

**For Whose Benefit?  
Reframing Beneficial Ownership Disclosure Around Users' Needs**

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**Executive Summary**

Beneficial ownership disclosure – that is, collecting and sharing information on genuine (rather than formal or nominee) owners of assets – is an area of financial crime policy that many countries struggle with. It can be highly emotive, as demonstrated by the public disagreement between the UK, the first state with a publicly accessible beneficial ownership register, and certain British Overseas Territories (BOTs), which favour only making beneficial ownership information available to state authorities. At the same time, even countries that pride themselves on their leadership in beneficial ownership disclosure face challenges in ensuring the efficacy of their frameworks. The UK is one of them, as are EU member states, which are bound by EU law to set up public registries.

Amidst disagreements about the value of transparency and technical discussions about data verification, the questions of how beneficial ownership information is in fact used and what this means for policymaking are all too often overlooked. This paper aims to address them by examining the needs and interests of various potential users of such information, including domestic and foreign law enforcement agencies, tax authorities, regulated businesses and the public at large. This analysis is based on a review of publicly available sources and over 40 interviews, including over 25 interviews with experts based in the BOTs and Crown Dependencies.

Contrary to what current controversies might lead one to believe, there is broad scope for agreement. Public accessibility of beneficial ownership information is rarely, if ever, held out as an end in itself. What does matter, however, is understanding what the users of such information require, securing its accuracy and ensuring it does not acquire such totemic status as to obscure other meaningful efforts against financial crime.

These are uncharted waters for governments as they learn to navigate the requirements of various stakeholders. To support their thinking on these issues, this paper outlines the current international standards on beneficial ownership disclosure, identifies key challenges in ensuring the accuracy of beneficial ownership information, and explores in detail the interests of various categories of users. We propose the questions that governments should consider when mandating beneficial ownership disclosure (see the Annex) and structure our findings and recommendations in the following five principles that can help answer these questions:

- **Domestic verification.** To ensure that the beneficial ownership information is accurate, the burden of verifying the information must be placed on the state – specifically, the registrar

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or another appropriate agency – or regulated intermediaries. Either approach has its costs, which constitute the price of having reliable information. In contrast, solely relying on a company or other arrangement to self-report its beneficial owners is ineffectual, especially if no meaningful sanctions are in place to dissuade non-compliance.

- **External validation.** Domestic verification apart, confidence in a state’s beneficial disclosure system requires external validation. This can be provided either by opening the register to the public or setting up an international validation scheme. For instance, the Financial Action Task Force (FATF) could collect and analyse countries’ reviews of their experience in obtaining beneficial ownership information from other jurisdictions. This could take place in the form of a ‘horizontal review’ of a specific issue (that is, beneficial ownership disclosure) across countries in addition to the regular mutual evaluation review that assesses country compliance with the whole spectrum of the FATF’s requirements once every 10 years.<sup>1</sup>
- **Proactive use.** There is a temptation in some countries, especially international financial centres, to limit their role in fighting international financial crime to furnishing information to overseas agencies on request. To identify financial crime, a more proactive approach is necessary, including reviewing the data for anomalies and revisiting it in light of news stories and newly uncovered typologies, and thus contributing to the global effort to combat financial crime.
- **Parity.** Despite the widespread understanding that various legal entities and arrangements – such as companies, trusts and partnerships – can be used to similar ends, beneficial ownership information in respect of them is not always collected and disclosed consistently. Some entities may historically be more often abused than others, and there may be an incentive on the part of policymakers to address one issue at a time. This creates room for displacement and results in an approach that is about as satisfactory as an unfinished jigsaw puzzle.
- **Accessibility.** In deciding who should have access to beneficial ownership information, governments should consider the needs of both domestic and foreign law enforcement agencies and tax authorities, as well as those of the regulated businesses and public at large. This assessment should be transparent and documented. If no arrangements exist for external validation of a country’s beneficial ownership information, the widest possible access is desirable. Those with a right to access beneficial ownership information should be able to do so without significant financial or bureaucratic barriers.

## Introduction

Beneficial ownership disclosure has become a key area of economic crime policy. To be a beneficial owner of an asset is to control it and profit from it, regardless of formal legal ownership. Knowing who owns property can serve various beneficial purposes, from identifying unexplained wealth to detecting conflicts of interest. Against that backdrop, states around the world have adopted rules that compel the disclosure of beneficial ownership to competent authorities.

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<sup>1</sup> For instance, following the 2015 Paris terrorist attacks, the Financial Action Task Force conducted a terrorist financing fact-finding initiative to swiftly establish countries’ ability to combat terrorist financing. See FATF, ‘Counter-Terrorism Financing Summit, Bangkok, 8 November 2018’, <<https://www.fatf-gafi.org/publications/fatfgeneral/documents/speech-cft-conference-nov-2018.html>> accessed 15 October. The FATF-style regional body in Europe, MONEYVAL, conducts such horizontal reviews on an occasional basis. See Council of Europe, ‘Horizontal Reviews’, <[https://www.coe.int/en/web/moneyval/evaluations/horizontal\\_reviews](https://www.coe.int/en/web/moneyval/evaluations/horizontal_reviews)>, accessed 14 October 2020.

These rules are in flux. The respective recommendation by the Financial Action Task Force (FATF), which was first introduced in 2003, aims to provide governments with access to reliable beneficial ownership information:

Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.<sup>2</sup>

In contrast, the EU's 5<sup>th</sup> Money Laundering Directive requires beneficial ownership information in member states to be accessible to anyone, subject to limited restrictions.<sup>3</sup> Although the directive was adopted in May 2018, according to Global Witness only five out of 27 EU member states fulfilled this requirement as of March 2020.<sup>4</sup>

Public access to beneficial ownership disclosure has become the bone of contention in the UK's relationship with the British Overseas Territories (BOTs). The UK introduced a requirement for limited liability companies and certain other entities to identify their persons with significant control in 2016. This information is made available on the Companies House website.<sup>5</sup> Two years later, the UK required the BOTs by law to introduce similar publicly accessible registers. Some of them vowed to comply, like the Cayman Islands,<sup>6</sup> and others have called for beneficial ownership transparency to become the global standard first, like Bermuda;<sup>7</sup> or, like the British Virgin Islands (BVI), have applied reservations to their compliance.<sup>8</sup>

And in the US, a significant domestic development with international implications is the possible introduction of beneficial ownership disclosure rules. In October 2019, the US House of Representatives approved the Corporate Transparency Act (H.R.2513), which would require corporations or limited liability companies to identify their beneficial owners to FinCEN, the US Financial Intelligence Unit. The bill has not been approved by the Senate and therefore expired with the election of the new Congress on 3 November 2020, but its progress marks the US edging closer

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<sup>2</sup> FATF, 'The Forty Recommendations', 20 June 2003, Recommendation 33, <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf>>, accessed 14 October 2020.

<sup>3</sup> Article 30(5) of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (as amended).

<sup>4</sup> Global Witness, 'Patchy Progress in Setting Up Beneficial Ownership Registers in the EU', 20 March 2020, <<https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5amld-patchy-progress/>>, accessed 14 October 2020.

<sup>5</sup> One can search for company details, including persons with significant control, on <<https://www.gov.uk/get-information-about-a-company>> accessed 22 October 2020.

<sup>6</sup> Cayman Finance, 'Statement by the Government of the Cayman Islands on a Public Beneficial Ownership Register for Companies', 9 October 2019, <<https://www.cayman.finance/2019/10/statement-by-the-government-of-the-cayman-islands-on-a-public-beneficial-ownership-register-for-companies/>>, accessed 14 October 2020.

<sup>7</sup> Jonathan Kent, 'Beneficial Ownership Register to go Public', *Royal Gazette*, 14 July 2020, <<http://www.royalgazette.com/business/article/20200714/beneficial-ownership-register-to-go-public>>, accessed 14 October 2020.

<sup>8</sup> Government of the Virgin Islands, 'BVI Premier Reiterates Territory's Commitment to an Appropriate Framework for Publicly Accessible Registers', press release, 22 September 2020, <<https://bvi.gov.vg/media-centre/bvi-premier-reiterates-territory-s-commitment-appropriate-framework-publicly-accessible>>, accessed 15 October 2020.

towards limited beneficial ownership disclosure, although it is not currently envisaged for such information to be available to the public at large.

With these developments afoot in key financial centres, there is the broader question of what beneficial ownership disclosure aims to achieve. There is no doubt that knowing who owns companies can be useful for multiple parties, which range from law enforcement agencies to private due diligence companies. But it is unlikely that their needs should have the same weight in the eyes of the public. Competing claims to accessing beneficial ownership information are implicit in discussions of the subject but rarely articulated.

There is also little public understanding of the role that beneficial ownership information plays in the day-to-day work of its intended users. Everyone would agree that it is neither useless nor a panacea. Understanding the difference that it makes is necessary for an informed discussion of the system's costs and benefits, as well as establishing who should have access to it.

Finally, there are contextual factors that must be taken into account. Some countries only allow companies to be created by licensed, regulated intermediaries, such as trust and corporate service providers (TCSPs) or notaries; others have a laissez-faire approach to incorporation. Some countries are home to hundreds of thousands of companies; others are not. Some countries frequently investigate financial crime that affects them; others mostly respond to requests from other jurisdictions. Against the backdrop of this diversity, beneficial ownership information is a solution in need of explanation.

