TRANSPARENCY INTERNATIONAL
the global coalition against corruption

PAVING THE WAY FOR ENHANCED TRUST TRANSPARENCY

Response to FATF's proposals to revise Recommendation 25

I. SCOPE OF LEGAL ARRANGEMENTS, RISK ASSESSMENT & FOREIGN TRUSTS

To clarify the scope of legal arrangements (other than express trust) which should be subject to R.25 requirements, the FATF is considering to revise the definition of legal arrangements by referring to Article 2 of the Hague Convention on the law applicable to trusts and their recognition so that jurisdictions can use this as a basis of whether legal arrangements have a similar structure or perform a similar function to an express trust. [1]

Further, in light of the variation of legal arrangements across countries and similar to the R.24 requirements, FATF is considering whether countries should apply measures to understand the risk posed by trusts and similar legal arrangements governed under their law or which are administered in their jurisdictions or whose trustees are residing in their jurisdictions, and to take appropriate steps to manage and mitigate these risks. For other legal arrangements, the FATF is considering to limit the scope of risk assessment and mitigation obligations to such legal arrangements that have sufficient links with the countries.

QUESTION 1

In this context, are the following concepts sufficiently clear? If not, how could they be improved?

(a) "governed under their law"

(b) "administered in their jurisdiction"

(c) "trustee residing in the jurisdiction"

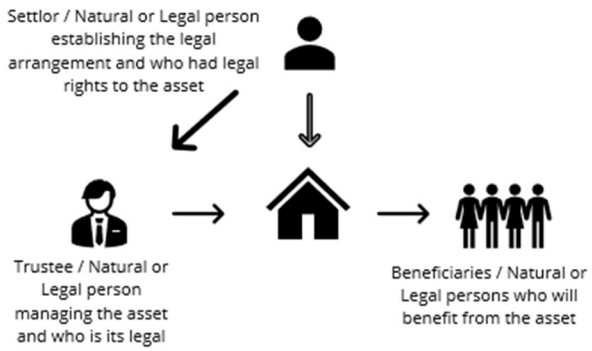
(d) "similar legal arrangements" (as compared with express trust)

Article 2 of the Hague Convention does not consider that there could be more than one settlor and/or protector to a trust. It is important for Recommendation 25 to account for this by making the requirement to collect information on the settlor and the protector **plural** (i.e., by adding "(s)" at the end of each word).

When it comes to the concepts, there are specific gaps that should be clarified. The concepts explicitly cover neither the jurisdiction where the asset is located nor where the beneficiaries of the legal arrangement are located. Both of these are essential elements of a trust or a similar legal arrangement, triggering the need to cover both. Wording examples could be: "beneficiaries residing in the jurisdiction" and "asset located in the jurisdiction".

When it comes to the definition of "similar legal arrangements" (as compared to express trusts), we believe this is also not sufficiently clear. It would be important to list the characteristics of legal arrangements 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,[2] 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 for instance fiduciary arrangements. Some examples identified by the European Commission of similar legal arrangements include: fiducie, treuhand, fideicomiso, svěřenský fond, funds and foundations.[3] An illustration of a typical legal arrangement involving a physical asset (in this case, a property) can be found below.



As shown in the graph, the parties to legal arrangements do not have to mandatorily be natural persons. Legal persons can also take the roles of settlor, trustee, beneficiaries or any other that ultimately provides such a person effective control over the arrangement. Structures of control involving legal entities will be more complex and can bring more complications as their beneficial owners will also have to be established in investigations.

QUESTION 2

What could be the pros and cons associated with the new suggested risk assessment? What could be the potential "sufficient links" for foreign-created legal arrangements (e.g., residence of trustee, location of asset etc.) for the purpose of risk assessment?

The major red flag concerning the new suggested risk assessment is how it is limited to only a few elements of the legal arrangement: the jurisdiction by which the trust is governed; the jurisdiction of residence of the trustee; and the jurisdiction where the trust is administered. This list should be broadened to include the jurisdictions in which the asset is located and where the beneficiaries are residing. Risk assessments should be conducted in all jurisdictions with which the trust or any party to the trust is located.

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

We would caution that any risk assessment on trusts and legal arrangements will likely be difficult to conduct and subject to limitations. The fact that trusts and legal arrangements in many countries are not required to be registered in order to have legal validity, makes it challenging to even assess the risks they pose. Moreover, previous assessments and reports also underscore a limited number of investigations and cases involving trusts – not because they do not pose risks, but because the level of secrecy of these instruments make detection and investigation more difficult and resource-intensive.

QUESTION 3

Are there any other considerations with respect to scope of legal arrangements or risks posed by legal arrangements that FATF should factor into its review of R. 25?

To launder money and hide their illicit funds, criminals could take advantage of the fact that trusts are governed by private law and shrouded in secrecy. In many jurisdictions they would not necessarily have to register trusts (due to lack of tax consequences and/or central trust registries) for them to have legal validity. Therefore, governments and their competent authorities could be unaware of the existence of many trusts potentially hiding criminal funds. In Australia[4] and New Zealand[5], for instance, authorities stated they do not know exactly how many trusts there are in their jurisdictions.

When trustees engage with financial institutions, it could also be the case that they are not obliged to disclose their status as trustees, which is the reality in Australia,[6] Canada,[7] New Zealand[8], for example. Even though financial institutions are meant to be doing their CDD checks, one can reasonably conclude that it would be hard for such entities to have a full understanding of whether their client is acting on behalf of themselves or someone else (especially in cases where there are no registers of trusts). This can – and indeed does – limit the information available on trusts to competent authorities.

There is an over-reliance on the private sector as a major or sole source of beneficial ownership information of trusts, which has proven insufficient through the years. This can be observed through the compliance and effectiveness rates of Recommendation 25 and Immediate Outcome 5.

