Open Ownership

Revisions to Recommendation 24 Public consultation response

Open Ownership (OO) provides technical assistance to countries implementing beneficial ownership (BO) transparency reforms, to help generate accurate data on BO that complies with international standards and meets the needs of data users across government, obliged entities and the wider private sector, and civil society.

Since 2017, OO has worked with over 40 countries to advance implementation of beneficial ownership reforms, as well as supporting the creation of over 15 new central and sectoral registers. OO has developed the world's leading data standard for beneficial ownership information, co-founded the international Beneficial Ownership Leadership Group, and built the world's first transnational public beneficial ownership register.

OO is pleased to contribute to the public consultation on revisions to the FATF Recommendation 24. Open Ownership recommends that FATF makes central BO registries a requirement as part of the multi-pronged approach under Recommendation 24. A central registry is the most effective way to ensure competent authorities, obliged entities and all other actors fighting financial crime have timely access to accurate BO data. Registrars should be primarily responsible for ensuring the verification of BO data in these registers, although all users of the data have a role to play in improving data accuracy. In order to address some of the current challenges, FATF should set minimum standards for key attributes of central registries and clearly outline the role regulators should play. This will lead to accurate, usable data, which is fundamental in fighting financial crime, but in itself does not automatically lead to data use and impact. Governments should take a proactive approach to increasing the capacity for proactive data use amongst all actors fighting financial crime. Central registries have been and are being implemented in major financial centres, and it is here that the evidence must be gathered and the models developed for other countries to emulate.

Responses to questions

Risk-based approach for foreign legal persons - In light of the use of cross-border ownership structures to conceal beneficial ownership, FATF is considering whether all countries should apply measures to understand the risk posed by all types of legal person created in the country (as currently required) and also to certain foreign-created legal persons, and to take appropriate steps to manage and mitigate these risks. To manage the task regarding foreign-created legal persons which countries should understand and mitigate the risk, FATF is considering to limit the scope to foreign-registered legal persons which have sufficient links with the countries.

1. Should countries be required to apply measures to assess the ML and TF risks to all types of legal persons created in the country and also to at least some foreign-created legal persons and take appropriate steps to manage and mitigate the risks?

Assessing ML and TF risks to types of legal persons, for instance through a national risk assessment (NRA), are essential to informing aspects of a beneficial ownership disclosure system, for instance a risk-based approach to verification (see **Q10**) in a central registry approach. For example, legal entities at particular risk of abuse declaring not to have a beneficial owner, should raise a red flag for subsequent investigation.

Open Ownership takes the position that all types of entities and arrangements through which ownership and control can be exercised in a jurisdiction should be subject to disclosing its beneficial ownership, as part of the principle of comprehensive coverage. Experiences in the United Kingdom have demonstrated how a legal entity not included within disclosure requirements, the Scottish Limited Partnership (SLP), became "the getaway vehicle for corrupt individuals and organised criminal gangs" according to Transparency International, until they were brought within the scope of disclosure requirements (see also p9 of this impact study). Therefore, risk assessments should not form the basis for exemptions from disclosure.

As not all countries have established BO registries, ideally all foreign-created entities and arrangements that have any connection with a jurisdiction, e.g. by holding assets or establishing business relationships in the jurisdiction, should also be subject to disclosure. These entities form a loophole in a disclosure regimes, especially in high-risk areas such as real estate.

2. What constitutes a sufficient link with the country? How should countries determine which foreign-created legal persons have a sufficient link with the country? Is there an alternative standard to "sufficient link" that could be used? What are the practical issues met/envisaged regarding the identification and risk assessment of foreign created legal persons?

From Open Ownership's work on trusts, the threshold for "sufficient link" should be any connection with the jurisdiction. This includes if a foreign entity holds assets (e.g. real estate), the entity is owned or controlled from that jurisdiction, or the entity establishes a business relationship in the jurisdiction with service providers subject to AML/CFT law and regulations. This includes, for instance, banks, investment managers, lawyers, accountants, tax advisers, trust and company service providers, and real estate agents.

Currently these domestic service providers may be under an obligation to identify beneficial owners of foreign created legal persons when these establish a business relationship. However, domestically these legal persons may not be under the same BO disclosure requirements, for instance if they are incorporated in a secrecy jurisdiction. This disparity in the availability of information can create substantial problems for identifying BO of foreign legal persons.

