

## Revisions to Recommendation 24 and the Interpretive Note – Public Consultation

The Financial Action Task Force (FATF) is considering proposals for amendments to Recommendation 24 and its Interpretive Note on the transparency and beneficial ownership of legal persons. Following a [White Paper consultation](#) in June-August 2021 on a number of key policy areas, the FATF has analysed the views received from various stakeholders in considering the potential amendments. These amendments seek to reinforce the Recommendation to ensure greater transparency about the beneficial ownership of legal persons, and take action to mitigate the risks. The draft text of proposals for amendments is available *here*. Proposed amendments are in redline.

The FATF is consulting all affected stakeholders before finalising these amendments. We primarily seek views from companies and other legal persons, financial institutions, designated non-financial businesses and professions (DNFBPs), and non-profit organisations, but also welcome contributions from other interested stakeholders. We would welcome views on specific proposals of the amendments to the text, as well as on the broader themes that they address, in particular on the areas of focus below:

### ***Multipronged approach to collection of Beneficial Ownership information***

*The requirement in paragraph 7 includes a compulsory company approach, a requirement for a public authority or body to hold beneficial ownership information (a beneficial ownership registry or another body) or an alternative mechanism, and the supplementary measures. Countries should decide, on the basis of risk, context and materiality, what form of registry or alternative mechanisms they will use to enable efficient access to information by competent authorities, and should document their decision. Do you agree with the approach set out in paragraph 7 of the Interpretive Note?*

### ***Bearer Shares and Nominee arrangements***

*Should bearer shares and bearer share warrants without any traceability be subject to additional controls as set out in amendments to paragraph 14 of the Interpretive Note? Is the draft glossary definition sufficiently clear to avoid inadvertently applying excessive controls to traceable and legitimate uses of such instruments? If there remains undue controls, how should this be mitigated?*

*Should nominee arrangements be subject to the disclosure requirements as set out in amendments to paragraph 15 of the Interpretive Note? Will the proposed rules and the new glossary definitions create undue restrictions for institutional investors or other legitimate uses of such instruments, and if so, how should this be mitigated?*

*Are there other specific mechanisms that should be permitted, in addition to those proposed, which could ensure their transparency?*

***Risk-Based Approach***

*Should countries be required to assess the ML and TF risks associated with foreign-created legal persons and take appropriate steps to manage and mitigate them? What constitutes a sufficient link with the country?*

*Should a risk-based approach be applied to verification of beneficial ownership information?*

***Access to Information***

*Taking into account needs of competent authorities and other stakeholders, and concerns relating to privacy, security and other potential misuse of BO information, do you agree with the requirements on access to information as set out in paragraphs 12 and 13?*

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 24”, by 3 December 2021 (18h00 CET).

While submitting your response, please indicate the name of your organisation, the nature of your business, and your contact details. You may insert any specific drafting proposals directly in the attached text of the draft amendment text in tracked changes. We will use your contact information only for the purpose of this public consultation and for further engagement with you on this issue. The FATF will not share this information with third parties without your consent.

At this stage, the FATF has not approved the draft amendments to R.24. The FATF will consider the views received and revise the text of the R.24 for discussions at its February 2022 meetings.

We thank you for your kind contribution.

## Draft Amendment Text to R.24 and INR.24

**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 24. Transparency and beneficial ownership of legal persons

Countries should assess the risks of ~~take measures to prevent the~~ misuse of legal persons for money laundering or terrorist financing, and take measures to prevent their misuse. Countries should ensure that there is adequate, accurate and timely up to date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently in a timely fashion by competent authorities, through either a register of beneficial ownership or an alternative mechanism. ~~In particular, e~~Countries ~~that have legal persons that are able to~~ should not permit legal persons to issue new bearer shares or bearer share warrants, and take measures to prevent the misuse of existing bearer shares and bearer share warrants. ~~Countries, or which allow nominee shareholders or nominee directors,~~ should take effective measures to ensure that nominee shareholders and directorsthey are not misused for money laundering or terrorist financing. Countries should ~~consider measures to~~ facilitate 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 24 (Transparency and Beneficial Ownership of Legal Persons)

