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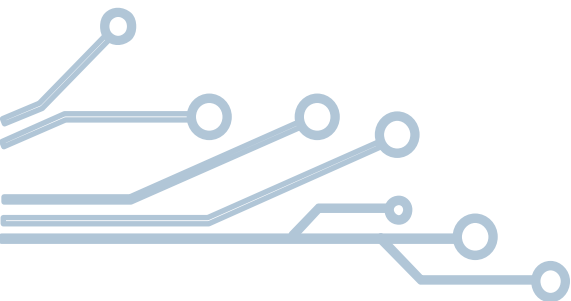
Fundación para el Desarrollo de la Libertad Ciudadana  
Capítulo Panameño de Transparencia Internacional

# Unveiling corporate structures

## An International view on Registries of Ultimate Beneficial Owners



CYRUS R. VANCE CENTER  
FOR INTERNATIONAL JUSTICE

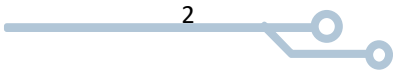


The legal research for this report was conducted by an international team of lawyers organized by the Cyrus R. Vance Center for International Justice for the Panamanian Foundation for the Development of Citizen Freedom, Panamanian Chapter of Transparency International.

The **Panamanian Foundation for the Development of Citizen Freedom** (*Fundación para el Desarrollo de la Libertad Ciudadana*), the Panamanian national chapter of Transparency International is a non-profit organization with a broad scope and impact on the creation of Panamanian state policies and laws. TI Panama's mission is to contribute to the improvement and deepening of the democratic system through permanent citizen participation. TI Panama's vision is to contribute to a better democratic model with transparent institutions, for the benefit of citizens. TI Panama has focused its activities on strengthening channels of government accountability and transparency and reducing corruption at local, regional, and national levels. <https://www.libertadciudadana.org/>

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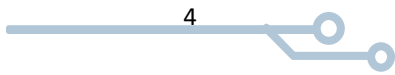
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# Preface

Emile van der Does de Willebois  
Coordinator World Bank/ UNODC Stolen Asset Recovery initiative

Before the recent publication of the Suspicious Activity Reports that became known as the “FinCEN leaks”, BuzzFeed (which broke the story) handed a sample to Bob Mazur for his review. Mazur is the former US Customs agent portrayed by Bryan Cranston in the film “The Infiltrator” about his time undercover in the Medellin Cartel. The sample consisted of hundreds of pages involving more than \$45 billion in suspicious wire transfers. Following that review, he wrote: “In nearly every instance, the reported transactions involved shell companies from many corners of the tax-haven world that had nominee owners who clearly were not the beneficial owners of the funds that were moved. Many of the shell entities used the same PO Box addresses, and in some cases had no address.”

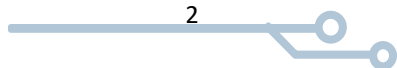
Mazur’s observation is further proof, if any were needed, of the enduring challenge posed today by corporate entities used to conceal ownership and control of proceeds of crime. It is by no means a new issue. Already in 1937, the US Secretary of the Treasury, Henry Morgenthau, wrote a letter to President Roosevelt complaining about companies with “dummy incorporators” and “dummy directors” to hide real owners. Since the 1990’s, international regulatory bodies and policy makers (the EU, UNODC, OECD, FATF) have kept up a steady stream of reports expressing concern and highlighting the abuse of corporate vehicles. We made our own contribution to the debate in 2011 with the publication of “*The Puppet Masters*”. Yet, it has taken countries very long to take action, and it is only in recent years, after sustained and concerted pressure from civil society, and after the G20 has put this on the international agenda following the global financial crisis, putting FATF in charge of implementation, that we see countries move to address it.

But the results are far from satisfying- a quick look at the [FATF consolidated table](#) of country assessment ratings, shows the current poor state of compliance with the relevant standards (Recommendations 24 and 25). When it comes to effectiveness, what the countries actually do in practice (as opposed to their laws and rules on the books) the situation is even worse. While countries know in general that they need to take action, it is proving challenging to make the necessary changes on the ground. Both the political will, but also the technical know-how on what works, are often lacking.

This current study is a very detailed, technical piece of work that goes into painstaking detail comparing different systems for gathering and providing access to information on beneficial ownership. It is important that countries look at many different models, both in their own region and further afield, to see what works, but also what doesn’t work. That can serve as an important input into the design of one’s own system. As mentioned above, throughout the world, civil society, and Transparency International in particular, have played a crucial role in drawing the public’s attention to the evils wrought by beneficial ownership opacity, have held policy makers’ feet to the fire to make sure that commitments were followed up on, but have also played a constructive role in putting forward practical and concrete suggestions on how the situation can be dealt with. This study is to be viewed from that perspective.

It is good to see that Panama has now enacted a law on the creation and operation of a registry of beneficial owners - the challenge now will be to make it effective in practice. TI Panama and the Cyrus Vance Center for

International Justice are to be commended for such a comprehensive and exhaustive review of relevant systems to provide input to the debate on the most effective way forward on BO in Panama. It is only through the hard grind and attention to detail that we are going to make progress. We trust that this will enrich the discussion in Panama- and lead to an improved BO regime for non-financial institutions. We wish TI and Panama well in this endeavour.



# Introduction

The report **Unveiling Corporate structures. An International view on Registries of Ultimate Beneficial Owners** answers the need for comparative information that allows decision makers, from the public and private sectors, to make better decisions when establishing public policies and regulations regarding the registration of ultimate beneficiaries.

On March 17, 2020, Panama approved Law 129 which created the Private and Sole Registry of Final Beneficiaries of Legal Entities.<sup>1</sup> The purpose of Law 129 is to establish the regulatory framework for the creation of the private and unique system of registration of final beneficiaries in Panama, in order to facilitate access to ultimate beneficiaries of legal entities collected by lawyers or law firms providing the service of resident agents to assist the competent authority in the prevention of the crimes of money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction, in accordance with the laws of Panama.

Panama has frequently been evaluated as a non-cooperative country in the fight against money laundering. It has been placed, and to date remains, on the list of countries, prepared by the **Financial Action Task Force (FATF)** that require special attention and review by the international community for not adequately combating money laundering. It is expected that this register of ultimate beneficiaries will address one of the specific deficiencies identified by international evaluations.

The approval of Law 129 takes place in a world context of increasing - and apparently irreversible - demand for transparency. With Law 129 of 2020, Panama has opted for a private and unique registry. There are already public registries of ultimate beneficiaries, as for example in the United Kingdom. Some jurisdictions of interest to Panama, such as the British Virgin Islands, have made known their commitment to move towards a public registry of ultimate beneficiaries in the year 2023.

Panama is facing the challenge to implement this Law. Comparative analysis is beneficial to understand how other countries have faced the same challenge. With this work, the Panamanian Foundation for the Development of Citizen Freedom, Panamanian Chapter of Transparency International, and the Cyrus R. Vance Center for International Justice aim to contribute to local and international stakeholders, to improve the normative quality, and ensure a solid technical basis and success for Registries of Ultimate Beneficial Owners.

This document is a high-level review of the legislation, rules and regulations applicable to registries of ultimate beneficial owners of companies in Panama, Colombia, Costa Rica, Spain, the United Kingdom, the Cayman Islands and the State of Delaware in the United States. Transparency International Panama has chosen these countries and states for the comparison, taking into account factors such as geography, the regulatory influence of the selected country, or because they are countries and states that compete with Panama in the so-called offshore services sector.

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<sup>1</sup> In January 2020, I published the article Panama: Private and Sole Registry of Final Beneficiaries which constitutes a direct antecedent to this report, with observations on the draft law on registration of final beneficiaries which was being evaluated in the National Assembly of Panama at that time.

This comparative report is not intended to provide a legal analysis of the applicable law in each jurisdiction, but it is intended to identify certain material aspects and provisions we believe would be especially relevant.

This report is one of Transparency International Panama's first structured efforts to address the need for transparency in the private sector, specifically in the area of corporate vehicles. The work that the Foundation has been carrying out for 25 years has been very focused on the issue of fighting corruption in the public sector.

Preventing abuse in the use of corporate vehicles has a high impact on the efficient and effective fight against corruption, public and private, local and international. Not doing so properly has high costs and losses for the general population and has affected the country's reputation very negatively.

Panama, October 2020.

**Carlos Barsallo**  
**President of the Board**  
**Panamanian Foundation for the Development of Citizen Freedom**  
**Panamanian Chapter of Transparency International**





# Overview Chart

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
Concept							
(1) Objectives of legislation	To increase accessibility to information, and to assist competent authorities in the prevention of money laundering, terrorism financing, and the financing of weapons of mass destruction.	N/A	To counter money laundering and terrorism financing, and to meet Costa Rica's obligations regarding the international exchange of information.	To prevent money laundering and terrorism financing.	No stated objectives in the Small Business, Enterprise & Employment Act of 2015 but, given that the register of beneficial ownership of companies is public it promotes transparency and plays an important role in the fight against corruption, tax evasion and money laundering.	No stated objectives in the Companies (Amendment) Bill of 2016.	The purpose of the Customer Due Diligence Requirements for Financial Institutions regulation is to assist law enforcement in financial investigations, help prevent evasion of targeted financial sanctions, improve the ability of financial institutions to assess risk, facilitate tax compliance, and advance U.S. compliance with international standards and commitment.  <sup>ln</sup> Delaware, the requirement is for LLCs and LPs to maintain a record

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
							of their members, managers and/or partners since 2014.
<b>(2) UBO definition</b>	A “ultimate beneficiary” is a natural person who: (i) directly or indirectly possesses, controls and/or exercises significant influence over the account, contractual and/or business relationship; or (ii) in whose name or benefit a transaction is carried out.	A “ultimate beneficiary” is a natural person who: (i) directly or indirectly owns a stake greater than 5% of the legal entity acting as a client; (ii) a person who, despite not owning a majority stake in the capital of the legal entity that acts as a client, exercises control of the legal entity; or (iii) a person on whose behalf that a transaction is carried out.	An ultimate beneficial owner is a natural person who: (i) exercises a substantive influence or control, direct or indirect, over the legal person or legal structure such that it has the majority of the voting rights of the shareholders or partners; (ii) has the right to designate or dismiss most of the administrative, management or supervisory organs; or (iii) who controls that company by virtue of its statutes.	A “real owner” is the natural person who: (i) ultimately owns or controls, directly or indirectly, a percentage greater than 25 percent of the capital or voting rights of a legal person; or (ii) who by other means, exercises direct or indirect control over the management of a legal person.	In summary, a UBO is an individual that (i) holds a certain threshold of shares or voting rights in a company (25%); (ii) has the right to appoint or remove a majority of the board of directors; or (iii) actually has significant influence or control over the company.	In summary, UBOs are defined as individuals that either (i) hold a certain threshold number of shares or voting rights in a company (25%) or (ii) hold the right to appoint or remove a majority of the board of directors of a company.	The US does not have a UBO registry.
<b>(3) Mandatory nature</b>	Registration is generally mandatory, but registration is not required for companies with common shares	There are no mandatory requirements to register UBO information.	Registration is generally mandatory, but registration is not required for companies already listed on a stock	Registration is generally mandatory, but registration is not required for companies listed on a “regulated	Yes – all UK incorporated companies and LLPs need to register the UBO information except if they are exempt.	Yes - it is always mandatory to register the UBO information for all companies incorporated or registered by way	Yes – it is mandatory for financial institutions to collect information on the beneficial owners of its legal

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
	that are listed on a local or international stock exchange, or that are owned by an international, multilateral or State agency.		exchange. Also exempt are public trusts, financial organizations overseen by the <i>Superintendencia General de Entidades Financieras</i> , and government entities.	market,” which means a market “subject to disclosure requirements in accordance with Union law or subject to equivalent international standards.”		of continuation under the Companies Law, that are not exempted.	entity customers (federal requirement) and mandatory for LLCs and partnerships to maintain a record of their members, managers and/or partners (DE).
<b>Registering Information</b>							
<b>(4)-(6) Responsible person and obligations</b>	<p>The resident agent must establish, verify and record the UBO information as well as keep it up to date.</p> <p>The resident agent must provide the following information for the legal entity subject to registration: Complete name; Registration number; Registration date; Address; and Main activity.</p> <p>Regarding the ultimate</p>	N/A	<p>Responsible person is the legal representative of any legal person or entity domiciled in Costa Rica, including nonprofits.</p> <p>These representatives must submit information to the registry, including information identifying the shareholders and ultimate beneficiaries with substantive participation.</p> <p>In addition, third party administrators</p>	<p>Responsible person is the person who has been given representation of the legal entity, typically company administrators.</p> <p>These administrators must obtain and maintain adequate, precise and updated information on the real ownership of these entities.</p> <p>They must establish the ownership structure of the shareholders controlling the</p>	A director, a secretary or a person acting in an advisory role for a company can be responsible for submitting the UBO information to the registry.	Companies are required to identify their own UBOs. The information for such UBOs includes among other things, the full legal name of such person and the date on which the individual became or ceased to be a registerable person in relation to the company.	Generally speaking, financial institutions are required at the federal level to collect information on the beneficial owners and maintain data. Similarly in DE, corporations, LLCs and partnerships are required to maintain records.

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
	<p>beneficiary, the resident agent must provide: Complete name; Identity card, passport, or personal identity document number; Date of birth; Nationality; Address; Date on which the condition of ultimate beneficiary is acquired.</p> <p>The resident agent must file the UBO information to the register within 30 days following changes in information of the ultimate beneficiary.</p>		<p>must provide the registry information pertaining to non-public trusts, including names of the trustee(s) and beneficiaries.</p> <p>UBO information must be submitted every year in September, but submission is also required within fifteen business days of a shareholder being recorded as meeting the standard for registration.</p>	<p>entity or holding more than 25% of the shares in the entity.</p> <p>They have to identify the UBOs with their,</p> <p>Names and Last Names; Government-issued ID; Date of birth; Nationality; Residence; Direct or indirect control percentage.</p> <p>They must submit UBO information annually, and there is no requirement for immediate notification of changes.</p>			
<b>(7)-(8)</b> <b>Obligations of lawyers and service providers</b>	Only resident agents have obligations regarding the registry. Lawyers and certified public accountants are not required to report suspicious	Lawyers must comply with new customer due diligence obligations which include obtaining twenty (20) line items of information from clients, including	There seem to be no specific obligations for lawyers, but there are instead obligations for any individuals responsible for reporting information to the	Generally, lawyers in private practice are not obligated to report suspicious activity if they receive the underlying information in the context of their legal	Lawyers are required to report suspicious activities like money laundering.	None.	None.

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
	<p>transactions if the relevant information was obtained in circumstances in which they are subject to professional secrecy or legal professional privilege, or confession that his client makes for proper defense.</p>	<p>identification of the shareholders or associates who hold directly or indirectly more than 5% of the share capital, contribution or participation.</p>	<p>registry. This individual must obtain a valid digital signature certificate to submit the information. For entities formed after the annual filing date (which is in September), UBO information must be provided to the Registry within twenty (20) business days.</p>	<p>representation of their clients, unless there's suspicion that the representation is for the purpose of money laundering.</p> <p>Lawyers who incorporate entities, as well as notaries and financial professionals, do not have specific obligations with regard to the UBO registry.</p> <p>However, lawyers and other professionals do need to identify the UBO of their client, through extensive due diligence work and risk assessment work in an attempt to verify that the client has no involvement with money laundering or terrorism financing activities.</p> <p>Moreover, they must keep this information and</p>			

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
				documents for ten (10) years in case authorities request it in the future.			
<b>(9)</b> <b>Monitoring/ review obligations</b>	Legal representatives must provide their resident agent with the information required to identify the ultimate beneficiary. They must also notify their resident agent of any variation in the information of the ultimate beneficiary within a maximum of thirty (30) business days following the date of the variation.	N/A	Individuals who provide information to the Registry must ensure that they do so annually, and that they resolve issues with those internal individuals who fail to provide information. They must also maintain the requisite documentation.	The legal entity's directors or managers must review at least once a year whether the information is still accurate, as part of their annual reporting obligations.	UBO registers are required to be kept-up-to-date.	There is a requirement for the companies to report any changes as to the registerable person/information to the Registrar.	N/A
<b>(10)</b> <b>Exemptions</b>	The definition of ultimate beneficiary makes an exception for companies with common shares that are listed on a local or international stock exchange, or	N/A	Public trusts are exempt. Companies with listed shares are also mostly exempt from information requirements.	Companies whose shares are listed and subject to the European rules on shareholder transparency do not have to make filings to the register.	Publicly listed companies in the UK, European Economic Area and certain select markets are exempt.	Exemptions are detailed in the country report but notably include companies that are listed on the Cayman Islands Stock Exchange or another approved stock exchange or	In Delaware, corporations are not required to maintain a record of their members/managers. At the federal level, certain institutions are

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
	that are owned by an international, multilateral or State agency.					are regulated in a jurisdiction with AML legislation deemed to be equivalent to that of the Cayman Islands.	exempt from the CDD rules.
<b>Sanctions</b>							
(11), (14)-(15)  Description of sanctions	<p>Resident agents may be fined between 1,000 and up to 5,000 balboas for failing to register or update information.</p> <p>The Superintendency of Non-Financial Entities may impose progressive fines of up to 10% of the original imposed fine until the default is remedied for a maximum term of six months.</p> <p>The legal entity may also be sanctioned with suspension of its corporate rights.</p>	<p>The <i>Superintendencia de Industria y Comercio</i> may impose fines of up to COP12,500,000 (approximately US\$4,200) for failing to renew their commercial registration.</p> <p>Additional failures on renewal obligations could result in temporary or permanent closure of a company.</p> <p>Supersociedades may impose sanctions when subordination among entities or a controlling person</p>	<p>Sanctions over noncompliance can be applied in accordance with the Tax Code, stating that a 2 percent fine will be imposed based on gross income of the legal person/entity (and between three and 100 salaries) based on the preceding income tax period.</p> <p>If noncompliance persists, the National Registry shall not issue certificates to or register documents of the legal entity. Also, in this case, notaries public have to note the breach in any</p>	<p>Fines of up to EUR 60,000 can be assessed for failure to comply with UBO registration obligations.</p> <p>The sanctions are financial, and any proceeds will go to the Spanish treasury</p> <p>The cancellation of a legal entity's registration is not a sanction under the Spanish regime.</p>	Sanctions include a fine or up to two years of imprisonment.	Sanctions range from a fine (in a range of \$25,000 to \$100,000) to imprisonment for a term of up to two years for a person who fails to comply with a notice or provides false information.	The CDD contemplates fines of up to \$100,000 for violations of the CDD rule. There are no such fines or sanctions in Delaware.

