

FATF PUBLIC CONSULTATION

Revision of R25 and its Interpretive Note

The Financial Action Task Force (FATF) is conducting a review of Recommendation 25 and its Interpretive Note (R.25/INR.25) on the transparency and beneficial ownership (BO) of legal arrangements. The FATF is also considering amendment of the definition of beneficial ownership in the glossary, to provide more clarity regarding legal arrangements.

The FATF's objective is to improve R.25 and its Interpretive Note to better meet its stated objective to prevent the misuse of legal arrangements for money laundering or terrorist financing.

In June 2022, FATF carried out a high-level white paper consultation on key policy questions. Based on consultation response proposals for amendment to R.25/INR.25 have been further revised. The FATF's work in this area is ongoing and will benefit from contributions from all stakeholders, including trustees, financial institutions, designated non-financial businesses and professions (DNFBPs), and non-profit organisations.

In particular, the FATF would welcome comments on the following:

1. Are FATF proposals **adequate** to mitigate the risk of misuse of legal arrangements and to ensure access to BO information?
2. Are proposals **clear** and are there any issues which need **further clarification** or that should be addressed in guidance?
3. What is the **expected impact** of the proposals on legitimate activity? In particular, what are the **challenges for implementation**?

The draft proposals can be found **below**.

Please provide your response, including any drafting proposals to FATF.Publicconsultation@fatf-gafi.org with the subject-line "Comments of [author] on the draft Amendments to Recommendation 25", **by 6 December 2022 (18h00 CEST)**.

While submitting your response, please indicate the name of your organization, the nature of your business, and your contact details. We will use your contact information only for the purpose of this public consultation and for further engagement with you on this issue. Your comments will also be shared with the FATF delegations in the course of further consideration of the amendments, unless you indicate otherwise. The FATF will, however, not share this information with third parties without your consent.

At this stage, the FATF has not approved any draft amendments to R.25/INR.25. The FATF will consider the submissions received and proposals for revisions at its February 2023 meetings.

We thank you for your contribution and interest in FATF's work.

Full Draft Amendment Text of R.25 and INR.25

Note on formatting:

The current text of the Recommendation and Interpretive Note are shown in normal black text. All proposed amendments are coloured in red, with additions underlined and ~~deletions struck out~~.

Recommendation 25. Transparency and beneficial ownership of legal arrangements

Countries should assess the risks of ~~take measures to prevent~~ the misuse of legal arrangements for money laundering or terrorist financing and take measures to prevent their misuse. In particular, countries should ensure that there is adequate, accurate and up-to-date ~~timely~~ information on express trusts and other similar legal arrangements, including information on the settlor(s), trustee(s) and beneficiary(ies), that can be obtained or accessed ~~in a timely fashion~~ efficiently and in a timely manner by competent authorities. Countries should consider ~~measures to facilitate~~ ing access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

Interpretive Note to Recommendation 25 (Transparency and Beneficial Ownership of Legal Arrangements)

1. Countries should require trustees of any express trust ~~governed under their law,~~ and persons holding an equivalent position in a similar legal arrangement, that are residents in their country or that administer any express trusts or similar legal arrangements in their country, to obtain and hold adequate, accurate and ~~current~~ up-to-date beneficial ownership information¹ regarding the trust ~~or other similar legal arrangements~~. This should include information on the identity of: (i) the settlor(s); (ii) the trustee(s); (iii) the protector(s) (if any); (iv) ~~the each~~ beneficiary(ies) or, where applicable, the class of beneficiaries² or objects of a power; and (v) ~~any~~ any other natural person(s) exercising ultimate effective control over the trust. For a similar legal arrangement, this should include persons holding equivalent positions. Where the parties to the trusts or other similar legal arrangements are legal persons or arrangements, countries should require trustees and persons holding an equivalent position in a similar legal arrangement to also obtain and hold adequate, accurate, and up-to-date basic and beneficial ownership information of the legal persons or arrangements. Countries should also require trustees and persons holding an equivalent position in a similar legal arrangement that are residents in their country or of trusts administered in their country ~~of any trust governed under their law~~ to hold basic information on other regulated agents of, and service providers to, the trust and similar legal arrangements, including investment advisors or managers, accountants, and tax advisors.

1*. Countries with express trusts and other similar legal arrangements governed under their law should have mechanisms that:

¹ Beneficial ownership information for legal arrangements is the information referred to in the interpretive note to Recommendation 10, paragraph 5(b)(ii).

