

OVERVIEW

No. RADAR

6135

Responsible level

International

Competent authority

FATF – Financial Action Task Force

Standard designation

International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation - Updated February 2023

Title of Standard 

International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - Updated February 2023

Abbreviation (standard)

Short Title 

Abbreviation (standard)

Abbreviation 

Implementation status of the standard

published

Industry relevance

Banking, insurance

category

08. Anti-money laundering and financial sanctions

Document type

Miscellaneous

Management Summary

The International Standard on Combating Money Laundering, the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction is regularly reviewed and revised by the Financial Action Task Force on Money Laundering (FATF). The standards of the international body for combating money laundering and terrorist financing do not constitute directly binding law. They comprise a total of 40 Recommendations that formulate uniform rules of conduct and standards for the financial sector and all persons involved. The content of the Recommendations was published in October 2020 (see, among others, the FATF's "Recommendations" and the "Recommendations" in the German version). *data set*

4311) have been updated.

This version includes revisions to Recommendations R.24 (Transparency and beneficial ownership of legal persons) and R.25 (Transparency and beneficial ownership of legal arrangements), as well as new glossary entries, accompanying adjustments to glossary entries and changes to interpretative guidance.

Management Summary

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The present version includes revisions to Recommendations R.24 (Transparency and beneficial ownership of legal persons) and R.25 (Transparency and beneficial ownership of legal arrangements) as well as new glossary entries, accompanying adjustments to glossary entries and amendments to interpretative notes.

CONTENTS

Main content

A. Overview

I. Amendment to Recommendation 24 (Transparency and beneficial ownership of legal persons)

II. Amendment to the explanation to Recommendation 24 (Transparency and beneficial ownership of legal persons)

III. Amendments to Recommendation 25 (Transparency and beneficial ownership of legal arrangements)

IV. Amendments to the Explanatory Note to Recommendation 25 (Transparency and beneficial ownership of legal arrangements)

V. Changes to the Glossary

B. Essential content

I. Amendment to Recommendation 24 (Transparency and beneficial ownership of legal persons)

The revised Recommendation 24 on transparency and beneficial ownership of legal persons clarifies that not only measures should be taken to combat abuse, but also the risk posed by legal persons with regard to money laundering and

Terrorist financing (ML/TF) is suspected. Adequate, accurate, and up-to-date information on the beneficial ownership and control of legal entities must be maintained and accessed quickly and efficiently by the competent authorities, either in the form of a beneficial ownership register or through alternative mechanisms. It also adds that the issuance of new bearer shares and new bearer share warrants by legal entities should be prohibited, and measures should be taken against the misuse of existing bearer shares and bearer share warrants. Finally, access to information regarding beneficial ownership and control by financial institutions and designated non-financial entities and professions (DNFBPs) that comply with Recommendations 10 and 22 should be facilitated (see source for details).

II. Amendment to the explanation to Recommendation 24 (Transparency and beneficial ownership of legal persons)

For legal entities, the competent authorities must also obtain information on ML/TF risks. The minimum requirements for mechanisms to reduce ML/TF risks from legal entities, which countries must have in place, are supplemented by measures to address and mitigate the identified risks, as well as the requirement to assess their country's country-specific risk, including with regard to legal entities established under foreign law (see source for details).

1. Basic information (Section A)

With regard to basic information, it is added that a unique identifier, such as a tax number or similar, is one of the minimum information that must be recorded and retained by a company for the purposes of a national business register.

2. Information about the beneficial owner (Section B)

The requirements for beneficial ownership information are being revised. To ensure the availability of information on a company's beneficial owner, countries should pursue a multi-pronged approach. Based on the specific risk, context, and materiality, countries should decide which form of register or alternative mechanisms they can use to ensure effective access to the information. The decision must be documented. Countries should have the following mechanisms in place (see source for details):

- Obligation of the country's companies to maintain adequate, accurate and up-to-date information on beneficial owners and to make this information available to the competent authorities in a timely manner and to assist financial institutions/DNFBPs in ensuring that they have up-to-date, accurate and adequate information;
- Obligation to maintain adequate, up-to-date and accurate information on the beneficial owners of a legal entity in a public register (e.g. tax authority, Financial Investigation Units (FIUs), business register or beneficial owner register) (alternative mechanisms are permitted under certain conditions);
- Additional information necessary to determine the beneficial owner of a company must be used (including information from supervisory authorities or stock exchanges, financial institutions and/or DNFBPs).

