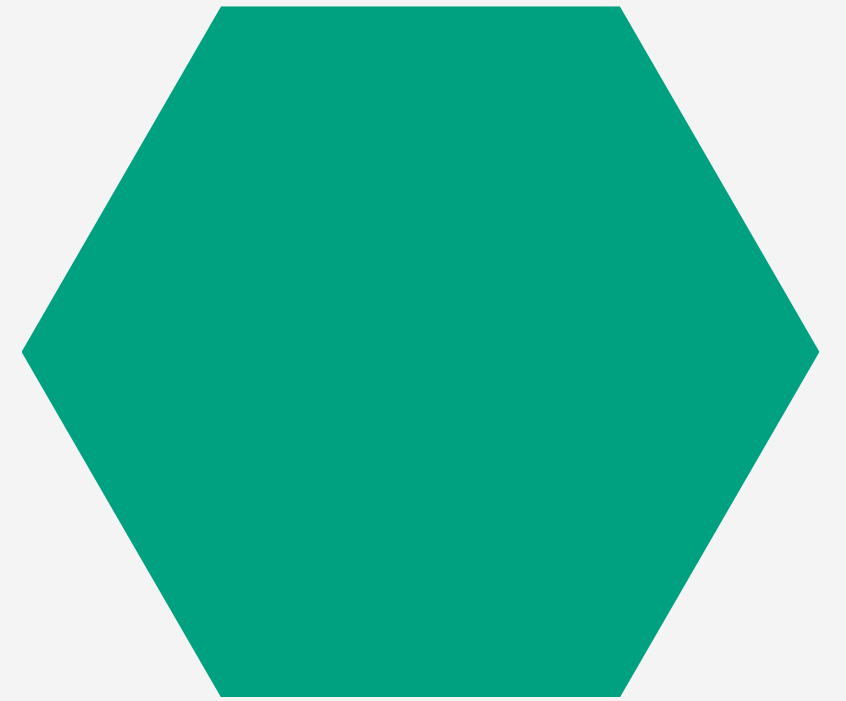




Revisions to Recommendation 24, Part 4: Nominee Arrangements.

**CFATF RESEARCH DESK
APRIL 25th, 2024**





Introduction

This article series will look at the amendments to Recommendation 24 and its Interpretive Note. In Part 4, the focus will be on nominee arrangements [1]. Countries will be assessed under the new requirements of the Recommendation in the 5th Round of Mutual Evaluations that is scheduled to begin (for CFATF Members) with the presentation of the first 5th Round mutual evaluation report at the CFATF November 2026 Plenary.

[1] This article draws on chapter 15 “Mechanisms for Preventing and Mitigating Risk of the Misuse of Nominee Arrangements” in the FATF Guidance on Beneficial Ownership of legal Persons, ps. 47-51.



Interpretive Note 24 – Nominee Arrangements

Amendments to Recommendation 24 have focused on nominee arrangements to prevent the misuse of nominee directors and shareholders for ML/TF. Paragraph 13 of revised (revisions in orange) INR. 24 reflects the mechanisms that are required to prevent and mitigate the risk of the misuse of nominees:

Countries should take measures to prevent and mitigate the risk of the misuse of nominee shareholding and nominee directors, for example by applying one or more of the following mechanisms:

(a) requiring nominee shareholders and directors to disclose their nominee status and the identity of their nominator to the company and to any relevant registry, and for this information to be included in the relevant register, and for the information to be obtained, held, or recorded by the public authority or body or the alternative mechanism referred to in paragraph 7 [2]. Nominee status should be included in public information;

[2] See ps. 92 and 93 of the FATF Recommendations. This footnote is not contained in the INR. 24



Interpretive Note 24 – Nominee Arrangements

- (b) requiring nominee shareholders and directors to be licensed [3], for their nominee status and the identity of their nominator to be obtained, held, or recorded by the public authority or body or alternative mechanism referred to in paragraph 7 and for them to maintain information identifying their nominator and the natural person on whose behalf the nominee is ultimately acting [4], and make this information available to the competent authorities upon request [5]; or
- (c) enforcing a prohibition of the use of nominee shareholders or nominee directors.

