

EXECUTIVE SUMMARY

1. Criminals employ a range of techniques and mechanisms to obscure their ownership and control of illicitly obtained assets. Identifying the true beneficial owner(s) or individual(s) exercising control represents a significant challenge for prosecutors, law enforcement agencies, and intelligence practitioners across the globe. **Schemes designed to obscure beneficial ownership often employ a “hide-in-plain sight”**

Legal arrangements – refers to express trusts or other similar legal arrangements.

Legal persons – refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property.

strategy, leveraging global trade and commerce infrastructures to appear legitimate. However, visibility does not equate to transparency, and many of the tools that were designed to encourage business growth and development, such as limited liability corporations and nominee directorship services, can be used to facilitate money laundering, tax evasion, and corruption. The globalisation of trade and communications has only increased this threat, and countries now face the challenge of enforcing national laws in a borderless commercial environment.

2. This joint FATF Egmont Group report takes a global view assessing how legal persons, legal arrangements and professional intermediaries can help criminals conceal wealth and illicit assets. The purpose of the report is to help national authorities including FIUs, financial institutions and other professional service providers in understanding the nature of the risks that they face.

3. Analysis of 106 case studies demonstrates that **legal persons, principally shell companies, are a key feature in schemes designed to disguise beneficial ownership**, while **front companies and bearer shares** are less frequently exploited.

Shell company – incorporated company with no independent operations, significant assets, ongoing business activities, or employees.

Front company – fully functioning company with the characteristics of a legitimate business, serving to disguise and obscure illicit financial activity.

Shelf company – incorporated company with inactive shareholders, directors, and secretary and is left dormant for a longer period even if a customer relationship has already been established.

4. **Individuals and groups seeking to conceal the ownership of assets are most likely to exercise control over those assets via a combination of direct and indirect control**, rather than strictly one or the other.

In a majority of cases, the beneficial owner used a combination of layering and direct ownership chains, as well as professional intermediaries and third parties exercising control on their behalf. In a limited number of cases, the beneficial owner exercised *only* indirect control and rarely retained direct control through a complicated structure without involving an intermediary. This demonstrates that, in many cases, the beneficial owner will maintain some level of direct control in a scheme, but will rarely do so without also involving an intermediary or “straw man” (informal

nominee shareholders and directors, such as spouses, children, extended family, and other personal or business associates).

5. **Nominee directors and shareholders, particularly informal nominees (or “straw men”), are a key vulnerability**, and were identified in a large majority of case studies assessed for this report. The role of the nominee, in many cases, is to protect or conceal the identity of the beneficial owner and controller of a company or asset. A nominee can help overcome jurisdictional controls on company ownership and circumvent directorship bans imposed by courts and government authorities. While the appointment of nominees is lawful in most countries, the ongoing merits of this practice are questionable in the context of the significant money laundering and terrorist financing vulnerabilities associated with their use.

Specialist and professional intermediaries

6. **The use of specialists and professional intermediaries is a key feature** of schemes designed to conceal beneficial ownership, particularly in cases where the proceeds of crime are significant. The majority of the case studies involved professional intermediaries. While it was not always explicitly stated in the case studies, approximately half of all intermediaries involved were assessed as having been complicit in their involvement. This demonstrates that complicity is not necessary to facilitate a scheme designed to obscure beneficial ownership, and that **professionals can be unwitting or negligent in their involvement**. This serves to highlight the importance of effective regulation of designated non-financial businesses and professions, and the need for increased awareness amongst professional service sectors. Nevertheless, law enforcement experience in some jurisdictions indicates that professional intermediaries are more likely to be complicit than unwittingly involved in money laundering cases.

- In the case study sample available for this report, **trust and company service providers (TCSPs)** represented the highest proportion of professional intermediaries involved in the establishment of legal persons, legal arrangements, and bank accounts. The TCSP sector was also significantly more likely to provide nominee, directorship, and other company management services to their clients, provide services to other professionals on behalf of third-party clients, and provide services to clients based internationally. However, despite their significant involvement in the establishment and management of these arrangements, TCSPs appear less likely to be the architect of schemes designed to obscure beneficial ownership. TCSPs that were assessed as having been complicit in their involvement were more likely to have been wilfully blind than fully complicit, or may have also provided legal, accounting, or other financial services. This suggests that the role of TCSPs is more likely to be transactional in nature, operating at the behest of a client or other intermediary, who are often based in another country. It also demonstrates that, **while TCSPs appear to be less likely to be the masterminds of schemes designed to obscure beneficial ownership, the services provided by TCSPs are vulnerable to exploitation by criminals and other professional intermediaries involved in these schemes**.

