



# Beneficial ownership transparency of trusts

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## Overview

Trusts are widely recognised as asset holding vehicles that can be used for a range of legitimate purposes. For instance, planning an inheritance; controlling and protecting family assets for children or classes of family members; holding and managing assets for vulnerable adults; or holding assets on behalf of a charity.<sup>a</sup> However, various reports published by the World Bank,<sup>1</sup> the Organisation for Economic Co-operation and Development (OECD),<sup>2</sup> the Financial Action Task Force (FATF),<sup>3</sup> and several civil society organisations (CSOs)<sup>4</sup> have also revealed the illegitimate use of trusts to hide identities and ownership of assets, especially using trusts as a final step in a complex ownership chain of companies. A World Bank study across 30 years found that nearly 70% of more than 200 large-scale corruption cases relied on anonymously owned companies, including the use of trusts and shell companies to disguise ownership.<sup>5</sup>

Identifying the beneficial owners of trusts can help reveal a trust's control and ownership structure, as well as any companies contained within it. As a part of their anti-money laundering and combatting the financing of terrorism (AML/CFT) policies, many governments have committed to beneficial ownership transparency (BOT) of legal entities – that is, collecting legal entities' beneficial ownership (BO) data in a register and making it available to data users. There is a growing recognition of government-run central and open public registers as a primary source of BO data. Nonetheless, limited effort has been made so far to centrally register the BO data of trusts or similar legal arrangements, except when they might appear in the ownership structure of a legal entity. Even in the latter case, there appears to be limited understanding and knowledge of the BO of trusts, which, when trusts appear in the ownership structures of legal entities, can create a significant blind spot in disclosure regimes. Compared to

the BO of legal entities, the literature on the BOT of trusts or similar legal arrangements is also limited, and the topic is yet to be researched in depth.

This policy briefing aims to contribute to filling this gap by analysing the existing policy and regulatory framework on the BOT of trusts at an international level, and highlights research and policy recommendations on the issue whilst identifying the gaps for further research. The aim is to help policymakers and those implementing or supporting BOT to think through various issues and approaches toward ensuring the BOT of trusts, as well as to outline considerations for operationalisation by identifying emerging best practice in legal and policy reforms. This briefing identifies the creation of central registers of BO of trusts as the best approach to regulate and prevent the misuse of trusts. So far, the EU's fifth anti-money laundering directive (AMLD5) is the only international regulatory framework that requires this. The framework also has fewer loopholes with respect to when to disclose information and what information to disclose. Best practice in the disclosure of the BO of legal entities (as covered in the Open Ownership Principles (OO Principles)<sup>6</sup>) provides a framework for thinking about how best to implement BOT of trusts, although there will be some key differences in discussions on certain aspects, such as whether information should be made public. Where jurisdictions are implementing BOT of legal persons, and when trusts feature in the ownership structure of a legal person, the information on the BO of trusts should, at a minimum, be made available to the public.

For those with a limited understanding of the concept of trusts and how they function, it is recommended to read this policy briefing in conjunction with the Open Ownership (OO) briefing, *An introduction to trusts*,<sup>b</sup> which

<sup>a</sup> Broadly speaking, there are three main types of trusts: express trusts, implied trusts, and statutory trusts. This paper mainly deals with express trusts. The term "trust(s)", as used in this paper, refers to express trusts or similar legal arrangements with express trust-like features. For more details on different types of trusts, their features, and the legitimate and illegitimate uses of trusts, see: Ramandeep Chhina, "An introduction to trusts", OO, July 2021.

<sup>b</sup> Ramandeep Kaur Chhina, "An introduction to trusts", OO, July 2021, <https://www.openownership.org/uploads/OO%20Introduction%20to%20trusts%20briefing%20July%202021.pdf>.



discusses in detail the history and various types of trusts, roles of trusts parties, the legitimate and illegitimate uses of trusts, as well as outlining examples of current practice on the treatment of trusts in a variety of countries.



# Beneficial ownership disclosure and transparency of trusts

## International policy and regulatory frameworks

The BOT of trusts has become a major policy and regulatory concern for international AML/CFT standard-setting bodies. The EU (AMLD5), the FATF (Recommendation 10), and the OECD (Common Reporting Standard) have developed the three main international instruments dealing with BO of trusts. This section analyses these policy frameworks at the international level.

## Defining the beneficial ownership of trusts

The FATF defines a beneficial owner as “the natural person(s), at the end of the chain, who ultimately owns or controls the legal arrangement, including those persons who exercise ultimate effective control over the arrangement, and/or the natural person on whose behalf a transaction is being conducted”<sup>7</sup> In other words, the beneficial owner is the natural person or persons who benefit from or exercise control over a trust. Considering different types of trusts, the different parties that are involved in a trust relationship and the fact that the documents that contain this information are private, it sometimes becomes difficult to identify which party benefits from or exercises control over a trust. For instance, in a discretionary trust, a trustee is expected to have discretion on deciding when, how, and to whom the trustee would distribute the trust assets.

However, there is a possibility that a settlor might still be retaining control over a trustee (or the trust) through a letter of wishes, by appointing a protector, or by giving power of attorney to a close associate to either veto or remove the trustee.

To mitigate the complexity in identifying the beneficial owners of trusts, the FATF and the AMLD5 have defined all of the parties involved in a trust as the trust’s beneficial owners. The following roles need to be identified and verified:

- settlor(s);
- trustee(s);
- protector(s) (if any);
- beneficiaries or class of beneficiaries; and
- any other natural person exercising ultimate effective control over the trust.<sup>c</sup>

For other legal arrangements similar to trusts – such as *fiducia*, certain types of *treuhand*, *fideicommissum*, private foundations, or *waqf*, where such arrangements have a structure or functions similar to trusts – parties in equivalent or similar positions, as for trusts above, are required to be identified and verified.<sup>8</sup>

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<sup>c</sup> The wording used here for the definition of BO of trusts is the one provided by the AMLD5. There is a difference between the FATF and AMLD5 definition of beneficial owners of trusts – the FATF definition does not use plurals for “settlor” and “protector”, as has been used in AMLD5. The approach of AMLD5 is in fact a better approach to cover all settlors and protectors within the scope of the definition, as there might be more than one.



Unlike the definition of beneficial owners of legal persons, as provided by FATF Recommendations, there is no cascading test<sup>d</sup> applicable to identifying the BO of trusts; all the parties to a trust have to be identified from the beginning when establishing a business relationship. Thresholds commonly feature in definitions of BO of legal persons – e.g. 25% or more voting rights or shares for companies. However, because of the nature of trusts and the difficulty in establishing who exercises ultimate control, or who ultimately benefits from the arrangement, no thresholds apply to trusts. To ensure no beneficial owners are left undeclared, the common approach taken is to consider all parties to a trust as beneficial owners. The FATF and the AMLD5 require that all parties to a trust should be identified and verified from the beginning, regardless of the proof of control.<sup>9</sup> For instance, settlor(s) should be identified whether it is a revocable or irrevocable trust.<sup>e</sup> Similarly, all beneficiaries or each class of beneficiaries should be identified even if it is a discretionary trust<sup>f</sup> or a trust in which a particular beneficiary only holds a beneficial interest of 1% in the trust property.<sup>10</sup>

The OECD's Common Reporting Standard (CRS) for automatic exchange of financial account information is currently implemented by more than 100 jurisdictions (including all EU member states); its definition of beneficial owners of trusts does not differ drastically from the

AMLD5 and the FATF definitions, except that the CRS uses the term “controlling persons” instead of “beneficial owners”.<sup>9</sup> The CRS clearly states that the term “controlling persons [...] must be interpreted in a manner consistent with the FATF”.<sup>11</sup>

Despite the apparent uniformity in the definitions of beneficial owners of trusts, as indicated in the table below, there are several minor differences that have the potential to create some uncertainty in their application at a practical level. For instance, if there is more than one settlor or protector for a trust, a trustee can, under the FATF definition, simply register only one settlor or protector instead of all settlors or protectors.<sup>h</sup> Thus, the definition of beneficial owners of trusts or similar legal arrangements should be made uniform at the international level.

