

# **CLOSING THE TRUSTS LOOPHOLE**

**Response to FATF's draft amendments to  
Recommendation 25 and its interpretive note**

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# RESPONSE TO FATF PUBLIC CONSULTATION

## QUESTION 1

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Are FATF proposals **adequate** to mitigate the risk of misuse of legal arrangements and to ensure access to BO [beneficial ownership] information?

## TRANSPARENCY INTERNATIONAL'S POSITION

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The proposed amendments are not adequate to mitigate the risks posed by trusts and other legal arrangements nor to ensure the timely access to adequate, accurate and up-to-date information by competent authorities. The work carried out by FATF to review Recommendation 24 showed that the flexibility provided by the FATF standard and the lack of a requirement for beneficial ownership information to be collected by government authorities had a direct impact on the availability of information to competent authorities in a timely manner. Transparency International's review of FATF members' compliance with Recommendation 25 finds a very similar pattern. Currently, the great majority of countries have opted for relying on beneficial information collected by trustees themselves or by obliged entities. This means that, for most trusts, beneficial ownership information is not available or very difficult to find. To adequately mitigate the risks posed by trusts and legal arrangements, Transparency International believes the following areas should be specifically addressed by the review:

### 1. Multi-pronged approach with registration with government authorities as a requirement

Similarly to the provisions agreed under Recommendation 24, it is fundamental that the revised Recommendation 25 and its interpretive notes address the flexibility that currently negatively affects the availability of information on trusts and their beneficial owners. Instead of flexibility to

choose ANY source of information, the revised standard should require a multi-pronged approach. Information should always be available from more than one source. In particular, trusts and similar legal arrangements should be required to provide basic and beneficial ownership information to a government authority. The information should be maintained in a central register and submitted to verification procedures to ensure that it is adequate, accurate and up to date. FATF should encourage countries to establish incentives for information to be updated in a timely manner (e.g., if trust information is not regularly updated, countries could deny any party to the trust the benefits they would derive from it). Authorities should be able to access additional sources, including information held by trustees themselves, by obliged entities or held in other government databases, including tax or asset registers. The legal validity of trusts should be subject to prior registration with government authorities.

As demonstrated in Transparency International's response to the previous public consultation,<sup>1</sup> the lack of a registration requirement on trusts leads to competent authorities in various countries being unable to even estimate the number of such instruments present in their jurisdictions. Consequently, they have a limited understanding of the risks posed by such instruments and face challenges to even start investigations. Furthermore, to access information on trusts and other legal arrangements from other sources, like trustees and obliged entities, competent authorities have to first establish the links between them and a legal arrangement to then request the information. This could lead to delays in accessing the information and hamper more proactive investigations, preventing competent authorities from following dirty money all together.

Back in 2016, the Panama Papers revealed how New Zealand foreign trusts were being used for money laundering and tax evasion. In response, New Zealand led an inquiry and implemented reforms, including establishing a register of foreign trusts. Following the reform, the number of foreign trusts

decreased by 75 per cent, from nearly 12,000 foreign trusts in 2016 to just under 3,000 in 2020.

Many trust arrangements operate in New Zealand with very little clarity about what they are established for, who the settlor or beneficiaries are, or what the trusts are used for. This applies to both New Zealand trusts and foreign owned trusts operating in New Zealand. A recent official information act (OIA) request by Transparency International New Zealand shows that there are over 400,000 “legal entities” in New Zealand that are subject only to registration with the tax authority, which is covered by tax secrecy. This number does not include charitable trusts. While we would expect that the tax authority shares some information with overseas tax authorities, there is limited evidence that it shares intelligence with other New Zealand agencies. The OIA request also reveals that there are 2,473 New Zealand foreign trusts (trusts with an active foreign trust rate (FTR) account registration in IR’s systems). It also advised that the majority of those NZ foreign trusts are professionally established by trust companies. New Zealand is marketed as a destination for wealth holding, often because New Zealand is virtually unique in having no capital gains tax. Neither the tax authority nor any other agency holds information on the breakdown of the 400,000 legal entities, e.g., family trusts, parallel trusts, single and business trusts.

## 2. Risk assessment and triggers for beneficial ownership disclosure should be broadened

The circumstances that should be considered when assessing the risks of trusts and legal arrangements need to be broadened beyond what the draft amendments suggest, otherwise there is a risk that countries fail to implement all necessary mitigation measures. In addition to assessing the risks of trusts and other similar legal arrangements governed under the country’s law and administered by a trustee based in the country, the risks brought by trusts and similar legal arrangements that have any party to the trust in the country or own assets in the country should also be considered.

