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GROUPE D'ACTION FINANCIÈRE

# The Revised FATF Standards

## 10. Beneficial Ownership

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## Overview

- Misuse of corporate vehicles
- Previous FATF requirements and why they have been revised
- Who is the beneficial owner?
- Legal Persons (R.24)
- Legal Arrangements (R.25)
- International Cooperation

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## Misuse of corporate vehicles

- Misuse of corporate vehicles is common in crime and money laundering.
- Legal persons (e.g. companies) and legal arrangements (e.g. trusts) are a layer between assets and their owner – which can be misused to conceal the identity of the owner.
- World Bank report “The Puppet Masters” (2011) sets out the methods and scale of misuse of corporate vehicles.

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## Previous FATF Requirements

- Old R.33 & 34 required countries to take measures to prevent the unlawful use of legal persons and legal arrangements by money launderers, by ensuring adequate transparency.
- Key goal was to ensure competent authorities can identify the beneficial owner, e.g. through:
  - Central Registration of beneficial owners; or
  - Records held by company service providers; or
  - Investigative powers.

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## Implementation in the 3<sup>rd</sup> round

- Problems identified in FATF evaluations:
  - Inconsistent evaluations;
  - Low levels of compliance;
  - R.34 not applicable in many countries;
  - Great practical difficulty for law enforcement in identifying beneficial owners.
- Causes - lack of clarity about the requirements & how to implement them; and low priority on implementation.

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## Objectives of the revision

- The goal is unchanged:
 

*Authorities should have adequate, accurate and timely access to beneficial ownership information about companies & trusts.*
- New interpretive notes aim at providing more clarity as well as flexibility about the practical steps that should be taken by countries.
- Stronger requirements in the areas where implementation was weakest.

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## Who is the beneficial owner?

- **The *Beneficial Owner* is the natural person who ultimately owns or controls a legal person or arrangement.**
- For a legal person, this is normally the person (if any) who ultimately has a controlling ownership interest – including through a chain of companies;
- For a legal arrangement, ownership & control may be divided, so beneficial owners include the trustee(s), settlor, protector, and beneficiaries.
- The **beneficial owner must be a natural person** – so could be at the end of a chain of legal persons and arrangements
- The focus is on who has *effective ownership/control* .

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## Legal Persons and Arrangements

### Legal Persons:

Any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, Anstalt, partnerships, or associations and other relevantly similar entities.


### Legal Arrangements:

Express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, Treuhand and fideicomiso.

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## Legal Persons / Companies (R.24)

### Basic information

- Definition:
  - a) Company name, incorporation details, status, basic regulating powers, address, list of directors
  - b) Register of all shareholders or members
- All companies should be registered by a company registry
- The company registry should record part (a) of the basic information relating to all companies
- All companies should hold part (a) and (b) of the basic information. Part (b) should be kept *within the country*, either at the company's registered office or at another location notified to the company registry

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## Legal Persons / Companies (R.24)

### Beneficial Ownership Information

- Can be either:
  - Recorded by the company (*Proactive approach*); or
  - Determined when necessary (*Reactive approach*)
- There is flexibility about how countries ensure this. They should use one or more of the following mechanisms:
  - Requiring companies or company registries to record the beneficial owner(s);
  - Requiring companies take reasonable measures to identify the beneficial owner(s);
  - Use existing information to identify the beneficial owner when needed (e.g. shareholder registers; financial institutions, and tax authorities).


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 **Legal Persons / Companies** (R.24)

### Other requirements


- Companies must cooperate with competent authorities – either through a designated natural person or DNFBP in the country responsible for providing information & assistance, or a comparable measure
- Information must be **accurate** and **up-to-date**; available in a **timely** way
- Records must be retained for five years
- Countries should facilitate access to this information by financial institutions & DNFBPs - *at minimum, to basic information, part a)*
- Equivalent requirements apply to other legal persons (i.e. Foundations, Anstalt, and LLPs) as to companies

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 **Legal Persons / Companies** (R.24)

- Specific measures required to prevent misuse of **bearer shares and nominees**; for example:
  - For bearer shares & share warrants :
    - a) Prohibition;
    - b) Conversion to normal shares (e.g. dematerialised);
    - c) Immobilisation; or
    - d) Holders of controlling bearer shares should be registered by the company.
  - For nominee shareholders and nominee directors:
    - a) Disclosure of the identity of their nominator to the company registry; or
    - b) Require nominees to be licensed professionals, and to hold information on their nominators.

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## Legal Arrangements / Trusts (R. 25)

- In the 3<sup>rd</sup> Round, the Recommendation only applied to trust law countries
- The Recommendation now applies to all countries
- The focus is on the trustee ability to operate in the country, and as the best source of information
- Some requirements only apply to trust law countries

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## Legal Arrangements / Trusts (R. 25)

### Requirements on trust law countries

- Trust law countries should require trustees of any express trusts governed under their law to obtain and hold:
  - a) Beneficial ownership information about the trust;
  - b) Basic information about the agents and service providers for the trust.
- These obligations would normally be part of trust law – so that it applies to all trusts governed by the country's trust law.

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## Legal Arrangements / Trusts (R. 25)

### Requirements on all countries

- All countries should ensure that trustees disclose their status to financial institutions and DNFBPs when they act as trustees.
- Trustees should not be prevented from disclosing their status.
- Countries are encouraged to ensure that other entities and authorities hold information on the trust, for example:
  - a) Registries (of companies and of assets)
  - b) Other competent authorities (e.g. Tax authorities) ; and
  - c) Agents and service providers to trusts (e.g. Lawyers, TCSPs, asset managers etc)
- The same obligations apply to other types of legal arrangement.

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## International Cooperation

- Weak international cooperation has been a major barrier to investigation of corporate vehicles.
- New specific requirements added for international cooperation on beneficial ownership.
- Countries are required to:
  - a) Facilitate access to basic information in registries;
  - b) Exchange information on shareholders;
  - c) Use their powers to obtain beneficial ownership information

Also required to monitor the assistance they receive regarding legal persons.

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