



Trust Registration around the World



The case for registration
under FATF
Recommendation 25

July 2022

Andres Knobel
Florencia Lorenzo

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Abstract

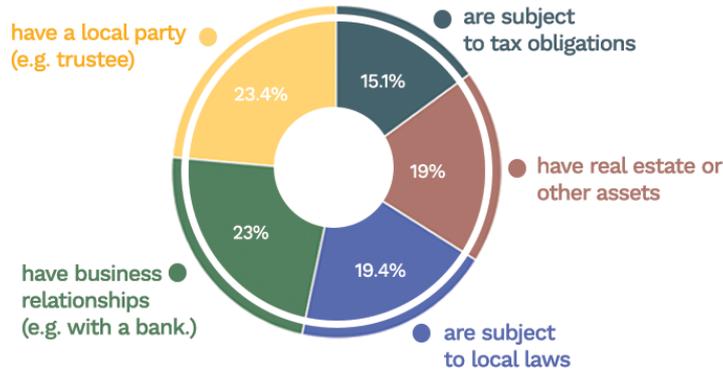
The Financial Action Task Force (FATF) is in the process of reforming Recommendation 25 on beneficial ownership transparency of trusts and other legal arrangements. This report explains the risks created by trusts and why these risks justify the call for increased transparency. The call for trust registration is supported by the findings of the 2022 edition of the Tax Justice Network's Financial Secrecy Index which found that more than 120 countries already require some type of trust registration, including 65 with some type of beneficial ownership registration.

Out of 141 countries 121 require some type of trust registration



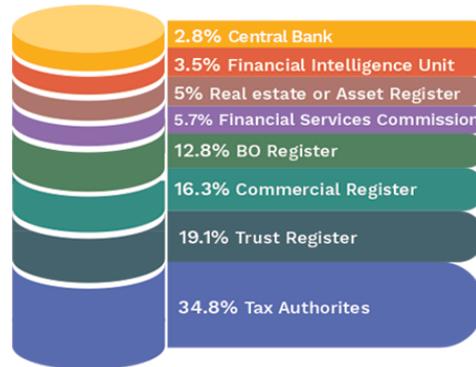
Triggers

Trusts have to register when they:



65 countries require some beneficial ownership (BO) registration for trusts

Authorities in charge of trust registration



What level of ownership is registered?



15 countries have,
or will have,
public info for
trusts & 4 more
have basic info
online



Introduction

The Financial Action Task Force (FATF) is the inter-governmental body that establishes and assess compliance with Recommendations on anti-money laundering (AML) and the financing of terrorism. The organisation is in the process of reforming beneficial ownership transparency requirements. In March 2022, the FATF approved the [reform of Recommendation 24](#) on beneficial ownership transparency for legal persons such as companies and foundations. The main improvement was the requirement for countries to set up beneficial ownership registries (or equally efficient alternative mechanisms). Although the FATF could have been much more [ambitious](#) in its reform, especially in terms of public access to beneficial ownership information or lowering thresholds used in the beneficial ownership definition, requiring a government authority to collect beneficial ownership data is a major achievement, especially for putting pressure on laggards including Switzerland or China. However, requiring beneficial ownership registration for legal persons is hardly “radical”, but rather mainstream. The Tax Justice Network found that by April 2020, [more than 80 jurisdictions](#) had already approved laws requiring beneficial ownership information to be filed with a government authority. By 2022, this number was closer to 90 jurisdictions including the recent approval of the [Corporate Transparency Act](#) in the US in early 2021.

In July 2022, the FATF started the process to reform Recommendation 25. It opened a consultation and published a [white paper](#) but gave little indication that “trust registration” will become part of Recommendation 25. This paper will show that extending beneficial ownership registration to trusts is equally, if not more urgent. On the bright side, this paper will also show that trust registration is becoming mainstream.

Section 1 of this report describes what a trust is, the risks they create and the need for more transparency. Section 2 explains why trusts should be subject to at least as much transparency as legal persons. Section 3 explores current global cases of trust registration, including beneficial ownership registration, proving that there are plenty of examples and regulatory infrastructure for countries to start requiring trusts to register and to file beneficial ownership data. Finally, Section 4 offers policy recommendations.

What is a trust and why are they problematic?

In simple terms, trusts are a type of legal vehicle where a settlor transfers assets (eg cash or a house) to a trustee who has a fiduciary



duty to hold and manage the assets in favour of beneficiaries appointed by the settlor. In theory, trusts are convenient for scenarios where it is undesirable for the settlor to donate the assets directly to the beneficiary. The classic example is a parent with young or vulnerable children, who wants to make sure that a trusted person will use the assets to care for the children after the death of the settlor, or where the settlor worries of giving too much money at once to a beneficiary who may be unprepared to manage it properly. But, while these are legitimate concerns for parents, and indeed many trusts are used for legitimate purposes, nothing in the law requires a trust beneficiary to be a minor or even vulnerable. The beneficiary may end up being the very same settlor, who created the trust only to create the appearance of having given away their assets in order to escape from authorities, creditors or former spouses seeking a claim on the settlor's assets. Without proper checks, trusts have proven to be a secrecy weapon of choice for tax abusers, money launderers, corrupt officials and oligarchs escaping sanctions.

As described in [the Tax Justice Network's brief on the role of trusts in the Pandora Papers](#), trusts create three specific secrecy risks and one asset protection risk.

Secrecy risk 1: Trusts do not need to register to have legal validity

In most countries, companies and most legal persons need to be incorporated or registered with the commercial registry to have legal validity (to exist as a separate legal entity) or at least to enjoy limited liability. In contrast, in many countries trusts don't need to register but still enjoy all the benefits conferred by the law. This means that governments do not know how many trusts exist in the world, how many assets they hold or who is benefitting from them.

This chosen ignorance is not a problem for producing statistics, but has very serious consequences on governments' abilities to maintain the rule of law. A 2019 [paper](#) commissioned by the Australian Tax Office (ATO), a country where trusts are extremely integrated into and relevant to the economy, warned that the risks of lack of trust registration included the inability to enforce tax laws and to prevent fraud, including the falsifying or backdating of documents (given that not all trusts need to be registered, and those that do depend on self-reporting):

“A question of primary importance is whether the Income Tax Assessment Acts can be adequately enforced with current sources of information about trusts.... The analysis demonstrates that without more complete trust data there is an inherent complexity in better determining the potential size of the active trust population in any one financial year... in the context of a self-reporting system, this presents a unique and complex set of challenges for the ATO...”

Trusts are being used for a variety of purposes and in across various industries. Such heterogeneity means that without some regulatory oversight it would become increasingly difficult for the ATO to monitor and administer the taxations laws in relation to

trusts. By comparison, the corporate structure is heavily regulated in Australia and yet trusts are just as prominent across as many industries and sectors...

Lack of trust registration and authentication requirements encourages opportunism and fraud on the part of taxpayers. Allegations that trusts exist and have certain terms may be based on falsified documents and/or false claims that constituent documents have been lost or destroyed. Distributive entitlements and/or persons' statuses as trust beneficiaries may be changed prior to tax audits in order to conform with previous years' tax returns" (pp. 89-106)

Similarly, the US also has limited trust filing obligations reliant on self-reporting, rather than a register where all relevant trusts have to be registered for them to have legal validity. This lack of proper information on trusts allowed, in one case, an individual to defraud millions out of the US tax administration. In March 2022, a man pleaded guilty to having submitted 227 fraudulent claims to the US's Internal Revenue Service (IRS) falsely claiming to be entitled to more than [\\$2.9 billion in tax refunds on behalf of non-existent trusts](#). While some of the claims were rejected, the lack of a trust register meant that some of the fraudulent claims did work and resulted in the individual receiving more than \$5.8 million from the IRS, which he used to purchase a home and multiple luxury vehicles.

Instead of this self-imposed secrecy on trusts, countries could follow the examples of [Barbados](#) (for purpose trusts¹), [Czechia](#)², [France](#)³, [Puerto Rico](#)⁴ or [St. Kitts](#)⁵, where trusts must be registered to be legally valid.

Secrecy risk 2: Trusts can use murky roles and numerous parties to obfuscate control and benefit

The classic example of a trust, where a parent (settlor) transfers assets to their sibling or lawyer (trustee) to manage the assets in favour of their spouse and children (beneficiaries), has a clear and straightforward delineation of roles and relationships. Modern trusts, however, can utilise a wide variety of increasingly complex and murky roles and relationships so as to completely obfuscate who has control or benefit over the assets.