3. Timely access to appropriate, accurate and current information (Section C)

Section C clarifies that mechanisms to ensure basic information and information on beneficial owners must be implemented in the respective countries. Definitions of the terms "adequate, accurate, and timely information" are added (see source for details).

The powers of the competent authorities, and in particular the FIUs, also include rapid and efficient access to basic information and information on the beneficial owner of a public authority, other body, or financial institutions or DNFBPs that hold such information. In the context of public procurement, timely access to basic information on legal entities and their beneficial owners must also be ensured.

It is also added that access to this information should also be made easier for financial institutions and DNFBPs and, where appropriate, public access should be granted with regard to information on the beneficial owner (see source for details).

4. Obstacles to transparency (Section D)

a) In accordance with the amendments to Recommendation 24, a ban on the new issuance of bearer shares and bearer share warrants is included in the explanatory notes. This is intended to prevent or reduce the risk of misuse of bearer shares and bearer share warrants. With regard to existing bearer shares and bearer share warrants, countries should take the following measures:

- Prohibition within a reasonable timeframe;
- Conversion into registered forms or
- Immobilization of shares by requiring them to be held with regulated financial institutions or professional intermediaries, and by requiring the competent authorities to have timely access to information prior to their prohibition or conversion. Furthermore, holders of bearer shares will be required to provide information about their identity before exercising rights related to the shares.

b) The example for preventing the misuse of nominated shareholdings and nominated directors will be designed as a mandatory measure. The catalogue of measures will be expanded. Nominated shareholders and nominated directors will be required to disclose their nominee status to the company and relevant registers, particularly those publicly accessible registers. Furthermore, the identity of their nominator must be recorded in the relevant register and made available to the competent authority upon request. The introduction of a ban on nominated shareholders and directors will be added as a new measure (see source for details).

5. International Cooperation (Section G)

With regard to international cooperation, it is added that a request for relevant information may not be refused on the grounds of taxation, banking secrecy, or similar reasons. To facilitate rapid, constructive, and effective international cooperation, countries should publish the locations where the relevant information on the beneficial owner is easily accessible (see source for details).

III. Amendments to Recommendation 25 (Transparency and beneficial ownership of legal arrangements)

The revised Recommendation 25 on Transparency and Beneficial Ownership of Legal Arrangements clarifies that, in addition to taking measures to prevent abuse, the risk posed by express trusts and similar legal arrangements, including their settlors, trustees, and beneficiaries, with regard to ML/TF should also be assessed. Furthermore, the requirement to maintain adequate, accurate, and up-to-date identification information is extended to legal arrangements comparable to express trusts.

IV. Amendments to the Explanatory Note to Recommendation 25 (Transparency and beneficial ownership of legal arrangements)

1. The obligation of trustees of express trusts and persons with an equivalent position in similar legal arrangements to maintain adequate, accurate, and up-to-date information regarding the beneficial ownership of the express trust is extended to similar legal arrangements. The circle of parties within a trust structure for whom appropriate proof of identity must be maintained is also expanded to include persons who can exercise economic control over the trust. Furthermore, the requirements regarding identity information also apply to similar parties to a legal arrangement. In the case of legal entities within the structure, the trustee of the trust or legal structure is required to maintain appropriate information (see source for details).

2. Countries should have mechanisms in their legislation that

- identify the different types, forms and basic characteristics of express trusts and comparable legal constructs,
- identify and describe the process for establishing appropriate legal structures and obtaining basic information on the beneficial owner and
- make the aforementioned information publicly available.

3. In addition, countries should assess the ML/TF risks associated with the following different types of trusts and other similar legal structures:

- those subject to their national legal regulations;
- those that are managed in their country or for which the trustee is resident in their country and
- those that have sufficient links to their country (links include, but are not limited to, significant real estate or investments on site, business relationships with financial institutions or DNFBPs, or tax obligations in a country) and for which measures are taken to reduce identified risks, provided that they are types of foreign legal structures.

