



Karaganda Buketov University

# THE CONCEPT OF BENEFICIAL OWNERSHIP IN AML AND TAX LAW

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# Definition

Beneficial owner refers to the **natural person(s)** who **ultimately owns or controls** a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a **legal person**. **Only a natural person** can be an ultimate beneficial owner, and **more than one natural person** can be the ultimate beneficial owner of a given legal person

# Directive 2005/60/EC

'beneficial owner' means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted.

The beneficial owner shall at least include in the case of *corporate entities*:

the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a **sufficient percentage** of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a **percentage of 25 % plus one** share shall be deemed sufficient to meet this criterion

**25+1%**

# BO regulation in Kazakhstan

In the Republic of Kazakhstan in paragraph 3 of Article 1 of the Law of the Republic of Kazakhstan dated August 28, 2009 № 191-IV "On Combating Legalization (Laundering) of Proceeds of Crime and Financing of Terrorism" (hereinafter - the AML/CFT Law) the

concept of "beneficial owner" is enshrined - a natural person:

- who directly or indirectly owns more than twenty-five percent of shares in the authorized capital or placed ( minus preferred and redeemed by the company) shares of the client - a legal entity or a foreign structure without formation of a legal entity;
- carrying out a control over the client in other ways;
- in whose interests the client performs transactions with money and (or) other property

**AFM RK approved the Rules for keeping the Register of Beneficial Owners of Legal Entities on September 25, 2023**

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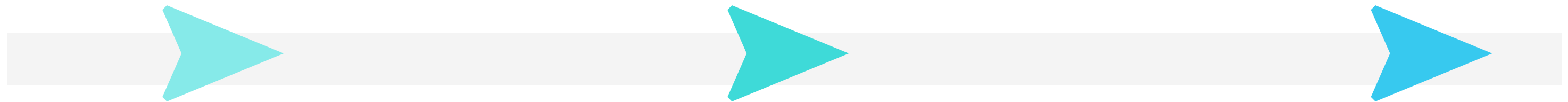
# WHY IS IT IMPORTANT TO KNOW WHO IS THE REAL BENEFICIAL OWNER?

The availability of beneficial ownership information on legal persons and arrangements (legal entities) is a key requirement of **tax transparency** and a key instrument in the fight against **tax evasion** and other financial and serious crimes, such as

*corruption*

*money laundering*

*terrorist financing*



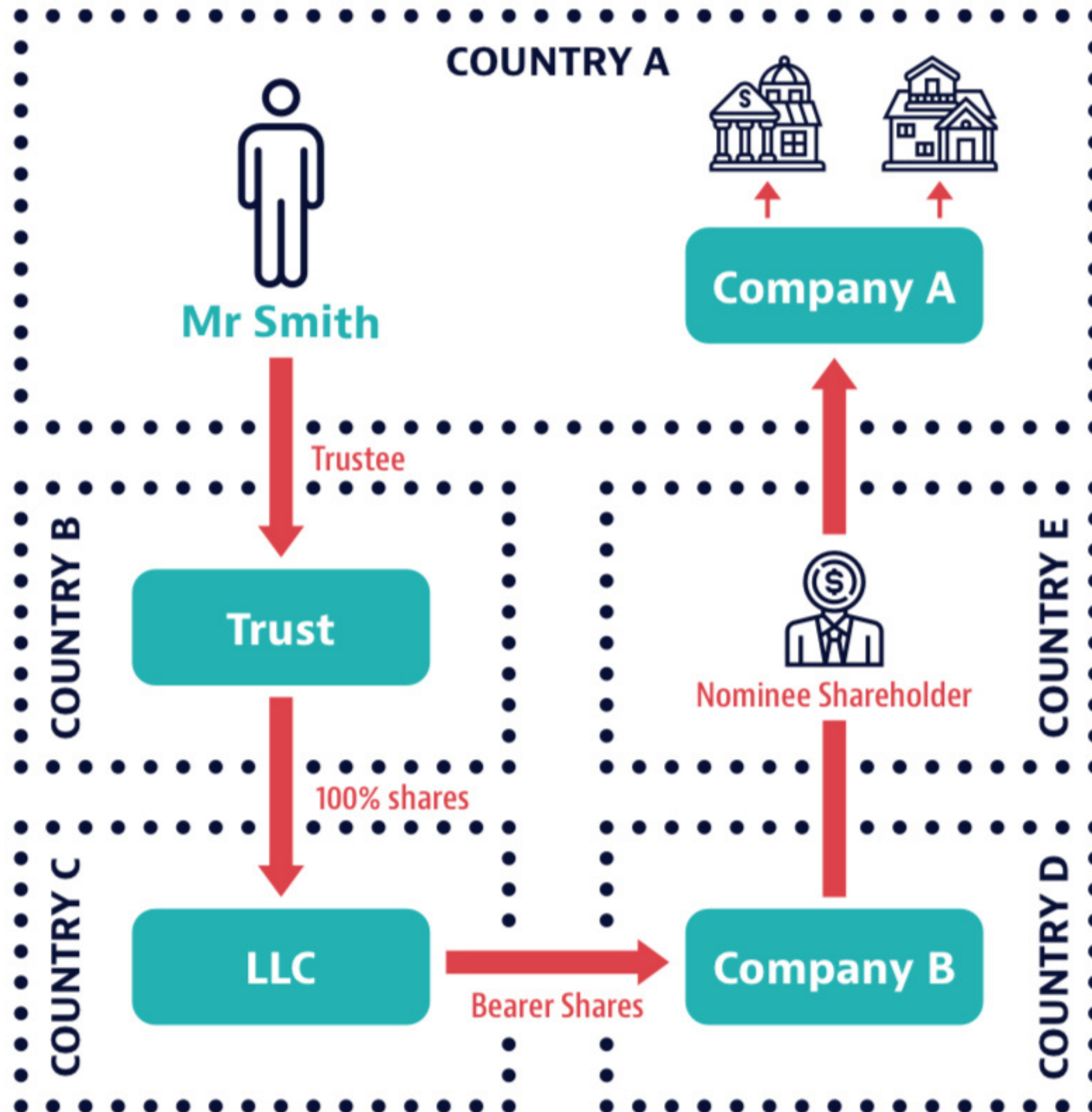
# HOW CRIMINALS CONCEAL BENEFICIAL OWNERSHIP