¹ Article 12(2) of the Trusts (Miscellaneous Provisions) Act (2018)

² Art. 1448.2 and 1451.2 of the Civil Code state that trusts have to be registered in order to be "created" (giving registration a "constitutive effect", meaning that rights start from the moment of creation).

³ France established the sanction of nullity in case of non-compliance with the registration of beneficial owners of trusts (amended Art. 2019, 4th paragraph of the French Civil Code).

⁴ "Every fideicomiso constituted in Puerto Rico shall be registered in the Special Registry of Fideicomisos, under penalty of nullity" (Law 219-2012, Art. 5)

⁵ In 2018 the Global Forum peer review on St. Kitts wrote: "A trust will not be recognized by law unless it is provided with a certificate of registration by the Registrar (s. 4(4))" (p. 58.)

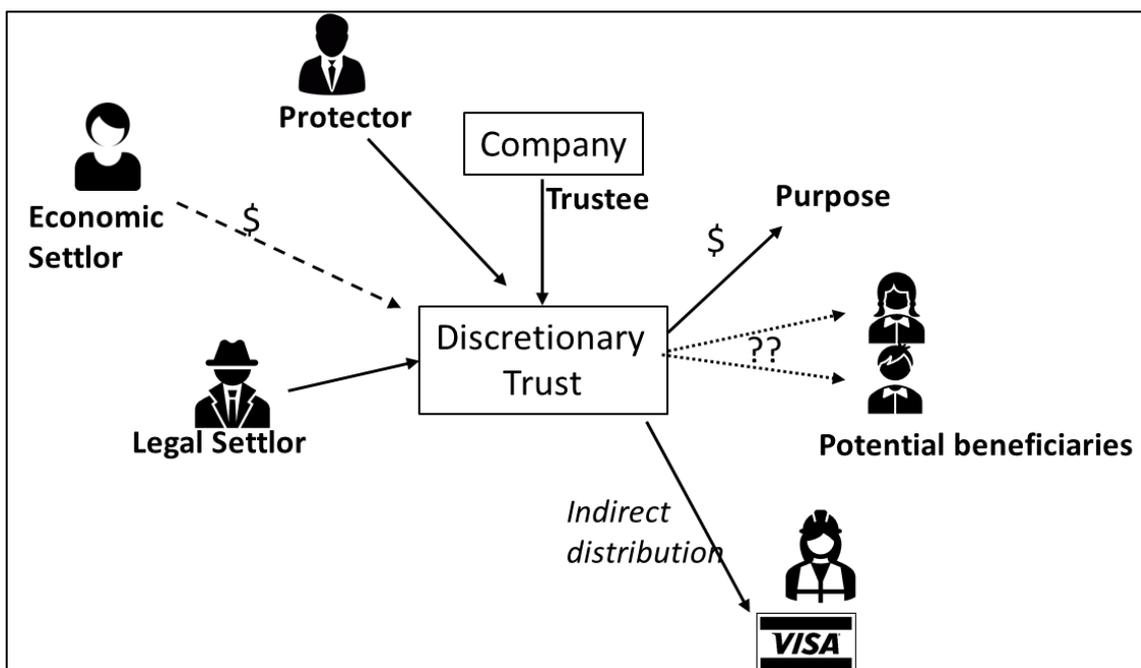
For example, instead of a settlor in the classic sense used in the example above (the parent or the individual who was the real beneficial owner of the assets transferred to the trust), a trust can have a “legal settlor” (a nominee). The legal settlor would be referenced in the trust deed (the trust instrument) in place of the real “economic” settlor, eg the parent. Instead of the trustee having independence to manage the assets based on the trust deed’s instructions like in the classic example, the trustee can be controlled by powers retained by the settlor (eg to veto, to appoint or remove trustees or to revoke the trust).

Additionally, a trust can have a “protector” or “enforcer”, roles that can specifically have powers to control the trustee. Alternatively, the trustee, instead of a sibling or family lawyer, can be a company of which the settlor is the director or main shareholder. The trustee may also have rights to appoint new beneficiaries without notifying any authority, or simply to make indirect distributions to individuals not mentioned as beneficiaries, such as paying for tuition fees or credit card bills.

As for beneficiaries, the beneficiary does not have to be pre-identified, specific individuals like the settlor’s spouse or children. Rather, a beneficial doesn’t have to be a natural person at all. A beneficiary can be an offshore company, the beneficial owner of which can be the settlor. Beneficiaries may simply refer to a class (eg “the grandchildren of X”) or may be contingent beneficiaries who could ask not to be identified unless or until they actually receive a distribution based on the trustee’s discretion. “Purpose trusts” available in some secrecy jurisdictions do not even need to have beneficiaries but merely “purposes”, such as “to hold the shares of company X”.

The illustration below shows how the structure a modern trust can be so far removed from the classic idea of a trust.

Figure 1. Possible parties in a modern trust



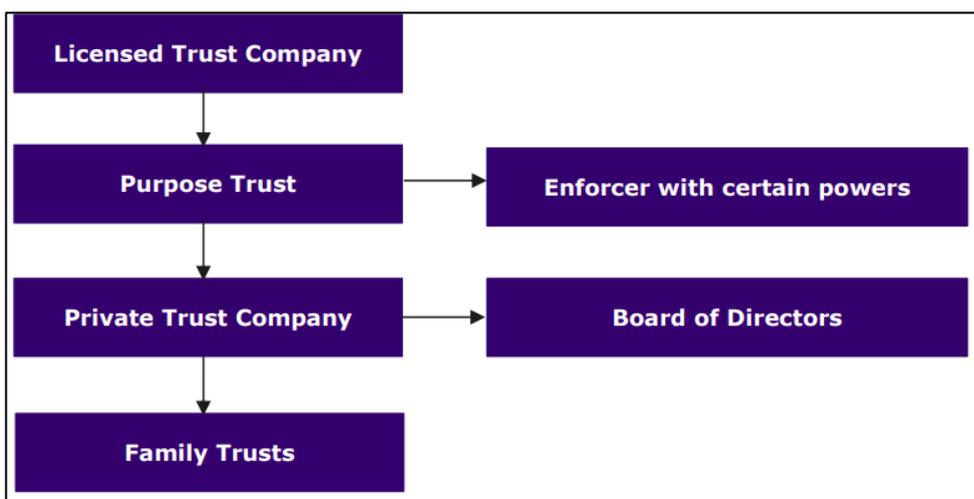
The number of parties to a trust may be especially large in the case of “unit trusts” used as investment funds. A unit trust can have thousands of beneficiaries or unit holders with rights to the trust’s income. All trusts, including unit trusts should be required to identify all of their parties no matter how many unit holders exist or how little their overall interests are. After all, the fund or trust manager should know the identity of each unit holder (to pay them accordingly), so that information should also be registered.

It may be argued that unit trusts used as investment funds would be better supervised by a financial regulator like other investments funds, but the Tax Justice Network has already detailed the loopholes in beneficial ownership frameworks which either exempt or fail to properly cover [companies listed on the stock exchange](#) and [investment funds](#). This research has particularly put attention on high thresholds that prevent most end-investors from being identified and the consequences these thresholds can have. Regardless of whether a trust is supervised by a financial regulator, all parties to a trust, including unit trusts, must be registered to enjoy legal validity. Obtaining information on the beneficial owner of each end-investor should also be required to reduce the current secrecy surrounding the investment fund industry and to prevent the abuse of investment funds as a way to escape beneficial ownership registration.

