



FATF Risk-Based Guidance on Recommendation 25

Response to the public consultation - December 2023

[Open Ownership](#) (OO) is pleased to contribute to the [public consultation](#) on the updated guidance of Recommendation 25 (R25). OO [provides technical assistance](#) to countries implementing beneficial ownership transparency reforms, to help generate accurate data on beneficial ownership that complies with international standards – notably Recommendations 24 (R24) and 25 – and meets the needs of data users across government, obliged entities, the wider private sector, and civil society.

Since 2017, OO has worked with [over 40 countries](#) to advance the implementation of beneficial ownership reforms and supported the creation of over 15 new central and sectoral registers. OO has developed the world's leading [data standard](#) for beneficial ownership information, co-founded the international [Beneficial Ownership Leadership Group](#), and built the world's first [transnational public beneficial ownership register](#).

OO believes that a lack of parity in the treatment of legal persons (R24) and legal arrangements (R25) is problematic and can cause a displacement of risk, as pointed out in its [R25 consultation response](#). Although these suggestions were not adopted, the draft guidance on R25 is an opportunity to inform implementing countries about the most effective approaches and encourage their implementation.

Generally, OO welcomes the draft guidance. It provides very useful background information on trusts, notably parts of sections 1–3. In OO's experience of providing technical assistance, there is generally a very low level of knowledge and understanding about trusts, particularly in non-trust law countries. These sections of the guidance will undoubtedly be a useful resource. OO also welcomes that the guidance is more comprehensive and ambitious than R25 itself.

As OO has developed its [expertise in implementing beneficial ownership registers](#) through hands-on experience providing technical support, our recommendations on how the guidance can be improved relate to emerging and established best practices in implementation. Therefore, this response relates mostly to consultation questions 4 and 5: additional mechanisms to ensure access to beneficial

ownership information in the context of trusts; and suggested approaches to identify, assess, and mitigate the money laundering/terrorist financing risks linked with different types of legal arrangements.

OO appreciates that the guidance cannot introduce new requirements, but is of the opinion that it could devote significantly more focus to what has been demonstrated to work well, especially drawing on lessons from the implementation of R24. As such, rather than answering each question of the consultation, this response will focus on two key aspects of best practice. In addition, in OO's experience, using country examples and case studies of effective implementation is a particularly effective way of supporting governments to implement these requirements. These could be added throughout the guidance.

The registry approach as part of the multi-pronged approach as best practice

Evidence from and experiences with the implementation of R24 clearly show that [the registry approach as part of the multi-pronged approach leads to higher levels of effectiveness](#); notably, that legal persons and legal arrangements are more transparent; and that adequate, accurate, and up-to-date beneficial ownership information is available on a timely basis to competent authorities.

OO welcomes encouragement in paragraph 78 of using the registry approach:

In the absence of registration requirements for express trusts and similar legal arrangements governed under a country's law and where failure to comply with such registration requirements would lead to the failure of the trust, a country may find it difficult to establish the extent to which there is foreign use of trusts governed under its law.

This point should be more strongly and clearly emphasised throughout the guidance. For example, many other requirements of R25 would be most effectively met through registration and centralisation of information, or would be incredibly challenging to meet, or enforce, without this. This includes access by all competent authorities, and ensuring – or even simply establishing – whether information is accurate and up-to-date. [Many jurisdictions](#) have chosen to implement the registry approach for legal arrangements and the guidance should include these as examples and case studies.

In addition, the registry approach is most effective when the legal validity of the corporate vehicle in question is contingent upon registration. This is the case in several countries, including Namibia and South Africa. For example, [in South Africa](#) upon registration of the trust, the trustee is issued a letter of authority which it requires to administer the trust and interact with obliged entities on behalf of the trust.

Parity of treatment of entities and arrangements will ensure consistency and prevent displacement of risk. The displacement of risk is well-documented in the UK. Experiences with the [abuse of Scottish Limited Partnerships](#) and subsequently [other UK Limited Partnerships bear testimony](#) to the risks of treating corporate vehicles differently, [irrespective of whether or not a corporate vehicle has a legal personality](#). Parity will also make the consideration of whether certain corporate vehicles should be treated under R24 or R25 easier for countries, and make their beneficial ownership disclosure systems less susceptible to loopholes.

It is also easier for countries pursuing the registry approach to make beneficial ownership information available to a range of government and non-government users, beyond competent authorities, that have a legitimate role to play in countering money laundering. These include obliged entities and civil society.

Structured and interoperable beneficial ownership information for legal arrangements

The guidance acknowledges that legal persons and legal arrangements are frequently part of the same corporate structures. For example, when legal persons are parties to a trust. The guidance should also cover instances where trusts appear in the ownership structures of a legal person, and what the considerations and applications of this are for ensuring both R24 and R25 lead to useful and usable information on legal persons and legal arrangements.

Critical to adequate, accurate, and up-to-date beneficial ownership data being collected, verified, stored, and used, is for it to be properly [structured, to ensure it is machine-readable and interoperable](#). The importance of combining datasets, interoperability, and entity resolution was emphasised by the vast majority of data users – including all competent authorities – in research recently conducted by OO (expected to be published in 2024). The guidance should therefore encourage countries to consider facilitating interoperability between beneficial ownership information gathered under R24 and R25 – both within and between jurisdictions – for instance by using established data standards and established unique identifiers such as the [Legal Entity Identifier \(LEI\)](#). It should also consider the need to combine beneficial ownership information with other datasets – including on procurement, sanctions, politically exposed persons, property, licences, and vessels. This is necessary for many of the potential use cases for beneficial ownership information to be used to combat money laundering.

The [Beneficial Ownership Data Standard \(BODS\)](#) is a free-to-use open standard for structuring information about beneficial ownership, including a data format and guidance for collecting, sharing and using data on beneficial ownership. [Both legal persons and arrangements](#) can be represented in BODS-compliant data, which is machine-readable and interoperable by default. BODS is [endorsed as the UK government data standard](#) for beneficial ownership, and has been implemented or is to be implemented, by a number of countries, including Armenia, Canada, Latvia, and Nigeria. Beneficial ownership information collected under R24 and R25 that is interoperable may also reduce the compliance burden for legal persons and legal arrangements meeting their statutory obligations, if they appear in each other's ownership structures.

For further information or to discuss these responses in further detail, please contact tymon@openownership.org.