

ANALYSIS

Defining Beneficial Ownership for Non-Commercial Organizations in the Kyrgyz Republic

I. Introduction

This Analysis was prepared by the International Center for Not-for-Profit Law (ICNL) at the request of non-commercial organizations (NCOs) of the Kyrgyz Republic (KR), which systematically face difficulties when undergoing customer due diligence procedures to access banking services.

When conducting customer due diligence, banks request information from NCOs on their founders for the purpose of identifying beneficial owners. However, the founders of NCOs, especially public associations, in many cases may long ago have ceased to be connected with the organization and may not participate in its activities. This is due to the legal nature of NCOs: founders perform their function at the stage of establishing the organization, after which management passes to the bodies formed in accordance with the charter. Nevertheless, founder data are retained in the Unified State Register of Legal Entities, and banks use this data as the basis for requesting identification documents from persons who, in fact, do not exercise control over the organization.

The inability to provide the requested data on founders may lead to the blocking of bank accounts and other serious operational consequences for NCOs. Organizations lose the ability to pay current expenses, pay salaries, and implement programs, including those aimed at supporting vulnerable groups of the population - victims of domestic violence, persons with disabilities, and children from disadvantaged families. The problem is systemic in nature and affects a significant number of NCOs whose founders may be unavailable for communication for objective reasons.

The purpose of this analysis is not to exempt NCOs from the requirements for identifying beneficial owners, but to ensure that persons who actually manage the

organization are identified as beneficial owners. **Verification of founders who are not connected with an NCO and do not exercise any control over it does not achieve the objectives of countering the financing of criminal activity and legalization of criminal proceeds** (hereinafter - CFC/LP). On the contrary, the identification of persons who make decisions and dispose of the organization's funds ensures real transparency of the NCO's management structure.

II. Kyrgyz Republic: Regulation, Practice, and Problems

2.1. CURRENT LEGISLATION

2.1.1. DEFINITION OF BENEFICIAL OWNER

The Law on Countering the Financing of Criminal Activity and Legalization (Laundering) of Criminal Proceeds (hereinafter - the CFC/LP Law) defines a beneficial owner as *"a natural person (natural persons) who ultimately (through a chain of ownership and control), directly or indirectly (through third parties), owns the property right or controls the client, or a natural person on whose behalf or in whose interests an operation (transaction) is carried out."*¹

This definition is based on two criteria: ownership rights and control. However, the criterion of ownership rights is not applicable to NCOs, since they do not have shares, stock, or other forms of equity participation, and profit is not distributed among founders or other persons.² Accordingly, for NCOs, the criterion of control is of key importance and should be used to identify the persons who actually manage the organization and make decisions.

2.1.2. CFC/LP REQUIREMENTS REGARDING IDENTIFICATION OF THE BENEFICIAL OWNER

Article 15 of the CFC/LP Law obliges all legal entities established and registered in the KR to form accurate and up-to-date information on their beneficial owners, retain it for at least five years, and submit it upon request to the State Financial Intelligence Service (hereinafter - SFIS).

The Regulation on the Procedure for Conducting Customer Due Diligence³ establishes a three-step procedure for identifying the beneficial owner of a legal entity (paragraph 33):

¹ Law of the Kyrgyz Republic dated 6 August 2018 No. 87 "On Countering the Financing of Criminal Activity and Legalization (Laundering) of Criminal Proceeds," Article 1, part 1, paragraph 2, available at: <https://cbd.minjust.gov.kg/111822/edition/2757/ru>.

² Civil Code of the Kyrgyz Republic dated 8 May 1996 No. 15 (as amended and supplemented), Article 85, available at: <https://cbd.minjust.gov.kg/3-1/edition/1263361/ru>.

³ Regulation on the Procedure for Conducting Customer Due Diligence (Annex 12 to Resolution of the Cabinet of Ministers of the Kyrgyz Republic dated 14 November 2025 No. 739, as revised on 4 February 2026), para. 33, available at: <https://cbd.minjust.gov.kg/230035234/edition/41398/ru>.

