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Evaluations and Compliance Group

5th Round Methodology Revisions to R.24/R.25 and IO.5 on Beneficial Ownership

24 October 2023, OECD Conference Centre, Paris, France

Issue: The FATF needs to align the Methodology with the recent revisions to R.24, R.25 and their interpretive notes.

SP3.2 – Work on update the 5th round FATF Methodology with changes to R.24 and R.25. (Project Timeline: March to October 2023).

Action: For comment by cob CET on 15 September 2023.

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5th Round Methodology Revisions to R.24/R.25 and IO.5 on Beneficial Ownership

For discussion

Issue :	The FATF needs to align the Methodology to the recent revisions to R.24, R.25 and their interpretive notes. SP3.2 – Work on update the 5th round FATF Methodology with changes to R.24 and R.25. (Project Timeline: March to October 2023).
Action :	For comment by cob CET on 15 September 2023.
Recommendation(s) :	Give the Secretariat clear guidance on the nine issues described in paragraph 3 (a) to (i) below, so this can be reflected in the next draft.
Timing :	Delegations are invited to submit their comments by cob Paris time on 20 September 2023. Based on comments received, the Secretariat will revise the paper and recirculate it in advance of the October meeting. The aim is to finish this work and adopt the Methodology for R.24 and R.25 by October 2023.

1. Background

1. To strengthen beneficial ownership (BO) transparency, the FATF revised R.24/INR.24 and R.25/INR.25 in March 2022 and February 2023 respectively.¹ The Plenary should revise the *5th Round Methodology* accordingly by October 2023, so countries have sufficient time to prepare for the next round, which is when countries' compliance with these revised Standards will be assessed.² In the meantime, all remaining 4th round assessments will continue being conducted using the existing *4th Round Methodology* for R.24, R.25 and IO.5.

2. The proposed *5th Round Methodology* revisions in **Annexes A, B and C** are based on one round of delegation comments (in May/June 2023), discussions at the June 2023 ECG meeting³, and a subsequent second round of comment to which nine delegation responded⁴. The revisions in tracked changes are based on this second round of comments.

2. Proposal and Recommendations

3. The ECG should give clear guidance to the Secretariat on the following nine points:
- a. **Decision point 1.** Despite the redundancy, do delegations agree to add a cross-reference in R.24/25 to the Note to Assessors in R.15 to improve clarity and ensure a consistent approach? See the proposed new paragraph 4 of the Note to Assessors in R.24, R.25 and IO.5.
 - b. **Decision point 2.** Do delegations agree that, despite the redundancy, it would be useful to add the following footnote wherever the term “adequate, accurate and up-to-date” appear to ensure that this concept is only assessed once in criterion 24.8 (for R.24) and

¹ See the *FATF Recommendations* which are published on the FATF website at the following link:

<https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>

² [FATF/PLEN/M\(2022\)2](#).

³ See also item 3.1 in [FATF/PLEN\(2023\)27](#) (*Report by the ECG Co-Chairs*).

⁴ Australia, Israel, Mexico, Singapore, Switzerland, United Kingdom, United States, EAG and Bahamas (CFATF).

criterion 25.8 (for R.25), which would avoid related deficiencies from cascading into other criteria?

Note to Assessors: If the relevant information is not “adequate, accurate or up-to-date”, such deficiencies should only be noted under criterion [24.8/25.8]. See also paragraph 3 above.

- c. **Decision point 3.** Do delegations agree to reinstate criterion 25.9 with the text fully aligned with paragraph 5 of INR.25?
- d. **Decision point 4.** Do delegations agree to incorporate should consider elements in the last sentences of R.24 and R.25, paragraph 9 of INR.24, and paragraph 5 of INR.25 into paragraphs 6, 12 and 14 of the IO.5 Examples of Information that could support conclusions on Core Issues, as reflected in Annex C?
- e. **Decision point 5.** Do delegations agree to add the following text (in *bold italics*) to paragraph 2 of the Examples of Information that could support the conclusions on Core Issues for IO.3?

2. Information on supervisory findings and subsequent actions including number and nature of breaches identified; required remedial actions, sanctions and their enforcement (e.g., including but not limited to number of warnings, corrective actions, reprimands, directions, restrictions, fines) applied, examples of cases where sanctions and other remedial actions have been applied and improved AML/CFT compliance). Information on how financial institutions and VASPs adjusted/improved their compliance practices in response to supervisor’s actions. *Information on what supervisory actions have been applied, as appropriate, to financial groups operating in host countries where the minimum AML/CFT requirements are less strict than the home country (e.g. placing additional controls on the financial group, requesting the financial group to close down its operations in the host country).*

- f. **Decision point 6.** Do delegations agree to add the following footnote to paragraph 3 of the *Note to Assessors* for R.24?

Note to Assessors: It is not a deficiency if the country does not have accurate beneficial ownership information on publicly-listed, foreign-created legal persons and arrangements that are shareholders of legal persons incorporated in the country.

- g. **Decision point 7.** Do delegations agree to add the following footnote to criterion 24.6, which clarifies how to assess the multi-pronged approach?

Note to Assessors: Countries should demonstrate that they have implemented all three prongs of the multi-pronged approach described in sub-paragraphs (a), (b) and (c). When considering this issue, information obtained by financial institutions and DNFBPs in accordance with R.10 and R.22 does not constitute an “alternative mechanism” pursuant to c.24.6(b), although it may be used as an “additional supplementary measure” pursuant to c.24.6(c).

- h. **Decision point 8.** Should the following clarifications should be added to the *Note to Assessors for IO.5*?

4. The scope of core issue 5.1 is much narrower scope than core issue 1.1, which focuses on all ML/TF risks facing the country. Whether and to what extent deficiencies in core issue 5.1 may (or may not) impact the assessment of core issue 1.1 and rating for IO.1 will depend on the country’s overall risks, materiality and context. See paragraphs 65 and 66 of the *Methodology* for further guidance.

- i. **Decision point 9.** Should the text in *bold italics* be added to paragraph 3 of Immediate Outcome 5?

3. Information on the role played by trustees or persons holding equivalent positions resident in the jurisdiction or persons who are administering any express trusts or similar legal arrangements in their jurisdiction, and disclosures by trustees and persons holding equivalent positions (*e.g. domestic legislation prescribing the activities that trustees or persons holding equivalent positions may lawfully perform and any limitations thereon, including the nature and frequency of any disclosure obligations—for example, to the trust beneficiaries to ensure that they have sufficient information to enforce the terms of the trust; any risk or threat assessments addressing the role of persons resident in the jurisdiction who are holding positions as trustees or equivalent positions or who are administering express trusts or similar legal arrangements in the jurisdiction; industry studies or guidance on these issues*)?

