

## **G20 High-Level Principles on Beneficial Owner Transparency (SPAIN)**

The Spanish legislation is in line and complies with the revised FATF Standards. In this context, Spain recognizes the particular importance of beneficial owner transparency as stated in the G20 High-Level principles.

Accordingly, the G20 High level Principles on Beneficial Owner Transparency and their status of implementation in Spain are as below:

### **I. Countries should have a definition of ‘beneficial owner’ that captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement.**

Article 4 of the Act 10/2010 of 28 April, on the prevention of money laundering and terrorist financing defines beneficial ownership as follows:

*“2. For the purposes of this Act, beneficial owner shall mean:*

*(a) Natural person or persons on whose behalf it is intended to establish a business relationship or intervene in any transaction.*

*(b) Natural person or persons who ultimately own or control, directly or indirectly, a percentage of more than 25 percent of the capital or voting rights of a legal person, or who by other means exercise control, directly or indirectly, over the management of a legal person. Companies listed on a regulated market of the European Union or equivalent third countries are excepted.*

*(c) Natural person or persons who ultimately own or control over 25 percent or more of the property of a legal arrangement or entity that administers or distributes funds, or, where the beneficiaries of the legal arrangement or entity have yet to be determined, the class of persons in whose main interest is set up or operates”.*

### **II. Countries should assess the existing and emerging risks associated with different types of legal persons and arrangements, which should be addressed from a domestic and international perspective.**

**a. Appropriate information on the results of the risk assessments should be shared with competent authorities, financial institutions and (DNFBPs<sup>1</sup>) and, as appropriate, other jurisdictions.**

**b. Effective and proportionate measures should be taken to mitigate the risks identified.**

**c. Countries should identify high-risk sectors, and enhanced due diligence could be appropriately considered for such sectors.**

Spain has effective mechanisms in most areas to identify, assess and mitigate risks associated to different types of legal persons and arrangements.

A specific working group produced a ML/TF risk assessment posed by legal persons, focusing on the risks presented by the different types of legal persons. Additionally, the risks posed by legal entities have been assessed in the CITCO reports focused on money laundering and organized crime.

The Commission for the Prevention of Money Laundering has issued several catalogues on risk transactions related to ML/TF to assist obliged persons in the detection of suspicious transactions. These catalogues include risks related to customers being legal persons or transactions related to agents in the

case of money remittance services. The one for legal professionals (notaries, registrars, lawyers, etc.) deserves particular attention due to the key role these professionals play in the process of company incorporation and in other acts during the lifetime of the company or through the services offered to legal persons. The catalogues contain red flags concerning customer identification, risky transactions, means of payments employed, or geographical criteria. They have been distributed to the obliged persons through their associations and representatives, which use them in order to complete or update their own risk indicators.

In order to improve the quality of the assessments and improve the implication of the private sector, a new group dependent of the Commission for the Prevention of Money Laundering has been created to deal with the national risk assessment and produce a consolidated document. This analysis will include data referred to the risks posed by legal persons.

Furthermore, Act 10/2010 expressly deals with the information that must be gathered in order to avoid these risks (articles 3 and 4). Therefore, appropriate information, evidence and assistance in this matter are provided to national and foreign competent prosecutorial and law enforcement authorities.

Preventive measures are also foreseen in Act 10/2010 (articles 5 to 7). They cover information regarding the purpose and nature of the business relationship, an ongoing monitoring and the application of due diligence measures. The Act also foresees special measures addressed to high risk sectors (articles 11 and seq.) This way, Act 10/2010 prohibits obliged persons to operate with companies whose ownership and control structure has not been ascertained or where the beneficial owner has not been determined.

Regulation 304/2014 implementing Act 10/2010 addresses specifically some of the detected risks, such as requesting enhanced due diligence measures for companies with bearer-shares and shelf-companies, or customers or funds from risk jurisdictions. It also specifies that a complex ownership structure or the fact that a company is merely an asset-holding company should be incorporated as a risk factor in the analyses of the need to apply enhanced CDD measures (article 18.3) and requires MVTs to apply enhanced measures to monitor agents compliance with AML preventative obligations (article 35).

### **III. Countries should ensure that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.**

In Spain, companies are obliged to register in the Company Register all information regarding their creation and all important subsequent acts.

Furthermore, Regulation 304/2014 implementing Act 10/2010 states that companies shall obtain and record accurate and up-to-date information on the identity of the beneficial owner of the company (article 8). The Act 10/2010 itself regulates the obligation of institutions and persons covered by it to systematically report the Executive Service on the transactions determined in the regulations (article 20). They shall also supply with the documentation and information required and put in place systems allowing them to respond fully and rapidly to enquiries from the Commission for the Prevention of Money Laundering and Monetary Offences and its support bodies (article 21).

Finally, Act 10/2010 foresees a sanctioning regime (articles 50 to 62) which covers information related to beneficial ownership.

