

Other trusts and foundations

- 5.3.258 There is a wide variety of trusts, ranging from large, nationally and internationally active organisations subject to a high degree of public interest and quasi-accountability, through trusts set up under testamentary arrangements, to small, local trusts funded by small, individual donations from local communities, serving local needs. It is important, in putting proportionate AML/CTF processes into place, and in carrying out their risk assessments, that firms take account of the different money laundering or terrorist financing risks that trusts of different sizes, areas of activity and nature of business being conducted, present.
- 5.3.259 For trusts or foundations that have no legal personality, those trustees (or equivalent) who enter into the business relationship with the firm, in their capacity as trustees of the particular trust or foundation, are the firm's customers on whom the firm must carry out full CDD measures. Following a risk-based approach, in the case of a large, well known and accountable organisation firms may limit the trustees considered customers to those who give instructions to the firm. Other trustees will be verified as beneficial owners, following the guidance in paragraphs 5.3.8 to 5.3.16.
- 5.3.260 Most trusts are not separate legal persons, and for AML/CTF purposes should be identified as described in paragraphs 5.3.267 to 5.3.271.
- Regulation 6(1), 42(2)(b) 5.3.261 The ML Regulations specify that a beneficial owner of a relevant trust means each of the following
- the settlor;
 - the trustees;
 - the beneficiaries, or where the individuals benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates;
 - any individual with control over the trust.
- Regulation 6(3) 5.3.262 In relation to a foundation or other legal arrangement similar to a trust, the beneficial owners are those who hold equivalent or similar positions to those set out in paragraph 5.3.261.
- Regulation 6(~~21~~)(~~a~~)(~~b~~) 5.3.263 In exceptional cases where persons other than trustees, the settlor and beneficiaries exercise control over the trust property, they are to be considered as beneficial owners. Examples of such persons may include trust protectors.
- Regulation 42(2)(b) 5.3.264 For the vast majority of relevant trusts, either there will be clearly identified beneficiaries (who are beneficial owners within the meaning of the ML Regulations), or a class of beneficiaries. These persons will be self-evident from a review of the trust's constitution, or proof or registration document from the Trust Registration Service.

5.3.265 In some trusts, no individuals may benefit directly; examples include trusts for the benefit of animals, wildlife or flora, or the conservation or preservation of buildings, habitats or environment.

Regulation 6(6), (7)

5.3.266 In relation to a legal entity or legal arrangement which is not a trust the beneficial owners (see paragraph 5.3.262) are:

- any individual who benefits from the property of the entity or arrangement;
- where the individuals who benefit from the entity or arrangement have yet to be identified, the class of persons in whose main interest the entity or arrangement is set up or operates;
- any individual who exercises control over the property of the entity or arrangement.

Where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property of the entity or arrangement, the individual is to be regarded as benefiting from or exercising control over the property of the entity or arrangement.

Obtain standard evidence

5.3.267 In respect of trusts, the firm should obtain the following information:

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| <ul style="list-style-type: none">➤ Name of the settlor➤ Full name of the trust➤ Nature, purpose and objects of the trust (e.g., discretionary, testamentary, bare)➤ Country of establishment➤ Names of all trustees➤ Names of any beneficiaries (or, when relevant and as set out in paragraph 5.3.261, a description of the class of beneficiaries)➤ Name of any protector or controller |
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Regulation 30A

Firms must obtain proof of registration or an excerpt of the register of the trust before establishing a business relationship (see 5.3.129A).

Regulation 28(2), (4)(c)

5.3.268 The identity of the trust must be verified on the basis of documents or information obtained from a reliable source which is independent of the customer. This may require sight of relevant extracts from the trust deed, or reference (subject to paragraph 5.3.270) to an appropriate register in the country of establishment. The firm must take reasonable measures to understand the ownership and control structure of the customer.

Beneficial owners

Regulation 6(1)(a)(b)

5.3.269 The ML Regulations specify that the settlor, trustees, beneficiaries and individuals that have control over~~settlor of~~ a trust are beneficial owners. In exceptional cases where persons other than trustees, the settlor and beneficiaries exercise control over the trust property, they are to be

considered as beneficial owners. Examples of such persons may include trust protectors.

Regulation 28(9) 5.3.270 The identities of other beneficial owners (e.g., certain beneficiaries), either individuals or a class, as appropriate, must also be verified (see paragraphs 5.3.8 to 5.3.16). Firms do not satisfy their obligations to verify the identity of beneficial owners by relying only on information contained in a register.