1. Competent authorities should be able to obtain, or have access in a timely fashion to, adequate, accurate and current information on the beneficial ownership and control of companies and other legal persons (beneficial ownership information<sup>1</sup>) that are created<sup>2</sup> in the country, as well as those that present ML/TF risks and have sufficient links<sup>3</sup> with their country (if they are not created in the country). Countries may choose the mechanisms they rely on to achieve this objective, although they should also comply with the minimum requirements set out below. ~~It is also very likely that e~~Countries ~~will need to~~should utilise a combination of mechanisms to achieve the objective.
2. As part of the process described in paragraph 1 of ensuring that there is adequate transparency regarding legal persons, countries should have mechanisms that:
  - a) identify and describe the different types, forms and basic features of legal persons in the country.
  - b) identify and describe the processes for: (i) the creation of those legal persons; and (ii) the obtaining and recording of basic and beneficial ownership information;
  - c) make the above information publicly available; and
  - d) assess the money laundering and terrorist financing risks associated with different types of legal persons created in the country, and take appropriate steps to manage and mitigate the risks that they identify.
  - e) assess the money laundering and terrorist financing risks associated with different types of foreign-created legal persons to which their country is exposed, and take appropriate steps to manage and mitigate the risks that they identify<sup>4</sup>.

### A. BASIC INFORMATION

3. In order to determine who the beneficial owners of a company<sup>5</sup> are, competent authorities will require certain basic information about the company, which, at a minimum, would include information about the legal ownership and control structure of the company.

---

<sup>1</sup> **Beneficial ownership information** for legal persons is the information referred to in the interpretive note to Recommendation 10, paragraph 5(b)(i). Controlling shareholders as referred to in, paragraph 5(b)(i) of the interpretive note to Recommendation 10 may be based on a threshold, e.g. any persons owning more than a certain percentage of the company (determined based on the jurisdiction's assessment of risk, with a maximum of 25%).

<sup>2</sup> References to creating a legal person, include incorporation of companies or any other mechanism that is used.

<sup>3</sup> 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 a company, on a non-occasional basis, owns a bank account, employs staff, owns real estate, invests in the stock market, owns a commercial/business insurance, or is a tax resident in the country.

<sup>4</sup> This could be done through national and/or supranational measures. These could include requiring beneficial ownership information on some types of foreign-created legal persons to be held as set out under paragraph 7.

<sup>5</sup> Recommendation 24 applies to all forms of legal persons. The requirements are described primarily with reference to companies, but similar requirements should be applied to other types of legal person, taking into account their different forms and structures - as set out in Section E.

This would include information about the status and powers of the company, its shareholders and its directors.

4. All companies created in a country should be registered in a company registry<sup>6</sup>. Whichever combination of mechanisms is used to obtain and record beneficial ownership information (see section B), there is a set of basic information on a company that needs to be obtained and recorded by the company<sup>7</sup> as a necessary prerequisite. The minimum basic information to be obtained and recorded by a company should be:

- a) company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (e.g. memorandum & articles of association), a list of directors, and unique identifier such as a tax identification number or equivalent (where this exists); and
- b) a register of its shareholders or members, containing the names of the shareholders and members and number of shares held by each shareholder<sup>8</sup> and categories of shares (including the nature of the associated voting rights).

5. The company registry<sup>9</sup> should record all the basic information set out in paragraph 4(a) above.

6. The company should maintain the basic information set out in paragraph 4(b) within the country, either at its registered office or at another location notified to the company registry. However, if the company or company registry holds beneficial ownership information within the country, then the register of shareholders need not be in the country, provided that the company can provide this information promptly on request.

---

<sup>6</sup> “Company registry” refers to a register in the country of companies incorporated or licensed in that country and normally maintained by or for the incorporating authority. It does not refer to information held by or for the company itself.