For foreign-created legal arrangements, “sufficient links” could be established through:

1. the residence of *any* party to the trust
2. location of the asset(s) and bank account(s)
3. location of service providers to the trust (including lawyers, accountants, financial and/or tax and/or investment advisors)

4. business address of *any* party to the trust

Furthermore, it would be fundamental to broaden the triggers for registration of trusts with government authorities. All trusts and similar legal arrangements that have a connection with a country – because one of the parties to the trust is resident in the country and/or an asset (real estate, bank account, vehicle, etc.) is registered in the country should be required to register with a government authority and disclose their beneficial owners.

## 3. Trustees should have anti-money laundering obligations

The Recommendation’s text should encourage countries to impose anti-money laundering obligations to all trustees or people/companies exercising similar functions in addition to record-keeping obligations.

The professionalisation of the current non-professional trustees would enable countries and their supervisory and law enforcement authorities to account for trustees under their jurisdiction, make it easier to oversee compliance with anti-money laundering obligations, enforce non-compliance as well as to know who to contact to obtain essential information on trusts and their beneficial owners.

## QUESTION 2

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Are proposals **clear** and are there any issues which need **further clarification** or that should be addressed in guidance?

## TRANSPARENCY INTERNATIONAL’S POSITION

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As it currently stands, the interpretative note to the Recommendation is not sufficiently clear and we believe that the following points should be addressed in the guidance document:

### 1. Similar legal arrangements

When it comes to the definition of “similar legal arrangements” (compared to express trusts), we believe this is not sufficiently clear. It would be important to list the characteristics of legal arrangements that are to be classified as “similar” to

express trusts to avoid future loopholes. This is key, particularly because the interpretation of what might constitute a similar legal arrangement may vary between jurisdictions, resulting in some instruments being left out of the definition.

An assessment by the European Commission,<sup>2</sup> for instance, established that legal arrangements should be deemed to be similar to trusts when they allow for the separation between the beneficial owner and the legal owner of assets, generally involving a mechanism where these are entrusted to a person, who is the title holder and manager of such an asset on behalf of one or more persons or for a specific purpose, including fiduciary arrangements, for instance. Some examples identified by the European Commission of similar legal arrangements include: fiducie, treuhand, fideicomiso, svěřenský fond, funds and foundations.<sup>3</sup>

A similar exercise should be conducted by FATF in its Guidance to Recommendation 25 by wherein it should stipulate the features to be considered when establishing whether a legal instrument should be considered similar to a trust and thus categorised as a “similar legal arrangement”. A list of known such instruments should be added to the guidance text, which should expand beyond those already determined by the EU Commission (see Annex 1).

## 2. Objects of power

As established in Transparency International's response to the previous consultation on the Recommendation, we believe that the term “objects of power” should be defined in the Interpretive Note and in the Glossary as it might not be fully understood by all parties.

As it currently stands, neither the Interpretative Note nor the Glossary provide for a clear definition of “objects of power” and neither even begins to untangle it from the concept of “class of beneficiaries”. It is fundamental that the two are not interpreted to mean the same thing. Therefore, FATF should define both terms separately from one another to avoid confusion. In the Guidance text, FATF should provide at least an example of what “objects of power” look like in practice.

## 3. Adequate, accurate and up-to-date information

As it currently stands, the definitions of adequate, accurate and up-to-date information are not

sufficiently clear. More detail should be provided in the Guidance document to avoid a plenitude of interpretations that could lead to obliged entities collecting and holding unreliable information.

### 3.1. Adequate

FATF should call countries to establish a strong and clear definition of who should be named as beneficial owners of legal arrangements. Beneficial owners should be all natural persons that are parties to the trust as well as those who have ultimate effective control over it.

The information to be collected for each beneficial owner of trusts should follow the guidance provided under Recommendation 24. At a minimum, the following information should be collected on each beneficial owner and the trust itself:

- + trust deed
- + name
- + date of birth
- + identification number
- + address
- + place of residence
- + nationality
- + role within the trust of each party
- + name of the person making the declaration

Where the beneficiary of a trust is a minor, measures should be taken to establish (and record) a relationship with the legal guardians, particularly when the trustee is a nominee.

### 3.2. Accurate

FATF should require that the accuracy of the information on the parties and beneficial owners of trusts and similar legal arrangements always – and not only based on risk – be attested against official identification documents (such as digital IDs and passports).