3. Analysis

3.1. Comments relevant to both R.24 and R.25

4. **Cross-references to Glossary definitions (*Notes to Assessors*).** Four delegations raised different points about paragraph 1 of the *Note to Assessors* for R.24, R.25 and IO.5:
- a. Germany suggested cross-referencing to both the main Glossary and the glossaries of the specific Recommendations. This suggestion will be taken on board when the Secretariat updates the entire Methodology with cross-references to the relevant Glossary definitions. (R.24, R.25 and IO.5 do not have specific glossaries).
 - b. EAG noted that these cross-references are redundant because the introductory paragraphs of the Methodology (para.27) already refer assessors to the Glossary definitions. The ECG discussed this issue in June and decided that, although redundant, specific cross-references should be included in the *Note to Assessors* for each Recommendation and Immediate Outcome to give assessors and assessed countries further clarity. See [FATF/ECG\(2023\)17/REV1](#) and paragraph 11 of [FATF/PLEN\(2023\)27](#) (*ECG Co-Chairs' Report*).
 - c. In the IO.5 *Note to Assessors*, Mexico suggested adding cross-references to the other terms used in R.24 and R.25 (*accounts, beneficiary, enforceable means, foreign counterparts, law, non-profit organisations (NPO), property and settlor*). R.25. This suggestion was not taken on board because these terms are not used in IO.5. As the assessors working on IO.5 are the same as those working on R.24 and R.25, they will be made aware of these definitions through the cross-references in the *Note to Assessors* for R.24 or R.25 where these terms are used.
 - d. Israel noted that the definition of *beneficial owner* (which the FATF revised in February 2023) only refers to *legal persons* and *legal arrangements*, but not to *any person* which creates a lacuna with regards to BO requirements in other recommendations (e.g. the beneficial owner of a customer in the course of CDD as per criterion 10.5). This issue is beyond the mandate of the ECG because the Glossary is part of the FATF Standards (although it is also published as part of the Methodology for assessors' convenience). PDG is the only working group with a mandate to consider changes to the FATF Standards (subject to a referral by the Plenary).

5. **Scope deficiencies (*Notes to Assessors*).** Mexico and Singapore suggested minor edits to footnotes 8 and 32 to clarify that failing to impose the requirements of R.24 and R.25 on legal persons and arrangements is not acceptable. Also, typos were corrected in the *Notes to Assessors* for R.24 (para.2) and R.25 (para.2, and footnotes 32 and 34).

6. **VASPs as existing sources of information:** R.24, R.25 and IO.5 refer to financial institutions and DNFBPs as existing source of information: see criteria 24.6(a) and (c), 24.9, 24.11, 25.7(a) and (c), and 25.10, and paragraphs 5, 6, 8 and 14 of IO.5. One delegation asked whether VASPs are also an existing source of information. This same point was raised by another delegation on a previous draft.⁵ The answer is yes. This is clarified in the *Note to Assessors* at R.15 which states:

“Assessors should also satisfy themselves that VASPs may be considered as existing sources of information on beneficial ownership for the purposes of c.24.6(c)(i) and 25.5; and are empowered to obtain relevant information from trustees for the purposes of c.25.3 and 25.4.

Footnote 43: Consideration of VASPs in the context of these criteria is meant to ensure availability of beneficial ownership information. Assessors should not consider these criteria to impose obligations on VASPs.”

7. When developing the Methodology criteria for R.15, the Plenary decided that it would be redundant to cross-reference this *Note to Assessors* in R.24/25.⁶ However, as this issue was a second time by a different delegation and the assessors working on R.24/25 and R.15 are not always the same, the Secretariat did a cursory review of some recent MERs to see if there appear to be any issues. From that cursory review, it is not always clear if the *Note to Assessors* in R.15 is being considered in the analysis of R.24/25, which raises some concerns about consistency. In this context, it is recommended to add a cross-reference to the R.15 *Note to Assessors* in R.24, R.25 and IO.5 for further clarity. It is not proposed to add the term “VASPs” whenever “FIs/DNFBPs” are mentioned, as that would be inconsistent with the approach taken in the rest of the Methodology and might be misinterpreted as applying additional requirements to VASPs (which it is not).

Decision point 1. Despite the redundancy, do delegations agree to add a cross-reference in R.24/25 to the *Note to Assessors* in R.15 to improve clarity and ensure a consistent approach? See the proposed new paragraph 4 of the *Note to Assessors* in R.24, R.25 and IO.5.

8. **“Adequate, accurate and up-to-date”.** Australia and Mexico suggested more emphasis to ensure that the assessment of whether information is “adequate, accurate and up-to-date” only happens once (even though that term is used in several places throughout R.24/R.25), so related deficiencies do not cascade into multiple criteria. Paragraph 3 of the R.24 and R.25 *Notes to Assessors* already makes this point, but further emphasis could be added wherever the term “adequate, accurate and up-to-date” appears in these Recommendations.

Decision point 2. Do delegations agree that, despite the redundancy, it would be useful to add the following footnote wherever the term “adequate, accurate and up-to-date” appear to ensure that this concept is only assessed once in criterion 24.8 (for R.24) and criterion 25.8 (for R.25), which would avoid related deficiencies from cascading into other criteria?

Note to Assessors: If the relevant information is not “adequate, accurate or up-to-date”, such deficiencies should only be noted under criterion [24.8/25.8]. See also paragraph 3 above.

⁵ See paragraph 8 of [FATF/ECG\(2023\)17/REV1](#).

⁶ See paragraph 11 of [FATF/ECG/WD\(2019\)8/REV4](#).

9. **“Should consider”**. Switzerland, United Kingdom, United States and EAG were supportive of reinstating criterion 25.9 but requested further edits to align the text more closely to paragraph 5 of INR.25 and avoid going beyond the FATF Standards (i.e., by imposing a new requirement). To address these concerns and avoid confusion, the text is now fully aligned with paragraph 5 of INR.25. Also, a cut-and-paste error that transposed footnote 71 of INR.25 (instead of footnote 72 of INR.25) into footnote 53 has been corrected, as suggested by one delegation. However, reinstating this criterion raises another issue because aspects of the FATF Standards using the language *should consider* do not necessarily create binding requirements, which can be assessed. Indeed, it was on that basis that this criterion was deleted from the previous version of this paper: see paragraph 36 of FATF/ECG(2023)REV1.

10. The Secretariat has since analysed this issue more deeply, by comparing all instances of *should consider*⁷ in the FATF Recommendations and how (or if) they have been transposed into the Methodology⁸. This reveals that *should consider* elements do not form part of the assessment if that term is used in the context of the preamble of a Recommendation (e.g., para.1 of INR.1) or refers to something that is expressly outside the scope of the *FATF Recommendations* (e.g., para.2 of INR.2, footnote 129 of INR.7 and para.8 of INR.32). On the other hand, *should consider* elements are incorporated into the Methodology in two instances:

- a. Where a *should consider* element is integrally linked to a requirement, it may be incorporated into the relevant technical compliance criteria. For example:
 - i. criterion 1.10 covers paragraph 16 of INR.1 (FIs/DNFBPs *should consider* all relevant risk factors as part of the process for meeting the requirement to determine the level of overall risk and appropriate level of risk mitigation to be applied); and
 - ii. criterion 10.19 covers the aspect of R.10 which requires countries to ensure that FIs *should be required to consider* making a suspicious transaction report if they are unable to comply with relevant CDD measures.
- b. Where *should consider* elements are not integrally linked to a requirement, but could strengthen the effectiveness, they may be incorporated into the effectiveness Methodology as *Characteristics of an Effective System*, clarifications to Core Issues, or the *Examples of Information* or *Examples of Specific Factors* that could support conclusions on core issues.⁹ For example:
 - i. For IO.4, one of the *Characteristics of an Effective System* is applying group-wide policies to DNFBP as appropriate. This reflects a *should consider* element of INR.22 and 23 (para.2).
 - ii. For IO.6, footnote 129 to Core Issue 6.1 clarifies that sources of information can include, where applicable, reports on cash transactions and foreign currency transactions. This reflects a *should consider* element of INR.29 (para.14).

⁷ When used to mean “to contemplate or think about in order to arrive at a judgment or decision”.

⁸ R.4 and R.38 were not included in this analysis (even though they currently contain *should consider* elements), because those Recommendations that are currently under revision, which means the Methodology will have to be changed in due course and in line with the revised Standards.

⁹ It should be noted that these *should consider* elements have been incorporated into the effectiveness Methodology without using the term *should consider* in the text, which is why these examples were not picked up in the Secretariat’s earlier analysis for the REV1 version of the paper.