- **Accounting professionals** were the least represented sector in the cases analysed for this report; however, they were significantly more likely to be complicit in their involvement when compared to legal professionals and TCSPs. The accounting profession demonstrated the least direct involvement in the establishment of legal persons, legal arrangements, or banking relationships, which suggests that the key role of the accounting profession in the construction of schemes designed to disguise beneficial ownership is the provision of expert advice. Accounting professionals represented the highest proportion of scheme designers and promoters in the case studies, and were more likely to promote their own scheme to prospective clients than to simply facilitate a scheme designed by their client. They were also the only professional sector that was not identified as having provided services to another professional intermediary on behalf of a third-party client. **It is likely that the financial acumen of the accounting profession, and the ease with which accountants can identify suspicious financial activities, limit their vulnerability to being unwittingly exploited to facilitate the concealment of beneficial ownership.** It also suggests that criminals and complicit professionals may be unwilling to involve an accounting professional unless their complicity can be assured in advance.
 - In comparison to other professional intermediary sectors, **the role of legal professionals in the facilitation of schemes designed to disguise beneficial ownership, varies depending on the situation.**
 - Legal professionals were more involved in the establishment of legal persons, legal arrangements, and bank accounts when compared with accountants, but less so when compared to TCSPs. The same was also true for the provision of nominee and directorship services.
 - Lawyers were the most likely of the three professions to be involved in the acquisition of real estate as a means of laundering the proceeds of crime and obscuring beneficial ownership.
 - Legal trust accounts and client accounts were also more frequently used as a means of disguising beneficial ownership, although the accounting profession also exhibited a similar proportion of this concealment technique. Legal professional privilege was also identified as a barrier to the successful recovery of beneficial ownership information.
 - In the case studies analysed for this report, where legal professionals were involved, there were a number of cases where legal professionals appeared to be unwitting or negligent in their involvement. This suggests that, despite their reasonably high level of involvement in the establishment of legal persons and arrangements, **legal professionals are not sufficiently aware of their inherent money laundering and terrorism financing vulnerabilities.** It is likely that this is exacerbated by the low level of regulation imposed on legal professionals in many countries.
7. Analysis indicates that **the services of both lawyers and accountants are rarely required to facilitate the same money laundering scheme – the involvement of one is typically sufficient.** TCSPs were present in almost all cases

that involved intermediaries from multiple sectors, and few cases demonstrated the use of both a lawyer and an accountant. Of the cases that involved multiple intermediaries from the same sector, the TCSP sector represented the overwhelming majority of these instances. When multiple TCSPs were exploited in a single scheme, almost all of the cases involved TCSPs in multiple jurisdictions. This reflects the role of TCSPs in establishing and managing local companies on behalf of foreign clients. Conversely, in instances where multiple legal or accounting professionals were used, most cases involved the use of multiple lawyers/accountants in the same jurisdiction, and most of these intermediaries were unwittingly involved. This suggests that, in instances where multiple lawyers or accountants are utilised to facilitate a scheme, criminal clients may be attempting to avoid suspicion by limiting their engagements with any single professional.

8. A lack of awareness and education of money laundering (ML)/ terrorist financing (TF) risks among professionals inhibits the identification of ML/TF red flags. This increases their vulnerability to being exploited by clients seeking to misuse otherwise legitimate services for ML/TF purposes. The case studies for this report identified that only four intermediaries involved in these schemes identified and reported suspicious activity in line with the FATF Standards. All of these cases were from countries that regulate designated non-financial businesses and professions (DNFBPs) under an anti-money laundering/counter-terrorist financing (AML/CFT) legal framework.

