APPROACHES TO BENEFICIAL OWNERSHIP TRANSPARENCY:

The Global Framework and Views from the Accountancy Profession

IFAC International Federation of Accountants

CPA CHARTERED PROFESSIONAL ACCOUNTANTS CANADA

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- preparing a future-ready profession; and
- speaking out as the voice for the global profession.

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FOREWORD

The scale of financial crimes is enormous, with global estimates ranging from US$1.4 trillion to US$3.5 trillion annually.[1] Underlying these trillions of dollars is criminal activity that damages human wellbeing and harms economies and societies throughout the world. The strong connection between financial crimes such as money laundering and activities such as the illegal drug trade, corruption and human trafficking makes the fight against them all the more urgent.

Uncovering and fighting illicit financial flows requires information on who owns, controls or ultimately benefits from any business involved in potentially illegal activities: namely, the beneficial owners.

By concealing and/or disguising the beneficial owners of their assets, lawbreakers hide their activities, their proceeds of crime and their real identities. Whereas anonymity aids and abets money launderers, tax evaders and others, the transparency of beneficial ownership information shines a light on the natural persons in control of legal structures, regardless of their purpose.

Timely access to accurate beneficial ownership information plays a critical role for law enforcement and other authorities in identifying, preventing and prosecuting money laundering, terrorist financing and tax evasion, among other financial crimes. For financial institutions and other professional services providers, such as lawyers and accountants, access to timely and accurate beneficial ownership information provides a valuable resource for conducting initial and ongoing customer due diligence.

International standards for anti-money laundering (AML) establish a framework for transparency of beneficial ownership information. Jurisdictions around the world are examining the extent to which, how, and by whom, beneficial ownership information is collected, centralized, reviewed and published, consistent with the global framework. In recent years, several countries have established centralized beneficial ownership registries, with varying degrees of access by the public.

As policymakers continue to consider these developments at the global and national levels, this report seeks to ground the discussion with evidence-based and practical perspectives, including those of professional accountants who are engaged with beneficial ownership information. This report reviews how existing and new models for registries are meeting international standards and reflecting the evolving landscape. Through this research, we hope to inform the discussions in many jurisdictions as they assess effective approaches to the transparency of beneficial ownership information.

As leaders in the global accounting community, we know that the accountancy profession, with its strong public interest mandate, is a committed partner in the fight against financial crime. We are eager to continue to demonstrate how our profession, working alongside government, law enforcement and other stakeholders, can best work to combat money laundering and other financial crimes.

The fight against financial crime is too important not to get it right.

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[1] ACCA and EY. *Economic crime in a digital age*. January 2020.

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EXECUTIVE SUMMARY

The fight against money laundering, corruption and tax evasion requires the participation of a number of stakeholders, including accountants, as well as strong legal frameworks and accurate and timely information. Information on beneficial ownership has been identified as a key factor in fighting these financial crimes. A large number of accountants routinely interact with beneficial ownership information as part of their day-to-day activities. This makes the legal framework around beneficial ownership information of direct relevance to the accountancy profession, as it is for all other participants in the ecosystem, including law enforcement, regulators, financial institutions, lawyers and notaries.

At the global level, the recommendations of the Financial Action Task Force (FATF) are the internationally endorsed standards for fighting money laundering and terrorist financing. Effective implementation of the 40 FATF recommendations by national governments increases transparency and enables countries to successfully take action against illicit use of their financial systems. The recommendations address transparency and beneficial ownership of legal persons (such as corporations and limited liability companies) and arrangements (such as trusts) as part of a comprehensive framework to fight money laundering and terrorist financing.

Who is a beneficial owner?

The term *beneficial ownership*, along with similar terms such as control persons, has different legal definitions in different jurisdictions. This report relies on the general definitions provided by the FATF.*

For legal persons, a beneficial owner is a natural person who ultimately has a controlling ownership interest in a legal person (with what constitutes a controlling interest determined by the nature of the legal person), either through an ownership interest in the legal person or by other means.

For legal arrangements, a beneficial owner is a settlor, trustee, beneficiary or any other natural person exercising ultimate effective control over the legal arrangement.

*FATF INTERPRETIVE NOTE TO RECOMMENDATION 10

Accountants routinely interact with beneficial ownership information as part of their day-to-day activities. This makes the legal framework around beneficial ownership information of direct relevance to the accountancy profession.

The FATF recommendations provide governments and policymakers with principles for beneficial ownership transparency based on an outcomes-focused approach. This acknowledges the varying domestic political, economic and historical circumstances, and accordingly facilitates their implementation. However, it also raises questions as to which approach is most effective in achieving the goal of fighting money laundering.

Jurisdictions around the world are grappling with questions regarding the extent to which, how, and by whom, beneficial ownership information is collected, reviewed and made available. Central to this discussion is the concept of beneficial ownership

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registers and registries. This report considers several approaches to beneficial ownership transparency and highlights issues for policymakers and other stakeholders. These include company-based beneficial ownership registers, centralized beneficial ownership registries (with varying degrees of access) and "using existing information."

Register or Registry?

This report adopts the use of *register* to refer to records of beneficial ownership maintained by the corporate entity, and *registry* to refer to a centralized database of beneficial ownership information. This approach is the same as the one set out in the consultation issued by the Government of Canada in February 2020. When referring to specific registries, however, this report will use the proper name (e.g., the UK's PSC Register).