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- <sup>d</sup> A cascading test is an identification process as provided in the FATF's “Interpretive Note to Recommendation 10” to determine the existence of at least one natural person as a beneficial owner of a legal person when conducting customer due diligence checks. The process contains three steps which are to be used in succession when a previous step fails to identify the beneficial owner of a legal person. The first step is to obtain and verify the identity of the natural persons who ultimately have a controlling ownership interest in a legal person (whether by shares, voting, property, or other rights). If there is a doubt under the first step as to whether a person(s) with controlling ownership interest is a beneficial owner, or where no natural person exerts control through ownership interests, then the second step is to identify a natural person exercising control of the legal person through other means. Where no natural person(s) is identified under the first or second step, the third and final step is to identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official. This might not, however, be the approach taken, or preferred, by all jurisdictions which require the ultimate beneficial owners to be identified rather than compromising with the identification of senior officials as beneficial owners. For the criticism of this approach, see: Knobel and Meinzer, “Drilling down to the real owners – Part 2”, 3.
- <sup>e</sup> In a “revocable trust”, a settlor retains the power to change the terms of the trust or revoke it at any time prior to his or her death and thereby retains control over the assets placed in the trust. Whereas, in an “irrevocable trust”, the settlor is generally unable to change the terms of the trust once the trust agreement is executed.
- <sup>f</sup> “Discretionary trust” is one that allows the settlor to place the assets under the trust at the discretion of the trustee(s), who will decide who is to benefit and how.
- <sup>g</sup> The OECD Commentaries to the CRS provide that “In the case of a trust, the term ‘Controlling Persons’ means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust. The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the trust. ... In addition, any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership) must also be treated as a Controlling Person of the trust with a view to establishing the source of funds in the account(s) held by the trust, where the settlor(s) of a trust is an Entity, Reporting Financial Institutions must also identify the Controlling Person(s) of the settlor(s) and report them as Controlling Person(s) of the trust. For beneficiary(ies) of trusts that are designated by characteristics or by class, Reporting Financial Institutions should obtain sufficient information concerning the beneficiary(ies) to satisfy the Reporting Financial Institution that it will be able to establish the identity of the beneficiary(ies) at the time of the pay-out or when the beneficiary(ies) intends to exercise vested rights.” (*Standard for Accounting Exchange of Information in Tax Matters*, OECD, (2nd edn, OECD Publishing), 2018, 198-199)
- <sup>h</sup> Here, it could be argued that when the FATF Recommendation 25 states “adequate, accurate and timely” information on BO of trusts, it implies information on all settlors and/or protectors, if there are more than one, OR that the FATF Recommendation 25 should be interpreted as a “minimum” requirement with best practice to disclose all settlor(s) and/or protectors. Nonetheless, the uncertainty it might result into when the FATF standards are transposed into national law cannot be overlooked.



**Table 1. Overview of who is included within the definitions of the beneficial ownership of trusts or similar legal arrangements in three main international frameworks**

| Definition of beneficial ownership       | FATF (Interpretative Note to Rec. 10)  | EU AMLD5 (Art. 31)  | OECD/CRS (Section VIII, subparagraph D6)                                      |
|--|--|---|---|
| <b>Trusts</b>                            | the settlor  | the settlor(s)  | the settlor(s)  |
|  | the trustee(s)   | the trustee(s)  | the trustee(s)  |
|  | the protector (if any)   | the protector(s) (if any)   | the protector(s) (if any)   |
|  | the beneficiaries or class of beneficiaries  | the beneficiaries or class of beneficiaries                                   | the beneficiar(ies) or class(es) of beneficiaries                             |
|  | any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership) | any other natural person exercising ultimate effective control over the trust | any other natural person exercising ultimate effective control over the trust |
| <b>Other types of legal arrangements</b> | persons in equivalent or similar positions   | persons in equivalent positions in similar legal arrangements                 | persons in equivalent or similar positions                                    |

## Disclosure requirements

Both the FATF Recommendations and the AMLD5 require countries to take certain measures to ensure the BOT of trusts. However, there are differences in the approaches taken by the two frameworks. The FATF Recommendations are more relevant for obliged entities that are subject to AML/CFT regulations, whereas the AMLD5 requirements extend beyond obliged entities, requiring the member countries to establish a central register of the BO of trusts. This section discusses the requirements of the BOT of trusts by analysing three key aspects covered in these frameworks: a) disclosure requirements imposed on trustees; b) requirements for financial institutions and designated non-financial businesses and professions (DNFBPs); and c) the requirement to establish a central BO register of trusts.

## Requirements for trustees

Both the FATF and the AMLD5 impose requirements on trustees to obtain and hold adequate, accurate, and current BO information regarding the trust. Nonetheless, there is a major difference in the approach taken, as highlighted in [Table 2](#) below.

**Table 2. Trustee obligations: FATF vs. AMLD5**

| FATF   | AMLD5  |
|--|--|
| Trustees of any <b>express trust governed under their law</b> to obtain and hold adequate, accurate, and current BO information regarding the trust  | Trustees of any <b>express trust administered in the member state</b> shall obtain and hold adequate, accurate, and current BO information regarding the trust <sup>i</sup>  |
| Trustees required to <b>disclose their status</b> as a trustee to financial institutions and DNFBPs, when as a trustee, forming a business relationship or carrying out occasional transactions above the prescribed threshold | Trustees or persons holding equivalent positions in similar legal arrangements shall <b>disclose their status and provide the relevant information on beneficial owners to obliged entities in a timely manner</b> , where, as a trustee or as a person holding equivalent position in similar legal arrangements, they form a business relationship or carry out occasional transactions above the prescribed threshold |

To give an example, under the FATF standards, if a trust is governed by the law of Country A, Country A will require trustees to obtain and maintain the BO information on the trust. However, if a trust is governed by the law of Country B but its trustee is a resident in Country A, the trustee is not required under Country A's laws to obtain and maintain the BO information of the trust, notwithstanding such a requirement on the trustee by the law of Country B. Such a scenario would result in a problem for Country B, as it would be difficult for Country B to practically enforce its disclosure requirement on a trustee that is resident in Country A. To deal with this issue, the approach taken by the AMLD5 appears to be better, in that it requires EU member states to impose a requirement to obtain and hold BO information on all trustees if a trust is administered in their respective jurisdiction. Now, if Country B authorities need to obtain this information, it might be available in a timely manner under the AMLD5 (if Country A is an EU member state).

#### Box 1: Provisions requiring trustees to obtain and hold beneficial ownership information relevant for non-trust law countries<sup>j</sup>

Under the **AMLD5**, trustee requirements are applicable to all EU member states – whether a trust law country<sup>k</sup> or non-trust law country – if they allow the administration of trusts within their state (i.e. by trustee(s) resident in the member state).

If the country is not an EU member state, it is not mandatory for non-trust law countries under the **FATF** to require trustees residing in their country to obtain and hold BO information on trusts. Nonetheless, it is best practice to incorporate and apply such a provision in non-trust law countries: first, to understand the activity of trusts administered within their jurisdiction;

and second, to ensure effective international cooperation under the FATF standards when such information is requested by a foreign counterpart regarding a trustee resident in a non-trust law country.

Under the **OECD's CRS**, if a country is a CRS participating jurisdiction (whether it is a trust law country or non-trust law country), the requirement to obtain and hold information on the beneficial owners of a trust is imposed on trusts which qualify as Reporting Financial Institutions under the CRS and are resident in the participating jurisdiction (i.e., if any one of their trustee(s) is a resident in the jurisdiction).<sup>12</sup>

<sup>i</sup> Administration of a trust in a member state is defined as the trustee being a resident in the member state.

<sup>j</sup> The expression "non-trust law countries" is used for those countries which do not allow the creation of trusts or similar legal arrangements under their domestic law. Such jurisdictions need not necessarily prohibit foreign law trusts from operating within the jurisdiction.

<sup>k</sup> The expression "trust law countries" has been used for those countries which allow the creation and recognition of trusts or similar legal arrangements under their domestic law.





The FATF standards and the AMLD5 also differ in the disclosure requirements that are imposed on trustees. The AMLD5 goes beyond the FATF standards in requiring trustees entering into a business relationship or carrying out occasional transactions above the threshold to not only disclose their trustee status to financial institutions and DNFBPs, but to also disclose information on all the beneficial owners of the trust. Again, the approach taken by the AMLD5 is a better approach to ensuring accurate BO information is provided and held by reporting entities, imposing a two-way obligation on both trustees and reporting entities rather than imposing a requirement only on reporting entities to collect and hold such information.

### Financial institutions and designated non-financial businesses and professions

Under both the FATF standards and the AMLD5, financial institutions and DNFBPs are required, as a part of their customer due diligence (CDD) checks, to identify and take reasonable steps to verify the identity of the beneficial owners of trusts. Accordingly, the majority of countries have imposed this requirement on their financial institutions and DNFBPs. In fact, financial institutions and DNFBPs are the main source of BO information on trusts when they establish any business relationship with these reporting entities, for in the majority of jurisdictions trusts are still not required to be registered.<sup>13</sup> However, there are two main issues that have been identified in the FATF mutual evaluations with the application of these requirements:

- the information that has been obtained and held by the financial institutions and DNFBPs is not always up to date; and
- it is difficult for competent authorities to get hold of this BO information in a timely manner from financial institutions and DNFBPs, as there are deficiencies in the legal framework.<sup>14</sup>

### Central beneficial ownership register of trusts

The FATF standards do not require countries to establish a central register for trusts, although it is one of three complementary approaches identified by the FATF as best practice.<sup>15</sup> However, establishing a central register of BO of trusts, similar to the register for legal persons, is something that is already a requirement under the AMLD5. As the AMLD5 is the only regulatory framework currently requiring central BO registers of trusts, this will be explored in more detail in the following section (see also, [Box 2](#)).