In countries where trusts are required to register, there might be substantial gaps in the rules defining the registration triggers. This could lead to important loopholes when it comes to the information on all trusts and similar legal arrangements available to authorities. A new report by Tax Justice Network, which uses data from the Financial Secrecy Index, shows that at least 120 countries already require some types of trusts to register with authorities under certain circumstances.[9] The triggers for registration however vary significantly. Registration can be triggered by a trust being created under local laws,

owning assets, having tax consequences, a local trustee or a business relationship (e.g., bank). There are however two main problems with the current approach to registration: (i) the triggers might not cover all relevant connections of a trust in a given country; (ii) registration only applies to certain types of trusts and legal arrangements, leaving significant loopholes in the case of other types.

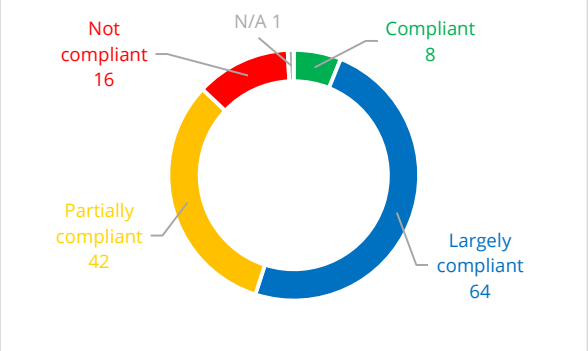
Moreover, the same analysis undertaken by the Tax Justice Network shows that in only about half of the countries that require certain trusts to register under certain circumstances, there is a requirement that the beneficial owners of the trusts should be disclosed. This means that in most countries that currently have some sort of trust registration, information about the real individuals in control and benefitting from trusts is not available.

This reinforces the need for (i) the mandatory registration of all trusts and similar legal arrangements established or operating in a given country and (ii) the requirement that the register includes all parties to the trust and their beneficial owners. This approach seems to have been proven more effective in France[10] and the United Kingdom,[11] for example. Both countries feature among the few countries rated as compliant and largely compliant with Recommendation 25, respectively, and having achieved a substantial level of effectiveness regarding Immediate Outcome 5.

Registries allow competent authorities to account for how many trusts there are in a given jurisdiction and to have centralised and timely access to all the needed information. Without such mechanisms, countries like Australia, Canada, New Zealand and the United States have a lot more difficulties obtaining relevant information. They first need to ascertain which entity is storing the information, and then rely completely on their work. There are many challenges with this approach, but in particular concerns over accuracy due to their own reliance on the information provided by their clients and which cannot always be confirmed via public sources. This has been reporting as "challenging" by New Zealand's law enforcement authorities,[12] for example. Similarly, in Australia, the quality of information retained by FIs (the jurisdiction's only reporting entities) have been considered to be "questionable".[13]

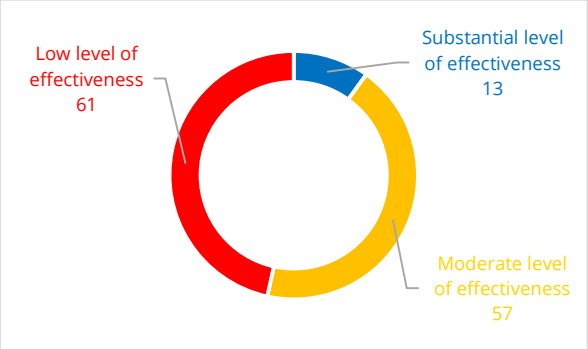
In Canada's Mutual Evaluation Report (September 2016), it is stated that instances in which LEAs were able to identify the beneficial owner(s) of Canadian legal arrangements appear to have been very limited[14], further corroborating the point that without centralised registers, competent authorities face more challenges and it becomes practically nearly impossible to fulfil FATF's Recommendation 25.

Figure 1: Compliance Rates of Recommendation 25 (FATF)



Source: Transparency International based on FATF Mutual Evaluations and Follow-Up Reports, 21 July 2022

Figure 2: Effectiveness of Immediate Outcome 5 (FATF)



Source: Transparency International based on FATF Mutual Evaluations and Follow-Up Reports, 21 July 2022

Note: No jurisdiction has achieved the "High Efficiency" label for IO 5.

II. OBLIGATIONS OF TRUSTEES UNDER R. 25

FATF is considering how to further clarify obligations on trustees (and persons holding an equivalent position in a similar arrangement) to obtain and hold adequate, accurate and up-to-date information, related to parties to a trust. Inter alia, R.25 currently requires trustees to obtain and hold information on beneficiaries (defined to cover persons entitled to benefit from any trust arrangement) or classes of beneficiaries. This requirement does not extend to objects of powers of discretionary trusts, who may derive a benefit from a trust in the future, notwithstanding that there is a likelihood that such an object will become entitled, e.g., they are named in a letter of wishes, or they may present a higher ML/TF risk. Specifically, the FATF is considering to set the nexus of such obligations to countries where the trustees reside and/or where the trusts are administered. Also, the FATF is considering to bring professional and nonprofessional trustees under the same set of requirements by extending the requirement for records to be kept for at least 5 years to such non-professional trustees.

QUESTION 4

What are the pros and cons of expanding the extent of information which trustees should hold to include the objects of power in the context of discretionary trusts? Is the concept of "objects of power"[15] sufficiently clear and reasonable? Are there any other terms that you would recommend FATF to use instead of "objects of power"?

The inclusion of the concept of "objects of power" is considered to increase beneficial ownership transparency and limit the existing loophole in discretionary trusts. "Objects of power" should be quoted among the beneficiary/beneficiaries and/or class of beneficiaries.

The term "objects of power" should be defined in the Interpretive Note, as it might not be fully understood by all parties. To make it easier for those accessing the text, it should be considered in the same line as beneficiaries/class of beneficiaries.

FATF could use "nominated or discretionary potential class of beneficiaries" instead of "objects of power" as it is textually more in line with the other denominations in use.

QUESTION 5

Do you agree with the proposed nexus of such obligations based on residence of trustees or location where the trusts are administered? Compared to the current obligation incumbent on countries that have trusts governed under their law, do you see pros and cons from such a change (e.g., would there be a difference in terms of efforts to collect the information in cases where a trust may be administered in a country in which a trustee is not resident)?

As for the first question, the proposed nexus of the obligations on the basis of the residence of trustees or location where the trusts are administered is appropriate. Nevertheless, it is not enough to guarantee that trust information is held in all jurisdictions related to a given legal arrangement.