For each approach, there are trade-offs that must be made. A key consideration, for example, is the trade-off between cost and accuracy. Without verification, beneficial ownership information is less valuable for law enforcement authorities and other users. This is particularly the case when dealing with sophisticated criminal actors motivated by large sums of money. However, there are costs associated with verification, and depending on the size of the jurisdiction, these are potentially significant. At the same time, advances in technology have the potential to bring major efficiencies to data verification, as well as data submission, which may fundamentally alter the resource requirements around enhanced verification.[2]

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Privacy concerns also play a significant role in the discussion, as publicizing ownership information may provide a tool for bad actors to exploit. Limiting the potential risks calls for diligence and care upfront in determining what personal information is needed by competent authorities only and what should be made public.

Policymakers should consider issues such as these closely when choosing the appropriate approach for their jurisdiction. Ultimately, the cost-benefit analysis for any approach to beneficial ownership transparency, such as a public registry, may be different for different jurisdictions.

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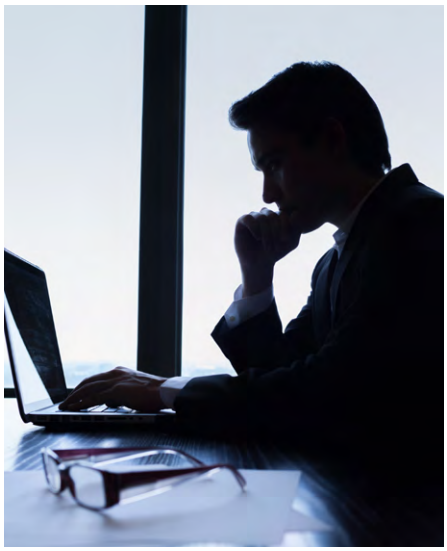
Similarly, it is important to note that the move to a central registry is a significant change management project. Policymakers may want to consider a phased approach. For example, if a jurisdiction is considering a public registry as the ultimate goal, it may be most effective to prioritize creating an accurate central registry that provides actionable information for law enforcement and other users with regulatory obligations before determining the extent to which the registry should be made public. We have seen this approach in the EU. The Fourth Anti-Money Laundering Directive first required a central registry. The Fifth Anti-Money Laundering Directive (AMLD5) subsequently required that these registries be made public.

[2] UK Department for Business, Energy & Industrial Strategy. *Corporate Transparency and Register Reform: Consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities*. May 2019. See p. 20, "New technologies can allow the UK to implement identity verification in a low-cost and light-touch way."

THE GLOBAL FRAMEWORK



The FATF standards

The recommendations of the Financial Action Task Force (FATF) are the internationally endorsed global standards for fighting money laundering and terrorist financing. Since its foundation in 1989 and the initial publication of the FATF Recommendations in 1990, the FATF has expanded from 16 member countries to 39 and has broadened the scope of the recommendations to cover additional areas including terrorist financing and financing of the proliferation of weapons of mass destruction. Through the national implementation of the FATF recommendations, as assessed through the mutual evaluations program conducted by the FATF and FATF-style regional bodies (FSRBs), significant progress has been made in the fight against money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction.

RECOMMENDATION 24. Transparency and beneficial ownership of legal persons

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) undertaking the requirements set out in Recommendations 10 and 22.

RECOMMENDATION 25. Transparency and beneficial ownership of legal arrangements

Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

Recommendations 24 and 25 address transparency and beneficial ownership of legal persons and arrangements. These recommendations require that countries take measures to prevent the misuse of legal persons and arrangements for money laundering or terrorist financing. Specifically, the recommendations require that countries ensure that adequate, accurate and timely information on the beneficial ownership and control of legal persons (Recommendation 24) and express trusts (Recommendation 25) can be obtained or accessed in a timely fashion by competent authorities.

Mutual evaluations

The FATF and the nine FSRBs conduct peer reviews of each member on an ongoing basis to assess levels of implementation of the FATF Recommendations, providing an in-depth description and analysis of each country's system for preventing criminal abuse of the financial system. The outcomes of these mutual evaluations are published in mutual evaluation reports.

The FATF and FSRBs compile assessment ratings for each of the 40 recommendations. Compliance with each recommendation is rated as compliant, largely compliant, partially compliant or non-compliant.

As of March 31, 2020, full compliance with Recommendations 24 and 25 was very low. Of the 100 assessed jurisdictions, only one received a rating of compliant for Recommendation 24, and just six were compliant with Recommendation 25. At these levels, Recommendation 24 is the FATF recommendation with the single lowest number of jurisdictions rated compliant in the fourth-round mutual evaluations. As for Recommendation 25, only three other recommendations have similarly low levels of compliance

COMPLIANCE WITH RECOMMENDATIONS 24 AND 25		
	R.24	R.25
Compliant	1	6
Largely Compliant	44	45
Partially Compliant	45	35
Non-Compliant	10	13
Not Applicable	0	1

The low level of full compliance provides some of the context for the increased focus by policymakers and civil society on the beneficial ownership recommendations.

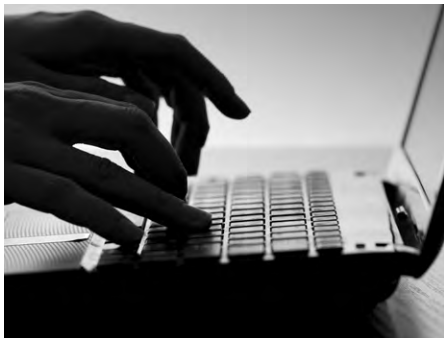
Interpreting the FATF Recommendations

The FATF supplements the recommendations with interpretative notes designed to clarify their application. In the interpretive notes for Recommendations 24 and 25, the FATF provides three approaches for legal entity beneficial ownership transparency: company-based beneficial ownership registers, centralized beneficial ownership registries, and the existing information approach. It is important to note that neither the FATF Recommendations themselves nor the interpretive notes call for public beneficial ownership registries.

