



REVISIONS TO RECOMMENDATION 24 AND THE INTERPRETIVE NOTE - PUBLIC CONSULTATION

Issued 1 December 2021

ICAEW welcomes the opportunity to comment on the **Revisions to Recommendation 24 and the Interpretive Note – Public Consultation** published by the Financial Action Taskforce, a copy of which is available from this [link](#).

This response of 1 December 2021 is made by ICAEW's **Business Law Department** and reflects consultation with the Economic Crime Sub-Committee.

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KEY POINTS

1. We welcome the proposals by the FATF to increase the transparency of beneficial ownership of legal persons and agree this is important in the fight against money laundering and terrorist financing. As a membership body for DNFBPs, ICAEW is committed to ensuring that Chartered Accountants are part of the defence of our financial systems against criminal proceeds.
2. It is important that in any changes to Recommendation 24 that the drafting is sufficiently clear to specify which organisations should be given access to which types of beneficial ownership data, and under what circumstances this access should be provided. For example, while we agree that competent authorities, especially law enforcement agencies, should be given access to information held by DNFBPs, it needs to be clear how this right of access would apply, and for appropriate safeguards to exist having due regard to sensitive client data. For example, there would need to be protection for DNFBPs for breach of confidentiality if they were required to give law enforcement agencies access to their client files.
3. We agree there is a need for competent authorities to have access to accurate and up to date beneficial ownership information on legal persons, and that this access should be on a timely basis. We are not convinced that full public access to this information would be proportionate, without proper consideration of the privacy, client confidentiality and security issues that could arise.
4. For beneficial ownership registers to be of value to both competent authorities and DNFBPs it is crucial that there is sufficient verification of the information held on the registers. Experiences from the UK, where information on the Companies House register of People with Significant Control is not currently verified, are that DNFBPs are not able to rely on the information on the register for the purposes of the Money Laundering Regulations. This significantly reduces the value of the register to all its users.

ANSWERS TO SPECIFIC QUESTIONS

Multipronged approach to collection of Beneficial Ownership information

Question 1

The requirement in paragraph 7 includes a compulsory company approach, a requirement for a public authority or body to hold beneficial ownership information (a beneficial ownership registry or another body) or an alternative mechanism, and the supplementary measures. 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. Do you agree with the approach set out in paragraph 7 of the Interpretive Note?

5. We agree that companies should be required to hold beneficial ownership information about themselves, and that there should be some form of registry held by a public body that provides timely access to the information by competent authorities. We also welcome the requirement for companies to cooperate with competent authorities, financial institutions and DNFBPs, although this is on the assumption that there is some form of business relationship between the company and financial institution/DNFBP.
6. It is unclear from the proposed paragraph 7 what alternative mechanisms would be appropriate in the event that a country did not have a beneficial ownership registry of legal persons held by one or more public bodies. Greater clarity on this point would be welcome.
7. We would support the encouragement for countries to ensure the accuracy of beneficial ownership information by using other sources of information such as information obtained by financial institutions and DNFBPs, but only where this is for information to be provided to competent authorities. Where the purpose of obtaining information from financial institutions and DNFBPs is to give public access to beneficial ownership records, due regard needs to be given to client confidentiality and privacy, plus local data protection requirements.

8. For information held on a register to be of value it is important that it is verified. This does however come at a cost, either for the registrar or third parties (such as DNFBPs) who may be obliged to verify the beneficial ownership information. These costs should be taken into account by countries to ensure those on whom the burden of verification will fall are provided with adequate resources.

Bearer Shares and Nominee arrangements

Question 2

Should bearer shares and bearer share warrants without any traceability be subject to additional controls as set out in amendments to paragraph 14 of the Interpretive Note?

9. We would support the additional controls proposed in paragraph 14 in relation to bearer shares and bearer share warrants without traceability.

Question 3

Is the draft glossary definition sufficiently clear to avoid inadvertently applying excessive controls to traceable and legitimate uses of such instruments? If there remains undue controls, how should this be mitigated?