- iii. For IO.7, paragraph 5 includes an *Example of Specific Factors* (postponing or waiving arrest) which is a *should consider* element of INR.30 (para.4)
11. In line with this analysis, criterion 25.9 may be reinstated as a TC criterion on the same basis as the examples above in paragraph 10a) because it sets out what sources of information countries *should consider* using as necessary to meet the requirement that adequate, accurate and up-to-date information on the basic and beneficial ownership of trusts or other similar arrangements, trustees and trust assets, is accessible efficiently and in a timely manner by competent authorities, other than through trustees or persons holding equivalent positions in similar legal arrangements.

Decision point 3. Do delegations agree to reinstate criterion 25.9 with the text fully aligned with paragraph 5 of INR.25?

12. Assuming delegations agree with the above analysis, it would also be important to ensure consistency when dealing with the other *should consider* elements of R.24 and R.25: see the last sentences of R.24 and R.25, para.9 of INR.24, and para.5 of INR.25. As none of these elements is integrally linked to a specific requirement, it is proposed to incorporate them into the *Examples of Information that could support the conclusions on Core Issues*, as shown in paragraphs 6, 12 and 14 of IO.5.

Decision point 4. Do delegations agree to incorporate *should consider* elements in the last sentences of R.24 and R.25, paragraph 9 of INR.24, and paragraph 5 of INR.25 into paragraphs 6, 12 and 14 of the IO.5 *Examples of Information that could support conclusions on Core Issues*, as reflected in **Annex C**?

13. On a separate but related issue, during this analysis, the Secretariat detected one anomaly—a *should consider* element of paragraph 5 of INR.18 is not in the Methodology, despite its links with effectiveness. To address this issue and ensure consistency throughout the Methodology, it is proposed to add text to the *Examples of Information* for IO.3.

Decision point 5. Do delegations agree to add the following text (in bold) to paragraph 2 of the *Examples of Information that could support the conclusions on Core Issues* for IO.3?

2. Information on supervisory findings and subsequent actions including number and nature of breaches identified; required remedial actions, sanctions and their enforcement (e.g., including but not limited to number of warnings, corrective actions, reprimands, directions, restrictions, fines) applied, examples of cases where sanctions and other remedial actions have been applied and improved AML/CFT compliance). Information on how financial institutions and VASPs adjusted/improved their compliance practices in response to supervisor's actions. **Information on what supervisory actions have been applied, as appropriate, to financial groups operating in host countries where the minimum AML/CFT requirements are less strict than the home country (e.g. placing additional controls on the financial group, requesting the financial group to close down its operations in the host country).**

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14. **Foreign-created legal persons and arrangements that are shareholders.** Mexico suggested adding a clarification to assessors concerning publicly-listed, foreign-created legal entities that are shareholders of legal entities incorporated in the assessed country.

Decision point 6. Do delegations agree to add the following footnote to paragraph 3 of the *Note to Assessors* for R.24?

Note to Assessors: It is not a deficiency if the country does not have accurate beneficial ownership information on publicly-listed, foreign-created legal persons and arrangements that are shareholders of legal persons incorporated in the country.

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15. **Consistent terminology.** The term *foreign legal persons and arrangements* has been changed to *foreign-created legal persons and arrangements* for consistency with R.24 and R.25. A similar change has been made for the same reason in R.25 (sub-criterion 25.3(c) and footnote 40) and IO.5 (the *Characteristics of an effective system* box, core issue 5.1 and 5.3, and paragraphs 3, 4, 9, 10).

3.2. Delegation comments on R.24

16. **Sub-criterion 24.1(c).** Mexico suggested adding the following sentence in sub-criterion (c) to clarify that countries should consider the ML/TF risks of other types of legal persons: “*Countries should take into account forms and structures of other legal persons, and the levels of ML/TF risks associated with each type of legal person, according with the National Risk Assessment...*” This suggestion was not taken on board because: i) it is inconsistent with the language of R.24 and no delegation has opposed the overall approach of mirroring the language of the revised Standards as closely as possible to ensure consistency;¹⁰ and (b) this edit may go beyond the Standards, which do not require countries to do a single national risk assessment document.
17. **Sub-criteria 24.1(d) and 24.2(c) (foreign-created legal persons).** Five delegations raised the following issues:
- a. Switzerland expressed their support for the approach for assessing foreign-created legal persons in sub-criterion 24.1(d) and suggested simplifying the language.
 - b. Singapore, Switzerland and United States noted that sub-criterion 24.2(c) appears to be inconsistent with the approach in sub-criterion 24.1(d). To address this issue, the reference to *foreign-created legal persons* has been deleted from sub-criterion 24.2(c).
 - c. The comments of Mexico and Cayman Islands on sub-criterion 24.2(c) were not taken on board as they appeared to misunderstand what this particular sub-criterion requires. To clarify, sub-criterion 24.2(c) requires countries to make publicly available **information regarding what processes they have** available for obtaining and recording basic and BO information. This sub-criterion does not require countries to make publicly available the basic and BO information they obtain through those processes.
18. **Criterion 24.3.** A cross-reference was made more specific to add clarity, as suggested by the United States.
19. **Criterion 24.6.** Mexico and EAG suggested adding more clarity to distinguish between the information that could be used to develop “an alternative mechanism” in c.24.6(b) and “additional supplementary measures” in c.24.6(c). To address this issue, it is proposed to add a clarifying footnote to criterion 24.6.

Decision point 7. Do delegations agree to add the following footnote to criterion 24.6, which clarifies how to assess the multi-pronged approach?

Note to Assessors: Countries should demonstrate that they have implemented all three prongs of the multi-pronged approach described in sub-paragraphs (a), (b) and (c). When considering this issue, information obtained by financial institutions and DNFBDs in accordance with R. 10 and R.22 does not constitute an “alternative mechanism” pursuant to c.24.6(b), although it may be used as an “additional supplementary measure” pursuant to c.24.6(c).

20. **Criterion 24.10.** Specific cross-references to the minimum requirements applicable to foreign-created legal persons that present ML/TF risks and have sufficient links with the country have been added, as suggested by Mexico.
21. **Criterion 24.12.** As suggested by EAG, footnote 27 has been deleted because it duplicates language in the body of the text. Also, a formatting error has been corrected so that sub-paragraph (b)(i) is now divided into two sub-paragraphs, as it was in the previous draft.

¹⁰ See paragraph 5 of [FATF/ECG\(2023\)17/REV1](#).

22. **Criterion 24.13.** Australia suggested replacing “or” with “and/or” at the end of sub-paragraph (b) to clarify that one or more of the mechanisms in this criterion should apply. This suggestion was not taken on board as it is inconsistent with the text of the Standards (see para.13 of INR.24) and the chapeau already makes this this clarification.

3.3. Delegation comments on R.25

23. **Criterion 25.2.** Mexico asked whether *joint venture agreements* are *other legal arrangements* for the purpose of R.25, while another asked the same in relation to the *fiduciary management of property*. It is recommended that both questions would be better addressed in PDG, in the context of its ongoing work to develop guidance on R.25: see [FATF/PDG\(2023\)22](#).
24. **Criterion 25.3.** United States suggested minor edits that are not substantive but simplify the language and improve its readability. Another delegation requested adding a footnote to clarify what “administered in their country” means in this context. It is not recommended to take this suggestion on board, as this is one of the issues being considered as part of PDG’s ongoing work to develop guidance for R.25. Paragraph 37 of the *5th Round Methodology* states that “assessors may also consider FATF Guidance as background information on how countries could effectively implement specific requirement”. Once the FATF adopts the guidance on R.25, the Secretariat will update the list of FATF guidance documents in Annex II of the *5th Round Methodology* accordingly.
25. **Criterion 25.4.** Footnote 42, which cross-references the definition of *express trust* in the Glossary, has been deleted as it is redundant now that the *Note to Assessors* for all Recommendations begins with a cross-reference to all relevant Glossary definitions.
26. **Criterion 25.7(c).** A minor edit has been made for better clarity and to align the language more closely with paragraph 4 of INR.25, as suggested by United States.
27. **Criterion 25.11.** The language of sub-paragraph (a) has been revised to better align with paragraph 13 of INR.25, as suggested by EAG.