#### Box 2: AMLD5 requirements for central beneficial ownership registers of trusts

- To establish a central BO register of trusts which shall hold information on trusts where:
  - a. a trustee is a resident in the member state; or
  - b. if the place of residence of the trustee is outside the EU, a trustee enters into a financial relationship in the name of the trust in the member state; or
  - c. if the place of residence of the trustee is outside the EU, a trust acquires real estate in the name of the trust in a member state.
- To provide access to the central BO register of trusts to:
  - a. competent authorities and Financial Intelligence Units (FIUs), without any restriction;
  - b. obliged entities, within the framework of their CDD requirements;
  - c. any natural or legal person who can demonstrate a “legitimate interest”; and
  - d. any natural or legal person who files a written request in relation to a trust, where the trust holds or owns controlling interest in any corporate or other legal entity through direct or indirect ownership.
- To set minimum BO data details that should be made available to the public or a third party, i.e. the name, the month and year of birth, the country of residence, and the nationality of the beneficial owner, as well as the nature and extent of beneficial interest held in the trust.
- To require reporting entities and, possibly, the competent authorities of the EU member state to report any discrepancies in the BO register.
- To grant an exemption, in exceptional circumstances and on a case-by-case basis, to protect the BO information on trusts from public disclosure (e.g. to mitigate personal safety risk), and to establish proper mechanisms for assessing and granting such exemptions.

Specifically, there are two provisions in the AMLD5 that require further discussion: the scope of and access to the register.



## Scope of the register

The AMLD5 has widened the scope of the trusts that are required to be registered in the central BO register. In the majority of jurisdictions that require the registration of trusts, registration is only the case if a trustee is resident in the respective jurisdiction or the trust has any tax liability.<sup>16</sup> This has been identified as a major loophole which can be exploited by criminals by re-locating the administration of their trust outside a country imposing such a registration requirement.<sup>17</sup>

The AMLD5 now provides that the requirement for the registration of a trust is triggered when the trust is administered in the EU member state; engages in a business relationship; or acquires real estate in the respective EU jurisdiction. Although this is a welcome provision, there is still scope for further improvement. To achieve better effectiveness of the central BO register for trusts, jurisdictions should require the registration of trusts whenever:

- a. any of the parties to a trust (including settlor and beneficiary) is a resident in that state; and
- b. the trust is created or governed by the law of the member state, not only when it is administered in the member state.

To give an example, the UK transposed the AMLD5 prior to leaving the EU, so a trust that is created and governed by the law of the UK is not required to register in the UK central BO register of trusts if its trustee(s) is not resident in the UK, does not hold any UK assets, or has no tax liability in UK, even if the settlor was a UK resident and domiciled in the UK when the trust was settled, or if the settlor and/or the life interest beneficiary is a UK resident and pays tax on the income and gains. Such a trust might be engaged in criminal activities outside the UK, but the UK will have no details on record for this trust in the register.

The AMLD5 also does not precisely define the term “business relationship”, which according to Andres Knobel should be defined broadly to include, for instance, “opening a bank account, providing goods or services, or having any type of operations in the [respective EU state].”<sup>18</sup> In the UK, the term has been interpreted to include business relationships with any UK service providers that are subject to UK AML/CFT law and regulations. This includes, for instance, banks, investment managers, lawyers, accountants, tax advisers, trust and company service providers, and real estate agents. This is a very important provision that should be followed by all countries to prevent trusts from posing financial crime risks to the jurisdiction.

## Access

Unlike the requirements for central BO registers for legal persons, the AMLD5 does not require the central BO register for trusts to be made public. It provides that the BO information on trusts should be made available only to those natural or legal persons who demonstrate a legitimate interest.

Due to the nature of trusts being private arrangements, there has always been a strong reluctance and argument against the public disclosure of the BO information of trusts. Generally, these arguments are based on the right to privacy, the complexity of registering the BO information of trusts, and that the beneficiaries may not know about the existence of a trust.<sup>19</sup> It has also been argued that since most trusts are legitimate and involve private family matters, such obligations would be too cumbersome.<sup>20</sup> This argument against the public disclosure of the BO information of trusts has also been upheld by a decision dated 21 October 2016 of the French Constitutional Court (*Conseil Constitutionnel*), which cancelled the Public Register of Trusts that came into force in France in May 2016 (see [Box 3](#)).<sup>21</sup>

### Box 3: France, Constitutional Court, Decision 2016-591 QPC of 21 October 2016<sup>22</sup>

In France, the Public Register on Trusts became effective on 10 May 2016. A case was brought to the French Constitutional Court by a US citizen, who was a tax resident in France, questioning whether the public nature of the Register of Trusts complied with the French constitution, especially regarding the right to privacy guaranteed by Article 2 of the Rights of Man and of the Citizen. The Court in this case had to consider two constitutional principles: a) the objective of this register to fight tax evasion; and b) the right to privacy protected by Article 2 of the Rights of Man and of the Citizen.

The French Court ruled against the public disclosure of the register of BO on the grounds that:

*the Parliament, which did not specify the quality nor the motives that justify consulting the register, did not limit the people that have access to the information in this register, placed under the responsibility of the tax administration.*



In those circumstances, the court commented in this decision that:

*these disputed provisions have a clearly disproportionate effect on the right to respect for private life with regard to the objectives sought.*

The Constitutional Court finally ruled that unrestricted and unregulated access to the register of trusts was manifestly disproportionate to the right to privacy. France has made its BO register of legal persons public in line with AMLD5 requirements.

On the other hand, civil society groups have advocated for BOT in the register of trusts similar to the register of legal persons. Their main argument is based on the very nature of trusts, which makes them attractive for criminal abuse – whether it be to commit financial crime (such as laundering the proceeds of corruption or tax evasion) or to fraudulently protect assets from creditors (for example, in cases of bankruptcy, financial setbacks, family disagreements, divorces, and lawsuits). It has been argued that if the existence and operation of trusts affects third parties in any way, they should be registered and, if not, they should remain private.<sup>23</sup> Similar to the case for the public BO register for legal persons, it has been argued that the public disclosure of the BO of trusts will: support law enforcement in the detection and prosecution of financial crime; act as a powerful deterrent for criminals; and help in tackling corruption.<sup>24</sup>

The AMLD5 appears to have taken a middle approach by allowing public access to the BO information when a legitimate interest can be demonstrated. The term legitimate interest is, however, not defined in the directive and is left to the discretion of the states. Nonetheless, the directive provides that when defining the term, member states should include “preventive work in the field of anti-money laundering, counter terrorist financing and associate predicate offences undertaken by non-governmental

organisations and investigative journalists” in their definitions.<sup>25</sup> How narrowly or broadly this term is interpreted by jurisdictions in their domestic law and the procedure laid down to prove legitimate interest remains to be seen, and will determine the accessibility of the BO information of trusts to third parties. The interpretation might result in making this information almost inaccessible to third parties,<sup>l</sup> or it might become a useful clause for third parties, including journalists and non-profit organisations, to access and analyse the relevant information to combat financial crime in similar ways they have done using public registers of BO of legal persons.<sup>m</sup>

Despite the limited public access to the central BO register of trusts provided in the AMLD5, a few EU countries have already gone beyond the requirements of the directive to provide public access to the BO information on trusts to promote transparency. [Box 4](#) outlines the approaches of a few countries who have transposed the AMLD5 to accessibility of their BO information on trusts.

<sup>l</sup> For instance, a Global Witness report (2017) has given a few country example of Czech Republic, Italy, and Latvia as to how narrowly this term “legitimate interest” was interpreted in their domestic law, as required earlier under the EU 4AMLD in the case of central BO register of legal persons (Worthy, “Don’t take it on trust”, 13). In Barbados, for instance, the BO information on trusts will only be disclosed by court order, in any civil or criminal proceedings (FATF Mutual Evaluation of Barbados, 2018).

<sup>m</sup> In the UK, for instance, the term “legitimate interest” has not been defined. However, a criteria to determine “legitimate interest” has been provided under Regulation 45ZB(11) of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020, which provides that a person may request to access the BO information of a trust if a person can demonstrate that the person is involved in an investigation into suspected money laundering or terrorist financing activity and there is a reasonable suspicion that the trust is being used for money laundering or terrorist financing (see also: Becky Bailes and Alexander Erskine, “The UK Trust Register – where are we now?”, Lexology, 27 October 2020), <https://www.lexology.com/library/detail.aspx?g=38b87fca-4966-47d1-b9f6-2f54142b5388>). Whether that includes non-governmental organisations and investigative journalists is not clear. The perception, however, is that criteria to demonstrate “legitimate interest”, as provided in the Regulations, is quite high for anybody to meet before the information can be accessed (see also: Sam Epstein, Jennifer Smithson, and Ethan Yu, “5MLD: major changes to the UK trust register”, Tax Journal, 6 November 2020, <https://www.macfarlanes.com/media/3581/tax-journal-5mld-major-changes-to-the-uk-trust-register.pdf>).