Regulation 6(1) 5.3.271 Where there is a large number of trustees the firm may take a risk-based approach to determining on how many, and which, in respect of whom the firm should carry out full CDD measures (see paragraphs 5.3.258ff).

5.3.272 Firms should take appropriate steps to be reasonably satisfied that the person the firm is dealing with is properly authorised by the customer. Some consideration should be given as to whether documents relied upon are forged. In addition, if they are in a foreign language, appropriate steps should be taken to be reasonably satisfied that the documents in fact provide evidence of the customer's identity.

5.3.273 Where a trustee is itself a regulated entity (or a nominee company owned and controlled by a regulated entity), or a company listed on a regulated market, or other type of entity, the identification and verification procedures that should be carried out should reflect the standard approach for such an entity.

Other considerations

5.3.274 Firms should make appropriate distinction between those trusts that serve a limited purpose (such as inheritance tax planning) or have a limited range of activities and those where the activities and connections are more sophisticated, or are geographically based and/or with financial links to other countries.

5.3.275 For situations presenting a lower money laundering or terrorist financing risk, the standard evidence will be sufficient. However, less transparent and more complex structures, with numerous layers, may pose a higher money laundering or terrorist financing risk. Some trusts established in jurisdictions with favourable tax regimes have in the past been associated with tax evasion and money laundering. In respect of trusts in this category, the firm's risk assessment may lead it to require additional information on the purpose, funding and beneficiaries of the trust.

Regulation 33(1)(g) 5.3.276 Where a situation is assessed as carrying a higher risk of money laundering or terrorist financing, the firm must carry out a higher level of verification. Information that might be appropriate to ascertain for higher risk situations includes:

- Donor/settlor/grantor of the funds (except where there are large numbers of small donors)
- Domicile of business/activity
- Nature of business/activity
- Location of business/activity (operating address)

Non-UK trusts and foundations

- 5.3.277 The guidance in paragraphs 5.3.258 to 5.3.276 applies equally to UK based trusts and non-UK based trusts. On a risk-based approach, a firm will need to consider whether the geographical location of the trust (or any other risk factor) gives rise to additional concerns, and if so, what they should do.
- 5.3.278 A foundation (“Stiftung”) is described in the FATF October 2006 *Report on the Misuse of Corporate Vehicles* as follows:
- “A foundation (based on the Roman law *universitas rerum*) is the civil law equivalent to a common law trust in that it may be used for similar purposes. A foundation traditionally requires property dedicated to a particular purpose. Typically the income derived from the principal assets (as opposed to the assets themselves) is used to fulfil the statutory purpose. A foundation is a legal entity and as such may engage in and conduct business. A foundation is controlled by a board of directors and has no owners. In most jurisdictions a foundation’s purpose must be public. However there are jurisdictions in which foundations may be created for private purposes. Normally, foundations are highly regulated and transparent.”
- 5.3.279 Foundations feature in a number of EEA member states and other civil law jurisdictions including, notably, Liechtenstein and Panama. The term is also used in the UK and USA in a looser sense, usually to refer to a charitable organisation of some sort. In the UK and USA, entities referred to as foundations will frequently be legal entities rather than legal arrangements.
- 5.3.280 The nature of a civil law foundation should normally be well understood by firms, or their subsidiaries or branches, operating in the jurisdiction under whose laws the foundation has been set up. Where a foundation seeks banking or other financial services outside its home jurisdiction, firms will need to be satisfied that there are legitimate reasons for doing so and to establish the statutory requirements within the specific home jurisdiction for setting up a foundation. So far as possible, comparable information should be obtained as indicated in paragraph 5.3.267 for trusts, including the identity of the founder and beneficiaries (who may include the founder), whose identity should be verified as necessary on similar risk-based principles.
- 5.3.281 Where the founder’s identity is withheld, firms will need to exercise caution and have regard to the standing of any intermediary and the extent of assurances that may be obtained from them to disclose information on any parties concerned with the foundation in response to judicial demand in the firm’s own jurisdiction. Liechtenstein foundations, for example, are generally established on a fiduciary basis through a licensed trust company to preserve the anonymity of the founder, but the trust companies are themselves subject to AML laws.
- 5.3.282 Whilst firms may conclude on the basis of their due diligence that the request for facilities is acceptable, they should bear in mind that terms

like ‘foundation’, ‘stiftung’, ‘anstalt’ are liable to be hijacked by prime bank instrument fraudsters to add spurious credibility to bogus investment schemes.

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