3.4. Delegation comments on Immediate Outcome 5

28. **Core Issue 5.1.** EAG sought clarification on the extent to which core issue 1.1 covers core issue 5.1:

CI.1.1. How well does the country identify, assess, and understand its ML/TF risks?

CI.5.1. How well does the country identify, assess and understand its ML/TF risks associated with legal persons and arrangements created in the country and foreign-created legal persons and arrangements that have sufficient links with the country?

29. While both core issues focus on a country’s identification, assessment and understanding of its ML/TF risks, the scope of CI.5.1 is much narrower. The extent to which assessors’ conclusions on CI.5.1 may also impact their conclusions of CI.1.1 will vary, depending on the country’s overall risks, materiality and context. For example, assessors’ conclusions on CI.5.1 may have a greater impact on CI.1.1 if the country is an important international centre for trust or company formation. On the other hand, the impact on CI.1.1 may be negligible depending on the relative importance of the risks associated with legal persons and arrangements compared with the other ML/TF risks facing the country. It is proposed to add further clarifications to the *Note to Assessors* for IO.5 to address this issue, along similar lines to paragraph 1 of the IO.3 *Note to Assessors*.

Decision point 8. Should the following clarifications should be added to the *Note to Assessors for IO.5*?

4. The scope of core issue 5.1 is much narrower scope than core issue 1.1, which focuses on all ML/TF risks facing the country. Whether and to what extent deficiencies in core issue 5.1 may (or may not) impact the assessment of core issue 1.1 and rating for IO.1 will depend on the country's overall risks, materiality and context. See paragraphs 65 and 66 of the *Methodology* for further guidance.

30. **Core Issue 5.4.** The text has been revised to better align with paragraph 7 of INR.25, as suggested by EAG.
31. **Paragraph 3 of *Examples of Information that could support conclusion on Core Issues*** states: “*Information on the role played by trustees or persons holding equivalent positions resident in the jurisdiction or persons who are administering any express trusts or similar arrangements in their jurisdiction, and disclosures by trustees and persons holding equivalent positions.*” EAG asked for examples of what might be expected from the assessed country in this context. A non-exhaustive list of possible examples could be included to address this issue.
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Decision point 9. Should the text in ***bold italics*** be added to paragraph 3 of Immediate Outcome 5?

3. Information on the role played by trustees or persons holding equivalent positions resident in the jurisdiction or persons who are administering any express trusts or similar legal arrangements in their jurisdiction, and disclosures by trustees and persons holding equivalent positions ***(e.g. domestic legislation prescribing the activities that trustees or persons holding equivalent positions may lawfully perform and any limitations thereon, including the nature and frequency of any disclosure obligations—for example, to the trust beneficiaries to ensure that they have sufficient information to enforce the terms of the trust; any risk or threat assessments addressing the role of persons resident in the jurisdiction who are holding positions as trustees or equivalent positions or who are administering express trusts or similar legal arrangements in the jurisdiction; industry studies or guidance on these issues).***

4. Next steps

32. Delegations are invited to submit comments on **Annexes A, B and C** by cob CET on 15 September 2023. All comments should be uploaded to the ECG secure site at the following [link](#). Based on the comments received, the Secretariat will revise the paper and recirculate it before October 2023 when it is planned to submit these revisions to the Plenary for adoption.
33. Once the criteria/core issues for R.24/25 and IO.5 are adopted, the Secretariat will update the relevant cross-references throughout the Methodology as needed, and add cross-references to the definitions from the main Glossary and the glossaries to specific Recommendations to each Recommendation and Immediate Outcome where they are used.

Annex A. Draft Methodology for Recommendation 24

RECOMMENDATION 24

TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS

Note to Assessors:

1. Assessors should refer to the following Glossary definitions when assessing this Recommendation: *accounts, bearer shares and bearer share warrants, beneficial owner, competent authorities, country, designated non-financial businesses and professions (DNFBP), enforceable means, financial institutions, foreign counterparts, law, legal persons, nominator, nominee shareholder or director, non-profit organisation (NPO), risk, should, and terrorist financing.*
2. If assessors identify a scope deficiency(ies)¹¹, they should assess this only in criterion 24.1 and not cascade the deficiency(ies) into other criteria that focus on the presence and adequacy of the specific requirements of R.24. When considering how heavily to weight criterion 24.1:
 - a) individual criteria do not have equal importance and the number of criteria met is not always an indication of the overall compliance with R.24, as per paragraph 43 of the Methodology;
 - b) the relative importance of a scope deficiency(ies) depends on: i) the materiality of each type of legal person created in the country relative to each other (e.g., based on their number, size and volume of business, types of activities, etc.)¹²; ii) the extent to which each type of legal person is covered by the R.24 requirements; and iii) the significance of any scope deficiency(ies), given the country's risk profile and other structural and contextual information, including if it is a company formation centre;
 - c) assessors should explain the basis for their weighting, as a particularly serious scope deficiency(ies) could result in a NC or PC rating even if all other criteria are met, while multiple (but relatively minor) scope deficiencies could result in an LC rating.¹³

¹¹ There are many types of scope deficiency. One example is if companies are covered by the R.24 requirements, but other forms of legal persons are not (i.e., the country does not impose any R.24 requirements on other forms of legal persons). Another example is if companies are covered by most R.24 requirements, but other forms of legal person are covered by only a few R.24 requirements (i.e., companies and other forms of legal person are covered to varying degrees).

¹² This is analogous to how assessors weight the various financial, DNFBP and VASP sectors, as described in paragraphs 9, 14 and 15 of the Methodology.

¹³ For example, an NC or PC rating could be justified if companies (which are normally the most materially important type of legal person in any country) are not subject to the basic requirements of R.24, but all other types of legal person are fully covered (depending on the relative material importance and risk of those other types). Conversely, an LC rating could be justified if companies and other types of legal person (which are also materially important in the context of the assessed country) are subject to most of the R.24 requirements, but some other types of legal person (which are not materially important or high risk) are completely outside the scope of R.24.

3. The assessment of criterion 24.6 should focus on what requirements and mechanisms a country has implemented in relation to beneficial ownership information, as opposed to criterion 24.8 which should focus on whether the information collected through those mechanisms is adequate, accurate and up-to-date. This means that if assessors note that the relevant information is not adequate, accurate or up-to-date, such deficiencies should be noted under criterion 24.8 (not elsewhere in other criteria).
4. When assessing criteria 24.6(a) and (c), 24.9 and 24.11, assessors should also refer to the third paragraph of the *Note to Assessors* for R.15.

