



8th December 2023

Ms. Violaine Clerc
Executive Secretary
Financial Action Task Force (FATF)
2 Rue André Pascal 75116
Paris, France

RE: FATF Risk-Based Guidance on Beneficial Ownership and Transparency of Legal Arrangements (Recommendation 25)

Dear Ms., Clerc:

The Wolfsberg Group¹ and the Institute of International Finance (IIF) appreciate the opportunity to provide input to the Financial Action Task Force (FATF) as it works to address many of the key issues facing the global financial community today. Our organisations have long supported the efforts of the FATF in establishing and promoting effective measures for combating money laundering (ML), terrorist financing (TF) and other related threats to the integrity of the international financial system.

We are particularly pleased to continue our respective contributions to the public consultation on the FATF's updated guidance document for Recommendation 25 (R.25) and we support the FATF's objective of strengthening international standards concerning the beneficial ownership (BO) of legal persons and Legal Arrangements to ensure greater transparency. We also support a policy outcome that specifically provides competent authorities and regulated entities with timely access to adequate, accurate (i.e. verified) and up-to-date BO information.

As set out in our response to last year's consultation on Recommendation 24 and R.25, we reiterate our belief in the importance of access to accurate BO information to enable financial institutions (FIs), Financial Intelligence Units (FIUs), and law enforcement to fulfil their anti-money laundering and countering the financing of terrorism (AML/CFT) responsibilities. The availability of information held in registers that is comprehensive, accurate, reliable and up-to-date, and where the identity of BOs and connected parties have been verified to a local regulator-approved standard, is an effective and proportionate means of achieving this aim. We recommend that countries be strongly encouraged to adopt the registry approach and that this should be assessed as part of the country's fifth round and ongoing Mutual Evaluations.

¹ The Group's members are Banco Santander, Bank of America, Barclays, Citigroup, Deutsche Bank, Goldman Sachs, HSBC, J.P. Morgan Chase, MUFG Bank, Société Générale, Standard Chartered Bank, and UBS.

We continue to believe that the financial sector should be able to rely on the information in a BO register and not be looked upon to verify that information as we see the primary responsibility for providing timely, complete, and accurate information resting with the reporting legal persons and arrangements. Since the very purpose of a public register is its reliability, having the financial sector perform duplicative verification is an inefficient use of resources, questions the reliability of the register and thereby does not improve combatting ML/TF. Registry owners should have the responsibility to ensure the accuracy and adequacy of the BO information prior to inclusion in the registry. If registry owners do not take on this responsibility, then they serve simply as a pass-through for information whose accuracy and adequacy is undetermined, with no improvements to effective outcomes in the fight against ML/TF and potentially impede ML/TF efforts by introducing unreliable information. We note that the principle of countries holding ‘adequate, accurate and up-to-date information on the beneficial ownership of legal persons to be held bycompany registry...’ is set out in the Interpretive Note to Recommendation 24 (Paragraph 7.b)(ii)) and recommend that this principle be adopted for R.25 and that it be stated explicitly that the registry has the obligation to ensure that it holds such information.

We welcome the statement set out in section 6 that “sanctions imposed for failing to grant timely access to information regarding the Legal Arrangement to competent authorities should be effective, proportionate, and dissuasive”. Such access should also be available to relevant FIs to enable them to discharge their financial crime risk management obligations (including but not limited to customer due diligence (CDD)) and the sanctions should also apply if FIs do not have timely access.

We respond as follows to the specific issues referenced by the FATF:

- i Are there any other purposes of express trusts beyond what have been set out in the Guidance?
No comments.
- ii Are there other potential scenarios concerning beneficiaries that should be included in this Guidance?
We welcome the express possibility that a trustee may take a risk-based approach to determine the detail of information they should hold about objects of a power.
- iii What other activities may be included in the definition of trust administration, if any?
We align with the view taken by the Society of Trust and Estate Practitioners (STEP)² that activities carried by an independent agent of the trustee should not result in the administration of the trust being treated as carried out in the jurisdiction in which the independent agent executes such activities and believe that is represented in the draft under paragraph 34. STEP has however referred to a necessary differentiation between core activities of a trustee and auxiliary activities to determine the jurisdiction in which the trust is administered. We question whether this differentiation is sufficiently clear in the guidance and defer to STEP who are likely to comment on this point.
- iv Are there other additional mechanisms available to ensure access to beneficial ownership information in the context of trusts?
We do not have any alternate mechanisms to propose, but we encourage the FATF to consider how BO registers might be useful in situations where an FI in one country has a trust customer that is registered in another country taking into account applicable national data protection and data security laws.

