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# FAQs

## Beneficial Ownership and Transparency of Legal Arrangements



## FAQ: Beneficial Ownership and Transparency of Legal Arrangements

### 1. What is an express trust and what are its key characteristics?

An express trust is a legal arrangement created by a settlor, who transfers assets to a trustee to manage for the benefit of beneficiaries.

Key characteristics include:

- 🕒 Clear creation: Established through a written document, typically a trust deed.
- 🕒 Separate legal existence: Assets are held by the trustee, separate from their personal assets.
- 🕒 Governed by a trust instrument: The deed outlines the terms, rights, and obligations of all parties.

### 2. Who are the key parties involved in a trust?

- 🕒 Settlor: The individual or entity establishing the trust and transferring assets into it.
- 🕒 Trustee: Holds legal title to trust assets and manages them according to the trust instrument.
- 🕒 Beneficiary: The individual or entity entitled to benefits from the trust.
- 🕒 Protector (optional): Oversees the trustee and safeguards beneficiaries' interests.
- 🕒 Object of a Power: Potential beneficiaries who may benefit at the trustee's discretion.

### 3. What are some risks associated with trusts and similar legal arrangements?

The private nature of trusts, coupled with features like asset protection and flexible beneficiary designations, presents vulnerabilities to misuse.

Specific risks include:

- 🕒 Money laundering and terrorist financing: Concealing illicit funds or using trusts for illegal activities.

- ⦿ Tax evasion: Exploiting tax advantages for illegitimate purposes.
- ⦿ Fraudulent conveyance: Shielding assets from creditors unfairly.
- ⦿ Abuse of power: Lack of transparency enabling exploitation by those in control.

#### 4. How do countries assess and mitigate the risks associated with legal arrangements?

Countries are expected to conduct risk assessments, considering vulnerabilities within their legal frameworks and the potential for misuse. They should then implement measures such as:

- ⦿ Registration requirements: For trusts governed by their law or administered within their jurisdiction.
- ⦿ Supervisory mechanisms: For professional trustees and service providers (like TCSPs).
- ⦿ International cooperation: To exchange information and address cross-border risks.
- ⦿ Sanctions: For non-compliance with transparency and beneficial ownership requirements.

#### 5. What is the role of a trustee in ensuring transparency?

Trustees play a crucial role in maintaining transparency by:

- ⦿ Identifying and verifying beneficiaries: Obtaining and holding accurate information.
- ⦿ Maintaining records: Keeping detailed documentation of trust activities and parties.
- ⦿ Cooperating with authorities: Providing information upon request and reporting suspicious activities.
- ⦿ Disclosing their status: Informing FIs and DNFBPs when acting on behalf of the trust.

#### 6. How is beneficial ownership information verified?

Verification involves confirming the identity and status of beneficial owners using reliable sources like:

- ⦿ Government-issued documents (passports, ID cards)

- ⦿ Publicly available data (company registers, land registries)
- ⦿ Information from regulated entities (financial institutions)

### **7. What information should be collected on agents and service providers to a trust?**

Trustees are required to collect "basic information" on agents and service providers, which includes:

- ⦿ Full name and legal status of the entity.
- ⦿ Contact information (address, email, phone number).
- ⦿ Relationship with the trust and services provided.

### **8. What is a "flee clause" and why is it a concern?**

A "flee clause" allows a trust to be moved to another jurisdiction upon the occurrence of specific events (political instability, legal action). It is a concern because:

- ⦿ Obstruction of justice: It can hinder investigations and asset recovery efforts.
- ⦿ Reduced transparency: Moving assets to jurisdictions with weaker regulations.

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