## **Objective**

This paper explores how beneficial ownership information is used and what this means for policymaking. It also proposes a set of principles that can help governments base their decisions on a considered view of what beneficial ownership disclosure can achieve. In so doing, this paper contributes to the literature that often takes the benefits of beneficial ownership transparency as a starting point without articulating the thinking behind that premise. It is not intended as a comprehensive guide to the topic. There are other useful sources of information on issues that include countries' experience of implementing beneficial ownership registers<sup>9</sup> and best practices in the verification of beneficial ownership information.<sup>10</sup> Rather than offering an alternative to those publications, this paper serves as an introduction to issues that governments should consider in order to effectively use beneficial ownership information to support greater financial system integrity rather than mandate its disclosure as an end in itself or to comply with international requirements.

## **Methodology**

This paper is based on: a scoping review of key documents, including FATF and EU standards and publications by national governments, civil society groups and academics; 43 interviews with international and national policymakers, government officials, lawyers, TCSP and financial sector experts, civil society groups, academics and journalists; and two consultative focus groups with

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<sup>9</sup> See, for example, FATF, 'Best Practices on Beneficial Ownership for Legal Persons', October 2019; Adam Smith International, 'Towards a Global Norm of Beneficial Ownership Transparency: A Scoping Study on a Strategic Approach to Achieving a Global Norm', March 2019.

<sup>10</sup> See, for example, Andres Knobel, 'Transparency of Asset and Beneficial Ownership Information', FACTI Panel Background Paper 4, 19 July 2020; Moran Harari et al., 'Ownership Registration of Different Types of Legal Structures from an International Comparative Perspective: State of Play of Beneficial Ownership - Update 2020', Tax Justice Network, 1 June 2020.

cross-sectoral sets of experts. These experts were mostly based in the UK, US, BOTs and Crown Dependencies (CDs), which reflects the financial importance of these jurisdictions and their centrality to ongoing discussions concerning beneficial ownership disclosure.

Interviewees were selected on the basis of their first-hand knowledge of beneficial ownership disclosure either as users of this information (in the case of government officials or journalists) or its submitters (in the case of private-sector experts), or otherwise acquired expertise in the subject, such as through academic research.

## Structure

This paper discusses: the meaning of beneficial ownership and key international requirements related to its disclosure; principal issues in relation to the accuracy of beneficial ownership disclosure and its verification; and the users of beneficial ownership information and challenges that arise in catering to their needs. The paper concludes with a list of principles and questions that governments should consider in designing an effective beneficial ownership disclosure system.

### I. International and Domestic Definitions

By way of background, this chapter summarises what beneficial ownership means. It discusses FATF standards, EU standards and select domestic experiences.

#### FATF Standards

As already mentioned, the FATF introduced beneficial ownership rules in 2003, noting ‘the increased use of legal persons to disguise the true ownership and control of illegal proceeds’.<sup>11</sup> The text of the respective recommendation – initially Recommendation 33, now Recommendation 24 – has remained unchanged since. There are two notable aspects to it.

First, it speaks solely of securing access to beneficial ownership information for ‘competent authorities’. The FATF does not prescribe who those authorities are and how they should use the information other than to suggest that it is desirable for financial intelligence units (FIUs) to have access.<sup>12</sup> Broader societal considerations, such as facilitating journalist investigations or inspiring confidence in the quality of available beneficial ownership information, form no part of the FATF standard.

Second, Recommendation 24 does not endorse any particular means of making ‘adequate, accurate and timely information’ available.<sup>13</sup> The FATF’s best practice guidance distils three different approaches to identifying beneficial owners:

1. **Registry approach:** Requiring company registries to obtain and hold up-to-date beneficial ownership information.
2. **Company approach:** Requiring companies to keep information about their beneficial owners that can be made available to authorities on request.
3. **Existing information approach:** Using otherwise available information, including due diligence files prepared by regulated businesses.<sup>14</sup>

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<sup>11</sup> FATF, ‘The Forty Recommendations’, p. 3.

<sup>12</sup> FATF, ‘Best Practices on Beneficial Ownership for Legal Persons’, p. 59, para. 99.

<sup>13</sup> FATF, ‘The Forty Recommendations’, p. 20.

<sup>14</sup> FATF, ‘Best Practices on Beneficial Ownership for Legal Persons’, p. 21.

In addition to Recommendation 24's provisions on companies, Recommendation 25 covers 'information on express trusts, including information on the settlor, trustee and beneficiaries'.<sup>15</sup> It likewise stipulates that such information must be 'adequate, accurate and timely' and made available to 'competent authorities'.<sup>16</sup>

The practical implications of the FATF's approach are evident from its mutual evaluation review of the UK in 2019. The FATF acknowledged that, when individuals create companies directly without TCSPs' intermediation – approximately 25% of all incorporations – 'Companies House does not conduct identification, verification, or other CDD [customer due diligence] checks'.<sup>17</sup> However, the FATF found that access to information from other sources, such as regulated businesses and companies themselves, 'helps mitigate accuracy problems with particular sources'.<sup>18</sup> The FATF therefore accorded the UK the 'substantially effective' grade for the relevant Intermediate Outcome 5. This goes to show that, from a law enforcement perspective, company registers are not indispensable as long as alternative means of accessing information are available.

### **EU Standards**

The EU's standards are different in both respects. First, they go beyond the focus on competent authorities by mandating public disclosure of beneficial ownership. Second, as a result of that, they require the creation of beneficial ownership registers.

These rules have undergone a drastic expansion in recent years. The 4<sup>th</sup> Money Laundering Directive, which was adopted in 2015, required EU member states to create beneficial ownership registers with access allowed to competent authorities and FIUs, obliged entities that need to undertake due diligence, and any person that can demonstrate a legitimate interest.<sup>19</sup>

In 2018, a set of amendments known as the 5<sup>th</sup> Money Laundering Directive replaced 'any person that can demonstrate a legitimate interest' with 'any member of the general public'.<sup>20</sup> Exemptions from access may be granted on a case-by-case basis if a disproportionate risk of crime exists. The 5<sup>th</sup> Money Laundering Directive also envisages interconnecting member states' registers via a central EU platform.<sup>21</sup>

Similar but different rules are in place for trusts. The beneficial ownership information on trusts is supposed to be available to those who demonstrate a legitimate interest as well as those who submit a written request in relation to a trust that holds a controlling interest in a company.<sup>22</sup> There

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<sup>15</sup> FATF, 'The Forty Recommendations', p. 20.

<sup>16</sup> *Ibid.*

<sup>17</sup> FATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: United Kingdom – Mutual Evaluation Report', December 2018, p. 150.

<sup>18</sup> *Ibid.*, p. 152.

<sup>19</sup> Article 30(5) of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

<sup>20</sup> Article 1(15)(c) of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU.

<sup>21</sup> Article 1(15)(g).

<sup>22</sup> Article 1(15)(d).

is therefore some disparity in the treatment of companies and trusts within the EU, which we will return to below.

### Definition of Beneficial Ownership

The FATF does not prescribe any particular definition of beneficial ownership but suggests that controlling ownership interest (shareholding) is the first factor to consider.<sup>23</sup> The 25% voting rights threshold is widely applied, including under the EU's 4<sup>th</sup> Money Laundering Directive. However, the analysis cannot end at this. The very concept of beneficial ownership is based on recognising that formal shareholding can be divorced from actual ownership or control. To identify a beneficial owner is to engage in a fact-sensitive, context-specific enquiry. Some countries, such as Bermuda and Jersey,<sup>24</sup> therefore mandate flexibility in the application of the threshold:

Where the distribution of interests is uneven, the percentage where effective control may be exercised (a material interest) may be less than 25% when the distribution of other interests is taken into account, i.e. interests of less than 25% may be material interests.<sup>25</sup>

According to an interview with Jersey government officials, the 10% threshold is often applied in practice.<sup>26</sup> In the BVI, TCSPs are required to hold information on 10% shareholders even though the country's beneficial ownership platform, the Beneficial Ownership Secure Search (BOSS) system, only includes information on 25% holdings.<sup>27</sup> The Cayman Islands also use the 10% beneficial ownership threshold,<sup>28</sup> although only 25% ownership is reflected on the register.<sup>29</sup>

Nor does the enquiry stop with ascertaining a company's shareholders. In cases where doubt exists as to the identity of beneficial owners, the FATF outlines two further steps that can be taken:

[T]o the extent that there is doubt ... 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 of the legal person or arrangement through other means.

Where no natural person is identified [that way], financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.<sup>30</sup>

The 'other means' prong of the test would capture situations where a nominee legally owns the shares but exercises his or her rights in the interests of the ultimate owner pursuant to an arrangement between them. Guernsey's guidance, which follows the same tripartite approach to

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<sup>23</sup> FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation', June 2019, Interpretive Note to Recommendation 10, p. 59.

<sup>24</sup> Home Office, 'Statutory Review of the Implementation of the Exchange of Notes on Beneficial Ownership Between the United Kingdom, Crown Dependencies and Overseas Territories', 2019, p. 9.

<sup>25</sup> Jersey Financial Services Commission, 'Handbook for Regulated Financial Services Business Part 1: Section 4 – Identification Measures: Finding Out Identity and Obtaining Evidence', February 2020, p. 12, para. 83.

<sup>26</sup> Interview 18, two state officials, Jersey, video call, 6 May 2020.

<sup>27</sup> Interview 12, finance expert, BVI, video call, 17 April 2020; interview 20, state official, BVI, video call, 14 May 2020.

