



# AML/CFT 101

CFATF Secretariat Research Desk  
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## The Nature of Beneficial Ownership- focus on legal arrangements

# What is Beneficial Ownership (BO)?

“Beneficial Owner” refers:

- to the natural person(s) at the end of the chain, who ultimately owns or controls the legal arrangement, including those persons who exercise ultimate effective control over the legal arrangement, and/or the natural person(s) on whose behalf a transaction is being conducted.



*Source: FATF Guidance on Transparency and Beneficial Ownership*



# What is Ultimate Effective Control?

“Ultimately owns or controls” and “Ultimate effective control” refers to:

- Situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

*Source: FATF Guidance on Transparency and Beneficial Ownership*



# What are legal arrangements?

- Recommendation 25 applies broadly to “legal arrangements” meaning express trusts or other similar legal arrangements.
- The term express trust is defined in the glossary to the FATF Recommendations to mean a trust clearly created by the settlor, usually in the form of a document (such as a written deed of trust).
- They are to be contrasted with trusts which come into being through the operation of the law and do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (such as a constructive trust).



# Why is BO important for legal arrangements?

- Beneficial ownership information can be obscured through the use of trusts and other legal arrangements which enable a separation of legal ownership and beneficial ownership of assets.
- This makes it more difficult for law enforcement and financial institutions to determine who the beneficial owner is.

# What are “Trusts?”



Trusts enable property to be managed by one person on behalf of another and are a traditional feature of common law.

They also exist in some civil law countries or are managed by entities in these countries and have a wide range of legitimate uses (for example, the protection of beneficiaries, the creation of investment vehicles and pension funds, and the management of gifts, bequests or charitable donations).

*Source : FATF Guidance on Transparency and Beneficial Ownership*



# How can Trusts be misused for AML/CFT?

- Trusts can be used to conceal the control of assets, including the proceeds of crime. For example, a trust may be created in one jurisdiction and used in another to hold assets across jurisdictions to disguise the origins of criminal proceeds.
- It may be used to enhance anonymity by completely disconnecting the beneficial owner from the names of the other parties including the trustee, settlor, protector or beneficiary.

# Did you know?



**Trustees**

- In a trust, the legal title and control of an asset are separated from the equitable interests in the asset. This means that different persons might own, benefit from, and control the trust, depending on the applicable trust law and the provisions of the document establishing the trust (for example, the trust deed).
- In some countries, trust law allows for the settlor and beneficiary (and sometimes even the trustee) to be the same person.
- Trust deeds also vary and may contain provisions that impact where ultimate control over the trust assets lies, including clauses under which the settlor reserves certain powers (such as the power to revoke the trust and have the trust assets returned).
- This may assist in determining the beneficial ownership of a trust and its related parties.





# Recommendation

## 25 –

# Transparency and beneficial ownership of legal arrangements

- Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities.
- Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.



# Understanding the Risks Associated With Legal Arrangements

Countries should:

Understand by conducting a comprehensive risk assessment of the legal arrangements that exist in their jurisdiction and the associated ML/TF risks.

Identify typologies which indicate higher risks by reviewing cases where trusts and other legal arrangements are being misused for criminal purposes. When assessing the risks associated with different types of legal arrangements, countries could consider assessing the risks of specific jurisdictions, and types of service providers.\*

\* World Bank / UNODC StAR report (2011), p. 66.



# Requirements for Trust Law Countries



Trust law countries should require the trustees of any express trust governed under their law to obtain and hold adequate, accurate, and current beneficial ownership information regarding the trust. This information should be kept as accurate, current and up-to-date as possible by updating it within a reasonable period following any change.

In this context, beneficial ownership information includes:

- a) information on the identity of the settlor, trustee(s), protector (if any), beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and
- b) basic information on other regulated agents of, and service providers to the trust, including investment advisors or managers, accountants, and tax advisors.

# Common Requirements for all Countries

All countries should implement the following measures:

a) Require that trustees disclose their status to financial institutions and DNFBPs when forming a business relationship or carrying out an occasional transaction above the threshold of (USD/EUR 15,000). The trustee needs to actively make such disclosure (and not only upon the request of a competent authority). Trustees should not be prevented from doing this, even if, for example, the terms of the trust deed require them to conceal their status. The only source of information on the trustee that is often available comes from the business relationship of a financial institution/DNFBP and the trustee.

b) Require professional trustees to maintain the information they hold for at least five years after their involvement with the trust ceases. Countries are also encouraged to extend this requirement to non-professional trustees and the other relevant authorities, persons and entities. \*

\* Interpretive Note to 25, par. 5 (Other authorities, persons and entities who might be holding useful information on trusts includes trust registries, tax authorities, agents and services providers to the trust, including investment advisors or managers, lawyers, or TCSPs).





