

Regulation of Beneficial Ownership in Latin America and the Caribbean

Prepared for the Innovation in Citizen Services
Division by:

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ABSTRACT*

The international community is increasingly aware that adopting laws, regulations, and mechanisms to gather and exchange information about “beneficial owners” (BOs) is crucial for combating tax evasion, money laundering, corruption, and the financing of terrorism. This paper explains the concept of beneficial owner, describes the standards in this area that countries should commit to, and presents the ratings achieved under the FATF and GF evaluations by each one of the 26 Inter-American Development Bank borrowing member countries regarding their beneficial ownership laws and regulations. Moreover, it analyzes the definitions of beneficial ownership currently in use in these 26 countries. In Latin America and the Caribbean, regulation in this area is very uneven. Although most countries have in place regulations defining the concept of beneficial ownership, these definitions do not always comply with international standards. In general, all of the countries have room to improve their regulations and, especially, their compliance in practice.

JEL Codes: D73, H63

Keywords: anti-money laundering, beneficial owner, companies, FATF, financial transparency, Global Forum, money laundering, tax evasion, tax transparency, transparency, trusts.

* The information contained in Annex 3 and all the data contained in this document concerning compliance by borrowing member countries of the Inter-American Development Bank (IDB) with international standards in terms of preventing money laundering and tax transparency are the author's own elaboration, based on information taken from relevant reports produced by the Financial Action Task Force, the Global Forum, and other pertinent entities. The data and information do not represent the opinion of the IDB or its employees. The IDB does not give ratings or make evaluations of its member countries, but does utilize those produced by other organizations competent in the field as a starting point for helping them to improve their record of compliance with such standards. The preparation of this technical note was made possible thanks to funding from the IDB's Transparency Fund, which benefits from generous contributions from the Government of Norway, the Government of Canada, and the MasterCard Corporation. The author is grateful for the valuable comments and suggestions offered by Francesco De Simone, Roberto de Michele, Alberto Barreix, Leonardo Costa, Catherine Greene, and Phil Keefer during preparation of this technical note.

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ACRONYMS

AML/CTF:	Anti-money laundering and counter terrorist financing	FATF:	Financial Action Task Force
BO(s):	Beneficial owner(s)	GF:	Global Forum on Transparency and Exchange of Information for Tax Purposes
CDD:	Customer due diligence	IDB:	Inter-American Development Bank
CRS:	Common Reporting Standard	IO [No.]:	Immediate Outcome
DNFBP:	Designated non-financial businesses and professions	ML/TF:	Money laundering and terrorist financing
EITI:	Extractive Industries Transparency Initiative	OECD:	Organization for Economic Cooperation and Development
EU:	European Union	R [No.]:	FATF Recommendation

EXECUTIVE SUMMARY

The international community increasingly recognizes that adopting laws, regulations, and mechanisms for gathering and exchanging information about beneficial owners (BOs) is indispensable when it comes to combating tax evasion, money laundering, corruption, and terrorist financing. For that reason, the Financial Action Task Force (FATF), which publishes recommendations on the fight against money laundering and terrorist financing, and the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum, or GF) assess countries in order to verify the availability of, and the authorities' access to, reliable and up-to-date information regarding the BOs of legal vehicles (e.g., companies, partnerships, trusts, foundations, etc.). The countries that receive negative ratings from these organizations may suffer reputational costs or even graver consequences, such as inclusion on a list of tax havens or non-cooperative jurisdictions, or the loss of correspondent banking relations (so-called de-risking) if financial institutions decide to leave those countries (to avoid the risks and sanctions related to money laundering, terrorist financing, or tax evasion).

The first part of this paper describes the concept of “beneficial owner,” explaining its definition, the criteria that must be taken into consideration when identifying BOs, and the obstacles that may be encountered during this process. The second part describes the recommendations on beneficial ownership transparency that all countries should follow, in accordance with the evaluations carried out by the FATF and the GF, and differentiating between legal persons and trusts. The third part describes the related measures being taken internationally, especially with regard to BO registries and public

disclosure of beneficial ownership information. The final part presents the FATF and GF evaluation ratings for beneficial ownership laws and regulations in the 26 Inter-American Development Bank (IDB) borrowing member countries. Furthermore, it analyzes the existing definitions of beneficial ownership for legal persons and trusts in the 26 countries. Finally, the work includes annexes for each country in which the definitions of beneficial ownership and the FATF and GF evaluation ratings are presented, along with a description of recent legislative developments that, in many cases, were not taken into consideration in the evaluations.

The analysis of the situation in Latin America and the Caribbean reveals that the regulation of beneficial ownership is uneven. Although the majority of countries have some kind of regulation that defines the concept of BO (especially in the case of legal persons, but not always for trusts), these definitions do not always fall into line with FATF requirements. In some cases, nonetheless, the countries went beyond the FATF requirements and established thresholds (percentages) of ownership even lower than those suggested by the FATF and encompassing more individuals as BOs. With regard to the FATF and GF ratings, the situation is similarly uneven. In general, in all of the countries there is room for improvement regarding their regulations and especially compliance in practice. In the near future, many countries will be evaluated by both agencies in new rounds that are even more demanding, especially in terms of beneficial ownership and compliance in practice. The countries already submitted to these more demanding evaluations have obtained, in general, worse ratings than the countries participating in the earlier rounds of evaluations.

SUMMARY OF COMMITMENTS ON BENEFICIAL OWNERSHIP

To combat money laundering and tax evasion, or to exchange information, authorities must have timely access to current and accurate information regarding the identity of the BOs of all legal persons and legal arrangements with links to their territory. There are a number of options as to where

beneficial ownership information is collected and stored, and regarding who should be responsible for doing so (e.g., a company registry or the entity itself). Authorities must guarantee, however, the availability of and access to this information, which must be both accurate and up-to-date.

TABLE 1. SUMMARY OF COMMITMENTS ON BENEFICIAL OWNERSHIP

	LEGAL PERSONS	TRUSTS
Requirements:	There are no bearer shares. If they exist, however, their BOs are duly identified. There are no nominee shareholders. If they exist, however, they notify their role as nominee shareholder to the entity. They must know the identity of the BO whom they represent.	—
The identity of the BOs of the following must be available and accessible to the authorities (with sanctions in the event of non-compliance):	All legal persons (e.g., company, partnership, foundation, etc.) set up in conformity with local laws. All foreign legal persons with sufficient nexus to the jurisdiction.	All trusts (and similar legal arrangements) created according to local laws, although this is not necessarily required if the trustee is not located in the country. All trusts (governed under local or foreign law) managed in the country, or with a trustee resident in the country.
Definition of the BO (who must be identified):	All individuals who, directly or indirectly, control the legal person or benefit from it through ownership (e.g., by having 25 percent of the shares) or by other means of control (e.g., votes, the power to appoint the majority of the board of directors or influence decisions, etc.). If there are doubts, or no one meets the conditions above to be identified as a BO, then the senior manager of the legal person must be identified.	All settlors, protectors, trustees, beneficiaries, classes of beneficiaries, and any other person with effective control over the trust.
The BO's identity, accessible to the authorities, is made available in:	A company registry or by the legal person itself, or a corporate service provider, or other sources (e.g., tax authority registries, automobile or real estate registries, the regulator of listed companies, banks, and other reporting entities subject to the FATF Recommendations, etc.).	The trustee, although countries can also set up trust registries or obtain information about the BO of trusts from real estate registries or from the tax authorities, etc.

Source: Author's elaboration based on the FATF Recommendations.

TABLE 2. SUMMARY OF THE REQUIREMENTS FOR BO REGISTRIES

Legal vehicles that must register their BO	The BO is “any natural person, local or foreign, who directly or indirectly has effective control over the legal vehicle, or benefits from it, or in whose name a transaction is made, including”:	Updated data that must be registered regarding each BO identified:
Companies (e.g., corporation, joint-stock company, LLC, partnership limited by shares, etc.) formed in the country	All individuals who control or benefit from, directly or indirectly, the legal person, via:	1. Full name
Foreign companies (e.g., S.A., S.R.L., LLC, AG, GmbH, etc.) that have a nexus in the country (e.g., administrated or with a permanent establishment in the country)	a. Ownership, by having a percentage of the shares or the capital, for example, “more than 25 percent.” If there are doubts or no one is found:	2. Address
Partnerships formed in the country (e.g., general partnership, LP, LLP, etc.)	b. Control by other means (e.g., 25 percent of the votes, power to appoint or remove the majority of the board of directors or influence over decision making, etc.). If there are doubts, or no one fulfills the conditions of BO:	3. Nationality and residence
Foreign partnerships (e.g., sociedad en comandita simple, société en commandite simplifiée, etc.) that have a nexus in the country (e.g., administrated or with a permanent establishment in the country)	c. Identify senior manager of the legal person.	4. Date of birth
Other types of legal persons (e.g., associations, cooperatives, civil partnerships, etc.)	* The threshold of ownership might be lower, for example, “5 percent or 15 percent of the shares,” but not higher than “more than 25 percent of the shares.”	5. Identity card/Passport
*Companies listed on the stock exchange	* If in the chain of ownership there is a trust or foundation, then the BO of the trust or foundation must also be identified, according to the rules mentioned below.	6. Taxpayer identification number (local and foreign)
*Companies of which the state (province, municipality, etc.) is the owner		7. Way in which control is exercised (e.g., owning more than 25 percent of the shares, or as settlor, etc.)
Foundations and similar arrangements (e.g., private foundation, <i>Anstalt</i> , <i>Privatstiftung</i> , STAK, etc.) formed in the country, or formed abroad but with a nexus in the country	Do not require registration if the regulator (e.g., the stock exchange) already has information about the BOs	8. Date that beneficial ownership began
Local trusts (created according to/regulated by local laws), if these exist	Do not require registration (it is assumed that they are appropriately regulated) and have no owner	9. Chain of control (entity or nominee shareholder through which effective control is exercised)
Foreign trusts (created according to/regulated by foreign laws; e.g., <i>fideicomiso</i> , <i>fiducie</i> , <i>Treuhand</i> , <i>Waqf</i> , etc.) whose trustee or administration is located in the country	All those listed below, irrespective of the percentages of control or rights:	
	1. Settlers or founders, 2. Trustees or members of the foundation council, 3. Protectors, if they exist, 4. Beneficiaries or classes of beneficiaries, and 5. Any other person with effective control	
	* If any of the above is a legal person, then the BO of said legal person must also be identified according to the rules mentioned above for legal persons.	
	* All beneficiaries must be identified, irrespective of the percentage of interests in the trust fund (it is incorrect to identify only “the beneficiaries with rights to more than 25 percent of the trust assets”).	

Source: Author’s elaboration based on the FATF Recommendations.

Note: The Tax Justice Network presents more details at: https://www.taxjustice.net/wp-content/uploads/2017/04/TJN2017_BO-Registry-ChecklistGuidelines-Apr.pdf.

INTRODUCTION

The aim of this work is to contribute to the understanding and regulatory development of beneficial ownership transparency, for those countries interested in adapting their regulations and registries to comply with new international transparency measures, especially with regard to the FATF and GF evaluations.

The first part of this paper describes the concept of “beneficial owner,” providing a definition, the criteria that must be considered for identification purposes, the significance of the matter for financial sector transparency, and the obstacles that may be encountered during the BO identification process. The second part describes the transparency recommendations that countries should follow, in accordance with the evaluations carried out by the FATF and the GF, differentiating between legal persons and legal arrangements

(e.g., trusts). The third part describes the related measures being taken internationally, especially with regard to BO registries (some countries updated their existing commercial registries in order to also register BOs) and public disclosure. The final part presents the beneficial ownership ratings achieved by the 26 IDB borrowing member countries in the FATF and GF evaluations. Furthermore, it analyzes the existing definitions of beneficial ownership for legal persons and trusts in these 26 countries. Finally, the work includes annexes for each country in which the definitions of beneficial ownership and the FATF and GF ratings with their observations are described (and sometimes transcribed), along with a description of recent legislative developments that, in many cases, were not considered in the evaluations.

The matter of so-called “beneficial owners” (BOs), also known as effective beneficiaries, real owners, or ultimate beneficial owners (UBOs), has been growing in importance at the international level due to the central role it plays in financial sector integrity and transparency. This has obliged countries to take measures and update their legislation to avoid reputational risks or negative ratings in the evaluations conducted by international agencies such as the GF or the FATF, which establish recommendations for combating tax evasion, and money laundering and terrorist financing respectively.

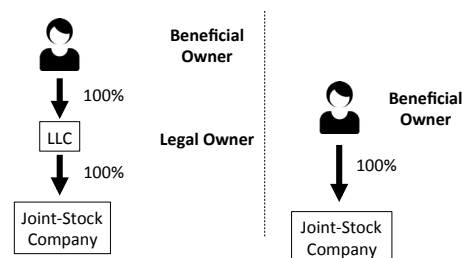
The concept of beneficial ownership refers to the individual or individuals—in other words, only physical or natural persons—who are the ones who really control or benefit economically from a legal vehicle such as a company, trust, foundation, etc.

The FATF defines a BO as the natural person or persons that “ultimately”—in the event that ownership/control is exercised through a chain of ownership or by any other means—own or control the customer and/or the natural person in whose name a transaction is carried out. It also includes the persons who exercise effective final control over a legal person or another legal entity (FATF, 2012).

Let us imagine a simple example. An individual is the sole shareholder of a company, and the one who effectively and directly controls it. This individual is therefore the BO of the company. However, in commercial practice it is possible that between a legal vehicle (the joint-stock company in Infographic 1) and its BO there may be more layers, which form a chain of entities before reaching the BO. In the left-hand panel of Infographic 1, there is a single layer between the legal

INFOGRAPHIC 1

DIFFERENCE BETWEEN A BO AND A LEGAL OWNER



Source: Author's elaboration.

vehicle and its BO: a limited liability company (LLC). In this case, the BO controls the joint-stock company indirectly (via the LLC). The LLC is the shareholder of the joint-stock company or, in other words, its legal owner.

2.1 How can beneficial ownership be determined?

The BO is the individual who effectively controls or benefits from a legal vehicle. This control or economic benefit can be exercised in various ways. The most common case is through ownership, by possessing a significant percentage (e.g., more than 25 percent) of a company's shares. A further case is when control is exercised by holding a significant percentage of the right to vote, or having the power to appoint or replace the members of the entity's board of directors. However,

effective control can also be exercised by other means, such as by having the power to influence or veto the decisions taken by an entity, either through agreements between shareholders or partners, or through a family or other kind of link with those responsible for decision making, or through holding an entity's negotiable bonds or other debt securities that can be converted into shares (FATF, 2014). The above examples show that determining the BO is a complex process that varies according to each case. A country's regulations often establish criteria in order to define who should be considered a BO.

One important detail is that the identification of BOs is irrespective of their nationality. In other words, a legal vehicle should identify its BOs irrespective of their nationality or place of residence.

2.2 Why is it important to identify the BO?

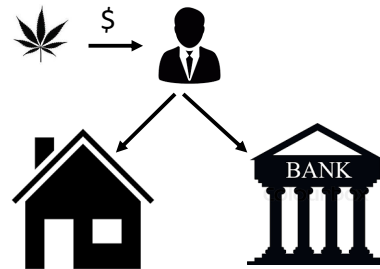
The GF and the FATF evaluate countries in order to determine whether they have access to information regarding the BOs of legal vehicles (companies, trusts, etc.), as this information is important for combating tax evasion, terrorist financing, and money laundering. Money laundering involves making complex transactions and operations that enable money of illicit origin (e.g., from drug trafficking or from tax evasion) to be used, making it appear legal. For example, a drug trafficker might open a nightclub in order to claim a legal income (from ticket sales and alcohol revenues), although the money in reality originates from the sale of drugs.

Let's imagine an individual, John Smith, who wants to evade taxes in Country A. If John Smith has a lot of real estate, bank accounts, and investments in Country A, all in his own name, it will be very easy for that country's authorities to notice that John Smith is evading taxes. The authorities will be aware of all his real estate and income and they will detect any that is undeclared, or for which he has not paid the corresponding wealth or income taxes.

A similar case would arise if John Smith is a drug trafficker and, using the money made from the sale of drugs, he buys houses and opens bank accounts, all in

INFOGRAPHIC 2

ECONOMIC ACTIVITY IN ONE'S OWN NAME



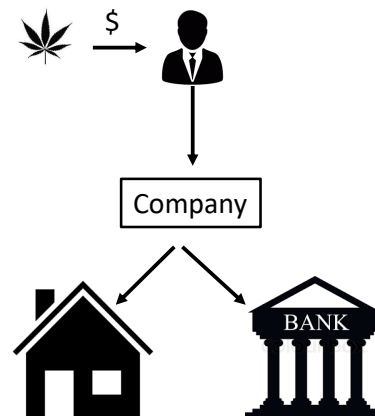
Source: Author's elaboration.

his own name. Again, it would be simple for the authorities to demonstrate that John Smith has no way of justifying the income that enabled him to acquire said real estate and bank accounts. John Smith might then consider opening bank accounts or buying properties overseas, but, thanks to the exchange of information between countries, the authorities of Country A could still find out about this activity.

Those individuals, therefore, who wish to remain hidden from the authorities do not usually conduct operations in their own name, but try instead to operate behind nominee shareholders or legal vehicles. Such

INFOGRAPHIC 3

ECONOMIC ACTIVITY THROUGH LEGAL VEHICLES



Source: Author's elaboration.

legal vehicles (e.g., companies, trusts, foundations, associations, etc.) are present in the economies of all countries and, for the most part, they are involved in legal and legitimate activities. This generalized and accepted use of legal entities and vehicles in the economy of any country, however, makes it attractive for criminals to misuse them in order to remain hidden.

Continuing with the previous example, John Smith could set up a company in Country A and acquire properties or open bank accounts, all in the company name (rather than in his own name). This would create a barrier for the authorities. However, if John Smith is listed as the sole shareholder of the company, the authorities could find out relatively easily that John Smith is the person who really controls it (in other words, that John Smith is the BO of the company). If

John Smith were more sophisticated and wished to evade taxes, launder money, or finance terrorism, he would surely add more layers so as to remain hidden from the authorities. He would do nothing in his own name. In contrast, he would hide his identity behind not just a single entity but a whole chain of legal vehicles.

The longer the chain of entities between a legal vehicle (in our example, the company) and its BO (John Smith), the more difficult it will be to determine who the BO is, given that it will be necessary to determine who controls each one of the layers.

A further factor that hampers BO identification is the use of nominee shareholders. The use of nominee shareholders—whereby a person provides his or her name to appear as a shareholder or owner in someone else’s name (whose identity remains masked)—is prohibited in some countries, but permitted in others. A nominee shareholder, however, might be masking the BO.

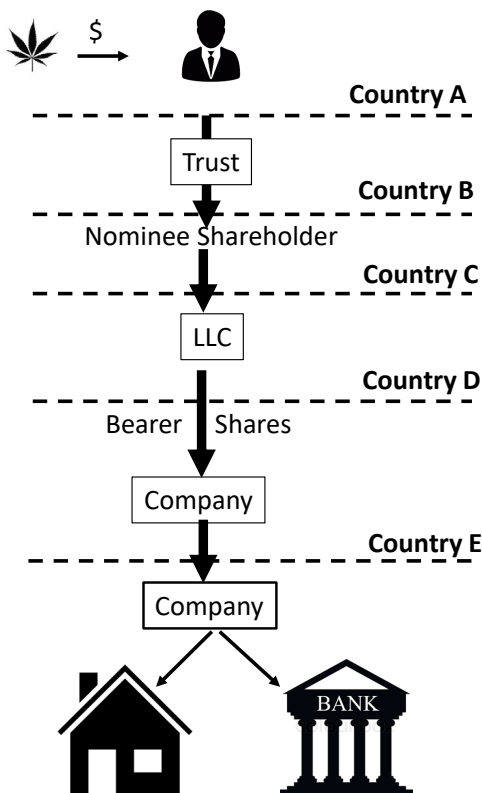
Bearer shares represent another barrier. If an entity issued bearer shares, the shareholder or owner of that entity is any person who holds the bearer shares (on paper) at any given moment. In other words, merely by physically handing the paper bearer shares over to someone else, ownership of the entity is also transferred. If the BO controls an entity through bearer shares, it will be extremely difficult to determine his identity, because authorities would need to know who has the paper bearer shares—which might be kept anywhere: a safe deposit box, a bank, etc.—at any one time. In some countries bearer shares are outlawed. In others they must be immobilized by a custodian, but in others they continue to circulate freely.

Furthermore, there are more complex legal vehicles, such as trusts or private foundations, whose control structure is more sophisticated than that of a company (which only has shareholders). With these more complex legal arrangements, it can become even more difficult to determine who really has effective control.

All of these barriers can be combined, as shown in Infographic 4. And, to make identification of the BO even more difficult, the chain of ownership is often expanded geographically, with each layer established in a different country. It will therefore be necessary to obtain information from each country in order to find

INFOGRAPHIC 4

ECONOMIC ACTIVITY THROUGH A COMPLEX SYSTEM OF LEGAL VEHICLES



Source: Author’s elaboration.

out who controls each layer. If one country of the chain fails to exchange information with others, or does not even have the information available, identifying the BO could turn out to be impossible.

If all countries provided information on beneficial ownership in all cases, the strategy of hiding behind a chain of legal vehicles would become obsolete. In our example, this would mean that the authorities would

know that the real estate and bank accounts belong to a company, but they would also know that the BO is John Smith. In contrast, if countries do not have beneficial ownership information, they will need to identify each layer of the chain of legal vehicles and discover each of their control structures until they get to the BO. This implies a much more arduous, and even sometimes impossible, task.

EVALUATING THE AVAILABILITY OF BENEFICIAL OWNERSHIP INFORMATION: THE GF AND THE FATF

The two international organizations that evaluate countries in terms of availability of beneficial ownership information are the GF and the FATF. The GF, which has more than 140 members¹ and reports to the Organization for Economic Cooperation and Development (OECD), is responsible for reviewing the practical and legal framework of countries in relation to the international standards on exchange of information for tax purposes.² In 2016, the GF published new Terms of Reference (GF, 2016) for its peer reviews, which assess the availability of and access to information, including beneficial ownership information, in relation to the standard for exchange of information. The GF ratings are public and serve as an input for the OECD list of non-cooperative jurisdictions. As the OECD has explained,³ countries must meet at least two of three criteria to avoid appearing in the list of non-cooperative jurisdictions. One is to achieve a GF rating of, as a minimum, “largely compliant” with the standard for exchange of information.

The FATF publishes 40 recommendations on anti-money laundering and counter-terrorist financing (AML/CTF), including Recommendations (R) 10, 22, 24, and 25, which are related to beneficial ownership. The FATF analyzes and reports data on each country’s compliance with the 40 recommendations. In addition to the reputational costs, countries with negative ratings can suffer consequences such as more exhaustive procedures during due diligence measures (enhanced due diligence) or even a ban on financial transactions.⁴ A negative rating from the FATF could be among the factors that lead to so-called de-risking, when international financial institutions make the

decision to shut down their operations in countries considered as high risk, with a view to avoiding sanctions for money laundering or terrorist financing.

In principle, both the GF and the FATF evaluate the availability of beneficial ownership information in each country. They also assess whether there are barriers to transparency, which means that countries must have regulations in place regarding nominees and bearer shares. However, there are some differences. The FATF focuses on AML/CTF and evaluates all types of legal vehicles, given that any one could be used to this effect. The GF’s focus is the exchange of information for tax purposes; consequently, entities that are generally exempt from taxes—for example, public welfare foundations—are not usually the object of analysis. Conversely, entities formed overseas but with a nexus in the country—for example, with the parent company or the administration in the country—are often the object of analysis by the GF,⁵ given that they may be subject to taxes.

¹ As of June 2017; see <http://www.oecd.org/tax/transparency/>.

² This standard is based on Article 26 (and commentaries) of the OECD Model Tax Convention to avoid double taxation and on the relevant articles of the OECD Model Agreement on Exchange of Information on Tax Matters.

³ See http://www.oecd.org/tax/strong-progress-seen-on-international-tax-transparency.htm?utm_source=Adestra&utm_medium=email&utm_content=%C2%BB%20Read%20the%20news%20release&utm_campaign=Tax%20News%20Alert%2028-06-2017&utm_term=demo.

⁴ See [http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate)).

⁵ Footnote 9, Terms de Reference (GF, 2016).

3.1 Availability of Beneficial Ownership Information

Both the FATF and the GF require the information on beneficial ownership to be accurate (neither false nor erroneous) and up-to-date (that the list of BOs is confirmed at least annually, or in the event of any changes, whether due to the transfer of shares or by the appointment of a new beneficiary). This beneficial ownership information must be accessible to the authorities. Likewise, both organizations require countries to have the necessary tools to verify compliance with this obligation, and to impose sanctions for failure to comply.

3.2 BO-Related Information That Should Be Made Available

It is important that each BO can be correctly identified (and not confused with other individuals). For this purpose, the following information is required from each BO: i) full name, ii) date of birth, iii) nationality, iv) country of residence, and v) date from which the individual is the BO. Some countries also require the address, identity card, or taxpayer identification number, and a description of the way in which control is exercised over the legal vehicle (e.g., by holding more than 50 percent of the shares).

3.3 Legal Vehicles Whose BOs Must Be Identified: Legal Persons and Legal Arrangements

Although countries must have available information regarding the BOs of all relevant legal vehicles, the FATF establishes different requirements according to whether the BO is a legal person (company, partnership, or foundation, among others) or a legal arrangement (trust, among others).