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
	<p>In this case, the legal entity can request an end to suspension within two years following the date of the suspension, but if no request is made the legal entity will be considered dissolved.</p> <p>In case of verification of false declaration of the registered information of the ultimate beneficiary by the resident agent, the Superintendence of Non-Financial Subjects will apply to the offender twice the maximum penalty (B/.5,000.00), as the case may be.</p> <p>Violation of the confidentiality of the information of the Unique System is sanctioned with a fine of two</p>	<p>is not duly reported or registered.</p> <p>Generally, economic sanctions are paid to the regulatory body imposing the economic sanctions.</p>	<p>documents they issue.</p> <p>Any resulting fines will go to the State for exclusive use by the Institute on Drugs on its operational activities.</p> <p>Registration cancellation is not one of the possible sanctions.</p>				



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	hundred thousand balboas (B/.200,000.00).						
<b>(12)</b> <b>Addressee of sanctions</b>	Official assigned to the duties imposed by law, Resident agent, Legal entity, Ultimate Beneficiary, and any person who accesses the register without proper authorization.	Generally, it is legal persons (i.e., the companies) that are subject to sanctions.	The fine is imposed on the legal entity.	The legal entity is subject to the fines.	Any company and every officer of such company who is in default.	Any company and its directors or managing partners, as well as registerable persons.	Pursuant to the CDD, financial institutions and their directors or managing partners.
<b>(13)</b> <b>Authority imposing sanctions</b>	The Superintendency of non-financial entities.	Several regulatory bodies impose the sanctions.	The General Directorate of Taxation imposes the sanctions.	The Director General of the Treasury and Financial Policy imposes the sanctions, at the request of the Secretariat of the Commission for the Prevention of Money Laundering and Monetary Infractions.	Companies House.	The Minister with responsibility for Financial Services acting alone or through a designated person or a court.	The fines under the CDD are assessed by the Financial Crimes Enforcement Network (FinCEN).
<b>Registry</b>							
<b>(16)</b> <b>Administering entity</b>	The administering entity is the Superintendency of Non-Financial	N/A	The registry is administered by the Central Bank of Costa Rica, the Ministry of Finance, and the	The UBO register is administered by the Mercantile Registry, which is an organization that operates	Companies House (although it is a registrar and not a regulator). The regulator is the	The Minister with responsibility for Financial Services; the Registrar; or a	At the federal level, compliance with the CDD is enforced by FinCEN. In Delaware, there is

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	<p>Entities, which is autonomous.</p> <p>The Superintendent is appointed by the President and ratified by the National Assembly, and may only be removed with cause by decision of the Third Chamber of the Supreme Court of Justice.</p>		<p>Costa Rican Institute on Drugs</p> <p>The Central Bank collects the UBO information requested and maintains the Registry database.</p> <p>The President of the Central Bank, who also sits on the Bank's Board of Directors, is appointed by the Governing Council of Costa Rica to a renewable four-year term and has "independence in the exercise of his powers."</p> <p>The President of Costa Rica appoints the Minister of Finance.</p> <p>The Director General of the Institute on Drugs is appointed by and is subject to oversight of a Board of Directors made of other government ministers.</p>	<p>under the Ministry of Justice.</p> <p>The agency is not self-regulated. The head of the Mercantile Registry is appointed by the Minister of Justice.</p>	Federal Secretary of the Interior.	corporate services provider.	no separate administering entity.

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
(17)-(18)  Public availability and exceptions	<p>UBO information is confidential and must be kept in strict reserve.</p> <p>Those who can view the information have a duty of confidentiality that if breached will result in a 200,000 balboas sanction, without prejudice to other sanctions established by law.</p> <p>The penalty for unauthorized access of the registry is 500,000 balboas, without prejudice to the other corresponding civil and criminal penalties.</p> <p>Access is strictly limited to the resident agent of the legal entity or legal entities to which services are rendered and to two officers appointed by the</p>	<p>Per an IMF's 2018 report, UBO information is only partially available through limited sources including the RUES, which is a registry that contains public information on the owners and founders of an entity.</p> <p>Beneficial ownership information may be available for simple ownership structures, but it does not contain up to date information on shareholders.</p> <p>Shareholder information is not publicly available, but can be obtained by judicial authorities, prosecutors, regulators or inspectors if requested for tax purposes,</p>	<p>Although there is no available listing of the registered entities, people can inquire whether they are in the Registry and entities can check the status of their own declarations online by entering their company's ID number and the year of the declaration.</p> <p>More information is only available to those with a valid digital signature certificate.</p> <p>The Tax Administration also has access to the information, but its officials would face sanctions for unauthorized use or disclosure of the information to others.</p> <p>Information in the Registry database is confidential.</p>	<p>The UBO registry ("RETIR") can be accessed through the Internet, but is restricted to entities, lawyers and other professionals.</p> <p>Those seeking access must first have a valid electronic certificate. These certificates may be issued by any one of twelve entities that are considered "trusted entities" by the RETIR.</p> <p>The "<i>Colegio de Registradores</i>," which maintains and oversees the RETIR's website, has signed "collaboration agreements" with many public offices, allowing them to access their content.</p> <p>These public offices include Tribunal de Cuentas, Fiscalía, Guardia Civil, Policía Nacional,</p>	The registers are publicly available.	No public information. Only the competent authorities may access the registry's information and the Financial Crime Unit, upon request.	No public information. Access to non-public information is limited to law enforcement officials in the case of the CDD at the federal level and members or partners in the case of Delaware LLCs and partnerships.

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
	<p>Superintendency of Non-Financial Entities, for the exclusive purpose of making the required information available to the competent authority.</p> <p>There are strict requirements to become one of the two officers who can access the registry.</p>	<p>investigations or inspections.</p> <p>Generally, only governmental authorities have access to non-public information for tax purposes, investigations or inspections.</p>	<p>The Central Bank manages access to the information by the Ministry of Finance and the Costa Rican Institute on Drugs.</p> <p>The information is considered confidential and is supposed to be used by the Ministry of Finance only for tax issues, risk management planning, and exchanges under international instruments, and by the Institute on Drugs for official purposes.</p>	<p>Banco de España, Comisión Nacional del Mercado de Valores, Consejo General de Poder Judicial and other institutions involved in efforts to prevent money laundering.</p> <p>A judge may also subpoena information from the registry as part of a judicial proceeding.</p>			
(19) Use for public procurement	No.	N/A	The information in the Registry can only be used for the purposes outlined in the preceding question.	Any public authority can access the register if this is required for the performance of its legal responsibilities, and if it signs an agreement with the “ <i>Colegio de Registradores</i> .”	All information held by Companies House is to be made available to law enforcement agencies and certain information is available in other circumstances (e.g., a financial institution running a due diligence	N/A	N/A

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
				This may include UBO verification in the context of public procurement.	check on a company).		
(20) Other registries with similar functions	Banks are required to maintain similar private registries.	Other registries include the commercial registries for chambers of commerce. See also question 18 for examples of other entities and databases, such as RUES and Supersociedades.	There are two other related registries: the National Registry and the Registry of Legal Entities. The National Registry and the Registry of Legal Persons both contain information that is available to the public (with account registration on the National Registry website).	The “ <i>Colegio de Registradores</i> ” centralizes the information submitted to Spain’s Mercantile Register. This system of registries include the RETI, the Property Registry, and the Real Estate Registry.	N/A	A range of registers for the different types of companies exist and they would presumably include similar information as the UBO Registry.	None but there are two proposed legislations seeking to implement UBO registries: the ILLICIT CASH Act and the Corporate Transparency Act. These bills are not yet in effect.
Other							
(21) FATF evaluation	Panama is under increased monitoring as of February 2020.	FATF through GAFILAT and IMF completed evaluation reports in November of 2018.  Per the GAFILAT report, Colombia was partially	GAFILAT has evaluated Costa Rica several times since 2015. A 2015 GAFILAT report found that there were “difficulties to access the basic information on	The evaluation for Spain is largely positive. According to a 2019 FATF report, since 2014, “Spain has worked to improve the effectiveness of its national	N/A	Still outstanding.	The FATF has upgraded the U.S.’s rating on Recommendation 10 from “Partially Compliant” to “Largely Compliant” due to

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
		<p>compliant with FATF. According to the report, beneficial owner information was only partially available for authorities and there was no processes to obtain or hold accurate and updated information on beneficial ownership in a timely manner as called by FATF standards.</p>	<p>beneficial owners of legal persons, on an accurate and updated manner.” That same year, registry information was highlighted as a “Higher-Risk Issue[,],” partially due to heightened real estate transactions as well as “public corporations incorporated in Costa Rica . . . used abroad with the sole purpose of concealing the beneficial owners.”</p> <p>In 2017, the rating was changed to “largely compliant” after the passage of Law 9416, which provided greater transparency and beneficial ownership mechanisms regarding shareholders. This led to the creation of the Transparency and Ultimate</p>	<p>framework to combat money laundering and terrorist financing.”</p>			<p>the effectuation of the CDD.</p>

Question	Panama	Colombia	Costa Rica	Spain	United Kingdom	Cayman Islands	State of Delaware
			Beneficiaries Registry.				
(22) Statistics	There are no statistics publicly available for the Panamanian registry.	N/A	There are no statistics publicly available for the Costa Rican registry.	There are no statistics publicly available for the Spanish registry.	N/A	N/A	N/A

# Comparative analysis

## A. Panama

### Concept

#### 1. What were the stated objectives for the UBO register under the legislation or regulation creating such UBO register in the jurisdiction?

The UBO registry was introduced in the Law 129 dated 17 March, 2020 (“Directive”).<sup>2</sup>

According to the Directive, creation of the ultimate beneficial owner (“UBO”) registry is intended to increase accessibility to information, as collected by lawyers or law firms providing resident agent services, about who the final beneficiaries of legal entities are. This information will ultimately assist competent authorities in the prevention of money laundering crimes, terrorism financing, and the financing of the proliferation of weapons of mass destruction, in accordance with the laws of the Republic of Panama.<sup>3</sup>

#### 2. How is UBO defined in the legislation or regulation?

An UBO, or a “Final Beneficiary” as the law refers to it, is defined as a natural person

- i. who, directly or indirectly possesses, controls and/or exercises significant influence over the account, contractual and/or business relationship; or
- ii. in whose name or benefit a transaction is carried out, which also includes natural persons who exercise final control over a legal entity.<sup>4</sup>

<sup>2</sup> Law 129 of March 17, 2020 promulgated on Friday March 20, 2020, Digital Official Gazette, No. 28985-C.

<sup>3</sup> Law 129, Article 1.

<sup>4</sup> Law 129, Article 2, “Criteria for determining possession, control or influence include, but are not limited to the following:

- i. Shareholder Criteria. The natural person who ultimately owns or directly or indirectly controls 25% or more of the shares or voting rights in the legal entity, except for those companies with common shares that are listed on a local or international stock exchange, or that are owned of an international, multilateral or State agency.
- ii. Control Criteria:
- iii. b.1. The case of a civil company, the partner or partners who hold the administration of the company.
- iv. b.2. In the case of a trust which holds a shareholding of 25% or more over legal entities; the settlor, in the event that the trust is revocable or the latter retains for itself administrative control or disposition power of the assets; the beneficiary, in case the trust is considered as non-discretionary regarding the payment of benefits; and the trustee or any natural person who exercises effective and definitive control over the trust.
- v. A discretionary trust shall be understood as the one in which the payment of benefits is at the discretion of the trustee under the terms of the trust.
- vi. b.3. In the case of a legal person in liquidation, insolvency or creditors arrangements, the natural person who is appointed as liquidator or curator of the legal entity.
- vii. b. 4. In the case of a shareholder of the legal person who would otherwise be a final beneficiary according to this section, but died, the natural person acting as executor or a personal representative of the deceased's patrimony.
- c. In any other case not foreseen in the previous provisions, the natural person who otherwise exercises effective and definitive control over the management of the legal entity, that is, who has the capacity to take relevant decisions over the legal entity and impose such resolutions. may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (29) (...);
- (a) in the case of trusts, all following persons:
  - (i) the settlor(s); (ii) the trustee(s); (iii) the protector(s), if any; (iv) the beneficiaries or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up



## 2.1 Is the same definition used in other laws in the jurisdiction and, if so, which ones?

Similar concepts, but not the same definition, are used. For example, in certain bank law statutes.<sup>5</sup> Therein, banks are required to (i) identify the final beneficiaries of companies using their financial services and (ii) keep a private copy of the ID of any shareholder owning more than 10% of a company's shares. Companies that are publicly registered are exempt from this requirement to the extent they are not from a "non-cooperating" country, as identified by the Financial Action Task Force.<sup>6</sup> This is in some ways a more inclusive definition than that established by the UBO registry, which covers only natural persons owning 25% or more of the shares or voting rights in a legal entity, but also appears to be incomplete, since it does not address control criteria.

In the Panamanian stock exchange, the concept of *Effective Ownership* is used. When used in connection with a security, the term Effective Owner is understood to mean "the person or persons who, whether or not they are registered as owners of such security, have the right, directly or through an intermediary, to receive the yield from such security, to exercise the voting rights in connection with such security, to sell or dispose of such security or to receive the proceeds from the sale or disposal of such security".<sup>7</sup>

## 2.2 Is the UBO always an individual (or more than one individual) or can it be a legal entity, estate or trust?

Only natural persons can be UBOs.<sup>8</sup>

## 2.3 What are the criteria to establish "ultimate ownership" (level of ownership that triggers the notification requirement, calculation in a multi-level chain of ownership, etc.)?

**Shareholder Criteria:** The natural person who ultimately owns or directly or indirectly controls 25% or more of the shares or voting rights in the legal entity, except for those companies with common shares that are listed on a local or international stock exchange, or that are owned by an international, multilateral or State agency<sup>9</sup>

## 2.4 What are the criteria to establish "ultimate control" (shareholder rights, GP position in partnership, beneficiary position in a trust or estate, joint control, etc.)?

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or operates; (v) any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;'

(b) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (b)''.

<sup>5</sup> Republic of Panama, Superintendency of Banks, Agreement No. 013-2018 (of 27 November 2018) ([https://www.superbancos.gob.pa/superbancos/documentos/leyes\\_y\\_regulaciones/acuerdos/2018/Acuerdo\\_13-2018.pdf](https://www.superbancos.gob.pa/superbancos/documentos/leyes_y_regulaciones/acuerdos/2018/Acuerdo_13-2018.pdf)), which modifies the Agreement No. 10-2015. "Identificación del último beneficiario: Los bancos y empresas fiduciarias deberán tomar medidas razonables para identificar al beneficiario final usando información relevante obtenida de fuentes confiables. Para tales efectos, deberá entender la naturaleza del negocio del cliente y su estructura accionaria y de control. En los casos que una persona jurídica sea el beneficiario final, la debida diligencia se extenderá hasta conocer a la persona natural que es el propietario o controlador. Para la identificación del último beneficiario, en el caso de sociedades anónimas, los sujetos obligados deben realizar las gestiones pertinentes para identificar a los accionistas que posean un porcentaje igual o mayor al diez por ciento (10%) de las acciones emitidas de la respectiva sociedad, para lo cual le será requerida la copia del documento de identidad. Se exceptúan del requerimiento de identificación del último beneficiario las empresas que cotizan sus acciones en la bolsa, salvo que se trate de empresas que hayan sido organizadas en países considerados como no cooperantes según el Grupo de Acción Financiera Internacional (GAFI). El banco o empresa fiduciaria deberá documentar en el expediente el sustento que certifique que se trata de una empresa que cotiza sus acciones en bolsa. En el caso de empresas públicas (entidades estatales), cuyo beneficiario final es el Estado panameño o un Estado extranjero, los bancos y empresas fiduciarias deben identificar y tomar medidas razonables para verificar la identidad de la persona natural relevante que ocupa el puesto de administrativo superior. En el caso de otras personas jurídicas, cuyos beneficiarios finales no puedan ser identificados mediante la participación accionaria, el sujeto obligado deberá asegurarse de obtener un acta, certificación o declaración jurada debidamente suscrita por los representantes o personas autorizadas, donde se detalle el o los beneficiarios finales. Cuando el sujeto obligado no haya podido identificar al beneficiario final se abstendrá de iniciar o continuar la relación de negocio o efectuar la transacción en caso que persista la duda sobre la identidad del cliente o el beneficiario final."

<sup>6</sup> Id.

<sup>7</sup> Article 49 numeral 51 of the Law of the Stock Exchange of Panama

<sup>8</sup> Law 129, Article 2.3.

<sup>9</sup> Law 129, Article 2.3.a.

Control Criteria:

- i. In the case of a civil company, the partner or partners who hold the administration of the company.
- ii. In the case of a trust which holds a shareholding of 25% or more over legal entities; the settlor, in the event that the trust is revocable or the latter retains for itself administrative control or disposition power of the assets; the beneficiary, in case the trust is considered as non-discretionary regarding the payment of benefits; and the trustee or any natural person who exercises effective and definitive control over the trust. A discretionary trust shall be understood as the one in which the payment of benefits is at the discretion of the trustee under the terms of the trust.
- iii. In the case of a legal person in liquidation, insolvency or creditors arrangements, the natural person who is appointed as liquidator or curator of the legal entity.
- iv. In the case of a shareholder of the legal person who would otherwise be a final beneficiary according to this section, but died, the natural person acting as executor or a personal representative of the deceased's patrimony.<sup>10</sup>

Catch all:

(v) In any other case not foreseen in the previous provisions, the natural person who otherwise exercises effective and definitive control over the management of the legal entity, that is, who has the capacity to take relevant decisions over the legal entity and impose such resolutions.<sup>11</sup>

**2.5 Do the criteria consider accounting principles, such as International Financial Reporting Standards or other applicable accounting principles?**

No.

**3. Is it mandatory to register UBO information in all cases? If only mandatory in some, in which cases is it mandatory to register the UBO information and in which cases is it not?**

Registration is not required for companies with common shares that are listed on a local or international stock exchange, or that are owned by an international, multilateral or State agency.<sup>12</sup>

**3.1 Are the registration requirements for legal persons and legal arrangements different?**

Yes, the registration requirements only apply to legal entities.<sup>13</sup>

**3.2 Is a resident agent required and what is their position?**

Yes, the law requires that resident agents as service providers take measures to know the final beneficiary of their clients and register final beneficiaries of the same in the UBO registry; if no resident agent is used a company would not be required to register in the UBO registry.

**3.3 Does the registration of UBO information have any implications on the legal existence of the entity?**

There are no implications.

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<sup>10</sup> Law 129, Article 2.3.b.

<sup>11</sup> Law 129, Article 2.3.c.

<sup>12</sup> Law 129, Article 2.3.a.

<sup>13</sup> Law 129, Article 2.3.a.

## Registering information

### 4. Who is responsible for submitting the UBO information to the registry? What are the obligations of this person or entity?

The resident agent must establish, verify and record the UBO information as well as keep it up to date.<sup>14</sup> It must file the UBO information to the register.<sup>15</sup>

### 5. What concrete actions must those being responsible take to identify the UBO?

Those actions that every resident agent must take to comply with the requirements of Law 23 of 2015, its amendments and regulations or the new regulatory framework that may replace it in the future.<sup>16</sup>

This includes:

**Article 27. Basic Due Diligence Measures for Natural Persons Clients.** The Financial Reporting Entities, the Non-Financial Reporting Entities and Activities performed by Professionals subject to supervision, shall take the following basic measures of Customer Due Diligence when it pertains to a natural person. 1. Identify and verify customer identity, requesting and consulting documents, data or reliable information from independent sources, due references or recommendations, as well as reliable financial profile information and/or transactional customer profile; 2. The non-financial reporting entities will identify and verify the identity of the client, asking and consulting documents, data or reliable information from official and independent sources. 3. Verify that the person acting on behalf of another, is authorized, in order for the Reporting Entities to proceed to identify and verify the identity of this person. 4. Identify the Final Beneficiary and take reasonable measures to verify the information and documentation obtained from each of the natural persons who identify themselves as the Final Beneficiary. 5. Understand and as appropriate, obtain information about the purpose and nature intended for the commercial and /or professional relationship. 6. Establish a financial profile, taking the reasonable measures to sustain the source of the funds, the frequency of the transactions and if the customer deposits cash, quasi-cash, checks or electronic transfers in order to be able to understand, at the opening of the account or contract, the usual behavior that the customer will have with the Reporting Entities. 7. Any new account relationship or contract must comply with an assessment of the financial profile and transactional customer profile, to calculate the risk of the products or services offered. In the case of Non-Financial Reporting Entities and Activities performed by Professionals subject to supervision, the basic measures for Customer Due Diligence for natural persons will be limited to numerals 1; 2; 3; and 4 taking in consideration the relative importance and the identified risk.<sup>17</sup>

**Article 28. Basic Due Diligence Measures for Legal Persons Clients.** The Financial Reporting Entities, the Non-Financial Reporting Entities and Activities performed by Professionals subject to supervision shall take the following basic measures for Customer Due Diligence, when it pertains to legal persons and other legal structures: 1. Request the corresponding certificates evidencing the incorporation and legal existence of the legal persons, as well as the identification of officers, directors, agents, authorized signatures and legal representatives of such legal persons, as well as their identification, verification and address. 2. Identify and take reasonable measures to verify the Final Beneficiary using relevant information obtained from reliable sources. 3. In the event that the Final Beneficiary is a legal person, due diligence will prolong until getting to know the natural person that is the owner or controller. 4. Understand the nature of the customer's business and its shareholder and control structure. 5. The Financial Reporting Entities in general, shall take steps to prevent undue use of products and services offered by the legal person for Money Laundering, Terrorism financing and Financing of Proliferation of Weapons of Mass Destruction. 6. The Reporting Entities that have legal persons as customers with bearer shares, or bearer share certificates, shall take effective measures to ensure the identification of the Final Beneficiary or who the real owner is and implement transactional Due Diligence so that these legal persons are not misused for Money Laundering, Terrorism financing and

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<sup>14</sup> Law 129, Article 3; Article 12.