A. Scope extends to companies and other legal persons

24.1 The requirements of Recommendation 24 apply to all forms of legal persons, subject to the following qualifications:

- a) *Companies* – The measures required by Recommendation 24 are set out with specific reference to companies.
- b) *Foundations, Anstalt, Waqf*¹⁴ and limited liability partnerships – Countries should take similar measures and impose similar requirements as those requirements for companies, taking into account their different forms and structures.
- c) *Other types of legal persons* – Countries should take into account the different forms and structures of other legal persons, and the levels of money laundering and terrorist financing risks associated with each type of legal person, with a view to achieving appropriate levels of transparency. At a minimum, countries should ensure that similar types of basic information should be recorded and kept accurate and up-to-date by such legal persons, and that such information is accessible in a timely way by competent authorities.
- d) *Foreign-created legal persons* – Countries should ensure that the requirements of criteria 24.3(b), 24.10 and 24.14 apply to foreign-created legal persons that present ML/TF risks and have sufficient links¹⁵ with the country.

24.2 Countries should have mechanisms that identify, describe and make publicly available the information regarding: (a) the different types, forms and basic features of legal persons in the country; (b) the processes for the creation¹⁶ of legal persons in the country; and (c) the processes for obtaining and recording of basic and beneficial ownership information related to legal persons in the country.

B. Risk assessment and risk mitigation

24.3 Countries should assess the ML/TF risks:

¹⁴ Except in countries where Waqf are legal arrangements under R.25.

¹⁵ 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 a company has permanent establishment / branch / agency, has significant business activity or has significant and ongoing business relations with financial institutions or DNFBCs, subject to AML/CFT regulation, has significant real estate / other local investment, employs staff, or is a tax resident in the country.

¹⁶ References to creating a legal person, include incorporation of companies or any other mechanism that is used.

- a) associated with different types of legal persons created in the country, and take appropriate steps to manage and mitigate the risks that they identify. For the other types of legal persons referred to in criterion 24.1c), this means reviewing the money laundering and terrorist financing risks associated with such other types of legal persons, and, based on the level of risk, determine the measures that should be taken to ensure that competent authorities have timely access to adequate, accurate and up-to-date beneficial ownership information for such other types of legal persons.
- b) to which their country is exposed, associated with different types of foreign-created legal persons, and take appropriate steps to manage and mitigate the risks that they identify¹⁷.

C. Basic information

- 24.4 Countries should require that all companies created in a country are registered in a company registry¹⁸, which should record and make public all the basic information set out in criterion 24.5(a).
- 24.5 Countries should require all companies¹⁹ created in their country to obtain and record the following minimum basic information:
- a) company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (e.g., memorandum & articles of association), a list of directors and unique identifier such as a tax identification number²⁰ or equivalent (where this exists); and
 - b) a register of their shareholders or members, containing the names of the shareholders and members and number of shares held by each shareholder²¹ and categories of shares (including the nature of the associated voting rights).
 - c) The company should maintain the basic information set out in criterion 24.5(b) within the country, either at its registered office or at another location notified to the company registry. However, if the company or company registry holds beneficial ownership information within the country, then the register of shareholders need not be in the country, provided that the company can provide this information promptly on request.

¹⁷ This could be done through national and/or supranational measures. These could include requiring beneficial ownership information on some types of foreign-created legal persons to be held as set out under criterion 24.6.

¹⁸ Company registry refers to a register in the country of companies incorporated or licensed in that country and normally maintained by or for the incorporating authority. It does not refer to information held by or for the company itself.

¹⁹ The information can be recorded by the company itself or by a third person under the company's responsibility.

²⁰ If the unique identifier used is a tax identification number, it should be held by the company registry or another public body.

²¹ This is applicable to the nominal owner of all registered shares.

D. Beneficial ownership information

24.6 Countries should follow a multi-pronged approach in order to ensure that the beneficial ownership of a company can be determined in a timely manner by a competent authority. This should include the following:

- a) Countries should require companies to obtain and hold adequate, accurate and up-to-date²² information on the company's own beneficial ownership; to co-operate with competent authorities to the fullest extent possible in determining the beneficial owner, including making the information available to competent authorities in a timely manner; and to co-operate with financial institutions/DNFBPs to provide adequate, accurate and up-to-date information on the company's beneficial ownership information.
- b) Countries should decide, on the basis of risk, context and materiality, what form of registry or alternative mechanisms they will use to enable efficient access to information by competent authorities, and should document their decision. Countries:
 - i. should require adequate, accurate and up-to-date information on the beneficial ownership of legal persons to be held by a public authority or body²³ (although information need not be held by a single body only)²⁴; or
 - ii. may decide to use an alternative mechanism instead of sub-paragraph 24.6(b)(i) if it also provides authorities with efficient access to adequate, accurate and up-to-date beneficial ownership information. For these purposes, reliance on basic information or existing information alone is insufficient, but there must be some specific mechanism that provides efficient access to the information.
- c) Countries should use any additional supplementary measures that are necessary to ensure the beneficial ownership of a company can be determined; including for example information held by regulators or stock exchanges; or information obtained by financial institutions and/or DNFBPs in accordance with Recommendations 10²⁵ and 22²⁶.

24.7 All the persons, authorities and entities mentioned above in criterion 24.6, and the company itself (or its administrators, liquidators or other persons involved in the dissolution of the company), should maintain the information and records referred to for at least five years after the date on

²² *Note to assessors:* If the relevant information is not "adequate, accurate or up-to-date", such deficiencies should be noted only under criterion 24.8. See also paragraph 3 above.

²³ For example a tax authority, FIU, company registry, or beneficial ownership registry.

²⁴ A body could record beneficial ownership information alongside other information (e.g. basic ownership and incorporation information, 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 person such as NPOs), or of a private body entrusted with this task by the public authority.

²⁵ *Beneficial ownership information* for legal persons is the information referred to in the interpretive note to Recommendation 10, paragraph 5(b)(i). Controlling shareholders as referred to in, paragraph 5(b)(i) of the interpretive note to Recommendation 10 may be based on a threshold, e.g. any persons owning more than a certain percentage of the company (determined based on the jurisdiction's assessment of risk, with a maximum of 25%).

²⁶ Countries should be able to determine in a timely manner whether a company has or controls an account with a financial institution within the country

which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution.

E. Timely access to adequate, accurate and up-to-date information

- 24.8 Countries should have mechanisms that ensure that basic information and beneficial ownership information, including information provided to the company registry and any available information referred to in criterion 24.6, is adequate²⁷, accurate²⁸ and up to date^{29, 30}.
- 24.9 Competent authorities, and in particular law enforcement authorities and FIUs, should have all the powers necessary to be able to obtain timely access to the basic and beneficial ownership information held by the relevant parties, including rapid and efficient access to information held or obtained by a public authority or body or other competent authority on basic and beneficial ownership information, and/or on the financial institutions or DNFBPs which hold this information. In addition, countries should ensure public authorities at national level and others as appropriate have timely access to basic and beneficial ownership information on legal persons in the course of public procurement.
- 24.10 For foreign-created legal persons that present ML/TF risks and have sufficient links with their country, the competent authorities should be able to obtain, or have access in a timely fashion, to adequate, accurate and up-to-date information³¹ on their beneficial ownership and control. Countries may choose the mechanisms they rely on to achieve this objective, although they should also comply with the minimum requirements of criteria 24.3(b), 24.10 and 24.14. Countries should utilise a combination of mechanisms to achieve the objective.
- 24.11 Countries should require their company registry to facilitate timely access by financial institutions, DNFBPs and other countries' competent authorities to the public information they hold, and, at a minimum to the information referred to in criterion 24.5(a) above.

F. Obstacles to transparency

- 24.12 Countries should take measures to prevent and mitigate the risk of the misuse of bearer shares and bearer share warrants (or any other similar instruments without traceability) by:

²⁷ *Adequate* information is information that is sufficient to identify the natural person(s) who are the beneficial owner(s), and the means and mechanisms through which they exercise beneficial ownership or control. Examples of information aimed at identifying the natural person(s) who are the beneficial owner(s) include the full name, nationality(ies), the full date and place of birth, residential address, national identification number and document type, and the tax identification number or equivalent in the country of residence.