It would be fundamental to broaden the nexus of such obligations to countries where the assets are located. This would be in line with the European Union's 5th Anti-Money Laundering Directive (Article 31, 3a), which establishes that when trustees or persons in similar positions acquire real estate assets and/or enter into business relationships on behalf of a trust, the jurisdiction where this occurs is to host the beneficial ownership information of the legal arrangement in their register.

Additionally, a nexus of such obligations should also extend to countries where the beneficiaries of the legal arrangements are located, as these are fundamental parties to a trust and will be the end beneficiaries of the assets held by it.

Regarding the second question, Transparency International agrees that both professional and non-professional trustees should be under the same set of requirements regarding the keeping of records for at least 5 years after the relationship with the trust is over or the trust is dissolved. However, the better scenario would be for Recommendation 25 to

endorse the end of unregulated and unlicensed trustees and make it mandatory for trustees to be licensed individuals/legal entities and thus professional trustees by default.

QUESTION 6

Do you see challenges in respect of record-keeping obligations for non-professional trustees noting that all other obligations under R. 25 apply to such trustees?

As suggested above, all trustees should be regulated and licensed; thus, by default, professionals. Only through the end of non-professionalisation of trustees can states be sure to meet FATF standards.

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.

To mitigate potential challenges, countries should streamline and clearly communicate the process by which one obtains a trustee license, as well as provide training and guidance on compliance requirements and anti-money laundering obligations.

III. DEFINITION OF BENEFICIAL OWNERS

The FATF defines beneficiaries and beneficial owners differently. FATF is looking into whether a clarification of the definition of beneficial owner in the case of legal arrangements is warranted. A separate definition could further clarify the concept of ownership and control in the context of legal arrangements. Under this approach, beneficial ownership information could include the identity of each: (i) settlor; (ii) trustee(s); (iii) protector (if any); (iv) beneficiary, or where applicable, class of beneficiaries or objects of a power; and (v) other natural person(s) exercising ultimate effective control over the arrangement. In the case of a legal arrangement similar to an express trust, beneficial owner 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.

By comparison, the following is the current definition included in the FATF:

"Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer 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 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 person or arrangement."

QUESTION 7

Would you support the insertion of a standalone definition for beneficial owner in the context of legal arrangements (distinct from that for legal persons)? Or would it risk creating confusion with the definition of beneficial owners applicable to legal persons? What relevance should control have in the definition of beneficial ownership of legal arrangements to address AML/CFT risk?

Transparency International sees no need for creating a standalone definition for beneficial owner in the context of legal arrangements. The concept of beneficial ownership of a legal entity or a trust does not differ. What differs are the categories of individuals who should be identified. In the case of trusts and similar legal arrangements, the beneficial owners of all parties to the trust should be identified. This includes:

+ settlors
+ trustees
+ protectors (if any)
+ beneficiaries or discretionary beneficiaries (objects of power)
+ any other natural person exercising ultimate effective control over the arrangement

The identification of the beneficial owners of trusts should follow the same requirements applicable to the beneficial owners of legal entities, as in only natural persons can be considered to be beneficial owners. In the case that another trust or a legal entity is a party to a trust, their beneficial owners will have to be established and listed.

The establishment of the natural person(s) exerting control over a trust or similar legal arrangement is fundamental. It should be of the utmost importance to highlight that control over trust assets/bank accounts is relevant independently of whether or not that person (usually a trustee or trust administrator) is currently benefiting from such assets.

Finally, following changes implemented with the revision of FATF Recommendation 24, the definition of "controlling shareholders" if based on a threshold should take into account the level of risk of trusts. In this regard, we would recommend that either no threshold applies in the cases of trusts or a threshold that is lower than the current 25 per cent adopted by many countries.

QUESTION 8

Does limiting the information regarding beneficiaries to only those who have the power to revoke the arrangement or who otherwise have the right to demand or direct (that is, without the

consent of the trustee) distribution of assets seem reasonable?

Transparency International's position is that regardless of the powers granted to the beneficiaries of a trust, if the individuals are set to benefit from a trust or the trust was created in their name, then they should be identified as beneficiaries.

Cases in which beneficiaries do not have the power to revoke the arrangement or demand or direct the distribution of assets do exist, and these natural persons will still benefit from the trust's assets and/or bank accounts in the future, so excluding them from the definition of trust beneficiaries does not seem appropriate and could create new loopholes.

QUESTION 9

Do you have any specific suggestions for a different standalone definition?

As mentioned, we do not see the need for a standalone definition for beneficial owners of trust. Our suggestion is to define which parties of the trust should be identified together with their respective beneficial owners (see response to question 7). In this context, when it comes to defining the parties to trusts, it would be important to state "settlor(s)" instead of "settlor", as a legal arrangement might have more than one single settlor. The same applies to protectors, it would be important to state "protector(s) (if any)" instead of "protector (if any)".

Considering that trusts might also have trust administrators and similar actors, it would be important to add "trustee(s) and any natural person(s) with similar administrative powers over the legal arrangement".

IV. OBSTACLES TO TRANSPARENCY

In light of potential complexities of legal arrangements, FATF would like to gather further input on how legal arrangements could be misused for money laundering/terrorist financing purposes. Themes which are under consideration include complex ownership structures, flee/flight clauses etc.

QUESTION 10

What features of legal arrangements do you see being used for obscuring ownership?

Are these linked to their involvement in the creation of broader complex structures or inherent to legal arrangements?

Trusts are created through private law and thus their existence does not even have to necessarily be known to competent authorities for them to have legal validity. This creates problems, as these instruments might be used to hide assets/monies.

The lack of [central] registration and the existence of non-professional trustees enhances the risk that some trusts will exist and operate across borders without competent authorities knowing about them and their activities.

Governments relying on the private sector to collect information on trusts' beneficial owners might be at risk of obtaining no information at all in cases where: (i) trustees are not obliged to disclose their status and (ii) customer due diligence checks do not establish that they are acting as trustees. Additionally, it could also be the case that trusts do not have any relationship with the reporting entities, thus enabling them to operate in absolute secrecy within the jurisdiction.