1. identification of natural persons who directly or indirectly own 25 percent or more of the shares or participatory interests in the charter capital;
2. if at the first stage the beneficial owner is not established or there are reasonable doubts - identification of natural persons exercising control over the client by other means;
3. if it is impossible to identify the beneficial owner under the first two criteria - identification of the natural person who is able to control the actions of the client by virtue of positions held within the legal entity's structure (a person responsible for strategic decision-making, a person exercising executive control, a person making key financial decisions).

Thus, the current Regulation formally contains a mechanism for identifying the beneficial owner through persons holding management positions (the third step). However, as practice shows, this mechanism is not properly applied to NCOs.

2.1.3. REGULATION OF NCO ACTIVITY

The Law of the KR on Non-Profit Organizations⁴ (hereinafter - the NCO Law) regulates the activities of NCOs of four organizational-legal forms:

- public associations;
- foundations;
- institutions;
- associations (unions) of NCOs and/or commercial legal entities.

The key principle established by legislation is that an NCO is an organization for which profit-making is not the main purpose of its activities, and any profit received is not distributed among members, founders, or officials.⁵ The Civil Code directly establishes⁶ that legal entities in respect of which their founders (participants) do not have property rights include public associations, charitable and other public foundations, as well as associations of legal entities (associations and unions). This means that, by law, the founders of the specified forms of NCOs do not have ownership rights to the organization's property and do not derive economic benefit from it.

THE ROLE OF FOUNDERS DIFFERS SIGNIFICANTLY DEPENDING ON THE ORGANIZATIONAL AND LEGAL FORM OF THE NCO:

Public associations - founders are not vested with any special management or control powers after registration.⁷ A public association is created on the initiative of at least

⁴ Law of the Kyrgyz Republic dated 15 October 1999 No. 111 "On Non-Profit Organizations," Chapters II-IV, Articles 7, 18-21, 22-29¹, 30-34, available at: <https://cbd.minjust.gov.kg/274/edition/6030/ru>.

⁵ Article 2 of the NCO Law; Article 85 of the Civil Code.

⁶ Paragraph 3 of Article 83 of the Civil Code.

⁷ Articles 19-21 of the NCO Law.

three legally capable natural persons. The founders convene the founding meeting, at which the decision to create the organization is made, the charter is approved, and governing bodies are formed. After state registration, founders cannot be a governing body of a public association - they become members of the organization on an equal basis with other members. The supreme governing body is the general meeting of members; current management is carried out by executive bodies created in accordance with the charter.

Foundations - the founders of a foundation participate in management only if the charter directly provides for this.⁸ Property transferred to the foundation by the founders is the property of the foundation. The founders are not liable for the obligations of the foundation, and the foundation is not liable for the obligations of the founders. The rights of a founder are not transferred to successors. Current management of the foundation is carried out by the board; supervision is carried out by the supervisory council. Decisions on issues concerning the foundation's activities may be assigned by the charter to the competence of the founders.

Institutions - the owner of an institution retains significant control.⁹ An institution is created by the owner to carry out managerial, socio-cultural, or other functions of a non-commercial nature. The property of the institution is assigned to it under the right of operational management. The owner determines the structure and powers of the governing bodies, has the right to withdraw unused property or property used not for its intended purpose, and the institution may dispose of property only with the owner's consent. If the institution has insufficient funds, the owner bears subsidiary liability for its obligations. The rights of the owner may be transferred to successors.

Associations (unions) - founders are not vested with any special management or control powers after registration.¹⁰ The provisions governing public associations apply to this form. Members of an association retain their independence and legal entity rights. Management is determined by the founding agreement and the charter. See above regarding public associations.

2.1.4. DATA OF THE UNIFIED STATE REGISTER OF LEGAL ENTITIES

The Regulation on the Procedure for State Registration of Legal Entities, Branches (Representative Offices)¹¹ determines the composition of information included in the

⁸ Articles 22, 23, 26, 28 of the NCO Law.

⁹ Articles 164, 231 of the Civil Code; Articles 30, 33, 34 of the NCO Law.

¹⁰ Article 7 of the NCO Law and Articles 165, 166 of the Civil Code.

