

GLOSSARY

Beneficial owner	<p><u>In the context of legal persons, beneficial owner</u> refers to the natural person(s) who ultimately¹ owns or controls a customer² a legal person and/or the natural person who obtains or may obtain a benefit from the legal person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person or arrangement³.</p> <p>¹ - Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control. Complex ownership structures should be discouraged or prohibited.</p> <p>² - This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.</p> <p>³ - The ultimate beneficial owner is always one or more natural persons. As set out in R.10, in the context of CDD it may not be possible to verify the identity of such persons through reasonable measures, and, to the extent that there is doubt about whether a person with a controlling ownership interest in a legal person is the ultimate beneficial owner, or where no natural person exerts control through ownership interests, the identity should be determined of the natural persons (if any) exercising control of the legal person or arrangement through other means such as voting rights, convertible stock or other financial instruments or having a power of attorney. Where no natural person is identified in that role, the legal person should be allowed to incorporate or hold assets or establish a relationship with an obliged entity, or at least the top 20 main shareholders or controllers should be identified up to a natural person.</p> <p>the natural person who holds the position of senior managing official should be identified and recorded as holding this position. This provision of R.10 does not amend or supersede the definition of who the beneficial owner is, but only sets out how CDD should be conducted in situations where the beneficial owner cannot be identified.</p> <p><u>In the context of legal arrangements, beneficial owner includes: (i) the economic and legal settlor(s); (ii) the trustee(s); (iii) the protector(s) (if any); (iv) each direct or indirect or potential beneficiary, or where applicable, the class of beneficiaries or objects of a power; and purposes, and (v) any other natural person(s) exercising ultimate effective control over the arrangement⁴ or who benefits or may benefit from the trust assets or income. In the case of a legal arrangement similar to an express trust such as a private interest foundation, beneficial owner refers to the natural person(s) holding an equivalent position to those referred above. When the trustee and any other party to the legal arrangement is a legal person, the beneficial owner of that legal person should be identified without applying thresholds.]</u></p> <p>⁴ - Reference to “ultimate effective control” over trusts or similar legal arrangements includes situations in which ownership/control is exercised through a chain of ownership/control. Complex ownership chains should be discouraged or prohibited.</p>
Beneficiaries	Please refer to the IN to Recommendation 8.
Beneficiary	<p>The meaning of the term <i>beneficiary</i> in the FATF Recommendations depends on the context:</p> <ul style="list-style-type: none"> ▪ In trust law, a beneficiary is the person or persons who are <u>or may become</u> entitled to the benefit of any trust arrangement. A beneficiary can be a natural <u>person</u> or a legal person or arrangement. All trusts (other than charitable or statutory permitted non-charitable trusts) are required to have ascertainable beneficiaries. While trusts must always have some ultimately ascertainable beneficiary, <u>trusts</u> may have no defined existing beneficiaries <u>when they are set up</u> but only <u>a class of beneficiaries or</u> objects of a power until some person becomes entitled as beneficiary to income or capital on the expiry of a defined period, known as the accumulation period, or following exercise of trustee discretion in the case of a discretionary trust. The <u>accumulation is</u> period is normally coextensive with the trust perpetuity period which is usually referred to in the trust deed as the trust period. Discretionary trusts should be prohibited. <p>[...]</p>
Express trust	<i>Express trust</i> refers to a trust clearly created by the settlor, usually in the form of a document e.g. a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangements (e.g. constructive trust).

<p>Legal arrangements</p>	<p><i>Legal arrangements</i> refers to express trusts and other <u>similar</u> legal arrangements. Examples of other similar arrangements¹ (for AML/CFT purposes) <u>may</u> include <u>but are not limited to</u> fiducie, <u>certain types of Treuhand</u>and, fideicomiso, <u>and Waqf</u>².</p> <p><u>1 – Similarity is assessed having regard to Article 2 of the Hague Convention on the law applicable to trusts and their recognition on the basis of whether legal arrangements have a similar structure or perform a similar function to an express trust.</u></p> <p><u>2- Except in countries where Waqf are legal persons under Recommendation 24.</u></p>
<p>Settlor</p>	<p>Settlors are natural or legal persons who transfer ownership of their assets to trustees by means of a trust deed or similar arrangement. The legal settlor is the nominee who appears on the trust deed while the economic settlor is the real owner of the assets who settles them into the trust.</p>
<p>Trustee</p>	<p>The terms <i>trust</i> and <i>trustee</i> should be understood as described and consistent with Article 2 of the <i>Hague Convention on the law applicable to trust and their recognition</i>¹.</p> <p>Trustees may be professional (e.g. depending on the jurisdiction, a lawyer or trust company) if they are paid to act as a trustee in the course of their business, or <u>a non-professional who is not in the business of being a trustee</u> (e.g. a person acting without reward on behalf of a family).</p> <p>¹ – Article 2 of the Hague Convention reads as follows: <i>For the purposes of this Convention, the term “trust” refers to the legal relationships created – inter-vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.</i></p> <p><i>A trust has the following characteristics –</i></p> <ul style="list-style-type: none"> a) <i>the assets constitute a separate fund and are not a part of the trustee’s own estate;</i> b) <i>title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;</i> c) <i>the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.</i> <p><i>The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.</i></p>