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Briefing Doc

Beneficial Ownership and Transparency of Legal Arrangements



Detailed Briefing Document

**Guidance on Beneficial Ownership and
Transparency of Legal Arrangements**

**Source: FATF/OECD Guidance on Beneficial Ownership and
Transparency of Legal Arrangements (2024)**

Main Themes:

Understanding and mitigating the risks associated with express trusts and similar legal arrangements, particularly regarding money laundering and terrorist financing (ML/TF).

Clarifying the scope of Recommendation 25 (R.25) of the FATF Standards, focusing on transparency requirements.

Providing guidance for countries and the private sector on identifying, verifying, and accessing beneficial ownership information of trusts and similar arrangements.

Key Ideas and Facts:

1. Scope and Definition:

The guidance focuses on express trusts – arrangements clearly created by a settlor (usually in writing) where a trustee holds assets for beneficiaries.

It also covers legal arrangements similar to trusts, highlighting the need to assess arrangements based on their functions and characteristics rather than their name.

The document emphasises a risk-based approach throughout, acknowledging that not all trusts pose the same ML/TF risks.

2. Understanding Risks:

The private nature of trusts is identified as a key vulnerability, allowing for potential misuse for ML/TF. Specific features that can be abused include the separation of legal and beneficial ownership, the ability to shield assets from creditors, and the use of flee clauses.

Countries are urged to conduct risk assessments based on:

- 🕒 **Trusts governed under their law:** Analysing the vulnerabilities of their legal framework and areas of concentrated trust activity.
- 🕒 **Trusts administered in their country or where the trustee resides:** Understanding the type of trust-related services offered and the parties involved.
- 🕒 **Foreign trusts with sufficient links to the country:** Assessing the nature and significance of business relations, investments, or tax residency.

3. Mitigating Risks - Key Measures:

Mandatory under R.25:

- 🕒 Strong understanding and assessment of ML/TF risks.
- 🕒 Sanctions for trusts bypassing registration requirements.
- 🕒 Supervision or monitoring of trust administrators, including non-TCSPs (e.g., lawyers, accountants).
- 🕒 Adequate, accurate, and up-to-date beneficial ownership information held by trustees.
- 🕒 Timely access to beneficial ownership information for competent authorities.
- 🕒 International cooperation in sharing beneficial ownership information.

Additional Mitigating Measures (non-exhaustive):

- 🕒 Registers for trusts administered in the country, where the trustee resides, or those governed under the country's law.
- 🕒 Licensing or registration requirements for professional trustees.
- 🕒 Applying CDD requirements to non-professional trustees and professional trust administrators.
- 🕒 Disclosure requirements for legal arrangements operating or holding significant assets in the country.
- 🕒 Legislative measures like anti-abusive provisions and limits on vulnerable measures.

4. Beneficial Ownership Information:

Trustees are primarily responsible for obtaining and holding beneficial ownership information on:

- 🕒 Settlor(s): Person(s) establishing the trust and transferring assets.
- 🕒 Trustee(s): Legal or natural person(s) managing trust assets.
- 🕒 Protector(s): Person(s) overseeing the trustee's actions (if applicable).

- Beneficiary(ies): Person(s) entitled to benefit from the trust. This includes classes of beneficiaries and objects of power.
- Any other natural person exercising ultimate effective control.
- Information Requirements: Basic information: Identifier, trust deed, purpose (if any), trustee residence/place of administration.
- Beneficial ownership information: Identity and verification data on all parties, including the means and scope of beneficial ownership.
- Verification: Robust procedures to confirm identities and ownership structures using reliable documents and information.

5. Access to Information:

- Competent Authorities: Countries should ensure competent authorities have timely and efficient access to beneficial ownership information through:
 - Central registries, asset registries, or other relevant authorities (e.g., tax authorities).
 - Compelling information disclosure from relevant parties.

- Clearly defined procedures and legal frameworks for information sharing.
- 🕒 FIs and DNFBPs: Countries should consider measures facilitating access to beneficial ownership information for FIs and DNFBPs, subject to data protection safeguards. This enables compliance with CDD obligations and supports verification efforts.

6. Sanctions:

- 🕒 Effective, proportionate, and dissuasive sanctions are crucial to deter non-compliance with R.25.
- 🕒 Sanctions should encompass administrative, civil, and criminal penalties, considering the seriousness of the breach.
- 🕒 Adequate resources and procedures should be in place for effective detection and sanctioning of violations.

7. Implementation Challenges & Considerations:

- 🕒 The guidance acknowledges the complexities of implementing R.25, especially concerning:

- Legal professional privilege and secrecy: Balancing transparency requirements with protecting client confidentiality.
- Oversight of non-professional trustees: Ensuring their understanding of and compliance with AML/CFT obligations.
- The document emphasises the importance of:
 - Guidance and training: For both service providers and trustees, particularly non-professionals, to raise awareness and understanding of their obligations.
 - International cooperation: To facilitate the exchange of beneficial ownership information across borders, especially given the global nature of trusts.

Quotes:

- "Countries should assess the money laundering and terrorist financing (ML/TF) risks of misuse of legal arrangements and take preventive measures."
- "Countries should consider facilitating access to beneficial ownership and control information by financial institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs)."

- 🕒 "A priori conclusions cannot be drawn on specific (categories) of legal arrangements, and that any assessment needs to be anchored to the legal framework of a country and its risk, context and materiality."
- 🕒 "To mitigate the above-mentioned risks, it is necessary to clearly establish the specific features that characterise each type of trust or similar legal arrangement, particularly the purposes of the arrangement."
- 🕒 "Countries should ensure that trustees are not prevented by law from providing competent authorities with relevant information relating to the trust."

Overall, the guidance document provides a comprehensive framework for understanding and addressing the ML/TF risks posed by express trusts and similar legal arrangements. It stresses the importance of a risk-based approach, robust information collection and verification procedures, effective international cooperation, and dissuasive sanctions for ensuring transparency and preventing the misuse of these legal vehicles for illicit purposes.

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