# Other Possible Measures

Countries are encouraged to ensure that other relevant authorities, persons and entities hold information on all trusts with which they have a relationship. Potential sources of information on trusts, trustees, and trust assets are:

- a) registries (for example, a central registry of trusts or trust assets), or asset registries for land, property, vehicles, shares or other assets.
- b) other competent authorities that hold information on trusts and trustees (for example, tax authorities which collect information on assets and income relating to trusts), and
- c) other agents and service providers to the trust, including investment advisors or managers, lawyers, or trust and company service providers.

# Mechanisms that can ensure the availability of beneficial ownership information on trusts and other legal arrangements

- Trustees are required to obtain and hold information on the trustee, the settlor, the protector (if any), the beneficiaries or class of beneficiaries, and any other person exercising control over the trust.
- Trustees are required to hold the information in electronic form, and are required to provide it to competent authorities upon request within a set time period,
- The obligations on professional trustees are supervised and enforced by a competent authority and trustees are subject to dissuasive and proportionate sanctions for failure to hold the required information, or for failing to grant to competent authorities' timely access to information regarding the trust.
- Trustees of express trusts are required to disclose their status to financial institutions. Sanctions apply for the provision of false information such as administrative penalties.
- TCSPs, lawyers and accountants carry out CDD and understand their CDD obligations with respect to beneficial ownership, and are subject to AML/CFT supervision, in line with R.10.
- A country has established a central registry of trusts which includes information on the trustee, the settlor, the protector (if any), the beneficiaries or class of beneficiaries, and any other person exercising control over the trust.



Source : [FATF Guidance on Transparency and Beneficial Ownership](#)



# Effectiveness in the context of Immediate Outcome 5 – Beneficial Ownership

“Legal persons and arrangements are prevented from misuse for ML or TF, and information on their beneficial ownership is available to competent authorities without impediments.”

This applies equally to all countries.





# Immediate Outcome 5 – Core Issues

Is information on types of legal persons and arrangements available?

How well do authorities understand the potential misuse of legal persons?

How well does the country prevent misuse?

Can authorities obtain information on legal persons?

Can authorities obtain information on legal arrangements?

How well are sanctions applied for failure to comply?

*Source : FATF Methodology*





# Immediate Outcome 5 – Some Specific Factors for consideration

- What are the measures taken to enhance the transparency of legal persons and arrangements?
- How do relevant authorities ensure that accurate and up-to-date basic and beneficial ownership information on legal persons is maintained? Is the presence and accuracy of information monitored, tested/certified or verified?
- To what extent is the time taken for legal persons/arrangements to register changes to the required basic and beneficial ownership information adequate to ensure that the information is accurate and up to date?



# Immediate Outcome 5 – Some Specific Factors for consideration (2)

- To what extent can FIs and DNFBPs obtain accurate and up-to-date basic and beneficial ownership information on legal persons and arrangements?
- What is the extent of information that trustees disclose to financial institutions and DNFBPs?
- Do the relevant authorities have adequate resources to implement the measures adequately?



# Factors that negatively impact Effectiveness in the context of IO 5 – Beneficial Ownership

System relies on the investigative approach, but the underlying information is not available.

Information held is out of date/unreliable; legal persons do not submit updated information; company registries do not actively regulate the requirements to maintain information.

Inadequate domestic or international cooperation and coordination.



# Regional Experiences to date

Jurisdiction	IO5	Rec 25
<u>Antigua &amp; Barbuda</u>	ME	LC
<u>The Bahamas *</u>	ME	LC
<u>Barbados</u>	ME	LC
<u>Bermuda</u>	SE	LC
<u>Cayman Islands</u>	ME	PC
<u>Haiti</u>	LE	NC
<u>Jamaica</u>	LE	PC
<u>Trinidad and Tobago</u>	ME	PC
<u>Turks &amp; Caicos Islands</u>	ME	C
St. Lucia	LE	PC

\* The Bahamas was re-rated in December 2018 from Partially Compliant to Largely Compliant.