<sup>15</sup> Id.

<sup>16</sup> Law 129, Article 2.4.

<sup>17</sup> Law 23 of April 27, 2015 Adopting Measures for the Prevention of Money Laundering, Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction and other provisions ([http://www.supervalores.gob.pa/attachments/article/5606/traduccion\\_ley\\_23\\_5-de-mayo-2015.pdf](http://www.supervalores.gob.pa/attachments/article/5606/traduccion_ley_23_5-de-mayo-2015.pdf)), Article 27.

Financing of Proliferation of Weapons of Mass Destruction. 7. When the Financial Reporting Entities has not been able to identify the Final Beneficiary, it will refrain from initiating or continuing the business relation or performing transactions when there is persisting doubt on the identity of the customer or of the Final Beneficiary. 8. Conduct the appropriate Due Diligence for natural persons acting as administrators, representatives, agents, beneficiaries and signatories of the legal person.<sup>18</sup>

For Non-Financial Reporting Entities and Activities performed by Professionals subject to supervision, the basic measures for Due Diligence of the Customer natural person will be limited to numerals 1; 2; 3 and 8 taking in consideration the relative importance and the identified risk and specially when they are involved in a cash transaction with a client for an amount equal or over the amount established by the regulatory body. Financial Reporting Entities shall take measures to prevent the misuse of legal structures, among others: Foundations of Private Interest, ensuring that there is adequate, precise, accurate and timely information, including information about the Final Beneficiary, the Foundation Board and the Founder. The Financial Reporting Entities, the Non-Financial Reporting Entities and Activities performed by Professionals subject to supervision shall apply simplified Due Diligence, in the case of those legal persons that are listed in a stock exchange recognized by the Superintendence of the Securities Market.<sup>19</sup>

Once the final beneficiary is established:

- i. The resident agent must maintain their own registry and provide the following information to the Superintendency of Non-Financial Entities:
  - a. Natural Person:
    - i. Complete name
    - ii. Personal Identity Card.
    - iii. Eligibility Number.
    - iv. Address.
    - v. Date of Birth.
    - vi. Contact information.
    - vii. FAU Code.
  - b. Civil Company:
    - i. Complete name.
    - ii. Registration number.
    - iii. Registration date.
    - iv. Address.
    - v. Contact information.
    - vi. FAU Code.
- ii. And must also provide the following information to the Unique System for each legal entity to which it provides such service:
  - a. For the legal entity subject to registration:
    - i. Complete name.
    - ii. Registration number.
    - iii. Registration date.
    - iv. Address.
    - v. Main activity.
  - b. For the final beneficiary:
    - i. Complete name.
    - ii. Identity card, passport, or personal identity document number.
    - iii. Date of birth.

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<sup>18</sup> Id. at Article 28.

<sup>19</sup> Id.

- iv. Nationality.
  - v. Address.
  - vi. Date on which the condition of final beneficiary is acquired.
- iii. As an exception, in those cases in which the final beneficiary of the legal entity subject to registration is a company with common shares listed on a local or international stock exchange or owned by a state or multilateral entity of a State, it must provide the following information:
  - a. For the legal entity listed in a stock exchange
    - i. Complete name.
    - ii. Address.
    - iii. Country of incorporation.
    - iv. Name and jurisdiction of the stock exchange in which the legal entity is listed.
  - b. For the final beneficiary of a state or multilateral entity:
    - i. Complete name of the entity.
    - ii. Address.
    - iii. Country and/or headquarter.
    - iv. Complete name of the legal representative or equivalent.
  - c. For the final beneficiary owned by a State:
    - i. Complete name of the country.
    - ii. Registration date.

**6. What are the time periods within which submission to the registry of the UBO information or notification of any changes is required?**

Within 30 days of constitution or registration of the legal person or of the appointment of a new resident agent, or within 30 days following updated information regarding any variation in the information of the final beneficiary.<sup>20</sup>

**7. What are the obligations of lawyers who incorporate the entities or set up the arrangements vis a vis the registry, and vis a vis the legal persons or legal arrangements (clients)? What are the obligations of resident agents, trustees or providers of domicile who are not lawyers?**

Only resident agents have obligations vis a vis the registry.<sup>21</sup>

**8. How do the applicable rules of professional responsibility balance the ethical obligations of lawyers regarding confidentiality versus the duty to report suspicious activities such as money laundering?**

Lawyers and certified public accountants that whilst performing their professional activities, are classified as activities performed by professionals subject to supervision, are not required to report suspicious transactions if the relevant information was obtained in circumstances in which they are subject to professional secrecy or legal professional privilege, or confession that his client makes for proper defense.<sup>22</sup>

**9. Are there ongoing monitoring/review obligations in connection with the information to be submitted and if so, for whom?**

Legal representatives of all legal entities is obliged to provide their resident agent with the information required to identify the final beneficiary, as well as to notify their resident agent of any variation in the information of the final beneficiary within a maximum term of thirty business days following the date of the variation, so that the resident

<sup>20</sup> Law 129, Article 11; Article 12.

<sup>21</sup> Law 129.

<sup>22</sup> Law 23, Article 25.

agent carries out the update within a maximum term of thirty business days following the date of receiving such information.<sup>23</sup>

#### **10. Are there any types of legal entities exempt from the obligations to submit UBO information?**

The definition of final beneficiary makes an exception for “companies with common shares that are listed on a local or international stock exchange, or that are owned of an international, multilateral or State agency”<sup>24</sup>

## **Sanctions**

#### **11. What are the sanctions for not submitting the required information or submitting incomplete or inaccurate information?**

Resident agents will be sanctioned (B/.1,000.00) up to (B/.5,000.00) for each legal entity which information is not registered or updated in accordance with the law. In addition, the Superintendency of Non-Financial Entities will impose daily progressive fines, equivalent to 10% of the original imposed fine until the default is remedied for a maximum term of six months. Progressive fines will take effect the day after notification of the resolution that sets the initial fine.<sup>25</sup>

In case of verification of false declaration of the registered information of the final beneficiary by the resident agent, the Superintendence of Non-Financial Subjects will apply to the offender twice the maximum penalty (B/.5,000.00), as the case may be.<sup>26</sup>

Violation of the confidentiality of the information of the Unique System is sanctioned with a fine of two hundred thousand balboas (B/.200,000.00).<sup>27</sup>

#### **12. Who is subject to the sanctions (the company, its directors, the UBO, the resident agent)?**

Official assigned to the duties imposed by law,<sup>28</sup> Resident agent,<sup>29</sup> Legal entity,<sup>30</sup> Final Beneficiary,<sup>31</sup> Any person who accesses the register without proper authorization.<sup>32</sup>

#### **13. What authority imposes the sanctions, and through what process?**

The Super-intendency of non-financial entities.

#### **14. If there are economic sanctions, where do the proceeds from such sanctions go?**

For training purposes for resident agents to fulfill their obligations in the prevention of money laundering, terrorism financing and the financing of the proliferation of weapons of mass destruction; as well as for trainings to the officers of the Superintendency of Non-Financial Entities.<sup>33</sup>

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<sup>23</sup> Law 129, Article 12.

<sup>24</sup> Law 129, Article 2.a.

<sup>25</sup> Law 129, Article 23.

<sup>26</sup> Id.

<sup>27</sup> Law 129, Article 17

<sup>28</sup> Law 129, Article 22

<sup>29</sup> Law 129, Article 22, 23

<sup>30</sup> Law 129, Article 25

<sup>31</sup> Id.

<sup>32</sup> Law 129, Article 22

<sup>33</sup> Law 129, Article 23.

**15. If one of the sanctions is canceling registration, can the legal person or legal arrangement reapply to be registered again?**

One of the sanctions is suspension of the corporate rights of the legal entity, the legal entity can request an end to suspension within two years following the date of the suspension. If no request is made after this two year period expires the legal entity is considered dissolved.<sup>34</sup>

## Registry

**16. Which agency (ies) administer the registry?**

The Superintendency of Non-Financial Entities.<sup>35</sup>

**16.1 Is the agency (ies) self-regulated?**

Yes, it is an autonomous entity of the State.<sup>36</sup>

**16.2 How is the head of such agency(ies) appointed?**

The Superintendent is appointed by the President of the republic and ratified by the National Assembly, who may only be removed from their charge due to the causes expressly stated in Law 124 and by decision of the Third Chamber of the Supreme Court of Justice.<sup>37</sup>

**17. Is all of the content of the registry publicly available and, if so, through what means (e.g., Internet, physical request at authority's location)?**

No, the content is confidential and must be kept in strict reserve.<sup>38</sup> Those who can view the information have a duty of confidentiality that if breached will result in a (B./200,000.00) sanction, without prejudice to other sanctions established by law.<sup>39</sup> The penalty for unauthorized access of the registry is (B./500,000.00), without prejudice to the other corresponding civil and criminal penalties.<sup>40</sup>

**18. If the registry is not fully publicly available:**

**18.1 What content is publicly available and what is not?**

None of the content is publicly available.<sup>41</sup>

**18.2 Who has access to the non-public information?**

Access is strictly limited to the resident agent of the legal entity or legal entities to which services are rendered and to two officers appointed by the Superintendency of Non-Financial Entities, for the exclusive purpose of making the required information available to the competent authority.<sup>42</sup> By deduction, the competent authority, the Superintendency of Non-Financial Entities also has access to the information.

**18.3 What is the process for accessing such information, and what conditions or terms is it subject to?**

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<sup>34</sup> Law 129, Article 24.

<sup>35</sup> Law 129, Article 27.

<sup>36</sup> <https://www.lexology.com/library/detail.aspx?g=8f2eb7b5-2dfa-4f0d-9fc5-9e005ad43864>

<sup>37</sup> Id.

<sup>38</sup> Law 129, article 16.

<sup>39</sup> Law 129, Article 17.

<sup>40</sup> Law 129, Article 26.

<sup>41</sup> Law 129, Article 17.

<sup>42</sup> Law 129, Article 14.

There are strict requirements to become one of the two officers who can access the registry, including that they must be a Panamanian citizen, 35 years of age or older, with a degree in Banking, Finance, Law and Political Science, Administration and/or related careers, have at least 5 years' experience in risk management and administration and/or in the prevention of money laundering, have not been convicted of intentional crimes, not be related to the president, the ministers of state up to the fourth degree of consanguinity or second of affinity, nor be the spouse of the Ministers of State or of the President of the Republic, and not be the direct or indirect owner of the majority of the shares of a non-financial reporting entity, or that the legal representative does not have control of a legal entity that is a non-financial reporting entity.<sup>43</sup>

**18.4 Is there a specific provision or procedure for requests made by the following entities or persons:**

- i. Judiciary entities: No.
- ii. Law enforcement entities: No.
- iii. Journalists: No.
- iv. Foreign authorities (administrative, regulatory or judicial): No.

**18.5 Are there judicial or administrative procedures to access information? Can a party in a judicial proceeding subpoena information and, if so, based on what criteria and according to what procedure? Within what time period must the UBO agency provide the information?**

No, there are not.

**18.6 What are the consequences of violating the privacy of the information?**

Those who can view the information have a duty of confidentiality that if breached will result in a (B./200,000.00) sanction, without prejudice to other sanctions established by law.<sup>44</sup> The penalty for unauthorized access of the registry is (B./500,000.00), without prejudice to the other corresponding civil and criminal penalties.<sup>45</sup>

**19. Is the information in the registry used for public procurement procedures? If so, how?**

No.

**20. Are there other registries in the jurisdiction with similar functions? What are the differences?**

Banks must comply with due diligence in each case, but they are not obliged to have a sole registry as such.<sup>46</sup> Certain businesses subject to regulation by the securities regulator as the Stock Exchange Superintendence, have the same obligations as banks.<sup>47</sup>

As for other registries, Panama allows bearer shares, but they are required to be deposited for safekeeping with an authorized custodian. There are registries of custodians.<sup>48</sup> The system of deposit or custody of this type of shares under an authorized custodian has been adopted, for which registries of authorized custodians have been created, including: banks and trustees, supervised by the Banks Superintendence of Panama<sup>49</sup>.

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<sup>43</sup> Law 129, Article 15.

<sup>44</sup> Law 129, Article 17.

<sup>45</sup> Law 129, Article 26.

<sup>46</sup> [https://www.superbancos.gob.pa/superbancos/documentos/leyes\\_y\\_regulaciones/acuerdos/2018/Acuerdo\\_13-2018.pdf](https://www.superbancos.gob.pa/superbancos/documentos/leyes_y_regulaciones/acuerdos/2018/Acuerdo_13-2018.pdf)

<sup>47</sup> See Agreement 2-2017 of February 1st, 2017 issued by the , the Stock Exchange Superintendence of the Republic of Panama: <https://www.supervalores.gob.pa/reglamentacion/acuerdos/acuerdos-vigentes-espanol/acuerdos-2017/1748-acuerdo-02-2017/file>

<sup>48</sup> See Law 47 of 2013 [https://www.organojudicial.gob.pa/uploads/wp\\_repo/uploads/2015/05/Lev-47-de-6-de-agosto-de-2013.pdf](https://www.organojudicial.gob.pa/uploads/wp_repo/uploads/2015/05/Lev-47-de-6-de-agosto-de-2013.pdf)

<sup>49</sup> (BSP) (Agreement BSP 10-2018),

[https://www.superbancos.gob.pa/superbancos/documentos/leyes\\_y\\_regulaciones/acuerdos/2018/Acuerdo\\_10-2018.pdf](https://www.superbancos.gob.pa/superbancos/documentos/leyes_y_regulaciones/acuerdos/2018/Acuerdo_10-2018.pdf)



Brokerage houses are regulated and supervised by the Stock Exchange Superintendence of Panama<sup>50</sup>.

There is a special registry for lawyers kept by the Fourth Chamber of the Supreme Court of Justice dedicated to General Business<sup>51</sup>

## Other

### **21. What are the results of the evaluation conducted by/or on behalf of the Financial Action Task Force (FATF) regarding the registry?**

Panama is under increased monitoring as of Feb., 2020.<sup>52</sup>

### **22. Please provide statistics, if available, on registry responses to requests for information.**

There are no such statistics publicly available for the Panamanian registry.

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<sup>50</sup> (SES Agreement 7-2015) <http://www.supervalores.gob.pa/reglamentacion/acuerdos/acuerdos-vigentes-espanol/acuerdos-2015/1548-acuerdo-07-2015/file>

<sup>51</sup> (Agreement 307 of 2015). [https://www.organojudicial.gob.pa/uploads/wp\\_repo/uploads/2015/05/Acuerdo-No.307-de-24-04-15-Que-crea-el-Regis6.pdf](https://www.organojudicial.gob.pa/uploads/wp_repo/uploads/2015/05/Acuerdo-No.307-de-24-04-15-Que-crea-el-Regis6.pdf)

<sup>52</sup> <http://www.fatf-gafi.org/countries/a-c/bahamas/documents/increased-monitoring-june-2020.html>

## B. Colombia<sup>53</sup>

### Concept

#### 1. What were the stated objectives for the UBO register under the legislation or regulation creating such UBO register in the jurisdiction?

N/A

#### 2. How is UBO defined in the legislation or regulation?

CE055/2016: A “final beneficiary” is any natural person who meets any of the following characteristics:

- i. Directly or indirectly owns a stake greater than 5% of the legal entity acting as a client.
- ii. A person who, despite not owning a majority stake in the capital of the legal entity that acts as a client, exercises control of the legal entity.
- iii. A person on whose behalf that a transaction is carried out. It is understood that the economic effects of said transaction will fall to this person.

The regulation further specifies that the interpretation of the definition should take into account the interpretative notes of the recommendations issued by the *Grupo de Acción Financiera* (“GAFI” or “FATF”).<sup>54</sup>

##### 2.1 Is the same definition used in other laws in the jurisdiction and, if so, which ones?

No. For example, pursuant to Article 631 under the Colombian Tax Statute which applies only for tax purposes to specific Colombian companies, an “Effective Beneficiary” must:

Have effective control, directly or indirectly, of a national company, a representative, an autonomous patrimony, a fiduciary trust, a collective investment fund or a permanent establishment of a foreign company with a permanent establishment in Colombia.

To be a direct or indirect beneficiary of the operations and activities carried out by the entities previously listed.

Possess, directly or indirectly, 25% or more of the capital or of the votes of the national company, of the entities previously listed.<sup>55</sup>

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<sup>53</sup> Colombia does not currently have a UBO Registry, but there are public entities such as Dirección de Impuestos y Aduanas Nacionales (“DIAN”) and Registro Único Empresarial y Social (“RUES”) which serve similar functions to a UBO Registry. Colombia has in place regulations regulating/defining the concept of “beneficial ownership” or “BO”. The most recent regulation with respect to beneficial ownership is Circular Externa 055 De 2016 (“CE055/2016”) from the Superintendencia Financiera de Colombia which came into effect in 2017. Accordingly, this summary will focus primarily on this regulation and related regulations and entities with respect to the concept of beneficial ownership which was also evaluated by the International Monetary Fund in its IMF Country Report No. 18/314, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism published in November 2018 (<https://www.imf.org/~media/Files/Publications/CR/2018/cr18315-ColombiaROSC.ashx>). In 2016, Colombia committed “to create a Central Registry of Beneficial Ownership of National Companies including those whose parent companies or investment legal arrangements are domiciled offshore, with effective and unrestricted access for local and foreign law enforcement authorities” ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522717/Colombia\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522717/Colombia_1_.pdf)). However, the creation of the registry is still in process.

<sup>54</sup> CE055/2016; [https://www.superfinanciera.gov.co/descargas?com=institucional&name=pubFile1021869&downloadname=ce055\\_16.docx](https://www.superfinanciera.gov.co/descargas?com=institucional&name=pubFile1021869&downloadname=ce055_16.docx)

<sup>55</sup> Article 631-6; <https://estatuto.co/?e=1454>

**2.2 Is the UBO always an individual (or more than one individual) or can it be a legal entity, estate or trust?**

Yes. See CE055/2016 Definition above for characteristics of a final beneficiary.

**2.3 What are the criteria to establish “ultimate ownership” (level of ownership that triggers the notification requirement, calculation in a multi-level chain of ownership, etc.)?**

See CE055/2016 Definition above for characteristics of a final beneficiary.

**2.4 What are the criteria to establish “ultimate control” (shareholder rights, GP position in partnership, beneficiary position in a trust or estate, joint control, etc.)?**

See CE055/2016 Definition above for characteristics of a final beneficiary.

**2.5 Do the criteria consider accounting principles, such as International Financial Reporting Standards or other applicable accounting principles?**

No.

**3. Is it mandatory to register UBO information in all cases? If only mandatory in some, in which cases is it mandatory to register the UBO information and in which cases is it not?**

There are no mandatory requirements at this time to register UBO information under CE055/2016. However, for tax purposes and pursuant Article 631 of the Colombian Tax Statute, entities listed in 2.1. must identify their beneficial owners, and if requested by the DIAN they must provide specific information.