FATF provides three approaches for legal entity beneficial ownership transparency:

- company-based beneficial ownership registers;
- centralized beneficial ownership registries; and
- the existing information approach.

FATF does not call for public beneficial ownership registries for legal entities or trusts.



The interpretive notes for Recommendation 25 provide that countries should require trustees of any express trust governed under their law to obtain and hold adequate, accurate and current beneficial ownership information regarding the trust.

Customer due diligence requirements

The FATF framework prioritizes timely access to beneficial ownership information by competent authorities and law enforcement. This access, however, also plays a central role in the customer due diligence requirements that apply to professionals, including

accountants, as set out in Recommendations 10 and 22. Both beneficial ownership recommendations provide that "countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22."

The recommendations require that financial institutions and DNFBPs, a category that includes accountants and lawyers, identify and reasonably verify the beneficial owner, including understanding the ownership and control structure of legal persons, when establishing business relationships and carrying out occasional transactions above a threshold value.

As the recommendations regarding customer due diligence have been adopted in a large number of countries, compliance with these requirements is a routine part of many accountants' work. The potential value of access to beneficial ownership information, preferably centralized, on the part of accountants in furtherance of their customer due diligence obligations was recognized by the Hong Kong Institute of Certified Public Accountants in a 2017 consultation response:

> The FATF framework prioritizes timely access to beneficial ownership information by competent authorities and law enforcement. This access however, also plays a central role in the customer due diligence requirements that apply to professionals, including accountants.

> For public interest and professional reasons, access should be available to CPA [Certified Public Accountant] practices and other relevant DNFBPs to facilitate them in complying with their CDD [customer due diligence] obligations under AMLO [the local money laundering legislation], as proposed. This would also be consistent with FATF Recommendations 24 and 25, which contain the statement: "Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22" (i.e., those relating to CDD and DNFBPs).[3]

RECOMMENDATION 22. Customer Due Diligence Requirements: DNFBPs

Lawyers, notaries, other independent legal professionals and accountants are required to conduct customer due diligence when they prepare for or carry out transactions for a client concerning the following activities:

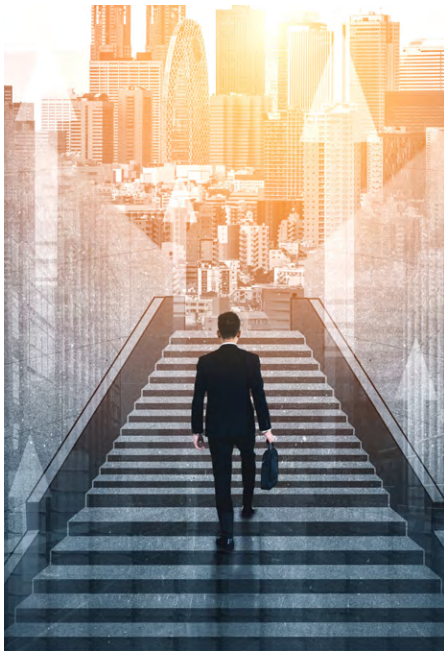
- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organization of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements; and
- buying and selling of business entities.

Trust and company service providers are likewise required to conduct customer due diligence when they prepare for or carry out transactions for a client concerning the following activities:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

[3] Hong Kong Institute of Certified Public Accountants. *Consultation Paper on Enhancing Transparency of Beneficial Ownership of Hong Kong Companies*. March 5, 2017, p. 5.

APPROACHES TO BENEFICIAL OWNERSHIP INFORMATION



Company-based beneficial ownership registers

The foundational issue for beneficial ownership information is whether it is required to be maintained solely by the company or whether the information is reported to a centralized registry (in addition to being kept by the company). Hong Kong provides an example of a jurisdiction that requires companies to keep up-to-date information on their beneficial owners but does not require submission of that information to any central register. In 2017, the government of Hong Kong consulted on whether to adopt a public beneficial ownership registry but ultimately chose the company-based register approach.

Hong Kong received a rating of largely compliant in its fourth-round mutual evaluation in September 2019. Under the Hong Kong Companies (Amendment) Ordinance of March 2018, companies are required to take reasonable efforts to identify significant control persons of the company. Non-compliance with these requirements is a criminal offence and may result in the company and all of its responsible persons being subject to fines and up to two years in prison.

Companies in Hong Kong are required to make their beneficial ownership register accessible to law enforcement upon demand. There is no provision, however, requiring that a company's beneficial ownership register be made available to financial institutions and DNFBPs, such as accountants and lawyers. This makes it less useful as an independent resource for these regulated parties in conducting customer due diligence. They are, however, entitled to request extracts from a company's beneficial ownership register during their initial or ongoing due diligence. Depending on the customer's willingness to comply with this request, or the information contained therein, the financial institution or DNFBP may determine whether to take on or maintain the client.

Accountants in Hong Kong may be actively engaged in this framework. Companies must designate at least one person to assist law enforcement officers in relation to the register. This person must be either (a) a natural person resident in Hong Kong and a member, director or employee of the company or (b) an accounting professional, a legal professional or a Trust or Company Service Provider under the local AMLO law.

The Hong Kong model has the benefit of eliminating the need for a centralized registry and the ongoing expense of operating it. It is an open question as to how timely the access by law enforcement and other authorities to the registers may be, or how accurate the information contained therein may be. Hong Kong's largely compliant rating in the FATF mutual evaluations demonstrates that it is possible for the company-based register model to be effective in the context of a smaller yet commercially active jurisdiction.[4]

[4] Financial Action Task Force. *Mutual Evaluation Report of Hong Kong, China 2019*. September 4, 2019.

