



REVISIONS TO RECOMMENDATION 24 - PART 1: UNDERSTANDING RISKS AND BASIC AND BENEFICIAL INFORMATION

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INTRODUCTION

This article series will look at the amendments to Recommendation 24 and its Interpretive Note. In Part 1, the focus will be on the changes to understanding and assessing the risks of legal persons, basic information, and beneficial ownership information. Countries will be assessed under the new requirements of the Recommendation in the 5th Round of Mutual Evaluations that is scheduled to begin (for CFATF Members) with the presentation of the first 5th Round mutual evaluation report at the CFATF November 2026 Plenary.



BACKGROUND OF THE AMENDMENTS TO RECOMMENDATION 24

Insufficient Compliance with Recommendation 24

- The FATF noted in its 2023 Guidance on Beneficial Ownership of Legal Persons (FATF 2023) that less than half of countries were rated Compliant or Largely Compliant for this Recommendation, based on a Stocktake of Mutual Evaluations (FATF 2023, p. 5).
- Likewise, five (5) CFATF member jurisdictions out of the sixteen (16) achieved Largely Complaint ratings while one country was rated as Compliant, through MEVALs or Follow-Up Report re-ratings.
- Furthermore, the FATF Guidance stated that for many countries, information on the beneficial owner and the legal owner of a company was not available. The information was not collected and/or sufficiently verified at the time the corporate vehicle was created or during its existence (FATF 2023, p. 5).



BACKGROUND OF THE AMENDMENTS TO RECOMMENDATION 24

Low Effectiveness Ratings with Immediate Outcome 5

- Effectiveness ratings for Immediate Outcome (IO) 5 are the lowest in the global network among all the IOs. Out of the 164 MEVALs conducted up to December 21st, 2023, only 14 countries (8.5%) were given a substantial level of effectiveness for IO 5.
- A similar trend was seen for IO 5 effectiveness ratings among CFATF members, of the sixteen (16) were assessed jurisdictions, one (1) country achieved a substantial level of effectiveness rating.





BACKGROUND OF THE AMENDMENTS TO RECOMMENDATION 24

The Misuse of Legal Persons for Financial Crime

- Legal persons can be exploited by criminals to conceal beneficial ownership. Techniques can include the construction of complex chains using multiple legal persons, the splitting of assets and company administration across different countries, the use of formal and informal nominees and using corporate vehicles, such as shell, shelf, and front companies (FATF-EGMONT 2018, p.22).
- Corporate vehicles are often attractive to criminals for various illicit purposes, such as money laundering (ML), bribery and corruption, insider dealings, tax fraud, terrorist financing (TF), sanctions evasion and other illegal activities.



UNDERSTANDING RISKS: CONDUCTING A RISK ASSESSMENT

The revised Recommendation 24 states that “Countries *should assess the risks of misuse of legal persons for money laundering or terrorist financing and take measures to prevent their misuse*” whereas before the requirement was to “*take measures to prevent the misuse of legal persons*”.

As a first step, countries should conduct as **risk assessment** of all the types of legal persons, which should take into account the jurisdiction’s specific legal and regulatory contextual issues and the particular international threats and vulnerabilities it faces.



TYPES OF LEGAL PERSONS: DOMESTIC AND FOREIGN

It is important for countries to understand the types of domestic and foreign legal persons operating within the country. **Domestic legal persons** are legal persons that can be incorporated under the laws of the country. Mechanisms should be in place to:

- Identify and describe the different types, forms and basic features, the processes for creating those legal persons and obtaining and recording basic and beneficial ownership information.
- Make the information noted above publicly available.
- Assess the ML/TF risks associated with the different types of legal persons, and to manage and mitigate risks that are identified.