¹¹ Regulation on the Procedure for State Registration of Legal Entities, Branches (Representative Offices) (Annex 1 to Resolution of the Cabinet of Ministers of the Kyrgyz Republic dated 31 March 2023 No. 178), available at: <https://cbd.minjust.gov.kg/160059/edition/1239754/ru>.

Unified State Register of Legal Entities (hereinafter - the register). According to the Regulation, the register contains, among other things:

- **Information on the founders of a legal entity** (paragraph 104(9)) - recorded at the time of registration and reflects the persons who made the decision to create the organization. For institutions and foundations, founder data are updated when their passport data change (paragraph 96(4)). Information on founders in the register does not reflect the organization's current actual management structure.
- **Information on the head** (paragraph 104(13)). The register contains current data on the head (as a rule, the executive director or chair of the board), which are updated when the head changes (paragraph 96(1) and paragraph 98) or when the passport data or data of another identity document of the head change (paragraph 96(6)). It is the head who is the person carrying out current management of the NCO.

2.2. APPLICATION OF THE NORMS TO NCOS IN PRACTICE

2.2.1. BANKING PRACTICE

In practice, when conducting due diligence of NCOs, banks refer to the data of the register of the Ministry of Justice and request identification data (passport copies) of the founders indicated in the register. At the same time, data on the head, which are also contained in the register, are not used by banks as the main source for identifying the beneficial owner.

This approach appears to be based on the fact that the definition of beneficial owner in the CFC/LP Law is built on the concepts of "ownership" and "control." As a result, by analogy with commercial organizations, banks consider NCO founders to be persons who own or control the organization. Moreover, the third step of identification (through senior officials) is not applied as the main approach for NCOs, even though for organizations without equity participation the first step (25% ownership) is, by definition, inapplicable.

2.2.2. ACTUAL MANAGEMENT STRUCTURE OF NCOS

An analysis of the legislation shows that the persons exercising actual control over an NCO differ depending on the organizational and legal form:

NCO form	Founders' role after registration	Persons with actual control
Public association	Ordinary members; no special powers	Executive body; general meeting of members

Foundation	Participate only if the charter provides	Supervisory council; board; founders (if charter provides)
Institution	Owner retains significant control	Owner; governing bodies defined by charter
Association (union)	Regulated as public association	Executive body; general meeting of members

2.3. PROBLEMS OF THE CURRENT APPROACH

2.3.1. INCONSISTENCY BETWEEN THE LEGAL NATURE OF NCOS AND THE CONCEPT OF BENEFICIAL OWNERSHIP

The concept of beneficial ownership was historically developed for commercial structures in which a natural person derives economic benefit through ownership of participatory interests or shares. The Civil Code directly establishes that founders of public associations, foundations, and associations do not have property rights in relation to the organizations they created (Article 83(3)). Members of public associations do not retain rights to property transferred to the organization (Article 161). The property of a foundation is the property of the foundation, not of its founders (Article 162).

Equating founders with beneficial owners for these forms of NCOs contradicts the civil-law status of these persons: they do not own the organization, do not control it (in the case of public associations and associations), and do not derive benefit from it.

2.3.2. FAILURE TO ACHIEVE CFC/LP OBJECTIVES

Current practice creates a situation in which persons who do not exercise control over an NCO and do not derive benefit from it are recognized as beneficial owners. At the same time, the persons who actually manage the organization (the executive director, members of the board, and the supervisory council) are not identified as beneficial owners, although it is precisely they who make strategic and financial decisions. Thus, the objectives of CFC/LP are not achieved.

2.3.3. IMPOSSIBILITY OF FULFILLING THE REQUIREMENTS

For many NCOs, founders may be unavailable for communication: they have changed their place of residence, left the country, lost contact with the organization, or passed away. Despite this, banks continue to require from NCOs documents and personal data of such persons for the purposes of customer due diligence and establishing the beneficial owner.

