



**financial intelligence centre
REPUBLIC OF SOUTH
AFRICA**

**Ultimate Beneficial Ownership:
Developments in international
standard setting context**

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DISCLAIMER

Not a FATF presentation!

- Personal views based on participation in FATF debates
- Revision process is still underway and nothing has been adopted yet



BACKGROUND

- Current FATF standards on customer due diligence require among others:
 - **Identifying** the beneficial owner, and **taking reasonable measures to verify** the identity of the beneficial owner such that the financial institution is satisfied that **it knows who the beneficial owner is**
 - For legal persons and arrangements this should include financial institutions **taking reasonable measures to understand the ownership and control structure** of the customer



BACKGROUND

- Definition:

“**Beneficial owner**” refers to the **natural** person(s) who ultimately **owns or controls** a customer and/or the person **on whose behalf** a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement



BACKGROUND

- Risk Based Approach:
 - Financial institutions ... may determine the extent of [CDD] measures on a risk sensitive basis depending on the type of customer, business relationship or transaction



WHAT IS COMING OUR WAY?

- FATF is midway through a process to revise certain Recommendations, including those on customer due diligence
- It seems Recommendations will not change dramatically as far as beneficial ownership is concerned:
 - Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is
 - For legal persons and arrangements this should include financial institutions **understanding the ownership and control structure** of the customer
 - In determining the reasonableness of the identity verification measures, regard should be had to the identified money laundering and terrorist financing risks



WHAT IS COMING OUR WAY?

- Definition will probably remain the same:
 - “**Beneficial owner**” refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement
- Will probably add clarification that reference to “**ultimately owns or controls**” and “**ultimate effective control**” refer to situations in which ownership/control is exercised through a **chain of ownership** or by means of control other than direct control



WHAT IS COMING OUR WAY?

- Risk Based Approach:
 - Financial institutions ... may determine the extent of [CDD] measures on a risk based approach
 - FATF will provide clearer understanding of the scope and implications of a risk based approach to CDD in interpretative notes to the Recommendations



WHAT IS COMING OUR WAY?

- Concept of 'beneficial ownership' will still apply to two different scenarios:
 - In respect of individuals it will apply to the person on whose behalf a transaction is being conducted
 - In respect of legal persons it will apply to the natural person(s) who ultimately owns or controls a customer
- FATF intends providing more clarity on these two scenarios in "Interpretative Notes" to the Recommendations



WHAT IS COMING OUR WAY?

- ***CDD – persons acting on behalf of a customer:***
 - Financial institutions should be required to verify that any person purporting to act on behalf of the customer **is so authorised**, and should identify and verify the identity of that person



WHAT IS COMING OUR WAY?

- ***CDD – legal persons and arrangements:***
- Financial institutions should be required to identify and verify the customer and understand the nature of its business, and its **ownership and control structure**
- As far as beneficial ownership is concerned financial institutions should be required to identify the beneficial owners of the customer and **take reasonable measures** to verify the identity of such persons
- Financial institutions should use the information obtained from the customer relating to its identity, nature of business and ownership and control structure to determine which natural persons should be considered to be beneficial owners



WHAT IS COMING OUR WAY?

- Companies and other legal persons
 - One or more natural person(s) ultimately owns a legal person:
 - Take reasonable measures to verify the identity of the person(s) who ultimately have a controlling ownership interest in a legal person
 - No natural person(s) ultimately owns a legal person:
 - Take reasonable measures to verify the identity of the person(s) exercising control through other means
- No natural person(s) has external control over a legal person:
 - Take reasonable measures to verify the identity of the natural person who holds the position of senior managing official



WHAT IS COMING OUR WAY?

- Legal arrangements (trusts): Take reasonable measures to verify the identity of
 - the settlor (founder),
 - the trustee(s),
 - the beneficiaries / class of beneficiaries, and
 - any other natural person exercising ultimate effective control over the trust.



WHAT IS COMING OUR WAY?

- Basic message:
 - **There is always a beneficial owner** – use information provided by the customer, in particular ownership and control structure as a map to identify who beneficial owner(s) of the client is
 - **Take reasonable measures to verify** the identity of person(s) identified as beneficial owner(s)
 - Extent and reasonableness of verification measures should be determined by reference to the **money laundering and terrorist financing risks**



QUESTIONS

General Information: www.fic.gov.za

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A large black question mark is suspended by a thin white string from the top edge of the slide. It is positioned over a grey, slightly angled surface. Below the question mark, four black spheres are arranged in a horizontal line on the grey surface. The background is a plain, light-colored wall.