Trusts also might have very complex control structures due to the flexibility provided to them by the law, which allows for the establishment of any sort of arrangement. Furthermore, trusts might be used in corporate structures to hide the identity of the beneficial owners of legal entities.

According to *The Puppet Masters* study (2011),[16] which spans 30 years, trusts have been commonly used in grand corruption schemes together with shell companies as identity concealment instruments. A 2018 analysis undertaken by FATF and the Egmont Group also highlights some of the risks trusts pose to the concealment of ownership. The report states that "the interaction of the trust with other legal persons adds an additional layer of complexity and helps frustrate efforts to discover beneficial ownership (…) It is also possible that the use of legal arrangements may increase the difficulty of investigating and identifying the beneficial owner, thereby explaining their relatively low prevalence in the case study sample".[17]

Adding to this, there is also the complex nature of jurisdiction(s) by which the trust should be governed. It is not always straightforward to identify the jurisdiction a trust should be governed by. Trusts might have been formed in country A through the laws of country B, have their settlor in country C and their trustee in country D, while the beneficiaries could be in various other countries, as well as the assets. This complexity could lead to no jurisdiction being able to access all trust information and relying on information obtained by another, thus making it more difficult to competent authorities to obtain timely access to any trust information not retained within their jurisdiction.

QUESTION 11

What are the legitimate uses of flee/flight clauses?

What are the challenges associated with these clauses?

Flee clauses being used in cases where the trustee is unresponsive (e.g., not responding for over a large period of time to other trust parties' communications) and/or no longer conducting trust business/maintenance appropriately (e.g., not paying the necessary taxes on an asset) is legitimate. Alongside this scenario, in cases when there is a circumstantial change in the jurisdiction where the trust has its situs (e.g., civil war), it could be deemed appropriate to change its situs.

However, the problem with such flee clauses is that they could easily be abused in order to easily move the trust from a jurisdiction which has improved their beneficial ownership reporting standards or other requirements to another that has not, for example.

Additionally, the fact that trustees are able to be replaced so freely could lead to competent authorities not being informed in due course of time about the changes and not being able to refer to trustees as a source of information.

In order to avoid that the flee clauses are abused, strict rules should be imposed through stipulating that in the trust deed the specified scenarios for a trust situs to be moved and/or for a trustee to be substituted are made clear and are appropriate with the scenarios deemed legitimate by FATF. These scenarios should be established in the interpretive note to this Recommendation.

QUESTION 12

What are the key obstacles to transparency of trusts and other legal arrangements?

According to *The Puppet Masters* study (2011),[18] trust's secrecy is a great problem to law enforcement authorities, who, in some cases, have avoided actively investigating incidents involving trusts, as it is very difficult to prove their role in a crime and they prove to be a "hurdle" to investigate.

This is problematic as it might be leaving a number of actors unaccountable for serious offenses and crimes. As stated above, there are many obstacles to trusts' transparency, such as:

+ Trusts are a product of private law and do not always need to be registered to have legal validity. This means governments would not necessarily even know of their existence. Not knowing exactly how many trusts there are in a given jurisdiction makes the work of law enforcement authorities much harder and adds more complexity to trust-related investigations, impacting their ability to follow the money and go after potential money laundering cases.
+ The existence of non-professional trustees, which are under lesser AML/CFT obligations than their professional counterparts (if any), also makes it more difficult for authorities to collect important trust information, including on beneficial ownership. In some cases, like that of Australia and the United States, only financial institutions are considered to be reporting entities, which limits the amount of information.[19] Furthermore, there might not even be an obligation for trustees to collect and maintain information on beneficial ownership of trusts, which is the case in Australia,[20] Canada,[21] New Zealand[22] and the United States.[23]
+ In many jurisdictions (e.g., Australia,[24] Canada,[25] New Zealand[26]) there is no obligation for trustees to disclose their status upon entering into a relationship with obliged entities, which would again restrict the information available to authorities.
+ Trusts' control structure is complex, especially in cases in which beneficiaries have not been named in the trust deed directly (e.g., settlor could establish that assets in the trust shall be released to the first person to land on Mars, which will remain a mystery until someone does) or in which other trusts and/or legal entities are part of their control structure.
+ As stated previously, trusts are often added in corporate structures to create another layer of complexity and secrecy, having been linked to several grand corruption schemes as instruments to hide beneficial owners' identities.[27]
+ Parties and assets to the trust might be spread out through various jurisdictions, making it harder for authorities to obtain all the necessary information in a timely manner, because of their reliance on a third country. This has been particularly the case for Canada, where several investigations involving Canadian companies owned by foreign trusts did not lead anywhere. Law enforcement authorities stated they were unable to identify the beneficial owners of such legal arrangements due to a lack of response to their requests for information from foreign jurisdictions.[28]
+ The inexistence in many jurisdictions of central registries of assets and/or trusts makes it harder for authorities to access beneficial ownership information in a timely access, which has been brought up by authorities in Australia,[29] Canada[30] and the United States,[31] for example.
+ In cases where central registries do exist, inadequate coverage, lack of public access, lack of connection with corporate registers and asset registers, as well as lack of verification of all information provided, would still be hindering the efforts of authorities and of obliged entities looking to verify information provided to them by their clients.

V. APPROACH IN COLLECTING BENEFICIAL OWNERSHIP INFORMATION

FATF is considering ways to strengthen the requirement for countries to have access to BO information in respect of legal arrangements and contemplating whether countries should be required to use mechanisms besides trustees, including for example: (i) a public authority or body holding information on the beneficial ownership of trusts or similar legal arrangements, (ii) asset registries, (iii) information collected by other competent authorities, or (iv) information collected by other agents or service providers including trust and company service providers, investment advisors or managers, accountants, or lawyers.

QUESTION 13

Can such an approach ensure that competent authorities have timely access to beneficial ownership information in the context of legal arrangements?

Transparency International believes that the information held by trustees should not be the sole source of beneficial ownership information of trusts and similar legal arrangements. Such an approach does not ensure authorities have timely access to the information. It also does not ensure any sort of control over the quality of information available.