²⁸ *Accurate* information is information, which has been verified to confirm its accuracy by verifying the identity and status of the beneficial owner using reliable, independently sourced/obtained documents, data or information. The extent of verification measures may vary according to the specific level of risk. Countries should consider complementary measures as necessary to support the accuracy of beneficial ownership information, e.g. discrepancy reporting

²⁹ *Up-to-date* information is information which is as current and up-to-date as possible, and is updated within a reasonable period (e.g. within one month) following any change.

³⁰ *Note to assessors:* If the relevant information is not “adequate, accurate or up-to-date”, such deficiencies should be noted only under criterion 24.8. See also paragraph 3 above.

³¹ *Ibid.*

- a) prohibiting the issuance of new bearer shares and bearer share warrants; and
- b) for any existing bearer shares and bearer share warrants, applying one or more of the following mechanisms within a reasonable timeframe³²:
 - i. converting them into a registered form;
 - ii. immobilizing them by requiring them to be held with a regulated financial institution or professional intermediary, with timely access to the information by the competent authorities; and
 - iii. during the period before (i) or (ii) is completed, requiring holders of bearer instruments to notify the company, and the company to record their identity before any rights associated therewith can be exercised.

24.13 Countries should take measures to prevent and mitigate the risk of the misuse of nominee shareholding and nominee directors, by applying one or more of the following mechanisms:

- a) requiring nominee shareholders and directors to disclose their nominee status and the identity of their nominator to the company and to any relevant registry, and for this information to be included in the relevant register, and for the information to be obtained, held or recorded by the public authority or body or the alternative mechanism referred to in criterion 24.6. Nominee status should be included in public information;
- b) requiring nominee shareholders and directors to be licensed³³, for their nominee status and the identity of their nominator to be obtained, held or recorded by the public authority or body or alternative mechanism referred to in criterion 24.6 and for them to maintain information identifying their nominator and the natural person on whose behalf the nominee is ultimately acting³⁴, and make this information available to the competent authorities upon request³⁵; or
- c) enforcing a prohibition of the use of nominee shareholders or nominee directors.

³² These requirements do not apply to newly issued and existing bearer shares or bearer share warrants of a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership.

³³ A country need not impose a separate licensing or registration system with respect to natural or legal persons already licensed or registered as financial institutions or DNFBPs (as defined by the FATF Recommendations) within that country, which, under such license or registration, are permitted to perform nominee activities and which are already subject to the full range of applicable obligations under the FATF Recommendations.

³⁴ Identifying the beneficial owner in situations where a nominee holds a controlling interest or otherwise exercises effective control requires establishing the identity of the natural person on whose behalf the nominee is ultimately, directly or indirectly, acting.

³⁵ For intermediaries involved in such nominee activities, reference should be made to R.22 and R.28 in fulfilling the relevant requirements.

G. Liability and sanctions

24.14 There should be a clearly stated responsibility to comply with the requirements in the interpretive note to Recommendation 24, as well as liability and proportionate and dissuasive sanctions, as appropriate for any legal or natural person that fails to properly comply with the requirements.

H. International cooperation

24.15 Countries should rapidly, constructively and effectively provide the widest possible range of international cooperation in relation to basic and beneficial ownership information, on the basis set out in Recommendations 37 and 40, which includes:

- a) not placing 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.;
- b) facilitating access by foreign competent authorities to basic information held by company registries;
- c) exchanging information on shareholders;
- d) using their powers, in accordance with their domestic law, to obtain beneficial ownership information on behalf of foreign counterparts;
- e) monitoring the quality of assistance they receive from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad;
- f) keeping in a readily accessible manner information held or obtained for the purpose of identifying beneficial ownership; and
- g) designating and making publicly known the agency(ies) responsible for responding to all international requests for beneficial ownership information.

Annex B. Draft Methodology for Recommendation 25

RECOMMENDATION 25

TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL ARRANGEMENTS

Note to Assessors:

1. Assessors should refer to the following Glossary definitions when assessing this Recommendation: *beneficial owner, beneficiary, competent authorities, country, designated non-financial businesses and professions (DNFBP), enforceable means, express trust, financial institutions, foreign counterparts, law, legal arrangements, legal persons, property, risk, settlor, should, terrorist financing, and trustee.*
2. If assessors identify a scope deficiency(ies)³⁶, they should assess this only in criterion 25.1 and not cascade the deficiency(ies) into other criteria that focus on the presence and adequacy of the specific requirements of R.25. When considering how heavily to weight criterion 25.1:
 - a) individual criteria do not have equal importance and the number of criteria met is not always an indication of the overall compliance with R.25, as per paragraph 43 of the Methodology;
 - b) the relative importance of a scope deficiency(ies) depends on: i) the materiality of each type of legal arrangement created in the country relative to each other (e.g., based on their number, size and volume of business, types of activities, etc.)³⁷; ii) the extent to which each type of legal arrangement is covered by the R.25 requirements; and iii) the significance of any scope deficiency(ies), given the country's risk profile and other structural and contextual information, including if it is a trust formation centre;
 - c) assessors should explain the basis for their weighting, as a particularly serious scope deficiency(ies) could result in a NC or PC rating even if all other criteria are met, while multiple (but relatively minor) scope deficiencies could result in an LC rating.³⁸
3. The assessment of criterion 25.4 should focus on what requirements a country has implemented on which parties in relation to beneficial ownership information, as opposed to criterion 25.8 which should focus on whether the information collected by those parties is

³⁶ There are many types of scope deficiency. The following examples assume the assessed country has express trusts governed under their law. One example is if trusts are covered by the R.25 requirements, but other forms of legal arrangements are not. Another example is if trusts are covered by most R.25 requirements, while other forms of legal arrangements are covered by only a few R.25 requirements (i.e., trusts and other forms of legal arrangements are covered to varying degrees).

³⁷ This is analogous to how assessors weight the various financial, DNFBP and VASP sectors, as described in paragraphs 9, 14 and 15 of the Methodology.

³⁸ For example, an NC or PC rating could be justified if the country is a trust formation centre that does not apply the basic requirements of R.25 to express trusts, but fully covers all other types of legal arrangements (depending on the relative material importance and risk of those other types). Conversely, an LC rating could be justified if trusts or other types of legal arrangements (which are also materially important in the context of the assessed country) are subject to most of the R.25 requirements, but other types of legal arrangements (which are not materially important or high risk) are completely outside the scope of R.25.

adequate, accurate and up-to-date. This means that if assessors note that the relevant information is not adequate, accurate or up-to-date, such deficiencies should be noted under criterion 25.8 (not elsewhere in other criteria).

4. When assessing criteria 25.7(a) and (c) and 25.10, assessors should also refer to the third paragraph of the *Note to Assessors* for R.15.

Scope extends to express trusts and other similar arrangements

- 25.1 The requirements of Recommendation 25 apply to all *legal arrangements* meaning *express trusts* (as defined in the Glossary of the FATF Recommendations) and other similar arrangements. Examples of other similar arrangements (for AML/CFT purposes) may include but are not limited to fiducie, certain types of Treuhand, fideicomiso and Waqf³⁹.
- 25.2 Countries with express trusts and other similar legal arrangements governed under their law⁴⁰ 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 basic⁴¹ and beneficial ownership information; and
 - c) make the above information referred to in (a) and (b) publicly available.

