

Updates on Disclosure of Beneficial Ownership (Part II) – Implementation Considerations

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Agenda

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- 2 The new law
- 3 Definition of key terms
- 4 Helping companies comply

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Background



FATF Recommendations on Beneficial Ownership :

- ❑ **R.24**: Countries to ensure that there is **adequate, accurate and timely information on BO** and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities

- ❑ **IO.5**: To ensure that **legal persons and arrangements are prevented from misuse for ML/FT, and BO information is available to competent authorities without impediments**

FATF Recommendations on Beneficial Ownership :

- ❑ To comply with R.24, countries should use one or more of the following mechanisms:
 - ❖ Option 1: Central Register of BO information
 - ❖ Option 2: Legal persons to maintain BO information
 - ❖ Option 3: Rely on existing information, including BO information collected by financial institutions (FIs) and/or designated non-financial businesses or professions (DNFBPs) such as company service providers (CSPs)

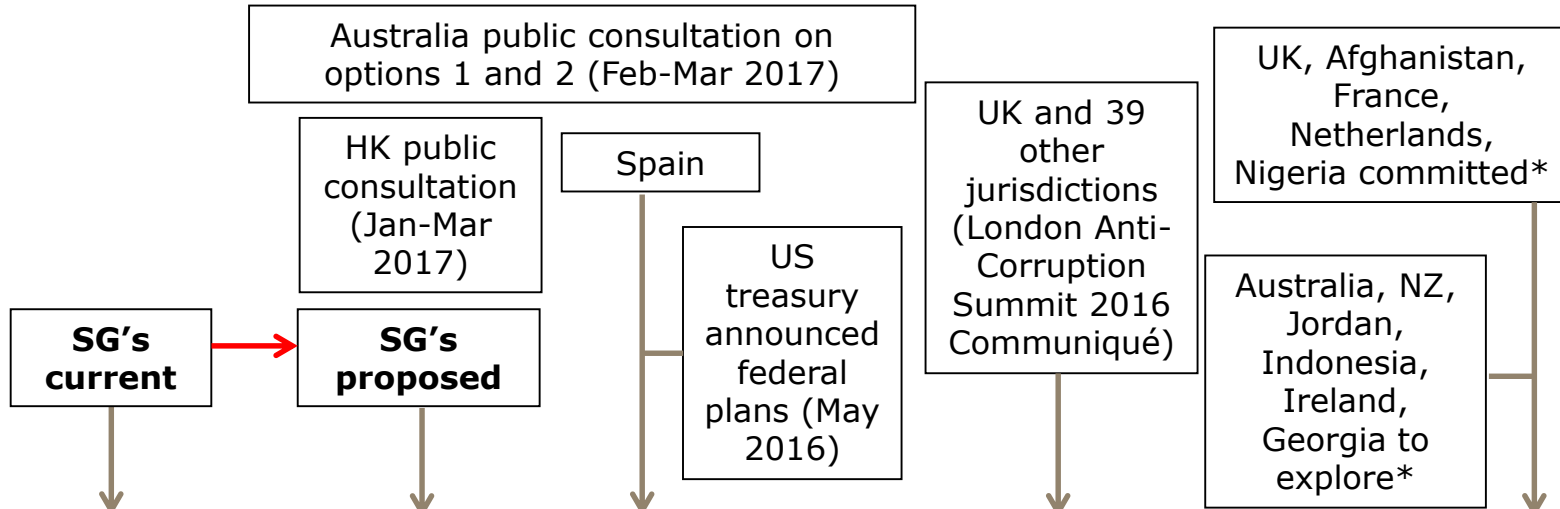
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The new law



International landscape for company BO

EU's 4th Anti-Money Laundering Directive
(item 4 or 6)



1. No BO requirement (except for listed co)	2. FIs and DNFBPs collect BO info	3. Legal persons to maintain BO info	4. Central, non-public BO register	5. Pilot initiative on auto exchange of BO info	6. Central, public BO register
	FATF R.24 Option 3	FATF R.24 Option 2	FATF R.24 Option 1		UK implemented register in Apr 2016
				Beyond FATF and GF standards	

Increasing BO transparency →

* Source: UK Govt press release, "PM hosts major summit as part of global drive to expose, punish and drive out corruption" (12 May 2016)

Singapore's new law

- ❑ Require locally incorporated/registered companies and LLPs to maintain registers of “controller” information.
- ❑ Proposal adapted from UK. Key differences: 1) Companies and LLPs keep BO registers, which 2) are private and accessible only to law enforcement authorities.
- ❑ Exempt listed companies as they are already subject to more stringent disclosure requirements under the Securities and Futures Act.

Singapore's new law

- ❑ Obligation imposed on company/LLP, with offence imposed on company/LLP and officers/partners in default

- ❑ Nature of obligation:
 - ❖ ascertain and identify beneficial owner/controller
 - ❖ obtain, record and update their particulars in company register

- ❑ Duty:
 - ❖ Company/LLP must take reasonable steps to ask for information (e.g. following leads and issue notices to persons requesting particulars)
 - ❖ Company/LLP must ask those whom they know or have reason to believe are controllers
 - ❖ Company/LLP need not probe further if recipient of notice does not reply

Singapore's new law

- ❑ Obligation also imposed on controllers to:
 - ❖ Inform company/LLP within 30 days of becoming controllers
 - ❖ Update changes in their particulars

- ❑ Offence to fail to comply

Extensive consultations

- ❑ Public consultation conducted by Ministry of Finance and ACRA (Dec 2016 to Jan 2017)

- ❑ Consultations and presentations with stakeholders, including:
 - ❖ Focus group discussions with bankers, lawyers and professional trustees
 - ❖ Institute of Singapore Chartered Accountants
 - ❖ CPA Australia
 - ❖ Chartered Secretaries Institute of Singapore
 - ❖ Association of Small and Medium Enterprises
 - ❖ The Law Society of Singapore
 - ❖ Singapore Institute of Directors
 - ❖ Singapore Business Federation
 - ❖ ACRA's Institute of Corporate Law

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Definition of key terms



Definition of controllers

- ❑ Controller: an individual or a legal entity that has a “significant interest” in or “significant control” over the company.

- ❑ “Significant interest” is based on:
 - ❖ Interest in (i) more than 25% of the shares or (ii) shares with more than 25% of total voting power in the company (for companies with share capital); and

 - ❖ Right to share in more than 25% of the capital or profits of the company (for companies without share capital).

Definition of controllers

□ “Significant control” is based on:

- ❖ Right to appoint or remove directors who hold a majority of the voting rights at directors’ meetings;
- ❖ More than 25% of the rights to vote on matters that are to be decided upon by a vote of the members of the company; or
- ❖ Right to exercise (or actually exercises) significant influence or control over the company.

Particulars of controllers

❑ Prescribed particulars likely to include:

- ❖ full name (including aliases);
- ❖ residential address;
- ❖ nationality;
- ❖ identification number e.g. identification card or passport number;
- ❖ date of birth; and
- ❖ date on which the person becomes, and if applicable, the date on which the person ceases to be a controller.

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Helping companies comply



Help Resources for Companies

- ❑ ACRA will issue guidance on (i) how companies, foreign companies and LLPs can comply and (ii) definition of “controllers” (including “significant influence or control”)
- ❑ Notices will be prescribed in legislation (e.g. standard template)
- ❑ Companies can access the ACRA website and video for more information.
- ❑ All companies will be notified via letters from ACRA prior to the implementation of the BO requirements.



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