#### Box 4: Examples of access to beneficial ownership registers of trusts or similar legal arrangements

- **Austria and Germany:** Austria and Germany have gone beyond the transparency requirements of the AMLD5 by making BO information on private foundations available to the general public.<sup>26</sup>
- **Ireland, Malta, and the UK:** Access to the central BO register of trusts is only available to those who demonstrate a “legitimate interest”.
- **Belgium:** Belgium does not have a separate centralised register on BO of trusts, but if a trust or similar legal arrangement appears in the ownership structure of a legal person, the central BO register on legal persons only displays the details of a trust or similar legal arrangement to the public, whilst the information on the beneficial owners of such trust or similar legal arrangements is only available to the natural or legal persons who can demonstrate a “legitimate interest”.<sup>27</sup>

## Beneficial ownership of trusts within disclosure regimes for legal entities

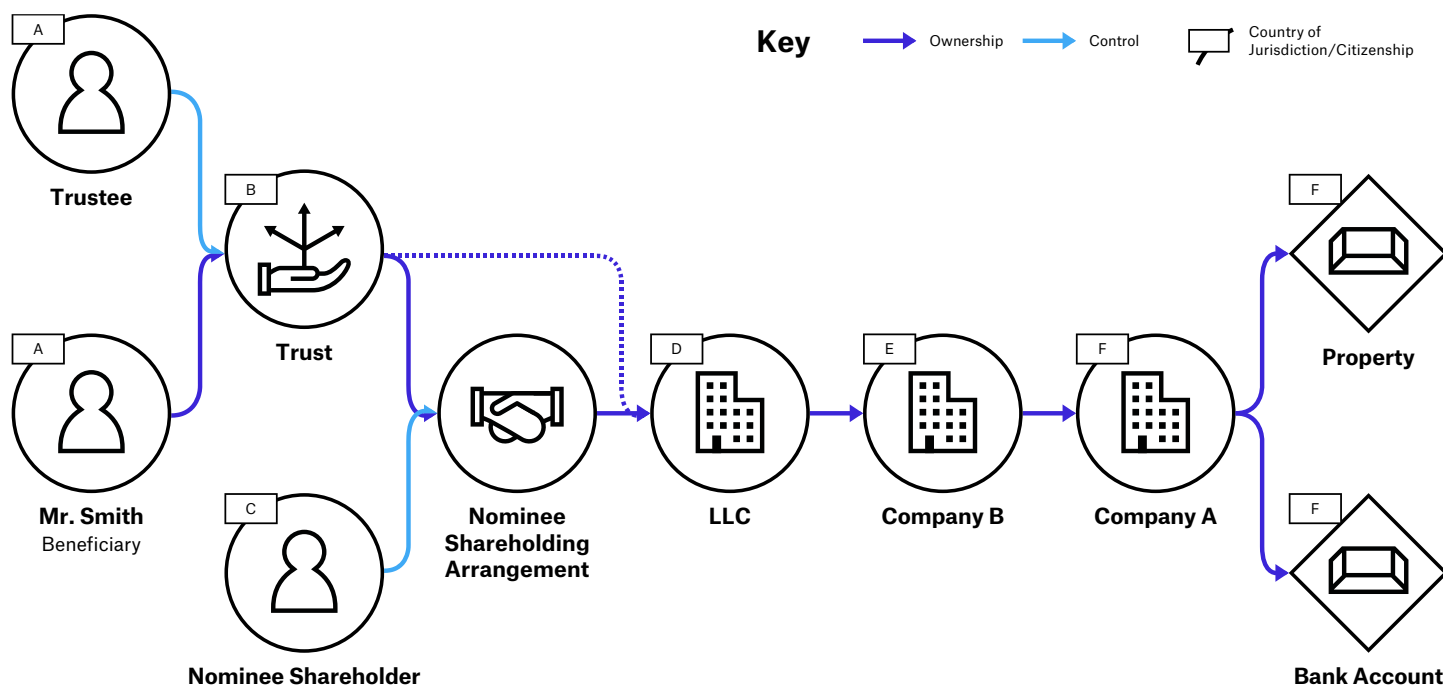
A question that often arises when discussing the BOT of trusts is how it would interact with the existing BO disclosure regimes for legal entities and what practical issues might arise. This is analysed below by dividing the question into situations where:

- trusts appear in the ownership structure of a legal entity; and
- companies appear in the ownership or control of a trust.

A comprehensive exploration of how different jurisdictions with beneficial ownership registers of legal persons have dealt with these issues is not within the scope of this paper. Rather, this section covers some of the decisions faced by implementers using scenarios.

### Trusts in the ownership structure of a legal entity

Trusts are sometimes used as the last layer of secrecy in a complex corporate structure, which has been primarily designed to disguise a criminal's connection to illicit funds. Layering trusts with shell companies in different jurisdictions, as illustrated in [Figure 1](#) below, will obfuscate BO and create a complicated and confusing trail between the criminal activities and proceeds. Arrangements are often made to span multiple jurisdictions, with trust assets, trust, and company service providers (TCSPs) and management companies each located in a different country.

**Figure 1. Trust in a complex system of legal vehicles**


Adapted from: OECD (2019)<sup>28</sup>

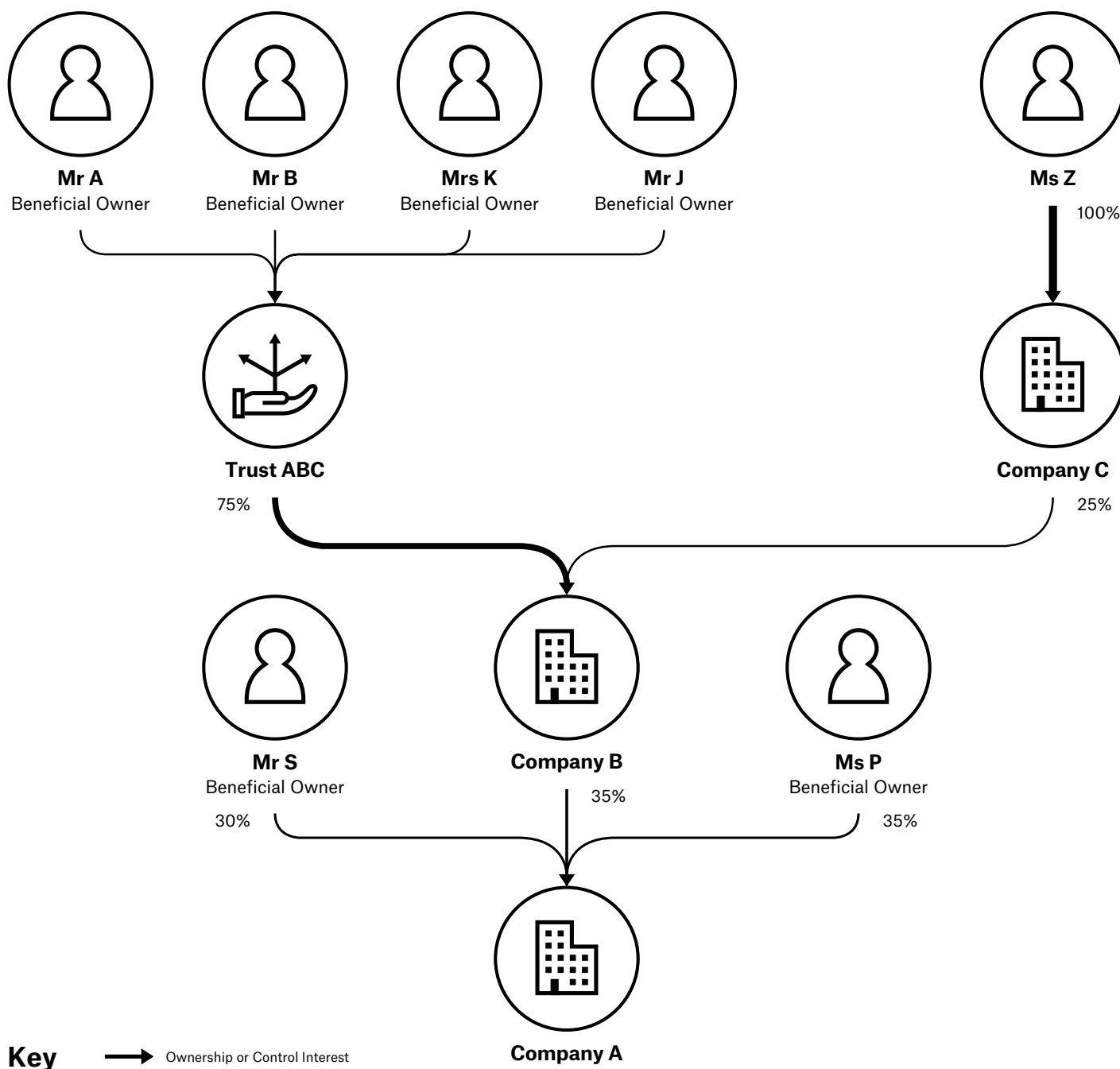
If a trust appears in the ownership structure of a legal entity, the question that is often asked is: what information should be obtained and registered in the BO register for legal entities? In line with international definitions of what constitutes a beneficial owner of legal entities and trusts, rather than the name of the trust, all natural persons party to a trust should be identified in the register. Due to the challenge of knowing who actually controls and benefits from trusts because of their endless variety and complexity,<sup>29</sup> thresholds are not relevant, and this includes: a) settlor(s); b) trustee(s); c) protector(s) (if any); d) beneficiaries or class(es) of beneficiaries; and e) any other natural person exercising control over the trust. As with other natural persons who are the beneficial owners of the trust should be registered, including the nature or means of the ownership/control relationship (e.g. by being a trustee of the trust). However, depending upon the jurisdiction's domestic law, the beneficial owners of the trust may apply for protection of certain information from disclosure to the public.