In the absence of the availability of BO information in all jurisdictions, some jurisdictions (e.g. the United Kingdom) have proposed implementing central BO registries for foreign legal persons who engage in specific activities (e.g. government contracting or purchasing real estate). There are substantial issues with this approach, not least the challenge in verifying BO of foreign legal persons. Therefore, the implementation of central BO registries should be required as part of a multi-pronged approach, complying to certain minimum standards set by the FATF.

Multipronged approach to collection of Beneficial Ownership information - The FATF recommends that countries use a multi-pronged approach to ensure that beneficial ownership information is available to competent authorities. FATF is evaluating countries' experience to date of the creation and operation of beneficial ownership registries, and is considering what core elements should be included in a multi-pronged approach, and what supplementary measures should be considered for inclusion. This includes the benefits to law enforcement and other competent authorities of registries and other approaches, the costs and compliance burden associated with beneficial ownership registries to governments and companies; the value of information; the risks around the introduction of registries and other approaches, and other requirements and challenges for each of these approaches to be successful.

3. (a)What do you see as the key benefits and disadvantages of a BO registry, and

(b) what are the alternative approaches to registries, such as BO information held by companies, FIs, and DNFBPs, and their key benefits and disadvantages?

Analysis of FATF country evaluations clearly demonstrates the importance of central BO registries for reducing money laundering risk: "We found, however, that in countries where beneficial ownership information is available from a registry (company or dedicated registry), authorities are more likely to timely access the information." Countries maintaining a central registry – as opposed to relying on other decentralised approaches where companies and other institutions hold BO data – perform better against FATF's requirement to ensure timely access to adequate, accurate, and up-to-date information on the BO of companies.

Law enforcement in the UK, where a central – and public – registry was introduced in 2016, "generally felt that the introduction of the registry [...] has made it quicker and easier to obtain such information". A 2002 UK government study estimated the savings from having a central registry of BO in police time alone was GBP 30 million a year; it also made it easier to trace and recover stolen assets, therefore already providing net benefit before considering a range of other direct and indirect cost saving impacts. Central registries allow for proactive rather than reactive investigations, allowing investigators to identify patterns and trends across full datasets. Centralising registries also provides significant advantages such as enabling the verification of BO data by cross-checking information against other government-held registries, thereby improving the accuracy of data.

The advantages of a central registry are broadly recognised. The United States and Canada have recently made significant commitments to introducing centralised BO registries covering specified legal entities. In the US, provisions were included in the Corporate Transparency Act (CTA), as part of the 2020 National Defense Authorization Act. Several disclosure regimes have existed at the state level, but the US opted for a national central registry in light of national security concerns. To date, decentralised approaches to BO data (including state-level registries and obliged entities holding BO data) did not provide sufficient access to data to enable them to tackle national security issues.

While some make the argument that alternative approaches, such as BO information held by companies, FIs and DNFBPs, are easier and cheaper to implement, evidence from places that have implemented central BO registries have shown that the ease and speed of access for law enforcement results in considerable time savings for investigations. These time savings alone represent ongoing cost savings that by themselves – disregarding all other benefits – already outweigh the costs of implementing and maintaining BO registries. Devolving responsibility also requires both very clear rules and ongoing oversight, making it questionable that there would be any cost savings. In addition, if FIs, and DNFBPs hold BO data, they may be tipped off when they are the subject of investigations as authorities will need to request their data. Data held by FIs and DNFBPs also present challenges in monitoring and oversight, and ensuring data quality (see **Q4**).

4. What are the key attributes and role regulators play in ensuring that a BO registry has adequate, accurate and up-to-date BO information available for competent authorities? Does this make a difference if BO information is held by a BO registry and alternative approaches to registries (e.g. BO information held by companies, FIs, and DNFBPs))?

Regulators have a key role to play in ensuring BO registries have adequate, accurate and up-to-date information. These are outlined in Open Ownership's principles for effective disclosure. Regulators should ensure that:

- Beneficial ownership is clearly and robustly defined in law, with sufficiently low thresholds set to ensure all relevant ownership and control interests are disclosed
- Data comprehensively covers all relevant types of legal entities and natural persons
- Beneficial ownership declarations collect sufficient detail to allow users to understand and use the data
- Data is collated in a central registry
- Sufficient data is freely accessible to all actors who use data to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system
- Data is structured and interoperable, to facilitate verification and data use
- Measures are taken to verify the data
- Data is kept up to date and historical records maintained
- Adequate sanctions and enforcement exist for noncompliance

When BO data is not held centrally but is, for instance, held by companies, FIs and DNFBPs, this presents serious challenges for the utility and effectiveness of BO data. Notably, this:

- Severely restricts ease and speed of access, including for competent authorities

- Limits access to competent authorities rather than all users who use BO data to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system
- Presents severe challenges to verify the data
- Prevents bulk analysis of BO data in order to identify trends, patterns, raise red flags, etc.
- Presents a serious oversight challenge for regulators to ensure disclosures are being done correctly.

