Under the Shadow of the Grey List – The Adequacy and Effectiveness of South African Beneficial Ownership Transparency

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Abstract

Beneficial ownership transparency shapes the quality of the financial intelligence on which anti-money laundering and counter-terrorist financing (AML/CFT) measures rely. South Africa's 2022 reforms secured a largely compliant re-rating of Financial Action Task Force (FATF) Recommendations 24 and 25 and preceded its removal from the grey list in October 2025, but the effectiveness of the reformed regime remains to be re-tested. This article assesses that regime for companies, close corporations and trusts against the adequacy and accuracy of the information it yields. It analyses the FATF standards purposively and shows that its assessment process risks rewarding legislative change more readily than institutional capacity. It also assesses the United Kingdom's register of persons with significant control, with its cumulative identification tests, look-through of nominee holdings and reasoned threshold, for comparative insight. Turning to the *Companies Act* 71 of 2008, the article distinguishes the beneficial holdership of securities, beneficial interests and beneficial ownership of companies, and submits that the statutory definition of a "beneficial owner", read purposively, gives effect to Recommendation 24. The weaknesses lie elsewhere: an ineffectual 5% threshold; the absence of any verification of beneficial ownership status or duty on beneficial owners themselves; no enforceable obligations for close corporations; a fragmented and unverified trust register; and a disclosure regime for affected companies that depends on those records to identify beneficial owners. The article concludes that the regime remains exposed to findings of ineffectiveness at the next mutual evaluation.

Keywords

Beneficial ownership; beneficial interest; beneficial interest disclosure; anti-money laundering; Financial Action Task Force; grey list; *Companies Act* 71 of 2008; close corporations; trusts.

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1 Introduction

Beneficial ownership transparency asks which natural persons ultimately own or control a legal person or arrangement. The answer is highly influential on the quality of the financial intelligence on which anti-money laundering and counter-terrorist financing (AML/CFT) measures depend. This is largely because of the great potential of legal persons and arrangements for the obfuscation of persons, transactions and activities relating to criminal action, money laundering and terrorist financing.[1] The financial intelligence used to combat these activities draws on information gathered by accountable institutions through customer due diligence and a larger body of information maintained by mandated governmental or quasi-governmental entities, and is put to use by financial intelligence units, supervisors and law enforcement agencies.

Recommendations 24 and 25 of the Financial Action Task Force (FATF) on the transparency of legal persons and arrangements respectively are the primary yardsticks by which beneficial ownership (BO) transparency is measured.[2] The FATF 2021 mutual evaluation of South Africa rated its technical compliance with these Recommendations as partial, and the effectiveness of its measures as low: beneficial ownership information was mostly not easily available and, when available, slow to obtain.[3] Timely access to such information duly featured in the action plan accompanying South Africa's placement on the FATF list of jurisdictions under increased monitoring (the "grey list") in February 2023.[4] Legislative reform in late 2022[5] led to both Recommendations being re-rated largely compliant in October 2023,[6] and South Africa left the grey list on 24 October 2025.[7] Technical compliance is, however, not effectiveness, upon which the FATF

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1 FATF *Guidance on Beneficial Ownership of Legal Persons* 4-5 paras 1-4; FATF *Misuse of Corporate Vehicles* 1; Olivier and Nortje 2024 *PELJ* 2-3, 11-12.

2 FATF *Recommendations* 22.

3 FATF *Mutual Evaluation Report: South Africa* 12, 137-144, 196-201.

4 FATF 2023 https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Increased-monitoring-february-2023.html.

5 Chiefly the *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act* 22 of 2022.

6 National Treasury 2023 https://www.treasury.gov.za/comm_media/press/2023/2023112901%20Media%20Statement%20Progress%20in%20Addressing%20Technical%20Compliance%20Deficiencies%20in%20South%20Africas%20Ati-Money%20Laundering%20System.pdf.

7 FATF 2025 https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/increased-monitoring-october-2025.html.

assesses separately[8] and which South Africa's next mutual evaluation, concluding in October 2027, will likely focus.[9]

Domestically, these obligations are spread across several sources. Under company law, companies that are not affected companies must identify their beneficial owners, record them in their securities registers and file them with the Companies and Intellectual Property Commission (CIPC), while affected companies (principally public companies) must instead keep a register of persons holding beneficial interests of 5% or more in their securities, which CIPC likewise centralises.[10] Trustees must lodge beneficial ownership information with the Master of the High Court.[11] Close corporations, by contrast, are subject to no enforceable beneficial ownership obligation.[12] Accountable institutions must, in turn, identify and take reasonable steps to verify the beneficial owners of their clients as part of customer due diligence.[13]

The purpose of this article is to assess whether South Africa's revised beneficial ownership regime does indeed achieve both technical compliance and effectiveness across the major legal forms of companies, close corporations and trusts. In that analysis, it also seeks to clarify the currently muddled relationship between the beneficial holdership of securities under company law and beneficial ownership in AML/CFT regulation. The analysis focusses on two of the FATF's informational requirements, adequacy and accuracy, without which timely access means little. Adequacy, it is submitted, asks whether a regime, even if working as designed, would capture every natural person who owns or controls an entity and the means by which the person does so; it aligns largely with technical compliance. Accuracy asks whether the institutional mechanics of the regime would reasonably verify and maintain that information in practice; it aligns largely with effectiveness. Some of the deficiencies identified below are technical, some speak to effectiveness, and some lie between the two.

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8 FATF *Methodology* 6 para 2.

9 National Treasury 2026 https://www.treasury.gov.za/documents/National%20Budget/2026/review/Annexure%20E.pdf.

10 Sections 50(3A), 56(7)(aA), 56(12) and 56(14) of the *Companies Act* 71 of 2008 (hereafter the *Companies Act*), read with regs 32A and 32B of the Companies Regulations (GN R351 in GG 34239 of 26 April 2011) (hereafter the Companies Regulations). See further section 4.2 below.

11 Section 11A of the *Trust Property Control Act* 57 of 1988 (hereafter the *TPCA*). See further section 2.2.2 below.

12 See section 2.2.1 below.

13 Section 21B of the *Financial Intelligence Centre Act* 38 of 2001 (hereafter the *FIC Act*). See further section 2.2 below.

For comparative insight, it draws on the United Kingdom, specifically England and Wales. This comparator is singled out for four main reasons: (1) the enduring influence of English law on South African company and securities law, and, in this context, importantly, its use of registered securities and nominee-holding,[14] through which beneficial owners are readily obscured;[15] (2) its beneficial ownership regime is mature and has been rated substantially effective by the FATF;[16] (3) its institutions and its documented record of reform offer direct counterparts against which South Africa's choices can be tested; and (4) its creative and effective adaptation of the FATF's three-step test for identifying beneficial owners offers significant insight. Further, as the FATF standards already supply a benchmark common to all jurisdictions, a single comparator suffices, and it permits the close statutory reading that this interaction demands.

Ultimately it finds, even with sharper clarity on beneficial ownership provisions within the South African *Companies Act*,[17] that there are material flaws in the latest iteration of the South African beneficial ownership regime. It finds material technical gaps across company, close corporation and trust law that, alone or in combination, generate systematic incompleteness or potential inaccuracy within BO transparency, as well as institutional weaknesses that materially diminish the prospect of the regime, even as it stands, effectively delivering the transparency required.

2 International and domestic context

The domain of AML/CFT centres around the FATF, functioning as the primary inter-governmental body for AML/CFT policy, standards, peer review and international monitoring.[18] It enforces its standards and policy through the exercise of soft power, primarily by leveraging its considerable influence over international consensus on jurisdictional *risk*, which indirectly but materially influences transaction and borrowing costs, as well as the

14 Although its primary focus is debentures and shares, see De Beer *Legal Nature of Debt Securities* ch 3 paras 3.1.1-3.1.2 for the history of English law influence on South African company law, and para 3.1.3.1 for the shift towards a more independent South African company law, culminating in the passage of the *Companies Act* 61 of 1973; and 12, 19, 61-62, 86-88, 240 on the registered character of South African equity and debt securities, which enables the nominee construct through which beneficial ownership has often been obscured. It is submitted that this character has, with some modification, also carried over to close corporations.

15 FATF *Guidance on Beneficial Ownership of Legal Persons* 48-49 paras 132-134; see also Olivier and Nortje 2024 *PELJ* 4-5.

16 FATF *Mutual Evaluation Report: United Kingdom* 145-158.

17 *Companies Act* 71 of 2008.

18 FATF *Recommendations* 1.

degree of access to global financial markets.[19] Its periodic assessments of countries' effective and technical compliance are the key instrument of this influence.[20]

The system does evince one obvious weakness. Since 2013, the FATF has assessed effectiveness separately from technical compliance, accepting that a technically compliant country may not be effective.[21] It has been argued that its assessments of effectiveness remain thinly grounded in data, leaving them open to the charge of being at best subjective, at worst superficial and impressionistic.[22] The result is that deficient countries can demonstrate progress most quickly through legislation, which is visible and readily assessed, while the institutional capacity on which effectiveness depends is slower to build and harder to evidence. This leaves countries incentivised to "comply symbolically (i.e., technically) with global standards [while they] fail to achieve the outcome objectives".[23] As will be seen, this is evident in a number of themes in this work.

2.1 FATF on beneficial ownership

The FATF definition of a beneficial owner, as explicitly distinct from legal ownership,[24] is as follows:

> the natural person(s) who ultimately owns or controls a customer … It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. 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 [or arrangement].[25]

Recommendations 24 and 25 each come with a supplementary interpretive note[26] and comprehensive guidance.[27] They are supported *inter alia* by the

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19 For a detailed and high-quality discussion, see Hugo and Spruyt 2018 *TSAR* 227-255.

20 And within its own requirements, FATF explicitly requires enhanced due diligence on business relationships and transactions with persons "from countries for which this is called for by the FATF" under Recommendation 19: FATF *Recommendations* 19, 91. Illustratively, Kida and Paetzold *Impact of Grey-Listing on Capital Flows* 5 estimate that grey-listing reduces capital inflows by an average of 7.6% of GDP.

21 Halliday, Levi and Reuter *Global Surveillance of Dirty Money* 16 paras 30-31.

22 Levi, Reuter and Halliday 2018 *Crime L & Soc Change* 325.

23 Halliday, Levi and Reuter *Global Surveillance of Dirty Money* 16 para 31; see also 6-7.

24 FATF *Guidance on Beneficial Ownership of Legal Persons* 16 para 35.

25 FATF *Recommendations* 126 (definition of "beneficial owner").

26 FATF *Recommendations* 22, 96-105.

27 FATF *Guidance on Beneficial Ownership of Legal Persons*; FATF *Guidance on Beneficial Ownership and Transparency of Legal Arrangements*.

customer due diligence (CDD) requirements of Recommendations 10 and 22 and the investigative powers of Recommendation 31.[28]

For legal persons, countries need to (1) evidence an understanding of the various species of legal persons they permit and the processes for obtaining and recording their basic and beneficial ownership information, (2) make this descriptive information publicly available, and (3) assess the associated money laundering and terrorist financing (ML-TF) risks, including those posed by foreign legal persons.[29] The same applies, *mutatis mutandis*, to trusts and trust-like arrangements (collectively, "legal arrangements").[30]

These requirements manifest at two levels. The first is the obligation of financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs), as identified by national legislation,[31] as part of the broader risk-based CDD obligation under Recommendation 10.[32] The second (and the core focus of this work) operates at country-level, and relates to efficient, timely access by competent authorities to accurate, adequate and up-to-date basic and beneficial ownership information,[33] with specific emphasis on the institutions responsible for maintaining company, securities and trust registries.[34]

2.1.1 CDD obligations: specific FATF guidance

Recommendation 10 requires regulated entities not only to identify and verify their customers, but also to understand their "ownership and control structure" and to identify and take reasonable steps to verify their BOs.[35]

For legal persons, FATF distinguishes "basic" information[36] (at least "information about the status and powers of the company, its shareholders and its directors")[37] from beneficial ownership information. Here FATF provides a methodological identification procedure: the natural person(s)

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28 FATF *Recommendations* 14-15, 19-20, 66-68, 94 (Recommendations 10 and 22); FATF *Recommendations* 25, 112-113 (Recommendations 30 and 31).