The FATF defines legal persons as “any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, corporate bodies, foundations, anstalt, partnerships,

or associations and other relevantly similar entities” (FATF, 2012: 120).

Legal arrangements are defined as express trusts (in which the settlor’s intention to create the trust is deliberate, and is neither implicit nor the result of a law) and similar vehicles such as the Spanish *fideicomiso*, the French *fiducie*, or the German *Treudand* (FATF, 2012). The trust, for example, is comprised of a structure in which a person (the settlor) transfers assets to another person (the trustee), who will manage the trust assets according to the settlor’s instructions, but in benefit of the beneficiaries (persons named by the settlor to receive the trust assets at some point).

3.3.1 Difference between legal persons and legal arrangements

The distinction between legal persons and legal arrangements has practical consequences for the availability of information because, in most countries, legal persons are obliged to register in order to exist,⁶ thereby identifying their owners. Trusts, in contrast, do not have to register, except with the tax authorities when their income is taxable (FATF, 2014). In other words, it should be easier for an authority to obtain information about a legal person (given that it must already be registered), than about a trust, as the latter are not always registered.

Likewise, the following two points, regarding the ownership of the assets (of a legal person or a trust) and the form in which control is exercised, demonstrate that in certain cases the distinction between legal persons and trusts can be considered more theoretical than practical.

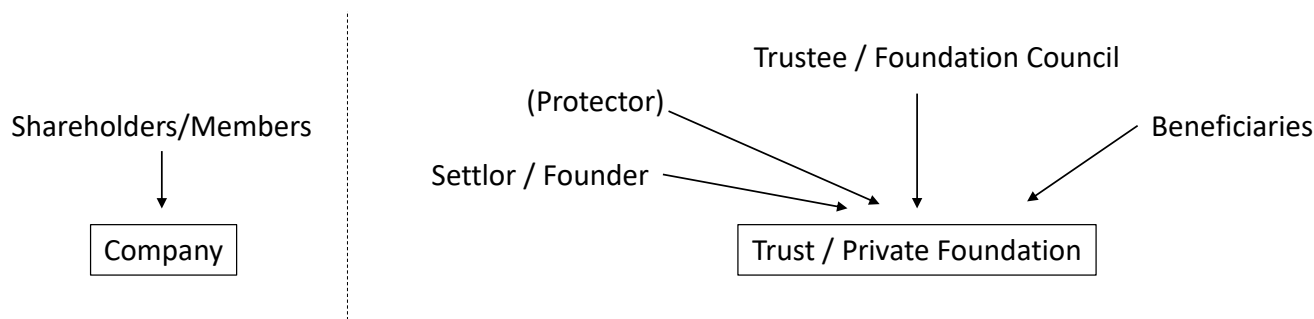
a) Ownership of assets

In a trust (which is a legal arrangement), the assets are usually in the name of the trustee (not of the trust), whereas in a foundation or a company (which are legal persons), the assets figure directly in the name of the entity (not in the name of the foundation council or the company board of directors). However, this distinction is more theoretical than practical, because although the assets are in the name of the trustee, the latter

⁶ In the case of a company, registration may be necessary to obtain legal validity or to limit the liability of the partners.

INFOGRAPHIC 5

DIFFERENCE IN THE CONTROL STRUCTURE BETWEEN A COMPANY AND A TRUST OR PRIVATE FOUNDATION



Source: Author's elaboration.

cannot appropriate or benefit from them as if they were his or hers, nor do they form part of his or her personal assets (which also means that the trustee's personal creditors cannot access the assets either, as they belong to the trust). In other words, the trustee enjoys only “legal ownership” (not absolute dominion) over the trust assets, which are separated from his or her personal wealth, which means in practice that it's as if the assets were in the name of the trust.⁷ A further example of the practical similarity between the trust and a legal person is that trusts (not the trustee) usually have a taxpayer identification number (TIN), to pay taxes just like any company, and they can also be the holders of bank accounts.

b) Means of exercising control

Furthermore, a distinction must be drawn, as the Interpretative Note to FATF R 10 does, between two ways of exercising ownership and control over the entity (although this is unrelated to the distinction between persons and legal arrangements).

It is one thing to identify the BO when the ownership and control are exercised only by shareholders or members who, in principle, are all equals (Infographic 5, left-hand panel)⁸—for example, in a company or in a partnership.⁹ It is a very different thing to determine who is the real controller of a trust, a private foundation, or an *Anstalt*,¹⁰ whose structures are more complex as there

⁷ This does not happen in countries that have no laws regarding trusts, or that do not recognize the status of the trust. In such a case, the trustee might be considered the real and sole owner, leaving the settlor and the beneficiaries in an unprotected situation.

⁸ There are also companies with different types of shares that bestow economic rights (e.g., receiving dividends) or political rights (e.g., voting rights). Moreover, there are companies whose capital is not comprised of shares, but of guarantees, or partnerships in which there are different types of partners, some with limited liability and others with unlimited liability.

⁹ In countries governed by common law, partnerships are usually fiscally transparent and are not always considered legal persons, especially if the partners have unlimited liability. Although the Global Forum classifies the legal persons of countries as either companies or partnerships, in countries following a continental tradition this difference lacks significance, and they are all called the same (e.g. “sociedades”). The World Bank report *Puppet Masters* explains that, whereas in companies the capital contribution is fundamental, in partnerships, the persons that form the partnership are fundamental and, traditionally in partnerships, all or some of the partners have unlimited liability. However, with limited liability partnerships (LLP), in which even companies can be partners, this characteristic no longer exists and all the partners in a partnership can enjoy limited liability.

¹⁰ This entity, typical in Liechtenstein, is a hybrid similar to a private foundation because it is a legal person, although in contrast to a private foundation, in an *Anstalt* there may not be an administrative board and the founder may be in sole control of the entity. There may be no beneficiaries (the founder in such a case is understood to be a beneficiary), and this position can be hereditary. However, the *Anstalt* can also issue shares, and be more similar to a trading company. In general, the founder creates the *Anstalt* through a trustee, in order to keep his or her identity secret. For more details, see: <http://kanzleiboesch.com/en/liechtenstein/establishment-anstalt-law.html> and page 166 of <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>.

are no owners but rather parties with different roles, rights, and obligations (Infographic 5, right-hand panel).

Although the FATF distinguishes between legal persons and legal arrangements, the reality is that private foundations, despite being legal persons, have very similar control structures to trusts (which are legal arrangements). The settlor/founder is the one who transfers the assets to the trust/foundation, whereas the trustee/foundation council is responsible for managing the assets of the trust/foundation on behalf of the beneficiaries.¹¹ In certain trusts—for example, discretionary trusts—there may also be a “protector” (generally appointed by the settlor) who monitors what the trustee is doing.

3.4 Legal Persons

3.4.1 Requirements

FATF R 24 (ex-R 33) requires that information on beneficial ownership of legal persons be accessible to the authorities via one or more of the following: i) a central registry, for example, a commercial registry that contains a list of the BOs of legal persons; ii) to request it directly from the legal person in question (presupposing it is required to hold an updated list of its BOs); or iii) other sources such as banks, lawyers, corporate service providers (given that many of these must identify the BO within the framework of the due diligence measures set out in R 10), the stock exchange, tax authorities, etc.

In order to guarantee this timely access to accurate, current (up-to-date) information, R 24 establishes additional measures against possible barriers, such as lack of information due to the passage of time or the impossibility of identifying the BO due to the use of nominee shareholders and/or bearer shares. Therefore, the FATF requires: i) that the information is kept for at least five years (even in the event of the company’s dissolution or liquidation); ii) that, if nominee shareholders are used (supposing that they are permitted in the country), they notify the legal person about their condition and identify the BO they represent, or that they at least obtain a license for their role of nominee shareholder and keep information about the BO; and iii) that if a legal person issues bearer shares (supposing that these are not

prohibited), they have to be converted into registered shares or immobilized by a custodian, or that the BO (who owns the bearer share) identifies themselves to the legal person.

Finally, the FATF requires that countries identify which of their legal persons represent the greatest risk of ML/TF, establish effective sanctions that ensure compliance with the previous requirements, and cooperate with other countries in exchanging information about beneficial ownership.

With regard to information that must be accessible to the public, the FATF establishes that countries must explain how the mechanism for obtaining information about beneficial ownership functions in their jurisdictions. Likewise, countries must have a registry (e.g., a commercial registry) that provides “basic information” about legal persons, such as name, proof of incorporation, legal type (limited company, limited liability company, etc.) and status (e.g., active), statute, name of the directors, types of shares, voting rights, etc.

“Exception” for companies listed on the stock exchange

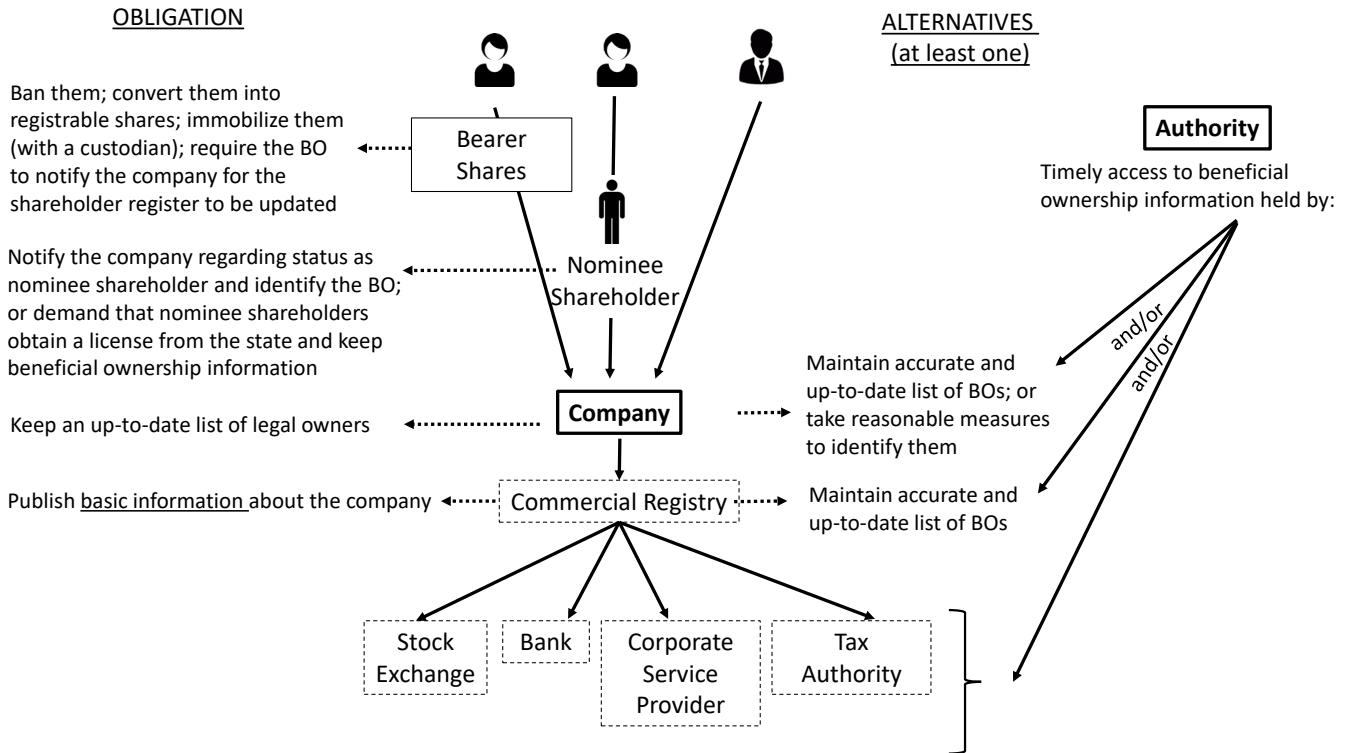
In principle, all legal persons must identify their BOs. However, in some countries’ regulations, companies listed on the stock exchange are not required to identify their BOs. In reality, the Interpretative Note to FATF R 10¹² suggests that financial institutions need not demand information regarding the BO of a listed company, but only if this data is redundant (because the stock exchange regulator, for example, already has the beneficial ownership information for the listed company). In other words, it is not that listed companies

¹¹ The Fourth AML Directive of the EU equates the definition of beneficial ownership of a private foundation with that of a trust (Art. 3.6 b.c) although, as does the FATF, it establishes different requirements for registration and transparency: foundations, like any other legal person, are governed by Art. 30, whereas trusts come under Art. 31.

¹² “Where the customer or the owner of the controlling interest is a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.”

INFOGRAPHIC 6

SUMMARY OF COMMITMENTS AND ALTERNATIVES REGARDING BENEFICIAL OWNERSHIP OF LEGAL PERSONS



Source: Author's elaboration based on the FATF Recommendations.

are not obliged to identify their BOs, but rather it is assumed that they already report this to the regulator and that the information regarding the BOs is available.

3.4.2 Definition of beneficial ownership

The GF refers to the FATF for the definition of the BO. The FATF establishes a minimum set of persons that should be considered as the BOs of legal persons. Countries may expand on this set, but not reduce it.

a) Cascade test

The FATF establishes three cascading tests (non-alternative) in order to determine who the BO of a legal person is. The Interpretative Note to R 10, regarding customer due diligence, establishes the need to identify as a BO:

- i.i *the identity of the natural persons—if any, given that ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal*

Box 1. The “responsible party” in the United States does not comply with the FATF’s definition of beneficiary owner

The definition of “responsible party” in the latest legislation in the United States is not consistent with the FATF’s definition of BO, given that only one “responsible person” must be identified, instead of—potentially—various, and this person might not even be the one who exercises full ownership or control over the company (FATF, 2016a: 224).

person or arrangement through ownership)—who ultimately have a controlling ownership interest; and

i.ii to the extent that there is doubt under (i.i) as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control over the legal person or arrangement through other means.

i.iii Where no natural person is identified under (i.i) or (i.ii) above, financial institutions should identify and take reasonable measures to verify the identity of the relevant person who holds the position of senior manager.

b) *Threshold (percentage) to determine controlling ownership and the famous 25 percent*
The FATF does not establish a threshold to determine the controlling ownership interest. Footnote 31 only establishes that:

A controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, for example any person owning more than a certain percentage of the company (e.g., 25 percent) (FATF, 2012).

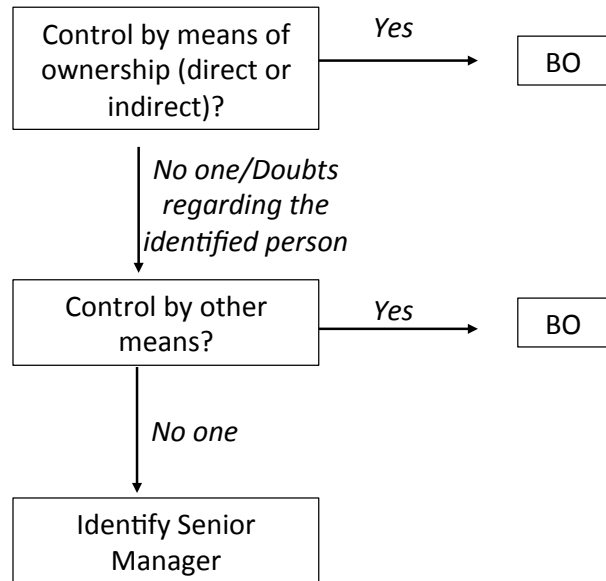
The famous “25 percent” or “more than 25 percent” is used in many definitions of BO (in the common reporting standard—CRS—for automatic exchange of information and the Fourth AML Directive of the European Union, among others), which makes reference to the FATF. However, the FATF merely suggests setting a threshold as an example for determining controlling ownership. One suggestion, within this example, is to use a percentage greater than 25 percent.

Although the FATF is not definite about the need for a threshold or percentage, a country should justify any higher threshold it establishes (given that this would cover a smaller set of persons). Many countries or initiatives, in contrast, use lower thresholds to identify the BO or whoever is considered to be the controlling owner. For example, Argentina and the Dominican Republic set a threshold of 20 percent; Uruguay, 15

INFOGRAPHIC 7

CASCADE TEST TO IDENTIFY THE BO OF AN ENTITY

At least one individual with:



Source: Author’s elaboration.

percent; Barbados, Bahamas, and Belize, 10 percent; and Colombia, 5 percent (Annex 1).

c) *Threshold and indirect ownership*

The BOs of a legal person or trust must always be the individuals (physical persons) that are either its

Box 2. The Criteria for Beneficial Ownership in the United Kingdom

The United Kingdom uses the 25 percent threshold, but not only for direct or indirect ownership of the company shares, but also for voting rights. Moreover, the BO will also be anyone that has the power to appoint or dismiss the majority of the company board of directors, or any person with effective substantial control. However, there is a possibility that no person will be identified as the BO, not even the senior manager.

owners or controllers, whether directly or indirectly. Neither nominee shareholders nor chains of companies should represent an impediment to identifying the BO. Therefore, as Infographic 8 shows, a company can have two BOs (a woman with 60 percent through three companies, and a man with 40 percent through a nominee shareholder), although there is no legal owner holding more than 25 percent of the capital (in Infographic 8, each shareholder or legal owner holds only 20 percent).

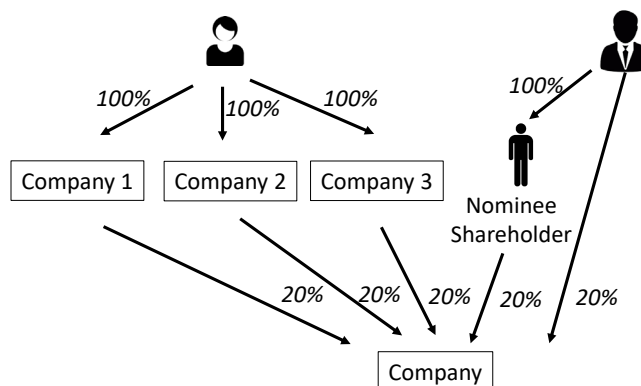
d) Control by other means

The FATF Guidance on beneficial ownership provides, as an example of “control by other means,” having personal connections with the persons that exercise control through ownership. Another example is those who control (without enjoying ownership of the entity) because they participate in financing the entity or through a close family member, through a historical or contractual relationship, or because they would assume control if the entity failed to pay its debts. Finally, the Guidance refers to those who obtain some profit, use, or enjoyment of the company’s assets, even though they never exercise control (FATF, 2014). Likewise, the Fourth AML Directive of the European Union (EU)¹³ includes in its definition of beneficial ownership not only those who have ownership, but also those who control 25 percent of voting rights. With regard to “control by other means,” this includes control through shareholder agreements, dominant influence, or the power to appoint the entity’s top administrators or managers. In the same way, the United Kingdom’s regulations include in their definition of beneficial ownership not only those having a percentage of ownership, but also those who hold more than 25 percent of the votes, with the power to remove or appoint the majority of the board of directors, or anyone wielding significant influence over the entity.

To summarize, although the FATF doesn’t define in a restricted sense the meaning of “control by other means,” the definitions of beneficial ownership in various countries, including in Latin America and the Caribbean (Annex 3), include not only a reference to ownership (e.g., having 25 percent of the shares) but

INFOGRAPHIC 8

DIRECT AND INDIRECT OWNERSHIP



Source: Author’s elaboration.

also to other forms of control, such as having a percentage of the votes. Many countries include in their law the term “other forms of control,” giving non-exhaustive examples, such as significant influence or the power to appoint or remove the board of directors, or hierarchical administrators or managers.

3.5 Legal Arrangements (Trusts)

3.5.1 Requirements

The FATF R 25 (ex-R 34), regarding legal arrangements (e.g., trusts), is similar to R 24 (on legal persons) in that it requires access to beneficial ownership information by authorities and that the information be kept for five years. In trusts, however, the person responsible for keeping the information about the BO is the trustee (in contrast to “the company itself” or a commercial registry for legal persons).

A further difference or, rather, exception, relates to which trusts are obliged to keep information about their BOs. Given that trusts are not generally required to register in order to gain legal validity (in contrast to

¹³ Including 13 and Art. 6.a).1, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>.

what generally happens with legal persons), it would be possible for an individual in Country X to set up a trust according to the law of Country Y even though not a single party to the trust (settlor, trustee, beneficiary) nor the trust assets were in Country Y. For Country Y, it would be impossible to be aware that such a trust exists. Therefore, R 25 does not demand that the information is available in Country Y, but rather puts the onus on the trustee (irrespective of the law that regulates the trust), who manages the trust and in whose name the trust assets are often registered. In other words, a trustee in Argentina should be obliged to keep, and report to the authorities, information on the BO of the trust it manages, irrespective of whether the trust was set up (and is regulated) according to Argentine law or to the law of another country.

3.5.2 Definition of beneficial ownership

With regard to defining the BO of a trust, the Interpretative Note to FATF R 10 does not establish a cascade test (as it does for legal persons), but rather that all parties to the trust should be identified directly:

- Settlor
- Trustees
- Protector
- Beneficiaries or classes of beneficiaries¹⁴
- Any other person who exercises ultimate effective control over the trust

Trusts are often very complex arrangements that can have additional parties. For example, a particular type of party in Argentina—a *fideicomisario*—is a beneficiary who receives the principal (any remaining balance after the trust terminates), and in the Cayman Islands the “STAR” trusts have so-called “enforcers,” which would be similar to a protector. There may even be fewer parties than is traditional (such as in “purpose” trusts, which might not have beneficiaries, for example). There may also be secret documents, such as letters of wishes with instructions from the settlor, which makes it extremely difficult to determine who really holds effective control of the trust. Demanding that all parties to the trust are identified reduces this risk.

3.6 Determining the BO When Legal Persons and Legal Arrangements are Combined

It is possible for a trust to be the owner or shareholder of a company, or that one party to the trust—for example, the trustee—is a legal person. In this event, although the FATF does not explicitly say so, it would be logical

¹⁴ Trusts can have beneficiaries or, rather, classes of beneficiaries that are not predetermined but determinable—for example, all the victims of Accident X or all the descendants of Mr. Z. It is necessary to know the way that the class is identified, in order to identify the physical person when the latter wishes to exercise his or her rights.

INFOGRAPHIC 9

COMBINATION OF LEGAL PERSONS AND TRUSTS



Source: Author's elaboration.

to follow the definitions of beneficial ownership both for legal persons and for trusts.

Based on the FATF definitions, when one party to a trust (e.g., the trustee) is a legal person (e.g., a company), the legal person should not be identified as BO of the trust, but rather the individuals that control that legal person (e.g., those who have more than 25 percent of the shares of the company). In other words, the BOs of the trust would be the following four individuals: the settlor, the beneficiary, and the two BOs of the corporate trustee (Infographic 9, left-hand panel).¹⁵

Furthermore, as the right-hand panel of Infographic 9 reveals, if a trust has more than 25 percent of the shares in a company, the BO of that company should not be the trust but, rather, all of the trust parties: all the individuals that are, or act as, settlor, protector, trustee, and beneficiary.

The United Kingdom, conversely, when a trust has, for example, 25 percent of the capital or voting

rights of a company, does not require all parties to the trust to be identified (as should be required based on the FATF), but only the trustee and any other person with effective control over the trust.

A further way in which the FATF Recommendations are incorrectly implemented is by applying the definitions of legal persons to trusts. For example, due diligence regulations for banks in Germany¹⁶ establish that the BOs of a trust do not include all of the beneficiaries (as the FATF requires), but only those that have the right to receive more than 25 percent of the trust assets.

¹⁵ The OECD's CRS for the automatic exchange of financial and banking information, in the definition of beneficial ownership of a trust (Paragraph 134 of the CRS Comments), establishes that when the settlor of a trust is a legal person, then the BOs of the legal person-settlor must also be identified.

¹⁶ Global Forum Peer Review, Germany, 2017.

THE INTERNATIONAL CONTEXT

In addition to the GF and the FATF, other international organizations or institutions also refer to the issue of beneficial ownership. The G-20 established in 2014 the High-Level Principles on Beneficial Ownership, and committed to following them to set an example. In 2016, the G-20 requested the FATF and the GF to suggest proposals for improving implementation of transparency standards, including those relating to beneficial ownership. The B20 has also called on the G-20 to follow up with implementing beneficial ownership transparency.¹ The OECD also developed its CRS for the automatic exchange of financial and bank account information. By July 2017, 101 jurisdictions had committed to implementing it.² The CRS also imposes requirements on beneficial ownership for those banks and financial institutions located in countries that will implement the automatic exchange of information. The CRS requires all financial institutions to identify all bank account holders so that their information can be exchanged with the corresponding countries. Bank account holders can be individuals or entities (e.g., when a company has a bank account). When the bank account holder is a special type of entity (classified by the CRS as “a passive entity”³ because of the type of income it earns), the banks must identify the BO of that (passive) entity. In this case, the bank will have to report the identity of both the account holder (the passive company) and of the BO of the passive company. In the near future, the GF will also evaluate countries with regard to their compliance with the CRS on the automatic exchange of banking information.

4.1 BO Registries

None of the international organizations require the establishment of BO registries (only that the information is made available), although the FATF does suggest it as a possibility. However, various countries have begun to establish these registries, either for legal persons or trusts, or for both.

On May 20, 2015, the EU approved the Fourth AML Directive, which requires in Articles 30 and 31 that the BOs of legal persons and of certain trusts⁴ (or similar entities), respectively, must be identified and registered in a central registry. The Directive implies a minimum level of registration that all EU member-countries must have implemented locally by June 30, 2017.