The different approaches suggested all have their own strengths and weakness. But, if used in combination, they could provide authorities with access to more reliable information on trusts and similar legal arrangements. In this context, we believe the best solution would be a multi-pronged approach with (i) a requirement that countries rely on different sources and (ii) the registration of the trust with a legal authority being a requirement. This would also be aligned with the recent revision of Recommendation 24.

(i) a public authority or body

Competent authorities should have direct and unfiltered access to information about trusts and other similar legal arrangements and their beneficial owners recorded in a register held by a public authority or body. The registration of trusts and legal arrangements should be a requisite for them to acquire legal validity. The information should be verified by public officials and there should be adequate penalties for the provision of false information and for delays in providing the necessary data.

Without such registration efforts, trusts and other legal arrangements remain subject to abuse by the corrupt and other criminals. Moreover, competent authorities will continue to face incredible challenges – from being unable to know investigate cases involving trusts to not knowing exactly how many trusts operate in their countries – and the risks these challenges pose[32] to the accuracy of the information held by the obliged entities.[33] The lack of trust registers adds an additional burden to criminal investigations, ultimately impacting the decision of authorities whether to pursue or not a case when a legal arrangement is involved.[34]

(ii) asset registers

Asset registers should be considered a supplementary source of information to aid in identifying assets related to the trusts found in the beneficial ownership registers. These should not be the primary source of information for competent authorities. Considering that in most countries, asset registers do not contain beneficial ownership information, but simply legal ownership data, authorities would still lack information about the real individuals who are parties to the trust.

Moreover, while some asset registers (e.g., for real estate) contain detailed information about trusts that are owners of the asset, including the trust deed, this is not always the case. In many countries, the asset register will only name the trust as the owner without identifying the parties to the trust or providing any further information.

(iii) information collected by other competent authorities

Other competent authorities, like the central bank, securities commissions or tax authorities might also collect certain types of information of some trusts or legal arrangements. Tax Authorities, for example,

might collect information on trusts with tax consequences in their jurisdictions, but not necessarily on other trusts linked to their jurisdiction.

Another potential challenge is that the information collected by these authorities does not necessarily include beneficial ownership information. As detailed in New Zealand's Mutual Evaluation Report (2021), trusts required to register with tax authorities only have to provide information on trustees and, in case of income distribution, on beneficiaries. This approach leaves the remaining parties to the trust unidentified. Therefore, and similar to the point above, using competent authorities' datasets (e.g., the tax authorities' tax files) as a primary source of information would lead to lengthier and more complex investigations, which could potentially not lead to concrete results.

Moreover, to be used as a source of information, it is fundamental that other authorities are able to access the information in a timely manner. However, as long as the information is not comprehensive, their records should serve only as supplementary sources of information.

Countries could opt to expand the scope of the information already being collected by certain authorities and for the coverage of the trusts that required to register to have a more comprehensive registration mechanism in the country, as suggested under point (i).

(iv) information collected by other agents or service providers

While it is fundamental for agents and service providers to a trust to conduct client due diligence (CDD), their records should also not be a primary source of information (see detailed list of challenges in response to Question 14).

For agents and service providers to trusts, their customer due diligence processes should be conducted to gain a full understanding of clients – including their beneficial owners – and their business activity. Conducting good due diligence will allow these professionals identify any unusual behavioural pattern of their customer. The better agents and service providers get at collecting good documentation, verifying it and using it to predict client behaviour and needs, the better it will be for their business, as not only will they be able to provide better service to their clients, but also be able to mitigate potential reputational risks and/or penalties in case their client uses their services for illicit purposes.

The documentation kept by these agents and service providers will depend on the internal procedures and rules of each, as there are no centralised rulebooks that all should be following. Therefore, the quality of information on record will also vary between agents and service providers, and various interpretations of what type of documentation they need for their purposes will arise. This is to say, the private sector will not offer a reliable source of information in all cases and should be resorted to for supplementary informational support only when truly essential.

Moreover, competent authorities face many challenges when it comes to accessing the beneficial ownership information they need. Firstly, they will have to establish a link between a legal arrangement and an agent or service provider who they should ask for relevant information. Secondly, they must go through an internal process to be able to request such data. Thirdly, they will have to rely on the timely dispatch of information from such agents and service providers, which – as stated in the MERs of Australia,[35] Canada,[36] New Zealand[37] and the United States[38] – is not always warranted. Lastly, as stated above, the data kept by these entities might not be reliable and/or helpful towards the investigation (see our response to Question 14).

QUESTION 14

Have you seen any issues/challenges with including information collected by other agents or service providers including trust and company service providers, investment advisors or managers, accountants, or lawyers as a mechanism?

There are several risks and challenges that come with relying on agents or providers as the primary source of beneficial ownership information:

+ The reliance on information held by agents or service providers prevents proactive investigations. Authorities already need to have suspicions about a trust when opening an investigation and will seek beneficial ownership information only to confirm or gather more evidence.
+ There is no guarantee that legal arrangements will have relationships with either of these types

of service providers. Trusts are a product of private law and without an obligation for them to be registered, there is no way to establish how many of these instruments exist in a given jurisdiction.[39] Furthermore, not all jurisdictions require trustees to disclose their status when entering into relationships with obliged entities, which might result in these entities dealing with trustee clients without the knowledge that they are acting on behalf of someone else.[40]

+ Competent authorities must take the additional step to establish a link between the legal arrangements and the FIs and DNFBPs with whom they have a relationship or conducted a transaction.
+ There are limitations to the availability of beneficial ownership information of express trusts in cases involving non-professional trustees, as they are not subject to CDD obligations, as stated in New Zealand's MER (2021).[41]
+ Legal arrangements' parties and assets might be scattered throughout various jurisdictions, which might give rise to multiple business relationships with FIs and DNFBPs from various countries. This adds more complexity to investigations, as law enforcement authorities will also be heavily dependent on foreign counterparts. This has proven challenging in Canada, where not all requests for information directed at their foreign counterparts were responded to in cases involving foreign trusts.[42]
+ Timely access to information after the authorities' requests might also not be granted in a timely manner by FIs and DNFBPs, which has been reported to be the case in the Australia, Canada, New Zealand, and the United States.
+ To request information from obliged entities, competent authorities need to follow internal processes, which by default can cause delays. In some jurisdictions, it is mandatory for authorities to provide a court order when requesting information; thus, contributing to a lengthier investigation, without timely access to information, and limited in terms of intelligence work.
+ The information kept by obliged entities might not be verified independently,[43] as obliged entities tend to rely on customer provided information alone, which leads to some authorities questioning the quality of the data stored by these entities.[44]
+ There is also the possibility that information is not updated in their internal databases as frequently as it should and thus might not reflect the reality of the legal arrangement at the time when competent authorities have access to it.
+ There is also the risk that obliged entities are not adequately regulated or supervised.

