

ANALYSIS

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

JUNE 18, 2026

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. SFIS GUIDELINES FOR IDENTIFICATION AND VERIFICATION OF BENEFICIAL OWNERS

By Order No. 45/θ/π of the SFIS dated March 25, 2025, the Methodological Recommendations for the Identification and Verification of Beneficial Owners were approved. Section 4.1 of the Methodological Recommendations is specifically dedicated to NCOs and defines which criteria of the Model Beneficial Owner Questionnaire are applicable depending on the NCO's legal form.

Public Associations. With respect to public associations, the Methodological Recommendations explicitly state that when identifying beneficial ownership/control, the focus should be on identifying individuals holding leadership positions in governing bodies (Criterion 5⁴ of the Model Questionnaire).

Foundations. Regarding foundations, the Guidelines stipulate the identification of beneficial control and the collection of documents, according to criterion 5, but also indicate that *the right of unconditional decision belongs to the founder* and designate the founder as the beneficial owner of the foundation. Furthermore, the identification of grantors as the beneficial owners of the foundation is permitted:

- according to criterion 2⁵ – if the grant amount, transferred at one time or in several transfers during the calendar year, exceeds 25 percent of the fund's working capital;

⁴An individual who can manage a client - a legal entity due to the positions occupied in the structure of the legal entity (responsible for making strategic decisions, carries out executive control, makes decisions on financial matters).

⁵An individual on behalf of and/or at whose expense the client carries out an operation (transaction) involving monetary funds or property, including in cases where the said individual does not have ownership rights to the monetary funds or property and does not control the client (In this case, indicate the number and date of the agreement, the term, the subject of the agreement, and other material terms).

- according to criterion 8⁶ – when grantors have a high degree of informal control over the activities of the foundation.

Institutions. In relation to institutions, the owner must be identified according to criterion 1⁷, which corresponds to the legal status of this form.

Associations and unions of legal entities. The guidelines do not provide any clarification regarding associations.

2.1.4. REGULATION OF NCO ACTIVITY

The Law of the KR on Non-Profit Organizations⁸ (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.⁹ The Civil Code directly establishes¹⁰ 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.¹¹ A public association is created on the initiative of at least 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

⁶An individual has the ability to control the client's actions in other ways.

⁷An individual ultimately, directly or indirectly (through third parties), owns or exercises control over a client (legal entity) or enjoys the benefits of ownership (management) of the capital or assets of a client (legal entity) (has a predominant participation (more than 25%) in the authorized capital of a client (legal entity) or owns more than 25% of the total number of shares of the client (legal entity) with voting rights). (If the ownership is indirect (through third parties), the relationship must be specified).

⁸ 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>.

⁹ Article 2 of the NCO Law; Article 85 of the Civil Code.

¹⁰ Paragraph 3 of Article 83 of the Civil Code.

¹¹ Articles 19-21 of the NCO Law.

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.¹² 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.¹³ 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.¹⁴ 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.

2.1.5. DATA OF THE UNIFIED STATE REGISTER OF LEGAL ENTITIES

The Regulation on the Procedure for State Registration of Legal Entities, Branches (Representative Offices)¹⁵ determines the composition of information included in the 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

¹² Articles 22, 23, 26, 28 of the NCO Law.

¹³ Articles 164, 231 of the Civil Code; Articles 30, 33, 34 of the NCO Law.

¹⁴ Article 7 of the NCO Law and Articles 165, 166 of the Civil Code.

¹⁵ 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>.

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.

This practice continues even after the approval of the Methodological Recommendations, which explicitly direct financial institutions to focus their attention, with respect to public associations, on individuals holding leadership positions in governing bodies. Nevertheless, banks continue to request the passports of the founders of public associations listed in the Ministry of Justice registry. This demonstrates that the problem lies less in the lack of a methodological approach than the failure of banks to apply it in practice, which is facilitated, among other things, by the absence of the Methodological Recommendations in the Centralized Database of Legal Information of the Kyrgyz Republic.

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.¹⁶ 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.

2.3.5. THE ERRONEOUS DEFINITION OF THE FOUNDATIONS' GRANTORS AS BENEFICIAL OWNERS

The definition of grantors as the foundation's beneficial owners, as established by the Methodological Recommendations for the Identification and Verification of Beneficial

¹⁶ Paragraph 56(5) of the Regulation on the Procedure for State Registration of Legal entities, Branches (Representative Offices).