In Latin America, various countries have begun to establish BO registries or to demand that such information is either recorded in commercial registries or reported to the authorities (see more details below). For example, in Argentina, legal entities must provide information about beneficial ownership to the

¹ See https://www.b20germany.org/fileadmin/user_upload/documents/B20/b20-ctg-rbac-fs.pdf.

² See <https://www.oecd.org/tax/transparency/AEOI-commitments.pdf>.

³ The CRS demands that BOs (described as “controlling persons” in the CRS) should be identified when the holder of a bank account is a “non-financial entity” (not a bank, for example) and “passive.” It is considered to be “passive” if its income is largely passive, that is, arising from rents, interests, dividends, or royalties, among others. “Active” income, for example, comes from the sale of goods or services.

⁴ Trusts that have fiscal consequences.

Box 3. NGOs' Experience with Transparency

Civil society organizations promote public registries of BOs in order to help authorities verify the veracity of information registered, thereby discouraging those who seek to register false or incorrect information. For example, some NGOs, such as Global Witness, analyzed information on BOs available in the public registry of the United Kingdom and found inconsistencies and errors that they then reported to the authorities. For example, 3,000 companies figured as BOs (even though BOs must always be individuals), the nationality "British" was written in more than 500 different ways, and among the BOs of United Kingdom entities there were 76 persons with the same name and date of birth as individuals mentioned in United States Sanctions lists, as well as 267 "disqualified directors" (who were supposedly barred from operating or being involved in setting up companies in the United Kingdom for 15 years).

commercial registry of the City of Buenos Aires. In Brazil, beneficial ownership must be reported to the tax authorities. In Costa Rica and Uruguay, the BO must be reported to the Central Bank. In Colombia, Peru, Dominican Republic, and Trinidad and Tobago, setting up a beneficial ownership registry within the framework of the Extractive Industries Transparency Initiative (EITI) is currently being evaluated, and the draft project for this purpose has already been sent to Congress in Colombia.

Establishing a BO registry has the following benefits: On the one hand, it facilitates timely access to information about the BO, as the authorities will already have the information and therefore do not need to request it from the entity itself, a corporate service provider, or a bank. This is also important to prevent the bank or service provider from tipping off their client that an authority, whether national or foreign, has requested information. Furthermore, registries enable compliance to be verified, by revealing whether an entity has failed to either report or update information. Otherwise, the authority will find out if the beneficial ownership data exists and is updated only at the moment when it requests the information from

the bank, the corporate service provider, or the entity itself. If the BO information turns out to be unavailable, the authority can impose sanctions, but such a sanction will not ensure that the beneficial ownership information will be obtained in a timely manner. The reasons for not establishing a registry might be the economic costs, political costs, or the bureaucratic processes needed to achieve a legislative change, or due to legal traditions (e.g., in common law countries that are unaccustomed to demanding that trusts are registered).

4.2 Reporting Beneficial Ownership Information

There is a debate about whether BO registries should be public. On the one hand, some sectors are opposed to reporting BO identity as they believe it would violate privacy or generate risks (of kidnappings and extortion, among others). On the other hand, the European Commission, for example, is planning an amendment⁵ to establish the Fifth AML Directive that, if approved, would require the establishment of public registries for the BOs of legal persons and of some trusts. For example, the United Kingdom⁶ (since 2016) and Denmark⁷ (since 2017) require that information about the BOs of companies and other legal persons be made available to the public in a registry accessible by Internet in an open data format. Ukraine⁸ also has a public BO registry, and the Netherlands⁹ will soon follow suit. At the Anti-Corruption Meeting held in the United Kingdom in 2016, Afghanistan,

⁵ See http://europa.eu/rapid/press-release_IP-16-2380_en.htm.

⁶ See <https://beta.companieshouse.gov.uk/>.

⁷ See <https://datacvr.virk.dk/data/>.

⁸ See [http://www.ey.com/Publication/vwLUAssets/Ukraine_enacts_law_requiring_mandatory_disclosure_of_beneficial_owners_of_companies/\\$FILE/2014G_CM4844_Ukraine%20enacts%20law%20requiring%20mandatory%20disclosure%20of%20beneficial%20owners%20of%20cos.pdf](http://www.ey.com/Publication/vwLUAssets/Ukraine_enacts_law_requiring_mandatory_disclosure_of_beneficial_owners_of_companies/$FILE/2014G_CM4844_Ukraine%20enacts%20law%20requiring%20mandatory%20disclosure%20of%20beneficial%20owners%20of%20cos.pdf).

⁹ See <https://www.tmf-group.com/en/news-insights/articles/2017/april/ubo-transparency-netherlands/>.

¹⁰ See https://www.globalwitness.org/documents/18609/Chancing_It_FINAL.pdf (p. 12).

Ghana,¹⁰ Mexico, and Nigeria all committed to establishing public beneficial ownership registries, and other countries are looking into ways of doing the same. Finally, in Article 2.5 of its standards, EITI recommends creating public registries of BOs for

corporate entities engaged in extractive activities (e.g., oil and gas, and mining).¹¹

¹¹ See <https://eiti.org/document/guidance-on-implementing-beneficial-ownership-disclosure>.

THE BENEFICIAL OWNERSHIP SITUATION IN IDB BORROWING MEMBER COUNTRIES

The following section examines the situation in the IDB borrowing member countries with regard to how beneficial ownership is defined (and indicating whether the definition complies with the FATF definitions), the FATF mutual evaluation ratings for beneficial ownership (IO 5, R 10, R 11, R 22, R 24, and R 25), and the GF peer review ratings.

5.1 Definition of Beneficial Ownership

5.1.1 *Legal persons*

As previously indicated, the FATF requires the definition of the BO of a legal person to include a cascade test, whereby the individual with control through ownership, and thereafter by other means, is identified. In the event that no one is identified, or if there are doubts, the senior manager of the entity must be identified. The FATF mentions, by way of example, that a threshold of 25 percent of share ownership may denote control.

Figure 1 shows the criteria used in defining beneficial ownership of legal persons. The colors indicate the level of compliance with the cascade tests proposed by the FATF.

Only five IDB borrowing member countries (nearly 20 percent of the sample) use a definition of beneficial ownership that coincides with the FATF Recommendations, that is: i) control through ownership; ii) control by other means, and iii) identification of the entity's senior manager or authority, if no one else has been identified. Most countries (12, or 46 percent) use definitions that mention ownership and control by other means, but do not require the senior manager to be revealed when no one is identified as the BO. Eight

countries (30 percent of the sample) use a definition that mentions ownership, or only effective control, or only the senior manager. In one case (Venezuela), no definition was found. Although the countries mention ownership or effective control, these terms are not always defined or a threshold is not set (e.g., Bolivia, El Salvador, or Peru), which means that, in practice, it would be difficult to identify the BO.

Figure 2 shows the thresholds established in the definitions of the BOs of legal persons, according to the number of countries that use each threshold. The colors indicate the level of compliance with the 25 percent threshold mentioned by the FATF.

Only nine countries (approximately one-third) of the sample of IDB borrowing member countries have no threshold with which to determine the capital ownership necessary to be considered the BO of an entity. Of the 17 countries that do have a threshold, only one (Jamaica) has a threshold higher than that suggested by the FATF (25 percent). The most common threshold used in the BO definitions, applied in seven of the 17 countries that have a threshold, is the FATF-suggested threshold. The remaining 60 percent of countries have lower thresholds, some even as low as 5 percent (Colombia).

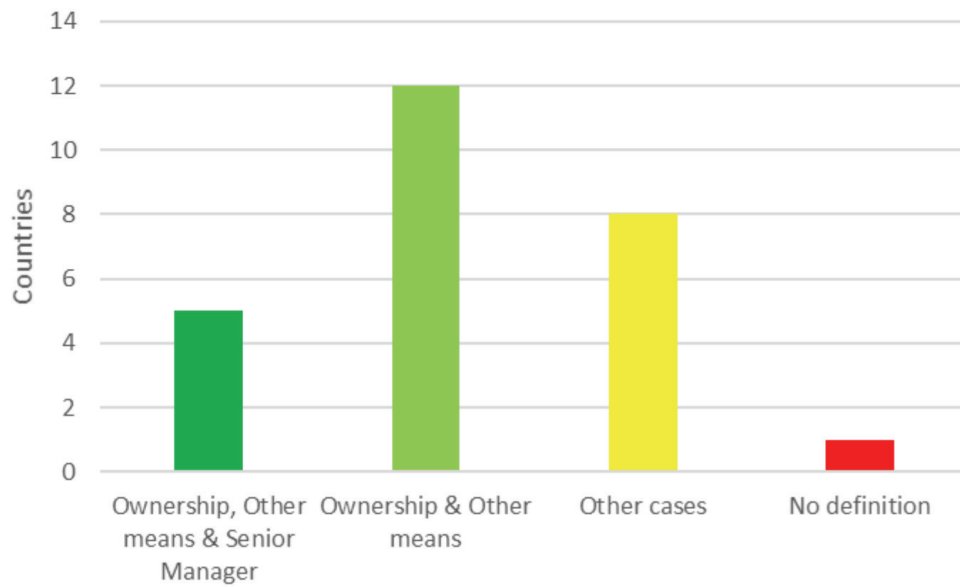
5.1.2 *Legal arrangements (trusts)*

Figure 3 shows the parties to the trust (settlor, protector, trustee, beneficiary, etc.) that should be identified, according to the definition of beneficial ownership of a trust. The colors indicate the level of compliance with the FATF definition of beneficial ownership of a trust.

Only three countries (Barbados, Belize, and Trinidad and Tobago) of the sample of 26 countries use a definition of beneficial ownership of trusts

FIGURE 1

DEFINITION OF BENEFICIAL OWNERSHIP OF LEGAL PERSONS

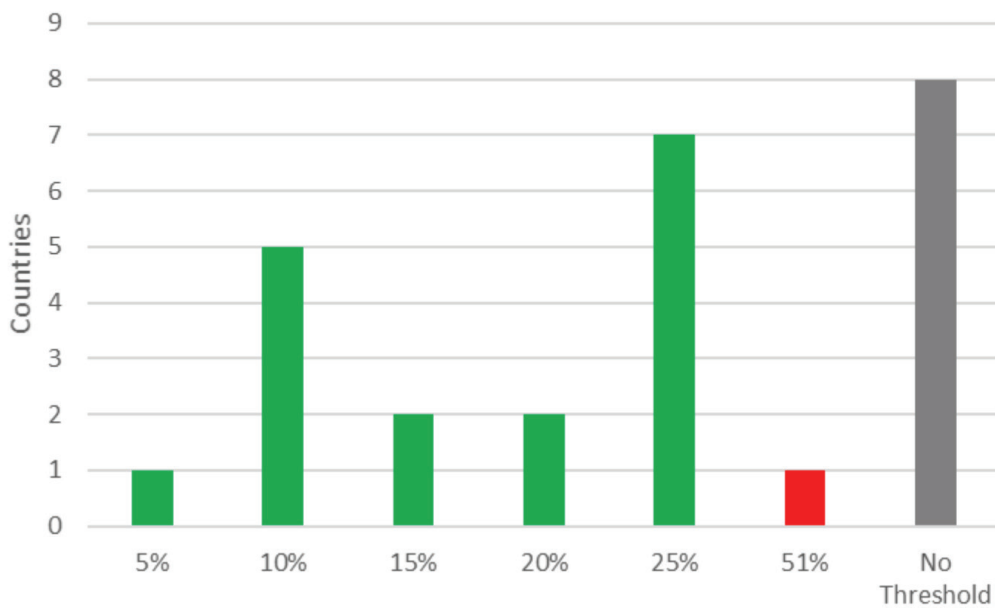


Source: Author's elaboration.

Note: Dark green = Compliant, Light green = Largely compliant, Orange = Partially compliant, Red = Non-compliant.

FIGURE 2

THRESHOLD OF OWNERSHIP TO BE CONSIDERED BENEFICIAL OWNERSHIP

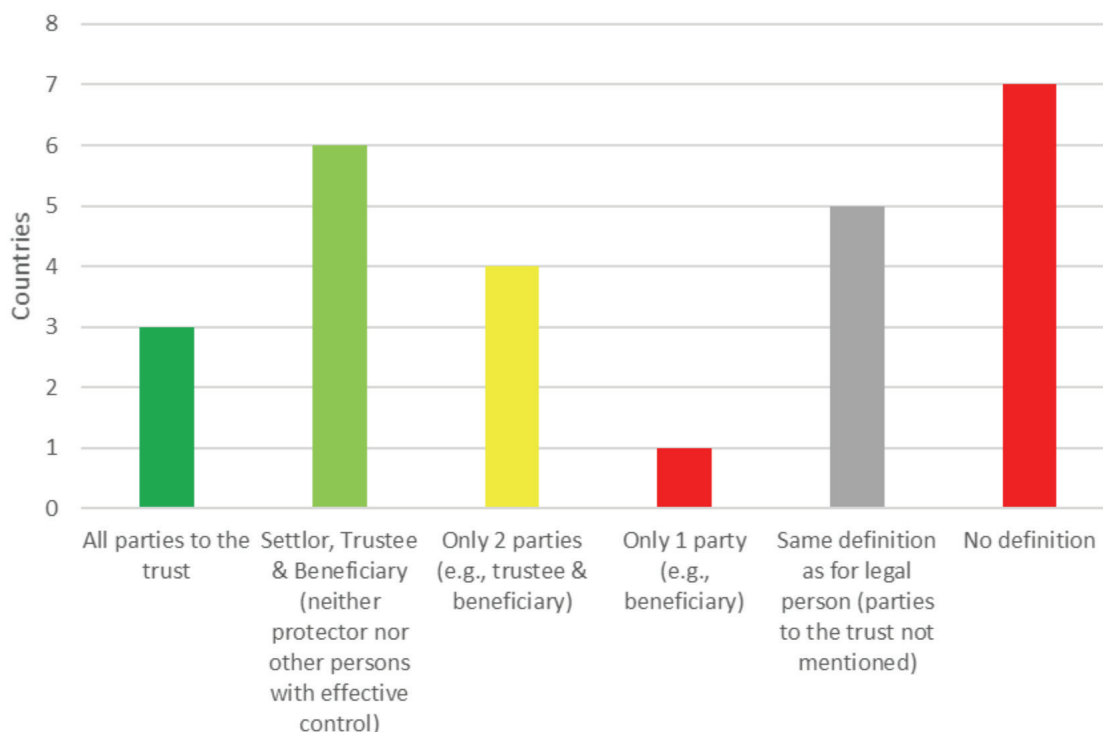


Source: Author's elaboration.

Note: Dark green = Compliant, Red = Non-compliant, Gray = No threshold.

FIGURE 3

WHOM DOES THE DEFINITION OF BENEFICIAL OWNERSHIP OF TRUSTS INCLUDE?



Source: Author's elaboration.

Note: Dark green = Compliant, Light green = Largely compliant, Orange = Partially compliant, Red = Non-compliant, Gray = Unavailable.

that includes all the parties mentioned in the FATF Recommendations. In six countries (23 percent of the sample), the definition includes all the parties, except for the protector and “any other person with effective control.” More than 25 percent of the sample (seven countries) lacks a definition, and in five countries (nearly 20 percent of the sample) there is no specific definition for trusts and, in general, the definition of beneficial ownership of legal persons is used.

5.2 Compliance with the FATF Recommendations

All the countries were evaluated by the Third Round of FATF Evaluations (based on the Recommendations of 2003 and the Methodology of 2004), whereas some countries have already been evaluated by the

Fourth Round (according to the Recommendations of 2012 and the Methodology of 2013), which is more demanding and comprehensive. Sutton states that the Fourth Round adds the risk-based approach and, among other aspects, includes more transparency and international cooperation requirements (Sutton, 2013). For example, a cascade test was established to define beneficial ownership of legal persons, and more requirements were added concerning bearer shares and nominee shareholders and regarding basic information on legal persons that should be available to the public; furthermore, there were more requirements for trusts, including the information that the trustee must hold and make available.

The following section presents the results, differentiating between the two rounds. It is worth highlighting that some countries may have made legislative developments after these evaluations were concluded;

it is therefore possible that the final rating fails to reflect the current legal situation (described in the Annexes).

5.2.1 Recommendation 24 regarding requirements for beneficial ownership of legal persons

Figure 4 shows each country's rating with regard to R 24 (ex-R 33). The colors indicate the level of compliance.

Of the six countries that were assessed under the Fourth Round of Evaluations (left-hand panel of Figure 4), only Guatemala complies largely with R 24, while Honduras fails to comply. Of the 20 countries assessed under the Third Round (right-hand panel of Figure 4), only seven countries comply or largely comply. The ratings of the Third Round include the developments mentioned in the Follow-Up Reports, which only analyze the new legislative developments reported by the countries, but do not constitute an evaluation as such, which means that these ratings could be revised when they are assessed under the Fourth Round, which is even more demanding. At the same time, some countries that figure as non-compliant may have subsequently made legislative developments that were not necessarily

incorporated into the Follow-Up Reports, which means that their current situation could be different from the rating obtained some years ago.

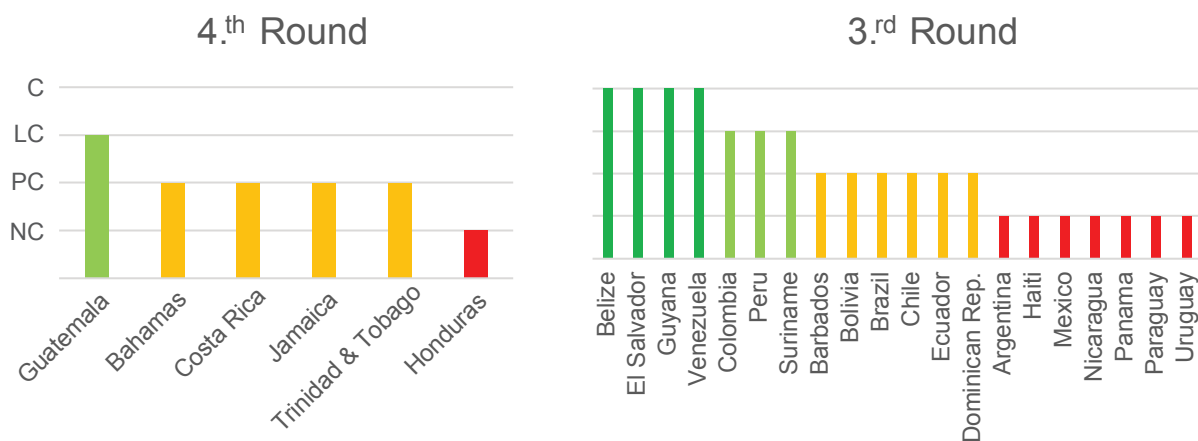
5.2.2 Recommendation 25 regarding requirements for beneficial ownership of legal arrangements (trusts)

Figure 5 shows each country's rating with regard to R 25 (ex-R 34). The colors indicate the level of compliance.

Of the six countries assessed under the Fourth Round of Evaluations (left-hand panel of Figure 5), only Guatemala and Honduras largely comply with R 25. In the case of the 20 countries assessed under the Third Round (right-hand panel of Figure 5), only six comply at least largely with R 25, and four (Brazil, Haiti, Nicaragua, and Suriname) were not evaluated for this recommendation as there was no local legislation on trusts. The ratings of the Third Round include the developments mentioned in the Follow-Up Reports. The latter only analyze the new legislative developments reported by the countries but do not constitute an evaluation as such, which means that these ratings could be revised when they are assessed under the more demanding Fourth Round. At

FIGURE 4

RECOMMENDATION 24

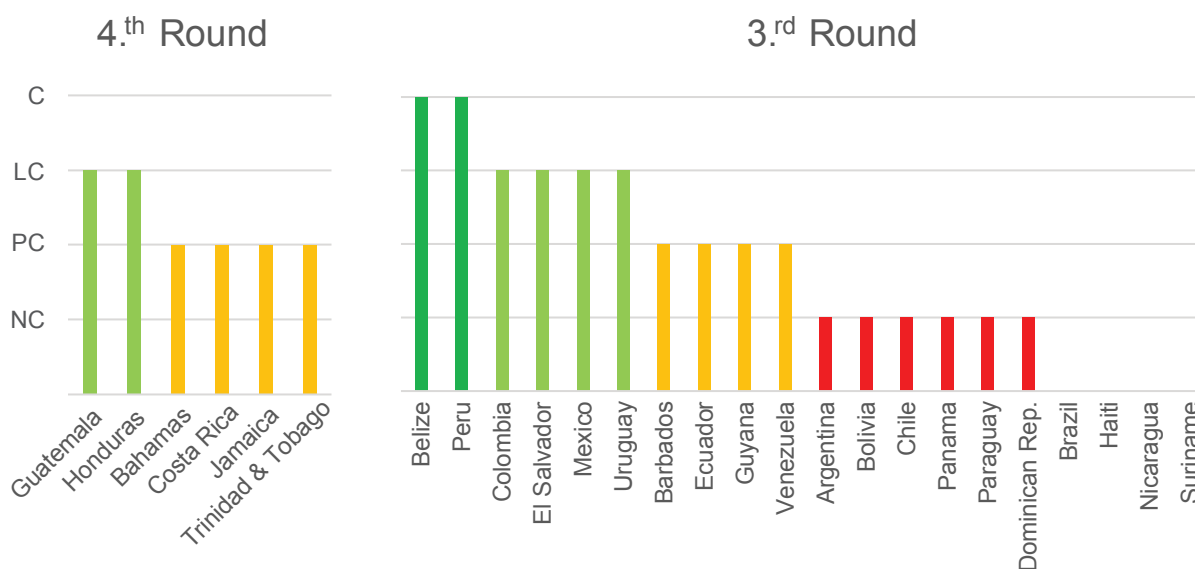


Source: Author's elaboration.

Note: C = compliant, LC = largely compliant, PC = partially compliant, NC = non-compliant. Dark green = compliant, light green = largely compliant, orange = partially compliant, red = non-compliant.

FIGURE 5

RECOMMENDATION 25



Source: Author's elaboration.

Note: C = compliant, LC = largely compliant, PC = partially compliant, NC = non-compliant. Dark green = compliant, light green = largely compliant, orange = partially compliant, red = non-compliant.

the same time, some countries that figure as non-compliant may have subsequently made legislative developments that were not necessarily incorporated into the Follow-Up Reports, which might make their current situation different than the rating obtained some years ago.

5.2.3 Other FATF Recommendations on beneficial ownership: R 10, R 11, R 22, and IO 5

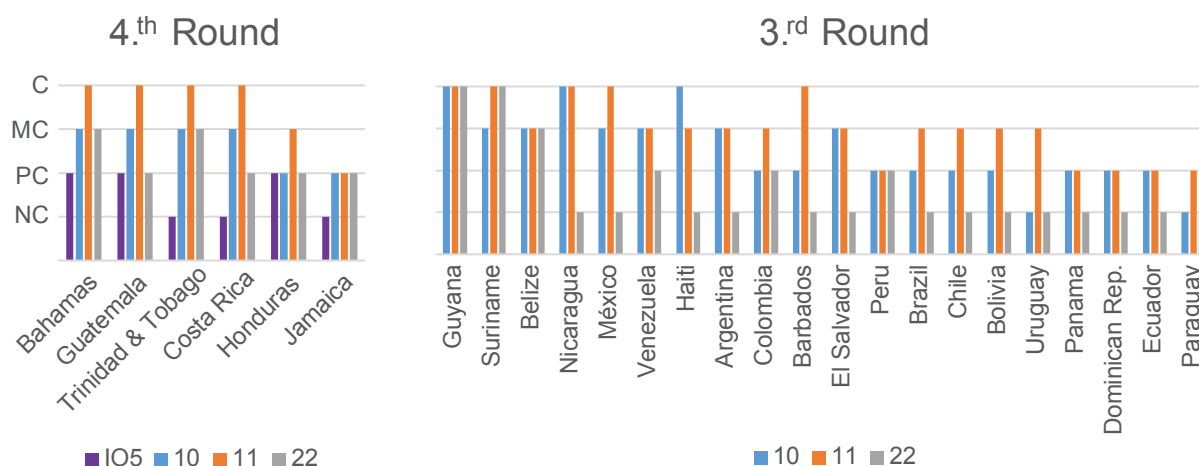
R 24 and R 25 establish that authorities should be able to obtain information on the BOs from financial institutions (e.g., banks) and from “designated non-financial businesses and professions” (DNFBP) (e.g., lawyers) that should obtain this data during the customer due diligence measures required by R 10 (ex–R 5) and R 22 (ex–R 12) and their respective interpretative notes. These customer due diligence measures require financial institutions and DNFBPs to obtain beneficial ownership information from their clients when: i) a relationship with the client is established (whether a legal

person or legal arrangement), ii) occasional transactions are made that exceed that US\$15,000, iii) there are suspicions of ML/TF, and iv) there are doubts about the veracity of the information previously obtained from the client (FATF, 2014). R 11 (ex–R 10) requires that records be kept for five years, including the documents about the identity of the BO obtained through customer due diligence measures. Likewise, in 2013, the FATF published its methodology for evaluating effective compliance with the Recommendations, and included, among others, Immediate Outcome 5 (or IO 5), which requires, among other aspects, that beneficial ownership information should be made available to authorities without impediments. Figure 6 shows the countries’ ratings with respect to R 10, R 11, R 22, and IO 5.