29 FATF *Recommendations* 96 para 2; FATF *Guidance on Beneficial Ownership of Legal Persons* 9-11.

30 FATF *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* 3, 7-15.

31 In South Africa, these are known as "accountable institutions" as set out in sch 1 to the *FIC Act*.

32 FATF *Recommendations* 66-68, 96-98 (and n 64), 103.

33 FATF *Recommendations* 22 (Recommendations 24 and 25). This concept is not necessarily, but often is, co-extensive with beneficial ownership information for the purposes of CDD.

34 FATF *Recommendations* 98-100, 103-105.

35 FATF *Recommendations* 66-68.

36 FATF *Recommendations* 97-98; FATF *Guidance on Beneficial Ownership of Legal Persons* 13-20.

37 FATF *Recommendations* 97-98; FATF *Guidance on Beneficial Ownership of Legal Persons* 15-20.

who (a) ultimately have a controlling ownership interest in the legal person, if any, and (b) exercise ultimate effective control over it through other means, if any, must be identified and, where no BO can be identified, (c) the natural person who holds the position of senior managing official. Reasonable measures must be taken to verify the identity of such persons *and* their status as BOs.[38] As regards the first leg, FATF recommends percentage-based equity and voting power thresholds, which could vary based on the assessed level of risk of the customer,[39] and recognises that ownership interests may be indirect (through intermediating entities, nominees or supplementary arrangements) and that there may be multiple BOs or, where equity is widely held, none.[40]

FATF's guidance lists these legs conjunctively, but the Interpretative Note to Recommendation 10 evinces a three-step process for CDD – (1) beneficial ownership through direct or indirect ownership interests; (2) failing that, beneficial ownership through control by other means; and (3) failing that, the senior managing official. The second step is activated where there is doubt whether those with a formal controlling ownership interest percentage are truly BOs, or where none can be identified.[41]

The precise contours of this test are not elaborated upon, but this is a consequential question: to what extent must a regulated entity disentangle a complicated web of multi-tiered and potentially multi-jurisdictional ownership before it can (or more practically will) retreat to the safety of "doubt"? Enigmatically, the guidance adds that control cases "are harder to detect and will in practice be less relevant with routine collection of beneficial ownership information by a registry, agency, or other body".[42] This could be an indirect indication that a criterion such as "reasonable effort" would also satisfy the second leg, and allow an FI or DNFBP to resort to the very practically attractive third leg of merely designating the most senior manager as BO for the purposes of CDD compliance. This is an

38 FATF *Guidance on Beneficial Ownership of Legal Persons* 15-16 (own emphasis).

39 FATF *Guidance on Beneficial Ownership of Legal Persons* 16-17 paras 37-39, and para 40 for suggested risk factors in that assessment.

40 FATF *Guidance on Beneficial Ownership of Legal Persons* 17-18 paras 41-43. It is unclear from the guidance alone whether the percentage should be calculated cumulatively through intermediated ownership or directly – for example, where a natural person holds 10% of a company via one holding company and 15% through another, or holds only 10% "ultimately" through a directly upstream holding company that holds 30%.

41 FATF *Recommendations* 67-68.

42 FATF *Guidance on Beneficial Ownership of Legal Persons* 19.

especially pernicious problem given that verification is aimed more at the detection of instances of concealment than pure information gathering.[43]
For trusts, the methodology is less flexible: the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust must all be identified.[44]

2.1.2 National obligations

The primary informational obligations that rest on countries are timely access to adequate, accurate and up-to-date beneficial ownership information by competent authorities.[45] FATF recommends countries adopt a multi-pronged approach, blending information from the legal persons or arrangements, institutional actors (most notably registry-maintaining authorities and other trustworthy public or quasi-public sources) and, as a supplementary measure only, the CDD records of regulated entities.[46] Given the diversity of legal and institutional norms and structures across jurisdictions, such a flexible approach makes sense. Overall it envisions a composite, jurisdictionally-appropriate matrix of institutionally available information rather than a single central repository of information sitting, for instance, at a national financial intelligence centre.

The key drawbacks of this approach, however, are (1) a presumption of parity in maturity and effectiveness in different national institutions, (2) a high level of required national co-ordination across a variety of (executive and administrative) governmental portfolios and private or quasi-private bodies, and (3) the absence of a locus for ultimate responsibility to enforce consistent and effective implementation across these institutions.[47] Inherent in all these weaknesses is that such a matrix is asymmetrically regulated.

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43 Bieler 2022 *Fordham J Corp & Fin L* 214, as quoted in Olivier and Nortje 2024 *PELJ* 13.

44 FATF *Recommendations* 67-68. This is echoed less explicitly in FATF *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* 3, 23-29.

45 FATF *Recommendations* 22 (Recommendations 24 and 25).

46 FATF *Guidance on Beneficial Ownership of Legal Persons* 21; FATF *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* 31-32. FATF explicitly notes, in para 95 (at 37), that the CDD beneficial ownership information held by FIs and DNFBPs is not sufficient, on its own, to serve as an "alternative mechanism" for legal persons; the guidance on legal arrangements does not echo this warning, though it is likely that the same caveat applies.

47 Recommendation 2 evidences this by simply providing for national policies and a designated authority or co-ordination function. It does not recommend at which institutional level it should sit, nor does it encourage giving it any kind of power with respect to the agglomeration of impacted institutions it purports to govern or co-ordinate: FATF *Recommendations* 10-11.

FATF recommends stringent local regulation and supervision of FIs and DNFBPs (considered only a supplementary source), but prescribes no meaningful hierarchical regulatory relationships across the composite of institutions and actors comprising the other "prongs". The net effect is that co-operative and harmonising efforts at stronger FATF compliance in this domain can be superficial and ineffective, and can often occur only reactively before and after FATF country assessments. The partial mirroring of country and CDD obligations compounds this effect: especially in less mature jurisdictions, it can engender an impression that adequate beneficial ownership CDD compliance across regulated sectors contributes more towards the overall adequacy and availability of national BO information than is intended by FATF.

These limitations are partially ameliorated by the registry requirement, which envisages central registries for legal persons and arrangements that, alongside information held by the entities themselves, form the primary pillars of the multi-pronged approach[48] The Wolfsberg Group (an association of global banks) correctly recognises this tool as paramount across both Recommendations 24 and 25, and argues that regulated entities should be able to rely on these sources for the purposes of CDD.[49] The accuracy of beneficial ownership information is explicitly linked to verification: once identified, the information must be subject to verification measures.[50] One must not conflate this superordinate verification requirement with verification as a component of regulated entities' CDD obligations, which FATF treats as only a supplementary source.[51] Verification in this broader sense comprises two elements: verification of the identity details of BOs and verification of their status as such. Total accuracy is not required: rather than "a zero-failure approach [this] is a process aimed

48 FATF *Recommendations* 97-98, 103; FATF *Guidance on Beneficial Ownership of Legal Persons* 30-34; FATF *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* 30-34.

49 Wolfsberg Group 2023 https://db.wolfsberg-group.org/assets/79f5441d-4a46-4c88-981e-f071861e15df/FATF%20R25%20Guidance%20note%20consultation%20submission.pdf: "the financial sector should be able to rely on the information in a BO register and not be looked upon to verify that information … Since the very purpose of a public register is its reliability, having the financial sector perform duplicative verification is an inefficient use of resources".

50 FATF *Guidance on Beneficial Ownership of Legal Persons* 23-24 paras 55, 58-60; FATF *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* 25-26 paras 96-98.

51 FATF *Guidance on Beneficial Ownership of Legal Persons* 38-39 and, to a lesser extent, FATF *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* 34-35. See section 2.1.1 above.

at increasing confidence that information on ultimate ownership and control is reliable".[52] Adequacy, in turn, requires information "sufficient to identify the natural person(s) who are the beneficial owner(s), and the means and mechanisms through which they exercise beneficial ownership or control".[53]

2.2 South African beneficial ownership regulation

The primary local instrument for "FATF compliance" is the *Financial Intelligence Centre Act* (the *FIC Act*) and its regulations,[54] but the focus here will be on the *Companies Act*, the *Close Corporations Act* and the *Trust Property Control Act*, as these instruments contain basic and, in most instances, beneficial ownership information requirements.[55] The *FIC Act* creates the Financial Intelligence Centre (FIC) as both the AML/CFT regulator and a financial crime intelligence agency, and incorporates the FATF Recommendations into domestic law, supplemented by FIC-issued Directives, Guidance Notes and Public Compliance Communications.[56]

2.2.1 Legal persons

Legal persons are regulated primarily by the *Companies Act*[57] (including, for certain purposes, foreign entities operating in South Africa), which, together with the *Close Corporations Act* for close corporations (CCs),[58] adequately identifies and describes the various types of legal persons that can be incorporated or operate within South Africa. The primary administering (and registering) authority is the CIPC,[59] which is somewhat analogous to Companies House in the UK: it maintains certain company and CC information centrally and ensures required information is also maintained by legal persons themselves.[60] As to basic information –

52 FATF *Guidance on Beneficial Ownership of Legal Persons* 23-24.
53 FATF *Recommendations* 99 para 9.
54 *Financial Intelligence Centre Act* 38 of 2001. Also see De Koker *et al South African Money Laundering and Terror Financing Law* paras 2.01-2.11.
55 The *Companies Act* 71 of 2008; the *Close Corporations Act* 69 of 1984; the *Trust Property Control Act* 57 of 1988; and the *Financial Intelligence Centre Act* 38 of 2001.
56 FIC 2003-2025 https://www.fic.gov.za/compliance/.
57 *Companies Act* 71 of 2008.
58 *Close Corporations Act* 69 of 1984 (hereafter the *Close Corporations Act*), which continues to apply although no new close corporations may be founded: Meskin, Galgut and Kunst *Henochsberg on the Close Corporations Act* "A Note from the Author".
59 Established in terms of Part A of ch 8 of the *Companies Act*, but mandated to administer a large number of Acts: see sch 4 to the *Companies Act*.
60 FATF *Mutual Evaluation Report: South Africa* 196-197 contains a useful summary of this.

provided to the CIPC at incorporation and updated thereafter[61] – there is alignment with FATF requirements,[62] and the CIPC is understood to verify independently the identities of persons submitted to it as role players in legal persons, including persons subject to disclosure as beneficial owners or beneficial interest holders.[63] The transparency and disclosure regime is discussed in detail in section 4 below. Suffice it to say here that the CIPC is an institutionally defensible choice as the primary institution for maintaining, overseeing and centralising the country-level informational requirements in Recommendation 24.

More alarmingly, it appears that no enforceable legal requirement can be found for beneficial ownership transparency in the *Close Corporations Act* or its regulations or other notices issued after 2001,[64] nor in any formal statutorily issued FIC or CIPC guidance or directives. The only evidence of regulation in this domain is that the CIPC requires, in its beneficial ownership filing user guidelines, that persons holding beneficial ownership of more than 5% in close corporations must file that information with the CIPC.[65] It is estimated there may be more than a million close corporations still registered in South Africa.[66]

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61 See specifically ss 13, 14, 23, 24, 33, 36, 37 and 50 of the *Companies Act*, and the Companies Regulations.

62 Confirmed in FATF *Mutual Evaluation Report: South Africa* 196-197.

63 CIPC *User Guidelines: Beneficial Ownership* 9; De Koker *et al South African Money Laundering and Terror Financing Law* para 6.10 n 22; FATF *Mutual Evaluation Report: South Africa* 199-200 (verification of identities against the Department of Home Affairs database). CIPC also highlights its "reviewer system to inspect and analyse submissions": CIPC 2024 https://www.cipc.co.za/?page_id=16055. Compare the pre-reform position, in which there was "no obligation under the Companies Act for the CIPC to collect and verify information on beneficial ownership of companies": Duri and Matasane 2017 *J Anti-Corruption L* 182. The 2022 reform addressed collection, but not verification of status as beneficial owner.

64 The year 2001 marks the passage of the *FIC Act*. See the *Close Corporations Act*; GN R2487 in GG 9503 of 16 November 1984; GN 1062 in GG 27745 of 1 July 2005; GN 54 in GG 30687 of 25 January 2008; GN 758 in GG 31232 of 18 July 2008; GN 167 in GG 32988 of 26 February 2010; GN 634 in GG 33384 of 23 July 2010; GN 77 in GG 37287 of 7 February 2014; GN 6335 in GG 52892 of 20 June 2025.