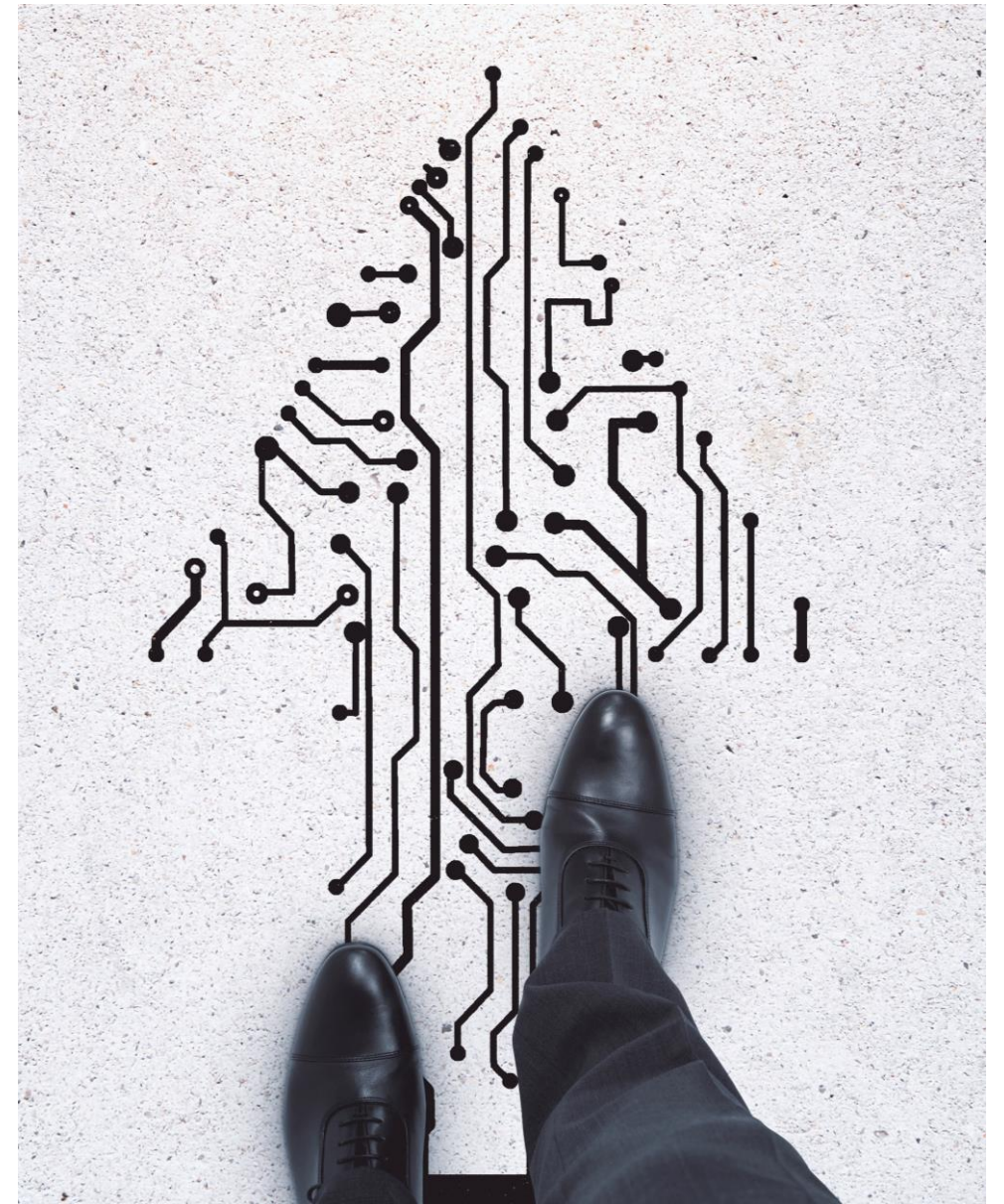
Source: FATF 2023, p. 10.



TYPES OF LEGAL PERSONS: DOMESTIC AND FOREIGN

Foreign legal persons are legal persons that were not created in a country but have sufficient links to the country. On a risk basis, sufficient link to a country can include, but is not limited to, factors such as a having permanent establishment, branch or agency, having significant business activity, possessing significant investment and significant, ongoing business relations with financial institutions or DNFBPs subject to AML/CFT regulation.

Source: FATF 2023, p. 10





STEPS TO A COMPREHENSIVE RISK ASSESSMENT

There are several measures that a country can take to conduct a robust risk assessment of legal persons, which can be a standalone assessment or part of a broader national ML/TF risk assessment. These include, but are not limited to the following: (FATF 2023, p. 10)

- Collection and analysis of registration statistics on all types of legal persons that can be created under national laws.
- Review and analysis of suspicious transaction reports, national law enforcement and prosecutorial cases where domestic or foreign legal persons were misused for criminal purposes. Information, such as how the legal person was exploited, how the beneficial ownership was concealed, and type of legal structure should be captured.



STEPS TO A COMPREHENSIVE RISK ASSESSMENT

- Identify the most common typologies of abuse of domestic or foreign legal structures that have a connection to their jurisdiction and assess the frequency of occurrence.
- Conduct expert consultations with external private sector, civil society, and academia experts who hold significant expertise on setting up legal structures and on their benefits and risks.

Risk assessments should also consider cross-border risks of legal persons, especially where there are complex company structures that span across multiple jurisdictions. Such structures can be exploited by criminals to perpetrate ML, TF and predicate crimes while making detection difficult for authorities (FATF 2023, p. 11).