No country that underwent the Fourth Round (left-hand panel of Figure 6) complies at least largely (substantially) with the IO 5 (effective compliance). Ratings in reality are called “low,” “moderate,” “substantial,” or “high” compliance. Only Bahamas and Trinidad and Tobago comply at least largely with R 10, R 11, and

FIGURE 6

IO 5 AND RECOMMENDATIONS 10, 11, AND 22



Source: Author's elaboration.

Note: C = compliant, LC = largely compliant, PC = partially compliant, NC = non-compliant.

R 22 (although in the case of Trinidad and Tobago, the IO 5 is low, equivalent to “non-compliance”). The ratings of the Third Round (right-hand panel of Figure 6) include the developments mentioned in the Follow-Up Reports (e.g., Guyana, Suriname, and Belize, which report very high compliance levels). These Follow-Up Reports only analyze the new legislative developments reported by the countries, but do not constitute an evaluation as such, which means that these ratings could be revised when they are assessed under the Fourth Round, which is more demanding. At the same time, some countries that figure as non-compliant may have subsequently made legislative amendments that were not necessarily accounted for in the Follow-Up Reports, meaning that their current situation could be different than the rating obtained some years ago.

5.3 Compliance with the GF Standard

The GF peer reviews for the exchange of information also evaluate the availability of information on beneficial ownership of legal persons¹ and trusts, and

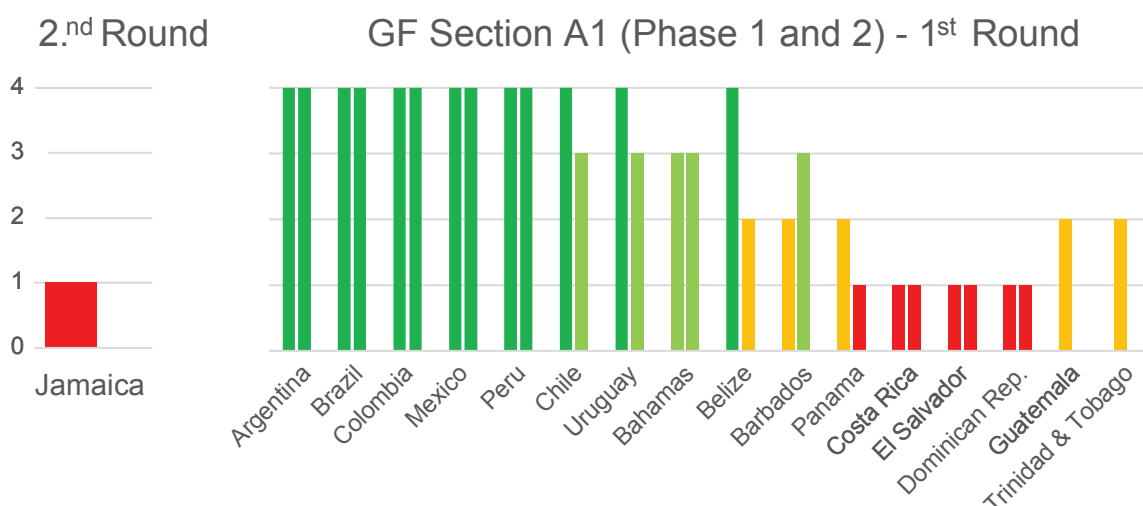
access by the authorities for subsequent exchange of information. However, from 2016 onwards (when the new Terms of Reference were published), the evaluations began to analyze the availability of beneficial ownership information—up until that point, availability of information referred to legal owners only. Solely Jamaica was evaluated according to the new Terms of Reference of 2016.

Section A1 of the GF peer reviews analyzes the availability of information on legal persons, sub-classifying them into companies, partnerships, and private foundations (those whose purpose might be a particular family's benefit and not necessarily public interest, charity, religion, etc.). The analysis also includes trusts, both those created according to the local law of the country, as well as those governed by a foreign law, but that are managed by a local trustee. Phase 1 analyzes the legal framework (theoretical), whereas Phase 2 evaluates the situation in practice.

¹ Availability of and access to information in the event that there are nominee shareholders and bearer shares are also evaluated.

FIGURE 7

RATINGS OF SECTION A1 OF THE GF STANDARD



Source: Author's elaboration.

Note: Dark green = "The element is in place" (Phase 1)/"Compliant" (Phase 2); light green = "The element is in place" but certain aspects need improvement (Phase 1)/"largely compliant" (Phase 2); orange = "The element is in place, but certain aspects of the legal framework need improvement" (Phase 1)/"partially compliant" (Phase 2); red = "The element is not in place" (Phase 1)/"non-compliant" (Phase 2).

In Section A3, the GF states that banking information should include, among other data, information about the legal owners and BOs of bank accounts. All IDB countries assessed under the first round of peer reviews achieved a rating of "compliance" with requirement A3, which is therefore excluded from Figure 7. Jamaica, which was evaluated in the second round (according to the Terms of Reference of 2016), achieved "partial compliance" with Section A3 (although in the first round of peer reviews, prior to 2016, it had also obtained a "compliant" rating).

Figure 7 shows the ratings received by the countries with respect to Section A1 of the GF standard. The colors indicate the level of compliance.

Of the 16 countries that were evaluated by the GF in the first round, eight (half of them) were at least

largely compliant in both Phases 1 (legal framework) and 2 (situation in practice). Four countries (Panama, Costa Rica, El Salvador, and Dominican Republic) failed to comply with the standard in practice (Phase 2). Two countries (Guatemala and Trinidad and Tobago) lack a sufficiently acceptable legal framework to be able to move on to Phase 2 and be evaluated in practice. Nine countries have yet to be evaluated, or are not members of the GF: Bolivia, Ecuador, Guyana, Haiti, Honduras, Nicaragua, Paraguay, Suriname, and Venezuela. Jamaica, which in the peer review of the First Round (2013) had been rated as "partially compliant" with Section A1, was rated as "non-compliant" in the new evaluation of the Second Round (2017).

CONCLUSIONS

The majority of IDB borrowing member countries have tackled the issue of beneficial ownership, but with uneven compliance. Although nearly all the countries use a definition of the BO for legal persons, there are few that comply with the FATF requirements, and not all have in place a definition for the BO of a trust (and fewer still have one that complies with FATF requirements), given that some use the same definition as for legal persons.

In the majority of cases, the provisions on beneficial ownership refer to the regulations for the so-called “reporting entities” (mainly financial entities and, in some cases, lawyers, notaries, corporate service providers, etc.) to comply with AML recommendations. Likewise, more and more countries have begun to require that beneficial ownership information about legal persons and trusts be included in a registry, or is at least in the hands of a competent authority. Some countries, following the example of EU countries, even make this information accessible to the public, or plan to do so in the future.

With regard to the FATF and GF ratings, there is a notably wide disparity and even an apparent contradiction: countries considered to be in non-compliance with certain FATF Recommendations can be seen to be complying completely with the GF standards. These differences may be due to various factors. First, not all countries were evaluated at the same time by the FATF and the GF; therefore, legislative changes might have been analyzed by one evaluation but not by the other. Second, some evaluations were more demanding than others (e.g., the FATF Fourth Round, compared to the Third Round). Third, in the case of countries assessed under the Third Round of the FATF, the figures also

include the ratings obtained in the Follow-Up Reports. In the Follow-Up Reports, countries describe the regulatory changes adopted subsequent to the last FATF evaluation, but this analysis is less rigorous and complete than in the evaluations of the FATF. In any case, whereas Follow-Up Reports on some countries were published in 2017 (allowing the opportunity to evaluate greater changes), in other cases the most recent evaluations or reports are from 2009 or 2012. Finally, the GF peer reviews contained in this work (except in the case of Jamaica) are prior to the formulation of the Terms of Reference of 2016, and therefore only cover the legal situation with regard to legal owners, but not to BOs. Therefore, Annex 3 contains more details per country, including recent regulatory developments on beneficial ownership (which were not covered by the FATF or the GF evaluations).

Undoubtedly, the world is moving towards a higher degree of transparency, pushed by new international commitments and by new evaluations by international organizations that are increasingly rigorous, not only in legal matters, but especially with respect to effective compliance with the law. Furthermore, leaks such as the so-called *Panama Papers* create both public and media pressure. In this context, it is probable that countries that fail to adjust their regulations and practices in the short term could be even more gravely affected. Cases of de-risking (whereby banks and financial institutions cut correspondent banking relations with their counterparts in countries that are considered very risky) have already taken place. Countries that receive negative ratings in their peer reviews might even be labeled as tax havens or non-cooperative jurisdictions. This would negatively affect their reputation and the

possibility of attracting investments by individuals or firms that might prefer not to be associated with these countries, and this could even bring fiscal consequences or other types of sanctions from other countries. It is crucial that countries confirm their commitment to transparency, demonstrating that they have the mechanisms in place that allow them to access

accurate and timely information about BOs, and thereafter exchange it. Likewise, it is important not to get left behind should the rest of the countries raise the bar on transparency beyond mere compliance with international commitments, for example if creating beneficial ownership registries and even granting public access to such information becomes the new norm.

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ANNEX 1.

SUMMARY OF DEFINITIONS OF BENEFICIAL OWNERSHIP OF LEGAL PERSONS

Country	Legal source	Evidence	Threshold	What if no one exceeds the threshold or has control by other means?
Argentina	UIF Resolution 30-E/2017	Control through ownership, vote, and other means	20 percent	The senior manager must be identified (president or highest authority).
Bahamas	AML & ATF Handbook & Code of Practice for Financial and Corporate Service Providers (2009)	Control through controlling interest	10 percent	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Barbados	Anti-Money Laundering/ Combating Terrorist Financing Guideline (2011) for Financial Institutions	Control through ownership interest or whoever gives instructions	10 percent	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Belize	Central Bank AML/CFT Guidelines (2010) for Banks, Financial Institutions, Credit Unions, and Money Transfer Services Providers	Control through ownership or whoever gives instructions	10 percent	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Bolivia	Resolution 18/2014 of the Central Bank of Bolivia	Ownership or effective control	—	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Brazil	The Department of Federal Revenue Normative Instruction (Instrução Normativa de la Receita Federal) 1634/2016	Control through ownership or significant influence or power to appoint majority of the board of directors	More than 25 percent	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Chile	Circular 57/2017	Control through ownership, vote, power to appoint or remove the top management and/or board of directors, and other means	10 percent	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Colombia	External Circular 055, 2016	Control through ownership, majority of votes, power to appoint a majority of the board of directors, or through influence	More than 5 percent	The regulation refers to the FATF Interpretative Notes, by which it may be assumed that the senior manager must be identified.

(continued on next page)

(continued)

Country	Legal source	Evidence	Threshold	What if no one exceeds the threshold or has control by other means?
Costa Rica	Law 9416, 2016	Control through ownership, vote, power to appoint or remove majority of the board of directors, and other means	15–25 percent (according to that stipulated by the regulation)	The administrator should be identified. (The legal representative is understood to be the BO.)
Dominican Republic	Law 155 (2017)	Control through ownership, votes, and other means	20 percent	The law fails to mention this situation. It is assumed that the senior manager need not be identified.
Ecuador	General Rules for Financial Institutions (Normas Generales para las Instituciones del Sistema Financiero)	Control through ownership and “effective control” (not defined)	25 percent	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
El Salvador	Technical Standards for Risk Management of Money and Asset Laundering and Terrorist Financing (Normas Técnicas para la Gestión de los Riesgos de Lavado de Dinero y de Activos, y de Financiamiento al Terrorismo), NRP-08, 2013	Control through ownership or effective control (not defined in these terms)	—	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Guatemala	Oficio IVE No.4471-2014	Ownership or control (the term “control” is not defined)	10 percent	The directors and managers at the highest management level should be identified.
Guyana	Anti-Money Laundering and Countering the Financing of Terrorism, Act No. 10, 2015	Vote, ownership, “effective control” (the term is not defined)	25 percent (of the votes)	The law fails to mention this situation. It is assumed that the senior manager need not be identified.
Haiti	Circular 99-1 of the Central Bank	Ownership	25 percent	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Honduras	Circular CNBS 19/2016	Ownership, significant responsibility for controlling, directing, or managing	25 percent	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Jamaica	The Companies (Amendment) Act, 2017	Effective control over decisions and policy through ownership or votes	51 percent	The law fails to mention this situation. It is assumed that the senior manager need not be identified.
Mexico	Consolidated text of the Resolution issuing the Arrangements of a General Nature (DCG—Disposiciones de Carácter General), referring to Arts. 115 of the Credit Institutions Act (Ley de Instituciones de Crédito)	Control by imposing decisions, appointment or dismissal of a majority of advisors, votes, strategic management, or ownership	25 percent (shares), more than 50 percent (votes)	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.

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(continued)

Country	Legal source	Evidence	Threshold	What if no one exceeds the threshold or has control by other means?
Nicaragua	Resolution UAF 9/2016	Highest authority over administrative management of the entity	—	Only and solely the highest authority must be identified.
Panama	Decree 363/2015	Control only through ownership	10 percent (financial institutions) or 25 percent (non-financial reporting entities)	The entity's representative must indicate who the BO is.
Paraguay	Resolution SEPRELAD 436/2011	Effective control	—	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Peru	Resolution S.B.S. No. 2660-2015	Effective control through ownership and other means	"Majority share" (51 percent?)	The senior manager must be identified.
Suriname	MOT Act (Suspicious Transactions)	Effective control	—	The regulation fails to mention this situation. It is assumed that the senior manager need not be identified.
Trinidad and Tobago	Financial Obligations Regulations (FOR)	Effective control (the term is not defined)	—	Although the definition of beneficial ownership does not refer to this situation, the regulations (in a different article) require the directors of a legal person to be identified.
Uruguay	Law 19.484 (2017), Art. 22, Decree 166/2017	Control through ownership, votes, and other means	15 percent	The law fails to mention this situation. It is assumed that the senior manager need not be identified.
Venezuela	—	—	—	—

Source: Author's elaboration.

ANNEX 2.

SUMMARY OF DEFINITIONS OF BENEFICIAL OWNERSHIP OF TRUSTS

Country	Legal source	All parties to the trust?
Argentina	UIF Resolution 140/2012	Everyone, except for the protector
Bahamas	AML & ATF Handbook for Financial and Corporate Service Providers (2009)	Everyone, except for the protector
Barbados	Anti-Money Laundering/Combating Terrorist Financing Guidelines (2011) for Financial institutions	All parties (settlor, trustee, protector, and beneficiaries), as well as the person who can add beneficiaries and is responsible for managing the funds, if this person is not the settlor
Belize	Central Bank AML/CFT Guidelines (2010) for Banks, Financial Institutions, Credit Unions, and Money Transfer Services Providers	All parties (settlor, trustee, protector, and beneficiaries), as well as the person who can add beneficiaries, use trust assets, veto decisions, etc., and is responsible for managing the funds, if this person is not the settlor
Bolivia	—	—
Brazil	The Department of Federal Revenue Normative Instruction (Instrução Normativa de la Receita Federal) 1634/2016	The BO of a trust is not defined, and so the same definition used for legal persons should be applied.
Chile	Circular 57/2017	Not referred to at all; only those who have effective control through ownership or other means are mentioned.
Colombia	External Circular 055, 2016	Although the BO of a trust is not defined, the “BO of the trust, including the settlor and the beneficiary” must be identified.
Costa Rica	Law 9416, 2016	The settlor, trustees, and beneficiary of non-public trusts must be identified.
Dominican Republic	Law 155 (2017)	Remains unclear; although the concept “all parties to the trust” is mentioned, only the settlor and the beneficiary are mentioned explicitly.
Ecuador	—	—
El Salvador	Technical Standards for Risk Management of Money and Asset Laundering and Terrorist Financing (Normas Técnicas para la Gestión de los Riesgos de Lavado de Dinero y de Activos, y de Financiamiento al Terrorismo), NRP-08, de 2013	No; only the effective control of legal persons or legal arrangements is mentioned.
Guatemala	Oficios 624-2010 and 4471-2014	All parties (except the protector), although “all persons with ultimate control over the trust” is added.
Guyana	—	—
Haiti	—	—
Honduras	Circular CNBS 19/2016	Settlor and trustee

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Country	Legal source	All parties to the trust?
Jamaica	Regulations of the Proceeds of Crime Act, 2007	Settlor and those with effective control and beneficial ownership of trusts (although these concepts are not defined)
Mexico	Consolidated text of the Resolution issuing the Arrangements of a General Nature (DCG—Disposiciones de Carácter General), referring to Arts. 115 of the Credit Institutions Act (Ley de Instituciones de Crédito)	Settlers, trustees (and the equivalent administrative body), and beneficiaries
Nicaragua	Resolution UAF 9/2016	Only the beneficiary is mentioned. It remains unclear whether a legal person or another trust can be considered a BO.
Panama	Decree 363/2015	No; it only mentions control of legal persons or trusts through shareholding, and the representative's requirement to indicate who the BO is when the majority shareholder cannot be identified.
Paraguay	—	—
Peru	Resolution S.B.S. No. 2660-2015	In the definition of beneficial ownership, only the beneficiaries (and the parties to the trust, for example, "the board" and "procurators," which are specific to Peruvian regulations) are mentioned. No other party is mentioned, except the settlor and the trustee (if the latter intervenes in the contract), who must be identified as clients (although they can be legal persons).
Suriname	—	—
Trinidad and Tobago	Financial Obligations Regulations (FOR), Art. 17	Settlor, trustee, beneficiaries, protector, and any other person with control over the trust
Uruguay	Law 19.484 (2017), Art. 22, 3rd Paragraph	Everyone, except for the protector
Venezuela	—	—

Source: Author's elaboration.

ANNEX 3. COUNTRY-BY-COUNTRY DETAILS

This annex presents, for each country for which there is information, the source and details of the definition of beneficial ownership of legal persons and trusts; the details or observations of FATF R 24, R 25, R 10, R 11, R 22, and IO 5 and Section A1 of the GF; and finally, recent legislative developments (subsequent to the date of the FATF and GF evaluations).

ARGENTINA

Summary: There are many regulations on beneficial ownership, depending on whether it involves a reporting entity or a specific sector. The new definition of beneficiary ownership of legal persons for reporting entities requires identification of the senior manager in the event that nobody exceeds the threshold of 20 percent. There is a public registry of beneficial ownership of legal persons and some trusts, but only in the City of Buenos Aires. The National Stock Exchange Commission (Comisión Nacional de Valores) requires identification of the BOs of companies listed on the stock exchange.

The definition of beneficial ownership of trusts does not include the protector. The new Civil and Commercial Code (Código Civil y Comercial) created a registry of trusts that is still not yet operational, and it is unclear whether identification of BOs will be required.

1. Definition of beneficial ownership

In Argentina there are different resolutions on beneficial ownership, especially those made by the Financial Intelligence Unit (Unidad de Inteligencia Financiera),

whether for reporting entities, for trustees, or for specific sectors. Details of the most complete definitions found are given below.

a) *Legal person*

[Resolution UIF 30-E/2017, Art. 2](#)

Owner/Beneficiary: any physical person who controls or may control, directly or indirectly, a legal person or legal arrangement without legal personality, and/or who possesses, at least, TWENTY PERCENT (20 percent) of the capital or of the voting rights, or that by other means exercises ultimate control, either direct or indirect. When it is impossible to identify the physical person, then the identity of the president or the highest equivalent authority must be determined and verified.

b) *Trust*

[Resolution UIF 140/2012, Arts. 2 and 18](#)

Art. 18. The reporting entities should:

- a. *In all cases adopt additional measures with a view to identifying the “owners” (defined in clause i) of Article 2 of the present resolution) and verify their identity (...)*
- b. *When there are elements that raise suspicions that clients are not acting on their own behalf, obtain further information about the real identity of the person (ultimate or real owner/customer) on whose behalf they are acting and take measures to truly verify their identity.*

Art. 2. For the purposes of this resolution, the following definitions are used:

- a. *Reporting entities: (...)*
 - 1) *Trustees, administrators, and all those who perform trustee functions (...)*

iii) *In trusts incorporated overseas, the physical persons or legal residents in the country who carry out any of the functions indicated in the above sections i) and ii).*

- b. *Client: (...)*
- *The settlors (...)*
 - *The beneficiaries (...)*
 - *The trustees*

2. FATF Recommendations on beneficial ownership

- **IO 5:** Unavailable
Observations: —
- **R 10 (2014):** Largely compliant (Argentina 2014: 18)
Observations: —
- **R 11 (2014):** Largely compliant (Argentina 2014: 18–19)
Observations: —
- **R 22 (2010):** Non-compliant
Observations:
 - *Real estate agents, lawyers, fiduciary, and corporate service providers are not subject to any AML/CTF requirement.*
 - *Distributors of precious stones and metals are not covered satisfactorily by AML Law 25.766.*
 - *Registries demand only very limited identification and maintenance requisites from public notaries, accountants, and casinos. However, none of these comply substantially with Recommendations 5 [new R 10] and 10 [new R 11] (Argentina 2010: 161).*
- **R 24 (2010):** Non-compliant
Observations:

The competent authorities do not have timely access to relevant, accurate, and updated information concerning the BOs of legal persons because:

 - *There is still no operational registry of legal persons; the registries are maintained separately by the City of Buenos Aires and the 23 provinces.*
 - *The provincial registries do not possess up-to-date beneficial ownership information, and the*

provincial monitoring authorities' capacity to obtain it is limited.

- *Corporate service providers are not obliged to gather such information.*
 - *Nominee shareholders are authorized by the law, although jurisprudence indicates the contrary.*
 - *It is unclear whether the competent authorities have access to timely, relevant, accurate, and updated information on beneficial ownership regarding previously issued bearer shares (Argentina 2010: 174).*
- **R 25 (2010):** Non-compliant
Observations:

The competent authorities do not have timely access to relevant, accurate, and updated information on the beneficial ownership of legal arrangements because:

 - *The law does not require the settlor to be named in the trust contract.*
 - *There is no central registry and trust contracts are not registered with the authorities.*
 - *Although law enforcement agencies have the power to obtain information from financial institutions concerning trusts, scant information is disclosed to the financial institutions themselves regarding the trusts.*
 - *The trust service providers do not have obligations with respect to AML/TF (Argentina 2010: 175).*

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2012), Phase 1:** The element is in place (compliant)
Observations:

This only refers to legal owners, not to BOs.
- **Section A1 (2012), Phase 2:** Compliance
Observations:

This only refers to legal owners, not to BOs.

4. Recent regulatory developments

- Unified Civil and Commercial Code (Código Civil y Comercial Unificado), Art. 1669 (trust contracts

- must be registered in the corresponding public registry).
- Resolution IGJ 7/2015 (Commercial Registry—Registro Mercantil—of the City of Buenos Aires): Arts. 50.2.d (registration procedures must include declaration of beneficial ownership); Art. 284 (limits registration of trusts and their BOs for those that have a trustee with residence in the City of Buenos Aires, or shares in companies registered with the IGJ, or registrable goods); Art. 510.6 (the definition of beneficial ownership is the same as the one given in Resolution UIF); and Art. 518 (annual declaration of BOs of local and foreign companies, and trusts).
- Resolution CNV 687/2016 (National Stock Exchange Commission for companies listed on the stock exchange) requires BOs to be identified.

Sources

a) Reports

- Argentina 2010: FATF Mutual Evaluation Report, 2010: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Argentina.pdf>.
- Argentina 2014: FATF 11th Follow-Up Report, 2014: http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR%20Argentina_reduced.pdf.
- GF Peer Review, 2012: <http://www.eoi-tax.org/jurisdictions/AR#ratings>.

b) Regulatory

- Resolution CNV 687/2016: <http://www.cnv.gov.ar/leyesyreg/CNV/esp/RGCRGN687.htm>.
- Resolution IGJ 7/2015: http://www.jus.gov.ar/media/920800/resolucion_general_07-15_actualizada.pdf.
- Resolution UIF 140/2012: <http://servicios.infoleg.gov.ar/infolegInternet/anexos/200000-204999/200723/texact.htm>.
- Resolution UIF 30-E/2017: <http://servicios.infoleg.gov.ar/infolegInternet/anexos/275000-279999/275996/norma.htm>.
- Unified Civil and Commercial Code: <http://servicios.infoleg.gov.ar/infolegInternet/anexos/235000-239999/235975/norma.htm#22>.

BAHAMAS

Summary: It is unclear which regulations are applicable to beneficial ownership. In the *AML & ATF Handbook & Code of Practice for Financial and Corporate Service Providers*, similar to that of the GF, the definition of beneficial ownership of legal persons makes reference only to possession of 10 percent of the shares (controlling interest). In the case of trusts, although not referred to as BOs, the trustee, settlor, and beneficiary must be identified.

1. Definition of beneficial ownership

a) Legal person

For example, the *AML & ATF Handbook & Code of Practice for Financial and Corporate Service Providers*, Art. 13.3.1 requires identification of: *Names and addresses of all BOs (the obligation to verify the identity of BOs is extended only to those who have a controlling interest of 10 percent of the corporate entity).*

b) Trust

For example, Art. 13.6.5 of the *AML & ATF Handbook & Code of Practice for Financial and Corporate Service Providers* states: *The corporate and financial service provider must verify the identity of the trustee and the nature of the capacity or responsibilities of the trustee or nominee. Consultations should be made regarding the identity of all parties for whom the trustee acts, including the settlor and the beneficiaries (except when only occasional transactions are made in the name of the beneficiary).*

2. FATF Recommendations on beneficial ownership

- **IO 5:** Moderate
Observations: (Bahamas 2017: 10)
- **R 10 (2017):** Partially compliant
Observations:

It is not necessary to adopt tougher measures to identify and verify the identity of the BO of the beneficiary of a life insurance policy at the time of payment. There are no requirements for identifying trust protectors (Bahamas 2017: 149).