Implementers may also have to address some other practical questions or challenges in registering the BO data of trusts, both on the BO register of legal persons and the BO register of trusts (if established). These include, for instance, who should be recorded as a beneficiary in the register:

1. In the case of a discretionary trust, for example, where the **beneficiaries only hold contingent interest** in the trust. In such instances, the UK's approach is to highlight the type of trust in the register but not record the details of the contingent beneficiary on the register until the contingency is satisfied. Once the contingency is satisfied or the trust property is distributed, the details of the beneficiary should be recorded on the register.
2. In the case of a **class of beneficiaries who are not yet specifically named**: for example, grandchildren of person A. The UK's approach is not to identify members of a class of beneficiaries in the register unless they receive a benefit from the trust. Whether such an approach is sufficient to ensure the BOT of trusts is debatable.



**Figure 2. Identifying beneficial owners of Company A with a trust in a chain of ownership**



To illustrate, in [Figure 2](#) a trust appears in the ownership structure of Company A, as it indirectly holds shares in the company through Company B. In the UK, if the trust satisfies the conditions to require registration to the trust register, all parties would be declarable as beneficial owners. For the beneficial ownership of legal entities, the UK takes the approach that the same conditions for disclosure apply for trusts as they do for individuals. The trust satisfies one of the conditions for beneficial ownership (or “significant control”, in the UK) of a legal entity; namely, directly or indirectly holding more than 25% of the shares in the company, as the trust owns 26.25% of

Company A indirectly. While all parties to Trust ABC are beneficial owners of Company A, the UK does not require the declaration of all the parties to a trust when it appears in the ownership structure of a company in the UK’s BO register (the Persons of Significant Control (PSC) register), but only the trustee(s) and the person(s) who exercise(s) ultimate effective control or influence over the activities of the trust (which could be a settlor, a beneficiary, or a protector). It can be argued that in a BOT of legal persons regime with full public access, all parties to the trust – all being beneficial owners – should be declared.



### Box 5: Trusts in a corporate ownership structure in Slovakia<sup>30</sup>

Before entering politics in 2011 on an anti-corruption platform,<sup>31</sup> current Czech Prime Minister Andrej Babiš worked in the private sector and founded the Agrofert Group in 1993. Agrofert now has more than 250 subsidiaries, including two of the largest Czech newspapers, MF DNES and Lidové noviny, as well as the Mafra media group, which owns, iDnes, the most visited Czech news server.<sup>32</sup>

Following the introduction of Czech conflict of interest legislation that prevents members of government and other public officials from having a controlling interest in news media, Babiš transferred his sole ownership of the Agrofert Group to two trust funds, AB private trust I, owning 565 shares (89.97%), and AB private trust II, owning 63 shares (10.03%).<sup>33</sup> Agrofert is currently active in 18 countries in 4 continents,<sup>34</sup> and as such it is registered in both the Czech Republic as well as Slovakia, where it is a market leader in agriculture and food processing.<sup>35</sup>

Following research on the Slovak BO register in 2018, Transparency International (TI) Slovakia uncovered that Babiš was disclosed as one of five beneficial owners by Agrofert Slovakia.<sup>36</sup> In response, Agrofert claimed that “Mr. Babiš is not the controlling entity of

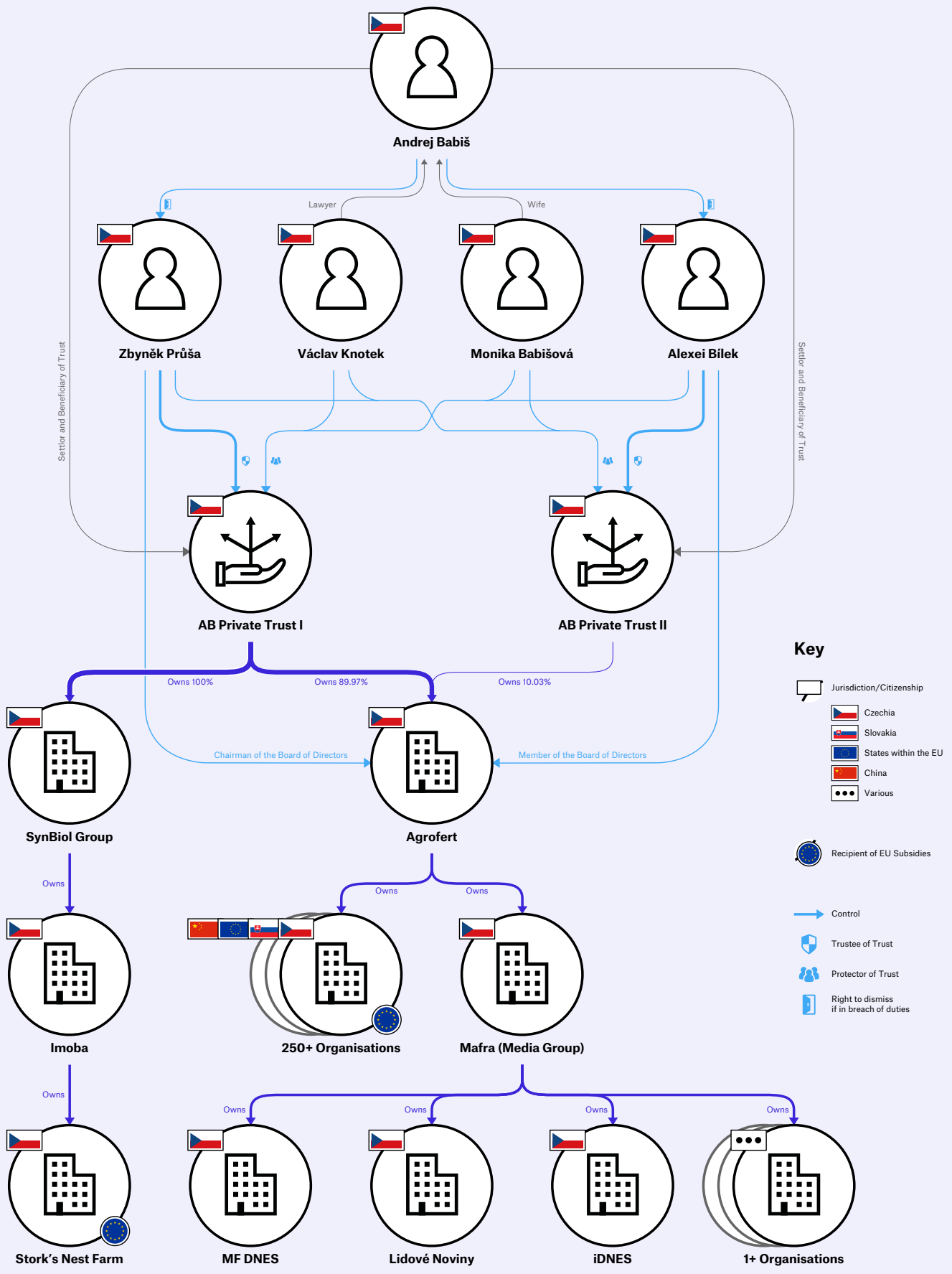
the Slovak companies of the Agrofert Group.”<sup>37</sup> This was contested by TI Slovakia, drawing attention to the fact that Babiš is the only beneficial owner that has the power to remove all other listed beneficial owners – the trustees.<sup>38</sup> Additionally, he is listed as a beneficiary in the certified disclosure document; the trust funds are set up so that the shares will return to him when he terminates his public office.<sup>39</sup> Besides potentially violating the Czech Conflict of Interests Act, Babiš could have violated EU laws regarding firms being owned by politicians not being eligible to receive EU funding,<sup>40</sup> as Agrofert subsidiary companies received EU subsidies both before and after Babiš transferred his ownership to the two trusts in 2017.