65 CIPC *User Guidelines: Beneficial Ownership* 2, providing that: "anyone with more than 5% beneficial ownership of a company or close corporation must submit (file) with the CIPC, the requisite information". It is unclear why the user guideline provides for *more than* 5% while CIPC *Guidance Note 2 of 2023* 2 provides that "the threshold of 5% of ownership and/or control will be applicable", and s 56(7)(aA) of the *Companies Act* provides for 5% or more for beneficial interest declarations of affected companies.

66 Reliable figures could not be found, but extrapolating from registration and deregistration figures suggests that some 1.3 million may remain: see Du Plessis 2009 *NZBLQ* 254; CIPC *Annual Report 2012/2013* 17; CIPC *Annual Report 2022/2023*.

Close corporations permit a maximum of ten members[67] who, as a point of departure, must be natural persons, subject to highly relevant exceptions regarding trusts;[68] the Act also recognises holdership by a nominee.[69] Therefore, without any enforceable beneficial ownership legal obligations or regulatory rules and guidance, close corporations remain susceptible to the evasion of beneficial ownership transparency, especially through potential abuses of the nominee construct, as well as the indirect control of trusts (for example, a juristic person operating as a trustee with sham beneficiaries). This demonstrably fails the test of technical compliance. It is, moreover, a gap that survived the 2022 reform and South Africa's subsequent removal from the grey list, and one that goes to the adequacy of the information rather than its accuracy: where no obligation exists, no information is generated. It could, however, be mitigated within the broader matrix of national beneficial ownership information available to authorities through adequate and effective beneficial ownership identification and centralisation for trusts. As seen below, it is not.

2.2.2 Trusts

Trusts are governed in part by the *Trust Property Control Act* (*TPCA*) and in part through the common law,[70] which together identify and describe the various species of trust adequately. Moreover, the *TPCA*, read with the common law, shows sufficient alignment with the basic information requirements met when trusts are registered, established and amended.[71] Since 2022[72] trustees are further required to lodge and keep up-to-date beneficial ownership information with the relevant office of the Master of the High Court.[73] The Master's office, in turn, is obliged to maintain an

67 Section 28 of the *Close Corporations Act*.

68 Section 29(1), (1A) and (2) of the *Close Corporations Act*, which permit trustees of *inter vivos* and testamentary trusts, and persons acting *nomine officii*, to be members, subject to conditions.

69 Section 29(4) of the *Close Corporations Act*: "[a] corporation is not concerned with the execution of any trust in respect of any member's interest in the corporation", echoing s 104 of the *Companies Act* 61 of 1973. See also Meskin, Galgut and Kunst *Henochsberg on the Close Corporations Act* para 30.1.

70 Palmer "Trusts" para 177.

71 See specifically ss 4, 5 and 11 of the *TPCA*, read with the common law trust formation requirements (as dealt with, for instance, in Palmer "Trusts" para 182).

72 After amendments to the *TPCA* by the *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act* 22 of 2022.

73 Section 11A(1)(c)-(d) of the *TPCA*, read with s 1 (definition of "Master") and s 3(1)(a): for testamentary trusts, jurisdiction lies with the Master in whose office the testamentary writing is registered and accepted and, in any other case (read to refer to *inter vivos* trusts), with the Master in whose area of appointment the greater or greatest portion of the trust property is situated.

accessible register of beneficial ownership information for trusts registered in South Africa.[74]

The *TPCA* identifies as a trust's beneficial owners[75] all natural persons who directly or indirectly ultimately own the trust property or exercise effective control of the administration of the trust arrangements, as well as its founders, trustees and beneficiaries – or, where such a party is a legal person, a partnership or a trust, the natural person who directly or indirectly ultimately owns or exercises effective control of it.[76] There has been much criticism of this within the field of trust law. Du Toit, Smith and Van der Linde level a number of quite understandable legal-technical criticisms at the definition (including that trustees derive no benefit, beneficiaries derive no ownership and the property vests, personally, in neither), most of which are echoed elsewhere.[77] Whilst this critique is generally very sound from a technical perspective, it is pragmatically difficult to accept the slide into doctrinal impurity that is thematically implicit across these sources, as the text is plainly for a singular, very direct purpose; its misuse in litigation or subsequent confirmation in precedent has not yet occurred, and it is submitted that it is not likely to do so.

One substantive difficulty does remain. In a discretionary trust no beneficiary holds more than a contingent expectation until the trustees exercise their discretion, so that a beneficial owner in the sense of the *TPCA* may, at the time of reporting, not yet exist. This leads Van der Linde to argue that the definition comes close to requiring trustees to anticipate their own future discretion.[78] The register, in these cases, must therefore either list everyone who might benefit, including members of open classes, or omit persons who later do – noise in the first case, incompleteness in the second. That is precisely the separation of control from visible benefit that makes trusts attractive to bad actors.[79] Here one must make use of the final port of call offered by FATF – that the "information on the class of beneficiaries and

74 Section 11A of the *TPCA*.
75 Section 1 (definition of "beneficial owner") of the *TPCA*, read with s 11A.
76 Section 1 (definition of "beneficial owner") paras (c)-(e) of the *TPCA*, noting that in para (d) the Act does not allow a trust as trustee.
77 Cameron, De Waal and Solomon *Honoré's South African Law of Trusts* 579; Cilliers *Meyerowitz on Administration of Estates and their Taxation* 425-426; Du Toit, Smith and Van der Linde *Fundamentals of South African Trust Law* 2-4; Du Toit, Smith and Janse van Vuren 2023 *TSAR* 390-393.
78 Van der Linde *South African Trust Law Introduction of Beneficial Ownership* 56, 59-60.
79 Knobel *Trusts: Weapons of Mass Injustice?* 16-17.

its characteristics, and objects of [the discretionary] power" should be recorded rather than the full membership of such a class.[80]

Regardless, the prior state of legislative affairs did not satisfy FATF.[81] It does not appear that there are any verification requirements, either in terms of BO identity or status as BO, incumbent on trusts or the Master in these obligations. This is a major hidden flaw in the framework for trusts, and has clear potential for abuse in obfuscating the identities and purposes of true beneficial owners of trusts, especially in scenarios where upstream trusts are used within more complex ownership structures of legal persons.

However, the primary vulnerability in this domain is the choice of the Master of the High Court as the registry institution.[82] The first issue is that there is no provision requiring the Chief Master to consolidate the beneficial ownership registers of each Master's office centrally. Thus, law enforcement authorities must first identify the relevant jurisdiction and then approach that Master's office for information. More importantly, the fragmented nature of the Masters' offices risks potentially diverse understandings and interpretations of beneficial ownership, different levels of competency and efficacy in terms of administration, record keeping and service delivery (quality and speed) and weak command, co-ordination and control by the Chief Master's office.

How material is this risk? The FATF mutual evaluation voiced a large number of concerns regarding the accessibility, speed and efficacy of the Master in its effectiveness assessment,[83] and reputable media sources record a damning and consistent pattern over a number of years of poor administration and service delivery within the offices of the Masters.[84] No government sources (such as parliamentary oversight reports) directly assessing the efficacy of the Master's office appear to be readily available, but parliamentary media engagement corroborates the pattern, including a

80 FATF *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* 12-13 paras 39-43.

81 FATF *Mutual Evaluation Report: South Africa* 199-201.

82 In terms of s 1 (definitions of "Master" and "Minister"), read with s 2(1)(a)-(b), of the *Administration of Estates Act* 66 of 1965, a Master of the High Court is appointed for each High Court jurisdiction, with a Chief Master of the High Courts as executive officer to whose "control, direction and supervision" each Master is subject, reporting to the Minister of Justice.

83 FATF *Mutual Evaluation Report: South Africa* 143 para 407.

84 Maleke 2025 https://dailynews.co.za/personal-finance/financial-planning/2025-04-15-masters-offices-face-operational-paralysis-amid-leadership-crisis/; Visser 2022 https://fm.co.za/features/2022-11-10-inside-the-mess-of-the-master-s-office/.

recent recognition of the need for a "turn-around plan for Masters offices…beset with challenges and customer complaints on various matters".[85] Legislative reform could not, by itself, resolve these concerns, which go to effectiveness rather than technical compliance and which the next mutual evaluation can be expected to test.

The Master may have been a rational choice, especially given the historical significance of the Master's office in the administration of trusts. But for effective ML-TF risk management and compliance, a compelling argument can be made that it is not an appropriate institutional choice for the centralisation of beneficial ownership information for trusts. It might have been far more defensible to follow the approach of the UK, which entrusts its register of trusts to the revenue authority (see section 3 below), and to confer the responsibility on the South African Revenue Service.

3 Implementation of FATF requirements in the United Kingdom

The choice of the United Kingdom rests on the four criteria set out in section 1, the first being the enduring influence of English law. Comparison is most instructive where the systems compared share the same problem and enough architecture for differences in outcome to be traced to differences in rules.[86] South African company statutes were English law facsimiles until 1973, and the field still today draws heavily from English law precedent and character. The registered security, with its partition between registered and beneficial holdership, is an English construct that remains a feature of South African securities to this day.[87] The UK *Companies Act* 2006 still forbids notice of any trust on the register of members of companies registered in England and Wales,[88] and its South African counterpart, though it has no equivalent prohibition, preserves the nominee as a registered holder acting for another.[89] Even the disclosure tools have strong similarities: section 140A of the *Companies Act* 61 of 1973, the precursor of section 56, mirrored down to its three-year look-back the notice procedure now in section 793 of

85 Azzakani 2024 https://www.parliament.gov.za/news/justice-and-constitutional-development-committee-closely-monitor-turnaround-plan-masters-office.

86 Zweigert and Kötz *Introduction to Comparative Law* 34; Hirschl 2005 *Am J Comp L* 125.

87 De Beer *Legal Nature of Debt Securities* 12, 36, 61-62, 74-75.

88 Section 126 of the *Companies Act* 2006 (UK).

89 Sections 1 (definition of "nominee") and 56(1) of the *Companies Act*; De Beer *Legal Nature of Debt Securities* 75, 143 (on s 104 of the *Companies Act* 61 of 1973).

the *Companies Act* 2006.[90] Comparison with the source system also shows what changed on reception: the nominee construct was grafted onto a Civilian private law that recognises neither dual ownership nor the constructive trust.[91]

Second, the UK regime is highly mature. Its 2018 mutual evaluation rated it substantially effective on legal persons and arrangements,[92] a level only 9% of assessed jurisdictions had attained by 2022.[93] Third, its institutions and reform record offer direct counterparts to South Africa's choices. Companies House corresponds to CIPC, and the trust register of His Majesty's Revenue and Customs (HMRC) to the Master's offices.[94] Companies House long recorded, rather than verified, what was filed with it;[95] only after a review of the register of persons with significant control (PSC register)[96] did identity verification become mandatory, on 18 November 2025.[97] When Scottish limited partnerships were linked to money laundering, the PSC regime was extended to them.[98]

Fourth, and of particular value, the United Kingdom has adapted the FATF's test for identifying beneficial owners creatively and, on the evidence, effectively. The FATF prescribes a sequential cascade: ownership, then control by other means, then the senior managing official.[99] The PSC conditions, by contrast, apply cumulatively: holding more than 25% of the shares or voting rights, the right to appoint or remove a majority of the board, or significant influence or control.[100] Nominee and indirect holdings are looked through,[101] and there is no management fallback at register level.

90 Section 140A(5)-(6) of the *Companies Act* 61 of 1973; s 793(1)-(2) of the *Companies Act* 2006 (UK). Compare s 56(5) of the *Companies Act*.
91 De Beer *Legal Nature of Debt Securities* 19, 539. See further section 4.1 below.
92 FATF *Mutual Evaluation Report: United Kingdom* 145-158.
93 FATF *Report on the State of Effectiveness and Compliance with the FATF Standards* 6, 32.
94 Regulation 45(1) of the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations* 2017 (SI 2017/692) (hereafter the MLR).
95 BEIS *Corporate Transparency and Register Reform* 20 para 32.
96 BEIS *Review of the Implementation of the PSC Register* 6, 35-40.
97 Part 1 of the *Economic Crime and Corporate Transparency Act* 2023 (UK); Companies House 2025 https://www.gov.uk/government/news/companies-house-confirms-identity-verification-rollout-from-18-november-2025.
98 *Scottish Partnerships (Register of People with Significant Control) Regulations* 2017 (SI 2017/694); Explanatory Memorandum to SI 2017/694 para 8.2.
99 FATF *Recommendations* 67-68. See section 2.1.1 above.
100 Section 790C(2)-(3) read with sch 1A paras 2-5 of the *Companies Act* 2006 (UK).
101 Schedule 1A paras 18-19 of the *Companies Act* 2006 (UK).