Secrecy risk 3: Trusts are often used in complex structures that create hurdles for authorities

In offshore settings, it is not uncommon for trusts to be used in a complex chain of trusts to reinforce secrecy. For instance, [Appleby Bermuda](#) proposes this “basic” structure to keep control over the trust:

Figure 2. Private trust company structure proposed by Appleby



Source: “[Guide to purpose trusts in Bermuda](#)”, Appleby 2015

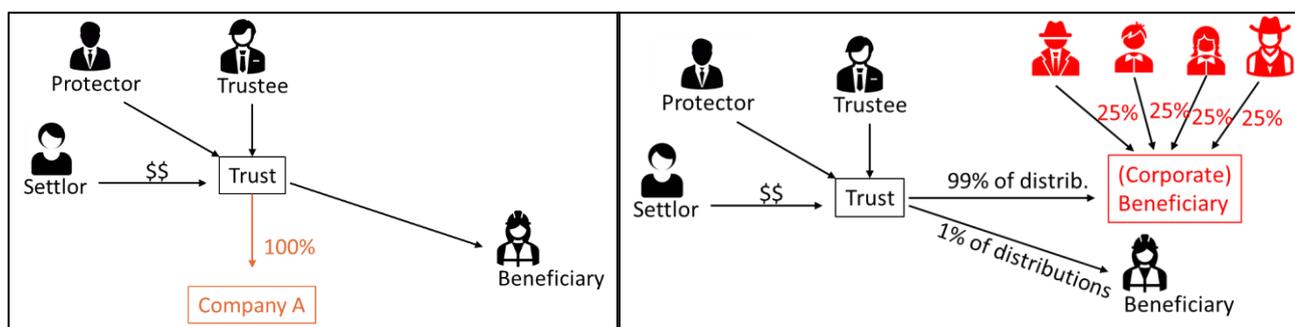
The combination of trusts and legal persons, however, in complex chains can also reinforce secrecy. Even a two-layer chain involving one trust and one legal person can create impenetrable secrecy. The main problem

occurs when the beneficial ownership definition doesn't properly address the situation. Taking the example of a two-layer chain, there are two scenarios.

The first is where the trust (or the trustee) owns a company. In this scenario, the definition should ideally require identifying all the parties to the trust as beneficial owners of the company. Instead, in some countries, only some parties will have to be identified. In Guernsey, for instance, the parties of the trust that have to be identified as beneficial owners of the company will depend on the type of trust, the type of trustee or the powers reserved by a person.⁶

In the second scenario, the company is a party to the trust, such as a corporate beneficiary. In principle all beneficiaries who have any right to trust assets should be identified. There are no thresholds on how much of a trust's assets an individual must have a right to or receive to be considered a beneficiary. However, when it comes to beneficial ownership definitions for companies, countries often only require company shareholders that have more than 25 per cent of company shares to be identified. By incorporating a company into the chain, thresholds limiting who is identified as a beneficial owner of a company can be used to supersede the no-threshold definition of a beneficiary of a trust. In this case, any shareholder-beneficiaries who do not pass the threshold used to identify the beneficial owners of companies (eg having more than 25 per cent of the shares) would not be identified as beneficial owners of the trust.

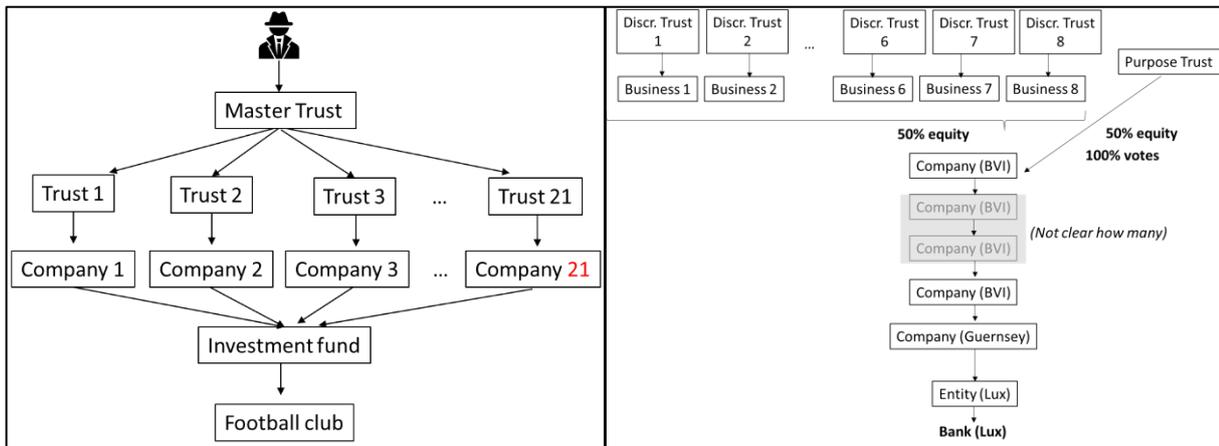
Figure 3. Combination of trusts and legal persons that may create secrecy



When trusts are combined with many other structures in a chain, they become even more secretive. As described by our paper on [complex ownership structures](#), trusts are usually involved in very complex chains combining several layers of entities and trusts from many different countries. These kinds of chains have been used to acquire ownership of British football clubs, own a Luxembourg bank, defraud a former wife in the UK's most expensive divorce case and to carry out the largest case of tax evasion by an individual in US history. The next figures illustrate how complex chains can get:

⁶ Section 2.1 of the Beneficial Ownership (Definition) Regulations, 2017.

Figure 4. Trusts involved in complex ownership structures



Source: Knobel, A., “Complex ownership structures”, Tax Justice Network, February 2022 based on investigations by Al Jazeera and Bloomberg

Authorities have at times been so intimidated or overwhelmed by these very complex schemes (and the lack of proper transparency) that they didn’t even bother to try investigating or prosecuting. This disappointing result can be exemplified by three statements, from 2011, 2018 and 2022:

The famous 2011 StAR (World Bank/UNODC) report on grand corruption cases, “[The Puppet Masters](#)”, acknowledged:

*Investigators interviewed as part of this study argued that the grand corruption investigations in our database failed to capture the true extent to which trusts are used. **Trusts, they said, prove such a hurdle to investigation, prosecution (or civil judgment), and asset recovery that they are seldom prioritized in corruption investigations. Investigators and prosecutors tend not to bring charges against trusts, because of the difficulty in proving their role in the crime...** As a result, even if trusts holding illicit assets may well have been used in a given case, they may not actually be mentioned in formal charges and court documents, and consequently their misuse goes underreported.* (pp. 45-46, emphasis added).

The 2018 paper on “[Concealment of beneficial ownership](#)” by the Financial Action Task Force (FATF) and the Egmont Group reached similar conclusions:

*The interaction of the trust with other legal persons adds an additional layer of complexity and helps frustrate efforts to discover beneficial ownership... **It is also possible that the use of legal arrangements may increase the difficulty of investigating and identifying the beneficial owner, thereby explaining their relatively low prevalence in the case study sample.*** (p. 34, emphasis added)

In 2022, Canada Revenue Authority’s “[Overall federal tax gap report](#)” identified offshore trusts as a strategy to hide foreign income and

acknowledged the use of data from the Panama Papers as a way to address these challenges. The use of data leaks shows the need for public beneficial ownership registries (which would disclose the same information, but on a daily basis rather than depending on a leak):

*Estimating the potential tax loss from offshore activities can be difficult given the unique challenges of detecting unreported foreign income. In general, **international tax non-compliance implicates a relatively small portion of individuals... that use sophisticated means to hide income through a complex web of offshore companies and trusts... Data on these offshore corporations and trusts are sparse and it can be difficult to distinguish between legitimate uses of these financial entities from tax non-compliance. Offshore leaks, such as the Panama and Paradise Papers, as well as formal information sharing agreements, including electronic funds transfers and common reporting standards, have increased the amount of data on these offshore entities and have helped the CRA investigate potential cases of international tax non-compliance.*** (p. 15; emphasis added)

Asset risk: Trusts shield assets against authorities and creditors

As described by our paper “[Trusts: Weapons of Mass Injustice?](#)”, the subsequent “[Response to the critics](#)” and many other [blog posts](#), trusts have been abused to allow individuals to shield their assets when accused or found guilty of [embezzlement](#), [defrauding creditors](#), [defrauding a spouse upon divorce](#), [avoidance of sanctions](#), [money laundering](#), [murder](#) and [sexual abuse against a minor](#).