**3.1 Are the registration requirements for legal persons and legal arrangements different?**

N/A

**3.2 Is a resident agent required and what is their position?**

N/A

**3.3 Does the registration of UBO information have any implications on the legal existence of the entity?**

N/A

## Registering information

**4. Who is responsible for submitting the UBO information to the registry? What are the obligations of this person or entity?**

N/A

**5. What concrete actions must those being responsible take to identify the UBO?**

N/A

**6. What are the time periods within which submission to the registry of the UBO information or notification of any changes is required?**

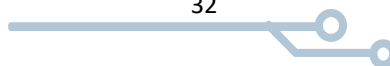
N/A

**7. What are the obligations of lawyers who incorporate the entities or set up the arrangements vis a vis the registry, and vis a vis the legal persons or legal arrangements (clients)? What are the obligations of resident agents, trustees or providers of domicile who are not lawyers?**

Under CE055/2016, “Designated Non-Financial Businesses and Professions” (including lawyers) must comply with new customer due diligence obligations which include obtaining the following information from clients:<sup>56</sup>

Description	NP	LP
Full name and surname or Company Name	X	X
National Persons: Identification number: NIT, civil birth registration, citizenship card and identity card.	X	X
Foreigners: Identification number: Immigration card, valid passport for tourist or visitor visa holders or another type of visa valid for less than 3 months, or card issued by <i>Dirección de Protocolo del Ministerio de Relaciones Exteriores para titulares de Visas Preferenciales</i> (diplomatic/consular service, international organizations or administrations, as appropriate, and in accordance with current immigration regulations).	X	
National tourists from the member countries of the Andean Community of Nations. Identification number: Valid and valid identification document in the issuing country with which you entered Colombia.	X	
Full name and surname of the representative or power of attorney and identification number.	X	X
Address and Telephone of the representative		X
Date and place of birth	X	
Address, email and home/cell phone number	X	
Occupation, employment or profession	X	
Activity description: Independent, dependent, position held.  Main economic activity: commercial, industrial, transport, construction, agribusiness, financial services, etc., in accordance with the provisions of the international ISIC code.	X	X
Name, address, telephone number of the office, company or business where you work if applicable. Address, telephone, city of the main office and of the branch or agency that acts as a client.	X	
Identification of the shareholders or associates who hold directly or indirectly more than 5% of the share capital, contribution or participation.		X
Type of company: private, public, mixed.		X

<sup>56</sup> See supra note 2, 4.2.2.2.1.3 Formularios.



Declaration of origin of the assets and / or funds, as the case may be (may be an annex).	X	X
Monthly income and expenses.	X	X
Detail of other income, non-operating income or income from activities other than the main one.	X	X
Total assets and liabilities.	X	X
In the case of trust, the kind of resources and identification of the goods being delivered.	X	X
Demonstration on the performance of activities in foreign currency.	X	X
Manifestación sobre la realización de actividades en moneda extranjera.	X	X
Applicant's signature and fingerprint.	X	X
Date of Diligence.	X	X

**8. How do the applicable rules of professional responsibility balance the ethical obligations of lawyers regarding confidentiality versus the duty to report suspicious activities such as money laundering?**

N/A

**9. Are there ongoing monitoring/review obligations in connection with the information to be submitted and if so, for whom?**

N/A

**10. Are there any types of legal entities exempt from the obligations to submit UBO information?**

N/A

## Sanctions

Colombia has several regulatory bodies and different types of sanctions imposed for failing to submit required information.<sup>57</sup>

**11. What are the sanctions for not submitting the required information or submitting incomplete or inaccurate information?**

Legal persons that fail to renew their commercial registration in public registries within three months are subject to economic penalties imposed by the *Superintendencia de Industria y Comercio*. As of 2018, these economic penalties were up to COP12,500,000 (approximately US\$4,200). Additional failures on renewal obligations could result in temporary/permanent closure of a company's facilities.

<sup>57</sup> See IMF Country Report No. 18/314, Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism published in November 2018 (<https://www.imf.org/~media/Files/Publications/CR/2018/cr18315-ColombiaROSC.ashx>)

For irregularities in books of commerce (i.e., accounting information or books of shareholders) and for failing to provide information related to these books, *Supersociedades* also imposes economic sanctions on legal persons (as of 2018, maximum fines were up to US\$34,100). Additionally, *Supersociedades* imposes sanctions where subordination among entities or a controlling person is not duly reported or registered.<sup>58</sup>

Criminal proceedings have also taken place where entities have provided false information to the commercial register (i.e., RUES). In such cases, it was the relevant chambers of commerce that filed penal complaints for falsification of private documents.

**12. Who is subject to the sanctions (the company, its directors, the UBO, the resident agent)?**

See information in 11. Generally, it is legal persons (i.e., the companies) that are subject to sanctions.

**13. What authority imposes the sanctions, and through what process?**

See information in 11. Generally, it is the several regulatory bodies in Colombia that impose the sanctions.

**14. If there are economic sanctions, where do the proceeds from such sanctions go?**

See information in 11. Generally, economic sanctions are paid to the regulatory body imposing the economic sanctions.

**15. If one of the sanctions is canceling registration, can the legal person or legal arrangement reapply to be registered again?**

N/A

## Registry

**16. Which agency (ies) administer the registry?**

N/A

**17. Is all of the content of the registry publicly available and, if so, through what means (e.g., Internet, physical request at authority's location)?**

N/A

**18. If the registry is not fully publicly available:**

**18.1 What content is publicly available and what is not?**

Per the IMF's 2018 report<sup>59</sup>, beneficial ownership information of legal persons is only partially available through limited sources including the following:

- i. RUES contains public information on the owners and first partners/founders of an entity. Financial groups must also identify and register the "financial controller" of the group which could be a legal person (not necessarily a beneficial owner under CE055/2016). Beneficial ownership information

<sup>58</sup> See Id for annual average penalties imposed by *Supersociedades* between 2015 and 2017.

<sup>59</sup> Id.

may be available for simple ownership structures, but it does not contain up to date information on shareholders.<sup>60</sup>

- ii. “Books of Shareholders”, held and updated by companies, contain information on shareholders, number/percentage/types of shares for each shareholder and ownership changes. Beneficial ownership information (as defined under CE055/2016) may be obtained if the shareholders are natural persons (not when legal persons are the holders or foreign ownership is involved). The information is not publicly available, but can be obtained by judicial authorities, prosecutors, DIAN or regulators/inspectors if requested for tax purposes, investigations or inspections.
- iii. Information from DIAN, supervisors/regulators and the *Superintendencia de Sociedades* (“*Supersociades*”) database on shareholders<sup>61</sup>. The *Supersociades* database contains information of all shareholders, percentage shares belonging to each shareholder and the financial statements/accounting information of the main domestic legal entities (approximately 27,000 in 2018).

### **18.2 Who has access to the non-public information?**

See information in 18.a. Generally, it will be governmental authorities that have access to non-public information upon request.

### **18.3 What is the process for accessing such information, and what conditions or terms is it subject to?**

See information in 18.a. Generally, it will be governmental authorities that have access to non-public information upon request for tax purposes, investigations or inspections.

### **18.4 Is there a specific provision or procedure for requests made by the following entities or persons:**

N/A

### **18.5 Are there judicial or administrative procedures to access information? Can a party in a judicial proceeding subpoena information and, if so, based on what criteria and according to what procedure? Within what time period must the UBO agency provide the information?**

N/A

### **18.6 What are the consequences of violating the privacy of the information?**

N/A

### **19. Is the information in the registry used for public procurement procedures? If so, how?**

N/A

### **20. Are there other registries in the jurisdiction with similar functions? What are the differences?**

See information in 18.a. for examples of such entities/databases (i.e., RUES, DIAN and *Supersociades*). Other registries include the commercial registries for chambers of commerce.

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<sup>60</sup> Information is publicly available on [www.rues.org.com](http://www.rues.org.com) while documents/backup records kept in company registries are not public, but accessible to authorities.

<sup>61</sup> Available here: <https://www.supersociades.gov.co/SitePages/Inicio.aspx>

**21. What are the results of the evaluation conducted by/or on behalf of the Financial Action Task Force (FATF) regarding the registry?**

FATF through GAFILAT and IMF completed evaluation reports in November of 2018. These reports are specific to transparency in Colombia regarding anti-money laundering measures and terrorism financing while also addressing the concept of beneficial ownership with respect to legal persons.<sup>62</sup>

Per the GAFILAT report, as of November 2018, Colombia was deemed partially compliant with FATF Recommendation 24 regarding transparency and beneficial ownership of legal persons. While basic information for companies had to be registered with public bodies and annually updated, beneficial owner information was only partially available for authorities and there was no processes to obtain or hold accurate/updated information on beneficial owner information in a timely manner as set by FATF standards.

**22. Please provide statistics, if available, on registry responses to requests for information.**

N/A

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<sup>62</sup> See <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GAFILAT-Mutual-Evaluation-Colombia-2018.pdf>



## C. Costa Rica

### Concept

#### 1. What were the stated objectives for the UBO register under the legislation or regulation creating such UBO register in the jurisdiction?

In December 2016, Costa Rica passed a law creating new measures to target tax fraud.<sup>63</sup> In April 2018, Costa Rica issued a regulation implementing that law, and citing an identified need to, *inter alia*, do more to counter “money laundering” and “the financing of terrorism” and meet its responsibilities with respect to the “international exchange of information.”<sup>64</sup> Costa Rica has established its current UBO registry (*el Registro de Transparencia y Beneficiarios Finales* or Transparency and Final Beneficiaries Registry) pursuant to the 2016 law and 2018 regulation.<sup>65</sup> The Registry’s objective is to identify the UBOs.<sup>66</sup>

#### 2. How is UBO defined in the legislation or regulation?

The ultimate beneficial owner is defined in the 2016 law as:

[T]he natural person who exercises a substantive influence or control, direct or indirect, over the legal person or legal structure such that it has the majority of the voting rights of the shareholders or partners, has the right to designate or dismiss most of the administrative, management or supervisory organs, or who have the condition of control of that company by virtue of its statutes. Indirect control shall be understood as having control over legal persons who have final stake in the national legal person or legal structure and, direct control, the possibility of having sufficient shares or stakes to control the national legal person or legal structure. In the case of legal persons or legal structures domiciled in Costa Rica, whose substantive shareholder control over social capital belongs, in whole or in part, to legal entities domiciled abroad, when it is impossible to identify the ultimate beneficial owner, in accordance with the provisions in this chapter, having exhausted all means of identification and as long as there is no reason for suspicion, it will be presumed that the ultimate beneficiary is the administrator.<sup>67</sup>

<sup>63</sup> Ley para Mejorar la Lucha contra el Fraude Fiscal, Norma N° 9416 (Dec. 14, 2016) [hereinafter Norma N° 9416], available at: [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=83186&nValor3=106701&strTipM=TC](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=83186&nValor3=106701&strTipM=TC) (last visited July 15, 2020).

<sup>64</sup> Reglamento del registro de transparencia y beneficiarios finales, N° 41040 -H (Apr. 5, 2018) [hereinafter Reglamento N° 41040 -H], ¶ II (trans.) (mentioning, for instance, “recommendations” of the Financial Action Task Force of Latin America (GAFILAT) (trans.)), available at: [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=86343&nValor3=111995&strTipM=TC#up](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=86343&nValor3=111995&strTipM=TC#up) (last visited July 15, 2020).

<sup>65</sup> Norma N° 9416; id.

<sup>66</sup> Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, N° DGT-ICD-R-06-2020 (Mar. 30, 2020), art. 2º, available at: <https://www.hacienda.go.cr/Sidovih/uploads/Archivos/Resoluciones%20de%20ley/Resoluci%C3%B3n%20DGT-ICD-R-06-2020-La%20Gaceta%20N%C2%B065%20-30marzo%202020.pdf>.

<sup>67</sup> Norma N° 9416 art. 5, original text:

Se entenderá por beneficiario final o efectivo la persona física que ejerce una influencia sustantiva o control, directo o indirecto, sobre la persona jurídica o estructura jurídica de manera que cuente con la mayoría de los derechos de voto de los accionistas o socios, tenga el derecho a designar o cesar a la mayor parte de los órganos de administración, dirección o supervisión, o que posea la condición de control de esa empresa en virtud de sus estatutos. Se entenderá por control indirecto tener control sobre personas jurídicas que finalmente tienen participación en la persona jurídica o estructura jurídica nacional y, el directo, la posibilidad de tener acciones o participaciones suficientes para controlar la persona jurídica o estructura jurídica nacional. En el caso de personas o estructuras jurídicas domiciliadas en Costa Rica, cuya participación accionaria sustantiva del capital social pertenezca, total o parcialmente, a entidades jurídicas domiciliadas en el extranjero, cuando resulte imposible identificar al beneficiario final, de acuerdo con lo dispuesto en este capítulo, habiendo agotado todos los medios de identificación y siempre que no haya motivo de sospecha, se presumirá que el beneficiario final es el administrador.

### **2.1 Is the same definition used in other laws in the jurisdiction and, if so, which ones?**

The 2018 regulation uses essentially the same definition as the 2016 law.<sup>68</sup> A similar definition appears in the Joint Resolution N° DGT-ICD-R-06-2020.<sup>69</sup>

### **2.2 Is the UBO always an individual (or more than one individual) or can it be a legal entity, estate or trust?**

Based on the above definitions, the UBO is always a natural person.

### **2.3 What are the criteria to establish “ultimate ownership” (level of ownership that triggers the notification requirement, calculation in a multi-level chain of ownership, etc.)?**

In the 2016 law, substantive interest is understood to mean “equal to or greater than” a limit set by the Ministry of Finance and within fifteen to twenty-five percent of the entity’s total capital.<sup>70</sup>

### **2.4 What are the criteria to establish “ultimate control” (shareholder rights, GP position in partnership, beneficiary position in a trust or estate, joint control, etc.)?**

The 2018 regulation further stipulates that substantive interest means holding “equal to or greater than” fifteen percent of an entity’s shares vis-à-vis its total capital.<sup>71</sup>

### **2.5 Do the criteria consider accounting principles, such as International Financial Reporting Standards or other applicable accounting principles?**

The only stated criteria is described in sections 2.3 and 2.4 above.

## **3. Is it mandatory to register UBO information in all cases? If only mandatory in some, in which cases is it mandatory to register the UBO information and in which cases is it not?**

Although various legal persons and structures are required to provide the Registry information, companies already listed on any established stock exchange, public trusts, financial organizations overseen by the Superintendencia General de Entidades Financieras, and government entities are not required to register UBO information.<sup>72</sup>

### **3.1 Are the registration requirements for legal persons and legal arrangements different?**

The requirements for legal persons and legal structures are the same.<sup>73</sup>

### **3.2 Is a resident agent required and what is their position?**

No, but the person providing the information must have a valid digital signature certificate.<sup>74</sup> Getting a digital signature requires having an identification number or residence number and visiting a registry office in person.<sup>75</sup>

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<sup>68</sup> Reglamento N° 41040 -H art. 2.

<sup>69</sup> See supra note 4, art. 16.

<sup>70</sup> Norma N° 9416 art. 5 (trans.); See Registro de Transparencia y Beneficiarios Finales (Aug. 2019), <https://activos.bccr.fi.cr/sitios/bccr/noticias/Documentos%20compartidos/2019-08-RTBF-informacion-general.pdf> for helpful diagrams of substantive interest in different control scenarios.

<sup>71</sup> Reglamento N° 41040 -H art. 2 (trans.).

<sup>72</sup> Id. art. 4; Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 4, art. 13 (listing the types of legal persons that must provide information, such as “sociedades anónimas” or “limited companies”). However, entities listed on stock exchanges must still provide certain information to the Registry. Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 4, art. 19.

<sup>73</sup> Reglamento N° 41040 -H arts. 5, 6.

<sup>74</sup> Id. art. 5.

<sup>75</sup> Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 4, art 3º; POLÍTICA DE CERTIFICADOS PARA LA JERARQUÍA NACIONAL DE CERTIFICADORES REGISTRADOS, Firma Digital (May 20, 2013), 7,

### 3.3 Does the registration of UBO information have any implications on the legal existence of the entity?

There are no readily apparent implications on the legal existence of the entity.

## Registering information

#### 4. Who is responsible for submitting the UBO information to the registry? What are the obligations of this person or entity?

The legal representative of any legal person or entity domiciled in Costa Rica or any third-party resource administrators must submit information to the registry, including information about the shareholders and final beneficiaries with substantive participation.<sup>76</sup> Third party administrators must provide the registry information pertaining to non-public trusts, including names of the trustee(s) and beneficiaries, if any.<sup>77</sup> Likewise, presidents (or others) of non-profit organizations must provide detailed records and identification information to the Registry.<sup>78</sup> Other organizations identified by the Costa Rican Institute on Drugs may also be required to provide information.<sup>79</sup> In the Joint Resolution N° DGT-ICD-R-06-2020, the legal representative is whoever has “extrajudicial representation.”<sup>80</sup> Moreover, others can be designated to provide the information if accredited by a notary public.<sup>81</sup>

#### 5. What concrete actions must those being responsible take to identify the UBO?

Those responsible for submitting information to the Registry must do the following:<sup>82</sup>

- i. Register and identify all shareholders (or those with substantial interest in the entity), all ultimate beneficial owners (even in the case of there being another administrator), and the entity’s shareholding composition.
- ii. Report share/quota ownership of capital stock in legal entities domiciled abroad, including for bearer shares.
- iii. Provide a valid email address.<sup>83</sup>

In the case of legal persons or entities domiciled in Costa Rica but with substantive control by entities domiciled abroad, all ownership information of those foreign entities must be provided.<sup>84</sup> If unable to identify the UBOs, the administrator is considered to be the UBO, and the person providing the information to the Registry must provide an affidavit to the Registry stating that it was unable to identify the UBOs along with certain documentation of the foreign entities that is available.<sup>85</sup>

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<http://www.firmadigital.go.cr/Documentos/CPSSistemaNacionalCertificaci%C3%B3nDigitalversi%C3%B3n1.pdf>; Inscripción y Declaraciones, Central Bank, 2, [https://ayudaenlinea.bccr.fi.cr/ucontent/5de36bc2bb3a402ba47bb4a86e9e5b80\\_es-ES/course/html/course.htm](https://ayudaenlinea.bccr.fi.cr/ucontent/5de36bc2bb3a402ba47bb4a86e9e5b80_es-ES/course/html/course.htm) (last visited July 15, 2020).

<sup>76</sup> Norma N° 9416 art. 5. Financial institutions may also be subject to requirements for the provision of information. Código de Normas y Procedimientos Tributarios (Código Tributario), Norma N° 4755 (May 3, 1971, as amended on Dec. 14, 2016) [hereinafter Norma N° 4755], art. 106 ter., available at: [http://www.pgrweb.go.cr/SCIJ/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?nValor1=1&nValor2=6530](http://www.pgrweb.go.cr/SCIJ/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=6530); Reglamento N° 41040 -H art. 5.

<sup>77</sup> Norma N° 9416 art. 6.

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 4, art. 13.

<sup>81</sup> Id. art. 14.

<sup>82</sup> Id. art. 7; Reglamento N° 41040 -H arts. 6, 12.

<sup>83</sup> Reglamento N° 41040 -H art. 27.

<sup>84</sup> Id. art. 10.

<sup>85</sup> Id.



In the case of legal persons or entities domiciled in Costa Rica, all interests and UBO information must be provided.<sup>86</sup>

A full accounting of the information, including that which must be provided in the declarations and with respect to the UBOs, is available in the Annex to the Joint Resolution N° DGT-ICD-R-06-2020.<sup>87</sup>

**6. What are the time periods within which submission to the registry of the UBO information or notification of any changes is required?**

UBO information must be provided through the Registry every year in September, and any time a shareholder is recorded as meeting or surpassing the limits described above (within fifteen business days of such event) (extraordinary declaration).<sup>88</sup>

**7. What are the obligations of lawyers who incorporate the entities or set up the arrangements vis a vis the registry, and vis a vis the legal persons or legal arrangements (clients)? What are the obligations of resident agents, trustees or providers of domicile who are not lawyers?**

The individual responsible for providing the Registry information must obtain a valid digital signature certificate to submit the information.<sup>89</sup> For entities formed after the annual filing date, UBO information must be provided to the Registry within twenty business days (ordinary declaration).<sup>90</sup> The obligations identified in response to Question 9 below also apply.

**8. How do the applicable rules of professional responsibility balance the ethical obligations of lawyers regarding confidentiality versus the duty to report suspicious activities such as money laundering?**

Those who provide the information to the Registry must ensure that there is nobody within the legal structure who has failed to provide the required information.<sup>91</sup>

**9. Are there ongoing monitoring/review obligations in connection with the information to be submitted and if so, for whom?**

The Central Bank must report annually to the General Directorate of Taxation on “the status of the declarations” in the Registry.<sup>92</sup> Those who provide information to the Registry must also ensure that they do so annually for the periods in question and that they resolve issues with those internal individuals who fail to provide information.<sup>93</sup> They must also maintain the requisite documentation.<sup>94</sup>

**10. Are there any types of legal entities exempt from the obligations to submit UBO information?**

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<sup>86</sup> Id. art. 11.

<sup>87</sup> Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 4, at Annex Único.