10. We consider the glossary definitions of bearer share and bearer share warrants to be sufficiently clear. We would suggest however that the definition remains under review and is amended if it becomes clear that either additional instruments should be included, or that some instruments have been caught by the definition unintentionally.

Question 4

Should nominee arrangements be subject to the disclosure requirements as set out in amendments to paragraph 15 of the Interpretive Note?

11. We would support the requirement for nominee arrangements to be disclosed to the company itself, the registry, law enforcement or financial institutions / DNFBPs where a business relationship exists with the legal person for whom the nominee arrangement applies. There are however many bona fide reasons why an interest in a legal person may be held by a nominee so the requirement to disclose that in a public register may not be desirable or proportionate.
12. In relation to licensing, where an individual acts as a nominee shareholder or director in a professional capacity, it would seem proportionate for that individual to be licensed and appear on a register of those providing such services. However, many nominee arrangements are between family members or are other private arrangements where the nominee is not acting in a professional capacity. In these cases, licensing or inclusion on a register of providers of nominee services should not be required.
13. In relation to disclosure of the nominee arrangement, where a professional nominee is acting it would seem appropriate for their role as a nominee, and the nominator, to be disclosed on a register. In contrast, where there is a family nominee arrangement, we would suggest that it would be proportionate for the nominee to appear on a register, but not the nominator, unless this was a closed register with access for competent authorities but not the public at large.
14. We would however support a requirement for all nominees to hold information on the nominator on whose behalf they are acting and to provide that information to competent authorities/law enforcement on request.

Question 5

Will the proposed rules and the new glossary definitions create undue restrictions for institutional investors or other legitimate uses of such instruments, and if so, how should this be mitigated?

15. No comments.

Question 6

Are there other specific mechanisms that should be permitted, in addition to those proposed, which could ensure their transparency?

16. No comments.

Risk-Based Approach

Question 7

Should countries be required to assess the ML and TF risks associated with foreign-created legal persons and take appropriate steps to manage and mitigate them? What constitutes a sufficient link with the country?

17. We would support a requirement for countries to assess the ML and TF risks of foreign-created legal persons. This assessment could form an additional part of the National Risk Assessment undertaken by a territory, and could focus on those foreign-created legal persons which are commonly encountered by financial institutions and DNFBPs in a given territory. In particular the assessment should identify the combined jurisdiction and entity type that gives rise to the risk e.g. French private companies or Italian foundations.
18. Where possible, this assessment should also propose steps to manage and mitigate the risks associated with these foreign-created legal persons. The steps could either be for a country's government to take on a national basis, or recommendations for those doing business with the legal persons to mitigate the risks. This would provide valuable guidance to businesses and professionals operating cross-border.
19. A sufficient link with a country should be where there is a business relationship (as defined under local law and regulation for the purposes of anti-money laundering and counter terrorist financing) between a financial institution or DNFBP in one jurisdiction with a foreign-created legal person. A sufficient link should also exist where a legal body has significant dealings with a public body in that country such as a local authority or national government.

Question 8

Should a risk-based approach be applied to verification of beneficial ownership information?

20. It would be appropriate for there to be a risk-based approach to verification of beneficial ownership information. This would mean that more comprehensive checks involving multiple data sources are undertaken where there is an elevated risk of incorrect beneficial ownership information.

Access to Information

Question 9

Taking into account needs of competent authorities and other stakeholders, and concerns relating to privacy, security and other potential misuse of BO information, do you agree with the requirements on access to information as set out in paragraphs 12 and 13?

21. We agree that competent authorities including law enforcement agencies should be given access to beneficial ownership information as set out in paragraph 12.

22. On the basis that the proposals for access to information per paragraph 13 relate only to registries, we agree with the requirements as drafted, including for public access. The UK already has publicly accessible registers including the register of Persons with Significant Control. We would have concerns however if there were proposals to give public access to client information held by DNFBPs as this would not be proportionate access to information.