Centralized beneficial ownership registries

A number of jurisdictions make use of a centralized beneficial ownership registry, to which companies are required to submit their beneficial ownership information (e.g., the UK, the Bailiwick of Jersey, and EU member states pursuant to the Fourth and Fifth Anti-Money Laundering Directives). Key considerations for centralized beneficial ownership registries are the nature and powers of the agency with responsibility for operating a country's beneficial ownership registry, the extent to which submitted information is verified, and who has access to the central registry.

> The structuring and empowerment of the registry operator has implications for the cost of operations and the quality of information.

Who operates the registry?

The operational structure of the registry varies across jurisdictions. Under some models, the registry is operated by a stand-alone agency (e.g., Companies House in the UK). In others, the registry is operated by, and is part of, a regulatory entity (e.g., the beneficial ownership registry operated by the Jersey Financial Services Commission [FSC]). In yet another structure, the beneficial ownership registry for entities in France is operated by the National Institute for Industrial Property, which has a wide variety of other non-regulatory responsibilities.

Closely associated with the location of the registry are the powers that the operator has with respect to verifying information, ensuring information remains current, and enforcing non-compliance. Under some models, such as that in the UK and Germany, the registry operator has little liability or power to ensure that information is accurate when submitted or remains so over time. The operator typically assumes no responsibility for incorrect entries or information.[5] This may result in lower information quality, which then negatively impacts the value of the information in preventing and identifying underlying financial crime.

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Under models where the registry sits with a regulatory authority (e.g., with the Jersey FSC), the registry operator may have greater ability to verify information and ensure it remains current. Likewise, association with a regulatory authority may provide the operator with more tools to actively enforce the requirements related to the provision and currency of information. Together, these factors should increase the accuracy of the beneficial ownership information held in the registry and make it more reliable and actionable.

The structuring and empowerment of the registry operator has implications for the cost of operations and the quality of information. Assigning responsibility for operating the beneficial ownership registry to an entity with strong powers to verify information may require more resources than a registry that simply publishes information as submitted, but may lead to greater information quality.

Data accuracy

In the absence of upfront validation and ongoing verification processes, public registries cannot be considered as authoritative sources of accurate beneficial ownership information. The example and experience with the public registry in the UK is particularly relevant to this issue of validation and accuracy of information.

[5] For example, the *General terms of use for Inspecting and the entry of beneficial owners in the Transparency Register* in Germany explicitly states that "the registration authority assumes no responsibility for incorrect entries or information."

Stakeholders in the UK have expressed concerns with the accuracy of the beneficial ownership data in the public registry — known as the People with Significant Control (PSC) Register — and the fact it is not definitive data within the registry. This is in large part due to the absence of standardized ways to file the data in the UK's public registry and the fact that unique identifiers are not leveraged to validate the information. Furthermore, Companies House, the executive agency that manages the registry, manages it first and foremost as a repository of information and currently does not actively verify the information it receives. This situation benefits the "bad actors" in the system who may either falsify their information or simply not register any information at all.

In commenting as part of the 2019 review of the PSC Register's implementation, the UK government noted:

> Most Law Enforcement Organisations felt that the introduction of the PSC register had helped to improve corporate transparency in the UK economy. However, this group of stakeholders cited knowledge of non-compliant behaviour and inaccurate information. As such, many held the opinion that the register was limited in its ability to provide complete transparency if the information submitted continues to go unchecked.[6]

In the Netherlands and Ireland, unique identifiers (similar to the social insurance numbers in the US and Canada) need to be provided for each beneficial owner and filed with the registry operator. This enables the operator to validate the identity of beneficial owners leveraging government databases. In the Netherlands, it is intended that an automated check will be performed on the information registered in the Persons Database against what is provided at the time of registration in the beneficial ownership registry of natural persons who are residing in the Netherlands. In the case of Ireland, the personal public service number of beneficial owners is used by the operator for verification purposes.

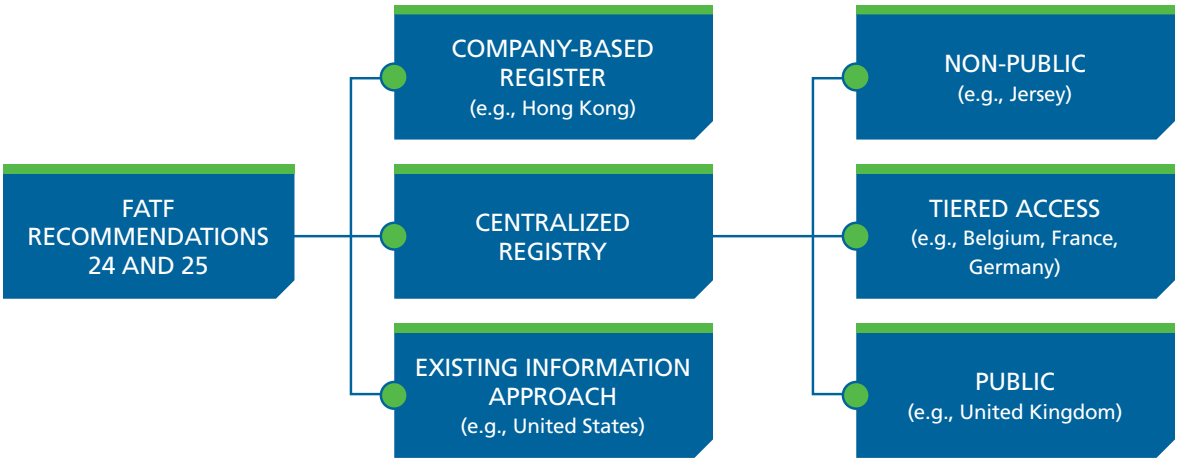
In some cases, if law enforcement authorities (such as those in Ireland, for example) and/or "obliged persons" under the law (such as auditors and professional accountants, for example, in the UK and France) identify in the course of their work a discrepancy between the information in a central registry and the beneficial ownership information available to them, they must notify the operator. The obligation to report discrepancies can create a certain level of uncertainty for accountants and auditors in terms of understanding how this requirement impacts or interacts with their existing professional obligations (e.g., professional secrecy in France). A lack of clear and specific guidance by the legislator can further increase uncertainty around when, how and what accountants and auditors actually have the responsibility to report.