<sup>88</sup> Norma N° 9416 art. 5; Reglamento N° 41040 -H art. 9; id. art. 13b, transitorio primero (noting that the exact month was initially based on the last digit of the entity's ID); Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 4, art. 6<sup>o</sup>.

<sup>89</sup> Reglamento N° 41040 -H art. 5.

<sup>90</sup> Id. art. 9; Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 9, art. 13a.

<sup>91</sup> Reglamento N° 41040 -H art. 21.

<sup>92</sup> Id. art. 20 (trans.).

<sup>93</sup> Id. art. 21.

<sup>94</sup> Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 9, art. 16; Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 4, art. 11.

Public trusts are exempt.<sup>95</sup> Companies with listed shares are also mostly exempt from the information requirements described in the responses to Questions 3 and 5.<sup>96</sup>

## Sanctions

### 11. What are the sanctions for not submitting the required information or submitting incomplete or inaccurate information?

Sanctions can be applied in accordance with Article 84 bis of the Tax Code in Law 4755, which states that typically a 2 percent fine will be imposed based on gross income of the legal person/entity (and between three and 100 salaries) based on the preceding income tax period.<sup>97</sup> For continuing noncompliance, the National Registry cannot issue certificates to or register documents of the legal person/entity and notaries public have to note the breach in any documents they issue.<sup>98</sup>

### 12. Who is subject to the sanctions (the company, its directors, the UBO, the resident agent)?

The fine is imposed on the legal person or structure obliged to provide the information under the 2016 law.<sup>99</sup>

### 13. What authority imposes the sanctions, and through what process?

The General Directorate of Taxation imposes such sanctions.<sup>100</sup> In the case of penal sanctions for possible crimes, the Tax Administration submits complaints to the Public Ministry for adjudication, during which time the sanctions process is suspended; if there is no outcome after five years, the complaint will be dismissed.<sup>101</sup>

The day after declarations are required to be submitted to the Registry, the General Directorate of Taxation will give a warning to provide any outstanding declarations or more complete information within three days.<sup>102</sup> If the problem is not resolved, then the obliged is considered to be in default and are added to a list of all those in default.<sup>103</sup>

### 14. If there are economic sanctions, where do the proceeds from such sanctions go?

Any resulting fines will go to the State for exclusive use by the Institute on Drugs on its operational activities.<sup>104</sup>

### 15. If one of the sanctions is canceling registration, can the legal person or legal arrangement reapply to be registered again?

Canceling registration is not one of the sanctions.

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<sup>95</sup> Norma N° 9416 art. 6.

<sup>96</sup> Id. art. 7.

<sup>97</sup> Id. art. 13; Norma N° 4755 art. 84 bis; Reglamento N° 41040 -H art. 26.

<sup>98</sup> Norma N° 4755 art. 84 bis.

<sup>99</sup> Reglamento N° 41040 -H art. 2 (“Sujetos obligados: Personas jurídicas o estructuras jurídicas obligadas al suministro de la información requerida en la Ley para Mejorar la Lucha contra el Fraude Fiscal.”); Norma N° 4755 art. 84 bis (“La Dirección General de Tributación impondrá al obligado que incumpla el suministro de información establecido. . . .”) (emphasis added).

<sup>100</sup> Norma N° 4755 arts. 84 bis, 149.

<sup>101</sup> Id. art. 90.

<sup>102</sup> Reglamento N° 41040 -H art. 21. Entities must post in a national newspaper to seek any missing data from shareholders. Resolución Conjunta de Alcance General para el Registro de Transparencia y Beneficiarios Finales, supra note 4, art. 20.

<sup>103</sup> Reglamento N° 41040 -H arts. 21–2.

<sup>104</sup> Norma N° 4755 art. 90.

## Registry

### 16. Which agency (ies) administer the registry?

The registry is administered by the Central Bank of Costa Rica (*Banco Central de Costa Rica*), the Ministry of Finance (*Ministerio de Hacienda*), and the Costa Rican Institute on Drugs (*Instituto Costarricense sobre Drogas*).<sup>105</sup> The Central Bank collects the UBO information requested and maintains the Registry database.<sup>106</sup>

#### 16.1 Is the agency (ies) self-regulated?

Law 9416 provides that officials of each of the three agencies can be sanctioned for improper access to or manipulation of the Registry (or the allowance thereof).<sup>107</sup> The law also created an Internal Affairs Directorate within the Ministry of Finance to investigate such issues.<sup>108</sup>

#### 16.2 How is the head of such agency(ies) appointed?

The President of the Central Bank, who also sits on the Bank's Board of Directors, is appointed by the Governing Council of Costa Rica to a renewable four-year term and has "independence in the exercise of his powers."<sup>109</sup>

The President of Costa Rica appoints the Minister of Finance.<sup>110</sup>

The Director General of the Institute on Drugs is appointed by and falls under the oversight of a Board of Directors made up of other governmental ministers.<sup>111</sup> The Director General must have certain qualifications and experience and must pass through a review by a special commission designated by the Board.<sup>112</sup>

### 17. Is all of the content of the registry publicly available and, if so, through what means (e.g., Internet, physical request at authority's location)?

Entities can make their declarations online.<sup>113</sup> Although there is no available listing of the registered entities, people can generally see if they are in the Registry and entities can check the status of their own declarations online by entering their company's ID number and the year of the declaration (more information is only available for those with a valid digital signature certificate).<sup>114</sup>

The Tax Administration also has access to the information, but its officials would face sanctions for unauthorized use, disclosure, or provision of the information to others.<sup>115</sup>

### 18. If the registry is not fully publicly available:

<sup>105</sup> Reglamento N° 41040 -H ¶ XIII.

<sup>106</sup> Norma N° 9416 art. 8.

<sup>107</sup> Id. art. 14; see also Norma N° 4755 arts. 93–7.

<sup>108</sup> Norma N° 9416 art. 15.

<sup>109</sup> Ley Orgánica del Banco Central de Costa Rica, Norma N° 7558 (Nov. 3, 1995), art. 17, available at: [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=40928#ddown](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=40928#ddown).

<sup>110</sup> Constitución Política de 7 de Noviembre de 1949 y sus Reformas art. 139(1), available at: <https://www.tse.go.cr/pdf/normativa/constitucion.pdf>.

<sup>111</sup> Ley sobre estupefacientes, sustancias psicotrópicas, drogas de uso no autorizado, actividades conexas, legitimación de capitales y financiamiento al terrorismo, Norma N° 8204 (Apr. 30, 1998, as amended Aug. 13, 2013), arts. 108, 111–2, available at: [http://www.icd.go.cr/portaldic/images/docs/normativa/Reforma\\_Ley\\_8204\\_2015.pdf](http://www.icd.go.cr/portaldic/images/docs/normativa/Reforma_Ley_8204_2015.pdf).

<sup>112</sup> Id. arts. 111–2.

<sup>113</sup> Registro de Transparencia y Beneficiarios Finales (RTBF), Central Directo, Banco Central de Costa Rica, <https://www.centraledirecto.fi.cr/Sitio/CentralDirecto/Inicio/RegistroDeAccionistas>.

<sup>114</sup> Reglamento N° 41040 -H art. 23; RTBF, Central Directo, Banco Central de Costa Rica, <https://www.centraledirecto.fi.cr/Sitio/RbfPublicoConsultas/ConsultaCiudadana/Index>.

<sup>115</sup> Norma N° 9416 art. 1.

### **18.1 What content is publicly available and what is not?**

Information in the Registry database is confidential.<sup>116</sup>

### **18.2 Who has access to the non-public information?**

The Central Bank manages access to the information by the Ministry of Finance and the Costa Rican Institute on Drugs.<sup>117</sup> The information is considered confidential and to be used by the Ministry of Finance only for tax issues, risk management planning, and exchanges under international instruments, and by the Institute on Drugs for official purposes.<sup>118</sup>

### **18.3 What is the process for accessing such information, and what conditions or terms is it subject to?**

Article 10 of Law 9416 states that the Ministry of Finance and the Institute on Drugs must provide the following information with any request for information:

- i. Name of requesting agency
- ii. Any associated file/case number
- iii. Name(s) of requesting official(s)
- iv. Date of request
- v. Signature(s) of requesting official(s) and a list of all officials who will have access to the requested information
- vi. Details about the required information and a reference to the applicable provision in Article 9(a) of Law 9416 in the case of the Ministry of Finance.
- vii. Any other requirements defined by regulation.

If any information is missing, the Central Bank must reject the request with reference to any shortcomings of the request.<sup>119</sup>

The General Directorate of Taxation oversees compliance of the provision of information and administers any related sanctions.<sup>120</sup>

### **18.4 Is there a specific provision or procedure for requests made by the following entities or persons:**

- i. Judiciary entities
- ii. Law enforcement entities
- iii. Journalists
- iv. Foreign authorities (administrative, regulatory or judicial)

The following contact information is provided online by the Central Bank for questions related to the UBO registry: infoyasisistencia@Hacienda.go.cr or phone number 2539-4000 ext. 1.<sup>121</sup>

### **18.5 Are there judicial or administrative procedures to access information? Can a party in a judicial proceeding subpoena information and, if so, based on what criteria and according to what procedure? Within what time period must the UBO agency provide the information?**

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<sup>116</sup> Id. art. 19.

<sup>117</sup> Norma N° 9416 art. 8.

<sup>118</sup> Id. art. 9.

<sup>119</sup> Id. art. 10.

<sup>120</sup> Id. art. 11; Reglamento N° 41040 -H art. 28.

<sup>121</sup> Contáctenos, Central Directo, Banco Central de Costa Rica, <https://www.centraledirecto.fi.cr/Sitio/CentralDirecto/Inicio/Contactenos>.

Anyone can seek corrections either directly with the person who provided the information or through an administrative judge who can pursue such changes.<sup>122</sup>

#### **18.6 What are the consequences of violating the privacy of the information?**

The Central Bank will alert providers of information if they have failed to meet the Registry requirements for information on UBOs.<sup>123</sup> There are certain guarantees about the use and confidentiality of the information provided to the Registry database, and UBOs can go before a judge to assert that the information is being used for illegitimate or different purposes than those stated.<sup>124</sup>

#### **19. Is the information in the registry used for public procurement procedures? If so, how?**

The information in the Registry can only be used for the purposes defined in response to Question 18b.

#### **20. Are there other registries in the jurisdiction with similar functions? What are the differences?**

There are two other related registries: the overarching National Registry (*el Registro Nacional*)<sup>125</sup> and its component Registry of Legal Persons (*el Registro de Personas Jurídicas*).<sup>126</sup> The National Registry and the Registry of Legal Persons both contain information that is available to the public (with account registration on the National Registry website).<sup>127</sup> By contrast, the National Registry may lack some information regarding trusts, according to one Financial Action Task Force of Latin America (GAFILAT) report.<sup>128</sup> Despite the existence of the Registry of Legal Persons—and its maintenance of “basic” registration information—the challenge of outdated or incorrect information about ownership has led to “difficulties” for ensuring accurate beneficial ownership data, as stated in one GAFILAT report.<sup>129</sup>

## **Other**

#### **21. What are the results of the evaluation conducted by/or on behalf of the Financial Action Task Force (FATF) regarding the registry?**

The GAFILAT, a member of the FATF, has evaluated Costa Rica several times since 2015.<sup>130</sup> In 2015, with reference to the National Registry and the Registry of Legal Persons, a GAFILAT report states: “[T]here are difficulties to access the basic information on beneficial owners of legal persons, on an accurate and updated manner.”<sup>131</sup> This statement came notwithstanding that information on the National Registry is publicly available.<sup>132</sup> In 2015, Costa Rica received an overall effectiveness rating of “low” for legal persons and structures; as the GAFILAT report explains:

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<sup>122</sup> Reglamento N° 41040 -H art. 24.

<sup>123</sup> Reglamento N° 41040 -H art. 7.

<sup>124</sup> Norma N° 9416 art. 12.

<sup>125</sup> “National Registry Services,” Registro Nacional, [http://registronacional.go.cr/regional\\_offices/index.htm](http://registronacional.go.cr/regional_offices/index.htm) (last visited July 8, 2020).

<sup>126</sup> “Legal Entities,” Registro Nacional, [http://www.registronacional.go.cr/legal\\_entities/overview.htm](http://www.registronacional.go.cr/legal_entities/overview.htm) (last visited July 8, 2020).

<sup>127</sup> Registro Nacional, <http://www.rnpdigital.com/index.htm> (last visited July 8, 2020); Mutual Evaluation Report of the Republic of Costa Rica, GAFILAT 15 I PLEN 3, ¶¶ 455, available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mutual%20Evaluation%20Report%20Costa%20Rica%202015.pdf>.

<sup>128</sup> *Id.* ¶ 474.

<sup>129</sup> *Id.* ¶¶ 470–2.

<sup>130</sup> “Costa Rica,” FATF, <http://www.fatf-gafi.org/countries/#Costa%20Rica> (last visited July 8, 2020).

<sup>131</sup> GAFILAT 15 I PLEN 3, *supra* note 12, ¶¶ A15, A31.

<sup>132</sup> *Id.* ¶ TC288.



It is difficult for authorities to obtain beneficial ownership information, since such information is not always updated, due to lack of obligation to record the transfer of shares, or due to the refusal of representatives or notaries to submit any such information.<sup>133</sup>

Moreover, “Tax authorities even observe that some prefer to pay the fine for not having books than to comply with this request.”<sup>134</sup> GAFILAT gave Costa Rica a rating of partially compliant for beneficial ownership of legal persons, citing out-of-date information, lax enforcement measures, “the lack of awareness of lawyers and notaries,” and ineffective sanctions for noncompliance under Law 8204.<sup>135</sup> Specifically, the report points out that “no sanctions have been imposed for the failure to provide information on beneficial ownership.”<sup>136</sup> In 2017, the rating was changed to “largely compliant” after the passage of Law 9416, which provided greater transparency and beneficial ownership mechanisms regarding shareholders and led to the Transparency and Final Beneficiaries Registry.<sup>137</sup>

Costa Rica received the same partially compliant rating for beneficial ownership of legal arrangements in 2015 due to unclear and weak legislative measures and a lack of sanctions.<sup>138</sup> In 2017, the rating was also upgraded to “largely compliant” based on new requirements under Law 9416 for beneficial owners.<sup>139</sup> In 2015, non-profits received a non-compliant rating due in part to a lack of “clear knowledge” on beneficial ownership.<sup>140</sup> However, that rating was revised to “partially compliant” in 2017 based in part on the passage of a new national law requiring pertinent beneficiary information.<sup>141</sup>

In 2015, registry information of legal persons in particular was highlighted as a “Higher-Risk Issue[,]” partially due to heightened real estate transactions as well as “public corporations incorporated in Costa Rica . . . used abroad with the sole purpose of concealing the beneficial owners.”<sup>142</sup> A specific area of concern that GAFILAT mentions is the “activity of administrators of third parties funds.”<sup>143</sup> The report recommended “regulatory adjustments” and stronger sanctions to address the shortcomings and to stop fraudulent “foreign transfers” involving “criminal organizations.”<sup>144</sup>

The 2018 regulation implementing Costa Rica’s UBO registry refers to GAFILAT’s recommendations in one of its opening paragraphs.<sup>145</sup>

## **22. Please provide statistics, if available, on registry responses to requests for information.**

These statistics for Costa Rica are not readily available to the public.

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<sup>133</sup> Id. ¶ E50.

<sup>134</sup> Id. ¶ 472.

<sup>135</sup> Id. ¶¶ F24, 473, TC302.

<sup>136</sup> Id. ¶ 451.

<sup>137</sup> Technical Analysis of FATF Recommendations – Rerating of Costa Rica: Fourth Round of Mutual Evaluations GAFILAT Re-Rating Report (Oct. 2017), GAFILAT, ¶¶ 51–8, available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/FUR-Costa-Rica-Oct-2017.pdf>.

<sup>138</sup> Id. ¶¶ F25, 474–6, TC310.

<sup>139</sup> Technical Analysis of FATF Recommendations – Rerating of Costa Rica, *supra* note 21, ¶¶ 59–65.

<sup>140</sup> Id. ¶ F8.

<sup>141</sup> Technical Analysis of FATF Recommendations – Rerating of Costa Rica, *supra* note 21, ¶¶ 27, 35.

<sup>142</sup> GAFILAT 15 I PLEN 3, *supra* note 12, at 26; id. ¶¶ 459–60.

<sup>143</sup> Id. ¶ C389–90.

<sup>144</sup> Id. ¶¶ D33, F257, D479; id. at 26.

<sup>145</sup> Reglamento N° 41040 -H ¶ II.

## D. Spain

### Concept

#### 1. What were the stated objectives for the UBO register under the legislation or regulation creating such UBO register in the jurisdiction?

The UBO Registry (“Registro de Titularidades Reales o RETIR”) was established by Ministry of Justice Order JUS/318/2018 on March 21, 2018. The Order adopted EU Directive 2015/849 on the same topic. The Order was also enacted pursuant to Law No. 10/2010 for the Prevention of Money Laundering and Terrorism Financing, which was initially regulated by Royal Decree 304/2014, of May 5, containing the formal Regulation of Law 10/2010.

The objective of Order JUS/318/2018, which was updated in 2019, is to “prevent the use of the financial system for on money laundering and terrorism financing.”<sup>146</sup>

#### 2. How is UBO defined in the legislation or regulation?

Under the Order, “‘Real owner’ is the natural person or natural persons who fulfill the requirements established in the Directive and in Spanish legislation. In general, ‘real owner’ is defined as the ‘natural person or persons who ultimately own or control, directly or indirectly, a percentage greater than 25 percent of the capital or voting rights of a legal person, or who by other means, exercise direct or indirect control over the management of a legal person.’ If the control is indirect through a legal person, the identity of the latter must be indicated. Where appropriate, article 42 of the Commercial Code and article 22, paragraphs 1 to 5, of Directive 2013/34 / EU of the European Parliament and of the Council will be taken into account.”<sup>147</sup>

##### 2.1 Is the same definition used in other laws in the jurisdiction and, if so, which ones?

An identical definition is used in Article 4(2)(b) of the Law 10/2010 of April 28, 2010 for the Prevention of Money Laundering and Terrorism Financing.<sup>148</sup>

##### 2.2 Is the UBO always an individual (or more than one individual) or can it be a legal entity, estate or trust?

Only individuals can be UBOs. “Physical person or persons” is the term used in Spanish legislation.<sup>149</sup>

##### 2.3 What are the criteria to establish “ultimate ownership” (level of ownership that triggers the notification requirement, calculation in a multi-level chain of ownership, etc.)?

An individual who

<sup>146</sup> “La principal novedad que se contiene en la información que se debe presentar en el Registro Mercantil está motivada por la Directiva (UE) 2015/849 del Parlamento Europeo y del Consejo de 20 de mayo de 2015, relativa a la prevención de la utilización del sistema financiero para el blanqueo de capitales o la financiación del terrorismo, y se centran en un nuevo formulario en el que debe manifestarse la llamada «identificación del titular real de la sociedad».” See Order available at <https://www.boe.es/buscar/doc.php?id=BOE-A-2018-4243>.

<sup>147</sup> “Tienen la cualidad de «titular real» la persona física o personas físicas que cumplen con los requisitos establecidos en la Directiva y en la legislación española. En general se entiende por «titular real» a la «persona o personas físicas que en último término posean o controlen, directa o indirectamente, un porcentaje superior al 25 por ciento del capital o de los derechos de voto de una persona jurídica, o que por otros medios ejerzan el control, directo o indirecto, de la gestión de una persona jurídica». Si el control es indirecto por medio de una persona jurídica deberá indicarse la identidad de esta. En su caso se tendrá en cuenta el artículo 42 del Código de Comercio y el artículo 22, apartados 1 a 5, de la Directiva 2013/34/UE del Parlamento Europeo y del Consejo.” *Id.* at 2.

<sup>148</sup> Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2010-6737>.

<sup>149</sup> See supra notes 2 and 3.