MITIGATING THE RISKS

- By assessing the ML/TF risks of the different types of legal persons a country is exposed to, appropriate risk mitigation measures should be taken by the jurisdiction. These would include measures for domestic legal person as well as foreign legal persons with sufficient links.
- The FATF (2018, p. 11) notes some preventive measures that may be taken by countries to mitigate risks, such as applying disclosure requirements to legal persons that wish to operate in, own significant assets, or apply for licenses in a country and increase the investigative and enforcement capacities and powers of the corporate registry, beneficial ownership registry or other relevant public body.



BENEFICIAL OWNERSHIP INFORMATION

Under the new amendment to Recommendation 24, “Countries should ensure that there is adequate, accurate and *up-to-date* information on the beneficial ownership and control of legal persons that can be obtained or accessed *rapidly and efficiently* by competent authorities, *through either a register of beneficial ownership or an alternative mechanism*”. Previously, the requirement stated that “Competent authorities should be able to obtain, or have access in a timely fashion to, adequate, accurate and *current* information on the beneficial ownership and control of companies and other legal persons (beneficial ownership information) that are created in the country.”



UP-TO-DATE BENEFICIAL OWNERSHIP

- The change from “current” to “up-to-date” means that countries should have mechanisms to ensure that basic and beneficial ownership information is as current as possible and is updated within a reasonable period following any change or when information becomes outdated. While the revision gives the example of one month as a “reasonable period”, this is an indicative timeline rather than a set period.
- It is essential for countries to establish a clear and practical framework that supports the updating of beneficial ownership information within a “reasonable period” required. Moreover, the framework should be specific about the meaning of “a reasonable period” and the manner in which it will be applied for each approach the country uses.

Source: FATF 2023, p. 27



UP-TO-DATE BENEFICIAL OWNERSHIP

- In some cases, countries may face practical challenges to keeping information up-to-date, which would necessitate more time to meet the requirement. Thus, these practical hurdles and/or specific situations and how they may hinder beneficial ownership information from being kept up-to-date for each mechanism should be considered by the country with mitigating measures put in place.
- A requirement for the periodic validation of beneficial ownership information on a risk-based approach by companies and other mechanisms used to ensure the information is up-to-date can implemented as a best practice by countries to ensure that competent authorities have timely access to it.

Source: FATF 2023, p. 27



RAPID AND EFFICIENT ACCESS TO BENEFICIAL OWNERSHIP BY COMPETENT AUTHORITIES

- Access to beneficial ownership information held or obtained should be rapid and efficient, which means that it should be quick and reliable, without undue delay or impediment.
- Furthermore, competent authorities, particularly LEAs and FIUs, should have all the powers necessary for obtaining timely access beneficial ownership information. However, how the access takes place may vary depending on factors such as the national legal framework and the body holding the information.

Source: FATF 2023, p. 40



REGISTER OF BENEFICIAL OWNERSHIP OR ALTERNATIVE MECHANISMS

- A beneficial ownership registry can be an effective mechanism because it allows competent authorities to access the information from a direct source in a rapid and efficient manner. In general, the efficacy of these registers is based on the registrar having sufficient resources to perform its tasks and, on its ability, to request additional information when there are queries on the information received.
- The revised Recommendation allows countries to have considerable flexibility in the set-up of their registers to configure them to their institutional context, for example, the variety of legal persons whose beneficial ownership is recorded in the register(s) and different registers for different types of legal persons.

Source: FATF 2023, p. 30



REGISTER OF BENEFICIAL OWNERSHIP OR ALTERNATIVE MECHANISMS

- Although registers are an effective mechanism, challenges can stem from institutional level obstacles, such as whether the registry is established to collect adequate, accurate and up-to-date beneficial information, its powers to collect the information, the resources to perform its role and whether proportionate and dissuasive sanctions for failure to comply with the requirements are applied.
- Other measures can be used to hold beneficial ownership information, such as tax authorities, FIU, companies' registries, notaries, a public authority or require companies to maintain their own beneficial ownership and provide access to competent authorities in a timely manner.

Source: FATF 2023, p. 30



REFERENCES

- FATF – Egmont Group (2018). “Concealment of Beneficial Ownership”, FATF, Paris, France.
- FATF (2023). “Guidance on Beneficial Ownership for Legal Persons”, FATF, Paris, France.
- FATF (2012-2023). “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation”, FATF, Paris, France.



Thank you for reading this article and we hope that you found it informative and interesting. Part II will continue the focus on the amendments to Recommendation 24, specifically the multi-pronged approach, bearer shares and nominee shareholders and directors.



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