In the UK, Ireland, Germany, France, the Netherlands and Belgium, failure to provide beneficial ownership information to the central registry or wilfully providing false information can result in administrative and/or criminal fines, and potentially imprisonment. These sanctions or fines for non-compliance can be applied to the corporate entity, its directors or governing body and/or the beneficial owners themselves.

[6] U.K. Department of Business, Energy & Industrial Strategy. *Review of the implementation of the PSC Register: BEIS Research Paper Number 2019/005*. August 2, 2019, p. 37.

Access

APPROACHES TO BENEFICIAL OWNERSHIP TRANSPARENCY



A key decision for policymakers is determining who can access the information within a centralized beneficial ownership registry. Generally speaking, the levels of access include:

- non-public access restricted to law enforcement and similar authorities;
- tiered access restricted to law enforcement, similar authorities, and other designated users (potentially including accountants); and
- public access.

Non-public access

In a non-public access model, beneficial ownership information is maintained in a central registry but is only accessible to a very limited number of parties. This will likely include law enforcement and other similar authorities in the first instance.

The restricted access model attempts to strike a strong balance between the benefits of centralization for efficient law enforcement access and data privacy concerns.

JERSEY

The Beneficial Ownership Register in the Bailiwick of Jersey is operated by the Jersey Financial Services Commission and is not accessible to the public.

The submission of beneficial ownership information to the register is closely linked to company formation, whereby the Jersey FSC must be satisfied with the information provided to grant a company licence.

The Jersey FSC receives approximately 2,500 company formation applications annually, processes 45,000+ beneficial ownership changes, and employs 12 full-time staff (with 3 to 4 working on information verification).

Public access

Under the public model, some or all of the beneficial ownership information maintained in the central registry is made available to the general public, typically through a publicly accessible and searchable website, either with or without a fee. This has the benefit of providing all directly interested parties—law enforcement, financial institutions and DNFBPs, including accountants—with immediate access to the stored beneficial ownership information. It also provides indirectly interested parties, such as civil society organizations, academics and others, with access to the information. The public access model has the benefit of simplicity—everybody among the public has the same level of access.

This approach comes down squarely on the side of transparency vis-a-vis privacy concerns and is lauded by civil society organizations such as Transparency International.[7] There is an open question, however, as to whether the public model sufficiently enhances outcomes from a law enforcement/AML enforcement and prevention perspective to warrant going beyond a central registry with restricted access and making publicly available otherwise private information.

Even in public access models, certain information such as residence address and day of birth may only be available to law enforcement authorities (and potentially DNFBPs). In this regard, a fully public model for all does not exist in the world at this point.

Tiered access

A model of public registry has emerged where different stakeholders have varying levels of access to beneficial ownership information in the registry. All EU member states under the AMLD5 have this tiered access model, whereby law enforcement authorities have full access to the information on beneficial owners that was provided whereas the general public usually has access only to data such as first name and surname, month and year of birth, nationality, country of residence, and the nature and extent of the beneficial interest held or control exercised. In some countries (such as France and Belgium, for example), reporting entities such as accountants and lawyers who can demonstrate that access to registry information is required in order to conduct their due diligence obligations may be granted access to more beneficial ownership information than the general public.

This approach actively seeks to balance transparency, privacy and legitimate need. It is also consistent with FATF Recommendations 24 and 25 when they provide that "countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking [customer due diligence requirements]." However, ensuring correct application of the tiered access has an associated operational cost and requires delineation of which categories of people, and under what circumstances, "interested parties" are eligible for the greater level of access.

UK

The UK PSC Register is a public register operated by the independent government agency Companies House. The PSC Register publishes information submitted by companies without verification.

The PSC Register contains information on more than four million companies. Between October and December 2019, there were 155,950 new incorporations and 121,625 dissolutions in the UK. Companies House has a staff of approximately 960 and an annual operational budget of approximately 71 million GBP.

The PSC Register has received criticism regarding the low quality of information published, as well as data privacy concerns.

In May 2019, the UK government launched a consultation to review issues related to accuracy of information held at Companies House, abuse of personal information in the register and misuse of UK registered entities as vehicles for economic and other crime. Consultation feedback is currently under review.

FRANCE

The beneficial ownership registry in France is operated within the *Registre du Commerce et des Sociétés ("RCS")*, maintained by the registries *("greffes")* of the local commercial courts. Obligated entities are bound to provide and update their beneficial ownership information to the greffes of local commercial courts.

Under AMLD5, the data of each court's registry are sent to the National Institute for Industrial Property (INPI), which is an *Établissement public à caractère administratif*.

Among a wide variety of responsibilities, INPI centralizes data on all formalities performed though the local greffes, including information on beneficial ownership. Data are centralized in the National Register for Commerce and Companies *("registre national du commerce et des sociétés, RNCS")*.

INPI is currently in the process of transitioning from a non-public model to a tiered model pursuant to AMLD5, which will provide a certain level of access to the general public.

