Module 3
TOOLS FOR TRANSPARENCY
Introduction

Before proceeding to Module 3, we would like to emphasize that vast majority of legal persons and legal arrangements are used for legitimate purposes.

The safeguarding of these important commercial and personal financial tools is one of the main objectives in transparency of beneficial ownership.
International Instruments and Standards

• In Module 3, we will walk you step-by-step through the **G20 High Level Principles on Beneficial Ownership Transparency**.

• The G20 Principles provides a comprehensive framework for discussion and analysis of how a country (or countries) measures up to the international standards.

• Each section provides a brief overview. If you want to read more about the topics covered, see **Module 5: Additional Resources**.
Legal Persons and Legal Arrangements

As you go through the module, keep in mind:

• **Legal person**: refers to companies, partnerships, foundations, and the like. Also referred to as “legal entities.”

• **Legal arrangement**: refers to trusts which originated from England and exist in common law jurisdictions.
  • It also refers to trust-like arrangements such as *fiducie*, *fideicomiso* and *Treuhand* that have come into existence in civil law and other jurisdictions.

• Sometimes they are referred together as “corporate vehicles” or “legal structures.”
First, what is the G20?

• G20 is...The Group of Twenty (G20) is composed of 19 countries and the European Union. The G20 provides the world’s largest economies with a forum on international economic cooperation and decision-making.

• The G20 adopted the High Level Principles on the Transparency of Beneficial Ownership in 2014, stating that:

  “Improving the transparency of legal persons and arrangements is important to protect the integrity and transparency of the global financial system. Preventing the misuse of these entities for illicit purposes such as corruption, tax evasion and money laundering supports the G20 objectives of increasing growth through private sector investment.”
The G20 High Level Principles on Beneficial Ownership Transparency

The G20 High Level Principles on Beneficial Ownership Transparency build on existing International instruments and standards, including:

• **The FATF (Financial Action Task Force) Recommendations:** International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation

• **Global Forum on Transparency and Exchange of Information for Tax Purposes**

• **United Nations Convention against Corruption**
FATF is the international standard setting body on anti-money laundering and countering the financing of terrorism (AML/CFT) and proliferation.

The FATF 40 Recommendations provide the most comprehensive standards on beneficial ownership transparency, including its Recommendations on:

- Transparency and beneficial ownership of legal persons (R.24)
- Transparency and beneficial ownership of legal arrangements (R.25)
- Financial institution secrecy laws (R.9)
- Customer Due Diligence by banks, other financial institutions and professional service providers such as lawyers, accountants and trust and company service providers (R.10 and R.22)
- Record-keeping (R.11 and R.22)
- Additional Recommendations include:
  - Supervision of banks and professional service providers
  - Suspicious transaction reporting
  - Politically exposed persons
  - Domestic and international cooperation
The Global Forum is “the multilateral framework within which work in the area of transparency and exchange of information [for tax purposes] has been carried out by both OECD [Organisation for Economic Co-Operation and Development] and non-OECD economies since 2000.”

The Global Forum’s Standards cross-references the FATF Recommendations, and “require:

• Existence of mechanisms for exchange of information upon request.
• Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request in a timely manner.
• Respect for safeguards and limitations and strict confidentiality rules for information exchanged.”

United Nations Convention Against Corruption

QUICK FACTS:
- Commonly known as UNCAC
- Entered into force in 2005
- 176 States Parties (as of July 2015)
- Implementation Review mechanism / voluntary publication of country review reports
- Website: www.unodc.org/unodc/en/treaties/CAC

- **UNCAC’s purposes are:**
  - To promote and strengthen measures to prevent and combat corruption.
  - To promote, facilitate and support international cooperation and technical assistance in prevention of and fight against corruption, including in asset recovery.
  - To promote integrity, accountability and proper management of public affairs and public property.

- **UNCAC provides for beneficial ownership transparency, including through:**
  - Obligations on countries to undertake measures to prevent money laundering (Art. 14.1(a)) and Prevention and detection of transfers of proceeds of crime (Art. 52.1 and 52.2)
  - Private sector (such as banks) obligation to conduct customer due diligence (Art. 12.2(c))
  - Requiring countries to ensure their financial institutions maintain adequate records including at minimum information relating to identity of the customer as well as, as far as possible, of the beneficial owner (Art. 52.3)
• **UNCAC provides for beneficial ownership transparency, including:**
  
  • Obligations on countries to ensure that there are measures to overcome obstacles that may arise out of the application of bank secrecy laws (Art. 40)
  
  • Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities (Art. 12, para. 2 (d)), as for other areas where the State intervenes in one way or another in economic life and the private sector, have been shown to be vulnerable to corrupt practices or other abuse.
The G20 High Level Principles on the Transparency of Beneficial Ownership

Applicability
Serves as useful framework for understanding the many components that make up a transparent beneficial ownership system
The G20 High Level Principles on the Transparency of Beneficial Ownership

Concept of Transparency
Transparency is a key objective under UNCAC, FATF 40 Recommendations and the Global Forum Standards, but is not expressly defined in them.