Additional checks using reliable and independent sources can then take place on a risk-sensitive basis. However, there is no guidance on what “risk-sensitive basis” means and it should be made clearer what should be considered as higher risk cases.<sup>4</sup>

### 3.3. Up-to-date

The definition is kept vague by the use of the terms such as “as current and up-to-date as possible” and “reasonable period [of time]”. This could be interpreted in various ways and therefore should be

more precise on the timeframe by which information is to be confirmed/updated (e.g., by establishing a minimum timeframe for such updating processes to take place).

Transparency International suggests that any change to legal arrangements' control structure should be communicated to authorities in charge of the register, as well as to the obliged entities they might have a relationship with, within 14 calendar days. Additionally, trustees should be required to submit an annual declaration to authorities attesting that there have been no changes to the trust and its parties during the period.

### QUESTION 3

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What is the **expected impact** of the proposals on legitimate activity? In particular, what are the **challenges for implementation**?

### TRANSPARENCY INTERNATIONAL'S POSITION

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The main objective of the amendment is to improve the transparency of trusts and the timely access to information on the beneficial owners of trusts and

similar legal arrangements by competent authorities. However, by not following a multi-pronged approach, it is likely that the effectiveness of these measures will be limited.

A potential challenge for implementation will be the lack of mandatory registration requirements for trusts to become legally valid. It will be complicated for competent authorities to enforce these requirements when they cannot be certain of the existence of legal arrangements nor have any relevant information which concerns these instruments from the start. FATF should encourage members to follow the French example regarding *fiducies*, which is a similar legal arrangement to trusts: French law requires for *fiducie* agreements to be concluded in writing and submitted to the tax authorities, which validate all the information concerning the *fiducie* before registering it in the French national register of *fiducies* (RDF). Fiducies in France must be registered in the RDF, otherwise, they will be rendered null and void.<sup>5</sup>

Another practical challenge could arise in countries which are still developing their digital systems and/or their existing staff's knowledge of the risks of trusts and how they can connect to money laundering schemes. These requirements can only be enforced if the competent authorities have the required expertise and central databases are available with trust-related information.

# 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 by FATF are coloured in red, with additions underlined and ~~deletions struck-out~~. All proposed amendments by **Transparency International** are coloured in blue, with additions underlined and deletions ~~struck-out~~.

## **RECOMMENDATION 25. TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL ARRANGEMENTS**

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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 abuse 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), as well as any other natural persons exercising ultimate control over the legal arrangement, 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)**

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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 administer any express trusts or similar legal arrangements in their country, to obtain and hold adequate, accurate and ~~current up-to-date~~ beneficial ownership information<sup>1</sup> 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 direct or indirect beneficiary(ies) or, where applicable, the class of beneficiaries<sup>2</sup> or objects of a power; and (v), 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

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

<sup>2</sup> 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. The object of a power in a discretionary trust are those who may derive a benefit from a trust in the future, even if there is chance that such an object will become entitled, e.g., they are named in a letter of wishes, which may present a higher ML/TF risk. 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.

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:

(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 basic<sup>3</sup> 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;

(c) which have a trust party, such as settlor, protector, beneficiary located in the country;

(d) which have relevant assets, including real estate, bank accounts, vehicles, in the country; and

(e) types of foreign legal arrangements that have sufficient links<sup>4</sup> with their country and take appropriate steps to manage and mitigate the risks that they identify.<sup>5</sup>

2. All Countries 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. Additionally, countries should ensure that trustees have AML/CFT obligations, ensuring their correct supervision by competent authorities. 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 information relating to the trust or other similar legal arrangements.<sup>6</sup> 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.

<sup>3</sup> 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.

<sup>4</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 the trust/similar legal arrangement or any party to the trust (such as a trustee or a person holding an equivalent position in a similar legal arrangement, beneficiary(ies), etc.) 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. Sufficient links could also be connected to the location of service providers to the trust (including lawyers, accountants, financial and/or tax and/or investment advisors).

<sup>5</sup> 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.

<sup>6</sup> 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~~ use all of the following sources of information:

(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.<sup>7</sup>

(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 or asset registers~~).

(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-date.<sup>8</sup> 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 trust<sup>9</sup>. At a minimum, the following information should be collected: (a) trust deed; (b) names of all parties to the trust and their beneficial owners; (c) dates of birth of all beneficial owners/parties to the trust; (d) identification numbers of all parties to the trust; (e) addresses and places of residence of all parties to the trust; (f) all nationalities of all parties to the trust; (g) roles within the trust of each party; (h) name of the declarant. In the case where the beneficiary of a trust is a minor, measures should be taken to establish (and record) a relationship with the legal guardians, particularly when the trustee is a nominee.