[3] A country need not impose a separate licensing or registration system with respect to natural or legal persons already licensed or registered as financial institutions or DNFBPs (as defined by the FATF Recommendations) within that country, which, under such license or registration, are permitted to perform nominee activities and which are already subject to the full range of applicable obligations under the FATF Recommendations.

[4] Identifying the beneficial owner in situations where a nominee holds a controlling interest or otherwise exercises effective control requires establishing the identity of the natural person on whose behalf the nominee is ultimately, directly, or indirectly, acting.

[5] For intermediaries involved in such nominee activities, reference should be made to R.22 and R.28 in fulfilling the relevant requirements.



What is a Nominator and Nominee? [6]

According to the FATF Glossary, a nominator is an individual, group of individuals or legal person that issues instructions (directly or indirectly) to a nominee to act on their behalf in the capacity of a director or a shareholder, also sometimes referred to as a “shadow director” or “silent partner.” A nominee is an individual or legal person instructed by another individual or legal person (“the nominator”) to act on their behalf in a certain capacity regarding a legal person.

Nominees can take the form of **directors** and **shareholders**. A Nominee Director (also known as a “resident director”) is an individual or legal entity that **routinely exercises** the functions of the director in the company on behalf of and subject to the direct or indirect instructions of the nominator. A Nominee Director is never the beneficial owner of a legal person.

[6] Guidance on Beneficial Ownership of Legal Persons, ps. 47 and 48.



What is a Nominator and Nominee?

A Nominee Shareholder **exercises the associated voting rights** according to the instructions of the nominator and/or receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares it holds as a nominee.

It is important to note that nominee relationships are also defined based on the nominee shareholder or director **routinely exercising** the functions in the company, subject to the direct or indirect instructions of the nominator.

Nominee arrangements describe a wide range of related legal and informal devices, where a nominee is registered as a director or shareholder. These are often formal legal agreements with corporate service providers [7]. Legal contracts that could be relevant in the context of the measures on nominees for R. 24 include:

- Professional nominee arrangements offered by corporate service providers.
- Professional nominee director and nominee shareholder services offered by corporate service providers.

[7] For example, a TCSP, notary, lawyer, or tax advisor.



What is a Nominator and Nominee?

Legal contracts (continued)

- Power of attorney arrangements used together with nominee arrangements.
- “Signature for sale” agreements in which the nominee is simply a front with no substantive connection with the company.

However, nominee arrangements can also involve informal relationships [8] or de facto (or “shadow”) directors [9]. These arrangements can pose ML/TF risks in countries that do not have specific legislation for nominee directors and nominee shareholders, because they exist solely in practice.

[8] A family member, friend, employee, or associate stands in for the nominator, who can be the beneficial owner.

[9] This occurs when the behaviour or conduct of a person makes them a nominee director in the eyes of the law. Some jurisdictions have defined hidden beneficial owners “shadow directors” under the law who exercise control through a (formal or informal) nominee.



Mechanisms to Prevent and Mitigate the Risk of the Misuse of Nominee Arrangements

Under INR. 24, three (3) mechanisms have been established to prevent and mitigate the abuse of nominee arrangements and countries are required to use one or more of these: transparency requirements, licensing requirements and prohibition of nominee arrangements.

Transparency Requirements:

- *INR 24, Para. 13 (a) requiring nominee shareholders and directors to disclose their nominee status and the identity of their nominator to the company and to any relevant registry, and for this information to be included in the relevant register, and for the information to be obtained, held, or recorded by the public authority or body or the alternative mechanism referred to in paragraph 7 [10]. Nominee status should be included in public information.*

[10] See ps. 92 and 93 of the FATF Recommendations. This footnote is not contained in the INR. 24



Mechanisms to Prevent and Mitigate the Risk of the Misuse of Nominee Arrangements

Transparency Requirements:

Nominee shareholders and directors must divulge their nominee status and the identity of the nominator on whose instructions they are acting on in the company. This information should be reported by the company or by the nominee to the relevant register [11] or alternative mechanism as designated by the country, regardless of whether the nominee arrangements are formal or informal.