Instead, it is an overarching objective that countries are required to meet through implementation of various concrete measures to ensure:

• **Availability** of accurate, adequate and current beneficial ownership information; and

• **Timely Access** to that information by relevant competent authorities.
The G20 High Level Principles on the Transparency of Beneficial Ownership

Now let’s proceed to the 10 Principles!
KEY POINTS:

- Must be a **natural person** *(i.e. human being)*
- **Control can be direct or indirect**
  - Example of direct control: holding majority voting rights in a company
  - Examples of indirect control: through use of a nominee director or “front”/“straw man”

- Referred to as a substantive definition of beneficial ownership, this requires countries and its banks and other professional service providers to look not just at how much of a company someone owns or whether the person is listed in the company incorporation papers as the director/controller but to examine who really owns and/or controls the legal person or arrangement.

- Not all countries have adopted the substantive definition, or may have done so in some of their laws but not yet in others.

- Without a substantive definition of the beneficial owner that meets international standards, there is the risk of gaps in transparency.

**Want to read more?**

- FATF Recommendation 10 and Interpretative Note to R. 10 para 5(b)(i.i-iii).
**Principle 2**

Countries should assess the existing and emerging risks associated with different types of legal persons and arrangements, which should be addressed from a domestic and international perspective.

a. Appropriate information on the results of the risk assessments should be shared with competent authorities, financial institutions and designated non-financial businesses and professions (DNFBPs) and, as appropriate, other jurisdictions.

b. Effective and proportionate measures should be taken to mitigate the risks identified.

c. Countries should identify high-risk sectors, and enhanced due diligence could be appropriately considered for such sectors.

**Key Points:**

- FATF R.1 requires countries to assess their risks for money laundering and terrorism financing.

- Principle 2 requires member countries to:
  - Assess the risks of their legal persons and arrangements being misused by their residents and non-residents ("international perspective")
  - Share the findings with their authorities (such as bank supervisors, financial intelligence units, tax enforcement), banks, other financial institutions, and Designated Non-Financial Businesses and Professions/professional service providers.
  - Take effective measures to mitigate the risks.
  - Identify high risk sectors and consider enhanced due diligence for them.

- **Key Term:**
  - Designated Non-Financial Businesses and Professions (DNFBPs): includes professionals such as lawyers, accountants, and trust and company service providers that facilitate the establishment and management of companies, trusts and such.
Principle 3

Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.

KEY POINTS:

• With the global marketplace for companies and other types of legal persons, one can form and register a legal person in many countries of the world.

• So for instance, a resident of country A may register a company in country B, using the services of a lawyer in country C. He uses the company to swindle victims in Country D.

• “Maintain beneficial ownership information onshore” means that country B must require the company which was established and registered under its laws to maintain the beneficial ownership information—in country B. It is not enough that the resident of country A has the information in country A or the lawyer has the information in his files in country C.

• Adequate means that there has to be enough information to be able to identify the person—Name, date of birth, passport or ID number, etc.

• Accurate means the information has to be correct.

• Current means the information has to be updated on a timely basis, including when the beneficial owner changes.
**Key Points:**

- **Timely access** to the beneficial ownership information of legal persons
- **Access is by authorities** who need it to carry out their supervisory, tax enforcement and other law enforcement duties
- Under FATF standards, countries can meet this obligation by one or more mechanisms, including:
  - Central registries (such as the UK is currently seeking to implement through its company registry)
  - Requiring financial institutions and/or other professional services providers to collect and maintain the information
  - Through law enforcement or other governmental powers
**Principle 5**

Countries should ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including information of settlors, the protector (if any) trustees and beneficiaries. These measures should also apply to other legal arrangements with a structure or function similar to express trusts.

**KEY POINTS:**

- FATF defines **express trust** as: “a trust clearly created by the settlor, usually in the form of a document e.g. a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust).”

- In its most basic form, an express trust will have a:
  - **Settlor**—the person who contributes the trust assets
  - **Trustee**—the person who holds the legal title to the trust assets and administers it
  - **Beneficiary**—the person entitled to the trust assets
  - **Protector**—some countries permit settlors to appoint a protector to oversee the trustee’s handling of the trust

- FATF R.25 obligates the trustee to identify and maintain records on all of these persons as well as any other professionals that provide services to the trust.
Principle 6
Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal arrangements.