- i. directly holds, or
- ii. controls, directly or indirectly, an entity that holds more than 25% of capital or voting rights in the relevant legal entity is considered its UBO.<sup>150</sup>

The second category above is considered “ultimate ownership by administration” if the individual indirectly possesses control over the decisions of the company, for example, through voting rights.<sup>151</sup>

#### **2.4 What are the criteria to establish “ultimate control” (shareholder rights, GP position in partnership, beneficiary position in a trust or estate, joint control, etc.)?**

Holding more than 25% capital or voting rights in *any* legal entity makes you a UBO.<sup>152</sup>

#### **2.5 Do the criteria consider accounting principles, such as International Financial Reporting Standards or other applicable accounting principles?**

Yes, Spanish legislation and regulation on UBOs refer to the Spain’s General Accounting Plan (“Plan General de Contabilidad”), the latest version of which was approved in 2007 under Royal Decree (“Real Decreto”) 1514/2007 of November 16.<sup>153</sup> This accounting regulation incorporates International Accounting Standards and International Financial Reporting Standards.<sup>154</sup>

### **3. Is it mandatory to register UBO information in all cases? If only mandatory in some, in which cases is it mandatory to register the UBO information and in which cases is it not?**

All legal entities domiciled in Spain with deposit accounts have the obligation to identify the real owner, except for companies listed on a regulated market pursuant to article 3.6(a)(i) of the EU Directive (UE) 2015/849 and Article 4(2)(b) of Law 10/2010 for the Prevention of Money Laundering and Terrorism Financing.<sup>155</sup>

#### **3.1 Are the registration requirements for legal persons and legal arrangements different?**

No, via the 25% control requirement, the registration obligation applies both to formally-registered legal entities as well as to specific-purpose, unregistered, or court-construed entities such as investment funds, civil companies, or associations. It also applies to the notion of “control” over other individuals.<sup>156</sup>

#### **3.2 Is a resident agent required and what is their position?**

<sup>150</sup> See supra notes 2 and 3.

<sup>151</sup> See Pedro Rincón de Gregorio, *Guía Teórico-Práctica sobre la Titularidad Real I*, available here: <https://notariabierta.es/guia-teorico-practica-titularidad-real-i/>.

<sup>152</sup> See supra notes 2 and 3.

<sup>153</sup> Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2007-19884>.

<sup>154</sup> “In the year 2000, and with a view to making the financial information of European companies more consistent and comparable, irrespective of where these companies are domiciled or on which capital market they trade, the European Commission recommended to other European Community institutions that the consolidated annual accounts of listed companies be prepared applying the accounting standards and interpretations issued by the International Accounting Standards Board (IASB). In order for accounting standards drafted by a private organisation to constitute law in Europe, specific legislation had to be enacted. European Parliament and Council Regulation 1606/2002 was introduced on 19 July 2002, defining the process for the European Union to adopt International Accounting Standards (hereinafter adopted IAS/IFRS). The Regulation made it mandatory to apply these standards in the preparation of consolidated annual accounts by listed companies, leaving member states to decide whether to allow or require direct application of the adopted IAS/IFRS to the individual annual accounts of all companies, including listed companies, and/or the consolidated annual accounts of other groups.” See analysis at: <http://www.icac.meh.es/Documentos/CONTABILIDAD/PGC%20Ingles.pdf>.

<sup>155</sup> See supra note 8. “Están sujetas a la obligación de identificar al titular real todas las personas jurídicas domiciliadas en España que depositan cuentas exceptuando las sociedades que coticen en un mercado regulado en virtud del artículo 3.6 a) i) de la directiva y el artículo [4(2)(b)] de la Ley 10/2010, de prevención del blanqueo de capitales y de la financiación del terrorismo.”

<sup>156</sup> See supra note 8.

No resident agent is required.

### **3.3 Does the registration of UBO information have any implications on the legal existence of the entity?**

There are no implications on the legal existence of the agency.

## **Registering information**

### **4. Who is responsible for submitting the UBO information to the registry? What are the obligations of this person or entity?**

Under Art. 9(1)(2) of Royal Decree 304/2014, “[t]he identification and verification of the identity of the real owner may be carried out, in general, by means of a responsible declaration by the client or the person who has been attributed the representation of the legal entity. For these purposes, the administrators of the companies or other legal persons must obtain and maintain adequate, precise and updated information on the real ownership of these entities.”<sup>157</sup>

### **5. What concrete actions must those being responsible take to identify the UBO?**

They must establish the ownership structure of the shareholders controlling the entity or holding more than 25% of the shares in the entity. They have to identify the UBO(s) with their

- i. Names and Last Names,
- ii. Government-issued ID,
- iii. Date of birth,
- iv. Nationality,
- v. Residence,
- vi. Direct or indirect control percentage.<sup>158</sup>

### **6. What are the time periods within which submission to the registry of the UBO information or notification of any changes is required?**

Submission of UBO information to the registry is annual, and there is no requirement for immediate notification of changers.<sup>159</sup>

### **7. What are the obligations of lawyers, who incorporate the entities or set up the arrangements vis a vis the registry, and vis a vis the legal persons or legal arrangements (clients)? What are the obligations of resident agents, trustees or providers of domicile who are not lawyers?**

Lawyers who incorporate entities, as well as notaries and financial professionals, do not have specific obligations vis a vis the registry. However, under Law No. 10/2010 for the Prevention of Money Laundering and Terrorism Financing, lawyers and other professionals need to identify the UBO of their client, through extensive due diligence work and risk assessment work in an attempt to verify that the client has no involvement with money laundering or terrorism financing activities, and they must keep this information and documents for 10 years in case authorities request it in the future.<sup>160</sup>

<sup>157</sup> See Pedro Rincón de Gregorio, *Guía Teórico-Práctica sobre la Titularidad Real II*, available here: <https://notariabierta.es/guia-teorico-practica-titularidad-real-ii/>.

<sup>158</sup> *Id.* at page 180.

<sup>159</sup> See supra notes 2 and 3.

<sup>160</sup> See Law 10/2010, Arts. 2(ñ)and(ó), 4(1)and(3)-(7), and 25.

**8. How do the applicable rules of professional responsibility balance the ethical obligations of lawyers regarding confidentiality versus the duty to report suspicious activities such as money laundering?**

Generally, lawyers in private practice are not obligated to report suspicious activities if they receive the underlying information in the context of their legal representation of their clients. This exemption does not apply, however, if the lawyer is aware or discovers that the client may be using the representation or advice for the purpose of money laundering.<sup>161</sup>

**9. Are there ongoing monitoring/review obligations in connection with the information to be submitted and if so, for whom?**

The legal entity itself and hence, its directors (or managers) must review at least once a year whether the information is still accurate, as part of their annual reporting obligations.<sup>162</sup>

**10. Are there any types of legal entities exempt from the obligations to submit UBO information?**

Companies whose shares are listed and that are subject to the European rules on shareholder transparency for listed companies do not have to make filings to the register. Specifically, these would be companies listed on a regulated market pursuant to article 3.6(a)(i) of the EU Directive (UE) 2015/849 and Article 4(2)(b) of Law 10/2010 for the Prevention of Money Laundering and Terrorism Financing.

## Sanctions

**11. What are the sanctions for not submitting the required information or submitting incomplete or inaccurate information?**

Under Law 10/2018, fines of up to EUR 60,000 can be assessed.<sup>163</sup>

**12. Who is subject to the sanctions (the company, its directors, the UBO, the resident agent)?**

Under Law 10/2018, only the legal entity is subject to the fines.<sup>164</sup>

**13. What authority imposes the sanctions, and through what process?**

Under Law 10/2018, the fines are assessed by the Director General of the Treasury and Financial Policy ("*Director General del Tesoro y Política Financiera*"), at the request of the Secretariat of the Commission for the Prevention of Money Laundering and Monetary Infractions ("*Secretaría de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias*").<sup>165</sup>

**14. If there are economic sanctions, where do the proceeds from such sanctions go?**

The sanctions are financial. The proceeds go to the Spanish treasury.<sup>166</sup>

**15. If one of the sanctions is canceling registration, can the legal person or legal arrangement reapply to be registered again?**

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<sup>161</sup> See Law 10/2010, Arts. 17 to 24.

<sup>162</sup> See supra notes 2 and 3.

<sup>163</sup> See Arts. 53, 58 and Only Additional Disposition.

<sup>164</sup> See Only Additional Disposition parag. 6.

<sup>165</sup> See Art. 61(2) and (3).

<sup>166</sup> Id.

Canceling registration is not a sanction under the Spanish regime.

## Registry

### 16. Which agency (ies) administer the registry?

The UBO register (“Registro de Titularidades Reales o RETIR”) is administered by the Mercantile Registry, which is an organization that operates under the Ministry of Justice.<sup>167</sup>

#### 16.1 Is the agency (ies) self-regulated?

No, see answer above.

#### 16.2 How is the head of such agency(ies) appointed?

The head of the Mercantile Registry is appointed by the Minister of Justice.<sup>168</sup>

### 17. Is all of the content of the registry publicly available and, if so, through what means (e.g., Internet, physical request at authority’s location)?

The UBO registry (“Registro de Titularidades Reales o RETIR”) can be accessed through the Internet, but is restricted to entities, lawyers and other professionals covered by Law No. 10/2010.<sup>169</sup>

### 18. If the registry is not fully publicly available:

#### 18.1 What content is publicly available and what is not?

See answer 17.

#### 18.2 Who has access to the non-public information?

See answer 17.

#### 18.3 What is the process for accessing such information, and what conditions or terms is it subject to?

Those seeking access must first have a valid electronic certificate. These certificates may be issued by any one of twelve entities—some public and some private—that are considered “trusted entities” by the RETIR.<sup>170</sup> At this point, the authorized user must download an app called “IURE” in order to be able to submit and update information in the registry (RETIR) electronically.<sup>171</sup>

#### 18.4 Is there a specific provision or procedure for requests made by the following entities or persons:

- i. Judiciary entities
- ii. Law enforcement entities
- iii. Journalists
- iv. Foreign authorities (administrative, regulatory or judicial)

The “Colegio de Registradores,” which maintains and oversees the RETIR’s website, has signed “collaboration agreements” with many public offices, allowing them to access their content. These public offices include Tribunal

<sup>167</sup> See supra notes 2 and 3, and see: <https://www.mjusticia.gob.es/cs/Satellite/Portal/es/areas-tematicas/registros/registro-mercantil>.

<sup>168</sup> See Royal Decree 1784/1996 Art. 13, available here: <https://www.boe.es/buscar/act.php?id=BOE-A-1996-17533>.

<sup>169</sup> Available at: <https://www.registradores.org/registro-de-titularidades-reales>.

<sup>170</sup> Available at: <https://sede.registradores.org/retir/#modal-cert>.

<sup>171</sup> Available at: [https://www.registradores.org/documents/33383/147565/Manual\\_IURE.pdf](https://www.registradores.org/documents/33383/147565/Manual_IURE.pdf).

de Cuentas, Fiscalía, Guardia Civil, Policía Nacional, Banco de España, Comisión Nacional del Mercado de Valores, Consejo General de Poder Judicial and other institutions involved in efforts to prevent money laundering.<sup>172</sup>

**18.5 Are there judicial or administrative procedures to access information? Can a party in a judicial proceeding subpoena information and, if so, based on what criteria and according to what procedure? Within what time period must the UBO agency provide the information?**

Any judge, going through the *Consejo General de Poder Judicial*, may subpoena information from the registry as part of a judicial proceeding. There is no delay between application and provision of the information.

**18.6 What are the consequences of violating the privacy of the information?**

Not available.

**19. Is the information in the registry used for public procurement procedures? If so, how?**

Any public authority can access the register if this is required for the performance of its legal responsibilities, and it signs an agreement with the “*Colegio de Registradores*.” This may include UBO verification in the context of public procurement.

**20. Are there other registries in the jurisdiction with similar functions? What are the differences?**

The “*Colegio de Registradores*” centralizes much of the information submitted to Spain’s Mercantile Register (“*Registro Mercantil de España*”), which include the RETI, the Property Registry, and the Real Estate Registry.<sup>173</sup>

## Other

**21. What are the results of the evaluation conducted by/or on behalf of the Financial Action Task Force (FATF) regarding the registry?**

The evaluation for Spain is largely positive. According to the FATF, in a 2019 report, “[s]ince its mutual evaluation in 2014, Spain has worked to improve the effectiveness of its national framework to combat money laundering and terrorist financing. The FATF has conducted a 5th year follow-up assessment that looks at the effectiveness of Spain’s measures on three issues, or ‘Immediate outcomes’. To reflect the country’s progress, the FATF has re-rated Spain on two of these immediate outcomes. [...] During the five years that have passed since the mutual evaluation, Spain has worked to improve its technical compliance with the FATF’s requirements. To reflect this progress, the FATF re-rated Spain on three Recommendations in 2018 and the country is now compliant or largely compliant on 38 of the 40 Recommendations.”<sup>174</sup>

**22. Please provide statistics, if available, on registry responses to requests for information.**

There are no such statistics publicly available for the Spanish regime.

<sup>172</sup> Available here: <https://www.registradores.org/registro-de-titularidades-reales>.

<sup>173</sup> Available here: <https://www.registradores.org/>.

<sup>174</sup> FATF – Anti-money laundering and counter-terrorist financing measures – Spain: Follow-up assessment, Dec. 2019, available here: <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

## E. United Kingdom

### Concept

#### 1. What were the stated objectives for the UBO register under the legislation or regulation creating such UBO register in the jurisdiction?

In 2015, the UK Government introduced provisions to establish a register of beneficial ownership as part of the Small Business, Enterprise & Employment Act 2015. The register launched in 2016 and is known as the People with Significant Control (PSC) register. The law was broadened to comply with the 4<sup>th</sup> Anti-Money Laundering Directive (MLR 17) on June 26, 2017.<sup>175</sup> It was the world's first publicly available register of the beneficial ownership of companies.<sup>176</sup> Registers of beneficial ownership provide transparency and play an important role in the fight against corruption, tax evasion and money laundering.

Also, United Kingdom government worked on promoting similar rules in all British Overseas Territories and Crown Dependencies. UK legislation set the deadline as end of 2020 to Overseas Territories to make those changes, and will otherwise set a specific date for them to comply. The UK Government's goal is to make public registers the global norm by the end of 2023.

#### 2. How is UBO defined in the legislation or regulation?

A PSC (UBO) is an individual who meets one or more of the following conditions<sup>177</sup>,

- i. directly or indirectly holds more than 25 percent of the shares in the company
- ii. directly or indirectly holds more than 25 percent of the voting rights in the company
- iii. directly or indirectly, has right to appoint or remove the majority of the board of directors
- iv. an individual who has the right to exercise, or actually exercises, significant influence or control over the company (only applicable where (i) to (iii) do not apply)
- v. where a trust or firm would satisfy one of the first four conditions if it were an individual, any individual holding the right to exercise, or who actually exercises, significant influence or control over the activities of the trust or firm.

Under MLR17, "beneficial owner", in relation to a body corporate (including an LLP) which is not a company whose securities are listed on a regulated market, means—

- i. any individual who exercises ultimate control over the management of the body corporate;
- ii. any individual who ultimately owns or controls (in each case whether directly or indirectly), including through bearer share holdings or by other means, more than 25% of the shares or voting rights in the body corporate; or
- iii. an individual who controls the body corporate if:
  - a. the body corporate is a company or a limited liability partnership and that individual satisfies one or more of the conditions set out in Part 1 of Schedule 1A to the Companies Act 2006 (people with significant control over a company); or

<sup>175</sup> <https://assets.kpmg/content/dam/kpmg/xx/pdf/2018/07/gls-transparency-register-web.pdf>

<sup>176</sup> Global Witness, 10 lessons from the UK's public register of the real owners of companies, 23 October 2017

<sup>177</sup> Summary guide for companies – register of people with significant control (Published by UK Government), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/621568/170622\\_NON-STAT\\_Summary\\_Guidance\\_4MLD\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621568/170622_NON-STAT_Summary_Guidance_4MLD_Final.pdf)



- b. the body corporate would be a subsidiary undertaking of the individual (if the individual was an undertaking) under section 1162 (parent and subsidiary undertakings) of the Companies Act 2006 read with Schedule 7 to that Act.<sup>178</sup>

**2.1 Is the same definition used in other laws in the jurisdiction and, if so, which ones?**

No. PSC concept is only introduced with the register.

**2.2 Is the UBO always an individual (or more than one individual) or can it be a legal entity, estate or trust?**

When PSC is a company, the law referred to as a Relevant Legal Entity. Where a body corporate or firm would be a PSC if it were an individual it may be required to be entered on the register if it is a 'Relevant Legal Entity' (RLE). A company must take reasonable steps to identify its PSCs and/or RLEs - and any PSCs or RLEs are required to make themselves known to the company.<sup>179</sup> Also, criteria 4 above allows a trust or firm to be a PSC.

**2.3 What are the criteria to establish "ultimate ownership" (level of ownership that triggers the notification requirement, calculation in a multi-level chain of ownership, etc.)?**

If any of the following criteria applies,

- i. Owns more than 25% of shares
- ii. Owns more than 25% of the voting rights in the company
- iii. has the rights to appoint or remove the majority of the board of director
- iv. has other right to exercise significant influence/control over the company
- v. has significant influence over a trust or firm that satisfies any of the other four conditions

**2.4 What are the criteria to establish "ultimate control" (shareholder rights, GP position in partnership, beneficiary position in a trust or estate, joint control, etc.)?**

"Significant influence" and "control" are alternatives. If a person has "control" of a company or of the activities of a trust or firm they have the power to direct its policies and activities.

"Significant influence" enables the person exercising the significant influence to ensure that the company or trust adopts those policies or activities which are desired by the holder of the significant influence. The "control" or "significant influence" need not be directed towards the financial and operating policies of the company or trust and do not have to be exercised by a person with a view to gaining economic benefits from the policies or activities of the company or trust.<sup>180</sup>

**2.5 Do the criteria consider accounting principles, such as International Financial Reporting Standards or other applicable accounting principles?**

No.

**3. Is it mandatory to register UBO information in all cases? If only mandatory in some, in which cases is it mandatory to register the UBO information and in which cases is it not?**

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<sup>178</sup> [https://www.cobalt.legal/files/bundleNewsPost/2990/Overview\\_status\\_implementation\\_UBO\\_register\\_-\\_survey\\_NautaDutilh\\_31\\_August\\_2017.PDF](https://www.cobalt.legal/files/bundleNewsPost/2990/Overview_status_implementation_UBO_register_-_survey_NautaDutilh_31_August_2017.PDF)

<sup>179</sup> Register of People with Significant Control (PSCs) [https://www.bclplaw.com/images/content/1/5/v1/150130/PSC\\_rules\\_-\\_Your\\_questions\\_answered.pdf](https://www.bclplaw.com/images/content/1/5/v1/150130/PSC_rules_-_Your_questions_answered.pdf)

<sup>180</sup> Statutory Guidance on the meaning of "significant influence or control" in the context of companies, <https://www.icsa.org.uk/assets/files/pdfs/Policy/PSC-register---Draft-Statutory-Guidance---3-December-2015.pdf>

Yes it's mandatory, all UK incorporated companies and LLPs need to register PSC information except for those who are exempt. Exemptions apply to companies with voting shares admitted to trading on a regulated market in the UK or EEA or specified markets.<sup>181</sup>

### **3.1 Are the registration requirements for legal persons and legal arrangements different?**

Yes, Legal Arrangements (Trust) can use Trusts Registration Service register the trust online and provide information on the beneficial owners of the trust.

### **3.2 Is a resident agent required and what is their position?**

N/A

### **3.3 Does the registration of UBO information have any implications on the legal existence of the entity?**

N/A

## **Registering information**

### **4. Who is responsible for submitting the UBO information to the registry? What are the obligations of this person or entity?**

Typically will be the director or secretary of the company, a designated member of an LLP, or a person acting in an advisory role for a company or SE.<sup>182</sup>

### **5. What concrete actions must those being responsible take to identify the UBO?**

They must take reasonable steps to determine whether any individual meets the PSC requirements, or whether any legal entity can be considered a registered RLE in relation to that company. Reasonable steps requirement is same as the criteria to determine whether the person is a PSC.

### **6. What are the time periods within which submission to the registry of the UBO information or notification of any changes is required?**

New companies must file their PSC as part of the initial incorporation process. Any changes should be noted in the company's PSC Register within 14 days of the change happens. The company then has an additional 14 days to file that change with the Companies House.

