COMPLIANCE FOCUS

REVISIONS TO FATF RECOMMENDATION 24

ST. KITTS BRANCH Financial Services Regulatory Commission

Amendments to FATF Recommendation 24 have focused on nominee arrangements to prevent the misuse of nominee directors and shareholders for ML/TF/PF.

A **nominator** is an individual, group or legal person that issues instructions (directly or indirectly) to a nominee to act on their behalf in the capacity of director or shareholder.

A **nominee** is an individual or legal person instructed by another individual or legal person (nominator) to act on their behalf in a certain capacity. Nominees can take the form of directors or 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 according to the direct or indirect instructions of the nominator. A nominee director is **NEVER** the beneficial owner of a legal person.

A **nominee shareholder** exercises the associated voting rights according to the instructions of the nominator and receives dividends on behalf of the nominator.

Nominee arrangements describe a wide range of legal and informal agreements where a nominee is registered as a director or shareholder. These are often legal arrangements with corporate service providers. Nominee arrangements can also involve informal relationships or de facto (shadow) directors.

These arrangements can pose money laundering (ML), terrorist financing (TF) and proliferation financing (PF) risks in countries that do not have specific legislation for nominee directors and nominee shareholders because they exist solely in practise.

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

Three (3) mechanisms have been established to prevent and mitigate the abuse of nominee arrangements. Countries are required to use one or more of these mechanisms.

1. 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 regardless of whether the nominee arrangements are formal or informal. The information should be maintained, held and recorded by the BO registry or alternative mechanism used by the country.

2. Licensing Requirements

Nominee shareholders and directors must be licensed to offer nominee services or belong to a licensed and regulated profession under AML/CFT/CPF regulations. Countries have the option of either creating a licensing system specifically for nominees or rely on existing licensing and regulatory systems of FIs and DNFBPs. The public authority, body or alternative mechanism designated by the country should obtain, hold or record information on the nominee status and identity of the nominator.

3. Prohibition

The country has the option to prohibit the use of nominee shareholders or directors. However, given the possibilities of informal nominees, the absence or removal of legislative provisions for nominees will not adequately ensure that nominee directors and shareholders are unavailable in practice. Measures to detect undisclosed nominees and enforce prohibition such as proportionate and dissuasive sanctions must be utilized.

Stronger emphasis should be placed on applying sanctions for false declarations of BO information to sufficiently address risks relating to the misuse of informal nominees. Depending on the level of risk and the registry or alternative mechanism used, FIs and DNFBPs may need to be sensitized to the risk of undisclosed nominee arrangements in the context of obtaining BO information.