A recent EU audit has found that: “Considering [...] that Mr Babiš has defined the objectives of the Trust Funds [...], set them up and appointed all their actors, whom he can also dismiss, it can be assessed that he has a direct, as well as an indirect decisive influence over the Trust Funds. Based on this assessment, the Commission services consider that, through these Trust Funds, Mr Babiš indirectly controls the parent company AGROFERT group [...]” and was found to be in violation of the EU’s Conflict of Interests Act.<sup>41</sup>

*Box continues on next page*



### Agrofert beneficial ownership structure in 2020



Source: Early impacts of public registers of beneficial ownership: Slovakia (2020)<sup>42</sup>

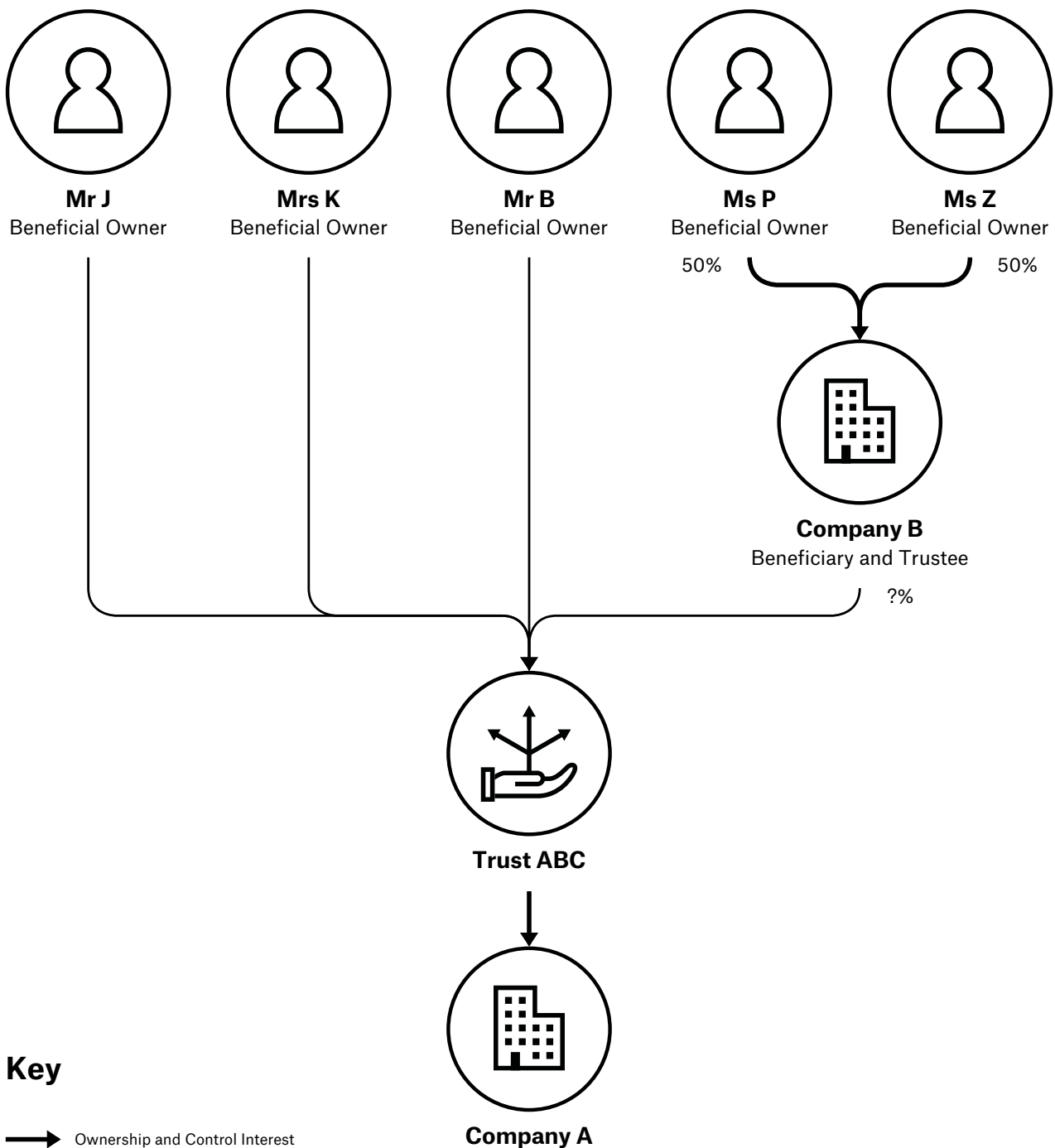




### Corporate ownership or control of trusts

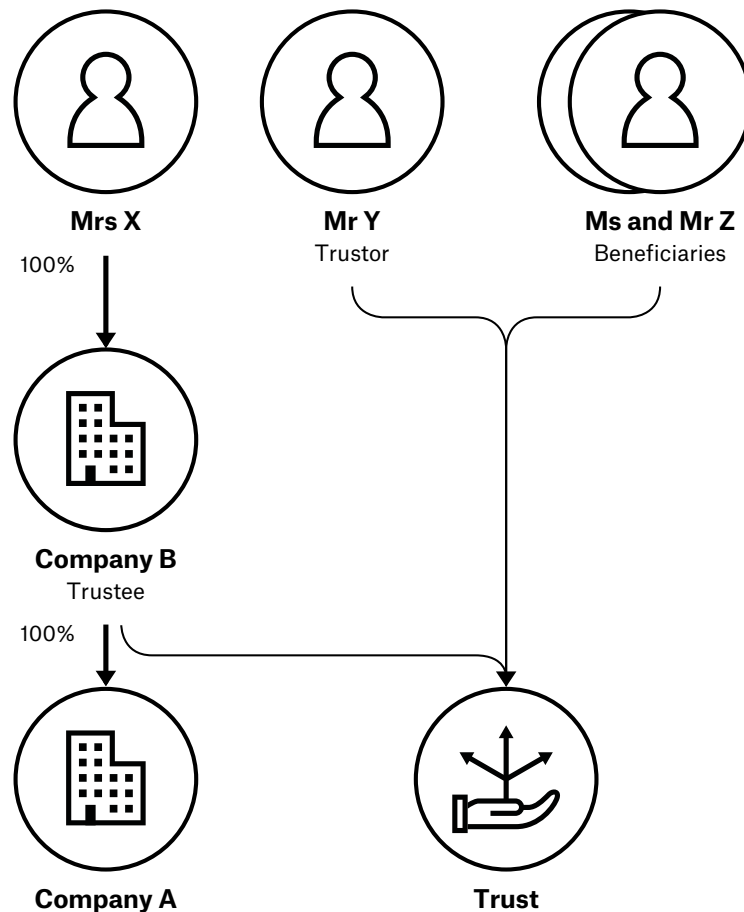
If in the ownership structure of a legal entity it becomes apparent that a legal entity is one of the parties of a trust, such as a corporate trustee or corporate beneficiary, the beneficial owners of a trust would be the settlor(s), trustee(s), protector(s), beneficiaries or class of beneficiaries, and natural persons who own or control the company that is party to the trust, either as a corporate trustee or a corporate beneficiary.

**Figure 3. Identifying beneficial ownership of Company A with a company as party to the trust in a chain of ownership**



In the scenario in [Figure 3](#), implementers in jurisdictions with thresholds for the BO of legal persons may have to address the question of who would be declarable as BO if the percentage ownership and control of Ms Z or Ms P dropped beneath the threshold (e.g. 25% in the UK). According to UK guidance, “if a legal entity [...] controls the trust [which would be a PSC of the company if it were an individual], then the ownership chain will need to be explored further until an individual [...] with majority ownership of that legal entity is identified, or it is established that none exists.”<sup>43</sup>

**Figure 4. Identifying beneficial owners of Company A with a corporate party to a trust in a chain of ownership**



In the scenario in [Figure 4](#), a legal entity Company B appears as a trustee to a trust, while also being a shareholder of Company A. In this scenario in the UK, while the trust and all its parties may need to be registered in the trust register if the trust satisfies any of the requirements, only Ms X would be required to be declared as a beneficial owner to Company A in the PSC register, indirectly owning 100% of its shares. Other countries, such as Austria, take a different approach. Namely, that in this case the trustor

and beneficiaries also all need to be declared as beneficial owners to Company A, as the trust as a whole exercises control over Company A.



