

Submission to the Financial Action Task Force Consultation on the **Draft Amendments to FATF Guidance on Beneficial Ownership (R.25)**

December 6, 2023

Introduction

Our purpose in submitting this response is to offer key considerations for the Financial Action Task Force (FATF) on the FATF Guidance on Beneficial Ownership and Transparency of Legal Arrangements (R.25) (the "Guidance"). Throughout 2023, ACAMS collaborated with its global members and chapters, spanning the public and private sectors, to identify ways to improve the accuracy of beneficial ownership registries. Through numerous roundtable discussions, individual meetings, and independent research, we identified ways jurisdictions are working to ensure the accuracy of beneficial ownership registries today and several potential enhancements to make registries more accurate in the future. Our findings are described in a recent paper titled, "**Beneficial Ownership: Taking the Extra Step to Data Accuracy**" (the "Paper").¹ Several of the key observations in the Paper may be relevant to sections in the Guidance, particularly Section 4.3, "Accurate Beneficial Ownership Information;" Section 5.2, "The Registry Approach;" and Section 6, "Sanctions."

About ACAMS

ACAMS is a leading international membership organization dedicated to providing opportunities for anti-financial crime (AFC) education, best practices, and peer-to-peer networking to AFC professionals globally. With over 100,000 members across 180 jurisdictions, ACAMS is committed to the mission of ending financial crime through the provision of anti-money laundering/counterterrorism-financing and sanctions knowledge-sharing, thought leadership, risk-mitigation services, ESG initiatives, and platforms for public-private dialogue.

The association's CAMS certification is the gold-standard qualification for AFC professionals, while the CGSS certification is its premier specialist qualification for sanctions professionals. ACAMS' 60+ Chapters globally further amplify the association's mission through training and networking initiatives.

Key Observations from our Global Convening

There is not a universally "correct" method to ensure the accuracy of beneficial ownership information in a registry. Therefore, the purpose of the Paper and our observations is not to recommend jurisdictions take any specific action. Rather, our goal is to present a range of options that could prove valuable irrespective of a country's stage in its beneficial ownership journey. These options include several tactical approaches jurisdictions employ to verify beneficial ownership information and potential structural enhancements jurisdictions could consider to ensure greater accuracy.

1. The paper can also be access via ACAMS website at <https://www.acams.org/en/media/document/36425>.

Tactical Ways Jurisdictions Verify Beneficial Ownership Information

Paragraph 125(iv) of the Guidance states, “[t]he public authority or body holding beneficial ownership information is required, on a risk-based approach, to establish different mechanisms to verify the identity of the beneficial owners.” In the Paper, we detail six methods currently employed by various jurisdictions to verify beneficial ownership information. These include controls at the time of entity formation, automated cross-checks with other government databases, independent third-party verification, beneficial ownership registry internal controls, leveraging financial institutions and designated non-financial businesses and professionals (DNFBPs), and leveraging the public and civil society. We believe the nuanced insights provided in the Paper could aid jurisdictions in effectively implementing paragraph 125(iv). Thus, citing the Paper in the footnotes of the Guidance may serve as a valuable supplementary resource.

Structural Enhancements to Ensure More Accurate Beneficial Ownership Information

Throughout our discussions, we solicited input from members and participants for ideas on how they would improve the accuracy of information in beneficial ownership registries. Three recurring suggestions emerged consistently, irrespective of geographic location: (1) greater accountability by the authorities responsible for registries; (2) increased allocation of resources devoted to beneficial ownership registries; and (3) strengthened enforcement against intentionally inaccurate and incomplete submissions to registries. We offer detailed observations in each of these areas for FATF’s consideration regarding the features of an effective beneficial ownership registry for inclusion in paragraph 125.

1. Greater accountability by authorities responsible for beneficial ownership registries.

The Paper identifies three potential ways for achieving a more accurate registry through enhanced accountability. Firstly, it underscores the importance of clearly designating the agency or authority responsible for ensuring the registry’s accuracy. Many jurisdictions lack a clearly defined accountable entity, as identified during stakeholder discussions, posing a common concern. The authority responsible for collecting beneficial ownership information often sees themselves as an aggregator of the information but not responsible for its veracity. In fact, in many cases, there is no clear agency or authority that is responsible for accuracy. This lack of clear accountability for the registry’s accuracy was a common concern expressed during stakeholder discussions.

Secondly, the Paper notes a scarcity of data on the accuracy of beneficial ownership registries, particularly those that are non-public. In our discussions, stakeholders expressed a desire for authorities to conduct and publicly disclose accuracy assessments. Some suggested integrating these findings into national risk assessments, as a high level of inaccuracy could be considered a significant vulnerability.

Thirdly, the Paper reveals a lack of regular dialogue among relevant constituents on beneficial ownership registries. Feedback from authorities in charge of registries, government officials, central bankers, financial institutions, and civil society that participated in our roundtables acknowledged the value of the roundtables and expressed a desire for these discussions to occur more regularly. To this end, stakeholders proposed the establishment of public-private partnerships to address challenges in establishing, maintaining, and ensuring access to accurate registries.

2. Increased allocation of resources devoted to beneficial ownership registries.

Navigating the funding challenges for maintaining accurate registries lacks straightforward solutions, and the approaches will likely vary across jurisdictions based on their unique circumstances. We believe this is an area where FATF could facilitate cross-government information sharing and provide guidance on cost-benefit analysis.

Our roundtable discussions revealed a widespread perception that registries often face resource constraints. Additionally, it was further observed that there is heightened political will for the importance of beneficial ownership transparency when countries are nearing an evaluation or undergoing increased FATF monitoring. This heightened political will helped certain jurisdictions secure the resources required to establish a more accurate and effective beneficial ownership registry. To this end, roundtable participants suggested there could be a need for enhanced political-level education on the importance of beneficial ownership transparency.

3. Strengthened enforcement against intentionally inaccurate and incomplete submissions to registries.

In Section 6 of the Guidance, it says that registry authorities should have sufficient powers to ensure accurate information, and “[t]he range of sanctions should be proportionate and dissuasive.” However, just as it is challenging to find data on the accuracy of beneficial ownership registries, finding information on enforcement actions against intentional submissions of inaccurate or incomplete data is equally difficult. Stakeholders consistently expressed a desire for increased reporting on enforcement actions, anticipating two potential benefits: (1) fostering greater accountability for the authority responsible for sanctions; and (2) creating a deterrent effect if the sanctions are “proportionate and dissuasive.”

Our research uncovered infrequent and relatively low monetary fines for intentional inaccuracies in registry submissions. These weak penalties not only fail to deter criminals but may also discourage law enforcement from pursuing these cases. A suggested solution from our discussions was that countries could strengthen sanctions by making the submission of intentionally inaccurate or incomplete information to a registry a sentencing enhancement. Similar to certain jurisdictions imposing longer sentences for offenses involving aggravating factors (i.e., use of a weapon), countries could adapt similar sentencing laws/guidelines to crimes that involve the abuse of legal entities and arrangements. By doing so, and if the enhancement is significant, it could have a deterrent effect on criminals and incentivize law enforcement to pursue the beneficial ownership aspects of investigations.

In the global fight against financial crime, limiting the abuse of legal entities and arrangements stands among the most impactful measures we can take as a global community. At ACAMS, we are grateful for the opportunity to share our observations as part of this FATF consultation and stand prepared to collaborate with various stakeholders — governments, policymakers, regulators, financial intelligence units, law enforcement, financial institutions, DNFBPs, and civil society — to collectively work towards achieving this crucial goal.