² <https://www.step.org/>

- v What are the suggested approaches to identify, assess, and mitigate the ML/TF risks linked with different types of legal arrangements (trusts governed under domestic law, foreign trusts administered in the country, and foreign trusts having sufficient links with the country)? What trends can be identified?

We see trends in the industry towards licensing requirements for professional trustees in countries which are not typical trust jurisdictions. Licensing often involves registration and satisfaction of financial, organisation and employee-related requirements. As an example, since 2020, trustees in Switzerland who carry out their activity on a commercial basis must apply for a license and be affiliated to a self-regulatory organisation. We see also registration requirements for trustees when they hold certain assets such as real estate or bank accounts in certain countries. We recommend that the FATF encourage jurisdictions to require licensing of professional trustees.

- vi Under which circumstances would a non-professional trustee be chosen? Which types of trusts are typically administered by such non-professional trustees?

No comment.

- vii How can countries achieve the obligations on non-professional trustees more effectively?

No comment

We offer the following specific points of feedback for consideration:

- FIs can deal with Legal Arrangements either as direct customers/contracting parties or indirectly and specifying that a lighter touch approach to CDD in the latter case would be beneficial as this would be consistent with a risk-based approach. We understand that one existing country-level practice is to verify who has control of the underlying entity rather than to identify all the parties to the Legal Arrangement for indirect relationships and suggest this be considered as the preferred option.
- We recommend adding explicit guidance confirming that, once any party to a Legal Arrangement loses their authority (e.g. due to a change in role, incapacity, or death), there is no continuing CDD obligation with respect to that person.
- For countries that do not have registries of Legal Arrangements and their beneficial owners, we do not think that FIs should be expected to obtain a copy of the trust deed to verify beneficial ownership. As paragraph 94 points out, verification of such information “may require professional expertise”, which should not be expected of FIs when providing banking services to a trust. Further, if beneficiaries are listed in an Objects of Power or belong to a class, or are at the discretion of the trustee, the trust deed itself will not enable the FI to verify the identity of such persons. As such, we recommend that an FI be able to rely on an attestation by the trustee as to the identity of the beneficial owners of a trust for CDD purposes.
- We recommend that situations where the Legal Arrangement displays few or no higher risk indicators that simplified CDD be permitted (see paragraph 107) consistent with a risk-based approach.
- We welcome the provision in Section 5.5.2 (paragraph 137) the obligation on countries to consider how to facilitate access to information on Legal Arrangements and reiterate the recommendation we made in respect of R.24 that such information should be available internationally and in more than one language. We further recommend that, in line with the Guidance on Recommendation 24 (paragraph 70 (b)), a discrepancy reporting mechanism

should define a threshold for discrepancies which requires FIs to report only material discrepancies, e.g. financial crime-relevant issues (see paragraphs 125 ix and 137).

- We recommend the FATF consider supporting countries by providing a proposal on data formats that can encourage the adoption of consistent data formats in BO registers across different countries. Consistency would improve usability of the information while cross-border consistency would reduce friction both for customers who may need to be registered in multiple countries and for law enforcement, which would otherwise face inconsistent information elements in their investigations. Consistent data formats among BO registers would also make it easier for registers to coordinate and cooperate across jurisdictions.

Thank you in advance for your consideration of our feedback. Please do not hesitate to contact the Wolfsberg Group Secretariat at info@wolfsberg-group.org and Matthew Ekberg at the Institute of International Finance at mekberg@iif.com if you have questions or would like to discuss this submission further.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'AK', with a long horizontal line extending to the right.

Alan Ketley
Executive Secretary
The Wolfsberg Group

A handwritten signature in black ink, appearing to be 'A. Portilla', with a large circular flourish at the top.

Andrés Portilla
Managing Director Regulatory Affairs
Institute of International Finance