## Access

A question that requires further probing here is: if the central BO register of legal entities is publicly accessible, would that imply that the BO information of any trust that features in the ownership structure of any entity would also be publicly available? If that would be the case, would it result in the infringement of the right to privacy? To deal with this situation, different countries have taken different approaches. In Belgium, as discussed earlier, the information on the BO of trusts that appear in the ownership structure of a legal entity is not made public, but is only accessible to those who demonstrate a legitimate interest. This approach has been adopted to strike a balance between the right to privacy and benefits of public disclosure. On the other hand, in the UK, the central BO register on legal entities only requires registering the information on the trustee or any “other person with significant control over the trust”. No information is required to be provided about the other parties of the trust on this register, which makes it deficient in the sense that it does not register all the beneficial owners of the trust, as defined by international standards. Additionally, in practice, information about trusts and trustees appears to be disclosed in an inconsistent way when people disclose trusts as part of a company’s ownership structure.

As required by the AMLD5, the UK has incorporated a provision in the law to provide accessibility on the BO information of trusts recorded in the trusts’ register to third parties where the registered trust has a controlling interest in a non-EEA legal company. In such an instance, the person seeking information on the trust does not have to demonstrate legitimate interest, but has to identify the specific non-EEA legal entity in question and its relationship with the trust which holds the controlling interest. In addition, the person might have to demonstrate how the request is in line with the objectives of the directive – i.e. that it will help to detect or prevent money laundering or terrorist financing, although there are no clear guidelines provided in this regard by the authorities yet. Access is expected from 2022. Therefore, there is currently no data as to the effectiveness of this provision.



# Emerging best practice and policy considerations

Operationalising the BOT of trusts and the related data requires making decisions about a number of things, including: which data should be collected; how and when to collect it; how to verify it; how the data is integrated (where applicable) with BO registers of legal entities; and whether and how data should be published. These aspects will all have an impact on data quality and usability. The format in which the data is collected will also affect its ability to be linked to other datasets, which may allow for specific types of analysis.

Most countries are still at too early stages of reforms in the BOT of trusts to learn much from their practical experience. Nonetheless, on analysing the information above, some of the most effective legal and regulatory approaches to the BOT of trusts can be identified. Additionally, the experience and lessons learned from establishing public BO registers for legal entities – how best to ensure comprehensive data collection, verification, data quality, accessibility etc., captured in the OO Principles<sup>44</sup> – can also provide a framework of guiding principles in this area of the BOT. The section below outlines some key policy considerations for implementers, using the OO Principles for effective disclosure of BO of legal entities as a framework.

## Clear and robust legal definitions

To underline the relevant data that should be collected on beneficial owners of trusts, it is important to ensure that the BO of trusts is clearly and robustly defined in law. Robust and clear definitions of BO should state that a beneficial owner should be a natural person. The definition of beneficial owners of trusts should be comprehensive enough to include all parties to a trust within its scope – settlor(s), trustee(s), protector(s) (if any), and beneficiaries or class(es) of beneficiaries, as well as any natural person exercising control over the trusts. This is the approach that has been adopted by Belgium, Bulgaria, Cyprus, Luxembourg, Malta, and the UK, although some use the singular “settlor” or “protector” in their BO definition of trusts, following the FATF standards.<sup>45</sup>

## Comprehensive coverage

At a minimum, trustees of express trusts or similar legal arrangements that are created or governed by the domestic law or administered in the jurisdiction should be required to obtain and maintain adequate, accurate, and up-to-date BO information of trusts. Ideally, governments should ensure that their disclosure regimes should comprehensively cover both domestic law trusts and foreign law trusts having *any* connection with their jurisdiction – whether it be that the settlor(s), trustee(s), protector(s) if any, or beneficiaries are resident in the jurisdiction or the trust holds assets or establishes any business relationships in the jurisdiction.

In addition, as a starting point, all relevant types of trusts and categories of people should be comprehensively covered in the disclosure regimes. It should be subsequently assessed as to which trusts and people can be excluded, for instance, on the basis of lower risk. If any jurisdiction provides any exemptions from the disclosure requirements, they should be clearly defined and publicly justified. Any exemptions provided should be re-assessed on an ongoing basis.



### Box 6: Trusts exempt from registration in the UK

The following categories of trust are excluded from registration in the UK:

- a. trusts which come into existence by construction or operation of law, including constructive trusts, resulting trusts, and statutory trusts;
- b. trusts that are set up for a very limited purpose unless they are liable to pay tax, including (not exhaustive list):
  - charitable trusts which are registered as a charity in the UK or which are not required to register as a charity (for example, schools, museums, galleries, churches, and certain groups);
  - trusts used to hold the money or assets of a UK registered pension scheme;
  - trusts used to hold a life insurance policy, income protection policy, or retirement benefits if the policy only pays out on death, terminal illness, or permanent disablement, or to meet the healthcare costs of the person assured and the policy does not have a surrender value;
  - trusts holding insurance policy benefits, provided the benefits are paid out within two years of the death of the person assured;
  - trusts set up to hold shares of property or other assets jointly owned by two or more people for themselves as “tenants in common”;
  - will trusts which are created by a person’s will and come into effect on their death, provided they only hold the estate assets for up to two years after the person’s death;
  - trusts for bereaved children under 18 or adults aged 18-25 set up under the will (or intestacy) of a deceased parent or the Criminal Injuries Compensation Scheme;
  - “financial” or “commercial” trusts created in the course of professional services or business transactions for holding client money or other assets.

These trusts have been made exempt on the grounds that either the information on some of these trusts is already available, as they are required to register in some other way (such as pensions and charities), or they pose a low risk for money laundering or terrorist financing.

### Sufficient detail for users to understand and use data

BO disclosure of trusts should collect sufficient detail to allow users to understand and use the data. Key information should be disclosed to authorities about the beneficial owners and all the relevant information on trusts that have any connection with the registration jurisdiction, including the means by which beneficial interest is held in the trust and the related trust documents. If the BO of trusts is held indirectly through multiple legal entities, sufficient information should be gathered to understand full ownership chains. It should be possible to unambiguously identify trusts and their BO.

When beneficiaries of a trust are named in the trust deed, collecting and providing sufficient information about them in the register might not be that difficult. However, an issue arises when there is a class of beneficiaries who are not yet known or named individually in a trust deed. For example, future grandchildren of Mr X. In such instances, the approach taken by the UK is to include “grandchildren of Mr X” in a class of beneficiaries because they are not specifically known or their names are not known. However, only when a member of a class of beneficiaries benefits from the trust, and so becomes known, the beneficiary’s details must be recorded in the register. It is important to emphasise here that in the UK the requirement to register a member of a class of beneficiaries is when that member (for instance, a grandchild) benefits from the trust and not when they were born.

However, how and when specifically this information is to be recorded in the UK’s BO register for legal entities – the PSC register – when trusts feature in the ownership of a legal entity is not clearly specified anywhere. The PSC register does not require all parties to a trust to be reported, but rather only persons “who influence or control the trust”. This seems to contradict leading definitions of the BO of trusts which state that all parties to a trust are taken to be beneficial owners. Therefore, whether such an approach is sufficient to ensure the BOT of trusts is debatable.

On analysing the information above, the following data should be disclosed to a central register at a minimum.

- For the **trust**:
  - the full name of the trust;
  - the type of trust;
  - the place where the trust is resident for tax purposes;
  - the place where the trust is administered (where the trustee resides);



- the law of the country that governs the trust;
  - the date when it was created;
  - the trust’s tax identification number(s) (if any);
  - the trust’s Legal Entity Identifier (LEI), if any, or other identifier;
  - information about the trust assets at the time of registration, including their estimated value;
  - trust-related documents (such as the trust deed, letter of wishes, or power of attorney, etc.).
- For **beneficial owners**: sufficient identifying information on individual beneficial owners, e.g.:
    - full name;
    - date of birth;
    - date of death (in case of deceased settlor);
    - country of residence;
    - nationality;
    - national identification number and address (if registered country’s national) or passport details and address (if not a national in the registration country);
    - the existence of and details of any classes of beneficial owners;
    - the means by which beneficial owners of trusts exercise control within the trust, i.e. their role in the trust.
  - For companies or other legal entities involved in the ownership structure:
    - corporate or firm name;
    - company incorporation/registration number and registering body, jurisdiction of registration, and LEI (where applicable);
    - registered or principal office address;
    - role in the trust;
    - the start date from which either the trust controls the company or company controls the trust.

## Central registers

Lessons from BO registers of legal persons identified by the FATF<sup>46</sup> suggest that establishing a central register of the BO of trusts is the best approach to deter and prevent the misuse of trusts. It will be a more efficient and cost-effective process for the relevant authorities and the public to access (or request to access) information through one central location in a standardised format.

## Public access

Similar to legal entities, public access to the BO data of trusts would stimulate broader data use and scrutiny that is likely to increase impact. The publication of data can also have a deterrent effect on wrongdoing and misuse. Therefore, an argument could be made that in order to get the maximum benefit and impact from BO data in preventing the use of trusts for illegitimate purposes, the BO of trusts should be collected centrally, verified, and published. Nonetheless, this approach has so far been taken only by a handful of countries (e.g. Austria and Germany).