- **R 11 (2017):** Largely compliant
Observations: (Bahamas 2017: 11)
- **R 22 (2017):** Partially compliant
Observations: (Bahamas 2017: 11)
- **R 24 (2017):** Partially compliant
Observations:
 - *No information is required regarding BOs for the registration of legal persons.*
 - *Companies are not compelled to authorize the physical person to disclose information on the BOs and cooperate with the competent authorities.*
 - *Legal persons/authorities/entities are not required to keep information on beneficial ownership for five years following the date on which the company is dissolved or ceases to exist.*
 - *Only the financial intelligence unit has the power to obtain timely access to information about BOs.*
 - *There is no sanction for non-compliance with R 24 (Bahamas 2017: 151).*
- **R 25 (2017):** Partially compliant
Observations:
 - *There is no requirement that the information on the beneficial ownership of legal arrangements be accurate and up-to-date.*
 - *There is no requirement to verify the identity of any physical person who exercises control over a trust.*
 - *Trustees are not required to obtain information about agents or service providers.*
 - *There is no requirement for the information kept in compliance with this recommendation to be periodically updated.*
 - *The authorities responsible for enforcing the law do not have the necessary powers to obtain*

timely access to information held by the trustees and other parties (Bahamas 2017: 152).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2013), Phase 1:** Largely compliant
Observations:

The majority of fund managers in the Bahamas are subject to customer due diligence (CDD) requirements under the regulatory and AML regime. However, there may be a limited number of investment funds that are not subject to such requirements. In these cases, the simplified procedure of due diligence applicable to the investment funds might not guarantee that, in all cases, full information on ownership of the investment funds is available.
- **Section A1 (2013), Phase 2:** Largely compliant
Observations:

The registry lacks a regular system for monitoring compliance with ownership and maintenance of identity data requirements with regard to all registered entities, and sanctions for non-compliance are not applied in practice. Although the majority of entities are regulated, or must contract a service provider that is subject to monitoring, verification of the BOs with regard to legal persons may mean that this oversight will not include the obligation to keep full information on beneficial ownership in every case.

4. Recent regulatory developments: —

Sources

- a) *Reports*
 - Bahamas 2017: Fourth Round, FATF Mutual Evaluation Report of the CFATF, 2017: <https://www.cfatf-gafic.org/index.php/documents/4th-round-meval-reports/8383-the-bahamas-4th-round-mer/file>.
 - GF Peer Review, 2013: <http://www.eoi-tax.org/jurisdictions/BS#latest>.

b) *Regulatory*

- *AML & ATF Handbook & Code of Practice for Financial and Corporate Service Providers* (2009): <http://www.scb.gov.bs/documents/AML%20Codes%20of%20Practise%20for%20FCSP.pdf>.

BARBADOS

Summary: The FATF 14th Follow-Up Report of 2016 recommends establishing a definition of BO. However, the *Anti-Money Laundering/Combating Terrorist Financing Guideline for Financial Institutions* define beneficial ownership as possessing at least 10 percent of the shares of a legal person that is not listed on the stock exchange. In the case of trusts, the *Anti-Money Laundering/Combating Terrorist Financing Guideline for Financial Institutions* establishes very broad requirements, even more so than those explicitly required by the FATF (e.g., a person with the power to add beneficiaries and the person who provides funds, if this person is not the settlor).

1. Definition of beneficial ownership

a) *Legal person*

Anti-Money Laundering/Combating Terrorist Financing Guideline for Financial Institutions, 2011, Art. 7.2:

In order to establish the identity of the client, the licensee must obtain:

e) *Identity data of the BOs of the entity. This information should be extended to include identification of those that ultimately own and control the company and must include any person who is giving instructions to the licensee for the latter to act in the company's name (...).*

If the enterprise is private, the identity of the persons with at least 10 percent of the shares should be determined.

b) *Trust*

Anti-Money Laundering/Combating Terrorist Financing Guideline for Financial Institutions, 2011, Art. 7.4.1:

At minimum, the licensee should obtain the following: (...)

d) *Identity of the trustee, settlor, protector(s)/ controller(s), or similar person who has the power to appoint or remove the trustee and, whenever possible, the names or classes of beneficiaries;*

e) *Identity of the person(s) with power to add beneficiaries, if applicable; and*

f) *Identity of the person who manages the funds, if this person is not the settlor.*

2. FATF Recommendations on beneficial ownership

• **IO 5:** —

Observations: —

• **R 10 (2016): Partially compliant**

Observations: (Barbados 2016: 22–31)

• **R 11 (2016): Compliant**

Observations: (Barbados 2016: 39)

• **R 22 (2016): Non-compliant**

Observations:

At present, the only DNFBPs subject to the requirements of the CBB Directives are service providers obliged under Section 35 of the CTSPA to comply with the directives issued by the Director of International Business (Barbados 2016: 10, 42–46).

• **R 24 (2016): Partially compliant**

Observations:

There is no legislative requirement for legal persons to disclose their BOs (Barbados 2016: 72–74).

• **R 25 (2016): Partially compliant**

Observations:

International trusts supervised by the Ministry of Economy and Development, lawyers, and accountants are not subject to the measures “Oversee and guarantee compliance with AML/CTF requirements”; in other words, “maintaining beneficial ownership and monitoring information” (Barbados 2016: 74–76).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2016), Phase 1:** Partially compliant
Observations:
The Foundations Act requires that the secretary (of local foundations) and the registered agent (of international foundations) keep a register containing information about the foundation beneficiaries. However, in the case of local foundations, the secretary is not required to be resident in Barbados or subject to the jurisdiction of Barbados.
- **Section A1 (2016), Phase 2:** Largely compliant
Observations:
 - *Although sanctions for non-compliance with reporting obligations have been introduced into the legislation of Barbados, the legal arrangements are too new to have been applied. The sanctions for non-compliance have yet to be applied in practice. Nor have non-monetary sanctions (such as cancellation) been imposed during the examination period.*
 - *The ministry responsible for international business still lacks a system for overseeing compliance with ownership and identity data maintenance requirements for all international entities and trusts. The International Business Division has yet to set up a compliance department and, up until now, is not monitoring any IBCs, licensed trustees, and service providers.*

4. Recent regulatory developments: —

Sources

a) Reports

- Barbados 2016: FATF 14th Follow-Up Report, 2016: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/barbados/6871-barbados-14th-follow-up-report/file>.
- GF Peer Review, 2016: <http://www.eoi-tax.org/jurisdictions/BB#latest>.

b) Regulatory

- *Anti-Money Laundering/Combating Terrorist Financing Guideline for Financial Institutions*, 2011: <http://www.barbadosfiu.gov.bb/pdf/Revised%20AML%20CFT%20Guideline%20-%202011.pdf>.

BELIZE

Summary: The Central Bank of Belize's *AML/CFT Guidelines for Banks, Financial Institutions, Credit Unions and Money Transfer Services Providers* define the BO as someone holding at least 10 percent of the shares of a legal person. In the case of trusts, the *AML/CFT Guidelines* establish very broad requirements, even more so than those explicitly required by the FATF (e.g., a person with the power to add beneficiaries and veto decisions, and a person who provides funds, if this person is not the settlor).

1. Definition of beneficial ownership

a) Legal person

The Central Bank of Belize's *AML/CFT Guidelines for Banks, Financial Institutions, Credit Unions and Money Transfer Services Providers*, 2010, in Art. 4.2, par. 88.8, establishes that information must be obtained: *Information regarding the identity of physical persons with a controlling interest in the corporate entity. This information must be extended, as far as possible, to identify those who hold at least 10 percent of the shares, those who, in the final analysis, own and have chief control over the assets of the enterprise, including anyone who is giving instructions to the financial institution to act in the company's name. However, if the enterprise is publicly listed on a recognized stock exchange and is not under the effective control of a small group of persons, identification and verification of the identity of the shareholders is not required.*

b) Trust

The Central Bank of Belize's *AML/CFT Guidelines for Banks, Financial Institutions, Credit Unions*

and Money Transfer Services Providers, 2010, Art. 4.3.1, requires the following information on trusts to be reported:

- *Identity of the ultimate physical person who provides the funds, if this is not the settlor.*
- *The trustee and any other person who is a signatory to the bank account.*
- *The settlor, the protector(s)/controller(s), and any other person who exercises effective control over the trust, which includes the individual who has the power (either exercised solely, jointly, with another person or with the consent of another person) to: a) dispose of, lend, invest, pay; b) amend the trust; c) appoint or remove a person as beneficiary or a class of beneficiaries; d) appoint or remove the trustees; e) demand, deny consent, or veto the exercise of a power as mentioned in a–d above.*
- *Any underlying beneficiary of a legal arrangement.*
- *In all circumstances, verification of the beneficiaries must take place before the first profit-sharing.*

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2015):** Largely compliant
Observations: (Belize 2015: 5)
- **R 11 (2015):** Largely compliant
Observations: (Belize 2015: 5)
- **R 22 (2015):** Largely compliant
Observations: (Belize 2015: 34)
- **R 24 (2014):** Compliant
Observations: (Belize 2014: 12; Belize 2015: 26–27)
- **R 25 (2014):** Compliant
Observations: (Belize 2014: 12; Belize 2015: 27)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2014), Phase 1:** Compliant
Observations: —
- **Section A1 (2014), Phase 2:** Partially compliant
Observations:
 - *During the examination period, the IFSC lacked a regular monitoring program to follow up on compliance with obligations imposed on the registered agents of IBCs or other licensed entities, including those that use the services of an office registered in Belize. Furthermore, the IFSC has failed to impose sanctions when non-compliance has been detected.*
 - *In practice, the bearer shares of IBCs can be held by registered agents who are not physically established in Belize, but simply use the back office of another agent who is so registered. In such cases, it is unclear whether the information on the ownership of such shares is always available in Belize. Furthermore, the application of any obligation to disclose that information in Belize might not be effective.*

4. Recent regulatory developments: —

Sources

- a) *Reports*
- Belize 2014: FATF Seventh Follow-Up Report, 2014: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/belize-1/4461-belize-7th-follow-up-report-1/file>.
 - Belize 2015: FATF Eighth Follow-Up Report, 2015: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/belize-1/5319-belize-8th-follow-up-report-1/file>. GF Peer Review, 2014: <http://www.eoi-tax.org/jurisdictions/BZ#latest>.

b) *Regulatory*

AML/CFT Guidelines for Banks, Financial Institutions, Credit Unions and Money Transfer Services Providers, June 2010: <https://www.centralbank.org.bz/docs/default-source/2.5-money-laundering-terrorismprevention-act/aml-cft-guidelines-june-2010.pdf?sfvrsn=2>.

BOLIVIA

Summary: It is not easy to determine whether beneficial ownership is regulated or not. A resolution by the Central Bank of Bolivia in 2014 establishes requirements for the “economic beneficiary,” which would be equivalent to the BO, although thresholds for controlling shareholding are not established. There seems to be no regulation on trusts, as indicated by the FATF in 2006.

1. Definition of beneficial ownership

a) *Legal person*

Resolution 18/2014 of the Central Bank of Bolivia on Internal Regulation for the Prevention, Detection, Monitoring and Reporting of Asset Laundering, Terrorist Financing and/or Predicate Offenses, with a Focus on Risk Management Approach (LGI/FT and/or DP)—in Spanish the Reglamento Interno Para la Prevención, Detección, Control y Reporte de Legitimación de Ganancias Ilícitas, Financiamiento del Terrorismo y/o Delitos Precedentes (LGI/FT y/o DP), con Enfoque en Gestión de Riesgo—establishes in Art. 3:

Economic beneficiary: Natural or legal person, of public or private nature, either national or foreign, for profit or non-profit, who, in the final analysis, are the owners or have control of a client and/or of the person in whose name operations are carried out. It also includes those persons who exercise effective control over a legal person or a legal arrangement.

b) *Trust*

The FATF Mutual Evaluation Report of Bolivia indicated in 2006: although in Bolivia trusts are

accepted as “stand-alone trusts,” specific measures have not been taken to impede the illegal use of these legal arrangements in relation to money laundering and terrorist financing. The country has not ensured that its commercial laws regarding trusts, and other laws, contain adequate transparency requirements in relation to ultimate ownership and control of trusts and other legal arrangements (Bolivia 2006: 89).

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2006):** Partially compliant
Observations: (Bolivia 2006: 103; Bolivia 2008: 3)
- **R 11 (2006):** Largely compliant
Observations: (Bolivia 2006: 104)
- **R 22 (2006):** Non-compliant
Observations: (Bolivia 2006: 104)
- **R 24 (2006):** Partially compliant
Observations:
It is impossible to access information about the final owner of anonymous companies with bearer shares. There is no apparent system for checking the background of owners or those responsible for legal persons (Bolivia 2006: 107–108).
- **R 25 (2006):** Non-compliant
Observations:
No regulations have been presented in this respect (Bolivia 2006: 108).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1, Phase 1:** - (Bolivia is not a member of the GF)
Observations: —

- **Section A1, Phase 2:** — (Bolivia is not a member of the GF)
Observations: —

4. Recent regulatory developments

Central Bank of Bolivia Resolution 18/2014 on Internal Regulation for the Prevention, Detection, Monitoring and Reporting of Asset Laundering, Terrorist Financing and/or Predicate Offenses (LGI/FT and/or DP), with a Focus on Risk Management Approach, establishes a definition of economic beneficiary.

Sources

- a) *Reports*
Bolivia 2006: FATF Mutual Evaluation Report, 2006 (available in Spanish only): <http://gafilat.org/index.php/en/biblioteca-virtual/miembros/bolivia/evaluaciones-mutuas-1/46-bolivia-2nda-ronda-2006/file>.
GF Peer Review: —
- b) *Regulatory*
Central Bank of Bolivia Resolution 18/2014 on Internal Regulation for the Prevention, Detection, Monitoring and Reporting of Asset Laundering, Terrorist Financing and/or Predicate Offenses (LGI/FT and/or DP), with a Focus on Risk Management Approach. https://www.bcb.gob.bo/web-docs/01_resoluciones/018%202014.PDF.

BRAZIL

Summary: The Department of Federal Revenue Normative Instruction (Instrução Normativa de la Receita Federal) No. 1634, 2016, demands that the BOs of legal persons and foreign trusts report themselves to the registry of legal persons. The definition of beneficial ownership includes ownership (greater than 25 percent) and control through significant influence, or power to appoint the majority of the board of directors. There is no definition of beneficial ownership of trusts, which implies that the same definition applied to legal persons is also used for trusts.

1. Definition of beneficial ownership

a) *Legal person*

The Department of Federal Revenue Normative Instruction No. 1634, 2016, establishes in Art. 8 that: § 1st *For the purposes of this chapter, the beneficial owner will be considered to be:*

- *The natural person who, in the final instance, directly or indirectly, possesses, controls, or significantly influences the entity; or*
- *The natural person in whose name a transaction is made.*

§ 2nd *Significant influence, as referred to in § 1st, is presumed when the natural person:*

- *Has more than 25 percent (twenty-five percent) of the entity's capital, directly or indirectly; or*
- *Directly or indirectly holds or exercises predominance in corporate resolutions and has the power to appoint the majority of the entity's administrators, although without controlling it.*

b) *Trust*

Art. 19. IV of Normative Instruction No. 1634 makes reference to the BOs of trusts, but there is no definition of BO.

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2010):** Partially compliant
Observations:
Corporate/financial service providers are not obliged to identify the real beneficiary (Brazil 2010: 260–261). There were no reports of sufficient progress (Brazil 2015: 5).
- **R 11 (2010):** Largely compliant
Observations: (Brazil 2010: 262)
- **R 22 (2010):** Non-compliant
Observations:

DNFBPs are not obliged to: identify the BOs; confirm whether the client is acting in someone else's name, understand the structure of ownership and control of clients that are legal persons; obtain information regarding the purpose and the alleged nature of the commercial relationship; carry out ongoing due diligence, or carry out enhanced CDD for high-risk clients (Brazil 2010: 262).

- **R 24 (2010):** Partially compliant
Observations:
 - *The competent authorities do not have timely access to adequate, accurate, and updated information on beneficial ownership of legal persons when the chain of ownership is broken by parties that do not have a CNPJ/CPF number (e.g., when the legal person is privately owned by foreign legal persons without a physical presence in Brazil, or companies listed on the stock exchange owned by foreign legal persons with no physical presence in Brazil and that, in turn, are owned by foreign legal persons without physical presence in Brazil).*
 - *A number of unidentified investors have bearer shares that were issued before the issue of such shares was prohibited; however, the risk of ML/TF is minimal, given that the shares were issued under very strict circumstances and cannot be used until full CDD has been carried out and their source has been declared (Brazil 2010: 265).*
- **R 25 (2010):** Unavailable
Observations: (Brazil 2010: 265)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2013), Phase 1:** Compliant
Observations: —
- **Section A1 (2013), Phase 2:** Compliant
Observations: —

4. Recent regulatory developments

The Department of Federal Revenue Normative Instruction No. 1634, 2016, establishes the obligation to register the BOs of legal persons and trusts with the fiscal authority.

Sources

a) Reports

- Brazil 2010: FATF Mutual Evaluation Report, 2010: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Brazil%20full.pdf>.
- Brazil 2015: Follow-Up Report, 2015: [http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/Informe%20de%20Seguimiento%20de%20Brasil%20\(julio%202015\).pdf](http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/Informe%20de%20Seguimiento%20de%20Brasil%20(julio%202015).pdf).
- GF Peer Review, 2013: <http://www.eoi-tax.org/jurisdictions/BR#latest>.

b) Regulatory

Department of Federal Revenue (fiscal authority), Normative Instruction No. 1634, 2016: <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=73658>.

CHILE

Summary: The definition of beneficial ownership of legal persons does not require any individual (not even the senior manager) to be identified if no one exceeds the threshold of 10 percent or other forms of control. The definition of beneficial ownership of trusts does not specify which parties to the trust (e.g., settlor, trustee, beneficiary, etc.) need to be identified. The information need not be registered with an authority, but must be accessible to the authorities.

1. Definition of beneficial ownership

a) Legal person

Circular 57/2017: Definitions.
BOs are understood to be:

- *The natural persons who ultimately possess, directly or indirectly, through companies or other mechanisms, a share equal to or greater than 10 percent of the capital or the voting rights of a given legal person or legal arrangement.*
- *The natural persons who, even when they possess directly or indirectly a share less than 10 percent of the capital or the voting rights of a legal person or legal arrangement, through companies or other mechanisms, exercise effective control over the decision making of the legal person or legal arrangement.*
- *Effective control: the capacity of a natural person to make important decisions and impose such resolutions on the legal person or legal arrangement, whether by possessing a significant number of shares, having the shares needed to appoint and/or remove the top management and/or the board of directors, and/or by having the use, enjoyment, or benefits of the assets owned by the legal person or legal arrangement, among other circumstances.*

b) Trust

The definition for legal persons (see above) also refers to “legal arrangements,” which includes trusts. Nonetheless, the parties to the trust (settlor, trustee, beneficiary, etc.) that should be identified as BOs are not specified.

2. FATF Recommendations on beneficial ownership

- **IO 5:** Unavailable
Observations: —
- **R 10 (2010):** Partially compliant
Observations:
With the exception of the SBIF and the SVS (except as stated above), a clear definition is needed with respect to the essential documentation for accreditation of a legal person, in particular with regard to its structure, social aims, and constituents of the company, in order to determine who its owners and, ultimately, its BOs, are (Chile 2010: 254–255).

- **R 11 (2010):** Largely compliant
Observations:
The sectors of the financial system are not usually required to keep information about the transactions and identification data for a minimum of five years counting from the time that the account was closed or the commercial relationship terminated, and that this same information should be sufficient to enable the reconstruction of individual transactions, in such a way that it can be used as proof in any subsequent legal action.
- **R 22 (2010):** Non-compliant
Observations:
 - *Not all the DNFBPs mentioned in R 12 are included as reporting entities.*
 - *A clear definition is needed with respect to the essential documentation for accreditation of a legal person, in particular with regard to its structure, social aims, and the constituents of the company, in order to determine who its owners and, ultimately, its BOs, are (Chile 2010: 256–257).*
- **R 24 (2010):** Partially compliant
Observations:
 - *There is no Single Commercial Registry (Registro Único de Comercio) at the national level from which all the information on legal persons can be obtained in digital form and that provides access to information by physical or legal persons.*
 - *There are no guarantees that the competent authorities can get timely access to information on ultimate owners and control of legal persons (Chile 2010: 260).*

R 25 (2010): Non-compliant

- Observations:
- *There is no control over local or foreign trusts.*
 - *There is no registry of trusts (Chile 2010: 260).*

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2014), Phase 1:** The element is in place
Observations: —

- **Section A1 (2014), Phase 2:** Largely compliant
Observations:
The arrangement that obliges foreign companies with a nexus in Chile to disclose information on ownership to the tax authorities will come into force on January 1, 2015.

4. Recent regulatory developments

Circular 57/2017 requires that beneficiaries of legal persons and trusts be identified. The information need not be registered with the authorities, but the latter must have access whenever they so require (clause g of the Circular).

Sources

Reports

Chile 2010: Third Round, FATF Mutual Evaluation Report, 2010: <http://www.uaf.cl/asuntos/gafisud.aspx>.

- GF Peer Review, 2014: <http://www.eoi-tax.org/jurisdictions/CL#ratings>.

Regulatory

- Circular 57/2017: <http://www.bolsadesantiago.com/noticias/SiteAssets/Paginas/Forms/EditForm/CI%2013744%20Circular%2057%20UAF%20sobre%20Beneficiario%20Final.pdf>.

COLOMBIA

Summary: External Circular 055 of 2016, Part I, Heading IV, requires reporting entities to identify the BOs of legal persons and trusts. The definition of beneficial ownership of legal persons is based on the ownership of more than 5 percent of the shares or, with reference to Arts. 26 and 27 of Law 222 of 1995, the majority of the vote, power to appoint the board of directors, or having influence over the legal person. By referring to the FATF Interpretative Notes, it is assumed, in the event that no BO is identified, that the senior manager must be identified. There is no definition of beneficial ownership of trusts,

although only the settlor and beneficiary are directly mentioned.

1. Definition of beneficial ownership

a) Legal person

External Circular 055 of 2016, Part I, Heading IV, Art. 1, establishes:

1.2. Beneficial owner: All natural persons who, without necessarily being a client, answer to any of the following characteristics:

1.2.1. Is the owner, directly or indirectly, of a share greater than 5 percent of the legal person that acts as client.

1.2.2. Is the person who, despite not being the owner of a majority share of the capital of the legal person that acts as a client, exercises control of the legal person, in accordance with that established in Arts. 26 and 27 of Law 222 of 1995.

1.2.3. Is the person on whose behalf a transaction is carried out. This person is understood to be the one to whom the economic effects of this transaction will accrue.

Unless alternative arrangements are in place, entities must take into account the Interpretative Notes for the recommendations on beneficial ownership issued by the FATF.

b) Trust

Although beneficial ownership of a trust is not defined, the Circular establishes in Art. 4.2.2.2.1.4.6: *Reporting entities that conduct trustee business should identify the beneficial owners of the resources of such business, including the settlors and beneficiaries.*

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2008):** Partially compliant
Observations: (Colombia 2008: 171–172)

- **R 11 (2008):** Largely compliant
Observations: (Colombia 2008: 172)
- **R 22 (2008):** Partially compliant
Observations: (Colombia 2008: 173)
- **R 24 (2008):** Largely compliant
Observations:
There are registries for the legal constitution of companies and partnerships that are declaratory, and it is impossible to guarantee exact and up-to-date information with respect to ultimate ownership and the control of the totality of legal persons (Colombia 2008: 175).
- **R 25 (2008):** Largely compliant
Observations:
It has not been possible to verify the effectiveness of the regulations that define the concept of BO and establish their identification, as these have only recently come into force (Colombia 2008: 175).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2015), Phase 1:** Compliant
Observations: —
- **Section A1 (2015), Phase 2:** Compliant
Observations: —

4. Recent regulatory developments

The External Circular 055 of 2016, Part I, Heading IV, requires reporting entities to identify the BOs of legal persons and trusts. There is draft legislation (the text was not found) to establish a BO registry.¹ The EITI Roadmap also mentions the possibility of a BO registry.

Sources

a) Reports

Colombia2008:ThirdRound,FATF Mutual Evaluation Report, 2008: <http://www.gafilat.org/UserFiles//>

[Biblioteca/Evaluaciones/Colombia_3era_Ronda_2008.pdf](#).

Colombia 2009: FATF Follow-Up Report, 2009: http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/1er_Informe_Avance_Colombia_2009.pdf.

GF Peer Review, 2015: <http://www.eoi-tax.org/jurisdictions/CO#latest>.

EITI Roadmap: https://eiti.org/sites/default/files/documents/hoja_de_ruta_req_2.5._colombia_aprob_ctn_0.pdf.

b) Regulatory

External Circular 055 of 2016, Part I, Heading IV: https://www.superfinanciera.gov.co/descargas?com=institucional&name=pubFile1021869&downloadname=ce055_16.docx and Annexes: https://www.superfinanciera.gov.co/descargas?com=institucional&name=pubFile1021937&downloadname=ance055_16.zip.