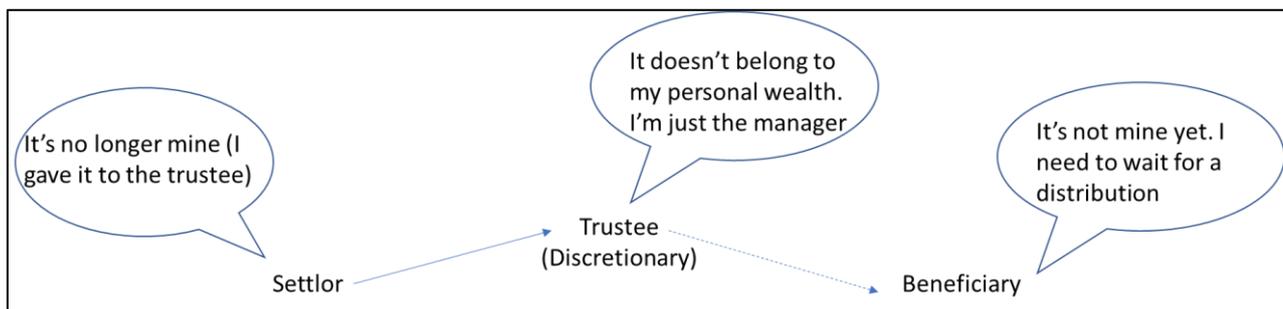
Trusts exploit many abusive strategies allowed and promoted by the laws of many jurisdictions, such as the inclusion of flee clauses (which order the trustee to move the trust to another jurisdiction upon an unfavourable change in local tax laws or the start of an investigation against the trust), spendthrift provisions (which prevent asset distributions to indebted beneficiaries), anti-duress rules (which prevent a trustee from following instructions from the settlor if the settlor was ordered by a court to act), non-recognition of foreign laws or foreign court judgements, reductions in the window period in which an anti-fraud action can be taken and increases in the burden of proof needed to start an anti-fraud action.

Still, the most sophisticated feature may come from discretionary trusts. Under this type of trust, the trustee has (at least on paper) the discretion to decide who receives a distribution, when and how much. In essence, this powerful feature can be abused to prevent distributions to indebted beneficiaries so that money won't reach legitimate creditors, or to withhold distributions to beneficiaries who may be subject to a higher marginal personal income tax rate (and delay distributions until these beneficiaries have losses they could offset against any distribution). Another feature of discretionary trusts is that a discretionary trust can

give the appearance of being charitable because its trust deed includes beneficiaries such as the Red Cross. However, the trustee can in practice decide to never give the Red Cross a distribution, and instead gives indirect distributions to the settlor or their family, or further yet, decides to just concentrate wealth in the trust.

As the next figure shows, trusts can put assets in an apparent “ownerless limbo” where – on paper – no one owns the assets when convenient (eg when the personal creditors of the settlor, the trustee or the beneficiary come knocking). Of course, all parties can still use and enjoy the assets when no one is looking.

Figure 5. Trusts’ “ownerless limbo”



Discretionary trusts give so much flexibility to trustees to appoint or remove beneficiaries or to agree or withhold distributions, that they should simply not be allowed to exist. Of course, trusts should be allowed to change throughout time, but these changes should be properly registered before they take effect, just like a shareholder or director who has to update the commercial registry upon every change.

Trusts should be subject to as much, if not more transparency, compared to legal persons

It's not entirely clear why trusts benefit from less transparency requirements compared to legal persons. As explained above, Recommendation 24 always contemplated the possibility of a beneficial ownership registry, and since the 2022 Reform, a register (or an equivalent efficient mechanism) will now be required. For trusts, Recommendation 25 merely puts the obligation on the trustee to hold and make available information on request. This difference, which results in more transparency for legal persons than for trusts, is also present in [the EU anti-money laundering directive \(AMLD\)](#). The Directive establishes public access to beneficial ownership information of legal persons, but not for trusts.

A possible explanation of the different treatment may involve the [pressure from Common Law countries](#), where trusts are widely used and

where there is very little appetite for more transparency. The circular arguments in favour of the special treatment for trusts usually refer to trusts being mere “legal arrangements” or “relationships” to make the point that they are very different from “legal persons” like companies. There is little doubt that companies and trusts are different. But the point is not whether trusts have enough similarities with companies, but whether there is any justification for trusts to be subject to less transparency. There are plenty of reasons why trusts should be subject to the same level if not more transparency:

- Equal or more risks. As explained above, trusts can create as much if not more risks to transparency, given their complex structures and the fact that they can have legal validity without needing to register.

This view is shared by [Luxembourg’s 2022 National Risk Assessment of money laundering and financing of terrorism](#), which identified legal arrangements (fiducies, similar to trusts) with the highest level of risk compared to other legal vehicles:

Figure 6. Luxembourg’s assessment of risk by type of legal vehicle

Table 31: Entity-type specific inherent risk determination

	Inherent vulnerability	Probability	Inherent risk outcome
Sociétés commerciales			
<i>Société cooperative – SCOOP/ SCOOP SA</i>	Medium	Very Low	Low
<i>Société coopérative européenne – SCE</i>	Medium	Very Low	Low
<i>Société anonyme – SA</i>	Very High	Medium	High
<i>Société par actions simplifiée – SAS</i>	High	Very Low	Medium
<i>Société à responsabilité limitée – SARL</i>	Medium	Very High	High
<i>Société à responsabilité limitée simplifiée – SARL-S</i>	Very Low	Very Low	Very Low
<i>Société Européenne – SE</i>	Very High	Very Low	Medium
<i>Société en commandite par actions – SCA</i>	Very High	Very Low	Medium
<i>Société en commandite simple – SCS</i>	Medium	Very Low	Low
<i>Société en commandite spéciale – SCS^{spé}</i>	Medium	Very Low	Low
<i>Société en nom collectif - SNC</i>	Medium	Very Low	Low
Non-commercial entities			
<i>Société civile</i>	Low	Very Low	Low
<i>Association sans but lucratif – ASBL</i>	High	Very Low	Medium
<i>Fondation</i>	High	Very Low	Medium
Legal arrangements¹⁰¹			
<i>Fiducie</i>	Very High	Very High	Very High

Source: [Luxembourg’s 2022 National Risk Assessment of money laundering and financing of terrorism](#) (p. 71)

- Trusts have tax identification numbers. Even countries that don't require trusts to register in order to exist or which don't consider trusts to be legal persons, may still treat the trust as an entity and give it a tax identification number and make it subject to tax (at the entity level).
- Trusts are treated as entities for automatic exchange of information. The OECD Common Reporting standard for automatic exchange of information treats trust account holders as "entity" account holders.
- The EU Court considered trusts as "entities". In a case about Freedom of Establishment (to avoid paying taxes), the EU court ruling 2017 (ECJ 646-15) considered that trusts (including the assets held by the trustee) should be considered an entity:

*“that concept of ‘other legal persons’ extends to an entity which, under national law, possesses rights and obligations that enable it to act in its own right within the legal order concerned, notwithstanding the absence of a particular legal form . . . **the assets placed in trust form a separate fund of property, distinct from the property of the trustees... the trust and its trustees constitute an indivisible whole. That being the case, such a trust should be considered to be an entity which, under national law, possesses rights and obligations that enable it to act as such within the legal order concerned.**”*

- Limited partnerships may also not have separate personality but must still register. Trusts aren't the only type of legal vehicle considered not to have legal personality. For instance, limited partnerships (LPs) in the UK are considered not have separate personality and it may be the general partner who holds assets or who enters into contracts on behalf of the partnership (similar to a trustee doing it on behalf of the trust). Still, limited partnerships have to be registered in Companies House and file legal ownership information. After a number of money laundering scandals, Scottish limited partnerships have also been required to register their beneficial owners. Civil society organisations have been calling for the UK to also cover limited partnerships from England and Wales and from Northern Ireland under the beneficial ownership registration requirements.
- Private foundations, considered legal persons, have the same structure and uses as trusts. Private foundations, available in the Netherlands, Austria or Panama have very similar structures to trusts: a founder (settlor), a council of members (trustees) and beneficiaries. They tend to be used for the same purposes as trusts, such as to concentrate wealth or to pass it on to the next



generation, or to keep control over other structures. Still, private foundations are considered legal persons and covered by FATF Recommendation 24 and by Art. 30 of the EU anti-money laundering Directive (AMLD), just like companies. In fact, the EU AMLD treats private foundations as legal persons, requiring public access to their beneficial ownership information, while applying the beneficial ownership definition that refers to trusts.

In conclusion, trusts are more sophisticated than companies and just as susceptible to abuse, if not more. Other types of legal vehicles such as limited partnerships or private foundations share similar features as trusts and yet they all have to be registered, unlike trusts. This exception to the rule for trusts must end.