Anti-money laundering obligations and supervision

9. Seventeen per cent of jurisdictions that participated in the FATF's Horizontal Study of supervision and enforcement of beneficial ownership obligations do not impose any AML/CFT obligations or AML/CFT supervision on any DNFBPs whatsoever, despite this being a requirement of the FATF Standards. In some cases, this is the result of resistance to regulation from the relevant sectors or professions; in other cases, it may represent an "unfinished" aspect of the AML/CFT system which has not yet been implemented. The lack of supervision in these countries is a major vulnerability, and **professionals operating in countries that have not implemented appropriate regulations for DNFBPs represent an unregulated "back-door" into the global financial system.**

10. A country with a weak AML/CFT regime will exacerbate the vulnerabilities of legal persons, legal arrangements, and professional intermediaries. Key requirements of the FATF Standards, such as Immediate Outcomes 4 and 5, and Recommendations 10, 11, 12, 22, 23, 24, 25 and 28, amongst others, all relate to the risk profile of legal persons, arrangements, and intermediaries in a given jurisdiction. However, other inter-jurisdictional variables, such as trade and finance routes, are also influential with respect to the vulnerabilities and challenges associated with beneficial ownership. These vulnerabilities differ across jurisdictions and therefore cannot be definitively assessed at a global level. Competent authorities, financial institutions and DNFBPs should be mindful of the jurisdictional vulnerabilities that affect their country/business when assessing risk.

11. Schemes designed to obscure beneficial ownership often rely on a "hide in-plain-sight" strategy. This significantly impairs the ability of financial institutions, professional intermediaries, and competent authorities to identify suspicious

activities designed to obscure beneficial ownership and facilitate crime. At the same time, the FATF Standards and, by extension, much of the global AML/CFT infrastructure, centre upon the identification and reporting of suspicious activities by financial institutions and DNFBPs. Many of the case studies analysed for this report identified that information held by financial institutions was invaluable to the investigation of crime, and those countries that require the reporting of other transactions (such as threshold and cross-border transactions) indicated that these threshold-based reports were instrumental to the identification of irregular financial activities.

12. As the global economy becomes increasingly interconnected, and the sovereignty of financial borders dissipates, it is important to ensure that authorities have access to the appropriate information required to effectively deliver their mandate, whether it be suspicious transaction reporting submitted by reporting entities or other types of information, such as threshold and cross-border reporting. Furthermore, the FATF standards provide scope for countries to use several mechanisms to enable timely access to beneficial ownership information, and some countries have recently implemented, or are currently implementing, registers of beneficial ownership information as a mechanism to enable them to do so. Systems combining one or more approaches to ensure availability and accuracy of basic and beneficial ownership information may be more effective than systems that rely on a single approach. Some jurisdictions consider the availability of beneficial ownership registers assist competent authorities access up-to-date and accurate information, including for verifying information obtained from other sources.

Issues for consideration

13. As a result of the analysis and consultations that underpin it, this report identifies a number of issues to help address the vulnerabilities associated with the concealment of beneficial ownership, including:

- Consideration of the role of nominees including measures that may limit their misuse.
- The need for regulation of professional intermediaries in line with the FATF Standards, and the importance of efforts to educate professionals on ML and TF vulnerabilities to enhance awareness and help mitigate the vulnerabilities associated with the concealment of beneficial ownership.
- Further work to identify possible solutions or measures to prevent the misuse of legal professional privilege (LPP) to conceal beneficial ownership information, including through the provision of enhanced training and guidance material for legal professionals.
- Ensuring financial intelligence units have access to the widest possible range of financial information.
- Increased sharing of relevant information and transaction records to support global efforts to improve the transparency of beneficial ownership.
- Further work to understand what can be done to improve the quality and timeliness of the cross-border sharing of information, including through mutual legal assistance.

- Ensuring, for countries that make use of registers of beneficial ownership, and for all countries' company registers, that there is sufficient resource and expertise associated with their maintenance. This is to ensure that the information recorded in the register is adequate, accurate, and up-to-date, and can be accessed in a timely manner.
- The need for countries to consider and articulate the vulnerabilities and threats relating to domestic and foreign legal persons and arrangements, the domestic and foreign intermediaries involved in their establishment, and the means by which criminals may exploit them to facilitate ML and other criminality.

14. A broad theme underlying all of these issues is information, including possible ways to improve the reliability, access and mechanisms to share that information more effectively at domestic and international levels. In some instances, these issues aim to inform responses by individual governments in taking further action; other issues identify areas for further research and engagement.