<sup>7</sup> The information can be recorded by the company itself or by a third person under the company’s responsibility.

<sup>8</sup> This is applicable to the nominal owner of all registered shares.

<sup>9</sup> Or another public body in the case of a tax identification number.

## ***B. BENEFICIAL OWNERSHIP INFORMATION***

7. Countries should follow a multi-pronged approach in order to ensure that the beneficial ownership of a company can be determined in a timely manner by a competent authority. Countries should decide, on the basis of risk, context and materiality, what form of registry or alternative mechanisms they will use to enable efficient access to information by competent authorities, and should document their decision. This should include the following:

- a) Countries should require companies to obtain and hold adequate, accurate and up-to-date information on the company's own beneficial ownership; to cooperate with competent authorities to the fullest extent possible in determining the beneficial owner, including making the information available to competent authorities in a timely manner; and to cooperate with financial institutions/DNFBPs to provide adequate, accurate and up-to-date information on the company's beneficial ownership information.
- b) (i) Countries should require adequate, accurate and up-to-date information on the beneficial ownership of legal persons to be held by a public authority or body (for example a tax authority, FIU, companies registry, or beneficial ownership registry). Information need not be held by a single body only<sup>10</sup>.
- b) (ii) Countries may decide to use an alternative mechanism instead of (b)(i) if it also provides authorities with efficient access to adequate, accurate and up-to-date BO information. For these purposes reliance on basic information or existing information alone is insufficient, but there must be some specific mechanism that provides efficient access to the information.
- c) Countries should use any additional supplementary measures that are necessary to ensure the beneficial ownership of a company can be determined; including for example information held by regulators or stock exchanges; or obtained by financial institutions and/or DNFBPs in accordance with Recommendations 10 and 22<sup>11</sup>.

10. All the persons, authorities and entities mentioned above, and the company itself (or its administrators, liquidators or other persons involved in the dissolution of the company), should maintain the information and records referred to for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution.

---

<sup>10</sup> A body could record beneficial ownership information alongside other information (e.g. basic ownership and incorporation information, 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 person such as NPOs), or of a private body entrusted with this task by the public authority.

<sup>11</sup> Countries should be able to determine in a timely manner whether a company has or controls an account with a financial institution within the country.

### ***C. TIMELY ACCESS TO ADEQUATE, ACCURATE, AND UP-TO-DATE INFORMATION***

11. Countries should have mechanisms that ensure that basic information and beneficial ownership information, including information provided to the company registry and any available information referred to in paragraphs 7, is adequate, accurate and up-to-date. ~~Countries should require that is accurate and is kept as current and up to date as possible, and the information should be updated within a reasonable period following any change.~~

Adequate information is information that is sufficient to identify<sup>12</sup> the natural person(s) who are the beneficial owner(s), and the means and mechanisms through which they exercise beneficial ownership or control.

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

Countries should consider complementary measures as necessary to support the accuracy of beneficial ownership information, e.g. discrepancy reporting

Up-to-date information is information which is as current and up-to-date as possible, and is updated within a reasonable period (e.g. within one month) following any change.

12. Competent authorities, and in particular law enforcement authorities, should have all the powers necessary to be able to obtain timely access to the basic and beneficial ownership information held by the relevant parties, including rapid and efficient access to information held or obtained by a public authority or body or other competent authority on basic and beneficial ownership information, and/or on the financial institutions or DNFBPs which hold this information. In addition, countries should ensure public authorities have timely access to basic and beneficial ownership information on legal persons in the course of public procurement.

13. Countries should require their company registry to provide and/or facilitate timely access by financial institutions, DNFBPs and other countries' competent authorities to the public information they hold, and, at a minimum, to the basic information referred to in paragraph 4 (a) above. Countries should also consider facilitating timely access by financial institutions and DNFBPs to information referred to in paragraph 4(b) above and to beneficial ownership information held pursuant to paragraph 7 above, as well as public access to these information.