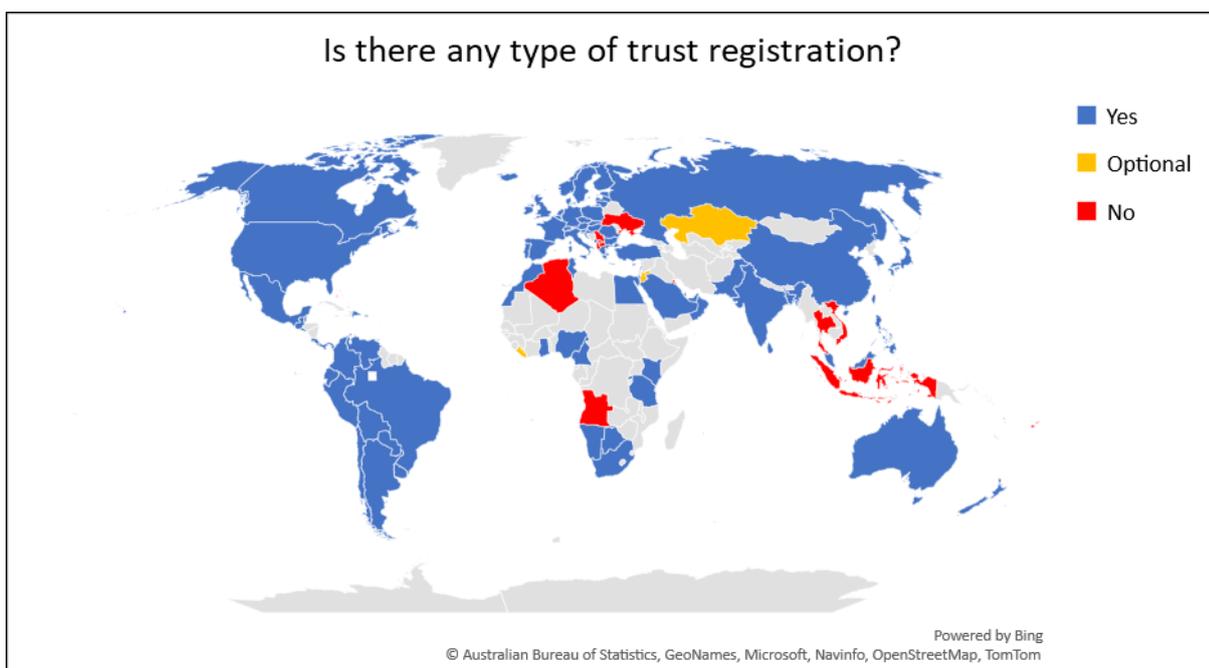
Trust registration around the globe

Number of countries with any type of trust registration

According to the 2022 edition of [the Financial Secrecy Index](#), which, among many things, assesses legal and beneficial ownership registration for 141 jurisdictions, there are 121 countries that have some type of registration for “trusts”. By “trusts”, we include in our reference similar structures such as fideicomisos, fiducie, Treuhand or waqf. By “registration”, we refer to any situation in which a trust (or a trustee on behalf of the trust) must file information about the trust to a government authority (eg the tax administration, a trust registry or the land register). Out of the 121 countries that have some type of trust registration, 113 require mandatory registration for at least some types of trusts and in the remaining 8 countries, trust registration is optional.

This means that most countries already have a government agency or the legal infrastructure to handle trust registration. In most cases, registration should be expanded to cover all relevant trusts. The next figure illustrates the countries with mandatory registration (in blue) for at least some types of trusts, cases with optional registration (in yellow) and countries without any case of registration (in red). Grey countries have not yet been covered by the Financial Secrecy Index:

Figure 7. Trust registration around the world



Although 121 countries have some type of trust registration with a government authority, only a few of them publish statistics on the number of trusts they have or the value of the trust assets. These

statistics give at least public basic information on the number of (self-reported) trusts. For instance:

- In Australia, most trusts have to register with the tax administration if they have a local trustee or if they receive Australian income.⁷ According to the 2019 [report](#) commissioned by the Australian tax office (ATO): “...there were approximately 823,448 trusts in Australia in 2015. The numbers of trusts have increased by almost 700% from 1990 to 2014. Most trusts are discretionary trusts and fixed unit trusts...The large number of trading trusts (261,752) highlights the unusual role of Australian trust as vehicle for business entities” (pp. 18 and 20).
- In China, according to the 2020 Global Forum peer review report, as of 2018, “52,198 trusts representing assets of RMB 2.27 billion (EUR 300 million) were registered” (p. 46). According to the report, “all trusts that are managed by a trust company or otherwise have trust company involvement must be registered with the China Trust Registration Corporation (CTRC)” (ibid.)
- In New Zealand, according to the 2018 Global Forum peer review report, as of 2016 and based on the number of trusts filing tax returns, there were 332,751 trusts created under New Zealand or foreign law with New Zealand trustee and resident settlor (these trusts must furnish a return of income if the trust derives taxable income or makes a taxable distribution to beneficiaries). In addition, while there had been 11,750 “New Zealand foreign trusts” (trusts created under New Zealand or foreign law with New Zealand trustee and a non-resident settlor), after New Zealand increased in 2017 the registration requirements for these type of trusts as a consequence of the Panama Papers, only 3,489 registrations had been received. Finally, by 2016 there were 24,009 charitable trusts with a New Zealand trustee (this refers to the number of charitable trust boards registered with the Registrar of Incorporated Societies).
- In Singapore, according to the 2018 Global Forum peer review report, “all wakafs must be registered at the office of the Islamic Religious Council of Singapore (Majlis Ugama Islam, Singapura). As of May 2018, there are a total of 91 wakafs registered in Singapore.” (p. 48)
- In the UK, the [2021 National Trusts Statistics](#) show that “the total number of trusts that have made Self Assessment (SA) returns has continued to decline This represents a sixth year of consecutive declines, continuing the long-term downward trend. There were 225,000 trusts and estates in the UK in the tax year ending 2004,

⁷ According to the 2017 Global Forum peer review on Australia: “Any trust with a trustee resident in Australia (except for Transparent and Secured Purchase Trust) and any foreign trusts receiving income from Australia must file an Australian tax return (unless exempted by the Commissioner from this requirement).” (p. 55).



which has fallen to 145,000 in the tax year ending 2020. This corresponds to a drop of approximately 34% over the past 15 years.”

- In the US, according to the 2021 report “[Present Law And Background On The Federal Taxation Of Domestic Trusts](#)” prepared by the staff of the Joint Committee on Taxation of the US Congress, “a domestic taxable trust is required to file an income tax return for a taxable year if it has (1) any taxable income or (2) gross income of \$600 or more regardless of the amount of taxable income...A fiduciary generally arranges for filing of the annual return using IRS Form 1041, ‘U.S. Income Tax Return for Estates and Trusts.’...In 2017, 3.2 million Form 1041s were filed...Total trust and estate income was \$178 billion” (pp. 10, 11 and 15).

Scope of trusts that need to register based on their connection to the country

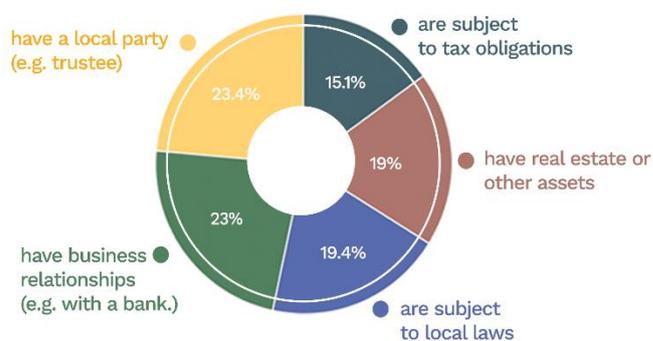
The scope of trusts that need to register varies greatly depending on the country, as shown by the bullet points above. In general, Common Law countries with a wide use of trusts have very complex registration rules. In the UK, for instance, as [summarised](#) by the Financial Secrecy Index, beneficial ownership registration may depend on the trust being subject to at least one of six types of taxes, on the residence of trustees and settlors, and on specific assets or operations (eg establishing business relations or acquiring real estate), unless some exceptions apply.

Based on the analysis of the 113 countries with mandatory registration for at least some types of trusts, and as shown by the next figure, trust registration usually applies based on the following conditions or triggers: (1) there is a party to the trust (generally the trustee) who is resident in the jurisdiction; (2) the trust has business operations or relations in the country (eg it engages with a local bank); (3) the trust is created according to, or governed by the law of the country; (4) the trust has assets in the country (especially real estate); or (5) based on tax obligations.