creating complex ownership and control structures through the use of legal persons and legal arrangements, especially when they are established in different countries



fraudulent activities through the use of fraudulent loans, false invoices and misleading naming conventions

using individuals and financial instruments to conceal the link between the beneficial owner and the asset, including bearer shares, front men and professional intermediaries



# NOMINAL BENEFICIARY

Risk indicators that indicate that individuals are nominee beneficial owners include

- 01 Young age of beneficial owners (up to 25 years old) with significant turnover of the company
- 02 Absence of cash investments by beneficial owners
- 03 Absence of dividends payment to the beneficial owners from the activity of the legal entity
- 04 Non-compliance of the volume of current assets of the legal entity with the financial wealth of the beneficial owners
- 05 Bringing the beneficial owners to criminal responsibility or administrative responsibility for antisocial behavior
- 06 Non-compliance of the volume of current assets of the legal entity with the position held by the beneficial owners



# What information should be provided about the company?

- The business name
- The legal form
- Address of the main business and if possible secondary offices
- The type of administration in place
- The list of administrators
- The type of activity to be conducted.



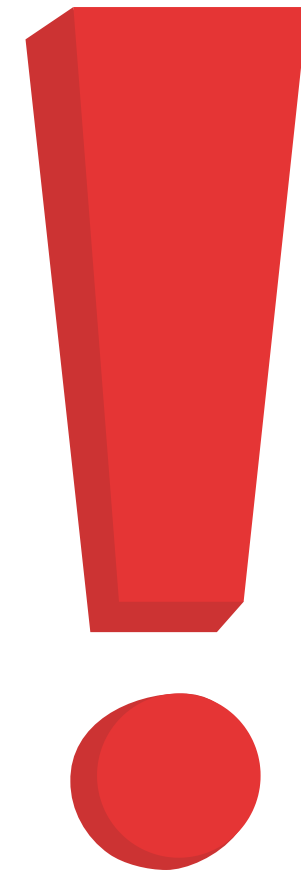
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The AML/CFT framework must provide clear and binding obligations that require AML/CFT obliged persons to:

**Identify the beneficial owners of their customers following a methodology aligned with the FATF Recommendations and the EOIR standard;**

**Verify the identity and accuracy of the beneficial ownership information of its customers**

**Update regularly the information on the beneficial owners of its customers**



## VERIFICATION SHOULD IDEALLY INCLUDE

### authentication

making sure the  
beneficial owner is  
who they say they  
are

### authorisation

ensuring that the  
individual  
consents to  
involvement with  
the legal vehicle

### validation

to prevent  
mistakes and  
deliberate  
falsehoods

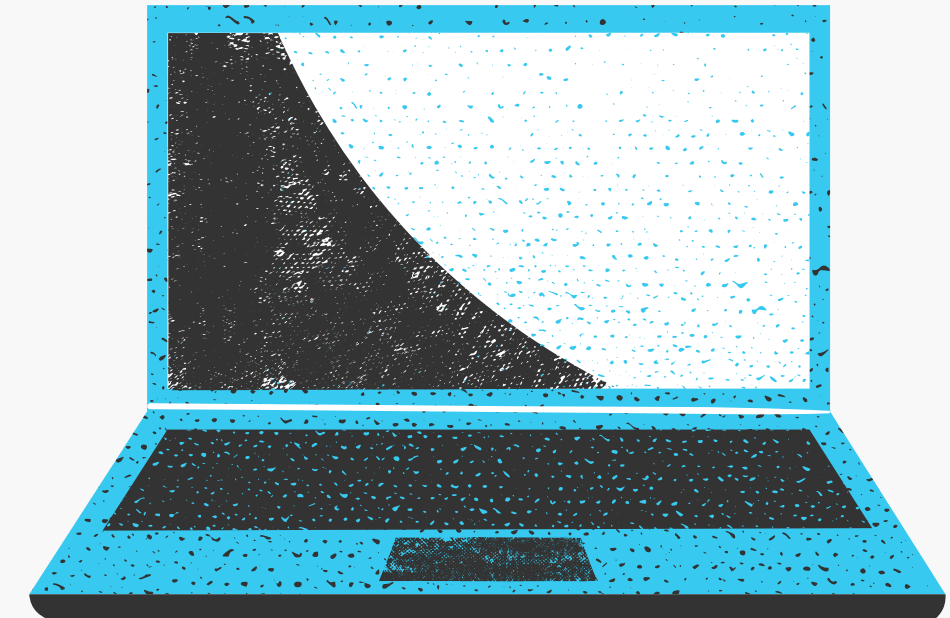
## Where can you find information about beneficial owner?