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. Countries should require that the accuracy of the information on the parties and beneficial owners of trusts and similar arrangements always be attested against official identification documents (such as digital IDs and passports). Additional checks should be conducted on a risk-sensitive basis using reliable and independent sources of information.~~

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<sup>7</sup> 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.

<sup>8</sup> For beneficiary(ies) of trusts/similar legal arrangements 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 a beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights. Trustees are expected to obtain adequate, accurate and up-to-date information on the beneficiaries within 14 calendar days of the person(s) becoming entitled as a beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights.

<sup>9</sup> 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.

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. Additionally, countries should require trustees to submit an annual declaration to authorities attesting that there have been no changes to the trust and its parties during the period.

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 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~~ establish 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 as well as to civil society actors and the public in general.
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](#) and/or [provide direct access to the information to designated foreign competent authorities, such as FIUs and LEAs.](#)

## 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.<sup>10</sup> 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.

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

## GLOSSARY

<p><b>Beneficial owner</b></p>	<p><u>In the context of legal persons, <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 natural persons who exercise ultimate effective control over a legal person <del>or arrangement</del>. 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 person <del>or arrangement</del><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> - 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 <del>or arrangement</del> through other means. Where no natural person is identified in that role, the natural person who holds the position of senior managing official should be identified and recorded as holding this position. This provision of R.10 does not amend or supersede the definition of who the <i>beneficial owner</i> is, but only sets out how CDD should be conducted in situations where the beneficial owner cannot be identified.</p> <p><u>[In the context of legal arrangements, <i>beneficial owner</i> includes: (i) the settlor(s); (ii) the trustee(s); (iii) the protector(s) (if any); (iv) each direct or indirect beneficiary, or where applicable, the class of beneficiaries or objects of a power; and (v) any other natural person(s) exercising ultimate effective control over the arrangement<sup>4</sup>. In the case of a legal arrangement similar to an express trust, <i>beneficial owner</i> refers to the natural person(s) holding an equivalent position to those referred above. When the trustee and any other party to the legal arrangement is a legal person, the beneficial owner of that legal person should be identified.]</u></p> <p><u><sup>4</sup> - Reference to “ultimate effective control” over trusts or similar legal arrangements includes situations in which ownership/control is exercised through a chain of ownership/control.</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:</p> <ul style="list-style-type: none"> <li>▪ In trust law, a beneficiary is the person or persons who are <u>or may become</u> entitled to the benefit of any trust arrangement. A beneficiary can be a natural <u>person</u> or <u>a</u> legal person or arrangement. All trusts (other than charitable or statutory permitted non-charitable trusts) are required to have ascertainable beneficiaries. While trusts must always have some ultimately ascertainable beneficiary, <u>trusts</u> may have no defined existing beneficiaries <u>when they are set up</u> but only <u>a class of beneficiaries or</u> objects of a power until some person becomes entitled as beneficiary to income or capital on the expiry of a defined period, known as the accumulation period, <u>or following exercise of trustee discretion in the case of a discretionary trust</u>. The <u>accumulation is</u> period is normally coextensive with the trust perpetuity period which is usually referred to in the trust deed as the trust period.</li> </ul> <p>[...]</p>
<p><b>Express trust</b></p>	<p><i>Express trust</i> refers to a trust clearly created by the settlor, usually in the form of a document e.g. a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust).</p>

<p><b>Legal arrangements</b></p>	<p><i>Legal arrangements</i> refers to express trusts and other <u>similar</u> legal arrangements. Examples of other similar arrangements<sup>1</sup> (for AML/CFT purposes) <u>may include but are not limited to</u> fiducie, <u>certain types of Treuhand</u> <del>and</del>, fideicomiso, <u>and Waqf</u><sup>2</sup>.</p> <p><u>1- Similarity is assessed having regard to Article 2 of the Hague Convention on the law applicable to trusts and their recognition on the basis of whether legal arrangements have a similar structure or perform a similar function to an express trust.</u></p> <p><u>2- Except in countries where Waqf are legal persons under Recommendation 24.</u></p>
<p><b>Settlor</b></p>	<p><i>Settlors</i> are natural or legal persons who transfer ownership of their assets to trustees by means of a trust deed or similar arrangement.</p>
<p><b>Trustee</b></p>	<p>The terms <i>trust</i> and <i>trustee</i> should be understood as described and consistent with Article 2 of the <i>Hague Convention on the law applicable to trust and their recognition</i><sup>1</sup>.</p> <p>Trustees may be professional (e.g. depending on the jurisdiction, a lawyer or trust company) if they are paid to act as a trustee in the course of their business, or <u>a non-professional who is not in the business of being a trustee</u> (e.g. a person acting <u>without reward</u> on behalf of a family).</p> <p><sup>1</sup> – Article 2 of the Hague Convention reads as follows:  <i>For the purposes of this Convention, the term “trust” refers to the legal relationships created – inter vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.</i></p> <p><i>A trust has the following characteristics –</i></p> <ul style="list-style-type: none"> <li><i>a) the assets constitute a separate fund and are not a part of the trustee’s own estate;</i></li> <li><i>b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;</i></li> <li><i>c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.</i> <p><i>The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.</i></p> </li></ul>