QUESTION 15

Do you think that a multi-pronged approach should be followed for accessing beneficial ownership information of legal arrangements, consistent with Recommendation 24?

Or would the features of legal arrangements make a single-pronged approach preferrable instead?

What are the pros and cons, including in relation to administrative burden, from these approaches?

A multi-pronged approach should be followed for accessing beneficial ownership information of legal arrangements. It would nevertheless be important that trusts and similar legal arrangements are registered with a public authority or body as a condition for having legal validity. Therefore, a trust register should be a required component as part of a multi-pronged approach.

This approach would also bring more consistency between the treatment given to legal entities and arrangements.

FATF's Recommendation prescribes timely access to beneficial ownership information; however, in practice, competent authorities from several jurisdictions[45] have stated that they do not have timey access to such information. This is a result of authorities not having access to a register where all data concerning beneficial ownership of trusts is deposited. Therefore, it would be essential to make it a requirement for jurisdictions to establish such registries.

Similar to the conclusions reached with the revision of Recommendation 24, the benefits of establishing a register include:

+ Authorities will be able to have a complete overview of trusts in their jurisdiction.
+ Authorities will have direct, timely and unrestricted access to beneficial ownership

information of all trusts and similar arrangements formed or operating in their countries.
+ Authorities will be able to use the register for proactive investigations once they can freely search the register and do not need to request specific information in a reactive manner.
+ During investigations, authorities will be able to avoid the risk of alerting or tipping off trusts' agents and service providers, as well as their parties.
+ Countries have the ability to have full control over what type of data is stored, as well as its quality.
+ Countries have more control over cases that could expose people at risk.
+ Countries can use data for analysing money laundering risks and therefore improving policies, supervision and enforcement.

If trust registers are open to the public, the benefits are even greater:

+ Foreign competent authorities will have direct access and will not need to resort to lengthy international cooperation requests.
+ Obliged entities and other businesses can use the data in due diligence processes, to vet business partners and suppliers, and make decisions on investments.
+ Other government bodies not directly tasked with anti-money laundering – such as auditors, procurement officials, competition authorities, anti-corruption agencies, election management bodies and environmental agencies – can access and use the information to detect conflicts of interest, fraud and other wrongdoing.
+ Civil society and journalists can scrutinise the data, revealing conflicts of interest and wrongdoing as well as improving the accuracy of the data.
+ It may deter criminals from abusing legal arrangements, as it has been seen in existing cases of publicly accessible beneficial ownership registries,[46] which would improve the marketplace integrity of any economy.

There are no disadvantages to the register approach; however, there are challenges that need to be mitigated to ensure the register is useful and reliable.

Most of these challenges involve the establishment of the register and the regulatory and institutional framework governing it. These challenges have been adequately identified in the context of Recommendation 24 and should also be considered in the context of a trust register.

Information collected and kept during the customer due diligence processes of obliged entities and/or trustees[47] should be seen as a supplementary source of information. The challenges and risks that concern using the private sector as the sole source of information have been detailed in response to questions 13 and 14.

QUESTION 16

Are there any other mechanisms that FATF should consider as a reliable source of beneficial ownership information for competent authorities?

Other public registries can be reliable data sources in case the information is verified and updated regularly.

VI. ADEQUATE, ACCURATE & UP-TO-DATE INFORMATION

FATF is considering how to clarify the key attributes of access to information by competent authorities, that access should be timely, and information should be adequate (to identify the natural persons who are the beneficial owner(s) and their roles in the trust), accurate (i.e. verified using reliable, independently sourced/obtained documents or other methods, on a risk-sensitive basis) and up-to-date (i.e. updated within a certain period following any change). This would leverage the approach taken in the revised R.24, adopted in March 2022 (see R.24 Interpretive Note paragraph 9 for reference).

QUESTION 17

Do you see any concerns with the suggested requirements?

1. Adequate

For information to be adequate, there should be 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 of 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

In case 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.

2. Accurate

The accuracy of the information on the parties and beneficial owners of trusts and similar legal arrangements should 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.[48]

3. Up-to-date

The definition is kept vague by the usage of the term "certain period of time". This could be interpreted in various ways and therefore should be more precise on the timeframe by which information is confirmed/updated (e.g., by establishing a minimum timeframe for such updating processes to take place).

Transparency International suggests that any change to legal arrangement's control structure should be communicated to authorities in charge of the register, as well as to the obliged entities they might have 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 18

In addition to trustees, who could play a role in the verification of BO information in the context of legal arrangements?

Similar to our response to a public consultation on Recommendation 24, we maintain that the primary responsibility for verifying beneficial ownership

information should lie with the register authority (or public body responsible for collecting beneficial ownership information of trusts and legal arrangements). The law should mandate the register authority to independently verify information provided by trustees or other parties to the trust. Adequate powers and resources should be given to the authority to check the information, request documents, carry out inspections and sanction non-compliance.

The verification process involves ensuring that people named in the register are who they say they are (authentication), that those persons have agreed to be involved in a legal arrangement (authorisation), and that all the registered data is valid (for example, the trust deed is legally valid, the dates of birth match those that has been indicated, and the roles assigned to each party are accurate).