### ***D. OBSTACLES TO TRANSPARENCY***

14. Countries should take measures to prevent and mitigate the risk of the misuse of bearer shares and bearer share warrants, ~~for example by prohibiting the issuance of new bearer shares and bearer share warrants<sup>13</sup>; and, for any existing bearer shares and bearer share warrants,~~ by applying one or more of the following mechanisms within a reasonable

---

<sup>12</sup> Examples of information aimed at identifying the natural person(s) who are the beneficial owner(s) include the full name, nationality(ies), the full date and place of birth, residential address, national identification number and document type, and the tax identification number or equivalent in the country of residence.

<sup>13</sup> Or any other similar instruments without traceability.

timeframe<sup>14</sup>:

~~(a) prohibiting them~~

~~(a) converting them into a registered form; or~~

~~(b) immobilising them by requiring them to be held with a regulated financial institution or professional intermediary, with timely access to the information by the competent authorities; and~~

~~(c) During the period before (a) or (b) is completed, requiring holders of bearer instruments to notify the company, and the company to record their identity before any rights associated therewith can be exercised.~~

15. Countries should take measures to prevent and mitigate the risk of the misuse of nominee shareholding and nominee directors, ~~for example~~ by applying one or more of the following mechanisms<sup>15</sup>:

(a) requiring nominee shareholders and directors to disclose their nominee status and the identity of their nominator to the company and to any relevant registry, financial institution, or DNFBP which holds the company's basic or beneficial ownership information, and for this information to be included in the relevant register as part of basic information; ~~or~~

(b) requiring nominee shareholders and directors to be licensed<sup>16</sup>, for their nominee status and the identity of their nominator to be recorded in company registries, and for them to maintain information identifying their nominator and the natural person on whose behalf the nominee is ultimately acting<sup>17</sup>, and make this information available to the competent authorities upon request<sup>18</sup>.

## ***E. OTHER LEGAL PERSONS***

16. In relation to foundations, Anstalt, Waqf<sup>19</sup>, and limited liability partnerships, countries should take similar measures and impose similar requirements, as those required for companies, taking into account their different forms and structures.

17. As regards other types of legal persons, countries should take into account the different forms and structures of those other legal persons, and the levels of money laundering and terrorist financing risks associated with each type of legal person, with a

---

<sup>14</sup> This requirement does not apply to bearer shares or bearer share warrants of a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership.

<sup>15</sup> Countries may instead choose to prohibit the use of nominee shareholders or nominee directors. If so, the prohibition should be enforced.

<sup>16</sup> A country need not impose a separate licensing or registration system with respect to natural or legal persons already licensed or registered as financial institutions or DNFBPs (as defined by the FATF Recommendations) within that country, which, under such license or registration, are permitted to perform nominee activities and which are already subject to the full range of applicable obligations under the FATF Recommendations.

<sup>17</sup> Identifying the beneficial owner in situations where a nominee holds a controlling interest or otherwise exercises effective control requires establishing the identity of the natural person on whose behalf the nominee is ultimately, directly or indirectly, acting.

<sup>18</sup> For intermediaries involved in such nominee activities, reference should be made to R.22 and R.28 in fulfilling the relevant requirements.

<sup>19</sup> Except in countries where Waqf are legal arrangements under R.25.



view to achieving appropriate levels of transparency. At a minimum, countries should ensure that similar types of basic information should be recorded and kept accurate and current by such legal persons, and that such information is accessible in a timely way by competent authorities. Countries should review the money laundering and terrorist financing risks associated with such other legal persons, and, based on the level of risk, determine the measures that should be taken to ensure that competent authorities have timely access to adequate, accurate and current beneficial ownership information for such legal persons.

#### ***E. LIABILITY AND SANCTIONS***

18. There should be a clearly stated responsibility to comply with the requirements in this Interpretive Note, as well as liability and effective, proportionate and dissuasive sanctions, as appropriate for any legal or natural person that fails to properly comply with the requirements.