² Where there are no ascertainable beneficiaries at the time of setting up the trust, the trustee should obtain and hold information on the class of beneficiaries and its characteristics, or object of a power. Following a risk-based approach, countries may decide that it is not necessary to identify the individual beneficiaries of certain charitable or statutory permitted non-charitable trusts.

- (a) identify the different types, forms and basic features of express trusts and/or other similar legal arrangements.
 - (b) identify and describe the processes for: (i) the setting up of those legal arrangements; and (ii) the obtaining of basic³ and beneficial ownership information;
 - (c) make the above information referred to in (a) and (b) publicly available.
- 1**. Countries should assess the money laundering and terrorist financing risks associated with different types of trusts and other similar legal arrangements:
- (a) governed under their law;
 - (b) which are administered in their country or for which the trustee or equivalent resides in their country; and
 - (c) types of foreign legal arrangements that have sufficient links⁴ with their country and take appropriate steps to manage and mitigate the risks that they identify⁵.

2. ~~All~~ eCountries should take measures to ensure that trustees or persons holding equivalent positions in similar legal arrangements disclose their status to financial institutions and DNFBPs when, in their function, as a trustee, forming a business relationship or carrying out an occasional transaction above the threshold. Trustees or persons holding equivalent positions in similar legal arrangements should cooperate to the fullest extent possible with, and not be prevented by law or enforceable means from providing competent authorities with ~~any necessary~~ any necessary information relating to the trust or other similar legal arrangements⁶. Countries should also ensure that trustees or persons holding equivalent positions in similar legal arrangements should not be prevented by law or enforceable means from; or from providing financial institutions and DNFBPs, upon request, with information on the beneficial ownership and the assets of the trust or legal arrangement to be held or managed under the terms of the business relationship.

³ In relation to a legal arrangement, basic information means the identifier of the legal arrangement ~~trust~~ (e.g. the name, the unique identifier such as a tax identification number or equivalent, where this exists), the trust deed (or equivalent), the residence of the trustee/equivalent or of the place from where the legal arrangement is administered.

⁴ Countries may determine what is considered a *sufficient link* on the basis of risk. Examples of sufficiency tests may include, but are not limited to, when the trust/similar legal arrangement or a trustee or a person holding an equivalent position in a similar legal arrangement has significant and ongoing business relations with financial institutions or DNFBPs, has significant real estate/other local investment, or is a tax resident, in the country.

⁵ This could be done through national and/or supranational measures. These could include requiring beneficial ownership information on some types of foreign legal arrangements to be held as set out under paragraph 3.

⁶ Domestic competent authorities or the relevant competent authorities of another country pursuant to an appropriate international cooperation request.

3. In order to ensure that adequate, accurate and up-to-date information on the basic and beneficial ownership of the trusts or other similar legal arrangements, trustees and trust assets, is accessible efficiently and in a timely manner by competent authorities, other than trustees or persons holding an equivalent position in a similar legal arrangement, on the basis of risk, context and materiality, countries should consider using any of the following ~~Countries are encouraged to ensure that other relevant authorities, persons and entities hold information on all trusts with which they have a relationship. Potential sources of information as necessary on trusts, trustees, and trust assets are:~~

~~(a) Registries (e.g. a central registry of trusts or trust assets), or asset registries for land, property, vehicles, shares or other assets~~

(a) A public authority or body holding information on the beneficial ownership of trusts or other similar arrangements (e.g. in a central registry of trusts; or in asset registries for land, property, vehicles, shares or other assets that hold information on the beneficial ownership of trusts and other similar legal arrangements which own such assets). Information need not be held by a single body only.⁷

(b) Other competent authorities that hold or obtain information on trusts/similar legal arrangements and trustees/their equivalents (e.g. tax authorities which collect information on assets and income relating to trusts and other similar legal arrangements).

(c) Other agents and/or service providers including trust and company service providers, to the trust, including investment advisors or managers, accountants, or lawyers, or financial institutions, or trust and company service providers.

3* Countries should have mechanisms that ensure that information on trusts and other similar legal arrangements, including information provided in accordance with paragraphs 2 and 3, is adequate, accurate and up-to-date⁸. In the context of legal arrangements:

Adequate information is information that is sufficient to identify the natural persons who are the beneficial owner(s), and their role in the trust⁹.

Accurate information is information, which has been verified to confirm its accuracy by verifying the identity and status of the beneficial owner using reliable documents, data or information. The extent of verification measures may vary according to the specific level of risk.