In addition to collecting documentation that confirms the identity of all parties to a trust, register authorities should also rely on other mechanisms to verify information, including:

+ electronic forms that include as many autogenerated fields as possible, and that can serve to validate and constrain responses to be entered (for example, nationality, address, postal code and date of birth)
+ cross-checking information against existing government databases and registers (such as tax registers, citizenship registers, and asset registers)
+ vetting information against sanctions and embargoes lists, PEP lists and adverse media

Moreover, register authorities should conduct additional checks based on risk factors to ensure information is up-to-date and identify potential red flags, including inspections at the premises of trustees' places of business. Register authorities should also be required to report any suspicion to the country's financial intelligence unit (FIU).

Quality and accuracy can be further improved through the establishment of discrepancy reporting requirements and the publication of beneficial ownership data to allow other users – such as journalists and civil society – to scrutinise the register.

Data should be online and freely accessible, allowing it to be collected and structured in a way that enables the information to be easily cross-checked against other databases.

Countries should require that financial institutions and DNFBPs, as well as competent authorities, report discrepancies to the register if the information recorded in the register differs from the information collected during CDD processes or investigations. A red-flag system should be in place to alert users that there is a discrepancy report under analysis until the inconsistency is resolved.

QUESTION 19

Can the notion of "independently sourced/obtained documents, data or information" in the definition of accurate information pose any issues for the private sector and, if so, how?

In cases where there are no public sources for client information, it seems unfeasible for the private sector to be able to obtain and verify information through data and documents which have not been provided by their clients.

In the case of trusts, it would be almost impossible for a financial institution to verify trust-related information in countries without asset registers and/or trust registers, let alone obtain an independent set of current data and documents.

VII. GENERAL QUESTIONS

QUESTION 20

What are the potential issues/challenges for the private sector regarding implementation of the R. 25 requirements?

According to some FATF Mutual Evaluation Reports, one of the main challenges for the private sector is **verification** of beneficial ownership information provided by their clients.

QUESTION 21

Do you see any challenges in obtaining information regarding beneficial ownership information of legal arrangements when the trustee (or equivalent) resides in another jurisdiction or when the legal arrangements is administered abroad?

As per Canada's Mutual Evaluation Report,[49] law enforcement authorities have found it challenging when there are foreign trusts in the corporate structures of Canadian companies. In fact, it is stated that it was "not possible" for authorities to identify the beneficial owners of such instruments, due to a lack of response from their foreign counterparts.

This highlights the challenge that comes with cooperation between authorities to obtain information, as it might not always lead to timely access to beneficial ownership information, if at all.

QUESTION 22

Are there any suggestions to improve R. 25 and its Interpretive Note to better meet its stated objective to prevent the misuse of legal arrangements for money laundering or terrorist financing?

The only way to ensure that the Recommendation's standards can be met – both legally and in practice – is to make it mandatory for jurisdictions to require that trusts and similar legal arrangements register with a public authority or body, thereby conditioning their legal validity on registration. The requirement to register should include collection of information on the beneficial owners of all parties to the trust. The information disclosed should be maintained ideally in a central register accessible at least to competent authorities. Countries should consider measures to enable access to obliged entities and to the public, in general. This could be done by striking a balance between privacy and security concerns as recommended under Recommendation 24. In the EU, for example, individuals and organisations that can prove legitimate interest (e.g., journalists investigating financial crime) can request to access the data. Moreover, countries could opt for making only a subset of the data collected available to the public. In the case of trusts and legal arrangements, at a minimum the first and last names of trustee(s), settlor(s), protector(s) (if any), beneficiaries or class of beneficiaries, and any natural person with ultimate effective control over the legal arrangement, their month and year of birth, places of residence, nationality as well as a description of their roles within the trust should be accessible to the public or individuals with legitimate interest.

Authorities should also have timely access to adequate, accurate and up-to-date information held by other sources to supplement the information available in registers. This would also be consistent with the requirements under Recommendation 24.

Furthermore, to enhance accountability, trustees should be required to obtain licenses and become regulated agents under the law.

QUESTION 23

What are the areas in particular where the private sector would benefit from guidance regarding implementation of R. 25 requirements, including revisions described above?

Such areas include:

+ verification of information
+ documents that should be requested and/or accepted from their clients and how long they should be stored for
+ timeframe for updating the information

+ red flags for potential high-risk trusts (e.g., high-risk jurisdictions)
+ establishing the beneficiaries of legal arrangements

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 European Union
9. Transparency International France
10. Transparency International Germany
11. Transparency International Kazakhstan
12. Transparency International Lebanon
13. Transparency International Mexico (Transparencia Mexicana)
14. Transparency International Mongolia
15. Transparency International Netherlands
16. Transparency International New Zealand
17. Transparency International Panama
18. Transparency International Portugal
19. Transparency International Russia
20. Transparency International Slovenia
21. Transparency International United States

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ANNEX 1: GLOSSARY

Accurate	Describes information that was verified using reliable, independently sourced/obtained documents or other methods, on a risk-sensitive basis.
Adequate	~~Describes information that has been verified for accuracy (as this term is used in the Interpretive note to Recommendation 16).~~ Describes information that allows for the identification of natural persons who are the beneficial owner(s) and their roles in the trust.
Beneficial owner	*Beneficial owner* refers to the natural person(s) who ultimately owns or controls a customer 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 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 person or arrangement. FATF proposes to clarify the concept more in line with legal arrangements' specificities, especially when it comes to ownership and control. Under such approach, beneficial ownership information could include the identity of each: (i) settlor; (ii) trustee(s); (iii) protector (if any); (iv) beneficiary, or where applicable, class of beneficiaries or objects of a power; and (v) other natural person(s) exercising ultimate effective control over the arrangement. In the case of a legal arrangement similar to an express trust, beneficial owner 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.
Beneficiary	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 statutory permitted non-charitable trusts) are required to have ascertainable beneficiaries. While trusts must always have some ultimately ascertainable beneficiary, trusts may have no defined existing beneficiaries but only 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. This period is normally co-extensive with the trust perpetuity period which is usually referred to in the trust deed as the trust period.
Legal arrangements	~~Legal arrangements refers to express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso.~~ Legal arrangements are all those who fall under Article 2 of the Hague Convention on the Law Applicable to Trusts and their Recognition. "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. A trust has the following characteristics – a) the assets constitute a separate fund and are not a part of the trustee's own estate; 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; 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. 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."
Up-to-date	Describes information that is updated within a certain period following any change.