Figure 8. Conditions that may trigger trust registration

Triggers

Trusts have to register when they:



Depending on the country, more than one trigger may apply. The scope will be expanded or reduced depending on whether triggers are cumulative or alternative. In the worst case, triggers will be cumulative meaning that trust registration applies only if a trust meets two or three conditions. In the most transparent case, triggers will be alternative, meaning that trust registration will apply if the trust meets at least one condition. There are some best cases:

- In France, according to the [Financial Secrecy Index](#) and based on Ordinance n° 2020-115, beneficial ownership registration applies if the trust is created according to domestic laws (a local fiducie); if a foreign law trust has either a local trustee, settlor or beneficiary who has their fiscal domicile in France; if the trust has an asset or right in France; if the trust acquires real estate in France; or if the trust establishes business relations with an obliged entity.
- In [Argentina](#), trust beneficial ownership registration applies if the trust is created according to domestic laws (a local fideicomiso) or if a foreign trust has a resident settlor, trustee or beneficiary.

In the most transparent scenario, trusts – and any other type of legal vehicle like a company – should be required to register (in order to have legal validity) as long as they had any connection point to the country: (1) they are created according to, or governed by local laws; (2) they have any asset or operation in the country; or (3) they have any party who is resident in the country.

Level of registration: basic, legal and/or beneficial ownership

Requiring trusts to register is a very important first step, especially if registration is a pre-requisite for the trusts' legal existence. However, the level of details that must be registered will determine whether authorities are merely able to know of a trust's existence, or know the trust's parties, their roles and the assets it holds.



In some cases, trust registration is minimal or basic: the trust name and maybe a registered office. An improvement is when trusts require all legal owners to be identified, meaning all parties to the trust: the settlors, trustees, protectors and beneficiaries. The best case is when registration also covers beneficial ownership. In this case, all parties to the trust must be identified just as at the legal ownership level. The only difference between “legal ownership” and “beneficial ownership” registration is that beneficial ownership registration requires that, if a party to the trust (eg the trustee), is a legal entity or a nominee, then the natural persons who ultimately own or control or benefit from that legal person must also be identified as beneficial owners of the trust. In other words, beneficial ownership registration should always reach the ultimate natural persons who may or not coincide with the legal owners.

Unfortunately, not all countries are clear on this distinction. In fact, some of them regulate as beneficial ownership registration the requirement to identify “all the natural persons who are settlors, trustees or beneficiaries”. This could be a loophole if it exempts from registration settlors, trustees or beneficiaries who are companies rather than natural persons.

From the 113 countries with mandatory registration for at least some type of trusts, the Financial Secrecy Index was able to determine the level of information to be registered for 98 countries (all but 15). These are the Financial Secrecy Index findings:

- 2 countries require only basic information (apparently, no ownership information): Labuan⁸ (Malaysia) and Dominica⁹.
- 31 countries require registration of legal ownership information (they either don’t have any beneficial ownership registration or it doesn’t extend to trusts).
- 65 countries require (or plant to require) beneficial ownership registration. This number includes:
 - All 27 EU countries. The 5th Anti-Money Laundering Directive (AMLD 5) requires EU countries to set up central beneficial ownership registries for trusts.¹⁰

⁸ According to the 2019 Global Forum peer review on Malaysia: “Trustees are required to file a return (statutory declaration) with the LFSA for tax purposes. However the return does not require that any identity or beneficial ownership information of the settlor or the beneficiaries be provided and it only requires a statement that the settlor and the beneficiaries are not citizens or permanent residents of Malaysia (section 10 LBATA).” (p. 67).

⁹ According to the 2020 Global Forum peer review report on Dominica: “Under the income tax law, all persons (including a domestic or foreign trust, but excluding international exempt trusts) liable to income tax must file an annual return of the income of their business to the IRD... There is no specific information on the trustees, settlors and beneficiaries required to be included in the trust’s tax return....Under the International Exempt Trusts Act, an international exempt trust is also required to register with the FSU; however, no information concerning the settlor, beneficiaries or trustees (other than the one registering the trust) of the trust is made available to the FSU” (p. 61).

¹⁰ According to the Financial Secrecy Index, while most EU countries already approved laws to require beneficial ownership registration for trusts, Latvia and Slovakia have yet to approve regulations.

- The US and four US territories (American Samoa, Guam, Puerto Rico and US Virgin Islands). The Corporate Transparency Act will apply to all US territories¹¹ and according to the [proposed FinCen regulations](#) (as of July 2022), “business trusts” (and other entities typically created by a filing with a secretary of state or similar office) will be covered by beneficial ownership registration.¹²
- 11 countries in Latin America and the Caribbean: Antigua & Barbuda¹³, Argentina, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Paraguay, Peru, St. Kitts¹⁴ and Uruguay.
- 9 jurisdictions in Europe: Andorra, Gibraltar, Iceland, Liechtenstein, Monaco, Montenegro, Norway, San Marino and the UK.
- 7 countries in Africa: Botswana, Morocco, Namibia, Rwanda, Seychelles, Tanzania and Tunisia.
- 5 countries in Asia (mostly in the Middle East): Lebanon, Qatar, Sri Lanka, Turkey and the UAE (for trusts created under the laws of the Abu Dhabi Global Market free zone).
- 1 country in Oceania: Nauru.

The next chart shows the countries that have (or plan to have) at least some type of beneficial ownership registration for trusts and those that have (or plan to have) at least some type of legal ownership registration:

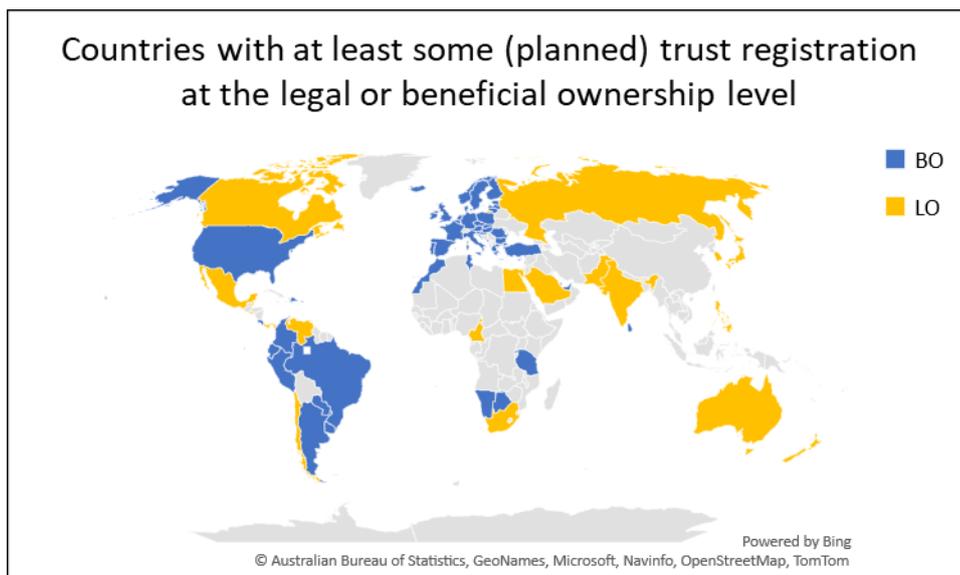
¹¹ CTA, Definitions, section 12: “The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States”

¹² Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking (NPRM): “The proposed rule identifies two types of reporting companies: domestic and foreign. A domestic reporting company would include a corporation, limited liability company, or any other entity created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe.... FinCEN expects that these definitions would include limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs, because such entities appear typically to be created by a filing with a secretary of state or similar office... Other types of legal entities, including certain trusts, would appear to be excluded from the definitions to the extent that they are not created by the filing of a document with a secretary of state or similar office.”

¹³ New Art. 18A on – Annual Attestation of Beneficial Ownership and Control established by Art. 5 of the International Trust (Amendment) Act, 2021.

¹⁴ In 2020 the CFATF wrote: “Similar provisions in the Trusts Act, Cap. 5:19 were enacted in 2019 to mandate that prior to the transfer or payment of assets by trusts, the particulars with respect to any trustee who is an individual and has beneficial ownership interest must be submitted to the Registrar.” (p. 128).