**IV. Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.**

As mentioned in the previous question, companies are obliged to register in Company Register all information regarding their creation and all important subsequent acts. This Register is public.

Regarding beneficial ownership information, notaries are requested to identify the beneficial ownership of the legal person in all the acts they authorize, since they are obliged persons concerning according to Act 10/2010 (article 2). Information held by each notary is centralized through a Notarial Database (Single Computerized Index) which grants them online information.

Additionally, every transmission of shares in Limited Liability Companies (approximately 96% of Spanish legal persons) shall be authorized by a notary. All this information is aggregated and permits direct online access to accurate and up-to-date information on the beneficial ownership of this legal persons.

**V. Countries should ensure that trustees of express trusts maintain adequate, accurate and current beneficial ownership information, including information of settlors, the protector (if any) trustees and beneficiaries. These measures should also apply to other legal arrangements with a structure or function similar to express trusts.**

Although trusts cannot be created under the Spanish legislation, Regulation 304/2014 implementing Act 10/2010 foresees specific rules to identify foreign trusts and similar structures when operating in Spain (article 9).

**VI. Countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal arrangements.**

Trusts or other similar arrangements cannot be created under the Spanish legislation. As referred above, Regulation 304/2014 implementing Act 10/2010 foresees specific rules to identify foreign trusts and similar structures when operating in Spain (article 9).

**VII. Countries should require financial institutions and DNFBPs, including trust and company service providers, to identify and take reasonable measures, including taking into account country risks, to verify the beneficial ownership of their customers.**

**a. Countries should consider facilitating access to beneficial ownership information by financial institutions and DNFBPs.**

**b. Countries should ensure effective supervision of these obligations, including the establishment and enforcement of effective, proportionate and dissuasive sanctions for non-compliance.**

Act 10/2010 requires obliged persons included in article 2 to take appropriate and effective measures: identification of the beneficial ownership, monitoring of the business relationship, application of due diligence measures according to the existing risks (articles 3 to 7). The Executive Service and financial supervisors are in charge of supervising the compliance with the obligation to identify beneficial owner.

The misapplication of these measures is also sanctioned by Act 10/2010 (articles 50 to 62).

**VIII. Countries should ensure that their national authorities cooperate effectively domestically and internationally. Countries should also ensure that their competent authorities participate in information exchange on beneficial ownership with international counterparts in a timely and effective manner.**

Act 10/2010 states that the Executive Service of the Commission and the Commission Secretariat shall cooperate with the authorities of other States with analogous functions (article 48). Also, law enforcement and judiciary cooperation in this field is granted both at the EU and extra-EU level through different mechanisms.

In practice, competent authorities make an extensive use of the information available in the Company Register and in the Council of Notaries, both regarding national investigation and foreign counterpart's requests.

**IX. Countries should support G20 efforts to combat tax evasion by ensuring that beneficial ownership information is accessible to their tax authorities and can be exchanged with relevant international counterparts in a timely and effective manner.**

Act 10/2010 provides that tax authorities and law enforcement agents shall have access to the information obtained as a result of the obligation to declaration which is submitted to the Executive Service (article 36). As well as this, they can accede to the information regarding opening or cancellation of current accounts, savings accounts, securities accounts and term deposits submitted to the Executive service (article 43).

The Commission Secretariat may provide tax authorities and law enforcement agents with information of relevance for tax or police operations (article 49). Furthermore, since the Spanish tax authorities shall issue a Tax ID number for newly created companies as a requirement prior to company registration in the Company Register, they have access to details on the beneficial ownership of companies.

Tax authorities have direct access to the beneficial owner information registered in the notaries' databases.

Additionally, in May 2016 a new database the "Financial Ownership File", will become operational. This database includes information on the opening or cancellation of current accounts, savings accounts, securities accounts and term deposits provided by credit institutions. It will contain the data identifying the holders, beneficial owners, representatives or authorised persons, together with all other persons with withdrawal powers, the date of opening or cancellation, the type of account or deposit and the information identifying the reporting credit institution. It will be accessible to the authorities, including Tax agency.

**X. Countries should address the misuse of legal persons and legal arrangements which may obstruct transparency, including:**

**a. prohibiting the ongoing use of bearer shares and the creation of new bearer shares, or taking other effective measures to ensure that bearer shares and bearer share warrants are not misused; and**

**b. taking effective measures to ensure that legal persons which allow nominee shareholders or nominee directors are not misused.**

Act 10/2010 ensures that obliged persons take appropriate steps to identify the structure of ownership and control of legal persons. To that end, they shall not establish or maintain business relationships with legal persons whose ownership or control structure has not been possible to ascertain. In the case of corporations whose shares are represented by bearer shares, this prohibition will be applicable unless the

obliged person ascertains by other means the ownership and control structure (article 4). Act 10/2010 also includes nominee shareholders and nominee directors as “obliged persons”, so they are subject to all the obligations and requirements contained in the referred Act (articles 3 and seq.) in order to prevent the misuse of legal persons and legal arrangements.