

BENEFICIAL OWNERSHIP PRINCIPLES

In 2014, the G20 endorsed High Level Principles on Beneficial Ownership Transparency and committed to implement them through concrete actions, to be shared in writing. Transparency International makes the following observations and recommendations in relation to the implementation of certain principles.

Principle 1: Countries should have a definition of 'beneficial owner' that captures the natural person (s) who ultimately owns or control the legal person or arrangement.

The majority of countries use a quantitative approach to identify and qualify beneficial owners, in line with the FATF definition of "the natural person who ultimately owns or controls a customer and / or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate control over a legal person or arrangement". Within this framework, control is often defined based on the holding of a certain percentage of shares or voting rights or property; however, this quantitative approach is not always useful. A person may exercise control over a corporate entity without holding shares or a position within the management of the company through, for example, kinship or other types of affiliation, shareholder agreements, nominee shareholders, convertible stock, directors and persons in senior management position, among others.

When defining beneficial ownership, countries should go beyond quantitative analysis of controlling shareholders based on a threshold (e.g. persons owning more than a given percentage of a company) and consider that measurement as just one evidential factor among others. Financial institutions and designated non-financial institutions (such as real estate agents) should use additional means to conduct due diligence to identify and verify the beneficial owner in the case of suspicious transactions.

Principle 2. Countries should assess the existing and emerging risks associated with different types of persons and arrangements, which should be addressed from a domestic and international perspective.

An effective money laundering regime requires a good understanding of how legal persons and arrangements can be misused. A clear understanding of the types of legal persons and arrangements that exist in the country, their formation and registration process, their different forms and structures and the risks they pose is foundational to a substantive risk assessment. The StAR Puppet Masters' report¹ demonstrates the importance of analysing beneficial ownership beyond formal control – in the great majority of grand corruption cases actual control was exercised by unknown individuals through professional beneficiaries. These unknown beneficiaries were later discovered to be Politically Exposed Persons laundering proceeds of corruption through corporate vehicles. Greater resources and time should also be dedicated to evaluating laundering risks associated with the potential misuse of trusts. Currently neither the FATF recommendations, nor the G20 Principles specify by whom, how and when risk assessments should be conducted and whether the results should be made public.

Risk assessments should be conducted and monitored frequently. Countries should not delay undertaking their risk assessments until due for peer review under the FATF Mutual Evaluations process. At a minimum an executive summary of risk assessments should be made public to better monitor for gaps, emerging challenges and loopholes.

Relevant authorities and external stakeholders, including financial institutions, Designated Non-Financial Businesses and professions (DNFBPs), and non-governmental organisations should participate during the risk assessment process. Results of the assessment and obligations should be clearly communicated to relevant authorities, financial institutions and DNFBPs.

Based on the assessment, enhanced due diligence and reporting requirements must be ensured for specific sectors or types of corporate vehicles.

¹ <https://star.worldbank.org/star/publication/puppet-masters>

Principle 3: Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.

The FATF Guidance on beneficial ownership and methodology underscores a series of issues to be taken into account to ensure that companies can effectively maintain beneficial ownership information. In practice, compliance with such requirements usually involves the obligation for companies to maintain a list of shareholders and members that is either available to the public or accessible to competent authorities. Shareholder lists are an important source of information and may provide useful hints to investigators for the identification of beneficial owners. They provide information on legal ownership, but not necessarily on beneficial ownership.

Moreover, to guarantee that the information on beneficial ownership is accurate and current, companies should have powers to request information from stakeholders on the beneficial ownership of shares.

Countries should ensure that companies and shareholders are made aware of their obligations and potential sanctions for non-compliance, through for instance the publication of guidance notes. Companies should ensure and verify that the actual beneficial owners, beyond shareholder lists, are identified.

Companies should also be able to claim restrictions (e.g. suspension of dividends) against shareholders if they fail to provide beneficial ownership information. Shareholders should also be required to report on changes to beneficial ownership when they occur and to declare when they administer shares on behalf of a third person.

Principle 4: Countries should ensure that competent authorities have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons.

We consider a central (unified) register to be the most effective and practical way to record information on beneficial ownership and facilitate access to competent authorities, including foreign authorities. A central registry also supports the harmonisation of the country's legal framework, avoiding double standards. In cases where the adoption of a central beneficial ownership registry seems unrealistic in the short term, countries should still ensure that existing company registries on the state or provincial level obtain and verify beneficial ownership information.

Registries should be public, but, at a minimum, beneficial ownership information should be made accessible in a direct manner (without restrictions or necessity of requests) to competent authorities such as law enforcement and prosecutorial bodies, tax agencies, financial integrity units and supervisory bodies as well as to financial institutions and DNFBPs with anti-money laundering obligations.

Beneficial Ownership registries should have the mandate and sufficient human, technical and financial resources to collect, verify and maintain beneficial ownership information and have the power to request information and sanction legal entities for non-compliance. The provision of false or out-of-date information by legal entities should be subject to dissuasive sanctions. Beneficial ownership registries should be publicly available, in open data format and free of charge.

Principle 8: Countries should ensure that their national authorities cooperate effectively domestically and internationally.

Countries should ensure that their legal framework does not contain provisions that could harm or pose challenges to international cooperation. This includes, for example, ensuring that authorities are allowed to share confidential information with foreign authorities without having the consent of the affected parties and ensuring that domestic competent authorities have powers to obtain Beneficial Ownership information from third parties (such as financial institutions or DNFBPs on behalf of foreign counterparts (i.e., at the request of foreign authorities not only when conducting their own investigations).