Figure 9. Trust registration at the legal or beneficial ownership level



Authority in charge of trust registration (those holding or receiving trusts' information)

The conditions that trigger registration for some types of trusts are usually related to the authority in charge of holding the trust register or receiving information filed by trusts. In some cases, the choice is obvious: if trust registration depends on the trust being subject to tax, the tax administration will be the authority receiving trust information. The same will apply if trust registration is required whenever a trust holds real estate. In such case, the land or real estate registry will be chosen. In other cases, when a country covers trusts within the general beneficial ownership registration framework, the same registry will apply, either a new and special beneficial ownership registry or the agency chosen to hold beneficial ownership data, such as the central bank.

Based on the Financial Secrecy Index's findings, the figure below shows the authorities in charge of managing the trust register or receiving information filed by trusts. The authority most often in charge is the tax administration, followed by a special trust register, the commercial register and the general beneficial ownership register. Other authorities, less commonly used, include the financial service commission (especially for unit trusts or trusts used as investment funds), the real estate register or any asset register, the Financial Intelligence Unit or the Central Bank.

Figure 10. Authorities in charge of trust registration



The choice of the authority in charge of the trust register may have consequences in terms of scope, access, verification and enforcement. For instance, a trust register or the commercial register may be better positioned to centralise information and to cover a comprehensive scope of trusts (eg all trusts created according to local laws and foreign trusts with local assets, operations or parties). These registries may also be in a good position to establish registration as a pre-requisite for the trust's legal validity. Otherwise, trust registration may be based on (voluntary) self-reporting or scattered throughout many authorities. Some authorities, eg the tax administration or the Central Bank may be unable to give public access to information. Finally, it is important that a register is able to verify information, by having the appropriate resources.

Public access to information on trusts

In order to facilitate access to information by all relevant stakeholders (including both local and foreign authorities, obliged entities such as banks in charge of customer due diligence, investors and business people, journalists and civil society organisations), there should be public access to information on trusts. Public access is also the only way to hold authorities to account and to check the quality of the register.

Unfortunately, public access to beneficial ownership information on trusts isn't required by any standard. Even for companies and legal persons, the FATF failed to require public access to beneficial ownership information as part of the reform of Recommendation 24. The EU Anti-Money Laundering Directive also limits access to trusts' beneficial ownership information to competent authorities, obliged entities and those with a legitimate interest. Nevertheless, countries in Europe and Latin America are going beyond the standards and offer (or plan to offer) public and online access to beneficial ownership information:

- 12 of the 27 EU Members already offer, or plan to offer, public access to trusts' beneficial ownership information: Austria,

Bulgaria, Croatia, Czechia, Denmark, Estonia, Germany, Netherlands, Poland, Portugal, Slovenia, and Sweden.

- The remaining 15 EU Members will have to ensure access to competent authorities, obliged entities and those with a legitimate interest. South Africa also offers access based on a legitimate interest.
- 3 more countries either plan to provide public access to beneficial ownership information on trusts (Norway) or already offer it for legal owners (Ecuador and Panama).
- 4 countries offer public online access to basic information on trusts: Dominican Republic, Oman, Seychelles and Singapore.

Best cases of public access

The next figures offer best cases of public and online information on trusts from Denmark, Ecuador, Panama and Singapore.

a) Denmark

Denmark offers free and public online access to information, allowing users to filter for only trusts in searches:

Figure 11. Denmark's public beneficial ownership register's search filters

The screenshot displays the 'Search CVR' interface. At the top, there is a search bar with the placeholder text 'Search CVR number, business name, address, person...' and a magnifying glass icon. Below the search bar, there are several filter categories, each with a dropdown menu:

- Municipality:** Choose
- Region:** Choose
- Number of employees:** Choose
- Business status:** Choose
- Business type:** 1 of 43 chosen. The dropdown menu is open, showing options: 'enhed', 'Særlig finansiel virksomhed', and 'Trust' (which is selected with a checkmark).
- Business marker:** Choose
- Person's affiliation:** Choose
- Choose activity:** Select industry

A 'Close filter' button with an upward arrow is located at the top right of the filter section.

Figure 12. Extract on trust information from Denmark’s public beneficial ownership register



Front page > Search results > Unit View

CVR - Central Business Register

Search CVR Help View basket

The [REDACTED] Discretionary Trust 4

CVR number	[REDACTED]
Address	[REDACTED]
Postal code and city	[REDACTED]
Start date	26.03.2019
Business type	Trust
Advertising protection	Yes - Terms of use
Status	Aktiv

— Ownership

Beneficial owners

[REDACTED]

Is the actual owner as the founder
Date of change: 26.03.2019

[REDACTED]

Danmark
Date of change: 26.03.2019

[REDACTED]

London E9 7SG
Storbritannien
Date of change: 26.03.2019

b) Ecuador

Ecuador allows users to search trust by name and tax identification number, including cancelled trusts:

Figure 13. Extracts from Ecuador’s public register on trusts

PORTAL DE INFORMACIÓN - BÚSQUEDA DE UN PARTICIPE DEL MERCADO DE VALORES POR NOMBRE										
CODIGO FICHA REGISTRAL	TIPO PARTICIPE	No. IDENTIFICACION	NOMBRE	ESTADO	No. INSCRIPCION C.P.M.V.	FECHA INSCRIPCION C.P.M.V	LOCALIDAD	SECTOR	SISTEMA	
3216	NEGOCIO FIDUCIARIO NO INSCRITO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	3/08/2015	QUITO	PRIVADO		
1893	NEGOCIO FIDUCIARIO INSCRITO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	3/01/2012	GUAYAQUIL	PRIVADO		
4509	NEGOCIO FIDUCIARIO NO INSCRITO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	27/02/2015	GUAYAQUIL	PRIVADO		
4135	NEGOCIO FIDUCIARIO NO INSCRITO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	24/02/2015	QUITO	PRIVADO		
543	ADMINISTRADORA DE FONDOS Y FIDEICOMISOS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	11/02/2005	GUAYAQUIL	PRIVADO	NO FINANCIERO	

A wide range of details are available including settlors (constituyentes) and beneficiaries (beneficiarios):

Figure 14. Details on each trust available in Ecuador’s public register on trusts



Although information usually refers to legal owners (including their name, tax identification number, nationality, etc), if these are local companies, beneficial information on the companies up to a natural person shareholder can also be found by searching in the register of companies. Below, legal ownership information on a trust’s beneficiaries:

Figure 15. Details on beneficiaries available in Ecuador’s public register on trusts

No. IDENTIFICACIÓN	APELLIDOS Y NOMBRES/RAZÓN SOCIAL	INICIAL/CESIÓN	NACIONALIDAD	FECHA DESIGNACIÓN	SECTOR	FECHA DE CESIÓN DE LOS DERECHOS FIDUCIARIOS
[REDACTED]	[REDACTED] S.A. H.S.R.	INICIAL	ECUADOR	10/10/2006	PRIVADO	

c) Panama

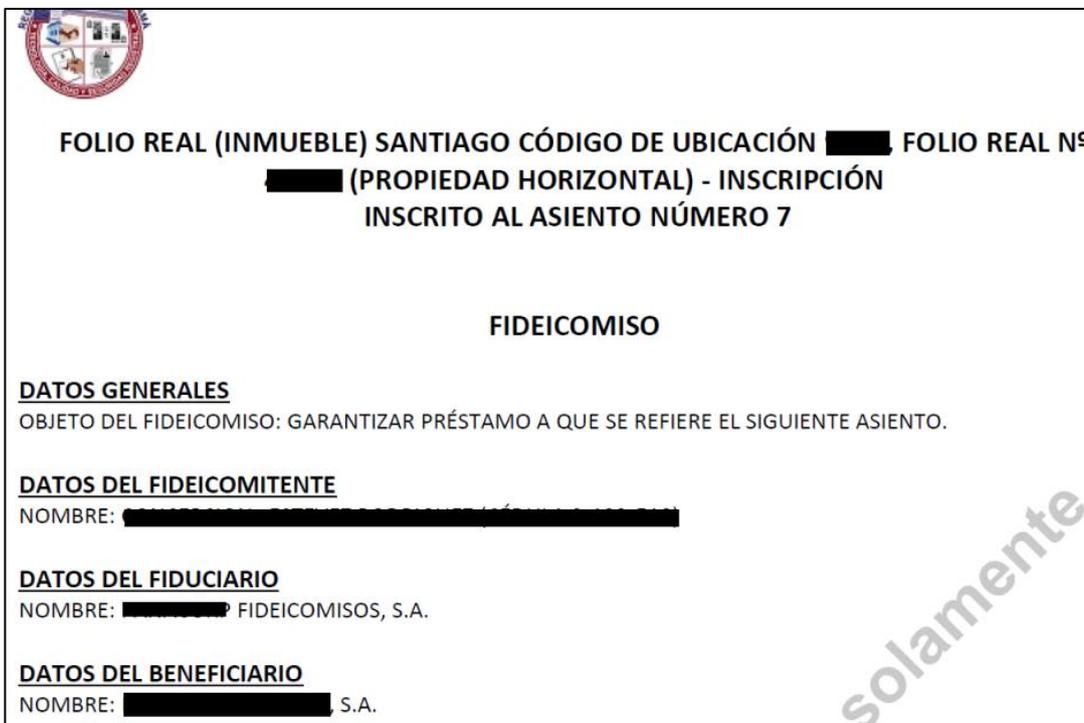
Panama allows free online searches for trusts that are involved in real estate (inmuebles). Users can search specifically for trusts (fideicomisos) involved in real estate, and can also searching by name of settlor (fideicomitente), trustee (fiduciario) or beneficiary (fideicomisario):