#### ***G. INTERNATIONAL COOPERATION***

19. Countries should rapidly, constructively and effectively provide the widest possible range of international cooperation in relation to basic and beneficial ownership information held by public authority or body, on the basis set out in Recommendations 37 and 40. This should include (a) facilitating access by foreign competent authorities to basic information held by company registries; (b) exchanging information on shareholders; and (c) using their powers, in accordance with their domestic law, to obtain beneficial ownership information on behalf of foreign counterparts. Countries should monitor the quality of assistance they receive from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. 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. Information held or obtained for the purpose of identifying beneficial ownership should be kept in a readily accessible manner in order to facilitate rapid, constructive and effective international cooperation. Countries should designate and make publicly known the agency(ies) responsible for responding to all international requests for BO information.

## GLOSSARY

<p><b>Bearer shares and bearer share warrants</b></p>	<p><i>Bearer shares</i> refers to negotiable instruments that accord ownership in a legal person to the person who possesses the <u>physical bearer share certificate, and any other similar instruments without traceability. It does not refer to dematerialised and/or registered forms of share certificate whose owner can be identified.</u></p> <p><u><i>Bearer share warrants</i> refers to negotiable instruments that accord entitlement to ownership in a legal person who possesses the physical bearer share warrant certificate, and any other similar warrants or instruments without traceability. It does not refer to dematerialised and/or registered form of warrants or other instruments whose owner can be identified. It also does not refer any other instruments that only confers a right to subscribe for ownership in a legal person at specified conditions, but not ownership or entitlement to ownership, unless and until the instruments are exercised.</u></p>
<p><b>Beneficial owner</b></p>	<p><i>Beneficial owner</i> refers to the natural person(s) who ultimately<sup>1</sup> owns or controls a customer<sup>2</sup> and/or the natural person on whose behalf a transaction is being conducted. It also includes those <u>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 entity or arrangement<sup>3</sup>.</u></p> <p><sup>1</sup> - Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.</p> <p><sup>2</sup> - This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.</p> <p><sup>3</sup> - <u>The ultimate beneficial owner is always one or more natural persons. As set out in R.10, in the context of CDD it may not be possible to verify the identity of such persons through reasonable measures, and, to the extent that there is doubt about whether a person with a controlling ownership interest in a legal person is the ultimate beneficial owner, or where no natural person exerts control through ownership interests, the identity should be determined of the natural persons (if any) exercising control of the legal person or arrangement through other means or, where no natural person is identified in that role, of the natural person who holds the position of senior managing official. This provision of R.10 does not amend or supersede the definition of who is the <i>beneficial owner</i>, but only sets out how CDD should be conducted in situations where the beneficial owner cannot be identified.</u></p>
<p><b>Beneficiaries</b></p>	<p>Please refer to the IN to Recommendation 8.</p>
<p><b>Beneficiary</b></p>	<p>The meaning of the term <i>beneficiary</i> in the FATF Recommendations depends on the context: In trust law, a beneficiary is the person or persons who are entitled to the benefit of any trust arrangement. A beneficiary can be a natural or legal person or arrangement. All trusts (other than charitable or</p>
<p><b>Nominator</b></p>	<p><u><i>Nominator</i> is an individual (or group of individuals) or legal person that issues instructions to a nominee to act on their behalf in a certain capacity, also sometimes referred to as a “shadow director” or “silent partner”. In some cases, it may not be possible to identify the ultimate beneficial owner of such nominator, as ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person through ownership.</u></p>

<b><u>Nominee shareholder or director</u></b>	<u><i>Nominee</i> is an individual or legal person instructed by another individual or legal person (“the nominator”) to act on their behalf in a certain capacity regarding a legal person. A <i>Nominee Director</i> (also known as a “resident director” or “corporate director” (if the director is a legal person)) is an individual or legal entity that exercises the functions of the director in the company on behalf of and subject to the instructions of the nominator. A <i>Nominee Director</i> is never the beneficial owner of a legal person. A <i>Nominee Shareholder</i> exercises the associated voting rights according to the instructions of the nominator and receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares it holds as a nominee.</u>
---	--