5. How should the accuracy of BO information disclosed to the BO Registry be confirmed?

To maximise the impact of BO registries, it is important that users and authorities can trust that the representation of ownership in a registry reflects the true reality of who owns or controls a particular legal person. Verification is a combination of checks and processes that help ensure that BO data is accurate and complete at a given point in time by eliminating accidental errors and identifying deliberate falsehoods. Checks can be deployed at different stages in a declaration system with the aim of making data accurate and reliable in order to create confidence in a registry and to maximise its utility and impact. The key principles for verification are laid out in the Open Ownership verification principle.

When data is submitted, measures should be taken to verify information about the:

- beneficial owner;
- entity;
- ownership or control relationship between the beneficial owner and the entity;
- person making the declaration.

This should be done by:

- ensuring values conform to known and expected patterns (e.g. ensuring a date of birth is a valid date, and not, for instance, in the future);
- cross-checking information against existing authoritative systems and other government registries (e.g. tax registries, citizenship registries); and
- checking supporting evidence against original documents (e.g. passport scans). This approach may also involve making designated third parties responsible and liable for verification (e.g. notaries and lawyers).

OO recommends implementing a combination of these mechanisms. What is feasible in a jurisdiction may depend on available government-held information.

After data has been submitted, it should be pro-actively checked to identify potential errors, inconsistencies, and outdated entries, using a risk based approach where appropriate (based on up to date and ongoing risk assessments), requiring updates to the data where necessary. A BO registry is a series of statements about ownership at different points in time. These can be referred to during investigation, even where the accuracy of data is in question, which is why it is essential to eliminate accidental errors as much as possible.

Mechanisms should be in place to raise red flags, both by requiring entities dealing with BO data to report discrepancies and by setting up systems to detect suspicious patterns based on experience and

evidence. Ownership types that are difficult or impossible to verify (e.g. bearer shares) should be prohibited.

6. What role should the private sector play, if any, in ensuring that the BO information is adequate, accurate and up-to-date? What lessons should be learned from private sector use of existing registries?

All users of BO information have a role to play in ensuring that BO information is adequate, accurate and up-to-date as part of a multi-pronged approach. However, governments with the right mandates are best placed to collect and verify BO information, and should become a requirement under FATF recommendations. Open Ownership research into private sector use of BO data (expected publication September 2021) shows that government BO registries are the primary source of BO information for private BO data service providers, which in turn is the primary source of BO information for companies. Services provided by these BO data service providers include cleaning and structuring information, and verification of BO data with other publicly available resources, usually at considerable cost for data users. These are basic services that are well within the scope of what government BO registries are able to offer. Improving the accuracy of data supplied by governments allows private sector BO data providers to move further up in the data value chain. In other words, the higher the base level accuracy of the data, the more verification mechanisms that rely on private sector actors (e.g. discrepancy reporting) can focus on remaining inaccuracies and improve overall data accuracy. Current use of BO data is severely constricted by poor data accuracy. Patchy availability of BO information globally makes developing holistic views of ownership challenging.

The research also suggests that government BO registries are an essential part of a multi-pronged approach, provided they are proactive in structuring and verifying BO information. Universal minimum standards of BO information would also make data more interoperable, and remove the challenge around differing BO definitions and thresholds. The implementation of BO registries by governments is relatively new, and many lessons are still being learned and new best practices identified. While this is the case, obliged entities should still be required to verify data from government BO registries.

7. What effective mechanisms (aside from a BO registry) would achieve the objective of having adequate, accurate and up-to-date BO information for competent authorities? What conditions need to be in place for authorities to rely on financial institutions and DNFBPs to hold BO information? How could BO information held by obliged entities as part of their CDD be utilised in this regard?

Relying solely on FIs and DNFBPs holding BO information presents serious limits to other companies being able to use BO information as part of their CDD processes, and exacerbate the challenges faced by private sector actors listed in Q6. Transparency International's review of FATF MERs has demonstrated that no single jurisdiction relying on BO data being held by FIs and DNFBPs showed high levels of effectiveness for IO3 and IO4.