When an organization seeks clarification, the SFIS generally recommends that it apply to the Ministry of Justice to change the information on founders in the Unified State

Register of Legal Entities. The Ministry of Justice, in turn, says in such cases that the NCO must undergo re-registration and change its founders. If contact with the founders remains, the organization is advised to obtain their consent to withdraw from the founders; if contact has been lost, to apply to court for their exclusion.

However, for public associations, replacing founders is legally impossible. The founder is a person who made the decision to create a public association at the founding meeting. This is a historical fact that cannot be changed after registration: after the organization has been created, "new founders" cannot appear, because the founding meeting has already taken place. The founder data in the register record the historical event of the organization's creation, not the current management structure.

With respect to foundations, a change in the composition of founders is formally permitted.¹² However, such replacement does not always have legal or practical meaning. Depending on the foundation's charter, a founder may have no management powers and may not participate in the foundation's activities after its creation. In addition, a foundation may be created, for example, on the basis of a will. In such cases, the founder does not exercise actual control over the organization, and replacing the founder does not affect management of the foundation and is meaningless.

2.3.4. CONSEQUENCES FOR NCO ACTIVITY

The inability to provide the requested data on founders may lead to the blocking of NCO bank accounts. This entails the inability to pay operating expenses, pay salaries, and implement programs. For NCOs working with vulnerable groups of the population, suspension of activity means the cessation of the provision of vital services. An account is blocked not because of a lack of transparency in the management structure, but because of the impossibility of verifying persons who, by law, do not exercise control over the organization.

2.4. CONCLUSIONS

The analysis of current legislation supports the following conclusions:

- **Current practice does not achieve the objectives of CFC/LP.** Identification of founders who do not control the organization and do not derive benefit from it does not contribute to identifying risks of money laundering or financing criminal activity. Information about unavailable founders does not ensure transparency of the actual management structure. On the contrary, identification of the head of the executive body and members of the board

¹² Paragraph 56(5) of the Regulation on the Procedure for State Registration of Legal entities, Branches (Representative Offices).

provides access to current data on persons who actually make decisions and dispose of funds.

- **The approach does not comply with the principle of proportionality established by international FATF standards.** Measures that lead to the blocking of accounts of organizations providing socially useful services because of the inability to verify persons who do not exercise control are disproportionate.
- **The approach creates requirements that for a number of forms of NCOs are legally and practically impossible to fulfill.** For public associations created decades ago, founders are unavailable for verification, and their replacement in the register is legally impossible. In foundations, such replacement is formally permitted but sometimes has no practical meaning, since founders may not participate in management and may not exercise control.
- **Current legislation already allows the requirements for determining the beneficial owner to be applied taking into account the legal nature of NCOs without amendments.** The Customer Due Diligence Regulation contains the third step of identification, allowing the beneficial owner to be determined through persons holding management positions. For NCOs without equity participation, the first step (25% ownership) is, by definition, inapplicable, and moving to the second and third steps is logically justified and lawful.

III. International Practice and Alternative Approaches

3.1. FATF APPROACH

3.1.1. RECOMMENDATION 8: PROPORTIONAL APPROACH TO NCOS

In 2023, FATF revised Recommendation 8 and updated its Interpretive Note with the aim of preventing the negative impact of CFC/LP measures on the lawful activities of NCOs.¹³ The revised text emphasizes that such **measures must be applied in a manner that does not lead to the unreasonable suspension or other disruption of lawful charitable activity**. This approach is directly reflected in the Outcomes of the FATF Plenary held on October 25-27, 2023.¹⁴

The revised document incorporated a risk-based approach to the regulation of NCOs and clarified requirements for states. Thus, the key principle of NCO regulation is the principle of proportionality, according to which **states must apply *targeted***,

¹³ International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (FATF Recommendations), available at: <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf?nocache=true>.

¹⁴ Outcomes of the FATF Plenary, 25-27 October 2023, available at: <https://www.fatf-gafi.org/en/publications/Fatfgeneral/outcomes-fatf-plenary-october-2023.html>.