If there are no identifiable beneficiaries at the time the trust is established, the trustee should obtain and retain information about the nature of the beneficial owners, their characteristics, and their powers. States may allow exceptions to the identification of beneficial owners for charitable or legally permitted non-commercial trusts.

With regard to legal constructs, identification must include, among other things, an identifier of the contractual agreement (e.g. the name, the tax number or similar), the purpose of the contract, the trust deed, the registered office of the trustee (or similar) or the registered office where the contract is administered.

4. The requirements for disclosure of their status to financial institutions and DNFBPs as well as cooperation with the relevant supervisory authorities will be extended to legal constructs (see source for details).

5. To ensure that adequate, accurate, and up-to-date basic information on beneficial ownership is available in a timely manner from sources other than the trust or legal arrangement itself, such information should be maintained by a public authority in the form of registers, including for legal arrangements. Other authorities may also serve as additional sources of such information on legal arrangements. Furthermore, the range of sources of such information is expanded to include investment advisors or investment managers, auditors, lawyers, and financial institutions.

6. Countries should have mechanisms in place to ensure that information on trusts or similar legal arrangements, including the information to be made available, is adequate, accurate, and up-to-date. With regard to legal arrangements, information is adequate if it allows sufficient identification of the natural persons, the beneficial owners, and their role in the arrangement. If the beneficial owner is a legal entity, this entity should also be identified. It must be possible to verify the accuracy of this information through reliable data, documents, and further information. Information is up-to-date if it is timely and regularly updated.

7. The authority of the competent authorities to obtain such information will be extended to FIUs. Furthermore, this information can also be obtained with regard to legal structures (see source for details).

8. The obligation to keep up-to-date basic information and identification information for five years and to facilitate access to such information is extended to legal constructs (see source for details).

9. The explanation of other legal constructs in paragraph nine is omitted.

10. With regard to international cooperation, it is added that a request for relevant information may not be refused on grounds of taxation, banking secrecy, or similar reasons. To facilitate rapid, constructive, and effective international cooperation, countries should publish the locations where the relevant information on the beneficial owner is easily accessible (see source for details).

11. The obligation to comply with the requirements of the Explanatory Notes is extended to legal constructs (see source for details).

V. Changes to the Glossary

1. Nominator, nominated shareholder or director

The glossary introduces new definitions of the terms nominator, nominated shareholder and nominated director (see source for details).

2. Beneficial owner

The definition of beneficial owner clarifies that only natural persons can be beneficial owners, although multiple natural persons can also be beneficial owners of a legal entity. With regard to legal arrangements, it is added that the term beneficial owner includes the settlor, the trustee(s), the guarantor, each beneficiary, the group of beneficiaries, powers of attorney, and any other natural person exercising effective control over the arrangement. For a legal arrangement similar to an express trust, the term beneficial owner refers to natural persons who hold one of the relevant positions mentioned above. If the trustee and any other person involved in the legal arrangement is a legal entity, the beneficial owner of that legal entity should be identified.

3. Legal construct

When defining the legal construct, it is added that this includes not only express trusts and similar constructs, but also certain types of trusts, e.g. entails and waqfs (provided the waqf is not a legal entity), although these examples are not exhaustive (see source for details).

CATEGORIZATION

Keywords

designated non-financial entities and professions, DNFBP, Express Trust, FIU, money laundering, ML/TF, ML/TF risks, bearer share, bearer share warrant, legal entity, legal construct, nominator, nominee status, nominated shareholder, nominated director, register, guarantor, effective control, terrorist financing, settlor, trustee, trust deed, beneficial owner, central financial investigation units

Legal and information bases

- International Standard on Combating Money Laundering and the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction - Update October 2020 (Dataset 4311)

Related Standards

- International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - Updated October 2020 (dataset 4311)

Target group – credit institutions

Yes

Target group – financial services institutions

Yes

Target group – Other companies in the financial sector

Yes

Target group – payment institutions

Yes

Target group – insurance companies

Yes

Target group – supplement

Comments 

Statement by (date)

Implementation status Explanation

Status – Further Details 

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March 10, 2023

Entry into force estimated?

No

Date of first application

March 10, 2023

Application appreciated?

No

Date Standard repealed

Remark (Entry into force/Publication)

Comments 

Sources

The sources are not shown in this working paper.