The 25% threshold is also reasoned, whereas no justification has been offered for South Africa's 5%.[102]

Finally, a single comparator suffices. The FATF standards (section 2.1 above) already supply a benchmark common to all jurisdictions, and a second comparator would add breadth at the expense of a close statutory reading. Obvious alternatives also fall short: the European Union's model has been in flux since the Court of Justice invalidated general public access to beneficial ownership registers in 2022,[103] and the United States has, since 2025, exempted domestic companies from reporting under the *Corporate Transparency Act*.[104] The focus on England and Wales matters little, as the *Companies Act* 2006 and the trust register apply UK-wide.[105] This section therefore examines key elements of the UK beneficial ownership regime, with a focus on the standard position as applicable to England and Wales.

For these purposes, the primary regulatory instrument is the *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations* (MLR) issued by His Majesty's Treasury.[106] It outlines the definition of beneficial ownership,[107] regulated entities and their beneficial ownership CDD obligations,[108] and basic and beneficial ownership information requirements for legal entities and trusts.[109]
Operating in conjunction with the MLR are various transparency-focussed instruments: Part 7 ("Companies: Transparency") and Schedule 3 of the *Small Business, Enterprise and Employment Act*[110] and Part 1 of the *Economic Crime (Transparency and Enforcement) Act*.[111] They created

102 On the UK justification, see the UK government's rationale quoted later in this section; on the South African threshold, see section 4.2.1.1 below.
103 Joined Cases C-37/20 and C-601/20 *WM and Sovim SA v Luxembourg Business Registers* ECLI:EU:C:2022:912 operative part para 1.
104 Financial Crimes Enforcement Network "Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension" 90 Fed Reg 13688 (26 March 2025).
105 Section 1299 of the *Companies Act* 2006 (UK); reg 45 of the MLR.
106 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations* 2017 (SI 2017/692).
107 Regulation 3(1) (definition of "beneficial owner") of the MLR, referencing regs 5 (bodies corporate or partnerships) and 6 (trusts, similar arrangements and others).
108 Regulation 28(3)-(9) of the MLR.
109 Part 5 (regs 42-45ZB) of the MLR.
110 *Small Business, Enterprise and Employment Act* 2015 (UK) ss 81-91 and sch 3, inserting Part 21A ("Information about People with Significant Control", ss 790A-790ZG) and sch 1A ("Information about People with Significant Control", supporting s 790C), as well as various supplementary amendments, into the *Companies Act* 2006 (UK).
111 *Economic Crime (Transparency and Enforcement) Act* 2022 (UK) ss 1-44.

central registries in the form of the PSC register and "Register of Overseas Entities" (ROE, which will not be discussed in detail), overseen by Companies House.

The *Economic Crime and Corporate Transparency Act*[112] has recently strengthened these registers by (1) ensuring Companies House is able to interrogate, reject and even sanction filings submitted to it, (2) introducing identity verification requirements for persons with significant control, and (3) enhancing the transparency requirements for limited partnerships.[113]
There are three particularly insightful features within the regime. The first is the comprehensive network of obligations it imposes in the gathering and maintenance of beneficial ownership information. It places obligations directly on "bodies corporate" (which include companies but also limited liability partnerships, or LLPs),[114] and limited partnerships (LPs) to hold detailed basic ownership information.

The only real lacuna in the UK framework is general partnerships (GPs) as regulated by the *Partnership Act.*[115] Other than within the CDD requirements for regulated entities in regulations 28(3A)-(4) of the MLR, as supported by the catch-all beneficial ownership description in regulation 5(3), there are no discrete beneficial ownership obligations that apply directly to these partnerships nor any centralisation of information.

Companies and LLPs must maintain their own beneficial ownership information internally, and provide it to Companies House for the maintenance of the public PSC register. The ROE register, by contrast, sits centrally only. Companies House also maintains an LP register with basic ownership (but not beneficial ownership) information.[116] For the former,

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112 *Economic Crime and Corporate Transparency Act* 2023 (UK).

113 See specifically ss 79-91, ss 64-69 and 98-101 (for "overseas companies"), and ss 109-152 respectively of the *Economic Crime and Corporate Transparency Act* 2023 (UK).

114 Section 1(2) of the *Limited Liability Partnerships Act* 2000 (UK). LLPs were included in the scope of the PSC register by reg 3 of the *Limited Liability Partnerships (Register of People with Significant Control) Regulations* 2016 (SI 2016/340), inserting Part 8A into the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (SI 2009/1804), and are therefore subject to the PSC provisions in Part 21A of the *Companies Act* 2006 (UK). This ensures that the true beneficial owners behind, for example, nominee or entity members are identified.

115 *Partnership Act* 1890 (UK).

116 LPs are regulated by the *Limited Partnerships Act* 1907 (UK), s 8A(2) of which requires registration of the basic information of each *legal* partner with the Companies House registrar. Sections 8R, 8S and 8T, inserted by s 122 of the *Economic Crime and Corporate Transparency Act* 2023 (UK) but not yet fully in

PSC-impacted entities, the *Companies Act* 2006 provides the power to compel third parties to provide the information requested.[117] This ensures that entities falling within the scope of the PSC and ROE registers are sufficiently empowered to take the necessary measures to obtain the beneficial ownership information envisaged in Part 5 of the MLR, and that such information is adequate, accurate, and timeously available when needed.

Trusts and similar arrangements without directly relevant legislation are more directly regulated by the MLR.[118] The commissioners of HMRC maintain a separate, non-public registry for these entities.[119] Thus, most entities vulnerable to ML-TF abuse are subject to a specific and targeted legislative scheme of regulation, with certainty around beneficial ownership information and, in some instances, powers to compel information from pertinent persons. This information also rolls up into centrally maintained registers that are directly queryable (including by any "relevant persons" for the conducting of CDD).[120]

The second insightful element is the manner in which the UK approaches FATF's recommended three-level beneficial ownership identification methodology for juristic persons. The primary definition of beneficial ownership is found in the MLR:

> "beneficial owner", in relation to a body corporate which is not a company whose securities are listed on a regulated market, means—
> (a) any individual who exercises ultimate control over the management of the body corporate;
> (b) 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
> (c) an individual who controls the body corporate.[121]

force, mandate more detailed information about the ownership structure and partners.

117 Primarily ss 790D, 790DA, 790E and 790I of the *Companies Act* 2006 (UK).

118 The obligations on trustees, and the various kinds of trusts or arrangements included, are found in reg 44 of the MLR.

119 Regulation 3 (definition of "Commissioners") of the MLR, read with regs 45 and 45ZA.

120 Regulations 43(1) and 44(1) of the MLR, read with reg 3 (definition of "relevant person") and reg 28 (CDD obligations).

121 Regulation 5(1) of the MLR.

For "(c)" above, an individual controls a body corporate if either that body corporate is a subsidiary undertaking as per section 1162 of the *Companies Act* 2006 or if the conditions found in Schedule 1A of the *Companies Act* 2006[122] are met. This schedule deals thematically with PSC matters.[123] Schedule 1A provides a set of five conditions which, if any one is met, qualifies as significant control: direct or indirect holding of more than 25% of (1) shares or (2) voting rights,[124] (3) the ability to appoint or remove a majority of directors, (4) lawful or factual exercise of significant influence or control over the entity, or (5) if in respect of a trust or "firm" that is not a legal person, "(a) the trustees of a trust or the members of a firm that, under the law by which it is governed … meet any of the other specified conditions (in their capacity as such) … or would do so if they were individuals, and (b) X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm."

Finally, subregulation (3) provides that in respect of partnerships other than LLPs, a BO is any individual who "ultimately is entitled to or controls (in each case whether directly or indirectly) more than 25% share of the capital or profits of the partnership or more than 25% of the voting rights … or otherwise exercises ultimate control over the management of the partnership". This is seemingly only for direct queries and CDD purposes, as the Companies House register only contains basic LP ownership information.

According to the UK government, the risk-based rationale for the setting of the threshold is as follows. (This is, for the purposes of section 4.2.1.1 below, worth quoting in full):

> The 25% threshold is in line with global norms set by the Financial Action Task Force for what is considered "significant influence or control". It was chosen because it fits with existing and long-standing broader elements of UK company law, in particular that those with less than 25% shareholdings, voting or appointment rights will be unlikely to be able to block special resolutions in the entity and therefore could not be said to have significant influence. The government has no current plans to reduce the thresholds and deems it a disproportionate burden to require companies to provide the same amount of information about their minority shareholders as they do their PSCs.
> The government recognises that some may deliberately reduce their shareholding in an effort to avoid scrutiny. That is why condition 4 above exists for both registers. Condition 4 ensures that anyone who has a right to exercise,

122 Regulation 5(2) of the MLR; sch 1A to the *Companies Act* 2006 (UK).

123 Paragraph 6 of sch 2 to the *Economic Crime (Transparency and Enforcement) Act* 2022 (UK) contains essentially identical conditions applicable to the ROE.

124 Paragraphs 13 and 14 of sch 1A to the *Companies Act* 2006 (UK) contain particulars of the calculation or determination of shareholding and voting percentages.

> or actually exercises, significant influence or control over a company is still required to be registered, even if they own less than 25% of the shares or have less than 25% of the voting rights.[125]

Crucially, paragraph 19 of Schedule 1A explicitly provides that a "share held by a person as nominee for another is to be treated for the purposes of this Schedule as held by the other (and not by the nominee)".[126] This is echoed in paragraph 19 of Schedule 2 of the *Economic Crime (Transparency and Enforcement) Act*.[127] This ensures that nominee-holdership does not enable the misidentification of BOs, but does so in a way that does not alter, hybridise or render uncertain the pre-existing nominee concept as it exists within company law.[128]

This schema does not appear to use a linear process of elimination (as has been described in section 2.1.1 above). Instead, it designates any person meeting any of its criteria as a beneficial owner. Three valuable points emerge from this arrangement.

First, it ensures that all persons with the kind of control the beneficial ownership concept looks for are identified, regardless of the manner in which they exercise such ownership. This becomes especially useful in scenarios where multiple persons should be regarded as BOs even though their benefit and measure of control over an entity are structured in fundamentally different ways. Specifically, in this way the meeting of the first leg of the FATF inquiry by one or more persons does not prevent the identification of persons who meet only the second criterion but who should rightfully be regarded as BOs alongside the former.

Second, by setting a threshold that is effective directly or indirectly, it is clear that where upstream interceding entities dilute holdings, the cumulative holding of the BO in the entity in question should rise above 25%. This prevents a different kind of beneficial ownership oversight – where someone at first glance does not meet the first FATF criterion, but has ownership or control of an upstream entity which, through multiple disparate holdings in the entity in question, actually holds cumulatively more than 25% of the equity or voting power in that entity.

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125 HM Government 2024 https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-act-2023-factsheets/economic-crime-and-corporate-transparency-act-beneficial-ownership.

126 Paragraph 19 of sch 1A to the *Companies Act* 2006 (UK).

127 Paragraph 19 of sch 2 to the *Economic Crime (Transparency and Enforcement) Act* 2022 (UK).

128 Also see FATF *Mutual Evaluation Report: United Kingdom* 214 (on criterion 24.12).

Third, the UK has not adopted the third leg of the FATF process (the "management fallback") in its higher-level beneficial ownership regime. More limitedly, it has done so in the MLR regulation 28(6)-(8) for CDD purposes. Rather, in MLR regulations 5(1)(a) and 5(3)(c) as well as in paragraph 5 of Schedule 1A of the *Companies Act* 2006, the catch-all criterion is someone who exercises "ultimate control" or "significant influence or control" over the entity. And failing that, detailed particulars must be filed in the PSC register as to why and how the entity was unable to identify any persons with significant control.[129] This is important in relation to how hidden administrative incentives shape the way institutions set about operationalising their beneficial ownership obligations, and to what extent they may be motivated (by cost, effort and priority) to use elements of the definition more easily satisfied rather than to develop a full understanding of the beneficial ownership dispensation in complex cases.