[7] See Transparency International. *Recommendations on Beneficial Ownership Transparency for Open Government Partnership National Action Plans*. July 17, 2018.

Exemptions

There are concerns that public registries may provide access and information to "bad actors" with criminal motives, including identity theft and kidnapping. In order to protect personal information, many countries with a public or tiered-access registry do not make public the full dates of birth and residential addresses of beneficial owners.

Many countries also make public disclosure exemptions available to certain categories of people. In Belgium, Germany, Ireland and the Netherlands, the beneficial ownership details of minors can be exempted from publication. In some countries (Germany, the Netherlands and Belgium), people with a disability or who are deemed "incapacitated" or "legally incapable" can also seek an exemption.

Exemptions can also be requested by individuals who are concerned that public access to their beneficial ownership information could expose them to the risk of falling victim to criminal offences (e.g., fraud, robbery, kidnapping, hostage-taking, blackmail, extortion, coercion, threat, violence or intimidation). Supporting documents may need to be provided by these individuals when submitting their exemption requests. It should be noted that while this exemption prevents the public from accessing the full extent of beneficial ownership information, the data is still made available to competent authorities, including law enforcement agencies.

Using existing information

The third option by which countries may comply with Recommendation 24 does not include any requirements for a company-based register or centralized registry. Rather, it provides that countries may comply by "using existing information, including information obtained by financial institutions or professional service providers and information held by other authorities (e.g. company registries, tax authorities or financial or other regulators)." The US is an example of where this approach is used. A large number of data sources with varying degrees of connectivity are relied on to provide timely information to law enforcement and other authorities on beneficial ownership.

Although the FATF Recommendations suggest that this may be a viable way to make beneficial ownership information available, the US was rated non-compliant in the fourth-round mutual evaluation of December 2016.[8] While there has been legislative activity related to the creation of a central registry in the US, none of these efforts have been ultimately passed into law.[9]

[8] See Financial Action Task Force. *Mutual Evaluation Report of the United States 2016. December, 2016*, p. 224, stating "the absence of any measures to ensure that there was adequate, accurate and timely information on the beneficial ownership and control of legal persons that could be obtained or accessed in a timely fashion by competent authorities."

[9] See, for example, *H.R.2513 - Corporate Transparency Act of 2019*.

PERSPECTIVES FROM THE ACCOUNTANCY PROFESSION

This section reflects the views from the accountancy profession as expressed by representatives from Professional Accountancy Organizations (PAOs) in interviews for the purposes of this research and the views, as cited, in formal written submissions. Experts from the following PAOs were interviewed for this report:

ACCA	Association of Chartered Certified Accountants
AICPA	American Institute of Certified Public Accountants
CAANZ	Chartered Accountants Australia and New Zealand
CNCC	Compagnie Nationale des Commissaires aux Comptes
CSOEC	Conseil Supérieur de l'Ordre des Experts-Comptables
HKICPA	Hong Kong Institute of Certified Public Accountants
ICAEW	Institute of Chartered Accountants in England and Wales
IDW	Institut der Wirtschaftsprüfer in Deutschland
SAICA	South African Institute of Chartered Accountants

Representatives from the Jersey Financial Services Commission (FSC) were also interviewed.

Professional accountants are key gatekeepers in the fight against money laundering. Grounded in a strong ethical code and serving the public interest, professional accountants play a critical role by safeguarding public trust and reporting suspicious activities to those charged with governance responsibilities, as well as regulators. At the same time, they are also at risk of unwittingly enabling money laundering, especially by sophisticated professional money launderers.

The global accountancy profession supports its inclusion within the legal and regulatory AML framework. Accountancy is a public interest profession and accountants understand their important role in fighting money laundering.[10] In many jurisdictions, accountants and accounting firms have obligations as reporting entities under legislation and regulations governing the anti-money laundering regime, in line with FATF standards. Internationally, FATF has also developed guidance for a risk-based approach for the accountancy profession to manage the money laundering and terrorist financing risks that accountants face.[11]

The profession supports initiatives to increase the transparency of beneficial ownership for entities and legal arrangements in a way that enables competent authorities to determine beneficial ownership in a timely manner. Corporate transparency that assists in the identification of high-risk parties and enhances the traceability of assets and sources of funds is valuable in preventing further illicit conduct.

The [global accountancy] profession supports initiatives to increase the transparency of beneficial ownership for entities and legal arrangements in a way that enables competent authorities to determine beneficial ownership in a timely manner.

[10] IFAC. *Fighting Corruption and Money Laundering*.

[11] Financial Action Task Force. *Guidance for a Risk-based Approach for the Accounting Profession*. 2019.

It is worth noting, however, that the expansion of new AML requirements to the accountancy profession is a relatively recent development underway in several jurisdictions. PAOs and accountants themselves are determining how new requirements apply to them. The "know your client" or customer due diligence requirements for accountants in onboarding clients in jurisdictions lacking beneficial ownership registries are challenging because accountants may not be able to trace the actual beneficial owners.

Where beneficial ownership registries are in place, they do help the profession conduct their customer due diligence, accountants report. Nonetheless, there is concern that demonstrating customer due diligence "on paper" may not actually identify the real beneficial owners in instances where a registry's information is either not required to be verified or is incomplete and cannot be fully traced beyond the home jurisdiction.

No one player can combat money laundering alone. Professional accountants are among many stakeholders with AML requirements, along with regulators, banks, insurance companies and securities firms. Cooperation among AML stakeholders in each country and with their international counterparts — including on beneficial ownership transparency — is integral to the efficacy of AML efforts.