A. Risk assessment and risk mitigation

- 25.3 Countries should assess the money laundering and terrorist financing risks associated with the following different types of trusts and other similar legal arrangements and take appropriate steps to manage and mitigate the risks that they identify⁴²:
- a) governed under their law;
 - b) which are administered in their country or for which the trustee or equivalent resides in their country; and
 - c) types of foreign-created legal arrangements that have sufficient links⁴³ with their country;

³⁹ Except in countries where Waqf are legal persons under Recommendation 24.

⁴⁰ This criterion covers the express trusts and other similar legal arrangements set up (i.e., created) under the law of the assessed country, but does not cover those that are set up (i.e., created) under the law of a different country even if they are administered in the assessed country.

⁴¹ In relation to a legal arrangement, basic information means the identifier of the legal arrangement (e.g. the name, the unique identifier such as a tax identification number or equivalent, where this exists), the trust deed (or equivalent) and purposes, if any, the residence of the trustee/equivalent or of the place from where the legal arrangement is administered.

⁴² This could be done through national and/or supranational measures. These could include requiring beneficial ownership information on some types of foreign-created legal arrangements to be held as set out under paragraph 5 of the INR25.

⁴³ 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 a trustee or a person holding an equivalent position in a similar legal arrangement 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.

B. Basic and Beneficial ownership information

- 25.4 Countries should require trustees of any express trust⁴⁴ and persons holding an equivalent position in a similar legal arrangement, that are residents in their country or that administer any express trusts or similar legal arrangements in their country:
- a) to obtain and hold adequate, accurate, and up-to-date⁴⁵ beneficial ownership information⁴⁶ regarding the trust and other similar legal arrangements. This should include information on the identity of: (i) the settlor(s), (ii) the trustee(s), (iii) the protectors (if any); (iv) each beneficiary(ies) or, where applicable, the class of beneficiaries⁴⁷ and 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;
 - b) where the parties to the trusts or other similar legal arrangements are legal persons or arrangements, to also obtain and hold adequate, accurate, and up-to-date basic⁴⁸ and beneficial ownership information of the legal persons or arrangements; and
 - c) to hold basic information on other regulated agents of, and service providers to, the trust and similar legal arrangements, including but not limited to investment advisors or managers, accountants, and tax advisors.
- 25.5 Trustees and persons holding equivalent positions in similar legal arrangements should be required to maintain the information referred to in criterion 25.4 for at least five years after their involvement with the trust or similar legal arrangement ceases.
- 25.6 Countries should require that any information held pursuant to criterion 25.4 above should be kept accurate and up-to-date, and the information should be updated within a reasonable period following any change.
- 25.7 Countries should take measures to ensure that trustees or persons holding equivalent positions in similar legal arrangements:
- a) disclose their status to financial institutions and DNFBPs when, in their function, forming a business relationship or carrying out an occasional transaction above the threshold;
 - b) cooperate to the fullest extent possible with competent authorities, and are not prevented by law or enforceable means from providing those authorities with necessary information relating to the trust or other similar legal arrangements⁴⁹; and

⁴⁴ References to a *trust* in the Methodology criteria for R.25 mean *express trusts*, as defined in the Glossary to the FATF Recommendations.

⁴⁵ *Note to assessors*: If the relevant information is not “adequate, accurate or up-to-date”, such deficiencies should be noted only under criterion 25.8. See also paragraph 3 above.

⁴⁶ Beneficial ownership information for legal arrangements is the information referred to in the interpretive note to Recommendation 10, paragraph 5(b)(ii) and the Glossary.

⁴⁷ 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, and objects of a power. 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.

⁴⁸ See footnote 39 above.

⁴⁹ Domestic competent authorities or the relevant competent authorities of another country pursuant to an appropriate international cooperation request.

- c) are not prevented by law or enforceable means from providing financial institutions and DNFBPs, upon request, with information on the beneficial ownership of the trust or similar legal arrangement and any assets of the trust or legal arrangement to be held or managed under the terms of the business relationship.

C. Timely access to adequate, accurate and up-to-date information

- 25.8 Countries should have mechanisms that ensure that information on trusts and other similar legal arrangements, including information provided in accordance with criteria 25.7 and 25.9, is adequate⁵⁰, accurate⁵¹ and up-to-date^{52, 53}.
- 25.9 Countries should decide on the basis of risk, context and materiality, which of the following sources of information to use as necessary. In order to ensure that adequate, accurate and up-to-date information⁵⁴ on the basic and beneficial ownership of trusts and other similar legal arrangements, trustees and trust assets, is accessible efficiently and in a timely manner by the competent authorities, other than through trustees or persons holding an equivalent position in a similar legal arrangement, on the basis of risk, context and materiality, countries should consider using any of the following sources of information as necessary:
- 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.⁵⁵

⁵⁰ *Adequate* information is information that is sufficient to identify the natural persons who are the beneficial owner(s), and their role in the legal arrangement. This means the settlor(s), trustee(s), protector(s) (if any), beneficiary(ies) or, where applicable, the class of beneficiaries, and objects of a power, 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.

⁵¹ *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.

⁵² *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. For beneficiary(ies) of trusts/similar legal arrangement that are designated by characteristics or by class, trustees/equivalent are not expected to obtain fully adequate and accurate information until the person becomes entitled as beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights, as per the risk-based approach.

⁵³ *Note to assessors:* If the relevant information is not “adequate, accurate or up-to-date”, such deficiencies should be noted only under criterion 25.8. See also paragraph 3 above.

⁵⁴ *Ibid.*

⁵⁵ 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.

- 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).
 - c) Other agents or service providers, including trust and company service providers, investment advisors or managers, accountants, lawyers, or financial institutions.
- 25.10 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.

D. Liability and sanctions

- 25.11 Countries should ensure that:
- a) there are clear responsibilities to comply with the requirements of the Interpretive Note to Recommendation 25;
 - b) trustees or persons holding equivalent positions in similar legal arrangements are either:
 - i. legally liable for any failure to perform the duties relevant to meeting the obligations in criterion 25.4 to 25.7⁵⁶; or
 - ii. that there are effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to comply⁵⁷; and
 - c) 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 criteria 25.4 and 25.5.

E. International cooperation

- 25.12 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) not placing unduly restrictive conditions on the exchange of information or assistance e.g., refuse a request on the grounds that it involves fiscal (including tax) matters, bank secrecy, etc.;
 - b) facilitating access by foreign competent authorities to any information held by registries or other domestic authorities;

⁵⁶ Countries need not include the requirements of criteria 25.4 to 25.7 and 25.11 in legislation, provided that appropriate obligations to such effect exist for trustees (e.g. through common law or case law).

⁵⁷ This does not affect the requirements for effective, proportionate, and dissuasive sanctions for failure to comply with requirements elsewhere in the Recommendations.

- c) exchanging domestically available information on the trusts or other legal arrangement;
- d) using their competent authorities' powers, in accordance with domestic law, in order to obtain beneficial ownership information on behalf of foreign counterparts; and
- e) where possible, designating and making publicly known the agency(ies) responsible for responding to all international requests for beneficial ownership 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.

Annex C. Draft Methodology for Immediate Outcome 5

Immediate Outcome 5

Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.

Characteristics of an effective system:

A country properly identifies, assesses and understands its money laundering and terrorist financing risks associated with legal persons and arrangements created in the country, and foreign-created legal persons and arrangements that have sufficient links with the country. Measures are in place to:

- prevent legal persons and arrangements from being used for criminal purposes;
- make legal persons and arrangements sufficiently transparent; and
- ensure that adequate, accurate and up-to-date basic and beneficial ownership information is available on a timely basis.