Law 222 of 1995: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6739>.

COSTA RICA

Summary: Law 9416 of 2016 establishes the requirement to register beneficial ownership data of legal persons and trusts with the Central Bank (including third-party fund administrators and foundations for public welfare that receive donations). BOs of legal persons or trusts are understood to be those who have control through ownership or other means, with a threshold of between 15 percent and 25 percent (according to how it is calculated). If it is impossible to identify the BO, the administrator must be identified. Special definitions for beneficial ownership of trusts are not established, although Art. 6 demands that information be reported to the Central Bank regarding the trustee, settlor, and beneficiary (although what happens if these are not natural persons is not specified).

¹ See <http://www.infolaft.com/es/art%C3%ADculo/registro-de-beneficiarios-finales-medida-para-combatir-la-corrupci%C3%B3n>.

1. Definition of beneficial ownership

a) Legal person

Law 9416 of 2016 establishes in Art. 5:

The beneficial or effective owner will be understood to be the physical person who exercises substantial influence or control, direct or indirect, over the legal person or legal arrangement in such a way that he or she has the majority of voting rights among the shareholders or partners, has the power to appoint or dismiss the majority of the administration, management, or supervision bodies, or possesses the controlling interest in the enterprise in accordance with its statutes. Indirect control is understood as control over legal persons who ultimately have a share in the local legal person or legal arrangement and direct control as the possibility of having shares or sufficient shares to control the local legal person or legal arrangement. In the case of persons or legal arrangements domiciled in Costa Rica, whose substantial share of the company's capital belongs, totally or partially, to legal entities registered overseas, when it is impossible to identify the beneficial owner, in accordance with the provisions of this chapter, after having exhausted all possible means of identification and whenever there is no motive for suspicion, the administrator will be presumed to be the beneficial owner.

Substantial participation will be understood to be holding shares and securities in a percentage equal to or greater than the limit fixed for this purpose by the Treasury (Ministerio de Hacienda) regulations, in observance of international parameters, and within a range of fifteen percent (15 percent) to twenty-five percent (25 percent) of shares with regard to the total capital of the legal person or legal arrangement.

b) Trust

See above, although Art. 6 establishes that:

Trusts, with the exception of public trusts, will be obliged to update and provide to the Central Bank of Costa Rica the information described in this chapter, including the object of the contract, the settlor, the trustee or the trustees, and the beneficiaries.

2. FATF Recommendations on beneficial ownership

- **IO 5 (2015):** Low

Observations:

It is difficult for the authorities to obtain information on beneficial ownership, given that such information is not always updated, as there is no obligation to register the transfer of shares, or due to the refusal by representatives or notaries to report such information (Costa Rica 2015: 13–14).

- **R 10 (2015):** Largely compliant (Costa Rica 2015: 17)

Observations: —

- **R 11 (2015):** Compliant (Costa Rica 2015: 17)

Observations: —

- **R 22 (2015):** Partially compliant (Costa Rica 2015: 18)

Observations: —

- **R 24 (2015):** Partially compliant

Observations:

Non-compliance with the obligation to identify BOs is not specifically established in Law 8204, and the sanctions that have yet to be applied are not effective or deterrent (Costa Rica 2015: 18–19).

- **R 25 (2015):** Partially compliant

Observations:

The Law does not include the specific obligations that the trustees must comply with respect to obtaining and preserving the identity of the settlor, trustee, protector, and beneficiaries of the trust, as well as other regulated agents of the trust service (Costa Rica 2015: 19).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2015), Phase 1:** Non-compliant

Observations:

- Unless the administrator and the owner of an individual limited liability company are one and the same person, information on ownership is not available.
 - Although a trustee of a trust under foreign law would be liable for tax on the trust's income arising from Costa Rican sources, there are no requirements to compel the trustee to keep the ownership data.
 - There are no specific sanctions for limited liability companies and associations that fail to register or update information with the registry. Furthermore, there is no penalty for a limited liability company that fails to keep a shares register.
- **Section A1 (2015), Phase 2:** Non-compliant Observations:
During the examination period, Costa Rica did not have a regular monitoring program to guarantee compliance with the obligations to record information on ownership and identity, in particular for passive entities, and sanctions for non-compliance have not been applied in practice.

4. Recent regulatory developments

Law 9416 of 2016 establishes the requirement to register beneficial ownership information about legal persons and trusts with the Central Bank, which will administer and develop the computerized system for centralized BO registration. The financial intelligence unit and the fiscal authority will have access to this information.

Sources

- a) *Reports*
Costa Rica 2015: FATF Mutual Evaluation Report, 2015: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mutual%20Evaluation%20Report%20Costa%20Rica%202015.pdf>.
- GF Peer Review, 2015: <http://www.eoi-tax.org/jurisdictions/CR#latest>.

- b) *Regulatory*
 - Law 9416 of 2016: http://www.pgrweb.go.cr/scij/Busqueda/Regulatory/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=83186&nValor3=106701&strTipM=TC.

DOMINICAN REPUBLIC

Summary: The definition of beneficial ownership of legal persons does not require any individual (not even the senior manager) to be identified in the event that no one exceeds the threshold of 20 percent or exercises control by other means. It is unclear what the definition of trusts includes. On the one hand, Art. 41 of Law 155 requires that fiduciary companies identify all the parties to the trust, although it only explicitly mentions the settlor and beneficiary. On the other hand, Art. 104, which amends Art. 50 of the Tax Code of Law 11-92 relative to Formal Duties of Taxpayers, Trustees and Third Parties (Deberes Formales de los Contribuyentes, Responsables y Terceros), refers to settlors, trustees, and beneficiaries—all those resident in Dominican Republic—to classes of beneficiaries, or to beneficiaries already designated who have ownership or right to 20 percent of the trust assets. The information need not be registered with an authority, but the information must be accessible by the authorities. The new law reduces the risk of bearer shares mentioned in the GF report.

1. Definition of beneficial ownership

- a) *Legal person*
Law 155 of 2017, Art. 2.5:
Beneficial owner: The physical person who exercises effective ultimate control over a legal person or holds at least 20 percent of the capital of the legal person, including the physical person in whose benefit the transaction is carried out.
- New clause c) of Article 50 of Law 11-92 (amended by Law 155 of 2017):
(...) *For every resident legal person, or body without legal personality, as well as non-residents*

in the cases mentioned below, there is an obligation to provide updated information about their beneficial owners (...)

Paragraph II.- Beneficial owners are understood to be the physical persons who exercise effective ultimate control or are the ultimate owners of a legal person or body without legal personality. The physical person in whose benefit the transaction is carried out will also be considered as a BO, even when the physical person does not appear as owner or as the person who formally controls that operation.

Paragraph III.- It is understood that a physical person, or if applicable, a combination of physical persons linked through marriage, kinship, or affinity to the second degree in direct or collateral line, possesses effective ultimate control:

a. In the case of legal persons:

1. When, in the final instance, through a chain of ownership or other means of control, they possess or control directly or indirectly a sufficient percentage of shares or voting rights of said legal person; to fulfill this criterion, a percentage of twenty (20) percent will be considered sufficient.

2. When they exercise by other means effective ultimate control over the legal person, whether because they benefit from its capital or its assets, or because they make the relevant or strategic decisions that affect the legal person and implement them.

b) Trust

Law 155 of 2017, Art. 41:

Due diligence on trusts. Companies permitted to create and manage trusts must perform due diligence to identify and verify all the parties to the trust, including the settlor and the beneficial owner, and apply all the preventive measures contained in this law and in its regulation. This information must be kept up-to-date, in compliance with this law.

New clause c) of Article 50 of Law 11-92 (amended by Law 155 of 2017):

Paragraph III. – It is understood that a physical person, or if applicable, a combination of

physical persons linked through marriage, kinship, or affinity to the second degree in direct or collateral line, possesses effective ultimate control:

b. In the event of any body without legal personality, such as trusts, investment funds, or similar:

1. When the future owners, the physical persons who are owners of twenty (20) percent or more of the assets or rights of the legal instrument have been designated;

2. When the beneficiaries of the body have yet to be designated, the category of person in whose benefit said body has been created or chiefly acts;

3. The physical persons who exercise by other means effective ultimate control of the entity, either because they benefit from its capital or its assets, or because they make the relevant or strategic decisions that affect the legal person and implement them. In particular, physical persons resident in the Dominican Republic who are trustees, or settlors, or beneficiaries of trusts or foreign trusts are considered to belong to this case.

2. FATF Recommendations on beneficial ownership

- **IO 5:** Unavailable
Observations: —
- **R 10 (2006):** Partially compliant
Observations:
The Dominican Republic's financial and exchange system mechanisms must be strengthened to establish accurate beneficial ownership identification (Dominican Republic 2012: 14–15).
- **R 11 (2006):** Partially compliant (Dominican Republic 2012: 21–22)
Observations: —
- **R 22 (2006):** Non-compliant
Observations: (Dominican Republic 2012: 23)
- **R 24 (2006):** Partially compliant
Observations:

There is no evidence to show that adequate measures exist to guarantee that legal persons able to issue bearer shares are not used for money laundering (Dominican Republic 2012: 43).

- **R 25 (2006):** Non-compliant
Observations:
It was impossible to determine if there is a mechanism for guaranteeing transparency in the use of trusts or additional regulation to avoid their use for money laundering or terrorist financing (Dominican Republic 2012: 44).
- ### 3. GF Peer Reviews of legal ownership and/or beneficial ownership
- **Section A1 (2016), Phase 1:** Non-compliant
Observations:
Limited companies, which represent approximately 23 percent of all companies in the Dominican Republic, can issue bearer shares. Although in some cases, in virtue of the AML Law and the Tax Code (Código Tributario), there are obligations in terms of ownership information in the event that a bearer share is transferred, these information mechanisms do not sufficiently guarantee that owners of such shares can be identified in all cases.
 - **Section A1 (2016), Phase 2:** Non-compliant
Observations:
In the cases in which companies and associations have not renewed their commercial certificate with the Registrar of Companies (Registrador Mercantil) or have yet to register with the DGII (tax authority), the Dominican Republic does not have an effective supervision program for guaranteeing compliance with ownership and identity requirements for such entities.

4. Recent regulatory developments

Law 155 of 2017 states that reporting entities must identify the BOs of legal persons and trusts, and this information must be available to the authorities (Art.

106). The law also envisages a period of one year to register bearer shares, after which time bearer shares will lose their legal validity.

In 2016, the EITI Roadmap for the extractive industry sector was published, which mentions “identifying the changes that should be introduced into the regulations analyzed, if applicable, with the aim of expanding and improving their content and scopes in relation to the concepts of BR [BO] and PEP [politically exposed person] and their inscription in the corresponding public registry.”

Sources

a) Reports

- Dominican Republic 2006: FATF Mutual Evaluation Report of the CFATF, 2006: <http://www.anti-moneylaundering.org/Document/Default.aspx?DocumentUid=1E727A96-F509-4088-9444-0ACA5A0ABE3A>.
- Dominican Republic 2012: Follow-Up Report on the Dominican Republic, 2012.
- GF Peer Review, 2016: <http://www.eoi-tax.org/jurisdictions/DO#ratings>.
- EITI Roadmap, 2016: https://eiti.org/sites/default/files/documents/dominican_republic_bo_roadmap_2016_0.pdf.

b) Regulatory

- Law 155 of 2017: <http://www.listindiario.com/la-republica/2017/06/02/468452/medina-pro-mulga-ley-de-lavado-de-activos>.

ECUADOR

Summary: The CDD regulations for financial institutions incorporate a definition of beneficial ownership that includes control through ownership or effective control, without defining these concepts, although the regulations mention that anyone who possesses 25 percent or more of the company’s capital must be identified. No regulations on beneficial ownership of trusts were found, although the FATF had indicated in 2011 that this did not exist.

1. Definition of beneficial ownership

a) Legal person

General Rules for Financial System Institutions (Normas Generales para las Instituciones del Sistema Financiero), Book I, Heading XIII, Art. 1.5 and Art. 12:

Beneficial owner: this refers to the natural persons who are the ultimate owners of the product of a transaction or have ultimate control over a client and/or over the person in whose name the transaction is carried out. It includes those persons who exercise effective control over a legal person or legal arrangement;

Art. 12: *In the case of legal persons, knowledge of the client implies, furthermore, knowing the identity of the natural persons who own the shares or securities, or the identity of whosoever has ultimate control over the client legal person, especially applying to enhanced due diligence for those that directly or indirectly possess 25 percent or more of the subscribed and paid capital of the institution or enterprise.*

b) Trust

No regulations were found in this respect. In 2011, the FATF had indicated “There are no specific regulations for determining all of the parties to the contract, or even the beneficial owner” (Ecuador 2011: 251).

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2011):** Partially compliant
Observations: (Ecuador 2011: 319–320)
- **R 11 (2011):** Partially compliant
Observations: (Ecuador 2011: 321)
- **R 22 (2011):** Non-compliant
Observations: (Ecuador 2011: 322)

- **R 24 (2011):** Partially compliant
Observations:
There is no mechanism for verifying the real owner or the BO of companies (Ecuador 2011: 330).

- **R 25 (2011):** Partially compliant
Observations:
There are no specific regulations for determining all the parties to the contract, or even the BO (Ecuador 2011: 330–331).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1, Phase 1:** —
Observations: —
- **Section A1, Phase 2:** —
Observations: —

4. Recent regulatory developments: —

Sources

a) Reports

Ecuador 2011: FATF Mutual Evaluation Report, 2011: http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Ecuador_3era_Ronda_2011.pdf.

- GF Peer Review: —

b) Regulatory

- General Rules for Financial System Institutions, Book I, Heading XIII: http://www.sbs.gob.ec/medios/PORTALDOCS/downloads/regulatory/nueva_codificacion/todos/L1_XIII_cap_IV.pdf.

EL SALVADOR

Summary: The definition of beneficial ownership that the financial entities must apply draws no distinction between legal persons and trusts (it is not clear whether trusts are to be included under the heading of “clients,” given that they are defined as natural and

legal persons). The definition refers to those who possess or control a client or to effective control, although none of these terms is defined and no percentage of ownership is given. The regulations fail to mention BOs beyond defining them at the beginning. Art. 18 mentions, within the framework of customer due diligence, identification of the shareholders or partners that hold 10 percent of the capital of a client, but it is not specified that this signifies the BO, but rather that this could be interpreted to be any direct holder of 10 percent of the shares.

The GF makes reference in terms of beneficial ownership to the Anti-Money Laundering Act (Ley Anti Lavado de Dinero) of 2014, in its Art. 13. However, this law does not define the concept of beneficial ownership (neither does the regulation). Art. 13 requires “identification of the beneficiary person or receiver of the transaction, if there is one,” without defining the concept of beneficiary person.

1. Definition of beneficial ownership

a) Legal person

The Technical Rules for Managing the Risks of Money and Asset Laundering and Terrorist Financing (Normas Técnicas para la Gestión de los Riesgos de Lavado de Dinero y de Activos, y de Financiamiento al Terrorismo) (NRP-08) of 2013, in Art. 3.c, establish that:

Beneficial owner: refers to the natural person or persons who ultimately possess or control a client and/or the natural person in whose name a transaction is made. Also includes the persons who exercise effective ultimate control over a legal person or other legal arrangement.

b) Trust

No specific regulations on trusts were found.

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —

- **R 10 (2014):** Largely compliant
Observations: (El Salvador 2014b: 4)
- **R 11 (2010):** Largely compliant
Observations: (El Salvador 2010: 135)
- **R 22 (2014):** Non-compliant
Observations:
Furthermore, Recommendation 12 (...) presents significant progress, but rules regarding approval of DNFBPs are still needed in order to achieve full compliance (El Salvador 2014a: 12).
- **R 24 (2013):** Compliant
Observations:
With regard to Recommendation 33 [now R 24], the country achieved a level of compliance equivalent to a C (El Salvador 2013: 12).
- **R 25 (2010):** Largely compliant
Observations:
Practical problems in identifying the BO when proceeding from third countries (El Salvador 2010: 138).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2016), Phase 1:** Non-compliant
Observations:
Bearer shares can be issued by joint-stock companies and limited liability companies in El Salvador and there are no mechanisms to ensure that the owners of such shares can be identified.
- **Section A1 (2016), Phase 2:** —
Observations: —

4. Recent regulatory developments

The Technical Rules for Managing the Risks of Money and Asset Laundering and Terrorist Financing (NRP-08) of 2013, in Art. 3.c, establish the definition of beneficial ownership for clients of a financial entity.

Sources

a) Reports

- El Salvador 2010: CFATF Mutual Evaluation Report, 2010: https://www.cfatf-gafic.org/index.php?option=com_docman&Itemid=414&task=doc_download&gid=71&lang=en.
- El Salvador 2013: Seventh Follow-Up Report of the CFATF, 2013: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/el-salvador/2889-el-salvador-7th-follow-up-report-1/file>.
- El Salvador 2014a: Eighth Follow-Up Report of the CFATF, 2014: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/el-salvador/3580-el-salvador-8th-follow-up-report-1/file>.
- El Salvador 2014b: Ninth Follow-Up Report of the CFATF, 2014: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/el-salvador/4424-el-salvador-9th-follow-up-report-1/file>.
- GF Peer Review, 2016: <http://www.eoi-tax.org/jurisdictions/SV#latest>.

b) Regulatory

The Technical Rules for Managing the Risks of Money and Asset Laundering and Terrorist Financing (NRP-08) of 2013: <http://www.bcr.gob.sv/bcrsite/uploaded/content/category/1326495246.pdf>.

Anti-Money Laundering Act (Decree 498) (mentioned by the GF): <http://www.uif.gob.sv/wp-content/uploads/leyes/leyclda.pdf>.

GUATEMALA

Summary: According to the Mutual Evaluation Report of 2016, the definition of beneficial ownership for reporting entities includes effective control over legal persons and legal arrangements, although it is not clear whether there is a definition of effective control and a percentage of share ownership. In the same way, apparently all the parties to the trust should be identified, but it is unclear whether any are specifically mentioned.

1. Definition of beneficial ownership

a) Legal person

The IVE Oficio No. 4471-2014, issued for reporting entities, establishes:

Procedure to adopt for the identification of the beneficial owner(s) of clients that are legal persons: 1. To determine the identity of the individual person(s), who exercise control over the legal person, through ownership of shares or a stake equal to or greater than 10 percent, paying special attention to the identity of the individual persons who are ultimately the ones that have the majority share that enables them to exercise control over the legal person; 2. in the event that the individual person(s) cannot be identified in accordance with the previous clause (with the majority share in the ownership of the legal person), the obliged person must adopt and execute the reasonable procedures deemed necessary that would enable him to identify the individual person(s) who exercise control of the legal person or, failing that, identify the directors or senior management official at the highest level of the legal person or arrangement.

b) Trust

IVE Oficios No. 624-2010 and No. 4471-2014 oblige financial companies (including those that provide trust services) that apply due diligence measures to identify the parties to the trust, as well as its beneficial ownership.

IVE Oficio No. 4471-2014 establishes:

Reporting persons should adopt controls and/or procedures to determine the identity of the settlor, the trustee, the beneficiaries, and any other individual person who exercises ultimate control over the trust. In the case of trustees, in their position as beneficiaries, this should be before profit-sharing.

2. FATF Recommendations on beneficial ownership

• IO 5: Moderate

Observations: (Guatemala 2016: 95)

- **R 10 (2016):** Largely compliant
Observations: (Guatemala 2016: 122–123)
- **R 11 (2016):** Compliant
Observations: (Guatemala 2016: 124)
- **R 22 (2016):** Partially compliant
Observations: (Guatemala 2016: 134)
- **R 24 (2016):** Largely compliant
Observations:
There is no obligation for companies to have available information on beneficial ownership when a legal person is shareholder (Guatemala 2016: 135, 138).
- **R 25 (2016):** Largely compliant
Observations: (Guatemala 2016: 139)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2015), Phase 1:** Partially compliant
Observations:
Although the issue of bearer shares has been curbed in Guatemala and the conversion process ended in June 2013, due to the reintroduction of bearer shares in the future, there is a slight risk that the information on the ownership of all holders of bearer shares is unavailable.
There is no arrangement that demands that foreign companies with a sufficient nexus with Guatemala provide information about their ownership.
The information on the ownership and identity of foreign companies might not be available in Guatemala, even when the foreign company operates in Guatemala or has income or tax exemptions or credits in Guatemala.
Information regarding ownership and identity of the settlor and beneficiaries of a foreign trust might not be available in Guatemala.
- **Section A1, Phase 2:** —
Observations: —

4. Recent regulatory developments: —

Sources

- Reports*
Guatemala 2016: FATF Mutual Evaluation Report, 2016: <https://www.cfatf-gafic.org/index.php/documents/mutual-evaluation-reports/guatemala-1/7463-cfatf-4mer-guatemala/file>.
 - GF Peer Review, 2015: <http://www.eoi-tax.org/jurisdictions/GT#latest>.
- Regulatory*
 - IVE Oficios No. 624-2010 and No. 4471-2014: text received by email, but not available online.

GUYANA

Summary: The definition of beneficial ownership refers to those who have 25 percent of the votes of an entity, rights of ownership, or effective control, without these terms being defined. No definition of beneficial ownership of trusts was found. The 10th Follow-Up Report explains that, although there was a legal reform (Act 15 of 2016) that added Articles 470A and 1A to the Companies Act, establishing that the registry must contain information on BOs of companies and trusts, the Follow-Up Report found that the regulation failed to enforce this requirement in reality (Guyana 2016: 24), although the criterion of the Follow-Up Report cannot be understood to mean that the amendment itself is insufficient.

1. Definition of beneficial ownership

- Legal person*
Art. 2 of Act 10 of 2015 (that amends the AML Law) establishes that:
Beneficial owner means the ownership by a physical person or persons who exercise, in the final instance, individual or joint voting rights that represent at least twenty-five percent of the total shares, or who possess the rights of ownership of a legal person; or ownership by a physical person or

persons who in the final instance possess or control a client, or the person in whose name a transaction is performed, and includes those persons who exercise effective ultimate control over a legal person or arrangement.

b) *Trust*

No definition of the beneficial ownership of trusts was found.

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2016):** Compliant
Observations:
“Taking into account the above, all the recommendations have been complied with” (Guyana 2016: 8).
- **R 11 (2016):** Compliant
Observations:
This recommendation was complied with—see Paragraph 21 of the First Follow-Up Report on Guyana (Guyana 2016: 45).
- **R 22 (2016):** Compliant
Observations:
The general level of compliance has improved with Rs 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 19, 21, 23, 25, 26, 27, 28, 29, 31, 33, 35, 37, 40, SR. I, SR. II, SR. III, SR. IV, SR. VII, and SR. IX, having complied with all the recommended actions (Guyana 2016: 15, 27).
- **R 24 (2016):** Compliant
Observations: See previous point (Guyana 2016: 27, 24).
- **R 25 (2016):** Partially compliant
Observations:
The authorities have not provided a single reference in the Companies Act demanding that such information [beneficial ownership] be provided or

maintained in the registry. The previous measure is not viable without said arrangement. In the absence of information about this arrangement, the recommendation is still pending (Guyana 2016: 27, 24).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1, Phase 1:** —
Observations: —
- **Section A1, Phase 2:** —
Observations: —

4. Recent regulatory developments: —

Sources

a) Reports

- Guyana 2016: 10th Follow-Up Report of the CFATF, 2016: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/guyana-1/6799-guyana-10th-follow-up-report/file>.
- GF Peer Review: —

b) Regulatory

- Act 10 of 2015 (which amends the AML Law): [http://parliament.gov.gy/documents/acts/5623-anti-money_laundering_and_cointering_the_financing_of_terrorism_\(amendment\)_no.2_act_2015.pdf](http://parliament.gov.gy/documents/acts/5623-anti-money_laundering_and_cointering_the_financing_of_terrorism_(amendment)_no.2_act_2015.pdf).
- Act 15 of 2016 (which amends the Companies Act): <http://parliament.gov.gy/publications/acts-of-parliament/anti-money-laundering-and-counter-acting-the-finance-of-terrorism-amendment-act/>.

HAITI

Summary: The definition of beneficial ownership, established by a Central Bank Circular, only makes reference to 25 percent of share ownership. There are no other criteria. There seems to be no definition of beneficial ownership of trusts.

1. Definition of beneficial ownership

a) *Legal person*

Central Bank of Haiti Circular 99-1, Art. 2:
Beneficial owner: (...) In the case of legal persons, identification refers to the identity of the physical persons who, in the final instance, are owners of a controlling interest in the enterprise (at least 25 percent).

b) *Trust*: —

2. FATF Recommendations on beneficial ownership

- **IO 5**: —
Observations: —
- **R 10 (2017)**: Compliant
Observations:
Haiti has addressed all nine (9) deficiencies observed via promulgation of the LSMLTF, alongside Part 4 of Circulars 99 and 99-1. Recommendation 5 is closed (Haiti 2017: 5–6).
- **R 11 (2008)**: Largely compliant
Observations: (Haiti 2008: 109)
- **R 22 (2017)**: Non-compliant
Observations:
The problems identified in relation to R 22 are yet to be resolved (Haiti 2017: 11–12).
- **R 24 (2017)**: Non-compliant
Observations:
The system of transparency for legal persons does not allow rapid access to reliable and updated information on beneficial ownership and control. The recommended action to address this deficiency was that authorities should supervise effectively and register any change in the holders of company bearer shares. This action has still not been taken into account by Haiti (Haiti 2017: 13).
- **R 25 (2008)**: Unavailable
Observations: (Haiti 2008: 113)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1, Phase 1**: —
Observations: —
- **Section A1, Phase 2**: —
Observations: —

4. Recent regulatory developments: —

Sources

a) *Reports*

- Haiti 2017: Eleventh Follow-Up Report of the CFATF, 2017: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/haiti-1/8322-haiti-s-11th-follow-up-report-1/file>.
- GF Peer Review: —

b) *Regulatory*

- Central Bank of Haiti Circular 99-1: http://www.brh.net/circulaires/circulaire_99.pdf.

