

Global NPO Coalition call with FATF Secretariat 02.02.2021

REVISION OF RECOMMENDATION 24 (BO of legal persons)

The FATF Secretariat is in the process of drafting new text and is holding a series of wide consultations (of which this was the first one). The FATF laid out its key proposals and the issues/implications for NPOs.



Key Proposals and Issues

Proposals for amendment to Recommendation 24

- Key elements – (i) adequacy, accuracy and timeliness of beneficial ownership information and (ii) definition of beneficial ownership (natural person) and control of legal persons (means and mechanism)
- Timely access by competent authorities
- Mitigating measures for risks associated with nominee arrangements and bearer shares

Issues for collecting views

- Understanding of the definition of Beneficial Ownership and the requirement of identifying beneficial owner (Beneficial Ownership Vs Beneficiaries)
- Use cases of using nominee arrangement for shareholding and directorship with legitimate purposes
- Any other implications of the proposals on NPOs

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Key questions from the NPOs side:

- **Is it really risk-based to include all public benefit organizations in BO policy?**
FATF response was that neither the old draft of R.24 or the new one mentions NPOs per se but that given NPOs are either a legal person or a legal arrangement (depending on what form they are registered as, given whether a country is governed by civil law or common law), BO regulations apply.
There was further pushback from the NPO-side, asking whether, even though NPOs *were* either incorporated as a legal person or arrangement, there was *any real risk*.
- **Who are the BOs of NPOs? Clarity on this would be welcome, to differentiate benefit from control, and ensure that beneficiaries are not confused with those who exercise control over the organization.**
FATF working on definitional side of things for the revised Recommendation.



- **What type of information is required and who has access.**
Again, FATF working on this, keeping privacy rights in mind.
- **The matter of avoiding duplication of information: who provides the BO information to whom?** REGISTRY APPROACH (company registers to include BO info)? COMPANY APPROACH (legal entities to keep BO info and make it available to authorities upon request)? EXISTING INFORMATION APPROACH (using otherwise available information)?
- **Over-regulation (especially as seen with the EU-AML) – with public benefit organizations regarded as obliged entities in many jurisdictions. Chilling impact of EU BO rules, with threats to beneficiaries/board members; difficulties for NPOs in appointing board members if they are to be listed as BOs.**
- **How will evaluators look at R24 for NPOs? Another tick-box exercise?**

FATF looking at, e.g., the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes.

Also looking at how BO applies to 'waqf'.

Examples were provided from **Nigeria** (the onerous rules under the Companies and Allied Matters Act, CAMA, 2020) and **Indonesia** (new ministerial regulation where everyone who is part of an association has to be registered as a BO – FATF to pass this on to the Indonesian ME team).

Next steps:

- **The FATF Secretariat will continue outreach with the Global NPO Coalition on the upcoming consultation of the amendments to R.24. The Coalition will be invited for written comments in the public consultation currently scheduled for March 2021.**
- **The Global NPO Coalition will submit additional case-studies (including country-specific examples) on the impact of the implementation of BO requirements to NPOs in order to best inform the discussion moving forward.**

ASSESSOR TRAINING

To prevent misapplication of R.8, and prevent government overreach, the FATF is:

1. Updating its **Joint Assessor Training course**. This course currently singles out the assessment of R.8 and could benefit from providing prospective assessors with a **one-page information package** to prompt them to assess R.8 in line with good practice.
2. Updating its **Standards Training Course (by end-March)**, which deals with the implementation of the FATF Standards in national settings. This course could benefit from national **case studies of good and improper R.8 implementation**. (Member States looking for bespoke training – and R8 came in the top 5 of Standards MSs would like training on.)
3. Considering creating a **standalone e-learning course** on FATF Standards/Methodology related to NPOs.
4. Continuing to push officials from national AML/CFT authorities to take its introductory e-learning course.



In addition to the compendium of good practice and examples of overreach, the Coalition also offered to provide:

- Outline of relevant IHL/IHRL/IRL standards
- Answers to frequent questions we get from both government and NPOs when we conduct R8 trainings across the world

Next Steps:

- The Coalition is requested to provide good and bad case examples of R.8 implementation.
- FATF Secretariat and the Coalition could arrange a smaller bilateral meeting to better discuss the FATF's training initiatives and contributions that the Coalition could make to them.