***proportionate, and risk-based measures* to NCOs to prevent their possible use for terrorist financing purposes.**

3.1.2. RECOMMENDATIONS 10 AND 24: CASCADE APPROACH TO DETERMINING THE BENEFICIAL OWNER¹⁵

The Interpretive Note to FATF Recommendation 10 (customer due diligence) establishes a three-step cascade approach to identifying the beneficial owner of a legal entity:

1. First, it is necessary to establish the natural persons who have a controlling ownership interest, as a rule through equity participation. At the same time, *FATF expressly recognizes that, in a number of cases, such persons may be absent.*
2. If it is impossible to establish the beneficial owner through ownership, the next step is to identify natural persons exercising control by other means.
3. If such persons are not identified at this stage either, the natural person holding the position of senior managing official must be established as the beneficial owner.

For NCOs that do not have equity participation, the first step of the approach is by its nature inapplicable. Accordingly, in accordance with FATF standards, identification should be carried out under the second (control by other means) and third (senior managing official) steps.

The FATF Guidance on Transparency and Beneficial Ownership¹⁶ also emphasizes that **a key element of the definition of beneficial owner is establishing the natural person who ultimately exercises actual control over a legal entity**, and not the person formally indicated in its registration documents. The Guidance directly states that the concept of beneficial owner must be distinguished from formal legal ownership, and that control may be exercised in various ways, not only through ownership rights. The same paragraph emphasizes that **persons indicated in registration documents or possessing formal rights are not necessarily beneficial owners if they do not exercise actual control.**

These provisions are of fundamental importance for NCOs in which there is no equity participation and confirm that identification of the beneficial owner should be carried

¹⁵ FATF Recommendations (updated edition, November 2023), Interpretive Note to Recommendation 10, paragraph (i.iii), p. 68, available at: <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>.

¹⁶ FATF Guidance "Transparency and Beneficial Ownership (Recommendations 24 and 25)," October 2014, para. 15, p. 14, available at: https://eurasiangroup.org/files/uploads/files/FATF_documents/FATF_Guidances/Rukovodstvo_FATF_Prozrachnost_i_BS.pdf.

out through persons who actually exercise management, not through founders who do not possess control powers.

3.2. COMPARATIVE ANALYSIS OF JURISDICTIONS

3.2.1. UNITED KINGDOM¹⁷

In the United Kingdom, the approach is that, when determining beneficial owners, the focus is not on formal founders, but on those who exercise actual control over a legal entity. Companies are required to establish and disclose information on so-called "persons with significant control" (Persons with Significant Control, PSC) and provide this data to the state register.

A person with significant control is recognized as a natural person who meets one or more established criteria. These criteria include:

1. ownership of more than 25% of shares;
2. control of more than 25% of votes;
3. the right to appoint or remove a majority of the members of the board of directors;
4. the right to exercise, or the actual exercise of, significant influence or control.

For NCOs, criteria 1 and 2 are inapplicable, since they do not have participatory interests or share capital. Therefore, the analysis is carried out on the basis of criteria 2 and 3, that is, based on actual control and influence. Founders are not automatically treated as persons with significant control.

United Kingdom regulation directly provides for the possibility of determining the beneficial owner through senior management in cases where it is impossible to establish the beneficial owner through ownership.¹⁸ At the same time, financial institutions are prohibited from relying exclusively on register data and are required to analyze the actual management structure, including persons making key decisions.

Thus, the British approach demonstrates that what is decisive is not the formal status of the persons who stood at the origins of the organization's creation, but real participation in management and decision-making. Founders are not automatically treated as beneficial owners if they do not possess the relevant powers or do not exercise actual influence over the organization's activities.

¹⁷ Government of the United Kingdom, Guidance for companies: register of people with significant control, published 19 November 2025, available at: <https://www.gov.uk/government/publications/people-with-significant-control-summary-guidance/summary-guidance-for-companies-register-of-people-with-significant-control-pscs>.

¹⁸ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, regulation 28(6)-(7), available at: <https://www.legislation.gov.uk/uksi/2017/692/body/made/data.html#d5e1069>.