<sup>28</sup> Interview 41, three private sector experts with expertise in finance and law, Cayman Islands, video call, 24 July 2020. See also Caribbean Financial Action Task Force (CFATF), 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Cayman Islands Mutual Evaluation Report', March 2019, p. 110.

<sup>29</sup> Interview 42, two public officials, Cayman Islands, video call, 31 July 2020.

<sup>30</sup> FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation', June 2019, Interpretive Note to Recommendation 10, p. 60.

identifying beneficial ownership, also offers the example of a familial relationship that allows a person to exercise de facto control over a company.<sup>31</sup>

In summary, ascertaining beneficial ownership relies on using several techniques to establish the economic reality behind the legal arrangement. Sometimes, their application will produce an unambiguous result, but at other times there may be scope for interpretation or disagreement. In those instances, it is not the disclosure of the beneficial owner that is of greatest value – which, after all, may be based on flawed analysis – but the underlying documents and information. This is one of the considerations pertinent to the vexed issue of the accuracy of beneficial ownership disclosure, which is considered in the following chapter.

## II. Beneficial Ownership Disclosure and Verification

Whichever use beneficial ownership information is put to, its accuracy is of paramount concern. As mentioned above, the FATF does not prescribe any particular approach to the disclosure and verification of beneficial ownership information. In contrast, the EU has opted in favour of registers, which can either be self-populated by companies that report their beneficial owners or utilise submissions by regulated businesses. The latter approach normally relies on regulated businesses who incorporate the company in the first place, such as TCSPs or notaries. To provide an overview of issues that arise in this context, this chapter discusses the accuracy of beneficial ownership information, the supervision of regulated businesses and the treatment of trusts.

### Accuracy of Beneficial Ownership Information

If the information is submitted by the companies concerned, it can be verified by an external party, such as a company registrar. For example, the UK is currently transitioning from a system with no verification to one that relies on the registrar's limited verification. There are two facets to the accuracy of beneficial ownership information:

- **Factual accuracy**, such as whether the person indicated indeed exists or holds shares in the company concerned.
- **Interpretive accuracy**, such as whether a person should be considered a beneficial owner due to familial relations or other means of exercising control over a company even though their formal share may be lower than the legislative threshold. This aspect is linked to the use of nominee shareholders and directors, whose *raison d'être* is to obscure genuine shareholders and directors.

An ideal verification system would achieve both factual and interpretive accuracy. But there are open questions with regard to the capacity of registrar-based systems to do so. For example, the UK government's proposed reform of Companies House is centred on identity verification, namely ensuring that 'an individual is who they say they are', which does *not* ascertain 'how that individual links to the company in question'.<sup>32</sup>

When regulated businesses report their customer's beneficial owners, they can be expected to look beyond appearances, regardless of formal ownership or directorships. This requires subjective judgment and may involve analysing information extraneous to that supplied by the client, such as

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<sup>31</sup> Guernsey Registry, 'Guidance on the Meaning of Beneficial Owner', 2017, p. 22.

<sup>32</sup> Department for Business, Energy and Industrial Strategy, 'Corporate Transparency and Register Reform', May 2019, pp. 26 and 25.

conducting an open-source investigation. In contrast, self-disclosure is more likely to only list formal shareholders and directors.

By its nature, interpretive accuracy requires insight into the affairs of a specific company. Measures such as establishing whether a particular person exists or is of sufficient age, such as cross-checking information against electoral databases, will not suffice to achieve it. Instead, some sort of risk-rating and sample checks by the registrar or another appropriate agency would be necessary.<sup>33</sup> Some propose the creation of a UK Screening Authority, based on the Judicial agency for Testing, Integrity and Screening, a Dutch agency that conducts due diligence on companies involved in public procurement.<sup>34</sup>

Any centralised verification solution entails costs, which are likely to increase with the number of companies whose information is subject to verification.<sup>35</sup> But mandatory reliance on regulated intermediaries to create companies likewise involves costs, not least in terms of an additional hurdle for setting up a business. Those costs, however, are borne by the user rather than the public at large. One way of resourcing public agencies to ensure the accuracy of beneficial ownership information, including interpretive accuracy, is to factor its costs into company registration fees. For instance, one commentator describes the state of affairs in the UK in the following terms:

[G]iven that, by international comparison, £12 is a low cost of entry, even a modest increase in the cost of forming one of the 600,000 companies formed in the UK every year could raise a substantial sum to fund reforms. The prevailing argument against this to date has been that it would deter business formation in the UK; an argument which wears thin when considering that the £55 cost of registering a vehicle has hardly deterred car ownership.<sup>36</sup>

The key consideration that should guide governmental thinking, which we call the ‘domestic verification principle’, is that no cost-free system is feasible. For beneficial ownership information to be credible, verification must take place on either a centralised (such as a registrar or another state authority) or a decentralised (regulated businesses) basis.

**Figure 1: Beneficial Ownership Registers**

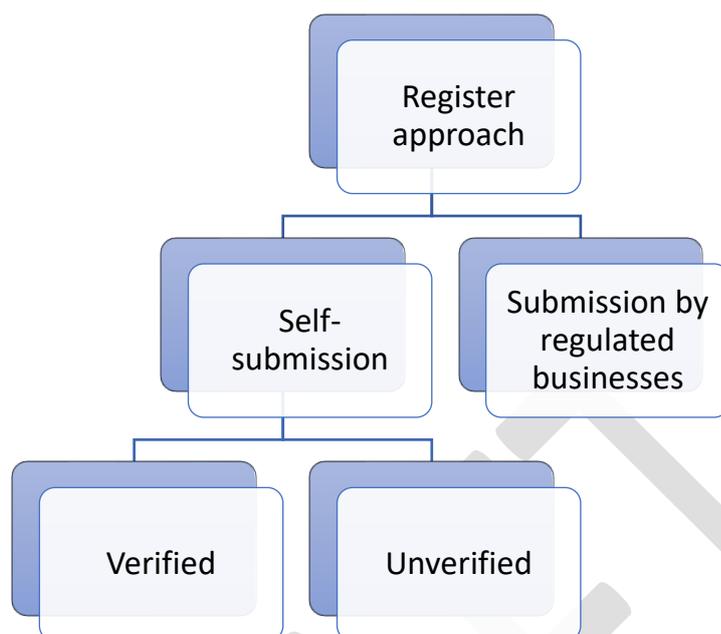
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<sup>33</sup> As advocated in Andres Knobel, ‘Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information’, Tax Justice Network, 22 January 2019, pp. 48–54.

<sup>34</sup> Nicholas Lord, Liz Campbell and Karin van Wingerde, ‘Corporate Vehicles and Illicit Finance – Policy Recommendations’, 19 March 2019, <<https://sites.manchester.ac.uk/corporate-vehicles/2019/03/19/corporate-vehicles-and-illicit-finance-policy-recommendations/>>, accessed 14 October 2020.

<sup>35</sup> Interview 38, academic with financial crime expertise, Cambridge, video call, 16 July 2020.

<sup>36</sup> Helena Wood, ‘Clamping the Wheel of the Money Launderers’ “Vehicle of Choice”: Reform of the UK Company Registry’, *RUSI Commentary*, 29 September 2020.



Source: Author generated.

Furthermore, false comfort should not be drawn from the perception, justified or otherwise, that most of the data on the register is correct even in the absence of verification. As one interviewee put it, a register that is 98% accurate can be useless if the remaining 2% are criminals whose information is not verified.<sup>37</sup>

This links to the fundamental objection against the utility of any form of beneficial ownership disclosure, which can be summarised as ‘crooks will be crooks’ – on no account can we expect criminals to voluntarily disclose information that can incriminate or expose them.

According to the interviews, this objection is overstated. It is often the case that an initially legitimate company is repurposed for illicit purposes and real beneficial ownership information will have been recorded at some point.<sup>38</sup> Likewise, to expect all corrupt officials or other nefarious actors to never reveal the beneficial ownership information that may come back to bite them is to credit them with greater foresight than they are due.

### **Supervision of Regulated Businesses**

An alternative, decentralised approach is to rely on regulated intermediaries such as TCSPs to verify and submit beneficial ownership information. This is the approach taken in the BOTs and CDs. For instance, in Jersey, local residents can set up a company themselves but others have to go through Jersey-regulated TCSPs.<sup>39</sup> This is complemented by the system of vetting foreigners wishing to obtain residency in Jersey.<sup>40</sup> The quality of CDD and resultant register submissions by regulated businesses is checked during off-site and on-site supervisory inspections.<sup>41</sup>

<sup>37</sup> Interview 28, two government relations experts, London, video call, 8 June 2020. The same point was echoed in interview 29, financial crime expert, London, video call, 15 June 2020.

<sup>38</sup> Interview 11, two lawyers, BVI, video call, 17 April 2020; interview 33, journalist, London, video call, 19 June 2020.

<sup>39</sup> Interview 18, two state officials, Jersey, video call, 6 May 2020.

<sup>40</sup> Interview 19, TCSP expert with government experience, Jersey, video call, 6 May 2020.

<sup>41</sup> Interview 40, five public officials, Cayman Islands, video call, 24 July 2020.