Certain basic information is available publicly, and beneficial ownership information is available to competent authorities. Persons who breach these measures are subject to effective, proportionate and dissuasive sanctions. This results in legal persons and arrangements being unattractive for criminals to misuse for money laundering and terrorist financing.

This outcome relates primarily to Recommendations 24 and 25, and also elements of Recommendations 1, 10, 22, 37 and 40.

Note to Assessors:

1. Assessors should refer to the following Glossary definitions when assessing this Immediate Outcome: *bearer shares and bearer share warrants, beneficial owner, competent authorities, country, designated non-financial businesses and professions (DNFBP), express trust, financial institutions, legal arrangements, legal persons, nominee shareholder or director, risk, should, terrorist financing, and trustee.*
2. Assessors should also consider the relevant findings in relation to the level of international co-operation which competent authorities are participating in when assessing this Immediate Outcome. This would involve considering the extent to which competent authorities seek and are able to provide the appropriate assistance in relation to identifying and exchanging information (including beneficial ownership information) for legal persons and arrangements, and providing input on these issues to the assessment of Immediate Outcome 2 (particularly Core Issues 2.3 and 2.4).

3. When assessing the core issues below, assessors should consider: the ML/TF risks associated with legal persons and arrangements created in the country, and foreign-created legal persons and arrangements that have sufficient links with the country; and whether the activities and measures it is taking to mitigate those risks are aligned with the identified risks.

4. When considering paragraphs 5, 6, 8 and 14, assessors should also refer to the third paragraph of the *Note to Assessors* for R.15.

(a) **Core Issues to be considered in determining if the Outcome is being achieved**

5.1 How well does the country identify, assess and understand its ML/TF risks associated with legal persons and arrangements created in the country and foreign-created legal persons and arrangements that have sufficient links with the country?

5.2 How well has the country implemented measures to prevent, manage and mitigate the risks associated with the misuse of legal persons and arrangements for ML/TF purposes, including measures to address the risk of misuse of bearer shares, bearer share warrants, nominee directors and nominee shareholders?

5.3 To what extent can relevant competent authorities obtain adequate, accurate and up-to-date basic and beneficial ownership information on all types of legal persons created in the country and foreign-created legal persons that present ML/TF risks and have sufficient links with their country, in a timely manner?

5.4 To what extent can relevant competent authorities obtain adequate, accurate and up-to-date beneficial ownership information in a timely manner 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? To what extent can relevant competent authorities obtain basic information on other regulated agents of, and service providers to, such trusts and similar legal arrangements, including but not limited to investment advisors or managers, accountants and tax advisors?

5.5 To what extent are effective, proportionate and dissuasive sanctions applied against persons who do not comply with the information requirements?

a) **Examples of Information that could support conclusion on Core Issues**

1. Contextual information on the types, forms and basic features of legal persons and arrangements in the jurisdiction, and any trends related to their creation (e.g., frequency of creation, prevalence, or changes in type or complexity).

2. Information on the role played by “gatekeepers” (e.g., *company service providers, accountants, legal professionals*) in the formation and administration of legal persons and arrangements.

3. Information on the role played by trustees or persons holding equivalent positions resident in the jurisdiction or persons who are administering any express trusts or similar legal

arrangements in their jurisdiction, and disclosures by trustees and persons holding equivalent positions.

4. ML/TF risk assessments, typologies and examples of the misuse of domestic and foreign-created legal persons and arrangements (e.g., *frequency with which investigations find evidence of domestic or foreign-created legal persons and arrangements being used for ML/TF; frequency with which criminal investigations find evidence of bearer shares, bearer share warrants, nominee directors, nominee shareholders, company service providers, trustees or persons holding equivalent positions being used for ML/TF; legal persons misused for illegal activities being dismantled or struck-off*).

5. Sources of basic and beneficial ownership information (e.g., *types of public information available to financial institutions and DNFBPs; types of information held in the company registry, by the company, by a public authority or body or by an alternative mechanism*).

6. Information on how well registries and other sources of information are maintaining basic and BO information that is adequate, accurate and up to date (e.g. *how often basic and BO information on legal arrangements is reflected in registries; results of checks by registries at the time of registration and subsequently; supervisory findings of how well financial institutions/DNFBP are fulfilling their CDD/BO obligations; how often relevant entities (i.e., registries, reporting entities and companies) are verifying beneficial ownership information; to what extent relevant entities have policies to ensure that such identification is accurate and kept up-to-date; which authorities are responsible for checking compliance with this requirement, and the frequency and nature of checks or supervision to confirm whether BO information is accurate and up-to-date; examples of cases where sanctions and/or other remedial actions have been applied and improved compliance in this area, whether complementary measures such as discrepancy reporting have been implemented to support the accuracy of BO information*).

7. Information on the extent to which bearer shares, bearer share warrants, nominee shareholders and nominee directors impede timely access to BO information (e.g. *information on their existence and prevalence; information on disclosures of nominee shareholder/director status or their licensing; information on the enforcement of prohibitions or actions to convert or immobilise existing bearer shares and bearer share warrants; examples of criminal investigations or prosecutions involving these obstacles to transparency*).

8. Experiences of law enforcement and other relevant competent authorities (e.g., *where and how basic and beneficial ownership information for legal persons and arrangements is obtained in a timely manner; whether this information could be obtained from only the trustee or other sources, such as FIs and DNFBPs. information used in supporting investigation; the number, type and level of sanctions and other remedial actions imposed for failing to comply with the requirements of R.24 and R.25, and the impact of these on compliance*).

9. Other information (e.g., *information on existence of legal arrangements both foreign-created or domestic; responses (positive and negative) to incoming and outgoing requests for basic or beneficial ownership information received from other countries; time taken to respond and sources from which such BO information was obtained, information on the monitoring of quality of assistance*).

b) Examples of Specific Factors that could support the conclusions on Core Issues

10. To what extent have the relevant authorities studied and assessed the risks of all relevant legal persons and arrangements both domestic and foreign-created with sufficient link to the country (e.g., as a standalone assessment or part of the broader assessment of the ML/TF risks in the country)? Based on the country's understanding of risks, how has the country implemented measures to address ML/TF risks posed by legal persons and arrangements?

11. What are the measures taken to manage and mitigate the risks identified in the risk assessment of legal persons (including prohibiting the issuance of new bearer shares and share warrants or taking risk-based measures for existing bearer shares and bearer share warrants, and taking risk-based measures on nominee shareholders and directors) and arrangements (including implementing the disclosure obligation for trustees and persons holding equivalent positions)?

12. How do relevant authorities ensure that accurate, adequate, and up-to-date basic and beneficial ownership information on legal persons and arrangements is maintained? Is the presence, adequacy and accuracy of such information of legal persons monitored, tested/certified or verified through a multi-pronged approach? Or through the use of different sources of information (such as a public authority or body holding BO information or tax information and gatekeepers and FIs) for legal arrangements? To what extent is information held or obtained for the purpose of identifying BO kept in a readily accessible manner?

13. To what extent is the time taken for legal persons to register changes to the required basic and beneficial ownership information to ensure that the information is adequate, accurate and up-to-date? Where applicable, to what extent are similar changes in legal arrangements registered in a timely manner?

14. To what extent can financial institutions and DNFBPs obtain adequate, accurate, and up-to-date basic and beneficial ownership information on legal persons and arrangements? To what extent does the country facilitate access by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22 to: beneficial ownership and control information; and information that is held on trusts or other similar arrangements by the other authorities, persons and entities referred to in criterion 25.9? What is the extent of information that trustees disclose to financial institutions and DNFBPs?

Do the relevant authorities have adequate resources to implement the measures adequately?