3.2.2. NETHERLANDS¹⁹

The Netherlands regulates beneficial ownership matters under the Law on the Prevention of Money Laundering and Terrorist Financing and the Implementation Decree.²⁰ Article 3 of the decree defines a beneficial owner as a natural person who:

1. directly or indirectly owns more than 25 percent of the property interest;
2. directly or indirectly can exercise more than 25 percent of the votes when amending the charter; or
3. can exercise ultimate effective control over the organization.

Since foundations and associations do not have equity participation, criterion 1 is inapplicable. Criterion 2 is also often inapplicable, because in associations decisions are made by the general meeting, consisting of a large number of members, and, as a rule, there is no person possessing more than 25 percent of the votes. If it is impossible to establish the beneficial owner under the indicated criteria, Dutch legislation introduces a mechanism of a "pseudo-beneficial owner," under which all members of the highest governing body - as a rule, the board - are recognized as such (Article 3, paragraph 6 of the decree).

Founders of foundations and associations are not automatically treated as beneficial owners; the determining criterion is actual control. The Dutch model is useful for the analysis because it directly demonstrates that for organizations without equity participation (which most NCOs are), the beneficial owner by default is recognized as the governing body - the board - and not the founders. The "pseudo-beneficial owner" mechanism here is an instrument ensuring transparency in the absence of classic ownership criteria.

3.2.3. GERMANY²¹

The German anti-money laundering law²² defines a beneficial owner as a natural person who ultimately owns or controls the counterparty, as well as the person on whose behalf a transaction or business relationship is carried out (§3). The law establishes that the beneficial owner, as a rule, is a natural person directly or indirectly owning more

¹⁹ Netherlands Chamber of Commerce (KVK), Shivani Boer, Who are the UBOs for your vereniging or stichting? 5 examples, updated 18 July 2025, available at: <https://www.kvk.nl/en/secure-business/who-are-the-ubos-for-your-vereniging-or-stichting-5-examples/>.

²⁰ Kingdom of the Netherlands, 2018 Implementation Decree to the Law on the Prevention of Money Laundering and Terrorist Financing (Uitvoeringsbesluit Wwft 2018), Official Gazette (Staatsblad) 2018, No. 241, 17 July 2018, available at: <https://zoek.officielebekendmakingen.nl/stb-2018-241.html>.

²¹ Federal Administrative Office of Germany (Bundesverwaltungsamt), Transparency Register: Questions and Answers on the Anti-Money Laundering Act (Geldwäschegesetz, GwG) (Transparenzregister - Fragen und Antworten zum Geldwäschegesetz), as of 5 May 2023, available at: https://www.bva.bund.de/SharedDocs/Downloads/DE/Aufgaben/VMII/Transparenzregister/Transparenzregister_FAQ.pdf?__blob=publicationFile&v=2.

²² German Act on the Detection of Proceeds from Serious Crimes (Anti-Money Laundering Act, Geldwäschegesetz - GwG), § 3, available at: https://www.gesetze-im-internet.de/gwg_2017/_3.html.

than 25 percent of the capital or votes. If it is impossible to establish such a person, an additional criterion is applied, under which the beneficial owner is determined through other forms of control, and as a fallback approach - through the legal representative.

For registered associations, which are the main form of NCO in Germany, these general rules apply. Since associations do not have equity participation, a beneficial owner under the 25-percent threshold criterion, as a rule, is not established. In such cases, where it is impossible to identify a person exercising control, the legal representative of the association (the head of the executive governing body) is indicated as the beneficial owner.

With respect to foundations, the law provides for special regulation. According to §3(3), beneficial owners include, in particular, the founder, members of the foundation board, persons exercising supervisory functions, specified beneficiaries (if provided for), as well as other natural persons who directly or indirectly exercise controlling influence. At the same time, the status of founder in itself has no priority and does not replace an assessment of actual control. This means that even where a founder is formally included in the list, the determining factor remains the identification of persons who actually influence management and decision-making in the organization.

Thus, the German approach is based on identifying persons who possess actual influence or control over the organization. Founders are not treated as beneficial owners automatically for all forms of NCOs: for associations, they are not taken into account; for foundations, they may be considered, but on an equal basis with other persons and without any priority - the key significance lies in who actually manages the organization and makes decisions.