No mechanism is likely to be prima facie effective. However, if BO information is not held centrally, oversight and being able to judge effectiveness would be very challenging. Therefore, central registries should be a required element of a multi-pronged approach.

8. How can the compliance burden on low risk companies be reduced, without creating loopholes that could be exploited by criminals?

Evidence from the UK suggests a relatively low burden for businesses to comply with disclosure requirements to central registries. This is especially the case for smaller companies. Additionally, a substantial part of the compliance costs is initial familiarisation with new regulations. This suggests that standardisation of BO reporting requirements across different jurisdictions is a way to considerably reduce the compliance burden for companies. Open Ownership has developed the Beneficial Ownership Data Standard (BODS) as a first step.

Whilst regulated entities spend significant resources on broader AML compliance, central registries would over time reduce these costs.

Adequate, accurate, and up-to-date information - FATF is considering how to clarify the key attributes of access to information by competent authorities, that access should be timely, and information should be adequate (to identify the beneficial owner's identity and means of ownership), accurate (i.e. verified using documents or other methods, on a risk-sensitive basis) and up-to-date (i.e. updated within a certain period following any changes).

9. Who should play a role in the verification of BO information? How effective is the framework on discrepancy reporting? What are the possible verification approaches that can balance the need for accuracy and compliance cost?

Regulators, the registrar and all users of BO information should play a role in the verification of BO information, with the registrar having primary responsibility. Data use yields more accurate data. A critical component of this is data users reporting incorrect information, and a registrar having the capacity and resources to properly assess, process and action these reports. Discrepancy reporting is one aspect of verification and a mechanism that should be part of a broader set of verification mechanisms that registrars should deploy (see **Q5**). Over time, by contributing to data accuracy in central registries, the level of effort for companies to obtain, hold and disclose BO data and the level of effort involved in verifying this should decrease. When BO is held as structured and interoperable data, many verification checks (including raising red flags) can be automated and the overall costs of verification reduced.

10. Should BO registries (where they exist) follow a risk-based approach to verifying of BO information?

As part of the Open Ownership principle on verification, a risk-based approach to verification is recommended for certain verification mechanisms. The best combination of verification mechanisms

varies per jurisdiction, and depends on a number of factors. For instance, whether the government holds other datasets that BO statements can be verified against. When BO information is collected and held as structured data, a number of verification checks can be automated at the point of and after the submission of BO information to reduce accidental errors and identify deliberate falsehoods. Automated checks should apply to all BO information and are not resource intensive if implemented well.

A risk-based approach is relevant for certain resource-intense verification mechanisms. For instance, some countries like Denmark check random samples of BO information. In this case, it would be more effective to check a random sample of companies deemed to be high risk.

11. How frequently should disclosed BO information be updated or re-confirmed (e.g. annually, within a set period after a change is made)?

Data should be kept up to date and historical records maintained. Initial registration and subsequent changes to BO should be legally required to be submitted in a timely manner, with information updated within a short, defined time period after changes occur.

Data should be confirmed as correct on at least an annual basis. All changes in BO should be reported within a defined, short period of time (e.g. 14 days). It is important that all changes are reported to prevent creating a loophole whereby multiple changes can be made within the reporting period (e.g. multiple changes to a company name) and subsequently only report the latest change.

An auditable record of the BO of companies should be available by dating declarations and storing and publishing historical records, including for dormant and dissolved companies.

Access to information - FATF is considering who should have access to beneficial ownership information, whether held by a registry or another mechanism., and how confidentiality or privacy should be protected.

12. Should access to a BO registry or another mechanism be extended beyond national (AML/CFT) competent authorities (e.g. to AML/CFT obliged entities such as financial institutions and/or DNFBPs)?

In addition to competent authorities, a range of actors use BO data to fight financial crimes, directly and indirectly. These include both obliged and non-obliged entities, civil society, investigative journalists and the general public. These all contribute to FATF's objectives of promoting effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. Extending access to at least a subset of beneficial ownership information – sufficient information for these actors to use the data, but excluding certain sensitive information unnecessary to do so – can have a range of benefits.

A number of benefits arise from making a BO registry public by looking at how different user groups are able to use the data when it is made public.

For government users, benefits include:

- improving speed and ease of access for both domestic government users and third country government users as an alternative to time and resource consuming;
- allowing for oversight of data use.

For private sector users, benefits include:

- managing risk by knowing who companies do business with
- improving private sector actors' ability to comply with government regulations;
- fostering trust in the integrity of the business environment and broader financial system;
- leveling the playing field between companies;
- improving environmental and social governance (ESG);
- generating economic value from data reuse.