Finally, there appear to be obligations to verify the identity of beneficial owners, but only more limited requirements to confirm and detail the nature or means through which beneficial ownership is held. For PSC-impacted entities, this is directly governed by sections 790CA and 790K(1)(h), as read with Schedule 1A, of the *Companies Act* 2006, including obligations to confirm and provide particulars relating to the nature of control. But the requirements lack documentary verification of these particulars.[130] For CDD measures more broadly (which are also the primary mechanism for BO identification for LPs), regulation 28(4)(b)-(c) of the MLR confirms verification of the identity of BOs but is similarly silent on the verification of the status as a BO. As noted, verification of a person's status as a BO appears to be a foundational underpinning of accurate and adequate BO information in terms of FATF standards. Yet, this potential deficiency is not noted in its most recent mutual evaluation of the jurisdiction, which assesses the UK's beneficial ownership effectiveness against Immediate Outcome 5 (Legal persons and arrangements) as substantial, and rates it largely compliant with Recommendation 24 and compliant with Recommendation 25.[131]

In summary, the UK regulates via a central AML/CFT instrument (the MLR) containing an authoritative definition of beneficial ownership for legal

129 Part 4 (regs 9-17) of the *Register of People with Significant Control Regulations 2016* (SI 2016/339), made under s 790M(7) of the *Companies Act* 2006 (UK).

130 *Companies Act* 2006 (UK).

131 FATF *Mutual Evaluation Report: United Kingdom* 145-158 (effectiveness), 210-219 (technical compliance).

persons and arrangements, specific CDD requirements for regulated entities and explicit obligations for bodies corporate and legal arrangements to keep and provide, upon request, beneficial ownership information. Slightly more asymmetrically, the MLR provides directly for a central register of beneficial ownership for legal arrangements held with HMRC. For most legal entities the obligation is to maintain (with enforcement powers) a register of their own basic and beneficial ownership information (PSC) but also to pass their information on to Companies House for collation into a central PSC register. This is done primarily via the *Companies Act* 2006,[132] using terminology distinct from the term "beneficial ownership". Importantly, the identification and reporting obligations rest on the entities directly, but the identification process is definitionally procedural – an entity must determine persons fitting targeted criteria, and then record and report. Uniquely, for PSCs, this is also cumulative – all individuals meeting any of the criteria are included, with no default ("management") fallback.

4 Analysing the efficacy, impact and shortcomings of beneficial ownership in South African law

4.1 Foundational concepts

The *Companies Act*, with its body of complementary common law, contains various concepts denoting relationships between persons not on the securities register and the substance of the security. These are: the traditional received English law concept of beneficial "ownership" of a security, other beneficial interests in securities, and beneficial ownership of a company through a relationship to its securities, security-holders or through alternative levers of control.

To make intelligible sense of the Act's disclosure provisions[133] and assess their ML-TF outcomes, one must recognise these as separate, functionally distinguishable concepts. For instance, it has been proposed that the Act now contains "two definitions of 'beneficial person' … [with] different but related reasons for existing" and at least the distinction of one excluding juristic persons entirely.[134] An adequate discussion of this topic would require far more than the scope of this work allows. The shorter examination of the meaning of each given below aims to entrench the distinctions more

132 *Companies Act* 2006 (UK).

133 It must be said that this author finds himself disappointed at the lack of clarity in the Act's current provisions dealing with disclosure, beneficial interest and beneficial ownership, specifically in s 1 and s 56.

134 Olivier and Nortje 2024 *PELJ* 20, with a useful broader discussion at 20-22.

firmly, and will suffice to inform the discussion on disclosure outcomes and efficacy that follows in section 4.2 below.

4.1.1 Beneficial ownership of securities

Beneficial ownership or, preferably, the holdership[135] of securities is a bilateral relationship best described as *sui generis* agency between registered and beneficial holders.[136] It is derived from an English law counterpart, though it operates on a different private law basis in South Africa.[137] This dual construct of separated "patrimonial" and "administrative" holdership has important higher-order utility,[138] which would be weakened by a fracturing of beneficial holdership as a concept into a more diverse

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135 The term "holdership" is preferred to "ownership" (1) to more clearly distinguish AML/CFT terminology from the traditional common law notion of the beneficial ownership of securities and (2) because as a "bundle of personal rights", a security is fundamentally an obligationary asset and it is preferable to speak of the holdership of personal rights than the ownership of those rights: see Delport *et al Henochsberg* s 1 (definition of "shareholder"), citing *Independent Community Pharmacy Association v Clicks Group Ltd* 2023 6 BCLR 617 (CC) para 233 (hereafter the *Clicks* case); also see a highly detailed argument in this regard in De Beer *Legal Nature of Debt Securities* 147-148.

136 Blackman *et al Commentary on the Companies Act of 1973* 5-172 n 8; *Sammel v President Brand Gold Mining Co Ltd* 1969 3 SA 629 (A) 666F-G; Van der Walt and Sutherland 2003 *SA Merc LJ* 95.

137 The traditional, legacy concept received through s 104 of the *Companies Act* 61 of 1973 and s 27 of the *Companies Act* 46 of 1926. These sections imported the *consequences* of the English doctrine of constructive trust despite the rejection of the doctrine itself in South African law (see most authoritatively *Lucas' Trustee v Ismail and Amod* 1905 TS 239 247-248; *Princess Estate and Gold Mining Co Ltd v Registrar of Mining Titles* 1911 TPD 1066 1077-1079), enabling the nominee concept in terms of which one person may be the holder of the patrimonial substance of a security while another may be reflected on the register as nominee. As per Borrowdale 1985 *CILSA* 40: "[b]y approximating registered title and ownership to legal and equitable title respectively, the concept of the share as found in English law is at least superficially integrated into the South African legal fabric". Also see *Farrar's Estate v CIR* 1926 TPD 501; *Jeffery v Pollak and Freemantle* 1938 AD 1 18; *West v De Villiers* 1938 CPD 96 102; *Moosa v Lalloo* 1956 2 SA 237 (D); *Verrin Trust and Finance Corp (Pty) Ltd v Zeeland House (Pty) Ltd* 1973 4 SA 1 (C); *Oakland Nominees (Pty) Ltd v Gelria Mining and Investment Co (Pty) Ltd* 1976 1 SA 441 (A); *Standard Bank of South Africa Ltd v Ocean Commodities Inc* 1983 1 SA 276 (A); and finally De Beer *Legal Nature of Debt Securities* paras 4.1.1-4.1.3, 4.3.1 generally for a reconceptualisation of the private-law basis for registered and beneficial holdership.

138 Its most important and useful functions are: (1) liquidity and economic efficiency: to ensure that the patrimony of securities (as important financial assets) is readily transferable, encumberable or inheritable without undue economic costs on the part of the issuer or alienating party; (2) to facilitate the efficient custody and administration of uncertificated securities trading at high volume and velocity in the secondary market (and indeed historically to *enable* immobilisation and dematerialisation); and (3) for debt securities, to enable issuers to deal with their debt security creditors programmatically for purposes such as variation, restructuring or real security arrangements.

multitude of beneficial interest holders. In accordance with the interpretive presumption that a statute does not alter the common law more than necessary,[139] as read with section 1 (the definition of "nominee") and section 56(1) of the Act, the continued existence of this construct is widely accepted.[140]

4.1.2 Beneficial interests in securities[141] *(narrow and wide)*

In addition, as useful for specific purposes,[142] the legislature has recognised a more diverse set of potential relationships between a registered holder of company securities and other natural or juristic persons. These are "beneficial interests" – i.e. indirect rights or entitlements "through ownership, agreement, relationship or otherwise, alone or together with another person" to benefit from income rights, to make use of participation, information and other rights, or to alienate securities or income from securities.[143]

The Act utilises the concept to expand the application of rights (for instance access to company information),[144] of obligations (for instance disclosure of beneficial interests)[145] and of certain regulatory parameters (such as for

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139 The presumption that the common law is preserved to the extent that it has not been expressly altered or is inconsistent with statute: *Du Plessis v Rolfes Ltd* 1997 2 SA 354 (A) 363B; *Durandt v Pienaar* 2000 4 SA 869 (C) 874D; Du Plessis "Statute Law and Interpretation" para 340.

140 *Companies Act*. In support, see Delport *et al Henochsberg* s 1 (definition of "shareholder"); Yeats *et al Commentary* Int-87 to Int-88. Recent case law in support includes *Sand Grove Opportunities Master Fund Ltd v Distell Group Holdings Ltd* 2022 5 SA 277 (WCC) para 31; *Aesthesis Holdings (Pty) Ltd v Eksteen Administration Holdings (Pty) Ltd* (GP) (unreported) case number 2024-010596 of 20 January 2025 para 29; and *Watson v Ngonyama* 2021 3 All SA 412 (SCA) para 63.

141 Section 1 (definition of "beneficial interest") of the *Companies Act*, and further deemed beneficial interest holders in accordance with s 56(2).

142 In addition to the s 50(2)(b)(iv)(bb), s 56 and s 122 disclosure provisions of the *Companies Act* (discussed hereafter), the Act incorporates the beneficial interest holder concept in a number of other specific contexts: widening the meaning of distribution in s 1, access to information rights in ss 26 and 31, widening the ambit and regulation of proxies in s 56(8)-(11), and in ss 117(1) and 123 in the context of Part B: Takeover Regulations.

143 Section 1 (definition of "beneficial interest") of the *Companies Act*. Its three limbs are quoted in section 4.2.2.1 below. The definition excludes any interest held by a person in a unit trust or collective investment scheme in terms of the *Collective Investment Schemes Control Act* 45 of 2002.

144 Sections 26 and 31 of the *Companies Act*. Section 26 is to be widened by s 4 of the *Companies Amendment Act* 16 of 2024, which had not commenced at the time of writing: see Proc 238 in GG 51837 of 27 December 2024; Proc 313 in GG 54722 of 22 May 2026.

145 Sections 56(3), 56(5) and 122(1) of the *Companies Act*.

distributions, proxy voting or in affected transactions).[146] Therefore, the ambit of the definition cannot be construed too widely, despite the use of "ownership, agreement, relationship or otherwise".

However, with respect, it cannot be interpreted so narrowly as only to encompass scenarios where "there is a severance of the interests (legal rights, entitlements or powers) that comprise ownership" (i.e. limited real rights in respect of securities) as appears *obiter dictum* in the *Clicks* case minority judgement.[147] It is submitted that the intention of the dictum was not to articulate an exhaustive meaning of the definition as used in the Act, but rather to demonstrate (in support of ascertaining a general meaning of the phrase beneficial interest) that limited real interests are included in its reference to ownership.[148]

With respect to "relationship" and "agreement", it is submitted that the right or entitlement must at least be direct. This is because, in order to give meaning and effect to section 56(2), the section 1 definition cannot include any agreement, relationship or other arrangement envisaged in that provision. Thus, the deeming provision serves as an excellent interpretive limiter for the concept. Crucially, it also supports the argument that "or otherwise" must be interpreted *eiusdem generis* and simultaneously serves to inform that interpretation.

Therefore, "relationship" must at least exclude the registered holdership of a security *nomine officii* (for example as a trustee or curator), marriage in community of property, the parent to a minor, and ultimate controllers of a holding company and subsidiary.[149] "Agreement" must exclude third parties' rights in agreements obliging the beneficial holder of a security to co-operate with that party in the acquisition or disposal of their beneficial holdership (it is submitted that this provision, however, does not exclude voting agreements);[150] "otherwise" must also exclude controllers of majority voting rights of an entity beneficial interest holder and the English law concept of shadow directors.[151]

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146 Section 1 (definition of "distribution") of the *Companies Act* and as used thereafter in the Act; s 56(9)-(11) for additional proxy provisions; and s 123 for mandatory offers.

147 *Clicks* case para 141 (minority judgment of Majiedt J).