Such a system must have two features to operate effectively. The first one is that regulated businesses should have a monopoly on incorporations – unless companies set up without their intermediation face centralised verification systems as discussed above. The second component is that regulated businesses should be subject to effective supervision and enforcement. This is particularly important since their interests can align with those of their clients.<sup>42</sup>

Interviews with private-sector experts in the BOTs suggest that supervisory inspections in those jurisdictions are thorough and taken seriously by regulated businesses,<sup>43</sup> which stands in contrast with the laissez-faire attitude in the previous decades.<sup>44</sup> This assessment is not always consonant with external observers' views, such as the CFATF's<sup>45</sup> evaluation of the Cayman Islands' supervisory effectiveness as 'low'.<sup>46</sup> More importantly for present purposes, not all of those jurisdictions' lessons are easily transferable to other countries, such as those that supervise much higher numbers of intermediaries.<sup>47</sup> It has also been suggested that in certain BOTs and CDs mere regulatory censure results in significant adverse effects on a company's business and stronger enforcement measures are therefore unnecessary,<sup>48</sup> which may not reflect the business environment elsewhere.

As one interviewee noted, there is no evidence on which of the two models operates better: the one that relies on regulated businesses to submit beneficial ownership information or the registrar-centred one.<sup>49</sup> One of the challenges is that some countries may struggle with effectively supervising large numbers of businesses. While one interviewee suggested that in this area 'offshore is teaching onshore',<sup>50</sup> this may be a reflection of the different scale that various countries have to operate on.<sup>51</sup> Be that as it may, there is a widespread sense among international financial centres that their perceived success in supervising TCSPs has not been acknowledged, and they are 'fighting history' by responding to allegations that relate to past misconduct.<sup>52</sup>

### **Treatment of Trusts**

Since trusts too can be used to hold assets, there is a prima facie case for consistency in the treatment of companies, trusts and other arrangements that can be used to beneficially own property without being its legal owner, such as partnerships.<sup>53</sup> In the absence of registration

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<sup>42</sup> Interview 16, civil society expert, Argentina, video call, 1 May 2020.

<sup>43</sup> Interview 6, TCSP expert, BVI, video call, 16 April 2020; interview 41, three private sector experts with expertise in finance and law, Cayman Islands, video call, 24 July 2020.

<sup>44</sup> Interview 30, TCSP expert, Bermuda, video call, 16 June 2020.

<sup>45</sup> The CFATF is a regional body that conducts reviews of member states' compliance with the FATF standards.

<sup>46</sup> CFATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Cayman Islands Mutual Evaluation Report', March 2019, p. 140.

<sup>47</sup> Interview 6, TCSP expert, BVI, video call, 16 April 2020.

<sup>48</sup> *Ibid.*

<sup>49</sup> Interview 38, academic with financial crime expertise, Cambridge, video call, 16 July 2020.

<sup>50</sup> Interview 7, TCSP expert, BVI, video call, 16 April 2020.

<sup>51</sup> Interview 28, two government relations experts, London, video call, 8 June 2020.

<sup>52</sup> Interview 5, financial crime expert and trainer, UK, video call, 16 April 2020. The same feeling was encapsulated in Cayman Finance's response to Tax Justice Network's Financial Secrecy Index 2020, which spoke of 'past tense data, present tense allegations'. See Cayman Finance, 'Cayman Finance Response to Tax Justice Network Financial Secrecy Index 2020', 19 February 2020, <<https://cayman.finance/2020/02/cayman-finance-response-to-tax-justice-network-financial-secrecy-index-2020/>>, accessed 14 October 2020.

<sup>53</sup> Interview 11, two lawyers, BVI, video call, 17 April 2020. See also Anton Moiseienko, 'One Step at a Time: Limited Reform of UK's Limited Partnerships', *RUSI Commentary*, 22 January 2019.

requirements for trusts, law enforcement agencies may not know that a trustee is holding an asset on trust for someone else, with detrimental consequences for investigations.<sup>54</sup>

The need for consistency in the treatment of trusts and companies was considered during the preparation of the 5<sup>th</sup> Money Laundering Directive. The Commission's proposal was to draw a distinction between 'business-type trusts and other similar legal arrangements', which were to be treated like companies, and other trusts.<sup>55</sup> The proposal did not make it to the directive, but the disparity only relates to whether it is all members of the public (for companies) or only those with a legitimate interest (for trusts) who can access beneficial ownership information.

To minimise possible displacement effects, the guiding principle should be that of *parity*, not only in relation to trusts but also with regard to other arrangements such as partnerships. The pattern of abuse of Scottish Limited Partnerships, which took off as other UK legal arrangements came under scrutiny,<sup>56</sup> bears testimony to the risks of treating like things differently.

### III. Users of Beneficial Ownership Information

As the previous two chapters have demonstrated, beneficial ownership disclosure is an area that enjoys the attention of policymakers yet presents implementation challenges. This raises the question of what the practical benefits of beneficial ownership disclosure are, and this is an issue arguably best addressed by reference to who uses it and how it is being used. This chapter therefore considers the interests of the key categories of users of beneficial ownership information, namely domestic and foreign law enforcement agencies, tax authorities, regulated businesses and the public at large.

#### Law Enforcement Agencies

The use of beneficial ownership information by law enforcement agencies is one of its most obvious and important applications. It is self-evident that at least some law enforcement agencies must be among the 'competent authorities' that the FATF envisages to have access to such information.

#### *Intelligence and Evidence*

There is a distinction to be drawn between using beneficial ownership information for intelligence and evidence purposes. Intelligence aids the conduct of an investigation. In contrast, evidence helps establish facts in court proceedings. The trade-off between the ease of obtaining information and its reliability will be approached in a different manner depending on which one of the two is concerned.

Information on a company's beneficial owners in the absence of supporting documents may suffice for intelligence purposes but will likely prove inadequate as evidence. As a result, the primary function of beneficial ownership registers insofar as law enforcement is concerned is to secure faster access to intelligence. This is salient in the experience of the BOTs and CDs which have introduced a centralised register but have chosen not to make it available to the public, with the exception of the

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<sup>54</sup> Interview 16, civil society expert, Argentina, video call, 1 May 2020.

<sup>55</sup> Proposal for a Directive of the European Parliament and of the Council Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing and Amending Directive 2009/101/EC, COM(2016) 450, final.

<sup>56</sup> Department for Business, Energy and Industrial Strategy, 'Limited Partnerships: Reform of Limited Partnerships Law', 30 April 2018, p. 8.

Cayman Islands, which has committed to introducing a public register ‘on a timeline that reflects the development and evolution of public registers in the UK and EU’.<sup>57</sup>

In each of those jurisdictions, company incorporation is only possible through licensed and registered TCSPs. Prior to the introduction of a centralised register, law enforcement agencies would have to turn to respective TCSPs for beneficial ownership information on their clients. With the register in place, law enforcement agencies can obtain this information from the register faster either directly or via another governmental agency, such as the Financial Investigation Agency in the BVI<sup>58</sup> or the FIU in Jersey.<sup>59</sup> To request and share financial crime-related intelligence internationally, countries can use the Egmont Network of FIUs.<sup>60</sup>

It is up to each country to decide whether the information gleaned from its own or another jurisdiction’s register can be used in court. For instance, information obtained in the BVI’s BOSS system can be used in BVI courts.<sup>61</sup> Typically, the information from another country’s register can only be used as intelligence and the underlying documents would have to be requested through mutual legal assistance procedures to be relied on in court proceedings.<sup>62</sup> In those cases, the register serves as a shortcut for obtaining basic information provided that detailed records are not (yet) necessary.<sup>63</sup>

#### *Foreign Law Enforcement Agencies*

In international financial centres, such as certain BOTs and CDs, the key impetus for recent reforms in relation to beneficial ownership disclosure is ensuring that the country can furnish information to foreign law enforcement agencies. The original requirement to collect some kind of beneficial ownership information in many of these jurisdictions dates back decades.<sup>64</sup> This is due to their decision to only allow incorporation through registered TCSPs while regulating those TCSPs.

There have, however, been recent expansions of the regime. Following international scrutiny,<sup>65</sup> the BVI stipulated in 2016 that TCSPs and other regulated businesses could not rely on overseas ‘eligible introducers’ to conduct CDD and all relevant information had to be available on the regulated entity’s BVI premises.<sup>66</sup>

A further innovation to the same end was the Exchange of Notes (EoN) arrangement between the UK, six BOTs and three CDs. Participating countries can obtain access to information from another country’s beneficial ownership register within 24 hours and under one hour in urgent cases. The

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<sup>57</sup> Cayman Finance, ‘Statement by the Government of the Cayman Islands on a Public Beneficial Ownership Register for Companies’.

<sup>58</sup> Interview 2, Beneficial Ownership Secure Search (BOSS) system expert, BVI, video call, 14 April 2020.

<sup>59</sup> Interview 18, two state officials, Jersey, video call, 6 May 2020.

<sup>60</sup> Interview 13, law enforcement agency, BVI, video call, 24 August 2020.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> The BVI started regulating TCSPs in the 1990s to pre-empt international attention to them. At the time, there were no applicable international standards and regulation was modelled on that applicable to banks. Interview 12, finance expert, BVI, video call, 17 April 2020.

<sup>65</sup> Interview 20, state official, BVI, video call, 14 May 2020.