Accountants as "obliged entities" in Belgium

Belgium offers an example of how beneficial ownership requirements impact the profession. In Belgium, auditors are subject to the beneficial ownership registration requirements. As "obliged entities," auditors have to identify and verify the identity of their clients' beneficial owners and they must ensure the firms, associations or foundations they audit comply with corporate laws requiring the registration of beneficial owners with the registrar.

Source: Instituut van de Bedrijfsrevisoren - Institut des Réviseurs d'Entreprises. 2018-20-Communication-Registre-UBO. 2018.

Accountants as information users

Business needs to know who it is doing business with and beneficial ownership information plays a critical role in that regard. Accountants may have customer due diligence responsibilities in onboarding clients, and they may be required as AML reporting entities to verify the identity of the beneficial owners where applicable, depending on national laws and regulations.

Where a registry offers tiered access, accountants see benefits in being granted a higher level of access to information. The HKICPA addressed this in response to Hong Kong's 2017 consultation: "[We] would suggest that the PSC [persons with significant control] register also be accessible to relevant DNFBPs in relation to their clients or prospective clients. If the PSC register is accessible only to competent authorities, this could undermine the efficacy of the register and, potentially, impede DNFBPs in conducting CDD."[12]

Accountants in other jurisdictions also cite challenges in demonstrating customer due diligence and verifying beneficial ownership information where the beneficial ownership registries have information that is not verified. A common critique is that the information in the beneficial ownership registry has no value above what the company directly provides to the accountant (i.e., the registry does not serve as an independent source of information).

For our members, the actual mechanics of how the new register and the BOR [beneficial ownership registry] will operate is an important issue in terms of the role accountants might play in the future collection and maintenance of data regarded as highly accurate in the eyes of regulators.
– CAANZ, 2017

Accountants and information accuracy

A publicly accessible registry can be useful to accountants because it enables them to investigate who the beneficial owners of companies are. However, in countries such as the UK, accountants cannot solely rely on the registry since the accuracy of the information is not guaranteed by the operator. Guidance published by the UK's Consultative Committee of Accountancy Bodies (CCAB), which includes ICAEW and

[12] HKICPA, March 5, 2017, p. 5.

ACCA, advises accountants against solely relying on information contained in the PSC Register, stating: "Companies House registers of persons of significant control may be used but may not be relied upon in the absence of other supporting evidence."[13] The experience for accountants, among others, is that it is also difficult to have incorrect information removed from the UK register.

Businesses and accountants want the information in the UK's register to be accurate. In recent consultations, ICAEW wrote:

> We agree that Companies House should have additional responsibilities to verify information on the register and extended powers and increased resources to enable it to do so. It is important that relevant information on the register can be relied upon as being accurate.... We believe that verification of the information will serve a useful purpose in deterring use of UK companies for criminal purpose (or at least addressing the perception that gaps in the UK's regime allow abuse).[14]

The importance of a unique identifier for businesses and individuals to avoid confusion around common names is another key point for consideration during the consultation and reform process underway in the UK and cited by accountants.

Accountants on costs versus benefits

In some jurisdictions, accountants are among those responsible for the collection and maintenance of the beneficial ownership information in company registers and/or for public registries. A common concern expressed by accountants is that the compliance burden be kept to a minimum for law-abiding businesses.

PAOs in some countries have recommended that governments consider the additional administrative burden that comes with beneficial ownership information reporting requirements and the risks that come with public disclosure of that information. "The compliance costs for legitimate businesses are potentially substantial if the beneficial ownership concept is implemented without careful consideration of the current risks, existing data sources and the use made of it by Government agencies, the costs and benefits," stated CAANZ in its submission to the government of New Zealand in 2018.[15]

Likewise, the costs around verification are a significant issue, which accountants have sought to link to the benefits in terms of outcomes. The ICAEW made this link in a 2019 submission to the UK Department for Business, Energy & Industrial Strategy (BEIS): "The objectives of verification should be clearly defined so that increased costs can be assessed against perceived benefits. We agree that the main objectives should be to improve the integrity and reliability of the register and to close the gap in the regulatory regime."[16]

Data privacy concerns

Privacy concerns exist for individuals and for corporations as a result of making beneficial ownership information publicly accessible. The potential risks include the loss of privacy (personal and business), identity theft, harassment, and threats to

[13] Consultative Committee of Accountancy Bodies. *Anti-Money Laundering Guidance for the Accountancy Sector*. 2018, p. 38.

[14] ICAEW. *ICAEW Representation 78/19 Corporate Transparency and Register Reform*. August, 2019, pp. 1, 4.

[15] CAANZ. *Increasing the Transparency of the Beneficial Ownership of New Zealand Companies and Limited Partnerships*. August 2, 2018, p. 3.

[16] ICAEW. 2019, p. 2.

safety and security. The risks that beneficial owners and/or their families face may vary greatly, and those risks may have nothing to do with a private company. Nevertheless, a beneficial ownership registry can become a new public access point to previously undisclosed information. The potential risks demonstrate the need for diligence and care upfront in determining what personal information is needed by competent authorities only and what should be made public. As previously mentioned, all registries that make some information available to the public do allow for exemptions to the public disclosure of beneficial ownership information.