148 A point also well made by Olivier and Nortje 2024 *PELJ* 21-22.

149 Section 56(2)(a), (b) and (d) of the *Companies Act*.

150 Section 56(2)(c) of the *Companies Act*.

151 Section 56(2)(e)-(f) of the *Companies Act*. The latter corresponds directly to the definition of shadow director as set out in *Re Hydrodam (Corby) Ltd* [1994] BCC 161. According to Cassim *et al Contemporary Company Law* 548, "[s]hadow directors

This means that the section 1 beneficial interest concept includes, but is not limited to, beneficial holders of securities and limited real right holders in respect of securities (such as pledgees or holders of a usufruct over shares), but leaves a narrow scope for what else could be included. It is submitted that the definition at least also includes: (1) bodies unincorporate, such as partnerships, clubs or other voluntary associations (where one of the partners or members is the registered holder but the entity itself truly controls the beneficial interest), (2) persons ultimately directing votes at a shareholders' meeting in terms of voting agreements, (3) certain species of joint ventures and (4) persons controlling the substantive rights of a security through more modern corporate finance constructs such as the "leasing" of securities.

Finally, the definition is also modified by the phrase "alone or together with another person" – the examples above provide sufficient context for the meaning of this phrase. What is noteworthy here is that such a relationship could have a dilutory effect when determining a percentage held by any one of these persons. For example, where 20% of a company's securities are held by a partner on behalf of a partnership, or by one person who is bound by a voting agreement with another, should that percentage be divisible by the number of parties? Could a four-person partnership imply that each partner is actually the holder of 5%, or in terms of an agreement each party is the holder of only 10%?

The Act also recognises a "wider" instantiation of the beneficial interest concept through section 56(2). In essence, it provides that persons with various relationships to holders of a "narrow" beneficial interest in public company securities should also be deemed beneficial interest holders of those securities.[152] The nature and scope of the various natural and juristic persons included in the deeming provision are wide and have been summarised in analysing the limits of its "narrow" counterpart above. Read with the very specific and targeted invocations of the concept elsewhere in the Act, it is submitted that "beneficial interest" in this wider sense should be seen to apply only to disclosure provisions (including but not limited to disclosures aimed at beneficial ownership transparency).[153] This effective

have been recognised in our common law, even if they have not been referred to as 'shadow directors'", citing *S v De Jager* 1965 2 SA 616 (A).

152 Section 56(2) of the *Companies Act*.

153 That is, the disclosure provisions found in ss 50(3A), 50(2)(b)(iv)(bb), 56 and potentially 122(1) of the *Companies Act*.

reading-in of "for the purposes of disclosure" to section 56(2) is not unassailable, but this cannot be pursued further here.[154] Suffice it to say, on balance it should not be read to recognise the broader categories of persons deemed beneficial interest holders at least for the purposes of informational rights,[155] proxy arrangements[156] or distribution rules.[157]

4.1.3 Beneficial ownership of legal persons158

Finally, there is the beneficial owner (of a legal person) concept. This section will deal with the meaning of the concept as well as some interpretive difficulties within it. Seen through the purposive lens of the FATF recommendations, it seems clear that although "it is … not legally accurate to state that a person owns a company … the BO concept denotes: a person that benefits from or controls a company's activities … [i.e.] whether there is an identifiable, human, ultimate owner, beneficiary or controller of a company".[159]

Its use of and interaction with the beneficial interest concept, as well as FATF, FIC and CIPC standards and guidance, is the focus here, centring on its definition in section 1 of the *Companies Act*.[160]

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154 Valuable perspectives can be found in Rachlitz 2013 *Stell LR* 406; Delport *et al Henochsberg* s 56(2); Yeats *et al Commentary* 2-1206 to 2-1209; Cassim *et al Contemporary Company Law* 330-332.

155 Sections 26(1), 26(3) and 31(1) of the *Companies Act*.

156 Section 56(8)-(11) of the *Companies Act*.

157 Section 1 (definition of "distribution") of the *Companies Act*, read with invocations of "distribution" within the Act.

158 Section 1 (definition of "beneficial owner") of the *Companies Act*.

159 Olivier and Nortje 2024 *PELJ* 18.

160 Section 1 (definition of "beneficial owner") of the *Companies Act*:
"in respect of a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company, including through—
(a) the holding of *beneficial interests* in the securities of that company;
(b) the exercise of, or control of the exercise of the voting rights associated with securities of that company;
(c) the exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company;
(d) the holding of *beneficial interests* in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company;
(e) the ability to exercise control, including through a chain of ownership or control, of—
(i) a juristic person other than a holding company of that company;
(ii) a body of persons corporate or unincorporate;
(iii) a person acting on behalf of a partnership;
(iv) a person acting in pursuance of the provisions of a trust agreement; or
(f) the ability to otherwise materially influence the management of that company".

The modifiers preceding its subsections are important. First, they end with "includes", indicating that this is not a closed list. Olivier and Nortje argue that the textual implication of an open-ended list is the possibility that an entity may not have a beneficial owner and that no consequent disclosure need be made.[161] Respectfully, read against the FATF first principles already discussed, this is not convincing. Rather, although somewhat convoluted and muddled, the wording does appear to search for direct or indirect (1) ultimate ownership, or (2) effective control of the company.

One informs this enquiry with a threshold, if any, set for controlling ownership interest. The definition in the Act does not specify a percentage threshold for controlling ownership, nor do sections 50(3A) or 56(12). The Minister has also not determined it as part of the "prescribed requirements" in terms of section 56(13). However, the CIPC states, presumably authoritatively, that "the threshold of 5% of ownership and/or control will be applicable for all entities required to file Beneficial Ownership Information".[162]

This is problematic for two main reasons. The first is scope. A percentage threshold cannot be applied to the FATF control by other means criterion – this is nonsensical. But as will be shown, the definition of the concept is imprecise in distinguishing controlling ownership and control by other means. Therefore, the notion of a percentage is useful in some of the definition's elements that refer *prima facie* only to control. The second is the marked deviation from FATF's recommended threshold of no higher than 25%,[163] as implemented at 25% in the UK. This discussion will be left for section 4.2.1.1 below, as it primarily impacts on the effectiveness of outcomes.

The "or" in the structure of the subsections indicates that any person meeting any criterion is a beneficial owner, which is also aligned to the UK

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161 Olivier and Nortje 2024 *PELJ* 19. It is agreed that this creates an unnecessary compliance burden for small to medium enterprises that mostly use close corporations and private companies, but for different reasons: see section 4.2.1.1 below.

162 CIPC *Guidance Note 2 of 2023* 2. De Koker *et al South African Money Laundering and Terror Financing Law* is silent on the beneficial ownership percentage for non-affected companies in para 6.10.
However, the 5% threshold is also required: (1) for affected companies' register of beneficial interest holders in s 56(7)(aA) of the *Companies Act*, and (2) for the purposes of regulated entities' beneficial ownership CDD measures in FIC *PCC 59* 11 para 2.18, issued in terms of s 4(c) of the *FIC Act*.

163 FIC *PCC 59* 10-14.

approach. Finally, the "directly or indirectly" modifier requires unpacking. One approach is to infer that it applies to all the definition's criteria. In so doing, the scope of each is considerably, perhaps indeterminably, widened. Rather, in relation to the previous point and more generally, it is submitted that literalism or excessive peering in search of a coherent superstructure to the definition is of greatly diminished value in interpreting this definition. There is, for instance, little to no utility in finding a way *ipsissima verba* to distinguish between an indirect beneficial interest in the "right or entitlement … to … exercise or cause to be exercised, in the ordinary course, [voting] rights attaching to the company's securities" as per subsection (a) of this definition (read with the definition of beneficial interest) and the indirect "exercise of or control of the exercise of the voting rights associated with securities of [the] company" in terms of subsection (b).[164]

As this provision was inserted by the *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act*,[165] intentionalist and purposive approaches to its import coincide,[166] since the evident intention of the legislature is to give effect to FATF Recommendation 24. Thus, the focus can turn to the meaning of the definition's subsections as interpreted purposively, primarily against the FATF methodological identification procedure's criteria. These are: controlling ownership interests and control through other means; as a catch-all, FATF provides for the senior manager of the company.[167]

Subsection (a) is relatively simple. The principles outlined in section 4.1.2 above, together with the 5% threshold,[168] make the thrust of this provision clear. Due to the extended additional coverage provided by (b), (d) and (e), it appears to apply to any natural person who meets the narrow definition of a beneficial interest holder in more than 5% of the securities of the company, and thereby holds a controlling ownership interest in the company. However, if this section requires the company to peer behind any juristic holders of a beneficial interest in at least 5% of its securities, the following process would need to be followed. Companies must first identify all

164 See Du Plessis "Statute Law and Interpretation" para 314 and authorities cited therein for an excellent overview of literalism.

165 Section 55(b) of the *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act* 22 of 2022.

166 Again, Du Plessis "Statute Law and Interpretation" paras 315-316 are of great value.

167 Outlined in section 2.1.1 above, but for these purposes the general approach set out in FATF *Guidance on Beneficial Ownership of Legal Persons* 15 paras 32-33 (that is, all persons matching any criterion) is more important than the sequential ("if not then") approach of Recommendation 10.

168 CIPC *Guidance Note 2 of 2023* 2.

beneficial interest holders, natural or juristic; second, they must identify the beneficial owners of any juristic persons, trusts or other legal arrangements identified as beneficial interest holders; and, finally, they must apply the 5% threshold to the individual interests held by the resulting list of natural persons (as potentially diluted by any "agreement, relationship, co-ownership or otherwise…together with another person" – see the example discussed above).

This process is, purposively, far better suited for application in terms of subsection (e). This subsection asks (1) whether there is control of the company, "including through a chain of ownership or control", (2) by a natural person, (3) via any species of intermediating entities, including legal persons, bodies unincorporate, trusts and partnerships. This is an instance where it is useful and appropriate to apply the 5% threshold to a provision that initially seems to target control by other means. Upon closer examination, the provision is clearly aimed at ultimate ownership or control, as per the main text of the definition. Therefore, the process above can be applied, in alignment with the FATF and UK methodologies of asking if a person's total controlling ownership (as inclusive of upstream dilutions) exceeds the prescribed threshold. However, the subsection goes further in that it also asks, regardless of whether the above process yields one or more beneficial owners, whether there are other natural persons with control over the company by other means.

That also answers the at-first-glance difficult question of what constitutes control over a person representing a partnership or acting in terms of a trust agreement as per subsection (e)(iii)-(iv).[169] Purposively, it is clearly aimed at secondary persons with control of such persons, by virtue of ultimate ownership or control over the trust or partnership itself. Thus, the operation of subsections (a) and (e), and their interrelation, is clarified. They both seek at least to find a controlling ownership interest. However, the former is concerned only with direct natural person beneficial interest holders; the latter is inclusive of controlling ownership or control through other means, including where there are intermediating entities within the ownership structure of the company.

In that light, the purpose of subsection (b) is less clear. This is because the direct right or entitlement of any natural person to exercise *or* cause the exercise of at least 5% of the voting rights of company securities is already

169 Subsection (e)(iii) and (iv) of the definition of "beneficial owner" in s 1 of the *Companies Act*.

included in the definition of beneficial interest.[170] Such a person would already have satisfied the criterion of subsection (a). And any non-natural person who exercises or controls the exercise of at least 5% of voting rights, as well as any natural person who indirectly does so, has already been shown to meet one of the sub-criteria of subsection (e). It is unclear which specific scenario not covered elsewhere would justify the stand-alone inclusion of the criterion.

Subsection (d) deals with beneficial ownership via a holding company. In the Act, this term has a specific and technical meaning, denoting a more absolute kind of control (to oversimplify: a majority shareholding, a majority of voting rights or the appointment of a majority of the board; it also takes cognisance of both nominees and the indirect exercise and control of the exercise of voting rights).[171] Only a 5% or more beneficial interest in a holding company will activate it. Conversely, its application evades an upstream company that is not a holding company. It is unclear why subsection (e) specifically excludes holding companies, as it appears simpler to remove the qualification along with (d) entirely. It is also unclear why subsection (d) specifies beneficial interests and (e) does not.

In the light of the discussions of Recommendation 24 and the UK regime in sections 2.1 and 3 above, the import of subsections (c) and (f) is uncontentious and requires no further discussion here. In conclusion, a purposive approach to the definition of beneficial owner demonstrates its effective alignment with Recommendation 24, and disentangles potentially confusing elements within its drafting.