<sup>66</sup> Interview 8, lawyer, BVI, video call, 16 April 2020; interview 12, finance expert, BVI, video call, 17 April 2020. See also Lexology, ‘Changes to BVI Anti-Money Laundering Regime’, 7 January 2016, <<https://www.lexology.com/library/detail.aspx?g=8659a3ed-1c94-43c0-8cee-e7f0e0ace615>>, accessed 14 October 2020.

development by the BVI of its BOSS system was done in anticipation of the EoN rules coming into force.<sup>67</sup>

Out of the 296 requests between July 2017 and December 2018, ‘nearly all’ of which were made by UK law enforcement agencies, all but four were answered within the time limit.<sup>68</sup> In 2019, the UK’s Joint Anti-Corruption Unit concluded a review of the EoN arrangement that attested to its utility for law enforcement. Interviews for this project echoed that view.<sup>69</sup> This begs the question of the extent to which countries that do not find themselves in the UK’s privileged position vis-à-vis the BOTs and CDs have the same positive experience. This is a key issue because the collection of data alone is of little use unless it is then shared with authorities that can use it, including overseas authorities.

Although there is no obligation to provide information to them within the same timeframe as to the UK, interviews suggest that beneficial ownership information is shared more promptly than it would have been absent a centralised register.<sup>70</sup> This is particularly the case in Bermuda, where only about 20% of beneficial ownership information requests originate in the UK whereas most of them come from the US<sup>71</sup> and, to a lesser extent, Asian jurisdictions.<sup>72</sup> Some countries, like the US, have strong working relations with UK law enforcement and are thus secondary beneficiaries of the UK’s ability to request information from the BOTs and CDs.<sup>73</sup>

#### *Domestic Law Enforcement Agencies*

The focus on servicing other countries’ needs points to the issue of the functions that beneficial ownership information has and the contribution that international financial centres can be expected to play against financial crime.

On the one hand, there are instances of investigations into money laundering commenced in such jurisdictions. For example, in 2003 the attorney general of Jersey commenced an investigation into money laundering by the former executive of Kenya’s state-owned electric power company who was the beneficial owner of a Jersey-incorporated company. The action culminated in the return of \$5.2 million to Kenya in December 2018.<sup>74</sup> As of this writing, Jersey’s attorney general is pursuing a highly publicised tax fraud probe into a Norwegian billionaire using a Jersey-incorporated company.<sup>75</sup>

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<sup>67</sup> Interview 2, BOSS system expert, BVI, video call, 14 April 2020.

<sup>68</sup> Home Office, ‘Statutory Review of the Implementation of the Exchange of Notes on Beneficial Ownership Between the United Kingdom, Crown Dependencies and Overseas Territories’, 2019, p. 4.

<sup>69</sup> Focus group 2, financial sector experts, BVI, video call, 14 April 2020; interview 36, two civil servants, UK, video call, 14 July 2020; Q&A session with a senior UK law enforcement officer under Chatham House rules attended by the authors, April 2019; interview 39, two Bermuda public officials, video call, 22 July 2020; interview 40, five public officials, Cayman Islands, video call, 24 July 2020.

<sup>70</sup> Interview 13, law enforcement agency, BVI, video call, 24 August 2020.

<sup>71</sup> Interview 37, TCSP expert, Bermuda, video call, 14 July 2020.

<sup>72</sup> Interview 30, TCSP expert, Bermuda, video call, 16 June 2020.

<sup>73</sup> US Department of Justice, ‘Statement of Steven M. D’Antuono, Acting Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, Department of Justice Before the Committee on Banking, Housing, and Urban Affairs, United States Senate, for Hearing Entitled “Combating Illicit Financing by Anonymous Shell Companies”’, 21 May 2019, p. 5.

<sup>74</sup> StAR Stolen Asset Recovery Initiative – Asset Recovery Watch, ‘Samuel Gichuru and Chris Okemu (Jersey)’, Case ID ARW-162, last updated on 20 September 2019.

<sup>75</sup> Fiona Potigny, ‘Fraud Probe into Local Company Linked With Oil Baron Can Continue’, *Bailiwick Express*, <<https://www.bailiwickexpress.com/jsy/news/fraud-probe-norwegian-oil-baron-can-continue/#.X0UfbshKg2w>>, accessed 14 October 2020.

On the other hand, there are relatively few domestic money laundering investigations in major international financial centres, such as the BVI.<sup>76</sup> The Caribbean Financial Action Task Force's (CFATF) review of the Cayman Islands critiqued the jurisdiction for the absence of any money laundering convictions other than in cases of self-laundering arising from predicate offences in the Cayman Islands.<sup>77</sup> That said, an interviewee reported that the Cayman Islands had seen a recent increase in the use of beneficial ownership information for domestic investigations.<sup>78</sup> Similarly, CFATF's review of Bermuda noted that 'the number of prosecutions in line with the risk profile was low' although it acknowledged an increase in the number of investigations that could lead to more prosecutions in the future.<sup>79</sup>

In summary, the approach taken in the BOTs and CDs gravitates towards serving as a repository of information on which others can draw. This approach has its results. For instance, the BVI supplied beneficial ownership information that was used in the UK's first application of unexplained wealth orders.<sup>80</sup> But it also means that no one is mining company registers for anomalies and using them to initiate investigations.<sup>81</sup> As a result, a promising source of data remains underexploited. Furthermore, if a country is solely focused on furnishing information to overseas law enforcement agencies, it may not even know the effect which that information has, which is key to ensuring that the benefits of beneficial ownership disclosure are understood.<sup>82</sup>

#### *Principle of Proactive Use*

As banks are required to do by employing various name-screening tools as part of their 'Know Your Customer' checks, there is an argument in favour of proactive use of company registers by jurisdictions that host them, both as a means of better detecting financial crime and – by way of a secondary benefit – to instil greater international confidence in those countries' efforts against financial crime.

A possible objection is that countries more directly affected by the alleged criminality may have better information and greater incentives to investigate.<sup>83</sup> In many instances, companies incorporated in a jurisdiction may be exploited but bank accounts will be opened elsewhere and no money will pass through its banking system.<sup>84</sup> Furthermore, it is common to hear law enforcement agencies and tax authorities say they have access to too much information, which they need to comb for leads.<sup>85</sup> If, the argument goes, 'onshore' law enforcement agencies are not in a position to process the vast masses of relevant information and commence investigations into crimes of

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<sup>76</sup> Interview 13, law enforcement agency, BVI, video call, 24 August 2020.

<sup>77</sup> CFATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Cayman Islands Mutual Evaluation Report', March 2019, p. 71.

<sup>78</sup> Interview 40, five public officials, Cayman Islands, video call, 24 July 2020.

<sup>79</sup> CFATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Bermuda Mutual Evaluation Report', January 2020, p. 52.

<sup>80</sup> *NCA v Hajiyeva* (2018) EWHC 2534 (Admin), para. 16. This was mentioned at focus group 2, financial sector experts, BVI, video call, 14 April 2020.

<sup>81</sup> Interview 43, retired civil servant, UK, video call, 12 August 2020.

<sup>82</sup> Interview 19, TCSP expert with government experience, Jersey, video call, 6 May 2020.

<sup>83</sup> Interview 41, three private sector experts with expertise in finance and law, Cayman Islands, video call, 24 July 2020.

<sup>84</sup> Interview 8, lawyer, BVI, video call, 16 April 2020; interview 40, five public officials, Cayman Islands, video call, 24 July 2020; interview 41, three private sector experts with expertise in finance and law, Cayman Islands, video call, 24 July 2020.

<sup>85</sup> Interview 14, tax official, BVI, video call, 22 April 2020.

concern to them, the chances of international financial centres, with their limited resources, being able to do that job are even lower.

This contradiction is at the heart of thinking about the functions of beneficial ownership information. Both conflicting views have some force, and the inevitable retort from transparency advocates would be that law enforcement's resource constraints are one of the reasons why beneficial ownership information should be open for the whole world to examine.

We return to this argument below in the section on access to the public at large. For now, however, we have sufficient grounds to posit the overarching principle of *active use*, namely ensuring that countries proactively analyse beneficial ownership information to identify criminal misuse rather than treat it as a repository of data that will not see the light of day unless someone from abroad comes looking for it.

One way of promoting such proactive use is to enable access to supervisors. For instance, Jersey's company register is housed within the Jersey Financial Services Commission, which uses beneficial ownership information to risk-rate supervised entities,<sup>86</sup> which is reportedly helpful.<sup>87</sup> Jersey's FIU also has direct access and expanding it further to other agencies is being considered.<sup>88</sup>

Not everyone agrees that access to beneficial ownership registers would be helpful for their jurisdiction's supervisor(s),<sup>89</sup> and it would be pointless to foist upon supervisors a responsibility that is irrelevant to their functions. But the issue is at the very least worth considering as a way to enhance supervision and escalate anomalies to law enforcement.

### **Tax Authorities**

Like law enforcement agencies, tax authorities need to know who owns what. To ensure fairness and effectiveness in taxation, they too are interested in economic (beneficial) rather than solely legal ownership. The OECD's standards for on-request and automatic sharing of information therefore apply to financial accounts legally or beneficially controlled by the requesting country's tax residents.<sup>90</sup>

Tax authorities often make use of international channels for sharing beneficial ownership information. HMRC is among the most prolific users of the EoN arrangement.<sup>91</sup> In Bermuda's experience, almost all tax requests concern beneficial ownership information.<sup>92</sup> In the Cayman Islands,

requests for basic and beneficial ownership are made for tax purposes to [the Department of International Tax Cooperation], via established tax information exchange agreements. During the period 2013 to 2017, the DITC received 222 requests from its treaty partners,

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<sup>86</sup> Interview 18, two state officials, Jersey, video call, 6 May 2020.

<sup>87</sup> Interview 19, TCSP expert with government experience, Jersey, video call, 6 May 2020.