Up-to-date information is information which is as current and up-to-date as possible, and is updated within a reasonable period following any change.

4. Countries should ensure that Competent authorities, and in particular law enforcement authorities and FIUs, should have all the powers necessary to obtain timely access to the information held by trustees, persons holding equivalent positions in

⁷ A body could record beneficial ownership information alongside other information (e.g. tax information), or the source of information could take the form of multiple registries (e.g. for provinces or districts, for sectors, or for specific types of legal arrangements), or of a private body entrusted with this task by the public authority.

⁸ For beneficiary(ies) of trusts/similar legal arrangement that are designated by characteristics or by class, trustees/equivalent are not expected to obtain adequate and accurate information until the person becomes entitled as beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights.

⁹ Settlor(s), trustee(s), protector(s) (if any), beneficiary(ies) or class of beneficiaries, and any other person exercising ultimate effective control over the trusts. For a similar legal arrangement, this should include persons holding equivalent positions. Where the trustee and any other party to the legal arrangement is a legal person, the beneficial owner of that legal person should be identified.

similar legal arrangements, and other parties, in particular information held by financial institutions and DNFBPs on: (a) the basic and beneficial ownership of the legal arrangement; (b) the residence of the trustees and their equivalents; and (c) any assets held or managed by the financial institution or DNFBP, in relation to any trustees or their equivalents with which they have a business relationship, or for which they undertake an occasional transaction.

5. ~~Professional~~ Trustees and persons holding equivalent positions in similar legal arrangements should be required to maintain the information referred to in paragraph 1 for at least five years after their involvement with the trust or similar legal arrangement ceases. Countries are encouraged to require ~~non-professional trustees and~~ the other authorities, persons and entities mentioned in paragraph 3 above to maintain the information for at least five years.

6. Countries should require that any information held pursuant to paragraph 1 above should be kept accurate and ~~be as current and~~ up-to-date ~~as possible~~, and the information should be updated within a reasonable period following any change.

7. Countries should consider measures to facilitate access to any trust information ~~on trusts that is~~ held by the other authorities, persons and entities referred to in paragraph 3, by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

8. In the context of the Recommendation, countries are not required to give legal recognition to trusts. Countries need not include the requirements of paragraphs 1, 2, 5, ~~and 6~~ and 11 in legislation, provided that appropriate obligations to such effect exist for trustees (e.g. through common law or case law).

~~[Other Legal Arrangements~~

~~9. — As regards other types of legal arrangement with a similar structure or function, countries should take similar measures to those required for trusts, with a view to achieving similar levels of transparency. At a minimum, countries should ensure that information similar to that specified above in respect of trust should be recorded and kept accurate and current, and that such information is accessible in a timely way by competent authorities.]~~

International Cooperation

10. Countries should rapidly, constructively and effectively provide international cooperation in relation to information, including beneficial ownership information, on trusts and other legal arrangements on the basis set out in Recommendations 37 and 40. This should include (a) facilitating access by foreign competent authorities to any information held by registries or other domestic authorities; (b) exchanging domestically available information on the trusts or other legal arrangement; and (c) using their competent authorities' powers, in accordance with domestic law, in order to obtain beneficial ownership information on behalf of foreign counterparts. Consistent with Recommendations 37 and 40, countries should not place unduly restrictive conditions on the exchange of information or assistance e.g., refuse a request on the grounds that it involves a fiscal, including tax, matters, bank secrecy, etc. In order to facilitate rapid, constructive and effective international cooperation, where possible, countries should designate and make publicly known the agency(ies) responsible for responding to all international requests for BO information, consistent with countries' approach to access to beneficial ownership information. To this end, countries should consider keeping information held or obtained for the purpose of identifying beneficial ownership in a readily accessible manner.

Liability and Sanctions

11. Countries should ensure that there are clear responsibilities to comply with the requirements in this Interpretative Note; and that trustees or persons holding equivalent positions in similar legal arrangements are either legally liable for any failure to perform the duties relevant to meeting the obligations in paragraphs 1, 2, 5 and 6 ~~and (where applicable) 5~~; or that there are effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to comply.¹⁰ Countries should ensure that there are effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to grant to competent authorities timely access to information regarding the trust referred to in paragraphs 1 and 5.

¹⁰ This does not affect the requirements for effective, proportionate, and dissuasive sanctions for failure to comply with requirements elsewhere in the Recommendations.