### **7. What are the obligations of lawyers who incorporate the entities or set up the arrangements vis a vis the registry, and vis a vis the legal persons or legal arrangements (clients)? What are the obligations of resident agents, trustees or providers of domicile who are not lawyers?**

N/A

### **8. How do the applicable rules of professional responsibility balance the ethical obligations of lawyers regarding confidentiality versus the duty to report suspicious activities such as money laundering?**

Lawyers must report suspicious activities like money laundering. The UK implemented the 2001 EC Directive by passing the Proceeds of Organized Crimes Act (POCA) in 2002. POCA created criminal penalties for certain

<sup>181</sup> UK PSC Register Requirements, Stevens & Bolton, <https://www.stevens-bolton.com/site/insights/briefing-notes/uk-psc-register#:~:text=Most%20UK%20incorporated%20companies%20and,with%20significant%20control'%20over%20them.&text=At%20least%20once%20a%20year,accurate%20and%20up%20to%20date.>

<sup>182</sup> A People With Significant Control Register FAQ, <https://insights.diligent.com/psc/a-people-with-significant-control-register-faq>

regulated sectors, most importantly lawyers, who fail to act upon their knowledge or suspicion that their client is engaged in money laundering. It requires lawyers who have those suspicions to file a SAR with the National Crime Agency and to avoid tipping off their client that such a filing has been made.<sup>183</sup>

**9. Are there ongoing monitoring/review obligations in connection with the information to be submitted and if so, for whom?**

Yes, PSC registers must be kept up-to-date. Public has the right to request it at any time.

**10. Are there any types of legal entities exempt from the obligations to submit UBO information?**

Yes. "Companies with voting shares admitted to trading on a regulated market in the UK or European Economic Area (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel . . . Overseas entities operating in the UK might be subject to requirements in their home country but are not subject to the requirements of Part 21A to hold a register . . . Eligible Scottish partnerships are not required to keep a PSC register but are required to deliver PSC information to Companies House for the central register."<sup>184</sup>

## Sanctions

**11. What are the sanctions for not submitting the required information or submitting incomplete or inaccurate information?**

- i. Failure to comply with the rules is a criminal offence punishable by a fine and/or up to two years' imprisonment
- ii. Companies can also be sanctioned by failure to disclose the information to the public or provide incorrect information
- iii. Companies may strict the rights attaching to the shares in question<sup>185</sup>

**12. Who is subject to the sanctions (the company, its directors, the UBO, the resident agent)?**

The company and every officer of the company who is in default.<sup>186</sup>

**13. What authority imposes the sanctions, and through what process?**

Companies House. Where help and advice does not secure compliance with regulatory requirements, Companies House uses fair and proportionate enforcement. This includes, where necessary:

- i. rigorous enforcement of regulations
- ii. prosecution of criminal activity to maintain confidence in the corporate registry
- iii. providing stability for business and enterprise

<sup>183</sup>Applying Anti-Money Laundering Reporting Obligations on Lawyers: The UK Experience,

<https://globalanticorruptionblog.com/2018/06/08/applying-anti-money-laundering-reporting-obligations-on-lawyers-the-uk-experience/>

<sup>184</sup> GUIDANCE FOR REGISTERED AND UNREGISTERED COMPANIES, SOCIETATES EUROPAEAE, LIMITED LIABILITY PARTNERSHIPS, AND ELIGIBLE SCOTTISH PARTNERSHIPS (SCOTTISH LIMITED PARTNERSHIPS AND SCOTTISH QUALIFYING PARTNERSHIPS),

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753027/170623\\_NONSTAT\\_GU\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753027/170623_NONSTAT_GU_1.pdf)

<sup>185</sup> [https://www.bclplaw.com/images/content/1/5/v1/150130/PSC\\_rules\\_-\\_Your\\_questions\\_answered.pdf](https://www.bclplaw.com/images/content/1/5/v1/150130/PSC_rules_-_Your_questions_answered.pdf)

<sup>186</sup> 790 F, Small Business, Enterprise and Employment Act 2015, <http://www.legislation.gov.uk/ukpga/2015/26/schedule/3/enacted>

Companies House will prioritise resources to focus on offences where there has been persistent, repeated and wilful non-compliance. Where appropriate, lighter touch enforcement will be used to secure compliance with regulations.<sup>187</sup>

**14. If there are economic sanctions, where do the proceeds from such sanctions go?**

N/A

**15. If one of the sanctions is canceling registration, can the legal person or legal arrangement reapply to be registered again?**

N/A

## Registry

**16. Which agency (ies) administer the registry?**

Companies House. Companies House is a registrar, not a regulator. By and large, it does not verify the accuracy of what it receives.<sup>188</sup>

The register is supervised by a federal authority under the Federal Secretary of the Interior.

**16.1 Is the agency (ies) self-regulated?**

No, Companies House is an executive agency of Her Majesty's Government under Department of Business, Enterprise and Regulatory Reform.<sup>189</sup>

**16.2 How is the head of such agency(ies) appointed?**

The appointment of the Chief Executive of Companies House follows an open competition overseen by the Civil Service Commission.<sup>190</sup>

**17. Is all of the content of the registry publicly available and, if so, through what means (e.g., Internet, physical request at authority's location)?**

The People with Significant Control (PSC) register includes information about the individuals who own or control companies including their name, month and year of birth, nationality, and details of their interest in the company.<sup>191</sup>

The UK has registers of beneficial ownership for three different types of assets: companies, properties and land, and trusts. Information on the beneficial ownership of companies is publicly available. For properties owned by

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<sup>187</sup> Companies House Enforcement Strategy, <https://www.gov.uk/government/publications/enforcement-strategy-at-companies-house/companies-house-enforcement-strategy>

<sup>188</sup> House of Commons Library Briefing, Registers of beneficial ownership, p. 7.

<sup>189</sup> About Us, Companies House, <https://www.gov.uk/government/organisations/companies-house/about>.

<sup>190</sup> Companies House Announces New Chief Executive, <https://www.gov.uk/government/news/companies-house-announces-new-chief-executive#:~:text=Louise%20Smyth%20has%20been%20appointed,Companies%20for%20England%20and%20Wales>.

<sup>191</sup> Section 4.2.1, Register of People with Significant Control, Guidance for People with Significant Control over Companies, Societates, Europaeae, Limited Partnerships and Eligible Scottish Partnerships, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753028/170623\\_NON-STAT\\_Guidance\\_for\\_PSCs\\_4MLD.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753028/170623_NON-STAT_Guidance_for_PSCs_4MLD.pdf); <https://www.gov.uk/government/news/people-with-significant-control-companies-house-register-goes-live>.

overseas companies and legal entities, the Government plans to launch a public beneficial ownership register in 2021. The register for trusts is not public.<sup>192</sup>

Individuals who may be at risk of violence or intimidation as a result of being on the register can apply to Companies House to have their information protected.<sup>193</sup>

To find out who has significant control over a company (the beneficial owner), one can search the company on the Companies House website, and click on the 'people' tab.<sup>194</sup>

## **18. If the registry is not fully publicly available:**

### **18.1 What content is publicly available and what is not?**

Almost all PSC information will be available on the central public register at Companies house. The only information that will not be is:

- i. The PSC's usual residential address, which is also not on the company's own PSC register; and
- ii. The PSC's date of birth, which will be accessible on the company's own PSC register.<sup>195</sup>

The PSC's residential address will be kept on the company's own PSC register but will not be made publicly assessable. It will be provided to Companies House but will not be made available on the central public register.<sup>196</sup>

A private company or LLP may choose to keep the information on its own PSC register at Companies House. In this case, all of the information set out in paragraph 4.2.1<sup>197</sup> will be publicly available, except the usual residential address. A company that wishes to do this must give notice to its PSCs that it intends to elect to keep its own register at Companies House at least 14 days in advance. The company may only go ahead with the election if you do not object. The company must deliver to Companies House information regarding any change in PSC information they are aware of within 14 days of becoming aware.<sup>198</sup>

### **18.2 Who has access to the non-public information?**

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<sup>192</sup> House of Commons Library Briefing, Registers of beneficial ownership, p. 3.

<sup>193</sup> Summary guide for companies – register of people with significant control, p. 5.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/621568/170622\\_NON-STAT\\_Summary\\_Guidance\\_4MLD\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621568/170622_NON-STAT_Summary_Guidance_4MLD_Final.pdf).

<sup>194</sup> Id. p. 6.

<sup>195</sup> Section 4.5.3, Register of People with Significant Control, Guidance for People with Significant Control over Companies, Societates, Europaeae, Limited Partnerships and Eligible Scottish Partnerships,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753028/170623\\_NON-STAT\\_Guidance\\_for\\_PSCs\\_4MLD.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753028/170623_NON-STAT_Guidance_for_PSCs_4MLD.pdf).

<sup>196</sup> Footnote 14 to Section 4.2.1, Register of People with Significant Control, Guidance for People with Significant Control over Companies, Societates, Europaeae, Limited Partnerships and Eligible Scottish Partnerships,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753028/170623\\_NON-STAT\\_Guidance\\_for\\_PSCs\\_4MLD.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753028/170623_NON-STAT_Guidance_for_PSCs_4MLD.pdf).

<sup>197</sup> Name, date of birth, nationality, country (including state or part of the UK where the PSC usually live), service address, usual residential address, the date the PSC became a PSC in relation to the company, which of the five conditions for being a PSC the PSC meets, and any restrictions on disclosing PSC information which are in place. Register of People with Significant Control, Guidance for People with Significant Control over Companies, Societates, Europaeae, Limited Partnerships and Eligible Scottish Partnerships,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753028/170623\\_NON-STAT\\_Guidance\\_for\\_PSCs\\_4MLD.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753028/170623_NON-STAT_Guidance_for_PSCs_4MLD.pdf).

<sup>198</sup> Section 4.5.4, Register of People with Significant Control, Guidance for People with Significant Control over Companies, Societates, Europaeae, Limited Partnerships and Eligible Scottish Partnerships,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753028/170623\\_NON-STAT\\_Guidance\\_for\\_PSCs\\_4MLD.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753028/170623_NON-STAT_Guidance_for_PSCs_4MLD.pdf).

Companies that are obliged to keep their own PSC register must make it accessible. Anyone with a proper purpose can have access to the company's own PSC register free of charge, or have a copy of it for £12. When the company grants access to your information it must not disclose the PSC's residential address.<sup>199</sup>

**18.3 What is the process for accessing such information, and what conditions or terms is it subject to?**

Anyone (an individual or organisation with a proper purpose) may have access to a company's register free of charge, or have a copy of it for which the company may charge a fee. They must make a request, which sets out their name, their address and if they are an organisation they must include a name and address of an individual responsible for making the request on the organisation's behalf and their purpose in seeking the information. A company must respond to the request within five working days of receipt. The company's reply should include the requested information, noting the date it was last updated. The company can charge up to £12 for providing a copy of the company's PSC register.<sup>200</sup>

**18.4 Is there a specific provision or procedure for requests made by the following entities or persons:**

N/A

**18.5 Are there judicial or administrative procedures to access information? Can a party in a judicial proceeding subpoena information and, if so, based on what criteria and according to what procedure? Within what time period must the UBO agency provide the information?**

Not applicable since the information is accessible to the public.

**18.6 What are the consequences of violating the privacy of the information?**

N/A

**19. Is the information in the registry used for public procurement procedures? If so, how?**

All information held by Companies House will be available to law enforcement agencies. Companies House also make residential addresses available to credit reference agencies and certain public authorities in certain circumstances. Where a credit institution or a financial institution is conducting customer due diligence on your company, in certain circumstances Companies House may also make most information available to that institution

**20. Are there other registries in the jurisdiction with similar functions? What are the differences?**

Before the PSC register existed, searches for similar information could only be done by looking at a company's annual return with full list of shareholders. These shareholders could be, and indeed often are, other companies, thus hiding the identity of the person in control.<sup>201</sup>

## Other

**21. What are the results of the evaluation conducted by/or on behalf of the Financial Action Task Force (FATF) regarding the registry?**

<sup>199</sup> Section 4.5.1, Register of People with Significant Control, Guidance for People with Significant Control over Companies, Societates, Europaeae, Limited Partnerships and Eligible Scottish Partnerships, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/753028/170623\\_NON-STAT\\_Guidance\\_for\\_PSCs\\_4MLD.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753028/170623_NON-STAT_Guidance_for_PSCs_4MLD.pdf).

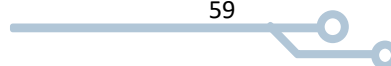
<sup>200</sup> Status overview UBO register Europe, P. 113 [https://www.cobalt.legal/files/bundleNewsPost/2990/Overview\\_status\\_implementation\\_UBO\\_register\\_-\\_survey\\_NautaDutilh\\_31\\_August\\_2017.PDF](https://www.cobalt.legal/files/bundleNewsPost/2990/Overview_status_implementation_UBO_register_-_survey_NautaDutilh_31_August_2017.PDF)

<sup>201</sup> House of Commons Library Briefing, Registers of beneficial ownership, p. 6.

N/A

**22. Please provide statistics, if available, on registry responses to requests for information.**

N/A



## F. Cayman Islands

### Concept

#### 1. What were the stated objectives for the UBO register under the legislation or regulation creating such UBO register in the jurisdiction?

The Companies (Amendment) Bill, 2016<sup>202</sup> that introduced the provisions on beneficial ownership in the Cayman Islands Companies Law ("Companies Law") does not specifically state any objectives for the UBO register. The memorandum of objects and reasons included at the beginning of such Companies (Amendment) Bill however suggests, that the Cayman Islands implemented this regime to comply with recommendations of the CFATF and to fulfill the commitments made under the Exchange of Notes between the Cayman Islands and the UK signed in April 2016<sup>203</sup>.

#### 2. How is UBO defined in the legislation or regulation?

According to sections 244 (1) and, 247 (3) of the Companies Law, an UBO with respect to a company is defined as an individual who:

- i. holds, directly or indirectly, more than 25% of the shares in the respective company,
- ii. holds, directly or indirectly, more than 25% of the voting rights in the respective company, or
- iii. holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the respective company.

If no individual meets the conditions in 247 (3) of the Companies Law, the UBO is according to section 247 (4) of the Companies Law the individual who has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the respective company through the ownership structure or interests described in 247 (3) of the Companies Law, other than solely in the capacity of a director, professional advisor or professional manager.

The shares, voting rights, etc. are held indirectly by an individual if the individual holds the majority of shares in a legal entity and the legal entity itself holds the shares in the company in question, or if the shares in the company are held via a chain of legal entities each of which the individual holds a majority in the entity immediately below.<sup>204</sup>

If no individual meets the conditions in 247 (4) of the Companies Law but the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of those conditions in relation to respective company in their capacity as such, the UBO is according to section 247 (5) of the Companies Law the individual who has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a director, professional advisor or professional manager.

#### 2.1 Is the same definition used in other laws in the jurisdiction and, if so, which ones?

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<sup>202</sup> The Companies (Amendment) Bill, 2016.

<sup>203</sup> Exchange of Notes between the Cayman Islands and the UK.

<sup>204</sup> Beneficial Ownership (Companies) Regulations (2019 Revision).



The Cayman Island Anti-Money Laundering Regulations (2020 Revision) (“AMLR”) uses the term of “beneficial owner” as well, but with a different definition.<sup>205</sup>

**2.2 Is the UBO always an individual (or more than one individual) or can it be a legal entity, estate or trust?**

According to section 247 of the Companies Law, an UBO is always an individual. However, according to section 244 (2) of the Companies Law, (a) a corporation sole, (b) a government or government department of a country or territory or a part of a country or territory, (c) an international organization whose members include two or more countries or territories (or their governments) and (d) a local authority or local government body shall each be considered as an individual for the purpose of the provisions of the Companies Law on the UBO registers.

**2.3 What are the criteria to establish “ultimate ownership” (level of ownership that triggers the notification requirement, calculation in a multi-level chain of ownership, etc.)?**

Please refer to item 2. above.

**2.4 What are the criteria to establish “ultimate control” (shareholder rights, GP position in partnership, beneficiary position in a trust or estate, joint control, etc.)?**

The criteria to establish “ultimate control” are the same as included in the definition of “beneficial owner” under section 247 (3) to (5) of the Companies Law as stated above and further specified/repeated in Sections 11 *et seqq.* of the Beneficial Ownership (Companies) Regulations (2019 Revision) (“UBO Regulations”).

**2.5 Do the criteria consider accounting principles, such as International Financial Reporting Standards or other applicable accounting principles?**

The Companies Law and the UBO Regulations do not explicitly consider any accounting principles.

**3. Is it mandatory to register UBO information in all cases? If only mandatory in some, in which cases is it mandatory to register the UBO information and in which cases is it not?**

It is always mandatory to register the UBO information for all companies incorporated or registered by way of continuation under the Companies Law, that are not exempted pursuant to section 245 of the Companies Law.<sup>206</sup>

**3.1 Are the registration requirements for legal persons and legal arrangements different?**

Yes, the registration requirements in general only apply to legal entities.

**3.2 Is a resident agent required and what is their position?**

No resident agent is required.

**3.3 Does the registration of UBO information have any implications on the legal existence of the entity?**

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<sup>205</sup> Section 2 (1) AMLR defines a beneficial owner as “the natural person who ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted and includes but is not restricted to —

(a) in the case of a legal person other than a company whose securities are listed on a recognized stock exchange, a natural person who ultimately owns or controls, whether through direct or indirect ownership or control, 10% or more of the shares or voting rights in the legal person;

(b) in the case of any legal person, a natural person who otherwise exercises ultimate effective control over the management of the legal person; or

(c) in the case of a legal arrangement, the trustee or other person who exercises ultimate effective control over the legal arrangement.”

<sup>206</sup> Please refer to item 10 below for a definition of the companies that are exempted.

There are no implications when registering the information. However, if a company fails to comply with the certain provisions of Part XVIIA of the Companies Law, a court may order that the company is struck off the register.<sup>207</sup>

## Registering information

### **4. Who is responsible for submitting the UBO information to the registry? What are the obligations of this person or entity?**

The company itself (and hence its board of directors, managing directors etc.) shall identify its own UBOs and give notice to those they identified as such.<sup>208</sup>

The Company shall keep the register at its registered office. It shall further provide in writing to the respective corporate services provider or the Registrar the required particulars<sup>209</sup> of registrable persons and shall instruct them, respectively, to enter the required particulars in the company's beneficial ownership register.<sup>210</sup>

### **5. What concrete actions must those being responsible take to identify the UBO?**

The company shall take reasonable steps to identify any UBO; for this purpose it is entitled to rely on the response of a person to a notice in writing sent in good faith by the company, unless the company has reasons to believe that the response is false or misleading.<sup>211</sup>

The information required for a UBO (the "required particulars") consist of:

- i. Full legal name
- ii. Residential address and, if different, an address for service of notices under the Companies Law
- iii. Date of birth
- iv. Information identifying the individual from their passport, driver's license or other government-issued document, including:
  - v. Identifying number
  - vi. Country of issue; and
  - vii. Date of issue and expiry
- viii. The date on which the individual became or ceased to be a registrable person in relation to the company.

Should the UBO be a legal person pursuant to section 244 (2) of the Companies Law the required particulars are:

- i. Name
- ii. Registered or principal office
- iii. The legal form of the entity and the law by which it is governed
- iv. The date on which it became or ceased to be a registrable person in relation to the company.

### **6. What are the time periods within which submission to the registry of the UBO information or notification of any changes is required?**

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<sup>207</sup> Section 274 (2) Companies Law.

<sup>208</sup> Section 249 Companies Law.

<sup>209</sup> As specified in Section 254 Companies Law.

<sup>210</sup> Section 253 (1) and (2) Companies Law.

<sup>211</sup> Section 247 (1) and (2) Companies Law.

The information regarding a UBO shall be provided by the company to a corporate services provider or the Registrar once the particulars have been confirmed.<sup>212</sup> The identified person has one month after receipt of a notice in writing to confirm or correct any required particulars.<sup>213</sup> Should the company become aware of any changes with respect to a registerable person it shall give notice to the registerable person as soon as reasonably practicable requesting confirmation of the change. After received confirmation the company shall record the change and instruct the corporate services provider or Registrar to enter the change in the company's beneficial ownership register.<sup>214</sup>

**7. What are the obligations of lawyers who incorporate the entities or set up the arrangements vis a vis the registry, and vis a vis the legal persons or legal arrangements (clients)? What are the obligations of resident agents, trustees or providers of domicile who are not lawyers?**

Lawyers do not have any obligations vis a vis the registry.