<sup>88</sup> Interview 18, two state officials, Jersey, video call, 6 May 2020.

<sup>89</sup> Interview 20, state official, BVI, video call, 14 May 2020.

<sup>90</sup> OECD, 'Standard for Automatic Exchange of Financial Information in Tax Matters: Implementation Handbook', 2<sup>nd</sup> edition, 2018, p. 21, para. 19. The handbook uses the term 'Controlling Persons' and says it 'must be construed in such a manner to correspond' to the FATF's definition of 'beneficial owner'.

<sup>91</sup> Home Office, 'Statutory Review of the Implementation of the Exchange of Notes on Beneficial Ownership Between the United Kingdom, Crown Dependencies and Overseas Territories', 2019, p. 7.

<sup>92</sup> Interview 39, two Bermuda public officials, video call, 22 July 2020.

70% of which were responded to within 90 days, 85% within 120 days and 96% within 1 year.<sup>93</sup>

But beneficial ownership disclosure can serve different objectives in the context of taxation than it does for law enforcement purposes writ large. The primary function of tax authorities is to assess and raise tax revenues, with the secondary aim of investigating tax offences. This determines the nature of their interest in beneficial ownership.

### *Meaning of Beneficial Ownership*

If Ruritania-incorporated Opaque Corporation LLC pays out dividends to overseas shareholders, Ruritania's law enforcement may investigate whether these are nominee shareholders and Opaque Corporation LLC is being used as a conduit for unlawful payments to a public official. From Ruritanian tax authorities' perspective, however, the identity of the shareholders only matters insofar as it is relevant to calculating the tax that should be withheld on the dividend payment, for instance by identifying if they benefit from relevant tax treaty provisions.

The very term 'beneficial owner' has a distinct meaning in international tax treaties. The dividends, interest and royalties provisions of the OECD's Model Tax Treaty apply if the respective payment is made to the 'beneficial owner' that is resident in a state party to the treaty.<sup>94</sup> The purpose this serves is to ensure that the benefits of the treaty cannot be obtained by establishing a conduit company in a contracting state. Similar provisions are found in EU tax law.

This is not the same as identifying the individual(s) who ultimately own(s) an asset. The interpretation of the term will reflect its purpose, which is why the meaning of 'beneficial owner' in international taxation – for instance, as discussed in a recent Court of Justice of the European Union (CJEU) judgment<sup>95</sup> – has no bearing on what the term stands for in the context of beneficial ownership disclosure.

### *Economic Substance*

Notwithstanding these differences, the worlds of taxation and beneficial ownership disclosure overlap. Some countries use their beneficial ownership registers to collect additional data specifically for tax purposes. For instance, the BVI's BOSS system will imminently be used to gather the economic substance information in compliance with the OECD's tax standards.<sup>96</sup> This is necessary because existing information-sharing arrangements under the Common Reporting Standard involve a different sort of information, which is currently collected from BVI financial institutions via the FARS system.<sup>97</sup>

This convergence is incentivised by the fact that international financial centres often face international scrutiny in relation to both taxation and financial crime matters. A key development is the promulgation by the OECD of the guidance on ensuring that companies incorporated in no or only nominal tax jurisdictions have some level of economic substance in those jurisdictions.

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<sup>93</sup> CFATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: Cayman Islands Mutual Evaluation Report', March 2019, p. 178.

<sup>94</sup> Articles 10, 11 and 12, in 'Articles of the Model Convention with Respect to Taxes on Income and on Capital [As They Read on 21 November 2017]', <<https://www.oecd.org/ctp/treaties/articles-model-tax-convention-2017.pdf>>, accessed 22 October 2020.

<sup>95</sup> Court of Justice of the European Union (CJEU), 'Judgment of 26 February 2019 in Joined Cases C-116/16 and C-117/16'.

<sup>96</sup> Interview 14, tax official, BVI, video call, 22 April 2020.

<sup>97</sup> *Ibid.*

Compliance with these rules, as well as the broader OECD's Base Erosion and Profit Shifting requirements, is a priority for international financial centres.<sup>98</sup>

This underscores that the tax authorities' focus is on the identification of taxpayers who game the international tax system by establishing themselves in low-tax jurisdictions or claiming treaty benefits on an artificial basis. And, as with law enforcement requests, international financial centres are likely to find themselves in the position of the net provider of information. For instance, the BVI does not tax the worldwide income of its tax residents and thus does not usually find it necessary to request information from overseas.<sup>99</sup>

### ***Regulated Businesses***

As already mentioned, EU law requires beneficial ownership information in company registers to be made available to regulated businesses that conduct CDD. Facilitating CDD is among the arguments sometimes made in favour of public company registers,<sup>100</sup> but it is also possible to grant regulated businesses access to an otherwise closed register. For instance, in Guernsey, it is not only law enforcement agencies but also regulated businesses who have access to beneficial ownership information from the centralised register.<sup>101</sup>

Conversely, another rationale for opening up this information to regulated businesses is to rely on them to verify it. This too is envisaged by the EU's 5<sup>th</sup> Money Laundering Directive, which requires that they 'report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them'.<sup>102</sup>

One of these views presupposes that regulated businesses can glean useful information from registers; the other assumes they can provide that information. Both are unlikely to be true at the same time, but it is possible that the register becomes more useful as a source of information with time.<sup>103</sup>

### ***Using Beneficial Ownership Information***

There are conflicting indications of the value of beneficial ownership information for regulated businesses. According to some interviewees, private companies are a long way away from being able to rely on information from public registers for CDD.<sup>104</sup> The inadequacy of the UK's public register as a source of due diligence information is widely noted.<sup>105</sup> But these objections speak more to the quality of available information than the principle at hand.

There is also evidence of the contribution that beneficial ownership information can make. For instance, publications and masterclasses by the financial crime expert Graham Barrow demonstrate

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<sup>98</sup> Interview 4, lawyer, BVI, video call, 15 April 2020; Interview 16, civil society expert, Argentina, video call, 1 May 2020.

<sup>99</sup> Interview 14, tax official, BVI, video call, 22 April 2020.

<sup>100</sup> Interview 15, three UK civil servants, London, video call, 30 April 2020.

<sup>101</sup> Interview 5, financial crime expert and trainer, UK, video call, 16 April 2020.

<sup>102</sup> Article 1(16)(f).

<sup>103</sup> Knobel, 'Beneficial Ownership Verification', p. 54.

<sup>104</sup> Interview 41, three private sector experts with expertise in finance and law, Cayman Islands, video call, 24 July 2020.

<sup>105</sup> Interview 18, two state officials, Jersey, video call, 6 May 2020.

how public registers can help identify unusual or suspicious behaviour.<sup>106</sup> Without more, such analysis does not allow to establish involvement in crime, but it facilitates client risk assessment and contributes to the filing of suspicious activity reports.

The value of public registers is therefore not in alleviating regulated businesses of the necessity to establish on their own who their customer is or who its beneficial owners are. It is, rather, in providing additional context. Self-evidently, the higher the quality of the information, the more useful it will be.

### *Verifying Beneficial Ownership Information*

The verification argument is drastically different. It is based on regulated businesses having access to documents provided by their customers and therefore being able to both establish their beneficial ownership and correct faulty information on a public register. This is the same logic as that behind the FATF's 'existing information' approach, which allows countries to rely on information collected by regulated businesses as part of CDD, with the difference that here they are supposed to police the integrity of the register rather than simply holding the information for themselves.

Subject to the existence of appropriate channels for reporting discrepancies, this principle is wholly unobjectionable, but it circles back to the question of why such a register is good to have and who should use it. The position of law enforcement agencies, tax authorities and regulated businesses as users of beneficial ownership information has already been considered. It is now time to proceed to the vexed issue of public access.

### **Public at Large**

The controversy over public access to beneficial ownership information owes in part to the ideological overtones it has acquired. Transparency being a value in its own right, discussions surrounding corporate registers transcend the question of whether public access advances the fight against financial crime. This was among the criticisms levied by the European Data Protection Supervisor against what became the 5<sup>th</sup> Money Laundering Directive:

[W]e notice that under the new provisions, personal data would be processed for a number of purposes: countering anti-money laundering and terrorism financing; countering tax evasion ...; preventing financial crimes and/or abuses of the financial markets; enhancing corporate transparency (necessary, in turn, to protect minority shareholders of corporations as well as any third party doing business with such corporations); give governments and regulators the opportunity to respond quickly to alternative investment techniques; allow public scrutiny on the functioning of financial markets, on investors and on tax evaders.<sup>107</sup>

To critics, importing these (admirable) objectives by stealth into AML/CTF legislation is a case of what the Germans would call *Etikettenschwindel*.<sup>108</sup> In line with this paper's overall approach, we focus squarely on the impact of this transparency on detecting, preventing and investigating

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<sup>106</sup> Graham Barrow, 'Who is Ali Moulaye and Why Does It Matter?', 28 May 2018, <<https://grahambarrow.com/2018/05/28/who-is-ali-moulaye-and-why-does-it-matter/>>, accessed 14 October 2020; Dark Money Files, 'Corporate Investigations Masterclass Introduction', 5 June 2020, <<https://www.youtube.com/watch?v=gub5Km4sA6c>>, accessed 14 October 2020.

<sup>107</sup> European Data Protection Supervisor, 'Opinion 1/2017: EDPS Opinion on a Commission Proposal Amending Directive (EU) 2015/849 and Directive 2009/101/EC – Access to Beneficial Ownership Information and Data Protection Implications', 2 February 2017, p. 9, para. 29.