4.2 Imperfect disclosure: beneficial ownership transparency under the Companies Act 71 of 2008

The disclosure regime in the Act places different disclosure obligations on different kinds of companies. The primary distinction is between affected

170 Which would also include voting agreements or a relationship of trust.

171 Section 1 (definition of "holding company") of the *Companies Act*, read with ss 2(2)(a) and 3(1)(a).

companies[172] and non-affected companies.[173] With respect to centralising the beneficial ownership (or interest holdership, as the case may be), section 56(14) places an obligation on the CIPC to maintain a central registry of (1) all beneficial ownership disclosures of non-affected companies and (2) the records contained in affected companies' registers of beneficial interest holders.

4.2.1 Non-affected companies

Non-affected companies have direct beneficial owner disclosure obligations. In addition, these companies must reflect and keep an up-to-date list of all beneficial owners (as per the definition discussed in section 4.1.3 above) in the securities register,[174] and must file (and thereafter also keep up-to-date via further filings) a record with the Commission of all such beneficial owners.[175] It is critical to note that the onus to identify and disclose rests on the company itself.[176] The natural persons concerned bear no corresponding obligation to disclose their own beneficial ownership – a weakness identified before the 2022 amendments took effect, and not cured by them.[177] In the United Kingdom, by contrast, registrable persons must notify the company of their status and keep that information current.[178]

Two key issues arise regarding the effectiveness of this disclosure regime in general

4.2.1.1 The threshold

As already noted, the CIPC threshold is 5%. The Commission provides no substantive justification for that number. The same threshold is also evident

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172 Section 1 (definition of "affected company") of the *Companies Act*, read with ss 117(1)(i) and 118(1), includes: all public companies, all state-owned companies not Ministerially exempted under s 9(3), and any private company if: (1) more than 10% (see reg 91(1) of the Companies Regulations) of its securities have been transferred to or from non-related or -interrelated persons in the 24 months preceding an affected transaction or offer; (2) its memorandum of incorporation "opts in" to its being a regulated company as per s 118; or (3) it is (3.1) controlled by or (3.2) a subsidiary of a regulated company. Also see Olivier and Nortje 2024 *PELJ* 14-16 for a deeper discussion of the concept.

173 A non-affected company is any company not included in the definition of an affected company.

174 Section 50(3A) of the *Companies Act*.

175 Section 56(12) of the *Companies Act*.

176 The provisions of s 50(2)(b)(iv) and (3A), as well as s 56(12) of the *Companies Act*, make it clear that the "company must" adhere to their requirements of disclosure.

177 Dhana *Role of Beneficial Ownership Reporting Obligations* 7, 19; Olivier and Nortje 2024 *PELJ* 24.

178 Sections 790G-790H of the *Companies Act* 2006 (UK).

in FIC *PCC 59*,[179] as well as in section 56(7)(aA) and is clearly the result of regulatory co-ordination. Unfortunately, the justification that is provided by the FIC is circular and offers no substantive insight into its underlying reasoning.[180] Although the FIC and CIPC guidance is technically non-binding, for the purposes of regulatory monitoring and enforcement it sets a *de facto* standard from which any upwards deviation will be difficult to defend. The threshold appears to represent a risk-based decision to "enable authorities to capture more information on those with ownership or control … [at the cost of] increasing identification efforts".[181]

The first issue with this threshold is that there is no publicly available information to support that it is indeed risk-based. FIC *PCC 59* is the only source that references risk assessments, stating rather cryptically that

> [r]isk assessments conducted on various sectors has highlighted the risk of legal person structures being abused by criminals who are beneficial owners … [and there are e]merging risks and media reports highlighting the abuse of the public procurement process, using illegitimate companies with criminal beneficial owners.[182]

Second, in the absence of available risk-based evidence other than the above, the threshold can be said at least to aim to identify persons abusing legal personality for tender processes or for the concealment of known criminals or persons subject to adverse media allegations of criminality. This is misguided, as these considerations speak, and should speak, to the disclosure of persons with significant control despite their not holding a controlling ownership interest. Not only is this a misapplication of the FATF principles – it creates additional risk. If a controlling person with a small minority share has already been disclosed among many other "beneficial owners", there is no further obligation to disclose any control such a person may have, or the nature of that control. Thus, there is insufficiently detailed information available (1) to distinguish such a person as significant, or (2) to determine and disclose the means of such a person's influence or control. This materially weakens identifiable ML-TF markers within the disclosed information and thereby diminishes the quality of the financial intelligence the AML/CFT system of rules is ultimately designed to generate.

Third, a 5% beneficial interest in respect of the securities of a company is factually and in the ordinary course of business almost never sufficient to

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179 FIC *PCC 59* 11.
180 FIC *PCC 59* 11 paras 2.19.1-2.19.3.
181 FATF *Guidance on Beneficial Ownership of Legal Persons* 16 para 38.
182 FIC *PCC 59* 11 para 2.19.2.

exercise control of an entity. The threshold is extraordinarily low, even in comparison to the low standards set in the context of the control of regulated or listed companies[183] as well as accounting benchmarks for "significant influence".[184] Quite patently, it will often not enable the identification of persons with a controlling ownership interest (blatantly, or at least not without obscuring these persons among those who in reality do not).

Finally, especially in the light of the general rising costs of compliance and the need to enable small businesses to minimise resources not spent on core business functions, one could make a cogent argument that this does not strike the appropriate "balance [between] the need for more information with a higher compliance burden and the risk of collecting too much information, introducing noise in the data and increasing the resources required to collect, store, and use it".[185]

There is literature contending that there should be no threshold at all. The contention is that anyone holding a single share should be identified as a beneficial owner because beneficial ownership is about transparency more than control, and because a lower threshold would change nothing for simple structures while burdening only those who layer entities to remain beneath it.[186] This argument is not accepted. Knowing every holder of equity may well serve purposes such as tax enforcement or the study of wealth concentration, but BO transparency is teleologically directed at the kind of variable blend of "ultimate" ownership and control of entities that is of use to those aiming to abuse it. Good financial intelligence should aim to identify that kind of control more than aim for total transparency. The more names a register holds (i.e. "noise" in the dataset), the less each means, and those with real control disappear among the many so identified, with little to nothing to distinguish them.

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183 As best evidenced by the 25-30% typically prescribed in takeover regulation in triggering mandatory offer and publicity requirements: see, in the UK, The Takeover Panel *City Code on Takeovers and Mergers* r 9.1, prescribing 30%; in Hong Kong, Securities and Futures Commission *Codes on Takeovers and Mergers and Share Buy-backs* r 26.1, prescribing 30%; in Germany, ss 29(2) and 35 of the *Wertpapiererwerbs- und Übernahmegesetz* (WpÜG), prescribing 30%; or in India, Securities and Exchange Board of India *SEBI (Substantial Acquisition of Shares and Takeovers) Regulations*, 2011 reg 3(1), prescribing 25%.

184 See International Accounting Standards Board *IAS 28: Investments in Associates and Joint Ventures* paras 5-6, prescribing 20% for significant influence.

185 Open Ownership *Guide to Drafting Effective Legislation for Beneficial Ownership Transparency* 14.

186 Knobel 2019 https://taxjustice.net/2019/10/02/not-just-about-control-one-share-in-company-should-be-enough-beneficial-owner/.

A very low threshold therefore produces more data but weaker information, and the cost falls on compliant companies, which must trace every chain to its end, while the persons who matter are neither singled out nor are more likely to be disclosed. Lower thresholds also do not reach those who deliberately structure beneath them unless status as a beneficial owner is effectively verified, which, in South Africa, it does not appear to be.[187]

The UK approach is preferable precisely because it generates the right data rather than more of it. Its conditions apply cumulatively.[188] The threshold does its proper work of identifying controlling ownership, while the control conditions capture, without any threshold, those who control otherwise than through equity. Moreover, each registrable person is recorded with the nature of their control. The UK's position on the 25% threshold, and its argument relating to the "disproportionate burden" of lower thresholds, is therefore supported here.[189]

4.2.1.2 Regulatory clarity and institutional information

A second issue is the lack of appropriately detailed regulatory guidance. It has been shown that the definition of "beneficial owner", when subject to a correct reading, is sufficiently comprehensive to identify any person that meets a policy-informed understanding of the intended outcomes of FATF Recommendation 24. However, neither the definition in section 1 nor the (negative) definition of a non-affected company is clear and unambiguous on its plain language.

Non-affected companies are private companies, and it can safely be assumed that this term includes the vast majority of smaller, more closely held businesses. This often also marks a lesser degree of maturity, sophistication, resources and legal knowledge in matters of company law compliance. If understanding the correct meaning and effect of "beneficial interest" and "beneficial owner" is not an intuitively simple exercise (which has exhaustively been shown not to be the case), there is little hope that all non-affected companies (as onus-bearers) will be able to reliably and consistently identify and disclose the appropriate persons as beneficial owners.

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187 Also see Olivier and Nortje 2024 *PELJ* 24.

188 Section 790C(2) read with sch 1A paras 2-5 of the *Companies Act* 2006 (UK). See section 3 above.

189 HM Government 2024 https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-act-2023-factsheets/economic-crime-and-corporate-transparency-act-beneficial-ownership.

It may have been an implicit assumption on the part of the legislature that these kinds of businesses will be in a better position to know and understand who their ultimate, effective owners or controllers are. This is not without some merit. But this assumption holds true only if either the Act or an easily accessible, well-drafted and comprehensive regulatory guidance instrument assists company directors and shareholders in matching their intuitive understanding of the business with the technical meaning and ambit of the beneficial ownership concept. Neither is evident today.[190]

A company has one limited aid in the fact that it can compel a registered holder to disclose to it whether a beneficial interest is held by another person, and to provide the identity of that person and the "particulars of the extent of the beneficial interest" in the three years preceding the request.[191] If this dispensation leads to potentially ineffective beneficial ownership transparency outcomes, the lack of verification requirements (especially status as a disclosed beneficial owner) incumbent on companies and on the CIPC exacerbates them.

It is also unclear whether companies will have direct access to the broader CIPC registry of beneficial owners and beneficial interest holders. Furthermore, it has been demonstrated that the beneficial ownership information available for close corporations may not always encompass all ultimate controllers of those entities. Finally, reliable beneficial ownership information on trusts may not be readily available, accurate or timeously accessible via the Master's offices. All of these factors make it even more difficult for these companies to put together the necessary facts to make an effective beneficial ownership determination.

4.2.2 Affected companies

The beneficial interest transparency regime for affected companies does not require a company to identify, record or file with CIPC any beneficial ownership information. Instead, it requires the disclosure of any beneficial interest holders whose interest is in respect of at least 5% of a company's securities.[192] The applicable disclosure provisions are diverse and scattered throughout the Act. Each will be cursorily discussed, and their cumulative

190 The Act's provisions are not simple to understand, and neither CIPC *Guidance Note 2 of 2023* nor CIPC *User Guidelines: Beneficial Ownership* evinces this level of effective guidance.

191 Section 56(5) of the *Companies Act*.

192 The threshold will be treated as a requirement for this section.

impact on beneficial ownership transparency will be assessed. There are material divergences between the requirements for public and non-public affected companies, which require their separate treatment.

4.2.2.1 Public affected companies

The first obligation under discussion, for reasons which will become clear, is disclosure by registered holders (as onus bearers) to the company of beneficial interest holders in terms of section 56(3), as read with the effects of the beneficial interest holder "deeming" provision of section 56(2).[193] Both of these sections find application in the case of public companies only.
Section 56(3) requires disclosure, by a registered holder of a security who is not also the holder of the beneficial interest in that security, of all natural or juristic persons who through ownership, agreement, relationship or otherwise have the right or entitlement to:

> (a) receive or participate in any distribution in respect of [5% or more of] the company's securities;
> (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to [5% or more of] the company's securities; or
> (c) dispose or direct the disposition of [5% or more of] the company's securities, or any part of a distribution in respect of [5% or more of] the securities.[194]

The preceding analysis of beneficial interests makes it clear that there can be multiple holders of beneficial interests in any given security.[195] This includes scenarios where the registered holder is also a holder of a beneficial interest, either alone or together with another person (e.g. together with a pledgee or usufructuary of a share, or together with other partners in a partnership, or together with a counterparty in terms of a voting agreement). The first question, therefore, is whether this disclosure provision requires such holders to disclose their own beneficial interest. While there is much debate on the scope of these two provisions in concert, authorities at least agree that this is not the case.[196]

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193 Section 56(2) of the *Companies Act*. Its terms are summarised in section 4.1.2 above.

