

Submission to the Financial Action Task Force Consultation on the Revisions to Recommendation 25

Monday, August 1, 2022

Introduction

Our purpose in submitting this response is to offer key considerations for the Financial Action Task Force (FATF) review of Recommendation 25 (R.25) on the beneficial ownership (B.O.) requirements related to legal arrangements. In support of this submission, ACAMS would highlight that transparency and beneficial ownership considerations underpin an essential dialogue that requires collaboration between the financial community, as well as critical gatekeepers within the designated non-financial businesses and professions (DNFBPs) community. The financial community requires transparency when undertaking customer onboarding or know your customer (KYC) requirements, and the maintenance of financial services through ongoing customer due diligence. A lack of transparency risks driving further de-risking of customer types.

About ACAMS

ACAMS is the largest international membership organization dedicated to elevating anti-financial crime (AFC) education, best practices, and peer-to-peer networking to AFC professionals globally. With over 90,000 members across 180 jurisdictions, ACAMS is driving the beneficial ownership dialogue across our global events, public-private sector roundtables, community surveys, chapter discussions, and ongoing training. In support of this consultation, we continue to host stakeholder dialogue across the US, EU, UK, and APAC regions on ways to improve transparency.

We thank FATF for advancing this critical review, and firmly believe there are real opportunities for supporting improvements in how transparency and beneficial ownership standards are applied to legal arrangements.

ACAMS polled our audience on LinkedIn regarding legal arrangements. The total votes received were **691**.

In response to the question “What is the most challenging obstacle regarding legal arrangements if administered or residing abroad?”:

- **40%** voted for different privacy regulations
- **30%** voted for regulatory challenges
- **28%** voted for information sharing
- **2%** voted other

(Source: ACAMS LinkedIn Poll, July 2022)

Key Themes for Consideration

The anti-financial crime community recognizes that illicit actors abuse legal arrangements to hide sources of wealth, often using complex legal arrangements and transferring illicit funds to financial safe havens and global financial centers. It is acknowledged that some jurisdictions have lax and/or ineffective beneficial ownership requirements that can be exploited by corrupt and illicit actors to abuse the financial system. Consequently, both the private sector and law enforcement continue to struggle with identifying and mitigating inherent money laundering risks. Alongside strengthened regulatory frameworks and addressing identified loopholes, opportunities also exist for the creation of enhanced tools and information sharing platforms that address vulnerabilities and information gaps.

ACAMS has not responded to the questions posed in the Call for Public Consultation; instead we have consolidated our response under two thematic areas:

1. Supervision of Trusts and Corporate Structures

- **Improving supervision**
Competent authorities in various jurisdictions must improve anti-money laundering regulations around trust and other legal arrangements. Regulators should advise the private sector and set out clear and concise requirements to assist financial institutions to manage risk.
- **Beneficial ownership registries**
The financial community needs tools, like registries, to improve transparency. Registries should be shared globally with trusted institutions, as many illicit actors have a reach that extends further than their jurisdiction of origin. The use of technology can assist in building an information sharing mechanism. Access to registries to FIs as well as law enforcement should be considered, as well as timeliness and the extent of information to be obtained to ensure consistent standards.
- **Role of trustees**
Trustees must be part of the solution. As such, their responsibilities must be more widely understood so as to ensure maximum effectiveness.
- **Information sharing**
Information sharing around beneficial owners is needed to gain greater transparency. By effectively increasing transparency between trusted institutions, the private sector can cooperate and investigate potential illicit activity without barriers to access information. Information sharing can build strong relationships and trust between institutions while also effectively enhancing investigations.

2. Definitions and Levels of Transparency

- **Beyond definitions**
Clear definitions are necessary, but broader threat and typology guidance would be welcomed too. Once clear definitions are established, financial institutions would benefit from guidance on managing risk through typologies, red flags, and best practices.
- **Role of gatekeepers**
Beneficial ownership requirements must be imposed on appropriate designated non-financial businesses and professions. In addition, building trust between DNFBPs and financial institutions can assist in increasing transparency and enhancing investigations. Cooperation between gatekeepers, financial institutions, regulators, and law enforcement will be imperative to detecting illicit activity using trusts.

Issues Requiring Clarification and/or Further Dialogue

ACAMS has identified some priority areas that should be considered as part of the broader review.

1. **Improved regulatory supervision** is a prerequisite. Currently, only 6% of the 129 jurisdictions comply with R.25. The financial sectors need a jurisdictional framework that includes addressing trust and corporate structure loopholes.
2. **Beneficial ownership registries** need to be established. Collecting, processing, and validating beneficial owners associated with trusts and other legal arrangements is time-consuming. Therefore, industry, regulators, and law enforcement require tools and technology to improve accurate and up-to-date information along with quick access to the information requested.
3. **The obligations on trustees** (and persons holding an equivalent position in a similar legal arrangement) should be reviewed to ensure proportionate and effective transparency implementation.
4. A balance between **customer confidentiality and information sharing** must be achieved. However, many jurisdictions make information sharing difficult. Financial institutions find it difficult to prioritize between client confidentiality and information sharing, so financial institutions may take the conservative approach. In addition, jurisdictional differences often occur with privacy regulations. An agreed upon level of information sharing will need to be established globally.
5. Financial institutions, regulators, and DNFBPs alike would appreciate better definitions and improved guidance. However, we need **global standards that span jurisdictions**, especially within trust law countries. Even with different laws, it would be beneficial to have some measure of standardization, notably within the guidance on types of controllers. The current scope is insufficient to help manage the various workflow and processes.
6. Various constituencies of gatekeepers, such as lawyers, accountants, or corporate trust service providers, play a vital role in understanding the real owners or controllers within the legal arrangements. **Expanding the role of gatekeepers**, notably trustees, would improve transparency and effectiveness, building the proper anti-money laundering controls.

Conclusions

Born out of necessity, trusts and similar types of legal arrangements play an essential role in the global financial markets – notably for wealth management and private banking services, such as the management and protection of assets, the transfer of generational wealth, and instructions to handle assets during times of incapacity or illness. A meaningful goal is to require beneficial ownership registries in the appropriate jurisdictions where there is a significant risk or where risk is exported to another jurisdiction.

Many financial institutions bear the increased burden of collecting and scrutinizing beneficial ownership documents for client onboarding and customer due diligence. Notable loopholes exist in various large financial centers and offshore jurisdictions, some of which may not have been enacted into legislation or included specific obligations on non-professional trustees. Australia has yet to advance **Tranche 2**, and the United States is still debating the **ENABLERS Act**. The private sector would welcome improved requirements incorporating legal arrangements and trusts but also improving the burden-sharing, which disproportionately falls on banks.

ACAMS derives feedback from our members globally, to undertake specific work on beneficial ownership requirements addressing legal arrangements and trusts in our conferences, webinars, training, and private consultations in collaboration with our sixty Chapters. This activity is a core and consistent business objective of our organization.

Subsequently, we have initiated a series of webinars on global transparency. We include beneficial ownership transparency sessions in our global conferences to elevate typologies, share common failings, and address abuse from sophisticated criminal networks and corrupt parties. Our objective is to raise awareness and competency on the misuse of legal arrangements.

We absolutely support FATF's review of Recommendation 25 and the more comprehensive global dialogue on addressing this vulnerability, especially given the cross-border nature of illicit activity moving through these structures and financial centers. We will further collaborate with our members, Chapters, and the broader anti-financial crime community to build upon the themes outlined in this paper.

ACAMS

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