



Regulatory Updates on Beneficial Ownership

Recent & Forthcoming Developments

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FATF Recommendation 24 (1)

- Recommendation 24 deals with ensuring transparency and beneficial ownership of legal persons
- March 2022 – FATF announced it had issued a revised Recommendation 24 and Interpretative Note
- Main changes introduced:
 - risk assessment
 - rapid and effective access to BO information
 - reference to registers or alternative mechanisms
 - prohibition against bearer shares / bearer share warrants
 - facilitate access to BO information
- Advised that the FATF is also looking at revising Recommendation 25



FATF Recommendation 24 (2)

- Risk Assessment of Legal Entities
 - Already required in terms of the Interpretative Note
 - Extended to foreign legal entities
 - Adopt mitigating measures to address risks identified

Main measure is the retention of beneficial ownership information

... but is it an option? 'could include requiring beneficial ownership information on some types of foreign-created legal persons'

... or is it mandatory? '[c]ompetent authorities should be able to obtain, or have access ..., to adequate, accurate and current information on beneficial ownership and control of companies and other legal persons ..that present ML/FT risks and have sufficient links with their countries (if they are not created in the country)



FATF Recommendation 24 (3)

- The Multi-Pronged Approach

- Recognised by the FATF and considered as including the following components:

- (i) Companies, FIs and DNFBPs are all to hold beneficial ownership information

- (ii) Designate public authority or body, including more than one, to hold beneficial ownership information or equally effective alternative mechanisms

- (iii) Additional supplementary measures

- Aim is to ensure that competent authorities have timely access to adequate, accurate and up-to-date information

... but it stops short of setting out how to ensure as much apart from the reference to liability and sanctions ...



FATF Recommendation 24 (4)

- Malta – A ‘Pro-Active’ Case Study and the FIAU’s Role

- Shared responsibility as even competent authorities have obligations:

The competent authorities ... shall report any discrepancies they find between the beneficial ownership available to them and the beneficial ownership information held in the register of beneficial owners kept by the Register [Regulation 12(3)]

Actively comparing BO Register data with BO data available to the FIAU through other sources:

- i. Periodic CBAR data validation exercise;
- ii. Client list comparison; and
- iii. RFI, STR and reporting comparison.

Result: July 2021 – March 2022 – 171 Discrepancies Reported to MBR



FATF Recommendation 24 (5)

- Malta – A ‘Pro-Active’ Case Study and the FIAU’s Role
 - Guidance to the different sectors and even to authorities to better understand beneficial ownership obligations.
 - Receiving information on failures re beneficial ownership obligations where these involve a subject person: information that is relevant for risk assessment purposes and specific supervisory exercises.
 - The conduct of periodic thematic exercises and targeted examinations focusing on beneficial ownership obligations.
 - Apply proportionate, effective and dissuasive sanctions, i.e. administrative fines and/or remedial actions.



The AML Package (1)

- July 2021 EU Commission issued its proposals for an AML Package
- Proposed Changes AML Rulebook:

1. Definition of Beneficial Ownership

'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted ...

(Directive (EU) 2015/849)

'beneficial owner' means any natural person who ultimately owns or controls a legal entity or express trust or similar legal arrangement, as well as any natural person on whose behalf or for the benefit of whom a transaction or activity is being conducted

(AML Rulebook)



The AML Package (2)

- Proposed Changes AML Rulebook:

2. Control through Ownership

A shareholding of 25% plus one share ... shall be an indication of ownership or control. This applies without the prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control.

(Directive (EU) 2015/849)

... 'control through an ownership interest' shall mean an ownership of 25% plus one of the shares or voting rights or other ownership interest in the corporate entity, including through bearer shareholdings, on every level of ownership.

(AML Rulebook)



The AML Package (3)

- Proposed Changes AML Rulebook:

3. Beneficial Ownership of Legal Entities other than Corporate Entities

- Same rules as for corporate entities
- Same rules as for trusts where the legal entity is similar to a trust

PLUS

- Comply or explain mechanism
 - (i) Member States to notify the EU Commission of the corporate and other legal entities under national law
 - (ii) EU Commission can make recommendations on how to determine who is the beneficial owner of legal entities other than corporate entities



The AML Package (4)

- Proposed Changes AML Rulebook:

- 4. Exceptions re Obligation to Determine BO for Legal Entities

- Retain exception for companies listed on a regulated market

PLUS

- Adds an exception to 'bodied governed by public law'
 - i. Have legal personality
 - ii. Financed, managed or supervised by the State
 - iii. Established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character



The AML Package (5)

- Proposed Changes AML Rulebook:

5. Express Trusts and Similar Legal Arrangements/Entities

- Member States to notify the EU Commission of all legal arrangements and entities where beneficial ownership is determined in the same way as for express trusts
- The EU Commission may adopt a list of legal arrangements and legal entities to which the same rules on beneficial ownership set for express trusts should apply



The AML Package (6)

- Proposed Changes AML Rulebook:

6. Implementation of the Revised FATF Recommendation 24

(a) Foreign legal entities + foreign legal arrangements to disclose beneficial ownership information to the BO Register when:

- i. acquiring immovable property in a Member State
- ii. establishing a business relationship with an obliged entity/subject person

Disclosure only in one BO Register even if active in two or more Member States

How to police this obligation? Through the obliged entities themselves...



The AML Package (7)

- Proposed Changes AML Rulebook:

6. Obligations of Legal Entities and Legal Arrangements

(a) Legal Entities

- Provide to the obliged entity a statement justifying why there is no beneficial owner in terms of the definition and therefore have to consider the SMO as the BO
- Data Retention Obligations – BO information to be retained for five years from dissolution or cessation of its existence, by persons designated by the entity, its administrator(s) or liquidator(s), or a person involved in the liquidation process. Person to be known to the BO Register.



Thank you!

Replace with any text to end the presentation.