Owners, appears erroneous. A grantor does not own the NCO, does not hold an equity stake, and does not profit or derive any material benefit from its activities. Providing a grant does not, by itself, constitute control over the NCO. The Methodological Recommendations themselves recognize that the grantor loses ownership of the transferred property—after the grant is awarded, the funds become the property of the NCO and are used in accordance with its statutory objectives and the terms of the grant agreement.

A donor may set the terms and conditions for the use of a specific grant (targeted purpose, reporting, audit), but this does not imply control over the NCO's governing bodies, its strategic and personnel decisions, its day-to-day operations, or the organization's financial flows. Control, as defined by the Law on CFC/LP, implies the ability to determine the client's actions, not just set the target limits for individual funding.

The practical consequences of this approach can be serious. Most donors (international organizations, foreign foundations, embassies, and development agencies) will not agree to provide personal data of their employees or officials as "beneficial owners" of the recipient NCO, as they are neither legally nor de facto beneficial owners. This approach can lead to unfounded bank demands, freezing of NCO accounts, and donors refusing to fund NCOs.

2.4. CONCLUSIONS

The analysis of current legislation supports the following conclusions:

1. **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 provides access to current data on persons who actually make decisions and dispose of funds.
2. **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.
3. **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.

4. **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.
5. **The SFIS's methodological recommendations generally support the correct approach to determining the beneficial owners of public associations; however, certain provisions concerning foundations require adjustment.** With regard to public associations, the recommendations correctly guide financial institutions toward identifying individuals holding leadership positions in governing bodies, which is consistent with the legal nature of public associations. However, the automatic classification of foundation founders as beneficial owners without assessing their actual authority and control, as well as the classification of foundation grantors as beneficial owners, requires revision.

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.¹⁷ 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, 2023.¹⁸

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

¹⁷ 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>.

¹⁸ 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>.

3.1.2. RECOMMENDATIONS 10 AND 24: CASCADE APPROACH TO DETERMINING THE BENEFICIAL OWNER¹⁹

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 Ownership²⁰ 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 out through persons who actually exercise management, not through founders who do not possess control powers.

3.2. COMPARATIVE ANALYSIS OF JURISDICTIONS

¹⁹ 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>.

²⁰ 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.

3.2.1. UNITED KINGDOM²¹

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.²² 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.

3.2.2. NETHERLANDS²³

²¹ 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>.

²² 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/ukxi/2017/692/body/made/data.html#d5e1069>.

²³ 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/>.

The Netherlands regulates beneficial ownership matters under the Law on the Prevention of Money Laundering and Terrorist Financing and the Implementation Decree.²⁴ 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. GERMANY²⁵

The German anti-money laundering law²⁶ 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 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.

²⁴ 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>.

²⁵ 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.

²⁶ 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.

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.²⁷ 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 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

²⁷ Estonian Money Laundering and Terrorist Financing Prevention Act, adopted 26 October 2017, available at: <https://www.riigiteataja.ee/akt/113022026013>.

organization. In practice, as follows from the methodological recommendations of the Ministry of Finance of Estonia,²⁸ 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

- I. **Amend the Methodological Recommendations** to clarify that the primary approach for foundations should be to determine the beneficial owner through the individuals who actually manage and control the foundation, primarily through the executive body that makes key strategic and financial decisions. The founder of a foundation may be defined as the beneficial owner only to the extent that they, according to the foundation's charter or actually manage or control the foundation. The grantor should not be considered the beneficial owner of the foundation.
2. **After making the appropriate changes, ensure the availability and uniform application of the Guidelines:**
 - *Publish the revised Methodological Recommendations in the Centralized Database of Legal Information of the Kyrgyz Republic*. This will increase the document's official visibility, facilitate its reference by NCOs, banks,

²⁸ Ministry of Finance of Estonia, Methodological recommendations on identifying the beneficial owner, pp. 4-5, available at: <https://www.fin.ee/media/9568/download>.

lawyers, and government agencies, and support the uniform application of the approach.

- *Provide banks with clarification on the application of the Methodological Recommendations to NCOs.* The SFIS and/or the National Bank should provide banks with practical clarification on the application of the criteria of the Model Questionnaire to various forms of NCOs: public associations – criterion 5 (persons holding management positions); foundations – criterion 5 in relation to persons actually managing the foundation, and the founder – only if they have powers under the charter or actual control; institutions – the owner according to criterion 1; associations (unions) – an approach similar to public associations, with a focus on management persons and actual control.

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.