<sup>108</sup> The use of a misleading label (encapsulated in one elegant word).

financial crime. As with the previous section, it is helpful to consider in turn the public's use of beneficial ownership information and its role in verifying it.

### *Using Beneficial Ownership Information*

The expectation that the public will find beneficial ownership information useful mostly revolves around those who make it their business to investigate crime, such as journalists, civil society organisations and academics. This leads us to consider two questions, namely how useful they find beneficial ownership information to be and how much weight should be given to making their job easier by providing such information.

Civil society groups consistently advocate in favour of publicly available beneficial ownership information, but this reflects a broader set of considerations than their own use of this data for investigations. Verification looms large,<sup>109</sup> as discussed in greater detail below. For instance, the analysis of Companies House data by Global Witness and included in the FATF's 2019 best practices paper did not disclose any criminal wrongdoing but identified errors in the data on the public register.<sup>110</sup>

For now, it is difficult to say how useful beneficial ownership information is because so little of it is available and reliable.<sup>111</sup> From a journalist's perspective, constructing networks based on beneficial ownership information is essential, but the most useful material comes from leaked databases like the Panama Papers.<sup>112</sup> They offer the amount and granularity of data that no publicly accessible company register would provide. This is important because, unlike CDD by regulated businesses, which may culminate in the identification of suspicious behaviour and filing of a report to state authorities, a journalist investigation has to arrive at more definitive conclusions. Similarly, an academic interviewed for this project observed that 'there is a great deal of misplaced confidence in the value of public registers'.<sup>113</sup>

This uncertainty about the impact of transparency aside, there is a view that beneficial ownership information should only be available to state authorities because they are responsible for detecting financial crime and enforcing the law. That position is at odds with reality, especially in countries afflicted by grand corruption, where journalists and civil society organisations frequently play the lead role in exposing crime.<sup>114</sup> Portraying their contribution to detecting crime as irrelevant is hardly convincing, although it is right to ask how exactly beneficial ownership transparency will enhance that contribution.

### *Verifying Beneficial Ownership Information*

Contrary to what might be expected, interviews for this project suggest that the key argument in favour of corporate transparency is the public's contribution to *verifying* beneficial ownership information, rather than using it.<sup>115</sup> If the information is not seen to the world, the argument goes, how can anyone be confident in its quality?

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<sup>109</sup> Interview 16, civil society expert, Argentina, video call, 1 May 2020.

<sup>110</sup> FATF, 'Best Practices on Beneficial Ownership for Legal Persons', October 2019, p. 51.

<sup>111</sup> Interview 34, academic researching corrupt networks, US, video call, 2 July 2020.

<sup>112</sup> Interview 33, journalist, London, video call, 19 June 2020.

<sup>113</sup> Interview 38, academic with financial crime expertise, Cambridge, video call, 16 July 2020.

<sup>114</sup> Interview 15, three UK civil servants, London, video call, 30 April 2020.

<sup>115</sup> Interview 32, three civil society experts, London, video call, 17 June 2020.

This presupposes that outside observers, such as the media or academics, have the means of verifying the information they see, which may be true at the level of basic plausibility checks. They may also undertake open source investigations that law enforcement agencies do not have the time for in order to identify information that does not comport with reality.

If the quality of beneficial ownership information in a given jurisdiction was beyond doubt, this rationale would fade away. But at present there are few opportunities for understanding how well a country is doing in terms of collecting and verifying beneficial ownership information. The UK's statutory review of the EoN arrangement is thus unique in providing insight into the (effective) operation of other jurisdictions' disclosure systems, although it is written from the UK's unique vantage point.

According to one interview, the BVI often requests feedback on the quality of its responses to tax queries, but it is rarely provided. The only time feedback is given is in the course of international reviews by organisations such as the FATF. More regular feedback would be valuable, for instance by encouraging it as part of tax information exchange.<sup>116</sup>

With that in mind, we propose the principle of *external validation*, which means that the quality of beneficial ownership information that countries hold and their effectiveness in sharing it should be validated by a reputable external source. For instance, the FATF could disseminate questionnaires on countries' experience of requesting beneficial information from other jurisdictions and regularly publish updates on how each jurisdiction is faring. This is consistent with the idea of conducting cross-country reviews of specific key areas in fighting financial crime in addition to, as is current practice, conducting an in-depth review on a country-by-country basis every 10 years.<sup>117</sup>

This solution would be compatible with data privacy considerations that militate against beneficial ownership transparency. They have both a human rights and a pragmatic aspect to them, the latter being that, in the absence of a consistent global transparency standard, customers may flee jurisdictions that make their information publicly available.<sup>118</sup> In contrast, it was reported that its disclosure to authorities alone was well-received by sophisticated, legitimate customers.<sup>119</sup> For that reason, there is a widespread insistence in the BOTs and CDs that they are happy to comply with prevailing global standard but do not wish to get ahead of it.<sup>120</sup>

#### *Requiring Legitimate Interest*

If one accepts that the public should have access to beneficial ownership information, it need not be absolute. The notion of 'legitimate interest', which retains its relevance in relation to trusts under the 5<sup>th</sup> Money Laundering Directive, is particularly attractive,<sup>121</sup> at least on a superficial level. By the very nature of the term, it is easy to agree that those with a legitimate interest should have access to certain data while those without should not. This excludes beneficial ownership information from the scope of data that should be available to all and thus accessible by means of, for instance, Freedom of Information requests.

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<sup>116</sup> Interview 14, tax official, BVI, video call, 22 April 2020.

<sup>117</sup> Tom Keatinge, 'It's Time to Reform and Refocus the Financial Action Task Force', *RUSI Commentary*, 23 October 2019.

<sup>118</sup> Interview 1, two TCSP experts, BVI, video call, 14 April 2020.

<sup>119</sup> *Ibid.*

<sup>120</sup> Interview 13, law enforcement agency, BVI, video call, 24 August 2020.

<sup>121</sup> Some interviewees otherwise critical of public company registers were sympathetic to relying on 'legitimate interest'. Interview 10, lawyer with government experience, BVI, video call, 16 April 2020.

The crux of the matter is what legitimate interest is and who should decide if it exists. The directive does not offer a definitive answer but notes, in the non-binding Recital 42, that ‘the preventive work ... undertaken by non-governmental organisations and investigative journalists’ should be taken into account.<sup>122</sup>

Interviewees have recounted instances of beneficial ownership information being sought for evidently illegitimate purposes, such as requests from private individuals in an Eastern European country that ceased communication when asked to explain the nature of their interest.<sup>123</sup> Others were concerned that requests for access to information could be animated by a broader set of motives and values than detecting financial crime. As one interviewee put it, ‘if you want to demonstrate that life is not fair, is that a legitimate interest?’<sup>124</sup>

A helpful point of comparison is the operation of a transparent system. If not well thought through, conditions of access that are on the face of it compatible with the 5<sup>th</sup> Money Laundering Directive can have a restrictive effect. For instance, the directive allows the levying of fees ‘which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register’.<sup>125</sup> According to some users, even a payment of several euros per search can be prohibitive when researching complex corporate structures.<sup>126</sup>

This points towards the need for the principle of *accessibility*, which is that beneficial ownership information should be genuinely accessible, without significant financial or bureaucratic barriers. Countries should decide on the range of persons who should have such access based on a transparent analysis of potential users’ needs and their legitimacy, as per the previous parts of this paper. Among other factors, the breadth of access granted to non-state actors should reflect whether there is a reliable mechanism for external validation of the country’s beneficial ownership disclosure system, as discussed above. That is, if the accuracy of beneficial ownership information and effectiveness of its sharing with relevant users is not assessed by any external party (such as the FATF by means of a review mechanism this paper proposes), then public access to such information is an important means of ensuring its quality.

A point was made during the fieldwork that a system already exists to ensure ‘controlled transparency’ as opposed to ‘unlimited transparency’ – namely, obtaining a court order to compel the disclosure of beneficial ownership information.<sup>127</sup> On one view, introducing the concept of legitimate interest would shift the decision-making power from courts to registrars, who may be less well-placed to make those determinations.<sup>128</sup> Yet the costs of bringing such court proceedings in the BVI vary from approximately \$15,000 to \$250,000,<sup>129</sup> which is hardly in line with the accessibility principle that we advocate.

Finally, there is a widespread concern among practitioners in international financial centres that customers will steer clear of jurisdictions that will be the first to introduce public disclosure of beneficial ownerships without any limits such as the legitimate interest requirement. In contrast, in

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<sup>122</sup> Recital 42 of the Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU.

<sup>123</sup> Interview 14, tax official, BVI, video call, 22 April 2020.

<sup>124</sup> Interview 19, TCSP expert with government experience, Jersey, video call, 6 May 2020.

<sup>125</sup> Article 1(15)(d).

<sup>126</sup> Interview 32, three civil society experts, London, video call, 17 June 2020.

<sup>127</sup> Interview 11, two lawyers, BVI, video call, 17 April 2020.

<sup>128</sup> Interview 14, tax official, BVI, video call, 22 April 2020.

<sup>129</sup> Interview 11, two lawyers, BVI, video call, 17 April 2020.

their experience the EoN arrangements have either not had any negative effect on business competitiveness or have been positive by signalling the jurisdiction's probity,<sup>130</sup> with one interviewee characterising businesses turning to better regulated jurisdictions as a 'flight to quality'.<sup>131</sup> This stands in contrast to a study that suggests that the amount of bank deposits in international financial centres tends to decrease in response to tax information exchange treaties adopted by the respective jurisdiction.<sup>132</sup> However, that research is based on 13 international financial centres and is focused on the money held in bank accounts in a given country rather than companies incorporated there (who may or may not hold funds in that same country).

