Preventing the Misuse of Corporate Vehicles

Timothy Goodrick
Policy Analyst, FATF Secretariat
UNCITRAL – Working Group I
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Overview

- Financial Action Task Force (FATF)
- What is the problem?
- Why action is needed?
- International standards: FATF Recommendations
- FATF Guidance
- Other global initiatives
- Possible relevance for UNCITRAL
- Future FATF work
Financial Action Task Force (FATF)

- Inter-government policy-making body:
  - 34 member countries + 2 member organisations
  - 8 FATF-style regional bodies (FSRBs)
  - 22 Observers

- Sets the **international standards** for anti-money laundering and counter-terrorist financing (AML/CFT)

- **Core activities:**
  - Standard setting (**FATF 40 Recommendations**)
  - Assessing compliance
  - Identify and respond to threats: high risk jurisdictions and typology studies

- **Over 190 countries** have endorsed the FATF Standards
What is the problem?

- **Criminals misuse corporate vehicles for illicit purposes**: money laundering, corruption, tax fraud & terrorist financing

- **Corporate vehicles that are not transparent facilitate the use and movement of proceeds of crime by disguising**:
  - The identity of the suspected criminal
  - The true purpose of an account or property
  - The source of funds or property

- **Example techniques**: use of shell companies, complex structures, use of intermediaries and nominees.
Why is action needed?

- Piercing the corporate veil is essential to combat criminal activity:
  - Important policy objective to combat misuse of corporate vehicles

- Integrity is important for economic growth

- Tax evasion: direct impact of state revenue
FATF Recommendations

- Set the **international standards** for measures to combat money laundering, terrorist financing and the financing of proliferation.
- First drafted in 1990, recently revised in 2012.
- Countries have some flexibility to implement AML/CFT measures to address risk.
- Legal, regulatory and operational measures:
  - Includes preventive measures for financial institutions and other designated sectors
- **Action to prevent the misuse of corporate vehicles:**
  - Legal persons (Recommendation 24), and
  - Legal arrangements (Recommendation 25)
Legal Persons – R.24

FATF Recommendation 24

- Countries must take measures to prevent the misuse of companies
- Risk assessment of legal persons
- All companies to be registered in a company registry
- Availability of basic information:
  - Recorded by the company and company registry: Company name, incorporation details, status, basic regulating powers, address, list of directors. This should be publicly available
  - Recorded by the company: Register of all shareholders or members
Legal Persons – R.24

- **Beneficial owner** – *the natural person(s) who ultimately owns or controls a customer....It also includes those persons who exercise ultimate effective control over a legal person or arrangement*

- Competent authorities should have **timely access to accurate and up-to-date beneficial ownership information**

- **Flexibility** – possible mechanisms:
  - Recorded by the **company registry**
  - Recorded by the **company** themselves
  - Determined using **existing information** (e.g. information held by financial institutions, tax authorities)
Legal Persons – R.24

- Beneficial ownership information: accuracy, availability, record-keeping, and evidence-gathering
- Controls on bearer shares and nominee shareholders
- Sanctions for non-compliance
- International cooperation
Other FATF standards

- Financial institutions to undertake customer due diligence (CDD), including identity of beneficial owners of corporate vehicles (R.10)
- Lawyers and trust and company service providers to also undertake CDD (R.22)
- Other obligations: Reporting suspicious transactions, record keeping, transaction monitoring, etc.
Challenges to transparency

- Ownership information and transactions can be spread across multiple jurisdictions
- Beneficial ownership information is not collected or is not accurate:
  - use of complex or non-transparent structures
  - inadequate safeguards regarding the misuse of bearer shares or nominees
  - Information collected is of poor quality
- Timely access to information where a country uses an investigative (reactive) approach
- Use of gatekeepers and level of CDD and supervision
- Domestic or international cooperation
**FATF Guidance on Transparency and Beneficial Ownership of Corporate Vehicles (October 2014)**

- **Audience is countries: policy-makers and practitioners**
- **Focus on implementation:**
  - Provides guidance on practical measures countries can take to implement the requirements
- **Outlines the options available and issues that countries need to consider:**
  - For example: what to consider when establishing the appropriate mechanism: Company register? Companies? Other measures?
Other global initiatives

- G8 Action Plan Principles to prevent the misuse of companies and legal arrangements (June 2013)
- G20 is developing high-level principles on beneficial ownership transparency (2014)
- World Bank / UNODC StAR Initiative:
  - *The Puppet Masters* (2011)
- OECD taxation initiatives:
  - OECD Global Forum on Transparency and Exchange of Information for Tax Purposes
  - Common Reporting Standard
Possible relevance for UNCITRAL

- Holistic approach to company incorporation and registration
  - Develop and implement measures taking into account AML/CFT objectives and FATF standards
- Consider AML/CFT issues in best practices and legal frameworks, for example, to ensure:
  - Sufficient information collected by company registry
  - Measures to ensure it is accurate and up-to-date
  - Timely access by authorities to information held by the company registry
  - If registry collects beneficial ownership information: range of issues to ensure accuracy and access
Future FATF work

- **FATF 4\textsuperscript{th} round of mutual evaluations**
  - Country evaluations published publicly
  - Recently commenced: first reports to be published in 2014
  - Focus on effectiveness

- **Undertake further study**
  - Focus on investigative techniques, methods and cases
For more information:

FATF public website

www.fatf-gafi.org