HONDURAS

Summary: The most exhaustive definition of beneficial ownership of legal persons is contained in the Circular CNBS 19/2016, which includes those who exercise effective control, understood as someone who holds 25 percent of the entity's capital or a significant responsibility in control, management, or direction. In the case of trusts, only the settlor and trustee are expressly mentioned, although the AML Law does make a generic reference to identifying the BOs of a trust.

1. Definition of beneficial ownership

a) *Legal person*

Although the AML Law (Decree 144-2014, Art. 2.5) contains a definition of beneficial ownership, an even more complete definition features in the National Banking and Insurance Commission

(Comisión Nacional de Bancos y Seguros) Circular 19/2016, Art. 38:

The reporting entity must establish procedures to identify the natural person in whose name a transaction is carried out and/or who possesses or exercises effective ultimate control over a client in whose favor the operation is conducted; including the persons who exercise effective ultimate control over a legal person, in other words, whoever has control or influence over the decisions adopted. Furthermore, they must identify the beneficial owners, before and while a financial or commercial relationship is established, and take reasonable CDD measures to verify their identity, in such a way that the beneficial owner is known.

The beneficial owner will be the natural person who complies with at least one of the following criteria:

- a. *Possesses, directly or indirectly, 25 percent or more of the wealth of the legal arrangement of the reporting entity's client business;*
- b. *Has significant responsibility in the control, management, or direction of the legal arrangement of the reporting entity's client business.*

b) *Trust*

The AML Law (Decree 144-2014), Art. 17, mentions the obligation to identify the BOs of the trust, although it is not understood why the article makes reference to companies:

In the case of trusts, the reporting entities should demand the corresponding certificates evidencing the incorporation and validity of the companies, as well as identifying signatories, directors, attorneys, and legal representatives of such companies, in such a way that they can establish and adequately document the real owner or beneficiary of the trust, whether direct or indirect.

The National Banking and Insurance Commission Circular 19/2016, in Art. 24.f, on identification of clients, establishes that, in the case of trusts, both settlor and trustee should be identified:

f) Trusts: The settlor and, in the event that he is party to the contract, the trustee.

2. FATF Recommendations on beneficial ownership

- **IO 5:** Low
Observations:
Companies can be set up even though the shareholder data, including regarding the BO, is unavailable to the public (Honduras 2016: 14).
- **R 10 (2016):** Largely compliant
Observations: (Honduras 2016: 17)
- **R 11 (2016):** Compliant
Observations: (Honduras 2016: 17)
- **R 22 (2016):** Largely compliant
Observations: (Honduras 2016: 18)
- **R 24 (2016):** Non-compliant
Observations:
The country does not have mechanisms that enable basic information and beneficial ownership of legal persons to be identified; such information is neither accurate nor updated periodically.
There are no limits on the issue of bearer shares in such a way as to comply with the mechanisms established in the standard (Honduras 2016: 18).
- **R 25 (2016):** Largely compliant
Observations: (Honduras 2016: 18)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1, Phase 1:** —
Observations: —
- **Section A1, Phase 2:** —
Observations: —

4. Recent regulatory developments: —

Sources

a) *Reports*

- Honduras 2016: FATF Mutual Evaluation Report, 2016: <http://www.fatf-gafi.org/media/>

fatf/documents/reports/mer-fsrb/GAFILAT-MER-Honduras-2016-Spanish.pdf.

- GF Peer Review: —

b) *Regulatory*

- AML Law (Decree 144-2014): <http://pplaft.cnbs.gob.hn/wp-content/uploads/2015/05/LEY-ESPECIAL-CONTRA-EL-LAVADO-DE-ACTIVOS-Decreto-No.-144-2014.pdf>.
- Circular CNBS 19/2016: <http://www.cnbs.gob.hn/files/GE/Compendio/2016/019-2016%20f.pdf>.

JAMAICA

Summary: The Law of 2017, which amends the Companies Act, establishes in Art. 8 (amending Art. 109 of the Companies Act) the requirement to register BOs, defined as whoever has effective control over the entity's decisions, through holding 51 percent of the votes or shares in the entity.

Art. 10 of the Law of 2017, which amends Art. 116 of the Companies Act, seems to require that the BO must be reported whenever shares are owned through a trust. Likewise, the Regulations of the Proceeds of Crime Act (2007) establish the obligation to identify the settlor, or whoever has effective control, and the BO of a trust, although the latter term is not defined.

1. Definition of beneficial ownership

a) *Legal person*

The Law of 2017, which amends the Companies Act, establishes in Art. 3 (amending Art. 2 of the Companies Act) that:

The BO is defined as an individual in whose name the shares are held or in whose name share transactions are made. The term also includes any individual who exercises ultimate ownership or effective control over company policy or decision making or who controls more than 51 percent of voting rights, or holds more than 51 percent of the shares issued by the company.

b) *Trust*

Art. 13.1c of the Regulations of the Proceeds of Crime Act (2007) establishes the obligation to identify the settlor, or whoever has effective control, and the BO, although the definition of the BO of a trust remains unclear.

2. FATF Recommendations on beneficial ownership

- **IO 5:** Low

Observations:

Jamaica has yet to perform an exhaustive evaluation of the risks of ML/TF associated with legal persons and legal arrangements. Consequently, there is no information on the degree to which companies and trusts are being used unsuitably. While the Companies Office does provide an online search mechanism for the general public to access information on companies, there is no precise and updated data regarding the real beneficiaries. Furthermore, trustees are not efficiently supervised to verify the accuracy of the information they hold regarding settlors, depositaries, beneficiaries, and protectors (if any). Therefore, the competent authorities cannot guarantee that accurate and up-to-date information about legal arrangements is being kept (Jamaica 2017: 94).

- **R 10 (2017):** Partially compliant

Observations:

Provisions do not require verification of the identity of the BO (10.5). The laws do not reflect the requirement to identify and verify the identity of the BO in the event of doubt, or where no person exercises control through ownership (10.10 (b)) (Jamaica 2017: 170).

- **R 11 (2017):** Partially compliant

Observations: (Jamaica 2017: 170)

- **R 22 (2017):** Partially compliant

Observations:

Identification and verification measures do not require verification of the identity of the BO (Jamaica 2017: 172).

- **R 24 (2017):** Partially compliant
Observations:
 - *The Companies Act does not oblige companies to obtain and keep accurate information on BOs.*
 - *There is no obligation for a person resident in Jamaica to help the competent authorities by providing information on BOs with regard to companies set up outside of Jamaica and that have requested permission for a place of business in Jamaica. There is no international cooperation with regard to the BOs of legal persons (Jamaica 2017: 172).*
- **R 25 (2017):** Partially compliant
Observations:
 - *The Law on Trustees does not require that trustees obtain and keep information on the identity of the settlor, the trustee, the beneficiaries, or the protector (if one exists).*
 - *There are no legal obligations to ensure that information on the settlor, the trustee, the beneficiaries, and the protector is kept accurately and updated whenever possible (Jamaica 2017: 173).*

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2017), Phase 1:** Non-compliant
Observations:

There is no requirement that information identifying the persons in a chain of property wherein a legal owner of a public company acts in name of another person as a candidate, or under a similar arrangement, is kept by a company or made available to the competent authority.

There are insufficient mechanisms for guaranteeing the availability of information that identifies the holders of bearer shares that may have been issued by a public enterprise.

Companies incorporated outside of Jamaica, but with their head office and management in Jamaica, are not obliged to provide information

that identifies the bearers as one of the registration requirements. Therefore, information identifying the owners of foreign companies is unavailable.

The beneficial ownership information is available to a certain extent in Jamaica through the concepts of “identification of the client” and “proof of identity” in the AML Regulation. However, in the case of companies and associations, these concepts fail to ensure that the bank must identify the effective beneficiary in line with international regulation. Furthermore, information on beneficial ownership of companies, partnerships, and trusts is only available for those entities or arrangements that have a bank account, or participate in a business with a regulated entity.

During the review period of 2009–12, the sanctions foreseen in the relevant tax laws and commercial laws seem to have been insufficient to effectively deter non-compliance. The application measures adopted by the Jamaican authorities also seem inadequate or ineffective for guaranteeing compliance with the obligations to present reports, in accordance with the pertinent laws. The situation continues to be very similar, despite the fact that the ITA (tax authority) sanctions have been updated.

The information that identifies the partners of a limited company that does not trade in Jamaica nor is liable for taxes in Jamaica is not, in practice, permanently available in the Public Registry Office.

It is unclear whether the existing mechanisms to ensure that information identifying settlors and beneficiaries of a trust is available with the pertinent authorities are effective in practice.

4. Recent regulatory developments

The Companies Act was amended in 2017, and BOs must now be reported.

Sources

- a) *Reports*
 - Jamaica 2017: CFATF Mutual Evaluation Report, 2017: <http://www.fatf-gafi.org/media/>

[fatf/documents/CFATF-Mutual-Evaluation-Jamaica-2017.pdf](#).

- GF Peer Review, 2017: http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-jamaica-2017-second-round_9789264280281-en#WbAS71GGM2w#page13.

b) *Regulatory*

- Law of 2017, which amends the Companies Act: [http://www.japarliament.gov.jm/attachments/article/339/The%20Companies%20\(Amendment\)%20Act,%202017.pdf](http://www.japarliament.gov.jm/attachments/article/339/The%20Companies%20(Amendment)%20Act,%202017.pdf).
- Regulations of the Proceeds of Crime Act of 2007: http://www.bgic.gov.jm/sites/default/files/Proceeds%20of%20Crime%20Act_Sub.pdf.

MEXICO

Summary: The definition of BO (in Mexico referred to as the “real owner”) refers to the physical person who exercises control, understood to be the capacity to impose decisions, appoint or dismiss the majority of board members or administrators, holding more than 50 percent of the votes, strategic management, or whoever holds 25 percent of the shares. In the case of trusts, the settlors, trustees, or administrative body and beneficiaries must be identified.

1. Definition of beneficial ownership

a) *Legal person*

The consolidated text of the Resolution that issues the DCG—Disposiciones de Carácter General—referred to by Arts. 115 of the Credit Institutions Act (Ley de Instituciones de Crédito), establishes in Art. 2:

XVI. The real owner is the physical person who, through another person or through any other act or mechanism, obtains the profits derived from a contract or operation signed with the entity and is, in the final instance, the real owner of the resources, by having the rights of use, enjoyment, benefit,

dispersion, or disposal of such resources (amended Paragraph D.O.F., March 9, 2017). The term “real owner” also includes any person or group of physical persons who exercise control over a moral person, as well as, when applicable, the persons able to instruct or determine, for their own economic benefit, the acts that can be carried out via trusts, mandates, or commissions (amended Paragraph D.O.F., March 9, 2017).

V. Control is the capacity of a person or group of persons, through ownership of shares, by signing a contract, or through any other legal act, to i) impose, directly or indirectly, decisions on the general meeting of shareholders or partners, or in the governing body equivalent to a moral person; ii) appoint or dismiss the majority of board members, administrators, or equivalents to a moral person; iii) maintain the ownership of rights that enable, directly or indirectly, to exercise the vote with respect to more than 50 percent of the social capital of a moral person; or iv) directs, directly or indirectly, the management, the strategy, or the main policies of a moral person (amended Paragraph D.O.F., December 31, 2014).

Furthermore, any physical person who, directly or indirectly, acquires 25 percent or more of the shareholding or of the social capital of a moral person will be understood to exercise control (amended Paragraph D.O.F., March 9, 2017).

b) *Trust*

The same consolidated text establishes, in Art. 4 on the identification of clients, that:

IX. With regard to trusts, the corresponding identification file should comply with the following requirements: (Additional clause, D.O.F., December 31, 2014):

a) It must contain the following data:

(...) With respect to settlors, trustees, delegates, and, when applicable, the members of the technical committee or the equivalent governing body, legal representative(s), and legal attorney(s), identification data must be collected in accordance with the terms referred to in the current arrangement, as appropriate.

2. FATF Recommendations on beneficial ownership

- **IO 5:**
Observations: —
- **R 10 (2014):** Largely compliant
Observations: (Mexico 2014: 5)
- **R 11 (2008):** Compliant
Observations: (Mexico 2008: 327)
- **R 22 (2008):** Non-compliant
Observations: (Mexico 2008: 328; Mexico 2014: 6)
- **R 24 (2008):** Non-compliant
Observations: (Mexico 2008: 332; Mexico 2014: 6)
- **R 25 (2008):** Largely compliant
Observations: (Mexico 2008: 332)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2014), Phase 1:** Compliant
Observations: —
- **Section A1 (2014), Phase 2:** Compliant
Observations: —

4. Recent regulatory developments

The consolidated text of the Resolution that issues the DCG—Disposiciones de Carácter General—referred to by Arts. 115 of the Credit Institutions Act (Ley de Instituciones de Crédito) updates the definition of beneficial ownership of legal persons and trusts.

In 2016, at the Anti-Corruption Summit in London, Mexico committed to establishing a public BO registry.²

Sources

a) Reports

- Mexico 2008: FATF Mutual Evaluation Report, 2008: <http://www.gafilat.org/UserFiles//Bibliote>

[ca/Evaluaciones/Mexico_3era_Ronda_2008.pdf](http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Mexico_3era_Ronda_2008.pdf).

- Mexico 2014: FATF Seventh Follow-Up Report, Mutual Evaluation of Mexico, 2014: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/Follow-up-report-Mexico-2014.pdf>.
- GF Peer Review, 2014: <http://www.eoi-tax.org/jurisdictions/MX#latest>.

a) Regulatory

The consolidated text of the Resolution that issues the DCG—Disposiciones de Carácter General—referred to by Arts. 115 of the Credit Institutions Act (Ley de Instituciones de Crédito): https://www.gob.mx/cms/uploads/attachment/file/207873/DCG_Compiladas_SOFOM.pdf.

NICARAGUA

Summary: The definition of beneficial ownership of legal persons seems to refer only to the highest authority over the administrative management of the entity. In the case of trusts, the BO seems to only be the beneficiary. Furthermore, the final sentence of Art. 16 would appear to indicate that legal persons or trusts (instead of only natural persons) can be BOs. Art. 20.3 of the Resolution refers to the profile of the settlor (settlor) and the beneficiary, but only requires that the “fideicomisario” (beneficiary who receives the remaining balance) and the beneficiary are identified.

1. Definition of beneficial ownership

a) Legal person

Resolution UAF 9/2016 establishes, in Art. 16, that:

For the effects of the present regulation, the “beneficial owner” will be understood to be the natural person:
1. Who controls the natural or legal person that requests services/operations from the reporting entity;

² See <http://www.eluniversal.com.mx/articulo/nacion/politica/2016/05/14/crearan-registro-de-beneficiarios-de-empresas>.

2. *Who is the owner of a legal person that requests services/operations from the reporting entity; or*

3. *In whose name the services/operations are requested from the reporting entity.*

The identity of the beneficial owners will be determined in the following way: (...)

2. *In the event that legal persons request services/operations, the natural person(s) or whoever has the highest authority over the administrative management of the legal person will be treated as beneficial owners;*

3. *In the case of trustee service providers, the beneficiary is the person or persons who have the right to the profits from a trustee arrangement, such as trustees, share certificate holders, and members of trust technical committees. In this case, beneficial owners could be one or various natural or legal persons or other trusts.*

b) *Trust*

See the previous point, final paragraph of Art. 16. However, Resolution UAF 9/2016 establishes, in Art. 20.3, that:

The trustee service providers should identify the trustees and beneficiaries of every trust and keep this information in documents, physical and/or digital, denominated “Profile of the Settlor” and “Profile of the Beneficiary” respectively.

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2013):** Compliant
Observations: (Nicaragua 2013: 21)
- **R 11 (2013):** Compliant
Observations: (Nicaragua 2013: 21)
- **R 22 (2013):** Non-compliant
Observations: (Nicaragua 2013: 59–62)

- **R 24 (2013):** Non-compliant
Observations: (Nicaragua 2013: 17, 120–122)

- **R 25 (2013):** Unavailable
Observations: (Nicaragua 2013: 123)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1, Phase 1:** —
Observations: —

- **Section A1, Phase 2:** —
Observations: —

4. Recent regulatory developments

Resolution UAF 9/2016 defines beneficial ownership of legal persons and trusts, although in the of case trusts it remains unclear who should be considered as a BO, and whether a legal person or trust can be considered a BO.

Sources

a) *Reports*

- Nicaragua 2013: Seventh Follow-Up Report of the CFATF, 2013: <http://www.uaf.gob.ni/index.php/difusion/evaluaciones-a-nicaragua?download=24:7mo-informe-de-seguimiento-a-nicaragua-noviembre-2013>.
- GF Peer Review: —

b) *Regulatory*

- Resolution UAF 9/2016: <http://www.uaf.gob.ni/index.php/marco-juridico/normativas-uaf?download=411:resolucion-n-uaf-n-009-2016-normativa-de-prevencion-deteccion-y-reporte-de-actividades-relacionadas-con-el-la-ft-a-traves-de-actividades-y-profesiones-no-financieras>.

PANAMA

Summary: The definition for both legal persons and for trusts is based on ownership, and apparently the

threshold of 10 percent or 25 percent depends on who carries out the due diligence measures. When the BO cannot be determined through share ownership, the representative of the entity must make a sworn declaration identifying the BO. This does not comply either with the criteria of control through ownership or other means, or with the explicit requirement to identify all parties to the trust.

1. Definition of beneficial ownership

a) Legal person

Art. 8 of Executive Decree 363/2015, establishes that:

Identification and verification of the beneficial owner. In the process of identification and verification of the beneficial owner's identity, in the case of legal persons and other legal structures, reasonable measures will be taken by the monitoring agencies established to carry out these duties, within their sphere of competence, which will be ten percent (10 percent) or more of the share of ownership for reporting entities and twenty-five percent (25 percent) or more of the share of ownership for non-financial reporting entities and those professionals that perform activities subject to supervision.

In the case of national or foreign legal persons, trusts, private interest foundations, non-governmental organizations, charitable or non-profit institutions, whose beneficial owners cannot be identified through share ownership, an act, certificate, or sworn declaration duly signed by the representatives or authorized persons must be obtained, in which details of the beneficial owner(s) are provided.

b) Trust

See above.

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —

- **R 10 (2014):** Partially compliant
Observations:
The identification requirements for BOs are insufficient for legal persons and arrangements. The requirements for identifying the effective beneficiary of an account are only for legal persons (companies) and not for clients who are physical persons. There are no measures to prevent the abuse of bearer shares by companies (Panama 2014: 302).
- **R 11 (2014):** Partially compliant
Observations:
The law fails to specify the point at which the five years of client and transactions record-keeping is to begin (Panama 2014: 305).
- **R 22 (2014):** Non-compliant
Observations:
CDD does not include identification of the BOs when the trust beneficiaries are legal persons (Panama 2014: 305–306).
- **R 24 (2014):** Non-compliant
Observations:
There are no mechanisms whereby the competent authorities have timely access to beneficial ownership information of legal persons, including companies and private foundations (Panama 2014: 315–316).
- **R 25 (2014):** Non-compliant
Observations:
No obligation to identify trust beneficiaries (Panama 2014: 316).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2016), Phase 1:** Partially compliant
Observations:
The Foundations Act and the rules governing “know your client” established by Law No. 23/2015 are not sufficiently clear to guarantee the availability of updated information on the identity of all beneficiaries of private foundations established in Panama.

Section A1 (2016), Phase 2: Non-compliant

Observations:

There are approximately 486,000 limited companies registered in Panama that are considered to be inactive, as well as 17,000 foundations. In these cases, the resident agent may have lost contact with the company or the foundation and its owners. For this reason, the availability of updated information on ownership in Panama, including information about the holders of bearer shares in these limited companies and foundations, cannot be sufficiently guaranteed.

There is some uncertainty as to whether all the bearer shares have been immobilized with custodians or definitively suspended before December 31, 2015, as required by the law. In practice, Panama has been unable to provide information on ownership in various cases since the share custody regime was introduced. The new legislation regarding bearer shares, including their transitional arrangements, might, therefore, not guarantee that in all cases information on all holders of bearer shares is available.

4. Recent regulatory developments

Law 23 of 2015, regulated by Executive Decree 363/2015, establishes identification requirements for BOs and clarifies questions related to the cancellation of bearer shares that were not registered with a custodian.

Sources

a) Reports

- Panama 2014: IMF Mutual Evaluation of Panama, 2014: <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Panama-Detailed-Assessment-Report-FATF-Recommendations-for-Anti-Money-Laundering-and-41348>.
- Panama 2015: FATF Follow-Up Report, 2015 (does not update any ratings): [http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/Informe%20de%20Seguimiento%20de%20Panama%20\(julio%20de%202015\).pdf](http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/Informe%20de%20Seguimiento%20de%20Panama%20(julio%20de%202015).pdf).
- GF Peer Review, 2016: <http://www.eoi-tax.org/jurisdictions/PA#latest>.

b) Regulatory

- Executive Decree 363/2015: <http://www.uaf.gob.pa/tmp/file/85/DECRETO%20EJECUTIVO%20363%20DE%2013%20DE%20AGOSTO%20DE%202015.pdf>.

PARAGUAY

Summary: The definition of beneficial ownership refers to the individual that has effective control, although this concept is not defined. However, the new Resolution SEPRELAD 345/2015 seems to establish an exception for certain foreign legal persons, whereby anyone having less than 10 percent of voting rights need not be identified (although it remains unclear whether this limitation applies to beneficial ownership or to bearer shares). In the case of trusts, no regulations were found regarding either beneficial ownership or the need to identify all the parties to the trust.

1. Definition of beneficial ownership

a) Legal person

Resolution SEPRELAD 436/2011 establishes, in Art. 1:

The beneficial owner is: every physical person who, without necessarily being a client, is the ultimate owner or has ultimate control over the activities of the client or of the person in whose name the operation is carried out. It also includes those physical persons who exercise effective ultimate control over a legal person or legal arrangement.

However, Resolution SEPRELAD 345/2015, in Art. 1.4, establishes that:

In the cases justified by their clients, there can be an exemption from applying the previously described procedure, up to a maximum percentage of ten percent (10 percent) of the client's voting shares. [It is unclear of what the exemption consists (e.g., it is unnecessary to identify those who have less than 10 percent of the voting rights), nor whether the exemption is applied only to foreign

companies that hold bearer shares, or whether the purpose is to determine the beneficial owners of foreign companies.]

b) *Trust*

No regulations were found on beneficial ownership of trusts.

2. FATF Recommendations on beneficial ownership

The monitoring reports of 2009 do not update the ratings for any of the following recommendations:

- **IO 5:** —
Observations: —
- **R 10 (2008):** Non-compliant
Observations:
Lack of express obligations imposed in the primary or secondary rules of (...). To determine who the physical persons are that, beyond doubt, own or control the client. This includes those persons who, in the final instance, exercise effective control of a legal person or a legal instrument (Paraguay 2008: 206).
- **R 11 (2008):** Partially compliant
Observations: (Paraguay 2008: 208)
- **R 22 (2008):** Non-compliant
Observations: (Paraguay 2008: 208)
- **R 24 (2008):** Non-compliant
Observations:
The competent authorities do not have timely access to sufficient accurate and up-to-date information about ownership and effective control of legal persons (Paraguay 2008: 217).
- **R 25 (2008):** Non-compliant
Observations:
The laws fail to demand the necessary transparency with respect to ownership and control of trusts (Paraguay 2008: 217).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1, Phase 1:** —
Observations: —
- **Section A1, Phase 2:** —
Observations: —

4. Recent regulatory developments

Resolution SEPRELAD 436/2011 establishes the concept of beneficial ownership, and Resolution SEPRELAD 345/2015 establishes the obligation to register bearer shares.

Sources

a) *Reports*

Paraguay 2008: FATF Mutual Evaluation Report, 2008: http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Paraguay_3era_Ronda_2008.pdf.

Paraguay 2009: Second Follow-Up Report, 2009: http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/2ndo_Informe_Avance_Paraguay_2009.pdf.

- GF Peer Review: —

b) *Regulatory*

Resolution SEPRELAD 436/2011: <http://www.seprelad.gov.py/biblioteca/4-resoluciones/106-4362011-determina-obligatoriedad-de-implementar-procedimientos-de-identificacion>.

Resolution SEPRELAD 345/2015: <http://www.seprelad.gov.py/biblioteca/4-resoluciones/344-34515-determina-politicas-preventivas-para-los-supervisados-por-el-bcp>.

