

Revisions to FATF Recommendation 24 - White Paper for Public Consultation

Submission by

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Beneficial ownership transparency - Sri Lankan context

Sri Lanka does not have a comprehensive and public mechanism to identify beneficial ownership, even though since 2018 there has been conversation around the need to amend the Companies Act No. 7 of 2007, to have increased transparency on beneficial ownership¹. Currently, data on registered companies is available to the public, but not online. Any interested party may access the relevant documents by paying a specified fee to the Registrar of Companies. However, it is usual for persons to refer this service through a lawyer rather than directly accessing it, making it in practice tedious.

Per the proposed amendment, the Registrar of Companies would be required to maintain a beneficial ownership registry.² Although it was stated that the amendments were nearing final drafting, as of July 2021, the most recent amendment to the Act titled Companies (Amendment) Act, No. 13 of 2019³, has no mention or reference to the above.

However, per the Financial Transaction Reporting Act (FTRA) No. 6 of 2006⁴, financial institutions (FIs) are required to identify the beneficial owners of their clients when establishing a business relationship.⁵ Further there are several guidelines⁶ issued by the Financial Intelligence Unit (FIU) – the Anti Money Laundering and Countering the Financing of Terrorism (AML/CFT) regulator in the country – to help FIs and Designated Non-Financial Businesses and Professions (DNFBPs) to identify beneficial owners.⁷

While the Guidelines requiring beneficial ownership information to be held by FIs are a step in the right direction, a few key concerns still remain:

- The current process relies purely on FIs to collect information, leading to possible non-compliance and inaccuracies
- There is no third-party verification or oversight
- Enforcement for conflicts of interest, money laundering, terrorist financing or other forms of corruption will be limited to instances of suspicions being raised through

¹ <https://www.ft.lk/front-page/Disclosure-on-beneficial-ownership-to-ensure-greater-transparency/44-653355>

² See footnote 1.

³ Companies (Amendment) Act, No. 13 of 2019, <http://www.drc.gov.lk/en/wp-content/uploads/2020/05/Companies-Act-Amendment-English.pdf>

⁴ [http://fiusrilanka.gov.lk/docs/ACTs/FTRA/Financial_Transactions_Reporting_Act_2006-6_\(English\).pdf](http://fiusrilanka.gov.lk/docs/ACTs/FTRA/Financial_Transactions_Reporting_Act_2006-6_(English).pdf)

⁵ Sections 30, 31 and 32 of the Financial Transaction Reporting Act No.6 of 2006

⁶ Guidelines on Identification of Beneficia Ownership for Financial Institutions, No. 04 of 2018, <http://fiusrilanka.gov.lk/docs/Guidelines/2018/Guideline-04-2018.pdf>, Guidelines for Designated Non-Finance Businesses on Identification of Beneficial Ownership No. 02 of 2019, <http://fiusrilanka.gov.lk/docs/Guidelines/2019/Guideline-02-2019.pdf>

⁷ See footnote 4

suspicious activity reports by the FIs or action taken by law enforcement authorities in response to a complaint. Without public accessibility, law enforcement's ability to detect such crimes is therefore severely limited.

- The Guidelines are non-binding

Therefore, Transparency International Sri Lanka proposes that the FATF amend Recommendation 24 to include the following:

1. All countries to be required to create, maintain and consistently update a register of beneficial owners.

It is crucial that this becomes a universal requirement, in order to effectively utilize the registries to combat corruption and money laundering. The combined impact of ensuring that all countries have beneficial ownership registries will not only be useful for tracing proceeds of crime but also be an effective preventive measure of corruption and money laundering.

2. All countries to be required to make their central beneficial ownership registers publicly available – preferably online.

There are numerous benefits of making registers publicly available. The most notable are as follows:

- Foreign competent authorities have direct access and will not need to resort to lengthy international cooperation requests.
- Obligated entities and other businesses can use the data as part of due diligence processes, to vet business partners and suppliers, make decisions on investments, among others.
- Other government bodies not directly tasked with anti-money laundering have access and can use the information to detect conflicts of interest, fraud and other wrongdoing including auditors, procurement officials, competent authorities, anti-corruption agencies, election management bodies, environmental agencies, among others.
- Civil society and journalists can scrutinise the data, revealing conflicts of interest and wrongdoing as well as contributing to the accuracy of the data.

3. All countries to be required to make their central beneficial ownership registers available free of charge without barriers to access to information.

Subjecting the information to the payment of a fee could restrict information which is important to transparency and accountability. As a result of this hurdle, information that could prevent misuse of public property and other forms of corruption could go under the radar, resulting in losses that will ultimately be borne by the public at large.

4. All countries to identify a competent authority to collect information on beneficial owners and all companies will be required to share this information with the authority on an annual basis or when beneficial ownership changes.

The primary responsibility to verify beneficial ownership information should lie with the registry authority (or public body responsible for collecting beneficial ownership information). The registry authority should be mandated by law to independently verify the information provided by legal entities. Adequate powers and resources should be given to the authority to allow them to:

- verify information provided by legal entities;
- request documents;
- carry out inspections and
- sanction non-compliance.