

# POSITION PAPER



## **WSBI-ESBG Position Paper to the FATF public consultation on the revision of Recommendation 25 (R.25)**

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WSBI



ESBG



I. Scope of Legal Arrangements, risk assessment and foreign trusts

1. In this context, are the following concepts sufficiently clear? If not, how could they be improved? a “governed under their law” b “administered in the jurisdiction” c “trustee residing in the jurisdiction” d “similar legal arrangements” (as compared with express trust).

**Yes, it is sufficiently clear.**

2. What could be the pros and cons associated with the new suggested risk assessment?

**Pros: It provides for seamless monitoring of entities for compliance with AML/CFT measures; how best to mitigate risks associated with different products and services. It also allows for the application of enhanced due diligence measures.**

What could be the potential “sufficient links” for foreign-created legal arrangements (e.g. residence of trustee, location of asset etc.) for the purpose of risk assessment?

**Sectoral risk assessment for legal persons and arrangements.**

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

**None.**

II. Obligations of trustees under R.25

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

**Professional service providers, e.g. lawyers, notaries, accountants, etc.**

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

**Yes. It would be difficult to verify or authenticate information provided by trustees from other jurisdictions. Additionally, some trustees may**



**reside from high-risk jurisdictions which are classified as non-corporative by AML/CFT measures.**

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

**There may be differences in laws and regulations governing record-keeping in different jurisdictions.**

### III. Definition of Beneficial Owners

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

**Yes. It would create a clear distinction between a Beneficial Owner for legal arrangements and for legal persons. We would support a harmonized definition, but when it comes to interpretative notes there should be clarification, e.g. when it comes to the element of “control” in a trust. Two completely separate definitions could lead to confusion. e.g. the Directive (EU) 2015/849 of the European Parliament of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ([AML Directive](#)) distinguishes for corporate entities (Article 3(6)(a)) and trusts (Article 3(6)(b)).**

8. Does limiting the information regarding beneficiaries to only those who have the power to revoke the arrangement or who otherwise have the right to demand or direct (that is, without the consent of the trustee) distribution of assets seem reasonable?

**Such information should be publicly available to promote transparency.**

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

**The current definitions are sufficient.**

### IV. Obstacles to transparency

10. What features of legal arrangements do you see being used for obscuring ownership? Are these linked to their involvement in the creation of broader complex structures or inherent to legal arrangements?

**Where a trust is owned or controlled by a company that has various directors/shareholders nominees in different jurisdictions. They are linked to broader complex structures.**



11. What are the legitimate uses of flee/flight clauses? What are the challenges associated with these clauses?

**They are used as a protective mechanism for members and the interest of the trust. There may be a challenge of enforceability of the clauses.**

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

**The use of professional intermediaries. Identification of Beneficial Ownership of various stocks might be difficult. Nominee shareholder/directors may be difficult to identify. Lack of uniform KYC standards - national KYC requirements are currently fragmented even across EU member states.**

V. Approach in collecting beneficial ownership information

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

**Yes.**

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

**Incomplete mandatory KYC information. Lack of uniform KYC standards - national KYC requirements are currently fragmented even across EU member states.**

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

**Yes.**

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

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

**Cons: Multi-pronged approach would be tedious and time consuming. Pros: Detailed KYC information will be collected through different approaches.**



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

**None.**

VI. Adequate, accurate and up-to-date information

17. Do you see any concerns with the suggested requirements?

**None.**

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

**Certified Fraud Examiners, Certified Anti-Money Laundering Specialists.**

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

**Yes. It would be difficult to obtain adequate information required.**

VII. General questions

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

**Resourcing and funding.**

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

**Yes. Different jurisdictions operate under different laws and regulations.**

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

**None.**

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

**Timely availability of information and accuracy of the Beneficial Owner.**



### **About WSBI (World Savings and Retail Banking Institute)**

Founded in 1924, WSBI brings together savings and retail banks from 64 countries, representing savings and retail banks worldwide. WSBI focuses on international regulatory issues that affect the savings and retail banking industry and provides a platform for knowledge exchange between member banks. Its aim is to achieve sustainable, inclusive, and balanced growth and job creation. Supporting a diversified range of financial services to meet customer needs, WSBI favours an inclusive form of globalization that is just and fair. It supports international efforts to advance financial access and financial usage for everyone. WSBI recognizes that there are always lessons to be learned from savings and retail banks from different environments and economic circumstances. It, therefore, fosters the exchange of experience and best practices among its members and supports their advancement as sound, well-governed, and inclusive financial institutions. Learn more at [www.wsbi-esbg.org](http://www.wsbi-esbg.org).



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### **About ESBG (European Savings and Retail Banking Group)**

ESBG is an association that represents the locally focused European banking sector, helping savings and retail banks in 16 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ 656,000 people driven to innovate at 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion billion in corporate loans, including SMEs, and serve 163 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21<sup>st</sup> century banking. Learn more at [www.wsbi-esbg.org](http://www.wsbi-esbg.org).



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