### *Dealing with Exemptions*

In some cases, there will be legitimate grounds to restrict access to beneficial ownership information. Kidnapping risks are often cited as a counterpoint to the benefits of transparency although, according to one TCSP expert, they are almost exclusively limited to Latin America and likely to be exaggerated.<sup>133</sup> An ongoing case in the CJEU concerns the interpretation of the conditions that justify protecting a person's beneficial ownership information from public disclosure. The case relates to an individual who claims to 'make regular visits to countries with unstable political regimes experiencing a high level of ordinary crime, creating for him a significant risk of kidnapping, abduction, violence, and even death'. The legal question at the heart of the dispute is whether such risks must be 'disproportionate' in order to justify non-disclosure.<sup>134</sup> Another risk is that of authoritarian governments using beneficial ownership information for repressive purposes, but history shows that the availability of such information is not at all a significant factor in determining whether an abusive government is able to oppress its citizens.

### **Conclusion**

The notion that publicly accessible beneficial registers alone will radically enhance responses to financial crime needs qualification. Over the course of this research, dozens of interviewees from across the public sector, private businesses and civil society have underscored the need to examine beneficial ownership information in context. This includes: understanding what its users require; securing its accuracy; and ensuring it does not acquire such symbolic status as to obscure other meaningful efforts against financial crime.<sup>135</sup>

The experience of the UK, which has been the trailblazer in this area by establishing a public company register, is illustrative. The government has signalled its intention to improve the accuracy of the information the register contains, but these are largely limited to digital identity verification for directors and beneficial ownership, with judgement reserved on what Companies House should do about companies that present hallmarks of fraudulent or criminal activity.<sup>136</sup> In the meantime,

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<sup>130</sup> Interview 1, two TCSP experts, BVI, video call, 14 April 2020; interview 41, three private sector experts with expertise in finance and law, Cayman Islands, video call, 24 July 2020.

<sup>131</sup> Interview 10, lawyer with government experience, BVI, video call, 16 April 2020.

<sup>132</sup> Niels Johanessen and Gabriel Zucman, 'The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown', *American Economic Journal: Economic Policy* (Vol. 6, No. 1, February 2014), pp. 65, 73.

<sup>133</sup> Interview 1, two TCSP experts, BVI, video call, 14 April 2020.

<sup>134</sup> CJEU, 'Case C-37/20, Summary of the Request for a Preliminary Ruling Pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice', 24 January 2020.

<sup>135</sup> Interview 29, financial crime expert, London, video call, 15 June 2020; interview 43, retired civil servant, UK, video call, 12 August 2020; interview 40, five public officials, Cayman Islands, video call, 24 July 2020.

<sup>136</sup> Department for Business, Energy and Industrial Strategy, 'Corporate Transparency and Register Reform: Government Response to the Consultation on Options to Enhance the Role of Companies House and Increase

the UK's system is seen abroad as a cautionary tale of good intentions that failed to deliver.<sup>137</sup> The UK government also aims to understand how publicly accessible data, including beneficial ownership information, improves corruption detection and investigation in four African jurisdictions, which can provide useful lessons for developing countries.<sup>138</sup>

In short, having sparred over the discrete issue of public access, governments are only beginning to explore the much broader set of questions, which are essential to beneficial ownership disclosure and unlikely to spark controversy. As they do so, we outline five principles that, while falling short of offering one-size-fits-all policy prescriptions, can help clarify governments' thinking on questions they need to consider when mandating beneficial ownership disclosure, which we list in the Annex below. Taking these principles and questions into account will help governments to genuinely use beneficial ownership information for law enforcement purposes rather than simply comply with international requirements for appearances' sake.

The principles we propose are as follows:

- **Domestic verification.** To ensure that the beneficial ownership information is accurate, the burden of verifying the information must be placed on the state – specifically, the registrar or another appropriate agency – or regulated intermediaries. Either approach has its costs, which constitute the price of having reliable information. In contrast, solely relying on a company or other arrangement to self-report its beneficial owners is ineffectual, especially if no meaningful sanctions are in place to dissuade non-compliance.
- **External validation.** Domestic verification apart, confidence in a state's beneficial disclosure system requires external validation. This can be provided either by opening the register to the public or setting up an international validation scheme. For instance, the FATF could collect and analyse countries' reviews of their experience in obtaining beneficial ownership information from other jurisdictions. This could take place in the form of a 'horizontal review' of a specific issue (that is, beneficial ownership disclosure) across countries in addition to the regular mutual evaluation review that assesses country compliance with the whole spectrum of the FATF's requirements once every 10 years.<sup>139</sup>
- **Proactive use.** There is a temptation in some countries, especially international financial centres, to limit their role in fighting international financial crime to furnishing information to overseas agencies on request. To identify financial crime, a more proactive approach is necessary, including reviewing the data for anomalies and revisiting it in light of news stories and newly uncovered typologies, and thus contributing to the global effort to combat financial crime.

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the Transparency of UK Corporate Entities', 18 September 2020, pp. 8, 64, <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925059/corporate-transparency-register-reform-government-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925059/corporate-transparency-register-reform-government-response.pdf)>, accessed 14 October 2020.

<sup>137</sup> Interview 17, US policy maker, Washington, DC, video call, 4 May 2020.

<sup>138</sup> Development Tracker, 'Mobilising Data for Anti-Corruption (MoDAC)', <<https://devtracker.dfid.gov.uk/projects/GB-GOV-1-300291>>, accessed 14 October 2020.

<sup>139</sup> For instance, following the 2015 Paris terrorist attacks, the Financial Action Task Force conducted a terrorist financing fact-finding initiative to swiftly establish countries' ability to combat terrorist financing. See FATF, 'Counter-Terrorism Financing Summit, Bangkok, 8 November 2018', <<https://www.fatf-gafi.org/publications/fatfgeneral/documents/speech-cft-conference-nov-2018.html>> accessed 15 October. The FATF-style regional body in Europe, MONEYVAL, conducts such horizontal reviews on an occasional basis. See Council of Europe, 'Horizontal Reviews', <[https://www.coe.int/en/web/moneyval/evaluations/horizontal\\_reviews](https://www.coe.int/en/web/moneyval/evaluations/horizontal_reviews)>, accessed 14 October 2020.

- **Parity.** Despite the widespread understanding that various legal entities and arrangements – such as companies, trusts and partnerships – can be used to similar ends, beneficial ownership information in respect of them is not always collected and disclosed consistently. Some entities may historically be more often abused than others, and there may be an incentive on the part of policymakers to address one issue at a time. This creates room for displacement and results in an approach that is about as satisfactory as an unfinished jigsaw puzzle.
- **Accessibility.** In deciding who should have access to beneficial ownership information, governments should consider the needs of both domestic and foreign law enforcement agencies and tax authorities, as well as those of the regulated businesses and public at large. This assessment should be transparent and documented. If no arrangements exist for external validation of a country’s beneficial ownership information, the widest possible access is desirable. Those with a right to access beneficial ownership information should be able to do so without significant financial or bureaucratic barriers.

### **Annex: Questionnaire for Policymakers**

#### ***Defining Beneficial Ownership Information***

1. Does the proposed beneficial ownership disclosure system cover all legal entities and arrangements – such as companies, trusts and partnerships – that can be used to obscure beneficial ownership?

#### ***Identifying the Users***

2. What do you know about how each of the following groups use beneficial ownership information?
  - a. Domestic law enforcement agencies and other state authorities;
  - b. Foreign law enforcement agencies and state authorities;
  - c. Regulated businesses and/or broader business community; and
  - d. Civil society groups and journalists?
3. What consultations have been held with each of these groups to ensure an accurate and up-to-date understanding of how they use – or can use – beneficial ownership information?
4. Which of the identified use cases do you view as valuable and why?
5. What policy or legal considerations militate against providing any of these groups with access?
6. How does the proposed beneficial ownership disclosure system allow proactive analysis of information contained on the database? Who is expected to conduct such analysis?

#### ***Access to Information***

7. How does the proposed system protect against beneficial ownership information being used for unintended purposes?
8. What are the requirements for accessing beneficial ownership information? Do they entail significant financial or bureaucratic barriers?
9. Would the concept of legitimate interest provide desirable compromise between broad public access to beneficial ownership information and privacy? If yes, what authority has the best resources and expertise to determine whether a legitimate interest exists?

#### ***Ensuring the Accuracy of Information***

10. Who submits beneficial ownership information?

11. What obligations is that person under as relates to ensuring the accuracy of the information provided?
12. Who is expected to verify the accuracy of the information provided, including:
  - a. A regulated business;
  - b. The company registrar;
  - c. Some third agency?
13. What sanctions are available for providing false information?
14. How realistic is the effective application of those sanctions?
15. If regulated businesses are expected to verify beneficial ownership information, are they subject to effective supervision?
16. If the company registrar or some third agency is expected to verify beneficial ownership information, does it have appropriate resources and expertise for the carrying out of these responsibilities?
17. Does verification of beneficial ownership information cover both factual accuracy (e.g. whether the person concerned exists or holds shares in the company concerned) and correct interpretation of the beneficial ownership rules (e.g. whether, based on the totality of available information, the person concerned should be deemed a beneficial owner)?

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