**8. How do the applicable rules of professional responsibility balance the ethical obligations of lawyers regarding confidentiality versus the duty to report suspicious activities such as money laundering?**

Generally, lawyers in private practice are not obliged to report suspicious activities if they receive the underlying information in the context of their legal representation of their clients.

**9. Are there ongoing monitoring/review obligations in connection with the information to be submitted and if so, for whom?**

There are no specific monitoring or review obligations. However, the respective company itself (and hence, its directors or managing partners) as well as the registerable persons shall notify each other of relevant changes and, if a change occurs, the company shall notify the Registrar hereof.<sup>215</sup>

**10. Are there any types of legal entities exempt from the obligations to submit UBO information?**

The following legal entities are exempted from the obligations under the Companies Law regarding the UBO registry:

- i. Listed on the Cayman Islands Stock Exchange or another approved stock exchange;
- ii. Registered or holding a license under a regulatory law (other than a company registered as an excluded person under section 5(4) of the Securities Investment Business Law (2020 Revision));
- iii. managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund, including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership;
- iv. regulated in a jurisdiction included in a list published by the Anti-Money Laundering Steering Group of countries and territories whose Anti-Money Laundering legislation is deemed to be equivalent to the Anti-Money Laundering legislation of the Islands;
- v. a general partner of a vehicle, fund or scheme referred to in lit. c) which vehicle, fund or scheme: (A) is registered or holds a license under a regulatory law; or (B) is managed, arranged, administered, operated or promoted by an approved person;
- vi. holding directly a legal or beneficial interest in the shares of a legal entity which holds a license under the Banks and Trust Companies Law (2020 Revision), the Companies Management Law

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<sup>212</sup> Section 253 (1) Companies Law.

<sup>213</sup> Section 2 (2) Companies Law.

<sup>214</sup> Section 255 (1) and 2 Companies Law.

<sup>215</sup> Sections 255, 257 Companies Law.

- (2018 Revision), the Insurance Law, 2010 [Law 32 of 2010], Part III of the Mutual Funds Law (2020 Revision) or the Securities Investment Business Law (2020 Revision); or
- vii. exempted by the Regulations.<sup>216</sup>

## Sanctions

### 11. What are the sanctions for not submitting the required information or submitting incomplete or inaccurate information?

A company that knowingly and willfully does not conduct with its obligations may pay a fine of 25.000 dollars for the first offence and for each subsequent offence a fine of 100.000 dollars. If a company was convicted three times of none-compliance, a court may order that the company is struck off the register.<sup>217</sup> If the offence of the company was committed with the consent or connivance of a director, the director commits the same offence and is liable to the same penalty as the company.<sup>218</sup>

A person commits an offence if a notice was addressed and the person fails knowingly and willfully to comply with the notice or provides false information, the person may pay a fine of 25.000 dollars the first time and for each consecutive offence a fine of 50.000 dollars or imprisonment for a term of two years, or on summary conviction imprisonment for a term of 12 month or a fine of 5.000 dollars.<sup>219</sup>

### 12. Who is subject to the sanctions (the company, its directors, the UBO, the resident agent)?

The company and its directors (or managing partners) as well as the registerable persons are subject to the fines.

### 13. What authority imposes the sanctions, and through what process?

The Minister with responsibility for Financial Services acting alone or through a person designated by him to act for a specific purpose<sup>220</sup> or a court.

### 14. If there are economic sanctions, where do the proceeds from such sanctions go?

The monetary sanctions are financial. The Companies Law does not explicitly state where the proceeds from such sanctions go.

### 15. If one of the sanctions is canceling registration, can the legal person or legal arrangement reapply to be registered again?

Yes. If the company is struck off the register pursuant to section 274 (2) Companies Law, the company or a member thereof may apply to court to restore the company to the register with the effect as of the company was never struck off. The application may be submitted within two years after the company was struck off.<sup>221</sup>

## Registry

### 16. Which agency (ies) administer the registry?

<sup>216</sup> Section 245 Companies Law; the definition “regulations” is specified Section 280 Companies Law.

<sup>217</sup> Section 274 Companies Law.

<sup>218</sup> Section 278 Companies Law.

<sup>219</sup> Section 275, 276 Companies Law.

<sup>220</sup> Section 246 Companies Law.

<sup>221</sup> Section 274 Companies Law in conjunction with Section 159 Companies Law.

The register is supervised by the Minister with responsibility for Financial Services and administered by either a corporate services provider<sup>222</sup> or the Registrar<sup>223</sup>.

#### **16.1 Is the agency (ies) self-regulated?**

The Minister and Registrar are appointed and supervised by the Governor.

#### **16.2 How is the head of such agency(ies) appointed?**

The Minister and the head of the Registrar are appointed by the Governor.

#### **17. Is all of the content of the registry publicly available and, if so, through what means (e.g., Internet, physical request at authority's location)?**

None of the content of the registry is publicly available. Only the competent authority<sup>224</sup> may execute a search in the register and only if a formal request by an official body was made.<sup>225</sup>

#### **18. If the registry is not fully publicly available:**

##### **18.1 What content is publicly available and what is not?**

No content is publicly available. The Cayman Islands Monetary Authority may disclose information in its possession on request by the competent authority.<sup>226</sup>

##### **18.2 Who has access to the non-public information?**

Only the competent authority.<sup>227</sup>

##### **18.3 What is the process for accessing such information, and what conditions or terms is it subject to?**

A senior official designated by the Minister representing one of the bodies listed in section 262 (1) of the Companies Law may request the competent authority to search the platform for beneficial ownership information. The senior official must certify that the request is proper and lawfully made.<sup>228</sup>

Further, a senior official of the Financial Crime Unit may request a search of the platform if the official certifies that the request is in response to a request from a jurisdiction listed in Schedule 6 of the Companies Law.<sup>229</sup>

##### **18.4 Is there a specific provision or procedure for requests made by the following entities or persons:**

- i. Judiciary entities
- ii. Law enforcement entities
- iii. Journalists

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<sup>222</sup> Defined in Section 244 (1) Companies Law as an individual or legal entity that provides corporate services under the Companies Management Law (2018 Revision), the Banks and Trust Companies Law (2020 Revision), the Insurance Law, 2010 [Law 32 of 2010] or any other regulatory law pursuant to which the individual or legal entity is licensed or permitted to provide registered office services.

<sup>223</sup> Defined in Section 2 (1) Companies Law as the Registrar of Companies appointed under section 3 and includes, where appropriate, the Deputy Registrar of Companies.

<sup>224</sup> As defined in Section 246 Companies Law.

<sup>225</sup> Only the bodies listed in Section 262 (1) Companies Law may request a search or a jurisdiction listed in Schedule 6 of the Companies Law pursuant to Section 262 (3) Companies Law may request a search.

<sup>226</sup> Section 263 Companies Law.

<sup>227</sup> Explicitly stipulated in Section 262 (4) Companies Law.

<sup>228</sup> Section 262 (1) and (2) Companies Law.

<sup>229</sup> Section 262 (3) Companies Law.

- iv. Foreign authorities (administrative, regulatory or judicial)

See above.

**18.5 Are there judicial or administrative procedures to access information? Can a party in a judicial proceeding subpoena information and, if so, based on what criteria and according to what procedure? Within what time period must the UBO agency provide the information?**

The Companies Law only provides for the above mentioned options to access information of beneficial ownership.

**18.6 What are the consequences of violating the privacy of the information?**

The beneficial ownership information is deemed to be confidential information under the Confidential Information Disclosure Law, 2016 ("CIDL"), and, therefore, the consequences are stipulated in the CIDL.

**19. Is the information in the registry used for public procurement procedures? If so, how?**

Please see above.

**20. Are there other registries in the jurisdiction with similar functions? What are the differences?**

The Cayman Islands provide *inter alia* a company register, partnership register, trust register, and a non-profit organization register.<sup>230</sup>

## Other

**21. What are the results of the evaluation conducted by/or on behalf of the Financial Action Task Force (FATF) regarding the registry?**

The evaluation for the Cayman Islands is still outstanding.<sup>231</sup>

**22. Please provide statistics, if available, on registry responses to requests for information.**

There are no publicly available official statistics on this matter.

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<sup>230</sup> <https://www.ciregistry.ky/>

<sup>231</sup> CFATF – Anti-money laundering and counter-terrorist financing measures, p. 14, section 32., <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/CFATF-Cayman-Islands-Mutual-Evaluation.pdf>

## G. Delaware, United States of America

The US does not have a UBO Registry at either the State or Federal Level.

This summary will focus primarily on the Customer Due Diligence Rule (“CDD”), which requires that financial institutions gather and verify the identities of the actual individuals who own and control a company when said company opens an account with the financial institution.

This summary will also lightly discuss the 2014 Amendment to the DE LLC Act and the Revised Uniform Limited Partnership Act (“DE Law”), which imposes a duty on LLCs and LPs to keep an internal record of their members and managers or partners, including their names and last known business addresses. However, there is no requirement to keep an internal record of its beneficial owners, nor is such term defined in the amendment.

### Concept

#### 1. What were the stated objectives for the UBO register under the legislation or regulation creating such UBO register in the jurisdiction?

CDD: The additional requirements on banks, brokers, dealers and other financial institutions to identify and verify the identify of beneficial owners became effective as of July 11, 2016 as an amendment to the Bank Secrecy Act.<sup>232</sup> The purpose of this regulation is to assist law enforcement in financial investigations, help prevent evasion of targeted financial sanctions, improve the ability of financial institutions to assess risk, facilitate tax compliance, and advance U.S. compliance with international standards and commitment.<sup>233</sup>

DE Law: The requirement for LLCs and LPs incorporated in DE to maintain a record of their members, managers and/or partners was introduced through amendments to the DE LLC Act and the DE Revised Uniform Limited Partnership Act in 2014.<sup>234</sup>

#### 2. How is UBO defined in the legislation or regulation?

CDD: A beneficial owner is defined as:

- i. Any individual who, directly or indirectly, owns at least 25% of the equity interests of a legal entity customer of the financial institution; or
- ii. A single individual with significant ability to control a legal entity customer of the financial institution.<sup>235</sup>

DE Law: N/A

##### 2.1 Is the same definition used in other laws in the jurisdiction and, if so, which ones?

<sup>232</sup> Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398, 29398 (May 11, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf> (hereinafter, “CDD Final Rules”).

<sup>233</sup> Id.

<sup>234</sup> See House Bill No. 327, 147<sup>th</sup> Del. General Assembly, [https://legis.delaware.gov/json/BillDetail/GetHtmlDocument?fileAttachmentId=45872](https://legis.delaware.gov/json/BillDetail/GetHtmlDocument?fileAttachmentId=45872;);

<sup>235</sup> 31 CFR 1010.230(d) (<https://www.law.cornell.edu/cfr/text/31/1010.230>):

“For purposes of this section, beneficial owner means each of the following:

(1) Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and

(2) A single individual with significant responsibility to control, manage, or direct a legal entity customer, including:

(i) An executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or

(ii) Any other individual who regularly performs similar functions.”

CDD: Similar definitions are used in laws and regulations dealing with money laundering with respect to cash real estate purchases.

DE Law: N/A

**2.2 Is the UBO always an individual (or more than one individual) or can it be a legal entity, estate or trust?**

CDD: Beneficial owners can only be natural persons.<sup>236</sup>

DE Law: N/A

**2.3 What are the criteria to establish “ultimate ownership” (level of ownership that triggers the notification requirement, calculation in a multi-level chain of ownership, etc.)?**

Same as item 2 above.

**2.4 What are the criteria to establish “ultimate control” (shareholder rights, GP position in partnership, beneficiary position in a trust or estate, joint control, etc.)?**

CDD: Control can be established through shareholder rights or through significant management responsibilities in the management structure of the legal entity customer.<sup>237</sup>

DE Law: N/A

**2.5 Do the criteria consider accounting principles, such as International Financial Reporting Standards or other applicable accounting principles?**

No.

**3. Is it mandatory to register UBO information in all cases? If only mandatory in some, in which cases is it mandatory to register the UBO information and in which cases is it not?**

CDD: It is mandatory for financial institutions to collect information on the beneficial owners of its legal entity customers.<sup>238</sup>

DE Law: It is mandatory for LLCs and partnerships to maintain a record of its members, managers and/or partners.<sup>239</sup>

**3.1 Are the registration requirements for legal persons and legal arrangements different?**

CDD: Reporting requirements are for financial institutions only.

DE Law: Requirement to maintain record applies to DE LLCs and partnerships only.

**3.2 Is a resident agent required and what is their position?**

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<sup>236</sup> CDD Final Rule at 29400.

<sup>237</sup> CDD Final Rules at 29411.

<sup>238</sup> CDD Final Rules at 29398.

<sup>239</sup> 6 DE Code § 18-305(h) (2020) <https://delcode.delaware.gov/title6/title6.pdf>:

“A limited liability company shall maintain a current record that identifies the name and last known business, residence or mailing address of each member and manager.”

6 DE Code § 17-305(g) (2020):

“A limited partnership shall maintain a current record that identifies the name and last known business, residence, or mailing address of each partner.”



CDD: No resident agent is required.

DE Law: Any LLC or partnership established in Delaware must have a registered agent within the state.<sup>240</sup>

### **3.3 Does the registration of UBO information have any implications on the legal existence of the entity?**

No.

## **Registering information**

### **4. Who is responsible for submitting the UBO information to the registry? What are the obligations of this person or entity?**

CDD: The financial institutions are required to collect information on the beneficial owners of its legal entity customers. The financial institutions must collect, and maintain records of, the information used to identify and verify the identity of the names of the beneficial owners.<sup>241</sup>

DE Law: The LLC or partnership has to keep an internal record of its members, managers and or partners.

### **5. What concrete actions must those being responsible take to identify the UBO?**

CDD: Financial institutions (and hence its directors and officers) must establish and maintain written procedures reasonably signed to identify and verify the identities of beneficial owners of legal entity customers. The information they must collect on the beneficial owners are:

- i. Name
- ii. Address
- iii. Date of Birth
- iv. Social Security Number (or similar information)<sup>242</sup>

DE Law: Corporations and partnerships must maintain a current record of the name and last known business, residential or mailing address of each member, manager or partner.<sup>243</sup>

### **6. What are the time periods within which submission to the registry of the UBO information or notification of any changes is required?**

CDD: N/A

DE Law: N/A

### **7. What are the obligations of lawyers who incorporate the entities or set up the arrangements vis a vis the registry, and vis a vis the legal persons or legal arrangements (clients)? What are the obligations of resident agents, trustees or providers of domicile who are not lawyers?**

CDD: N/A

DE Law: N/A

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<sup>240</sup> 6 DE Code § 15-111(a); 6 DE Code § 18-104(a).

<sup>241</sup> CDD Final Rules at 29450.

<sup>242</sup> CDD Final Rules at 29454.

<sup>243</sup> Supra note 9.

**8. How do the applicable rules of professional responsibility balance the ethical obligations of lawyers regarding confidentiality versus the duty to report suspicious activities such as money laundering?**

Generally, lawyers in private practice are not obliged to report suspicious activities if they receive the underlying information in the context of their legal representation of their clients. This exemption does not apply, however, if the lawyer is aware that the client uses the representation or advice for the purpose of committing or perpetuating crime or fraud.

**9. Are there ongoing monitoring/review obligations in connection with the information to be submitted and if so, for whom?**

CDD: N/A

DE Law: N/A

**10. Are there any types of legal entities exempt from the obligations to submit UBO information?**

CDD: Certain financial institutions do not need to comply with the rule, subject to limitations.<sup>244</sup>

DE Law: Corporations are not required to maintain a record of its members/managers.

## Sanctions

**11. What are the sanctions for not submitting the required information or submitting incomplete or inaccurate information?**

CDD: Violations of the CDD Rule can lead to fines of up to \$100,000.<sup>245</sup>

DE Law: N/A

**12. Who is subject to the sanctions (the company, its directors, the UBO, the resident agent)?**

CDD: The financial institution and its directors (or managing partners) are subject to the fines.

**13. What authority imposes the sanctions, and through what process?**

CDD: The fines are assessed by the Financial Crimes Enforcement Network (FinCEN), which is authorized under the Bank Secrecy Act to impose AML program requirements on all financial institutions.<sup>246</sup>

**14. If there are economic sanctions, where do the proceeds from such sanctions go?**

CDD: The civil penalties go to the U.S. Treasury.

**15. If one of the sanctions is canceling registration, can the legal person or legal arrangement reapply to be registered again?**

CDD: N/A

## Registry

**16. Which agency (ies) administer the registry? Note, there is no registry at the State or Federal level.**

<sup>244</sup> 31 CFR § 1010.205 (<https://www.law.cornell.edu/cfr/text/31/1010.205>).

<sup>245</sup> 31 U.S. Code § 5321 ([https://www.law.cornell.edu/uscode/text/31/5321#a\\_1](https://www.law.cornell.edu/uscode/text/31/5321#a_1)).

<sup>246</sup> CDD Final Rules, 29398.

CDD: FinCEN is charged with enforcing compliance with the Customer Due Diligence Rule, while financial institutions are required to maintain information on the beneficial owners of its legal entity customers.

DE Law: LLCs and partnerships are charged with maintaining its internal record of members, managers and/or partners.

**17. Is all of the content of the registry publicly available and, if so, through what means (e.g., Internet, physical request at authority's location)?**

No.

**18. If the registry is not fully publicly available:**

**18.1 What content is publicly available and what is not?**

Nothing is publicly available under either the CDD or DE Law.

**18.2 Who has access to the non-public information?**

CDD: Law enforcement officials may access the financial institution's records.<sup>247</sup> Financial institutions may also share information amongst themselves for the purposes of identifying and reporting criminal activity.<sup>248</sup>

DE Law: Members or partners may have access to the list upon reasonable demand.<sup>249</sup>

**18.3 What is the process for accessing such information, and what conditions or terms is it subject to?**

CDD: Law enforcement must make a request to FinCEN, providing a written certification detailing the entities they are investigating.<sup>250</sup>

DE Law: See (b) above.

**18.4 Is there a specific provision or procedure for requests made by the following entities or persons:**

- i. Judiciary entities
- ii. Law enforcement entities
- iii. Journalists
- iv. Foreign authorities (administrative, regulatory or judicial)

See (c) above.

**18.5 Are there judicial or administrative procedures to access information? Can a party in a judicial proceeding subpoena information and, if so, based on what criteria and according to what procedure? Within what time period must the UBO agency provide the information?**

There is no specific mention of this under the laws reviewed.

**18.6 What are the consequences of violating the privacy of the information?**

CDD: N/A

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<sup>247</sup> CDD Final Rules at 29400.

<sup>248</sup> 31 CFR § 1010.540 (<https://www.law.cornell.edu/cfr/text/31/1010.540>).

<sup>249</sup> 6 DE Code § 15-403(a); 6 DE Code § 18-305(a).

<sup>250</sup> 31 CFR § 1010.520 (<https://www.law.cornell.edu/cfr/text/31/1010.520>);

DE Law: N/A

**19. Is the information in the registry used for public procurement procedures? If so, how?**

CDD: N/A

DE Law: N/A

**20. Are there other registries in the jurisdiction with similar functions? What are the differences?**

There are two proposed legislations that would seek to implement UBO registries: the ILLICIT CASH Act and the Corporate Transparency Act. However, not much progress has been made on these bills.

**21. What are the results of the evaluation conducted by/or on behalf of the Financial Action Task Force (FATF) regarding the registry?**

The FATF has upgraded the U.S.'s rating on Recommendation 10 from "Partially Compliant" to "Largely Compliant" due to the effectuation of the CDD.<sup>251</sup>

**22. Please provide statistics, if available, on registry responses to requests for information.**

CDD: N/A

DE Law: N/A

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<sup>251</sup> FATF, "Anti-Money Laundering and Counter-Terrorist Financing Measures: United States" (March 2020), <http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-United-States-March-2020.pdf>.