

Question: When considering the requirements under Clause 2, Part 5 of Article 16 and Parts 1 and 2 of Article 27 of the Republic of Armenia Law on Combating Money Laundering and Terrorism Financing, as well as the requirements under Part 1 of Article 9 of the Republic of Armenia Law on Combating Money Laundering and Terrorism Financing, Part 3 of Article 66 and Part 4 of Article 36 of the Republic of Armenia Law on State Registration of Legal Entities, State Recordkeeping of Separated Divisions of Legal Entities, Enterprises and Sole Proprietors, what shall reporting entities do to identify and (or) verify the identity of the beneficial owner of a legal entity, including in case of an indefinitely long chain of legal entities?

Answer: Part 5 of Article 16 of the Republic of Armenia Law on Combating Money Laundering and Terrorism Financing (hereinafter referred to as the Law) stipulates that reporting entities should determine whether the customer is acting on behalf and (or) for the benefit of another person. Reporting entities should “establish any beneficial owner and, as applicable, identify the beneficial owner and verify his identity, in accordance with Parts 1 to 4 and Part 8 of this Article”.

This requirement is driven by FATF Recommendations 10 and 22, which specify that reporting entities should – as part of customer due diligence process – identify beneficial owners and undertake adequate measures to verify the identity of the beneficial owner, thus ensuring that they have information of beneficial ownership. In particular, when a customer is a legal person or arrangement, reporting entities should have information on those who own and control the customer involved.

According to Part 1 of Article 9 of the Law, in case of registering a legal person the founders shall be obligated to file a declaration on the beneficial owners of the legal person with the state authority in charge of registering legal persons (hereinafter referred to as the State Registry). Moreover, pursuant to Part 3 of Article 66 of the Republic of Armenia Law on State Registration of Legal Entities, State Recordkeeping of Separated Divisions of Legal Entities, Enterprises and Sole Proprietors, in case of making changes in the statutory capital or in the composition of the shareholders, legal persons shall be obligated to file with the State Registry a declaration on beneficial owners as prescribed by the Law.

This requirement stems from the FATF Recommendation 24 defining that countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons.

2014 FATF Guidance on Transparency and Beneficial Ownership (hereinafter referred to as the Guidance) reflects on the identification of beneficial owners of legal persons, with its Clause 32 defining the successive steps to be taken by reporting entities (and by the State Registry). Particularly, financial and non-financial institutions should identify and verify the identity, and the State Registry should establish:

- 1) The identity of the natural persons (if any, as ownership interests can be so diversified that there are no natural persons, whether acting alone or together, who exercise control of the legal person through ownership) who ultimately have a controlling ownership interest in a legal person; and
- 2) To the extent that there is doubt as to whether the persons with the controlling ownership interest are the beneficial owners, or where no natural person exerts control through ownership interests, the identity of the natural persons (if any) exercising control of the legal person through other means;
- 3) Where no natural person is identified under (1) or (2) above, the relevant natural person who holds the position of senior managing official.

Hence, in all cases where it is impossible to identify and (or) verify identify of the natural persons specified in (1) and then in (2), FATF Recommendations allow to stop in the process of identifying and (or) verifying identity of the beneficial owners of the legal person once the identity of the natural person acting as the senior managing official of the legal person has been established. It is worth mentioning that Clause 14, Part 1 of Article 3 of the Law stipulates that a member of the management and (or) executive body of a legal entity can also be recognized as the beneficial owner.

2014 FATF Guidance on Transparency and Beneficial Ownership stipulates the natural persons who may exercise control through positions held within a legal person. Such are natural person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of activities of the legal person; or natural person(s) who exercise(s) executive control over the daily or regular affairs of the legal person through a senior management position, such as a chief executive officer (CEO), chief financial officer (CFO), managing or executive director, or president¹.

More details around the clarifications provided in the Guidance can be found at <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparencybeneficial-ownership.pdf>.

In case the last step in the succession of measures undertaken does not lead to a positive result, then financial and non-financial institutions should refuse the transaction or business relationship and consider recognizing it suspicious as prescribed under Parts 1 and 2 of Article 27 of the Law, and the State Registry should refuse the registration as prescribed under Part 4 of Article 36 of the Republic of Armenia Law on State Registration of Legal Entities, State Recordkeeping of Separated Divisions of Legal Entities, Enterprises and Sole Proprietors.

¹ 2014 FATF Guidance on Transparency and Beneficial Ownership, pages 15-16