PERU

Summary: the definition of beneficial ownership, although it includes effective control, control by other means, and identification of the senior manager when

the person with effective control cannot be identified, does not establish any threshold for determining control through ownership. The definition mentions “effective control through majority shareholding” but it remains unclear whether this refers to 51 percent or is according to each case. In the case of trusts, although all the parties to the trust that are specific to the regime in Peru (the board and procurators must be identified, for trusts with more than five beneficiaries, denominated “fideicomisarios”) must be identified, the settlor, the trustee, the protector, or any other person with effective control need not be. Although Art. 27.e establishes that the settlor and, in the event of participating in the contract, the trustee, must be identified as clients, the clients can be legal persons (not necessarily physical persons).

1. Definition of beneficial ownership

a) Legal person

Resolution S.B.S. No. 2660-2015 establishes, in Art. 28, that:

The beneficial owner is the natural person in whose name a transaction is carried out and/or who possesses or exercises effective ultimate control over a client in whose favor an operation is performed. It also includes the persons who exercise effective ultimate control over a legal person or legal body.

It is the companies' permanent duty to identify the beneficial owners of all the services or products that they provide and to take reasonable measures to verify their identity, as far as due diligence will allow, in order to be absolutely certain that they know who the beneficial owner is.

In the case of legal persons and legal bodies, in the event that the person who exercises effective ultimate control, by majority share, cannot be determined, whoever exercises control by other means should be considered; and only when in such cases a natural person cannot be identified, will the natural person who performs administrative and/or management functions be considered.

b) Trust

Resolution S.B.S. No. 2660-2015 establishes, in Art. 28, 4th Paragraph, that:

In the case of trusts, the beneficiary's identity must be determined as well as, if applicable, the disposal of the remaining assets. In the event that there are more than five (5) trustees, the representatives and procurators designated by the boards should be identified; except for those foreseen in Article 267 of the General Law.

Art. 27.e of the same Resolution establishes:

The client is the natural or legal person with whom companies contract the provision of a service or the supply of any financial product, with the following peculiarities: (...)

e) In the case of trusts, the settlor is considered to be a client, as are the beneficiaries in the event that they intervene in the contract.

2. FATF Recommendations on beneficial ownership

The 2015 Follow-Up Report does not amend any of the ratings for the relevant recommendations, which means that the ratings of the 2008 Mutual Evaluation are included here.

- **IO 5:** —
Observations: —
- **R 10 (2008):** Partially compliant
Observations:
There is no specific regulation demanding that financial institutions identify the BO and take reasonable measures to verify the identity of the BO (Peru 2008: 108–109).
- **R 11 (2008):** Partially compliant
Observations: (Peru 2008: 109)
- **R 22 (2008):** Partially compliant
Observations: (Peru 2008: 110)
- **R 24 (2008):** Largely compliant
Observations: (Peru 2008: 112)
- **R 25 (2008):** Compliant
Observations: (Peru 2008: 112)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2016), Phase 1:** Compliant
Observations: —
- **Section A1 (2016), Phase 2:** Compliant
Observations: —

4. Recent regulatory developments

Resolution S.B.S. No. 2660-2015 establishes the definition of beneficial ownership for legal persons and trusts.

In 2016, the EITI Roadmap for Peru's extractive industry sector was published, which mentions that the creation of a BO registry will be evaluated.

Sources

a) Reports

- Peru 2008: FATF Mutual Evaluation Report, 2008: http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Peru_3era_Ronda_2008.pdf.
- Peru 2015: Follow-Up Report, 2015: [http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/Informe%20de%20Seguimiento%20de%20Peru%20\(julio%20de%202015\).pdf](http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/Informe%20de%20Seguimiento%20de%20Peru%20(julio%20de%202015).pdf).
- GF Peer Review, 2016: <http://www.eoi-tax.org/jurisdictions/PE#latest>.
- EITI Roadmap, 2016: https://eiti.org/sites/default/files/documents/hoja_de_ruta_-_beneficiarios_reales-peru_0.pdf.

b) Regulatory

- Resolution S.B.S. No. 2660-2015: <http://www.bancomercio.com/repositorioaps/0/0/jer/prevencion01/files/RESOLUCION%20SBS%20N%C2%B0%202660-2015.pdf>.

SURINAME

Summary: The Follow-Up Report of 2017 indicates that the definition of beneficial ownership is found in

Art. 1.g of the WID Act (on service providers). This law was not found, but a translation of the MOT Act (Disclosure of Suspicious Transactions) establishes a definition, although it might be out of date. There seem to be no definitions of beneficial ownership of trusts (R 25 is rated as Not Applicable, which suggests that there are no trusts in Suriname).

1. Definition of beneficial ownership

a) Legal person

Article 1 of the WID Act has defined the BO as the natural person who possesses, controls, or exercises control over a legal person (Suriname 2017: 15).

Art. 1.A.(15).r of the regulation No. 133 of 2012, which amends the MOT Act (Suspicious Transactions), establishes:

Beneficial owner: the physical person who in reality or in the final instance possesses or has control over the legal person, or the person in whose benefit the transaction is carried out. The term includes the person who exercises de facto ultimate control over a legal person or a legal arrangement.

b) Trust: —

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2017):** Largely compliant
Observations: (Suriname 2017: 17)
- **R 11 (2017):** Compliant
Observations: (Suriname 2017: 17)
- **R 22 (2017):** Compliant
Observations: (Suriname 2017: 73)
- **R 24 (2017):** Largely compliant
Observations: (Suriname 2017: 123)

- **R 25 (2017):** Unavailable
Observations: (Suriname 2017: 123)
3. **GF Peer Reviews of legal ownership and/or beneficial ownership**
- **Section A1, Phase 1:** —
Observations: —
 - **Section A1, Phase 2:** —
Observations: —
4. **Recent regulatory developments:** —

Sources

- a) *Reports*
- Suriname 2017: 11th Follow-Up Report, 2017: <https://www.cfatf-gafic.org/index.php/documents/cfatf-follow-up-reports/Suriname/8324-Suriname-s-11th-follow-up-report/file>.
 - GF Peer Review: —
- b) *Regulatory*
- 2012 Amendment of the MOT Act (translated into English): <https://www.cbvs.sr/images/content/pdf/Wetten/Disclosure%20of%20Unusual%20Transactions%20Act%202012.pdf>.
 - 2012 Amendment of the MOT Act (original): http://www.dna.sr/media/51964/S.B._2012_no._133_Wet_van_6_8_12_goedgek._wijziging__MOT.pdf.

TRINIDAD AND TOBAGO

Summary: The definition of beneficial ownership of legal persons includes effective control but does not define this term. Although they do not specify what happens if no one is identified as a BO, the regulations (in another article) require that directors are identified, which means that the senior manager will eventually be identified. With regard to trusts, although there is a generic definition of beneficial ownership, the

regulations require identification of the settlor, trustee, protector, and any other person with control over the trust, although no mention is made of the beneficiary. However, the Central Bank Guidelines on AML/CTF do mention the trust beneficiary.

1. Definition of beneficial ownership

a) *Legal person*

The Financial Obligations Regulations (FOR) of 2010 establish in Art. 12. (5):

For the purposes of this regulation, the “beneficial owner” is understood to be the person who, in the final instance, possesses and controls an account or who exercises specific control over a legal person or a legal arrangement; and “legal arrangement” includes an express trust.

Art. 16 of the FOR requires directors of the legal person to be identified (although they are not mentioned as BOs).

b) *Trust*

In addition to the generic definition of beneficial ownership of trusts mentioned in the previous point, Art. 17 of the FOR establishes:

17. (1) When a business applicant is a trustee, a nominee, or a trustee client, apart from the requirements established in Rule 15, the financial institution or the listed enterprise must obtain the following information: (...) (c) verification of the trustee’s identity.

(2) In this regulation, “trustee” includes the settlor, the protector, the person who provides the trustee funds, the controller, or any person who has the power to appoint or remove the trustee.

The Central Bank Guidelines on AML/CTF establish in Art. 12.3.2 (i.):

The financial institution must also obtain the following:

(...)

D) Identity of the trustee(s), settlor(s), protector(s)/controller(s) or person with the power to design or dismiss the trustee and, whenever possible, the names of the beneficiaries or their classes;

E) Identity of the person(s) authorized to add beneficiaries, when applicable;

F) Identity of the person who provides the funds, if this is not the settlor;

G) Identity of the settlor(s) and of the other parties to the trust, which includes any individual with the power (whether exercised singly, jointly with another person, or with the consent of another person) to:

i. Dispose of, advance, lend, invest, pay, or apply the trust property;

ii. Vary the trust;

iii. Add or remove a person as beneficiary or a class of beneficiaries;

iv. Appoint or remove trustees; and

v. Direct, withhold consent to, or veto the exercise of a power as mentioned in clauses i), ii), iii), or iv); and

H) In the event of a nominee relationship, the identity of the beneficial owners.

2. FATF Recommendations on beneficial ownership

- **IO 5:** Moderate
Observations: (Trinidad and Tobago 2016: 106)
- **R 10 (2016):** Largely compliant
Observations: (Trinidad and Tobago 2016: 12)
- **R 11 (2016):** Compliant
Observations: (Trinidad and Tobago 2016: 12)
- **R 22 (2016):** Largely compliant
Observations: (Trinidad and Tobago 2016: 12)
- **R 24 (2016):** Partially compliant
Observations:
 - *There is no express legal requirement to hold beneficial ownership and control information in the company register.*
 - *There is no specific mechanism for guaranteeing that beneficial ownership and control information is adequate, accurate, and updated regularly.*

- *Bearer shares are not specifically prohibited by the Companies Act (Trinidad and Tobago 2016: 12).*

- **R 25 (2016):** Partially compliant
Observations: (Trinidad and Tobago 2016: 13)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2011), Phase 1:** Partially compliant
Observations:
Companies incorporated outside of Trinidad and Tobago, but that have their central management and control in Trinidad and Tobago, are not obliged to provide information identifying their owners as part of registration requirements, and foreign companies are not obliged to maintain a shares register in Trinidad and Tobago. Therefore, the availability of information that identifies the owners of these companies will depend, in general, on the law of the jurisdiction in which the enterprise is incorporated and, therefore, might not be available in all cases.
There is no specific requirement for keeping information relative to the settlor, the trustees, and the beneficiaries of trusts.

- **Section A1, Phase 2:** —
Observations: —

4. Recent regulatory developments

The EITI Roadmap for the extractive sector states that “the Government also mentioned in its 2017 Budget that it would discuss its plan for the presentation of mandatory reports by ‘introducing a requirement under the Companies Act whereby BOs must be declared to the Companies Registry and their declaration of ownership must be timely and updated, and not declaring ownership constitutes a crime under the Companies Act.’”

Sources

- a) *Reports*
- Trinidad and Tobago 2016: CFATF Mutual Evaluation Report, 2016: <https://www.cfatf-gafic.org/>

index.php/documents/4th-round/4th-round-meval-reports/6841-trinidad-and-tobago-4th-round-mutual-evaluation-report/file.

- GF Peer Review, 2011: <http://www.eoi-tax.org/jurisdictions/TT#latest>.
- EITI Roadmap, 2016: <http://www.tteiti.org.tt/wp-content/uploads/TTEITI-Beneficial-Ownership-Roadmap-Final.pdf>.

b) *Regulatory*

- Financial Obligations Regulations (FOR), 2010: <http://www.fiu.gov.tt/content/The%20Financial%20Obligation%20Regulations%20-%202010.pdf>.
- Central Bank Guidelines on AML/CTF: <https://www.central-bank.org.tt/sites/default/files/page-file-uploads/Anti-Money%20Laundering%20Combating%20of%20Terrorist%20Financing%20Guideline%20October%202011.pdf>.

URUGUAY

Summary: The definition of beneficial ownership of legal persons does not require any individual to be identified (not even the senior manager) in the event that no one exceeds the 15 percent threshold. The definition of beneficial ownership of trusts does not explicitly include the protector. The Central Bank of Uruguay will register the BOs of legal persons and trusts, and this will be accessible by the authorities, but not by the general public.

1. Definition of beneficial ownership

a) *Legal person*

Law 19.484, Art. 22

For the purposes of this law, the beneficial owner will be understood to be the physical person who, directly or indirectly, possesses at least 15 percent (fifteen percent) of the capital or its equivalent, or of the voting rights, or that by other means exercises ultimate control over an entity, which is considered to be a legal person, a trust, an investment

fund, or any other kind of patrimony of affectation or legal arrangement.

Ultimate control will be understood to be that exercised either directly or indirectly through a chain of ownership or through any other means of control.

Art. 1 of Decree 166/2017 regulates Article 22 of Law 19.484, but does not substantially amend the definition: it refers to “integrated” capital or its equivalent, and adds that the entity (legal person, trust, etc.) may or may not have legal personality.

b) *Trust*

Law 19.484, Art. 22, 3rd paragraph:

In the case of the trusts, the physical person(s) must be identified who comply with the conditions set out in the preceding clause in relation to the settlor, trustee, and beneficiary.

Art. 1 of Decree 166/2017 regulates Article 22 of Law 19.484, but does not substantially amend the definition: it specifies that the obligation is only for trusts not supervised by the Central Bank and adds identification of administrative entities.

2. FATF Recommendations on beneficial ownership

The Follow-Up Report of 2008 does not contain further FATF evaluations, but rather only reports the progress that Uruguay has made, for which reason it is not considered here.

- **IO 5:** Unavailable

Observations: —

- **R 10 (2006):** Non-compliant

Observations:

- *The rules on implementation must include the entire range of CDD requirements, beyond the direct identification obligations limited to the client, to policies, and to procedures, and should preferably be reflected as a direct obligation.*
- *CDD is not demanded when there are suspicions of ML/TF (e.g., with regard to possible new clients,*

carrying out occasional transactions or when there are doubts about whether the previously obtained client identification was satisfactory).

- *A general obligation of CDD is needed, in all cases, with respect to the beneficiaries of accounts and transactions, entities and legal arrangements, including the principal owners and beneficiaries or controllers.*
 - *Clearer arrangements/directives are needed about what constitutes acceptable forms of identification and verification (Uruguay 2006: 121–122).*
- **R 11 (2006):** Non-compliant (Uruguay 2006: 122)
Observations: —
- **R 22 (2006):** Non-compliant
Observations:
 - *Some categories of DNFBP are not considered by the law.*
 - *The obligation to identify casino customers is still not in force due to the lack of authorizing regulations (Uruguay 2006: 123).*
- **R 24 (2006):** Non-compliant
Observations:
 - *Lack of legal demands and adequate administrative mechanisms for facilitating access by the authorities to information about owners or whoever controls the companies through bearer shares.*
 - *The centralized system of registry at the national level lacks the capacity to provide sufficient information within a reasonable time frame regarding the majority of registered companies (Uruguay 2006: 126).*
- **R 25 (2006):** Largely compliant
Observations:
The Registry's lack of resources could complicate appropriate management of information about trusts (Uruguay 2006: 126–127).

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1 (2015), Phase 1:** The element is in place (compliant)

Observations:

Only refers to legal owners, not to BOs.

- **Section A1 (2015), Phase 2:** Largely compliant
Observations:
Legal requirements have been introduced for presenting information on ownership in relation to bearer shares in all cases. However, some of these legal requirements, such as the extinction of the rights of shareholders for failing to present information and mandatory liquidation of companies that issue bearer shares and fail to comply, have only recently come into force and their effectiveness cannot be evaluated in practice by the evaluation team.

4. Recent regulatory developments

- Law 19.484 (2017) requires identification of the BOs of legal persons and trusts (Art. 22) and this updated information must be registered with the Central Bank (Arts. 27 and 29).
- Decree 166/2017 regulates Law 19.484.

Sources

a) Reports

- Uruguay 2006: Mutual Evaluation Report, 2006: http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Uruguay_2nda_Ronda_2006.pdf.
- Uruguay 2008: Follow-Up Report on Uruguay: http://www.gafilat.org/UserFiles//Biblioteca/Evaluaciones/Avances/4to_Informe_Avance_Uruguay_2008.pdf.
- GF Peer Review, 2015: <http://www.eoi-tax.org/jurisdictions/UY#ratings>.

b) Regulatory

- Law 19.484: <https://www.impo.com.uy/bases/leyes/19484-2017>.
- Decree 166/2017 (regulates Law 19.484): <https://www.impo.com.uy/bases/decretos/166-2017>.

VENEZUELA

Summary: Although the Follow-Up Report considers that R 24 has been complied with, no regulations were found that define or demand identification of the BO of either legal persons or trusts.

1. Definition of beneficial ownership

a) *Legal person:* —

b) *Trust:* —

2. FATF Recommendations on beneficial ownership

- **IO 5:** —
Observations: —
- **R 10 (2014):** Largely compliant
Observations: (Venezuela 2014: 10)
- **R 11 (2014):** Largely compliant
Observations: (Venezuela 2014: 10)
- **R 22 (2014):** Partially compliant
Observations: (Venezuela 2014: 19)
- **R 24 (2014):** Compliant
Observations: (Venezuela 2014: 23)

- **R 25 (2014):** Partially compliant
Observations: (Venezuela 2014: 24)

3. GF Peer Reviews of legal ownership and/or beneficial ownership

- **Section A1, Phase 1:** —
Observations: —

- **Section A1, Phase 2:** —
Observations: —

4. Recent regulatory developments: —

Sources

a) *Reports*

- Venezuela 2014: Eighth Follow-Up Report, 2014: <https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/venezuela/3729-venezuela-8th-follow-up-report-1/file>.
- GF Peer Review: —

b) *Regulatory*

- Resolution by the Superintendent of Banks and Other Financial institutions (Superintendencia de Bancos y Otras Instituciones Financieras) 119-2010: <http://www.bancoactivo.com/wp-content/uploads/2016/02/RES-119-10.pdf>.

ANNEX 4. SUMMARY OF RATINGS BY COUNTRY

Country	BO definition for legal persons			BO definition for trusts and similar arrangements			FATF Recommendations										Global Forum
	Ownership	Influence/ Directors/ Senior Manager	Threshold	Trustee Beneficiary Settlor Protector	Person with effective Control	IO 5	10	11	22	24	25	25	25	25	A1-Phase 1	A1-Phase 2	
Argentina	Yes	Yes	20%	Yes	Yes	—	—	LC	LC	NC	NC	NC	C	C	C	C	
Bahamas	Yes	—	10%	Yes	Yes	—	Modrt	PC	LC	PC	PC	PC	PC	LC	LC	LC	
Barbados	Yes	Yes	10%	Yes	Yes	Yes	—	PC	C	NC	PC	PC	PC	PC	PC	LC	
Belize	Yes	Yes	10%	Yes	Yes	Yes	—	LC	LC	LC	C	C	C	C	C	PC	
Bolivia	Yes	Yes	—	—	—	—	—	PC	LC	NC	PC	NC	PC	—	—	—	
Brazil	Yes	—	>25%	BO definition for legal persons			—	PC	LC	NC	PC	PC	N/A	C	C	C	
Chile	Yes	—	10%	BO definition for legal persons			—	PC	LC	NC	PC	NC	C	C	C	LC	
Colombia	Yes	Yes	>5%	Yes	Yes	—	—	PC	LC	PC	LC	LC	C	C	C	C	
Costa Rica	Yes	Yes	15%	Yes	Yes	—	Low	LC	C	PC	PC	PC	PC	NC	NC	NC	
Ecuador	Yes	—	25%	—	—	—	—	PC	PC	NC	PC	PC	PC	—	—	—	
El Salvador	Yes	—	—	BO definition for legal persons			—	LC	LC	NC	C	LC	NC	NC	NC	NC	
Guatemala	Yes	—	—	"Parties to the trust"			Modrt	LC	C	PC	LC	LC	LC	PC	—	—	
Guyana	Yes	Yes	25%	—	—	—	—	C	C	C	C	C	PC	—	—	—	
Haiti	Yes	—	25%	—	—	—	—	C	LC	NC	NC	N/A	—	—	—	—	
Honduras	Yes	—	25%	Yes	—	—	Low	LC	C	LC	NC	LC	—	—	—	—	
Jamaica	—	Yes	51%	Yes	—	—	Yes	Low	PC	PC	PC	PC	PC	PC	PC	PC	
Mexico	Yes	—	25%	Yes	Yes	—	—	LC	C	NC	NC	LC	C	C	C	C	
Nicaragua	—	Yes	—	Yes	—	—	—	C	C	NC	NC	N/A	—	—	—	—	
Panama	Yes	Yes*	25%	BO definition for legal persons			—	PC	PC	NC	NC	NC	PC	PC	NC	NC	
Paraguay	—	Yes	—	—	—	—	—	NC	PC	NC	NC	NC	—	—	—	—	
Peru	Yes	Yes	—	Yes	Yes	—	—	PC	PC	PC	LC	C	C	C	C	C	
Dominican Rep.	Yes	—	20%	Yes	Yes	—	—	PC	PC	NC	PC	NC	NC	NC	NC	NC	
Suriname	—	Yes	—	—	—	—	—	LC	C	C	LC	N/A	—	—	—	—	
Trinidad and Tobago	—	Yes	—	Yes	Yes	Yes	Modrt	LC	C	LC	PC	PC	PC	PC	—	—	
Uruguay	Yes	—	15%	Yes	Yes	—	—	NC	LC	NC	NC	LC	C	C	C	LC	
Venezuela	—	—	—	—	—	—	—	LC	LC	PC	C	PC	—	—	—	—	

Source: Prepared by the author on the basis of the FATF and GF ratings.

Note: C = Compliant, LC = Largely compliant, PC = Partially compliant, NC = Non-compliant, N/A = not available. Ratings in yellow indicated that it is not clear what the correct rating is according to the last Follow-Up Report.

ANNEX 5. EXAMPLE OF THE IMPORTANCE OF IDENTIFYING BOS IN EACH COUNTRY

The following infographics reveal the importance of identifying BOs in order to combat different types of illegal activities. Infographic A5.1 shows the ease with which legal vehicles can be misused, when the BO is unknown, by giving an appearance of legitimacy.

Market abuse: What appears to be public open bidding between three independent oil and gas companies,—OIL 1, 2, and 3—in reality hides the same owner or, in other words, there is really only one bidder.

Corruption: Being granted the concession was thanks to a bribe, disguised as payment for services received from Bribe LLC. The payment was made via a foreign bank account, whose indirect holder is the minister who granted the license.

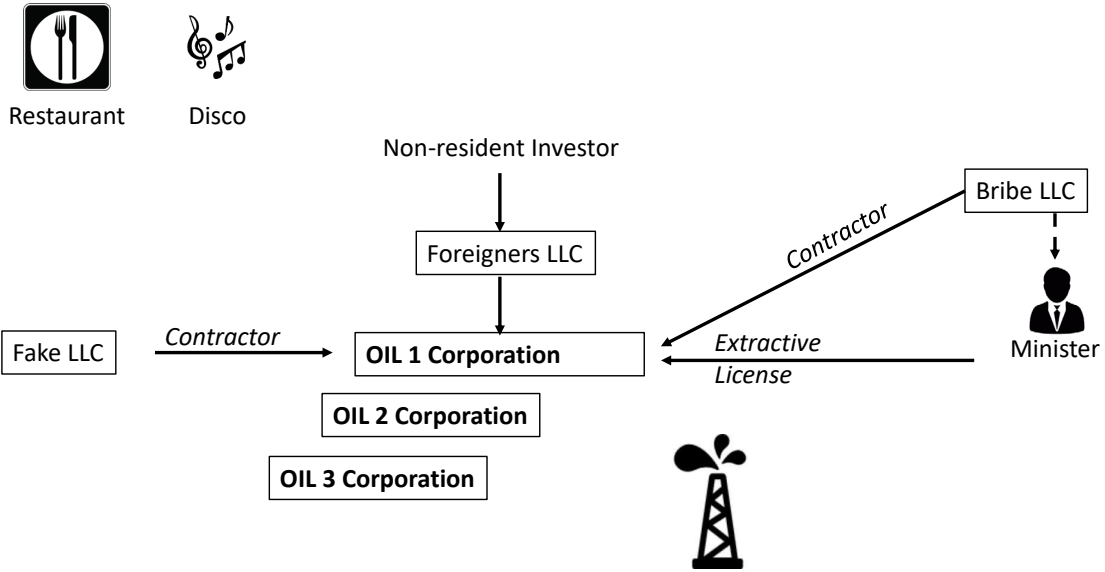
Money laundering: 1) The capital needed to set up and equip OIL 1 came from drug trafficking, although the money was laundered by simulating income from restaurants and nightclubs, and 2) Bribe LLC laundered the money arising from corruption by investing it abroad to hide its origin.

Tax evasion: 1) OIL 1 pretended to be owned by foreign investors in order to take advantage of tax incentives for foreign investment; 2) a supply company was set up, Fake LLC, to issue fake invoices for non-existent services, which enabled OIL 1 to fictitiously increase its costs in order to pay less income tax; and 3) the money obtained by Bribe LLC, thanks to corruption, was invested in foreign shares and funds (money laundering) and no taxes were paid on the earnings.

Infographics A5.1 and A5.2 show that, by failing to demand identification of the BOs (the criminal and the minister, in the example), the authorities cannot be aware that the three oil and gas companies, the suppliers (Fake LLC and Bribe LLC), and the nightclub and the restaurant, although they seem independent of one another, are in reality all interrelated as part of a sophisticated plan for money laundering, corruption, tax evasion, and market abuse. If the BOs are identified, not only can the interrelation between the companies be seen, but also the legality of the income of both BOs can be investigated. In this case, the fact that the origin is from illicit drug trafficking and bribery would be discovered.

INFOGRAPHIC A5.1

WHAT IS KNOWN TO THE AUTHORITIES



INFOGRAPHIC A5.2

THE REALITY