Note on formatting: All proposed amendments by FATF are coloured in red, with additions underlined and ~~deletions struck out~~.

ANNEX 2: 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
Belgium	Fideï-commis de residuo
Bulgaria	None
Czechia	Svěřenský fond
Denmark	None
Germany	No notification
Estonia	None
Ireland	(a) Express trusts (b) Statutory trusts (c) Trusts imposed or arising by operation of law
Greece	None
Spain	No notification
France	Fiducies
Croatia	None
Italy (*)	(a) Mandato fiduciario (b) Vincolo di destinazione
Cyprus (*)	(a) Εμπιστεύματα (b) Διεθνή εμπιστεύματα
Latvia	None
Lituania	None
Luxembourg	(a) Trusts (b) Foundations
Hungary	Vagyonkezelő alapítvány
Malta	(a) Trusts (b) Foundations
Netherlands (*)	Fonds
Austria	No notification
Poland	None
Portugal	No notification
Romania	fiducia
Slovenia	None
Slovakia	None
Finland	None
Sweden	None
United Kingdom	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 . (2019, October 24). 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 July 26, 2022, from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC1024(01)&from=FR

ENDNOTES

[1] See Annex 1.

[2] 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

[3] See Annex 2 for the European Commission's full consolidated initial list of identified similar legal arrangements.

[4] FATF and APG (April 2015), *Anti-money laundering and counter-terrorist financing measures – Australia*, Fourth Round Mutual Evaluation Report (MER). Retrieved from: https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-australia-2015.html.

[5] FATF (April 2021), *Anti-money laundering and counter-terrorist financing measures – New Zealand*, Fourth Round MER. Retrieved from: http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-new-zealand2021.html.

[6] FATF and APG (April 2015), Australia MER

[7] FATF (September 2016), *Anti-money laundering and counter-terrorist financing measures – Canada*, Fourth Round MER. Retrieved from: https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html

[8] FATF (April 2021), New Zealand MER

[9] Andres Knobel & Florencia Lorenzo (July 2022), *Trust Registration around the World: The Case for Registration under FATF Recommendation 25*. Tax Justice Network. Retrieved from: https://taxjustice.net/reports/trust-registration-around-the-world-the-case-for-registration-under-fatf-recommendation-25.

[10] FATF (May 2022), *Anti-money laundering and counter-terrorist financing measures – France,* Fourth MER. Retrieved from: https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-france-2022.html.

[11] FATF (December 2018). *Anti-money laundering and counter-terrorist financing measures – United Kingdom*, Fourth Round MER. Retrieved from: https://www.fatf-gafi.org/countries/u-z/unitedkingdom/documents/mer-united-kingdom-2018.html.

[12] FATF (April 2021), New Zealand MER

[13] FATF and APG (April 2015), Australia MER

[14] FATF (September 2016), Canada MER

[15] "Objects of power" means those persons who have an expectation or hope of a benefit arising from a trustee's power of appointment in a discretionary trust.

[16] Emile van der Does de Willebois, Emily M. Halter, Robert A. Harrison, Ji Won Park and J. C. Sharman (2011). *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. World Bank. Retrieved from: https://openknowledge.worldbank.org/handle/10986/2363.

[17] FATF – Egmont Group, 2018. *Concealment of Beneficial Ownership*. Retrieved from: https://www.fatf-gafi.org/publications/methodandtrends/documents/concealment-beneficial-ownership.html.

[18] Emile van der Does de Willebois et al. (2011)

[19] FATF and APG (April 2015), Australia MER

[20] FATF and APG (April 2015), Australia MER

[21] FATF (September 2016), Canada MER

[22] FATF (April 2021), New Zealand MER

[23] FATF (December 2016), United States MER

[24] FATF and APG (April 2015), Australia MER

[25] FATF (September 2016), Canada MER

[26] FATF (April 2021), New Zealand MER

[27] Emile van der Does de Willebois et al. (2011)

[28] FATF (September 2016), Canada MER

[29] FATF and APG (April 2015), Australia MER

[30] FATF (September 2016), Canada MER

[31] FATF (December 2016), United States MER

[32] This is the case of Australia and New Zealand, according to each respective MER.

[33] LEAs in Australia have expressed that the information held by FIs are "questionable" in terms of data quality, as per the country's MER.

[34] Emile van der Does de Willebois et al. (2011)

[35] FATF and APG (April 2015), Australia MER

[36] FATF (September 2016), Canada MER

[37] FATF (April 2021), New Zealand MER

[38] FATF (December 2016), United States MER

[39] As previously stated, that is the case in both Australia and New Zealand, where authorities can only estimate how many trusts are present in their jurisdiction but cannot be certain of the numbers.

[40] In Australia, Canada, New Zealand and the United States, trustees are under no obligation to disclose their status. Obliged entities are wholly responsible to identify their status through CDD checks.

[41] FATF (April 2021), New Zealand MER

[42] FATF (September 2016), Canada MER

[43] Something that has been highlighted in Canada's MER, for example.

[44] FATF and APG (April 2015), Australia MER

[45] Australia, Canada, New Zealand and the United States

[46] Anecdotal evidence from the United Kingdom shows that incorporation rates for Scottish Limited Partnerships (SLPs), which have been closely linked to money laundering offenses, have been dropping considerably since these instruments were made to comply with beneficial ownership transparency and obligated to disclose beneficial ownership information to Companies House, a publicly accessible beneficial ownership registry. Kiepe, T. (2021, May 25). Public beneficial ownership data user groups. openownership.org. Retrieved August 1, 2022, from https://www.openownership.org/en/publications/making-central-beneficial-ownership-registers-public/public-beneficial-ownership-data-user-groups/

[47] Trustees are not required to collect and keep information in all jurisdictions, as stated above.

[48] Some examples of potential higher risk cases could involve legal arrangements that span throughout 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.

[49] FATF (September 2016), Canada MER

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