194 Section 1 (definition of "beneficial interest") of the *Companies Act*.

195 Also see Delport *et al Henochsberg* s 56(3); Yeats *et al Commentary* 2-1209 to 2-1210.

196 Delport *et al Henochsberg* s 56(3); Yeats *et al Commentary* 2-1209 to 2-1214; Cassim *et al Contemporary Company Law* 330-332; Rachlitz 2013 *Stell LR* 417-418.

Read together, and ignoring interpretations that render section 56(2) of no effect, these two sections can be approached in three different ways.[197] The most textually literal reading requires a registered holder with no beneficial interest to disclose: (1.1) any beneficial interest holders as per the section 1 definition, and (1.2) any deemed beneficial holders standing in relationship to: the registered holder,[198] or the beneficial interest holder;[199] unless (2) the deeming provision results in the registered holder being deemed a beneficial interest holder, in which case there is no disclosure obligation.

The second approach, seeking to ameliorate some of the less sensible outcomes of the first approach, provides that any beneficial interest holders, in terms of "(1.2)" above, replace the "true" beneficial interest holders with whom they stand in a relationship. Thus, a registered holder who is not a beneficial interest holder must disclose any such deemed beneficial interest holders and any "true" beneficial interest holders unaffected by the deeming provision, unless the deeming provision results in the registered holder being deemed a beneficial interest holder, in which case there is no disclosure obligation.

The final approach, which is also the least textually literal, follows the first approach to deeming (additive rather than replacing), but does not hold that the obligation to disclose further beneficial interest holders lapses when the deeming provision's effect is that the registered holder is deemed a beneficial interest holder.[200] This means all additional beneficial interest holders, deemed or otherwise, must be disclosed. For AML/CFT beneficial ownership transparency, the third approach is purposively most preferable, but also the least textually defensible.

However, a deficiency not discussed by the authorities, on any approach, is the assumption that registered holders with a beneficial interest are not required to disclose their own beneficial interests. This is uncontentious when there are no other beneficial interest holders – here the assumption that the registered holder is also a beneficial holder of a given security is a safe one. Yet the nature of potential beneficial interests and holders (actual

197 For a full discussion of these approaches by other authorities, see Cassim *et al Contemporary Company Law* 330-332; Yeats *et al Commentary* 2-1209 to 2-1214; Rachlitz 2013 *Stell LR* 417-418; Luiz 2014 *SA Merc LJ* 173.

198 As described in the main text of s 56(2).

199 As described in s 56(2)(a)-(f).

200 Rachlitz 2013 *Stell LR* 418, reading s 56(3) to apply where the registered holder "is not the only holder of a beneficial interest" in the security, so that it "obliges any registered shareholder to disclose the identity of all other holders of a beneficial interest in the shares for which he is registered".

or deemed) is potentially diverse and multitudinous. Thus, one can make the argument that a company is left with incomplete or inadequate beneficial ownership information where a beneficial interest disclosure is made in respect of a third party without concomitant clarification of whether the registered holder also holds a beneficial interest. It is not certain that, as per section 56(3)(b), disclosure of "the extent of each such beneficial interest" envisages also disclosure of the nature of that beneficial interest, or does so to an extent that will allow a company to infer what the nature of the registered holder's "beneficial" rights or entitlements are, if any.

4.2.2.2 Disclosure obligations for all affected companies

The first common obligation incumbent on affected companies is the requirement to ensure the holders of a beneficial interest in company debt securities are reflected in the securities register alongside registered holders.[201] The second requirement is to maintain a disclosure register for all disclosures made in terms of section 56.[202] The third is to maintain a register of all holders of a beneficial interest of 5% or more in respect of company securities, and to update this register when it is notified of a change in beneficial interest as per section 122(1).[203] That section requires disclosure by any person who acquires a beneficial interest in securities of an affected company that would result in that person holding at least 5%, or additionally acquiring an interest that would result in a total beneficial interest holding of, or above, any further whole multiple of 5%. The acquirer must disclose such a change in beneficial interest to the company. It requires disclosure by the same principles, modified *mutatis mutandis,* by any person who disposes of beneficial interests in securities.[204]
Importantly, as has been posited, the deeming provision should be read purposively to apply to all disclosure requirements for public companies. This would imply that the disclosure requirements articulated above encompass a broader group of beneficial interest holders for public companies (including those so deemed) than for non-public affected companies (only those that fall within the section 1 definition).

The affected company obligations do not extend to identifying the natural person(s) behind any beneficial interest holders who are legal persons or other arrangements anywhere in the Act. Thus, the affected company

201 Section 50(2)(b)(iv)(bb) of the *Companies Act*.
202 Section 56(7)(a) of the *Companies Act*, read with (1) s 56(3) and (5) for public companies, and (2) only s 56(5) for non-public affected companies.
203 Section 56(7)(aA) of the *Companies Act*.
204 Section 122(1)(a)-(b) of the *Companies Act*.

disclosure regime, insofar as it seeks to achieve beneficial ownership transparency, appears to operate on the assumption that a full view of all beneficial interest holders at CIPC-level (including the records of close corporations), as supplemented by the records of trusts (as held by trustees and the Master), will enable the identification, by competent authorities, of the ultimate natural person beneficial owners or controllers of any given company. This is because, to oversimplify, the beneficial interest holdership records aggregated by the CIPC will either (1) reveal only natural persons as beneficial interest holders or (2) where they reveal any legal persons or arrangements, there are already existing records at the CIPC of the disclosed affected or non-affected companies or with the Master for trusts, which will enable the traceability of the chain of ownership all the way to the end-of-chain natural persons who meet the FATF definition of beneficial owners.

This is fatally flawed for two reasons. The first, as has been demonstrated, is that non-CIPC records are not reliable or complete. First, for partnerships and other bodies unincorporate, there are no country-level beneficial ownership identification requirements (in contrast to the generally detailed, if selective, regulation of partnerships in the UK). Second, the accuracy, adequacy and timeous access to records of the beneficial owners of trusts are subject to credible and material doubt. Third, close corporations do not have explicit beneficial ownership obligations and are vulnerable to abuse via ownership through trusts and nominee holding. Fourth, there are no clear legal beneficial ownership obligations within the domestic law relating to foreign entities that are not classified as external companies.[205]

The other reason, perhaps even more importantly, is that by virtue of the direct and limited scope of the beneficial interest concept in section 1 (and to a slightly lesser extent, if applicable, the deeming provision), there is no indication of whether this constellation of company and non-company records will enable competent authorities to identify all, or any, persons who indirectly exercise the control of companies through means other than direct or indirect beneficial interest holding. This, it is submitted, potentially implies substantial ineffectiveness in respect of the outcomes required by FATF Recommendation 24.

In closing, it is not entirely clear on what basis FATF, in its follow-up report of 2023, states that "[a]mendments to the Companies Act in 2023 create a

205 Section 1 (definitions of "external company" and "foreign company") of the *Companies Act*.

process for *all* companies to obtain and keep beneficial ownership information in their securities registers".[206] (Own emphasis.) The statement does not, with respect, hold for affected companies, which, as shown above, record beneficial interest holders rather than beneficial owners. The distinction is not semantic. The re-rating of Recommendation 24 to largely compliant followed the 2022 reforms, and appears to rest, at least in part, on a reading of the *Companies Act* that its text does not bear. It is also in respect of affected companies that the deficiencies identified in this article converge. Unlike that of non-affected companies, their disclosure regime depends on the linking of records at the national level: a chain of beneficial interest holders can be followed to its natural persons only if the records of the companies, close corporations and trusts in that chain are complete and reliable. Close corporations are subject to no enforceable beneficial ownership obligation, and trust information lodged with the Master's offices is neither verified nor reliably accessible. The cumulative effect is an ineffectiveness so structural that it shades into a question of technical compliance.

5 Conclusion

This work has demonstrated that the efficacy of beneficial ownership transparency regulation is determined not only by technical compliance with the formal requirements of the Financial Action Task Force, but also by effective compliance in the manner in which those requirements are operationalised through entities and institutions. Where beneficial ownership information is accurate, adequate and accessible, it generates credible and actionable financial intelligence, with concomitantly strong AML/CFT outcomes. Conversely, deficiencies in regulatory design or institutional implementation undermine these outcomes.

A comparative analysis with the United Kingdom highlights the importance of clarity, proportionality, and institutional robustness in beneficial ownership regimes. The UK approach, with its layered and cumulative methodology for identifying persons with significant control, demonstrates certainty, adaptability and coverage of most significant entity types.

By contrast, the domestic framework, measured against the requirements of adequacy and accuracy, falls short in three distinguishable ways. The first is technical. Close corporations remain subject to no enforceable

206 FATF *Follow-up Report & Technical Compliance Re-rating – South Africa* 28-29.

beneficial ownership obligation, so that the information is simply not generated and the regime is, to that extent, inadequate by design. The second goes to effectiveness. Beneficial ownership information on trusts is lodged, unverified, with a fragmented network of Masters' offices whose administrative record inspires little confidence that it will be accurate or timeously accessible. The third lies between the first two. The disclosure provisions of the *Companies Act* are, with respect, poorly drafted and productive of unintended consequences, yet the affected and non-affected company regimes are each, viewed in isolation, workable. The difficulty is one of dependency. Unlike non-affected companies, affected companies disclose only beneficial interest holders, so that the identification of their beneficial owners rests on the ability of competent authorities to trace chains of ownership across company, close corporation and trust records. Where one of those sources carries no enforceable obligation, and another is unreliable, the resulting ineffectiveness is structural rather than incidental, and comes close to a deficiency of technical compliance in its own right.

At a deeper level, the company law provisions reveal a persistent tension between the conceptual and common law foundations of company law and the practical imperatives of financial crime regulation. The co-existence of beneficial holdership, beneficial interests and beneficial ownership has created overlapping but not always coherent categories, which complicates disclosure obligations and weakens regulatory outcomes. Without more precise legislative drafting and more explicit interpretive guidance, the present regime risks leaving material gaps in coverage and deficiencies in the disclosure regime.

In four years, South Africa moved from partial technical compliance and low effectiveness to a largely compliant re-rating and, in October 2025, removal from the grey list. That removal confirmed that South Africa had completed its action plan; it did not amount to an assessment of whether the reformed regime works, a question that falls to the next mutual evaluation, which is due to conclude in October 2027. The risk, in short, is either of a regime that complies symbolically rather than effectively and passes, or of a regime that fails and is once again under the shadow of the grey list. Measured against the standard that evaluation will apply, South Africa's beneficial ownership regime remains at risk of ineffective outcomes and, in respect of close corporations, of technical shortfall, with adverse implications not only for financial integrity but also for the country's standing in the global financial system.

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List of Abbreviations

Am J Comp L	American Journal of Comparative Law
AML/CFT	anti-money laundering and counter-terrorist financing
BEIS	Department for Business, Energy and Industrial Strategy (United Kingdom)
BO	beneficial owner; beneficial ownership
CC	close corporation
CDD	customer due diligence
CILSA	Comparative and International Law Journal of Southern Africa
CIPC	Companies and Intellectual Property Commission
Crime L & Soc Change	Crime, Law and Social Change
DNFBP	designated non-financial businesses and professions
FATF	Financial Action Task Force
FI	financial institution
FIC	Financial Intelligence Centre
FIC Act	Financial Intelligence Centre Act 38 of 2001
Fordham J Corp & Fin L	Fordham Journal of Corporate and Financial Law
GDP	Gross Domestic Product
GP	general partnership
HMRC	His Majesty's Revenue and Customs
J Anti-Corruption L	Journal of Anti-Corruption Law
LLP	limited liability partnership
LP	limited partnership
ML-TF	money laundering and terrorist financing

MLR	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
NZBLQ	New Zealand Business Law Quarterly
PELJ	Potchefstroom Electronic Law Journal
PSC	persons with significant control
ROE	Register of Overseas Entities
SA Merc LJ	South African Mercantile Law Journal
Stell LR	Stellenbosch Law Review
TPCA	Trust Property Control Act 57 of 1988
TSAR	Tydskrif vir die Suid-Afrikaanse Reg
UK	United Kingdom