the Register of  
Beneficial Ownership



Official requests to  
other countries



Other sources

## OTHER SOURCES



### Lexis Nexis

online access to  
multidisciplinary  
databases  
<https://lexisnexis.com>

### World-Check Risk Intelligence

Electronic database  
<https://www.lseg.com/en>

### UK registered company database

[https://find-and-  
update.company-  
information.service.gov.uk/](https://find-and-update.company-information.service.gov.uk/) -

Information on more than 785,000  
companies registered in offshore

jurisdictions

[offshoreleaks.icij.org](https://offshoreleaks.icij.org)



### General Register of Companies of EU states

(by name and by registration number):

[https://e-](https://e-justice.europa.eu/489/EN/business_registers__search_for_a)

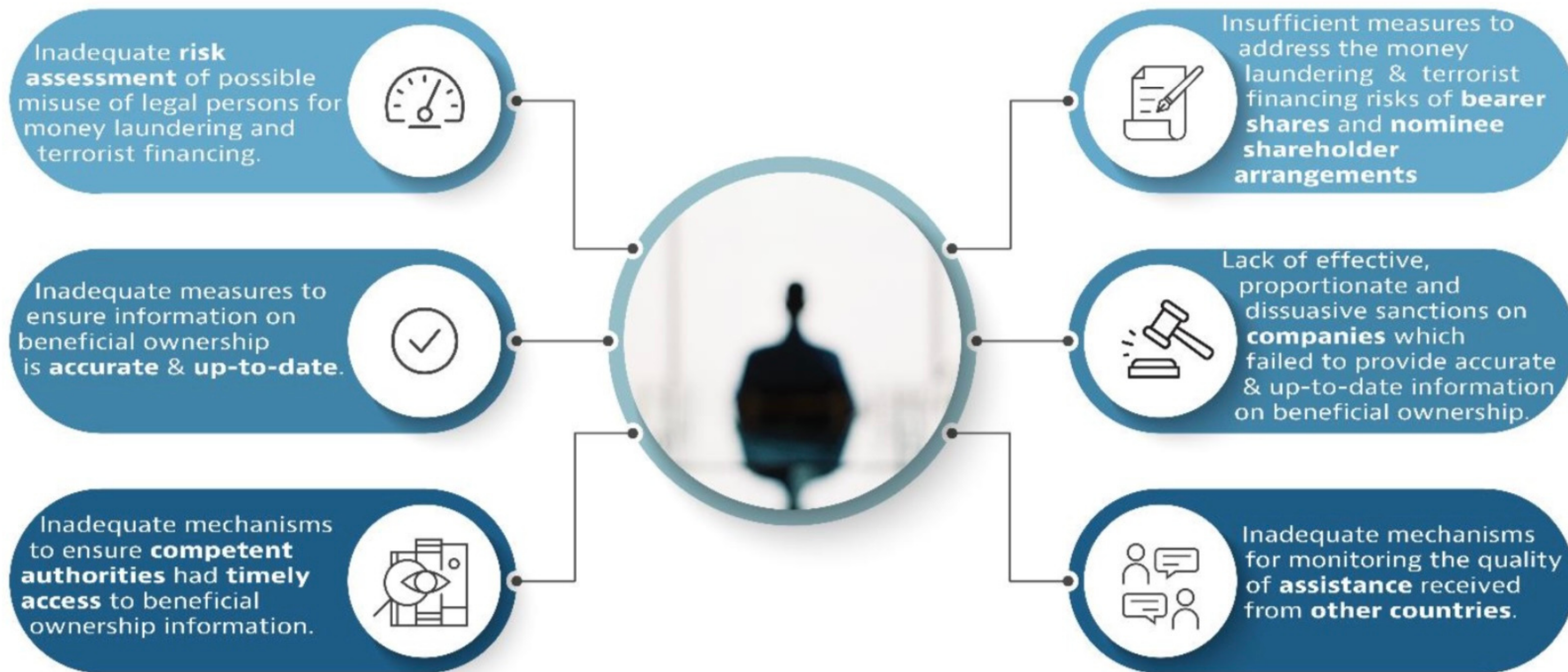
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# Important

it should be noted that the fundamental assumption is that the concept of Beneficial Ownership primarily ensures the proper operation of articles 10, 11 and 12 of the OECD Model

# Common challenges

## in implementing beneficial ownership measures



*Based on the results from the fourth round of FATF mutual evaluations.*