Figure 16. Search mechanism for trusts in Panama’s public registry



Information sometimes includes a summary of trust’s purpose (eg guarantee) and the name of the settlor, trustee and beneficiaries:

Figure 17. Trust summary from Panama’s public registry



More impressively, in some cases a free online scan of the full public deed creating a trust (fideicomiso) or a private foundation (fundación de interés privado) is available:

Figure 18. Public deed establishing a trust, downloaded from Panama’s public registry

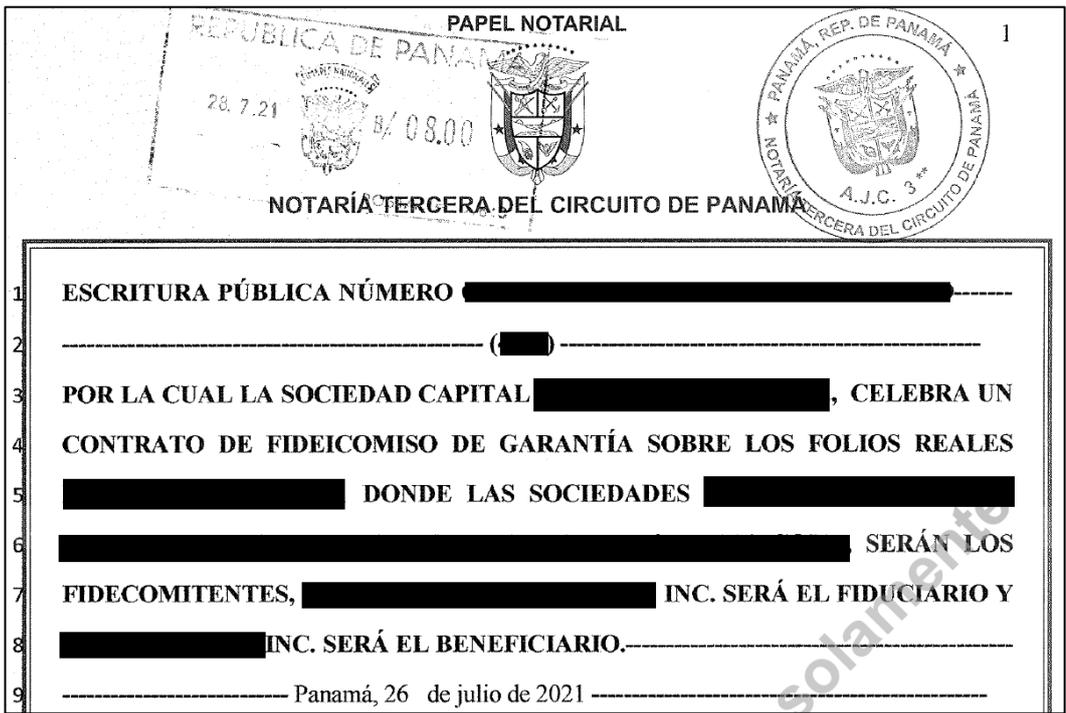


Figure 19. Public deed establishing a private foundation, downloaded from Panama’s public registry



d) Singapore

Singapore allows for free online searches of business trusts:

Figure 20. Search mechanism for trusts in Singapore public register of business trusts

The screenshot shows the MAS OPERA website. The header includes the MAS Monetary Authority of Singapore logo and the OPERA logo (Offers and Prospectuses Electronic Repository and Access). A navigation bar contains links for HOME, ABOUT OPERA, OFFERS, BUSINESS TRUSTS E-SERVICES, and TAKE-OVERS & MERGERS. The breadcrumb trail is Home » Business Trusts E-Services » Search Registered Business Trusts. The main heading is "Search For Business Trusts". Below this, there are four search criteria: "Name of Business Trust", "BT Registration Number", "Name of Trustee-Manager", and "Effective Date From". Each criterion has a corresponding input field. The "Effective Date From" field is set to "23/07/2022".

Free details include the name of the trust, the registration number, status, etc:

Figure 21. Extract on trusts from Singapore public register of business trusts

The screenshot shows the MAS OPERA website with the breadcrumb trail Home » Business Trusts E-Services » Search. The main heading is "BUSINESS TRUSTS D". Below this, there is a table of search results. The table has two columns: the search criteria and the corresponding values. The search criteria are: "Name of Business Trust", "BT Registration Number", "Status", "Date of Registration", "TM Name", "TM UEN Number", and "Contact Details of the TM". The corresponding values are: ": Asc", ": 201", ": Reg", ": 30/", ": Asc", ": 201", and ": 65-".

Search Criteria	Value
Name of Business Trust	: Asc
BT Registration Number	: 201
Status	: Reg
Date of Registration	: 30/
TM Name	: Asc
TM UEN Number	: 201
Contact Details of the TM	: 65-

For a fee, it's possible to obtain more details on Singapore business trusts:

Figure 22. Trust details that may be purchases from Singapore’s public register of business trusts

<input type="checkbox"/>	Document Type	Description	Effective Date	TotalAmt(\$)
<input type="checkbox"/>	Extract of Particulars	Extract of Particulars	15/07/2022	5.00
<input type="checkbox"/>	Annual return	Annual Report of [REDACTED] for the financial year ended 31 December 2021	22/04/2022	25.00
<input type="checkbox"/>	Extract of Particulars (Certified Copy)	Extract of Particulars (Certified Copy)	15/07/2022	29.00
<input type="checkbox"/>	Resolution passed by unitholders	Please refer to the Ordinary Resolution 3 under the Minutes of AGM and Notice of AGM	22/04/2022	25.00
<input type="checkbox"/>	Notice of unitholders' approval for the issue of units by the Trustee-Manager	Please refer to Ordinary Resolution 3 under the Results of Annual General Meeting ("AGM")	22/04/2022	25.00



Recommendations

In conclusion, this report described the many risks for money laundering, tax abuse and fraud trusts pose due to their complex structures and lack of transparency. Fortunately, most countries (more than 120) already have the legal infrastructure to require trusts to file ownership or control information with a government authority and some countries, including infamous secrecy jurisdictions, are already offering free online public access to trust information. Based on the Tax Justice Network's previous [recommendations](#) on how to prevent trusts from being abused to avoid sanctions against oligarchs, we propose that:

The Financial Action Task Force (FATF) should:

1. Require the “registry approach” for trusts under the Reform of Recommendation 25.

All countries should:

2. Require trusts to register in order to have legal validity.
3. Establish central registers to collect beneficial ownership information on all trusts that: (a) are created according to, or governed by local laws; (b) have any asset or operation in the country; or (c) have any party who is resident in the country.
4. All parties (settlers, trustees, protectors, beneficiaries, and any other individual with control or benefit) to a trust (including unit trusts used for investment funds) should always be required be identified as beneficial owners before they are allowed to enjoy any power or control, or receive a distribution.
5. When a trust owns a company, all the parties to the trust should be considered the beneficial owners of the company (not just the trustee or “any person with control over the trust”).
6. When a party to the trust is a legal person (eg a company), all the beneficial owners of the company should be identified as beneficial owners of the trust, ideally without applying any threshold (even if the beneficial ownership definition for companies usually applies thresholds, eg “anyone with more than 25 per cent of shares”, no thresholds should be applied when a company is a party to the trust).
7. Provide public access to information on trusts, just as is done with legal persons similar to trusts such as private foundations. Public access should ideally be online, free and in open data format.
8. Prohibit discretionary trusts.