3.2.4. ESTONIA

Estonia regulates beneficial ownership matters under the Law on the Prevention of Money Laundering and Terrorist Financing.²³ According to §9(1) of the law, a beneficial owner is a natural person who ultimately exercises decisive influence over an organization through ownership or other forms of control, or the person in whose interests a transaction is carried out. If such a person cannot be established, an additional criterion applies - ownership of more than 25% of shares (§9(2)). However, this criterion is secondary and applies only when it is impossible to determine the beneficiary through control. If the beneficial owner is not established at this stage either, the person holding the position of senior managing official is recognized as the beneficial owner (§9(4)). If several persons meet the criteria, priority is given to those

²³ Estonian Money Laundering and Terrorist Financing Prevention Act, adopted 26 October 2017, available at: <https://www.riigiteataja.ee/akt/113022026013>.

who actually exercise control and make strategic decisions, and in their absence - to those who ensure day-to-day management (§9(4¹)).

For non-profit associations and foundations that do not have equity participation, in accordance with §9(1) of the law the beneficial owner is recognized as the natural person who, through ownership or another type of control, has decisive influence over the organization. In practice, as follows from the methodological recommendations of the Ministry of Finance of Estonia,²⁴ such persons are usually recognized as members of the board, and if the board consists of more than four members, it is sufficient to indicate the chair of the board.

Thus, the Estonian approach also confirms that for NCOs the beneficial owner is determined through persons who actually exercise management (the board), and not through founders.

3.2.5. GENERAL COMPARATIVE CONCLUSIONS

The comparative analysis shows that none of the jurisdictions reviewed equates founders of NCOs with beneficial owners automatically. In all cases, the key criterion is actual control over the organization, not participation in its creation.

Despite differences in legal models, all states use similar logic: first ownership is assessed (if applicable), then control, and where such persons cannot be established, a mechanism for determining the beneficial owner through the organization's management is applied.

In all jurisdictions, priority is given to persons who exercise management and make decisions: executive bodies, the board, and in certain cases persons exercising actual influence. Founders may be considered only in individual cases (primarily in relation to foundations) and only where there is real control, but not automatically.

IV. Proposed Solutions for the Kyrgyz Republic

4.1. AT THE LEVEL OF INTERPRETATION OF EXISTING NORMS

The SFIS or the National Bank could issue methodological recommendations (clarifications) establishing the procedure for determining the beneficial owner of an NCO, taking into account the organizational-legal form:

- **Public associations and associations (unions):** the beneficial owner is the head of the executive body (executive director, chair of the board), whose data is contained in the register of the Ministry of Justice.

²⁴ Ministry of Finance of Estonia, Methodological recommendations on identifying the beneficial owner, pp. 4-5, available at: <https://www.fin.ee/media/9568/download>.

- **Foundations:** the beneficial owner is the founder - provided that the charter grants the founder management powers; or the members of the board - if the charter does not provide for founders' participation in management.
- **Institutions:** the beneficial owner is the owner (creator of the institution), who by law retains control over the property and activities.

4.2. AT THE LEVEL OF SUBORDINATE LEGAL ACTS

The introduction of amendments to the Regulation on the procedure for conducting customer due diligence, providing for a special procedure for identifying the beneficial owner of an NCO. Such a procedure should:

- establish that for organizations without equity participation the first step of identification (25% ownership) is inapplicable, and identification must be carried out under the second and third steps;
- determine the list of relevant persons for each organizational and legal form of NCO.

The proposed principle is that founders should not automatically be treated as beneficial owners of an NCO if they do not exercise actual control over the organization. This approach does not reduce the level of transparency; on the contrary, it ensures the identification of persons who actually make decisions and control the organization's activities, instead of the formal verification of persons who have no relation to management.

Implementation of this approach will allow the Kyrgyz Republic to bring the practice of determining beneficial owners of NCOs into compliance with the risk-based FATF requirements, in particular Recommendations 10 and 8, which require the identification of actual control and the application of proportionate measures that do not create unjustified obstacles to the lawful activities of NCOs.