## ANNEX 1: LIST OF TRUSTS AND SIMILAR LEGAL ARRANGEMENTS GOVERNED UNDER THE LAW OF THE MEMBER STATES AS NOTIFIED TO THE EUROPEAN COMMISSION IN 2019

Member State	Trusts or similar legal arrangement
<b>Belgium</b>	Fidei-commis de residuo
<b>Bulgaria</b>	None
<b>Czechia</b>	Svěřenský fond
<b>Denmark</b>	None
<b>Germany</b>	No notification
<b>Estonia</b>	None
<b>Ireland</b>	(a) Express trusts (b) Statutory trusts (c) Trusts imposed or arising by operation of law
<b>Greece</b>	None
<b>Spain</b>	No notification
<b>France</b>	Fiducies
<b>Croatia</b>	None
<b>Italy (*)</b>	(a) Mandato fiduciario (b) Vincolo di destinazione
<b>Cyprus (*)</b>	(a) Εμπιστεύματα (b) Διεθνή εμπιστεύματα
<b>Latvia</b>	None
<b>Lithuania</b>	None
<b>Luxembourg</b>	(a) Trusts (b) Foundations
<b>Hungary</b>	Vagyonkezelő alapítvány
<b>Malta</b>	(a) Trusts (b) Foundations
<b>Netherlands (*)</b>	Fonds
<b>Austria</b>	No notification
<b>Poland</b>	None
<b>Portugal</b>	No notification
<b>Romania</b>	Fiducia
<b>Slovenia</b>	None
<b>Slovakia</b>	None
<b>Finland</b>	None
<b>Sweden</b>	None
<b>United Kingdom</b>	No notification

\* Trusts are recognised based on provisions of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition developed by the Hague Conference on Private International Law.

Source: Official Journal of the European Union. (24 October 2019), List of trusts and similar legal arrangements governed under the law of the member states as notified to the Commission (2019/C 360/05). Retrieved 26 July 2022 from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC1024\(01\)&from=FR](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC1024(01)&from=FR)

## **ANNEX 2: SIGNATORIES**

1. Civil Society Legislative Advocacy Centre (Transparency International Nigeria)
2. Corruption Watch (Transparency International South Africa)
3. Integrity Fiji
4. Transparency International
5. Transparency International Australia
6. Transparency International Canada
7. Transparency International Colombia (Transparencia por Colombia)
8. Transparency International Denmark
9. Transparency International European Union
10. Transparency International France
11. Transparency International Germany
12. Transparency International Kenya
13. Transparency International Lebanon
14. Transparency International Mauritius
15. Transparency International Mexico (Transparencia Mexicana)
16. Transparency International Mongolia
17. Transparency International Netherlands
18. Transparency International New Zealand
19. Transparency International Panama
20. Transparency International Portugal
21. Transparency International Russia
22. Transparency International United States

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# ENDNOTES

<sup>1</sup> Transparency International (July 2022), *Paving the way for enhanced trust transparency: Response to FATF's proposals to revise Recommendation 25*

<sup>2</sup> European Commission (16 September 2020), *Report from the Commission to the European Parliament and the Council assessing whether member states have duly identified and made subject to the obligations of Directive (EU) 2015/849 all trusts and similar legal arrangements governed under their laws*. Retrieved on 22 July 2022 from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A52020DC0560&rid=5>

<sup>3</sup> See Annex 1 for the European Commission's full consolidated initial list of identified similar legal arrangements.

<sup>4</sup> Some examples of potential higher risk cases could involve legal arrangements that span various jurisdictions and/or are governed under the laws of offshore jurisdictions; PEPs being part of the control structure of legal arrangements; legal arrangements that are controlled by other legal arrangements and/or shell companies; and legal arrangements that are part of complex corporate structures.

<sup>5</sup> FATF (May 2022), *Anti-money laundering and counter-terrorist financing measures – France, Fourth Round Mutual Evaluation Report*. Retrieved from: <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-france-2022.html>