Moreover, the information should be obtained, held, or recorded by the beneficial ownership registry or alternative mechanism used by the country. The country should also include the nominee status of nominee directors and nominee shareholders in information that is public, such as adding a label or an asterisk to the names of directors and shareholders who are nominee directors and shareholders, on the relevant registry.

[11] For example, the company's shareholder register, the company register or a beneficial ownership register.



Mechanisms to Prevent and Mitigate the Risk of the Misuse of Nominee Arrangements

Licensing Requirements

INR 24, Para. 13 (b) requiring nominee shareholders and directors to be licensed, for their nominee status and the identity of their nominator to be obtained, held, or recorded by the public authority or body or alternative mechanism referred to in paragraph 7 and for them to maintain information identifying their nominator and the natural person on whose behalf the nominee is ultimately acting, and make this information available to the competent authorities upon request;

Nominee shareholders and directors must be licensed to offer nominee services or belong to a licensed and regulated profession under AML regulations. Countries may either create a licensing system for specifically for nominees or may rely upon existing licensing and regulation systems of FIs and DNFBPs, including TCSPs.

The public authority, body or alternative mechanism designated by the country must obtain, hold, or record information on the nominee status and identity of their nominator. In addition, nominee shareholders and directors must maintain information identifying their nominator, the natural person on whose behalf they are ultimately acting and make this information available to competent authorities available upon request.



Mechanisms to Prevent and Mitigate the Risk of the Misuse of Nominee Arrangements

Prohibition

INR 24, Para. 13 (c) **enforcing a prohibition of the use of nominee shareholders or nominee directors.**

Under this requirement, nominee arrangements are explicitly prohibited. However, given the possibilities of de facto (“shadow”) and informal nominees, the absence or removal of legislative provisions for nominees will not adequately ensure that nominee directors or shareholders are unavailable in practice.

Therefore, measures to detect undisclosed nominees and enforce prohibition, such as proportionate and dissuasive sanctions, must be utilized. Additionally, prohibition may be combined with other measures listed under a) and b) above, for example, a prohibition of corporate directors in combination with licensing or transparency requirements for other types of nominee arrangements.



Mechanisms to Prevent and Mitigate the Risk of the Misuse of Nominee Arrangements

Prohibition

Informal nominee arrangements can be more difficult to detect due to the inability to apply transparency or licensing requirements or apply measures to detect them. Thus, a stronger emphasis should be placed on applying sanctions for false declarations of beneficial ownership to sufficiently address risks related to the misuse of informal nominees. The declarations can be used for investigative and sanctioning purposes.

Regarding FIs and DNFBPs, information could be requested and recorded by these entities for documentation purposes on the main elements of the nominee relationship/s. Further, depending on the level of risk and the registry or alternative mechanism used, FIs/DNFBPs may need to be sensitised to the risk of undisclosed nominee arrangements in the context of obtaining beneficial ownership information.



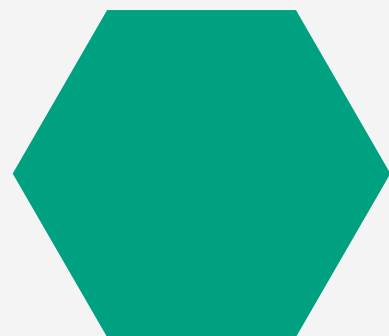
References

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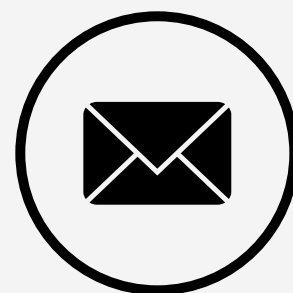
FATF (2023), “Guidance on Beneficial Ownership for Legal Persons”, FATF, Paris.



Thank you for reading this article and we hope that you found it informative and interesting. Part 5 will continue the focus on the amendments to Recommendation 24, specifically on bearer shares and bearer share warrants.



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