KEY POINTS:
• As with Principle 4 and legal persons, Principle 6 requires countries to ensure timely access to the beneficial ownership information of trusts and other legal arrangements.
• Access is by authorities who need it to carry out their supervisory, tax enforcement and other law enforcement duties.
**Principle 7**

Countries should require financial institutions and DNFBPs, including trust and company service providers, to identify and take reasonable measures, including taking into account country risks, to verify the beneficial ownership of their customers.

a. Countries should consider facilitating access to beneficial ownership information by financial institutions and DNFBPs.

b. Countries should ensure effective supervision of these obligations, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.

**KEY POINTS:**

- Financial institutions that open banking and other accounts, and professionals such as lawyers, accountants and trust and company service providers that form, manage or provide certain services to legal persons and legal arrangements are required to identify and verify the beneficial ownership of their customers.

- Countries have to make sure that the financial institutions and professionals comply with their customer due diligence and recordkeeping requirements.

- Countries also should:
  - have a range of penalties (sanctions) that they can apply if the financial institutions and professionals don’t carry out their obligations, and
  - enforce the penalties in case of non-compliance.
KEY POINTS:

- **Effective cooperation** means that there are no undue legal or practical barriers that prevent national authorities from cooperating with one another or with their international counterparts.

- If a request for beneficial ownership information is received and the request is a proper one, then authorities should be able to exchange information in:
  - A timely manner—without undue delays,
  - An effective manner.

**Principle 8**

Countries should ensure that their national authorities cooperate effectively domestically and internationally.

Countries should also ensure that their competent authorities participate in information exchange on beneficial ownership with international counterparts in a timely and effective manner.
Principle 9
Countries should support G20 efforts to combat tax evasion by ensuring that beneficial ownership information is accessible to their tax authorities and can be exchanged with relevant international counterparts in a timely and effective manner.

KEY POINTS:
- This Principle draws from the Global Forum’s Standards, which cross-references the FATF Recommendations.
- The Global Forum standards require:
  - Existence of mechanisms for exchange of information upon request.
  - Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request in a timely manner.
  - Respect for safeguards and limitations and strict confidentiality rules for information exchanged.
- Note that the Principle speaks about tax evasion, not tax avoidance.
Principle 10

Countries should address the misuse of legal persons and legal arrangements which may obstruct transparency, including:

a. prohibiting the ongoing use of bearer shares and the creation of new bearer shares, or taking other effective measures to ensure that bearer shares and bearer share warrants are not misused; and

b. taking effective measures to ensure that legal persons which allow nominee shareholders or nominee directors are not misused.

KEY POINTS:

While bearer shares/bearer share warrants, nominee shareholders and nominee directors can and are used as legitimate tools, if misused they can serve as obstacles to transparency.

- FATF Glossary defines **bearer shares** as “negotiable instruments that accord ownership in a legal person who possesses the bearer share certificate.” Because it is difficult to detect the transfer of the paper certificates, authorities are concerned that bearer shares can be misused to conceal beneficial ownership.

- **Nominee shareholders and nominee directors** (sometimes referred to as professional or third-party directors) fall into 2 categories:
  - **Formal**: paid professional nominees
  - **Informal**: associates, friends, relatives, “front men”

- To prevent misuse of nominees, the FATF Recommendations suggest such measures as requiring nominee shareholders and directors to disclose their status to the company registry and to maintain information identifying their nominators.
The G20 High Level Principles on the Transparency of Beneficial Ownership

CHECKLIST:

How does your country measure up to the G20 Principles?

- 1. Have a substantive Definition of Beneficial Ownership
- 2. Undertake a National Risk Assessment
- 3. Maintain onshore the BO information of legal persons incorporated under the country’s laws
- 4. Ensure access by relevant authorities to BO information of legal persons
- 5. Maintain BO information of express trusts
- 6. Ensure access by relevant authorities to BO information of trusts/legal arrangements
- 7. Require and Supervise Financial Institutions and DNFBPs to identify and verify beneficial ownership and keep the records (customer due diligence and recordkeeping)
- 8. Ensure effective domestic and international cooperation
- 9. Combat tax evasion through BO information sharing
- 10. Prevent misuse of bearer shares/nominee shareholders/nominee directors
Congratulations!

You have successfully completed Module 3.

Now go to Module 4 and . . .
Take a short interactive quiz to test your newly gained knowledge