For civil society users, benefits include:

- carrying out investigations into financial crimes and corruption;
- allowing for oversight and holding government to account;
- verifying data through use;
- deterring misuse of legal entities.

13. What measures should be taken to address concerns relating to privacy, security and potential misuse of BO information, arising from access to BO information?

Implementation to date has shown that beneficial ownership transparency can be readily accommodated within existing privacy and data protection legislation. This is because the publication of BO data is within the public interest, which often outweighs the potential negative effects of reduced privacy. No data protection regimes categorically prevent the publication of personal information. In order to ensure BO data can be made public in a manner that is compliant with data protection and privacy legislation, implementers should define a clear purpose in the legal basis for collecting and processing data when drafting legislation.

While sufficient data should be freely accessible to the public for the reasons outlined in Q12, implementers should proactively mitigate any potential negative effects arising from publication. Broadly, implementers can take three main approaches to this:

1. **Data minimisation**: Implementers should follow the principle of data minimisation and only collect data that is adequate (sufficient to fulfil the stated policy aims), relevant (has a rational link to that purpose), and limited to what is necessary (not surplus to that purpose). Disclosure regimes should not collect any unnecessary data – especially not sensitive data (e.g. physical appearance or racial background), which also often needs to meet a higher legal threshold for processing.
2. **Layered access**: Implementers should make a smaller subset of the data available to the public than to the authorities. The general public should have access to sufficient details necessary for public oversight to work. This means publishing sufficient data in order to be able to identify two beneficial owners of different companies when they are the same person, and being able to distinguish between two beneficial owners when they are different people, but

for instance share the same name. Additional data fields – e.g. a person's tax identification number – should only be accessible to competent authorities.

3. **Protection regime**: Implementers should provide for exemptions to publication in circumstances where someone is exposed to disproportionate risks. This is a common feature of many BOT regimes. This should focus on mitigating risks emerging from the publication of the data – i.e. knowing that someone is the beneficial owner of a specific legal entity. For instance, a person might be a member of a particular religious community and be the beneficial owner of a company whose activities conflict with the principles of that religion. The protection regime should also include risks emerging from the publication of any of the personal data. For instance, someone who has been stalked and harassed has a legitimate case not to have the combination of name and residential address published. A protection regime should have an application system with the possibility to apply to have certain or all data fields protected before these are published, when substantiated by evidence. These should be reviewed according to a set of narrowly defined conditions, to avoid creating significant loopholes in a disclosure regime.

Bearer Shares and Nominee arrangements - FATF is considering possible measures to strengthen controls on bearer shares and nominees to prevent them from being used to conceal the beneficial owners of legal persons. This includes potential prohibition on the issuance of new physical bearer shares and a requirement for existing physical bearer shares to be immobilised or converted before any associated rights can be exercised. FATF is also considering requiring nominee directors and shareholders to proactively declare their status and (for non-regulated nominees) their nominator to the company and to a registry or financial institution.

14. Should issuance of new physical bearer shares without any traceability be prohibited?

Yes. Bearer shares without any traceability form a significant loophole and vulnerability to global AML/CFT efforts as they are not possible to verify. As part of Open Ownership's principle on verification, ownership types that are difficult or impossible to verify (i.e. bearer shares) should be prohibited.

15. Should existing physical bearer shares be immobilised or converted?

Yes. See Q14.

16. With regard to nominee arrangements, what are the benefits and disadvantages of requesting nominees directors and stakeholders to declare their status? Are there alternative equivalent measures that would offer the same level of transparency?

OO strongly recommends the mandatory disclosure of nominee arrangements as their presence is a relevant indicator within a risk-based approach. A benefit of requesting this disclosure is that bulk

analysis of nominee arrangements may reveal broader patterns of misuse of legal entities, including internationally.

Importantly, a clear benefit of requiring the disclosure of nominee directors and shareholders is that they are the only ones, in addition to who they are representing, that are aware of their status. A compliance officer responsible for declaring beneficial ownership of a legal entity may not be aware of all nominee arrangements. The disadvantage is that it is impossible to verify if all nominee arrangements have been comprehensively declared although this should be considered with regard to other measures to improve data quality, such as verification. We strongly recommend an approach which requires, for each declaration of ownership and control, to state explicitly whether it is or whether it is not a nominee arrangement. This declaration can then be relied upon in court.