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The submission by CAANZ to a 2017 consultation in Australia reflects a common concern expressed by accountants: "We believe that the demands of transparency advocates need to be balanced against individual privacy rights (i.e. the shareholders of private companies), the need for commercial confidentiality, and maintaining Australia's business friendly reputation."[17]

In the UK, the ICAEW reflected accountants' concerns with a publicly accessible registry, in a submission in 2019:

> As the consultation paper notes, a registration system of this kind will not be a fool-proof safeguard against filing of false information. Similarly, it will not in itself prevent abuse by criminals of UK companies even where filings are correct. Those running the company may allow it to be used for illegitimate purposes, just as living individuals may allow their identity to be used by criminals. It is also possible that criminals might steal a company's identity, as they can steal identities of individuals.[18]

The role of technology

Digitalizing information flows will make a difference in jurisdictions where current legislation regarding beneficial ownership information is predominantly paper-based and needs updating (an example is the UK). The ACCA summed up the opportunity of technology in its 2019 submission to the UK BEIS:

> The holding of information in a digital format is the first step towards realising the benefits offered by modern technology, but it is essential that the information itself is trustworthy. The use of tools such as artificial intelligence, robotic process automation, machine learning and data analytics could transform the usefulness of Companies House records, but only if the underlying information is accurate and consistent. Implementing reforms to ensure the quality and consistency of the data which is to be mined by automatic tools is a prerequisite for driving value out of their use.[19]

The ICAEW supported digital verification, but added a caveat too, in its submission in 2019:

> We agree that digital verification is to be preferred (assuming that the data is protected and systems access controlled appropriately). This should be quicker, cheaper and more reliable than manual methods….A digital verification process is likely to be most efficient, but it would be necessary to cater for those who do not have access to digital tools or for whom any standard processes may be problematic.[20]

[17] CAANZ. *Increasing Transparency of the Beneficial Ownership of Companies*. March 17, 2017, p. 8.

[18] ICAEW, 2019, p. 5.

[19] ACCA. *Corporate Transparency and Register Reform - response to consultation - Ref: TECH-CDR-1832*. August 2019, p. 2.

[20] ICAEW, 2019, p. 7.

On the issue of businesses having to maintain their own register on top of submitting information to a central registry, such as the Companies House, accountants have noted that if a switch to a digital registry takes place, then the burden will lessen for companies who can file their own registers electronically to the central registry.

Beneficial ownership central registries can use application programming interfaces, which enable companies to export their information to the registries; this is already the case in Jersey with the FSC registry. In late 2020, Jersey's registry will go fully digital and automated and will likely use an AI algorithm as well to run verification and other checks to support its efficacy.

In some jurisdictions, professional accountants advocate prioritizing the modernization of existing business registers where the information may be poor. Furthermore, the use of government data and technology could help enhance existing business registers to perform the functions of a beneficial ownership register.

Linking to other data sources

Leveraging existing sources of data required and held by government, particularly the data held by the tax authority, is seen as a valuable attribute for beneficial ownership registries from the perspective of accountants and companies.

In New Zealand, for example, CAANZ has recommended: "Before placing additional information demands on companies, we suggest it would be worthwhile for government to conduct a stocktake of its existing data sources and sharing protocols and consider the potential for better utilisation of the data that already exists."[21]

In the UK, ACCA has raised the benefits of this approach in its 2019 submission: "There is definitely value to be derived from sharing datasets. Sharing of data with HMRC (the tax authority) should flow both ways. In addition to identifying standalone cases of fraud or other offences facilitated by submission of mismatched documents, there is also value to HMRC in understanding the ownership, management and control of corporate groups."[22]

In jurisdictions where beneficial ownership registries are contemplated but not yet in place, accountants also suggest linking existing government data systems.

In jurisdictions where beneficial ownership registries are contemplated but not yet in place, accountants also suggest linking existing government data systems. In Australia, for example, there is an expectation that linking tax data to beneficial ownership information would help to ensure accuracy and timeliness. Federal-state cooperation could facilitate the registration of Australian businesses by letting them click a box to allow information to flow from one jurisdiction to another.

In Canada, there is an existing process in one province for collecting non-tax information, which is filed with the national tax authority — a process that CPA Canada posits could be expanded to include required beneficial ownership information.[23] This example raises the question of whether it could be expanded to other jurisdictions, provinces or territories to achieve collection, compliance and enforcement, all while minimizing some of the regulatory burden on companies.

[21] CAANZ, 2018, p. 2.

[22] ACCA, 2019, p. 16.

[23] Chartered Professional Accountants of Canada. *Submission in response to Strengthening Corporate Beneficial Ownership Transparency in Canada*. April 2020.

CONCLUSION

Introducing and enhancing transparency regarding the beneficial owners of private companies, trusts and other legal arrangements is critical to bolstering anti-money-laundering regimes and tackling other financial crimes throughout the world. This report reflects the salient features, issues and accountants' views of various approaches to implementing registers or registries to support beneficial ownership transparency. Overall, the verification and validity of information and the appropriate access to the information appear as key factors in a registry's efficacy.[24]

However, experience shows that a decision by a jurisdiction to adopt a public beneficial ownership registry does not immediately ensure that law enforcement and others have access to accurate information in a timely manner. In several jurisdictions, the move to a public registry has been a more advanced step in a journey. The EU, for example, started with non-public registries under the Fourth Anti-Money Laundering Directive and then transitioned to public registries under AMLD5. In the UK, the establishment of a public registry has been followed by greater scrutiny around issues such as accuracy and the actionability of the information. These experiences are useful for policymakers to consider as they assess their domestic situations.

The global accountancy profession, with its public interest mandate, International Code of Ethics for Professional Accountants,[25] and FATF-recognized role in AML, is uniquely qualified to contribute to the consideration of beneficial ownership transparency. With this report, we are pleased to provide our perspectives and experience to the discussion on the best way forward, as we collectively fight financial crime and improve economies and societies.

[24] These findings are in line with several of the key features cited in the FATF report *Best Practices on Beneficial Ownership for Legal Persons*. 2019, see page 5.

[25] See, *The International Code of Ethics for Professional Accountants (including International Independence Standards)*.

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