As discussed earlier in this briefing, whilst there is a case for making data public to maximise the effectiveness of BO data for trusts, there can be legitimate privacy concerns over making the BO data available to the public. The majority of countries and the AMLD5 have taken the approach of making the BO data on trusts available to third parties only if they demonstrate a legitimate interest – although this term has not been defined in the AMLD5. As a principle, governments should collect all relevant BO data on trusts in the register, then decide on the approach that is best suited to achieving their policy aims. At a minimum, BO data on trusts should be available to members of the public demonstrating legitimate interest, which should be defined by the countries,<sup>n</sup> whilst keeping in mind the significance of ensuring the adequacy and accuracy of the data held in the register. Where jurisdictions are implementing BOT of legal persons, and when trusts feature in the ownership structure of a legal person, the BO information of these trusts should, at a minimum, be made available to the public. Exceptions to public disclosure should be considered on a case-by-case basis, similar to the case for legal entities, where credible threats to an individual emerge from the publication of data. Only the authorities need access to the full set of data fields specified above. Where information about the BO of trusts is made public,

<sup>n</sup> In the UK, legitimate interest has not been defined. However, an example of legitimate interest includes: when an individual or organisation is conducting an investigation into suspected money laundering or terrorist financing activity involving a specified trust, they may apply for information from the register for that trust. To access information, applicants will have to give details which substantiate why they suspect that the trust may have been used for money laundering or terrorist financing and explain how they will use the trust data.



a subset of the data containing sufficient details to be able to use the data should be made available, and sensitive data such as national identification numbers and passport details should be excluded from publication.

## Structured data

Operationalising the use of BO data for trusts could be best achieved through integrated digital technologies to collect, store, and publish data as structured and machine-readable. Structured data can be analysed and cross-referenced easily and cheaply, which helps provide insights into the activities and operations of trusts and their beneficial owners.

It should be possible to unambiguously identify trusts. When combining datasets, it is key to be able to identify individuals, trusts, and companies across them. Data that is easy to link with other datasets can be described as interoperable. Matching people, trusts, and entities across datasets by using identifiers such as names is unreliable and labour intensive, and not viable for larger datasets. A better approach is to use unique identifiers. Some trusts will have LEIs, but many will not. This is important for implementers to consider, as existing regulations will lead to trusts being represented in multiple registers.

Combining datasets allows for analysis that would otherwise not be possible. For instance, linking the BO trust data with the birth and death register would be useful to update and verify the relevant parties of the trusts, even when new beneficiaries (e.g. newly born grandchildren of the settlor, etc.) are identified in the trust register.

## Verification

To maximise the impact of BO data, it is important that data users and authorities can trust that the data contained in the register broadly reflects the true and up-to-date reality of who owns or controls a particular trust. This can be done through verification (defined as the combination of checks and processes that a particular disclosure regime opts for in order to ensure that the BO data is of high quality, meaning it is accurate and complete at a given point in time<sup>47</sup>). This can include checking that data conforms to known and expected patterns; cross-checking information against existing authoritative systems and other government-held datasets (such as the tax authority, BO register for legal persons, or charity register); and regularly checking that data is correct.

Data on trusts should be verified on submission, including verifying relevant trust documents (such as the trust deed, letter of wishes, or power of attorney, etc.), and updated – or confirmed that it still holds true – on a regular basis. Due to the complexity in identifying the BO of trusts and their very nature as private arrangements, it is important that all relevant trust documents are uploaded and registered for authorities to verify that the BO information is correct.

### Box 7: An example from Belgium

From October 2020, the regulatory framework in Belgium requires uploading supporting documents in the central BO register for legal entities demonstrating that the BO information is adequate, accurate, and up to date. These include, for example, relevant extracts from deeds and incorporation documents, register of shares, shareholders' agreement, or any other relevant document with legalisation requirements under certain conditions.

If a trust appears in the ownership structure of a legal entity, these supporting documents would ideally be a trust deed, power of attorney, and letter of wishes (although it does not appear to be specifically mentioned). These supporting documents are only accessible to competent authorities.

## Up to date and auditable records

Compared to legal persons, there might be less frequent changes to the BO information on trusts. Nonetheless, it is essential that initial registration – e.g. whenever trusts form a business relationship or carry out occasional transactions above a prescribed threshold – and subsequent changes to BO should be submitted in a timely manner. The information should be updated within a short, defined time period after the change occurs. In the UK, for instance, any changes in the registered information on trusts has to be updated within 30 days of the change.

Data should be confirmed as correct on at least an annual basis and all changes in BO should be reported. An auditable record of the BO of trusts should be created. Historical records with dates should be maintained, including changes to trusts, inactive trusts, and terminated trusts. For example, information should be stored about a previous trustee or a former beneficiary where the trustee has been replaced or the beneficiary is no longer able to benefit.



## Sanctions and enforcement

Governments should ensure that effective, proportionate, dissuasive, and enforceable sanctions should exist in case of non-compliance with the disclosure requirements, including non-submission, late submission, incomplete submission, or false submission, in order to drive up compliance. Sanctions should cover the person making the declaration, the beneficial owner(s), the trustee(s), and the trust.<sup>o</sup> A number of countries have already implemented sanctions, both monetary and non-monetary, for failure to provide or for providing incorrect BO data on legal entities. For trusts, too, effective, proportionate, and dissuasive sanctions should be imposed to ensure compliance. In addition to monetary sanctions, these sanctions may range from preventing trusts from opening a bank account, acquiring property or assets, or preventing their entering into any business relationship with the reporting entities under the AML/CFT law.<sup>48</sup> Such a provision has been adopted in North Macedonia in the law relating to the central BO register of the legal entities.

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<sup>o</sup> Whilst trusts do not have a separate legal personality as companies do and should not be holding assets in their own name, in some jurisdictions, they are however classified as "entities", recorded as owning assets in their own name, and even given a tax identification number. To deal with such instances, it is proposed that sanctions should also cover trusts.





## Conclusion

Over the past decade, there has been significant focus and emphasis placed on ensuring the BOT of corporate vehicles. Whilst considerable progress has been made in promoting and implementing the BOT of legal entities, including the establishment of central BO registers worldwide, the issue of the BOT of trusts and similar legal arrangements remains underexplored, with limited attention and work focusing on ensuring the BOT of trusts. As it becomes apparent from this policy brief and OO's *An introduction to trusts*, trusts are highly complex and secretive asset holding legal arrangements, which can be even more slippery than offshore shell companies. Moreover, the lack of understanding and uniformity among jurisdictions on the concept and treatment of trusts has also contributed to making these legal arrangements highly desirable for criminals. Whilst efforts have intensified by the regulatory bodies in the last few years to ensure the BOT of trusts, including the requirement to establish a central BO register for trusts by the AMLD5, there is still room for a lot of improvement at policy and regulatory level, as highlighted by this paper.

This paper has identified emerging best practice. Ensuring the BOT of trusts is highly important to effectively combating financial crime, including money laundering, corruption, and terrorist financing. Similar to the central BO register for legal entities, the establishment of a central BO register for trusts is the best way forward. An initiative in this regard has already been taken by the AMLD5, the only framework which requires the establishment of central BO registers for trusts. The framework also has fewer loopholes with respect to when to disclose information and what information to disclose. However, these countries are still at too early stages of establishing trusts registers to learn much from their practical experience. This policy briefing, along with the OO Principles on the effective disclosure of the BO of legal entities, provides a useful framework for thinking about how best to implement transparency in the BO of trusts. However, there are some key differences in discussions on certain aspects, such as whether information should be made public. Where jurisdictions

are implementing BOT of legal persons, and when trusts feature in the ownership structure of a legal person, the information on the BO of trusts should, at a minimum, be made available to the public.

As more jurisdictions continue to implement BOT for legal persons, implementers – including in non-trust law jurisdictions – will have to find ways to deal with the role of trusts in the ownership structures of legal entities. OO will continue to learn and update its thinking on best practice and develop practical guidance for implementers.

### Areas for future research

Undoubtedly, due to the nature of the trusts and their complexity, there are questions which need further probing and research. Some of the questions which might serve as an agenda for future in-depth research include:

- undertaking a comparative analysis of jurisdictions on their treatment of trusts or similar legal arrangements, including the deficiencies that have been identified in their legal, regulatory, and implementation framework in complying with international standards;
- the effectiveness of the current international legal and policy framework in ensuring the BOT of trusts, and whether these measures are sufficient;
- the risk that trusts pose to the implementation and effectiveness of the BOT reforms for legal entities if, for example:
  - there is *no* equivalent BOT reform for legal arrangements;
  - there is an *equivalent but legally and institutionally separate* BOT reform for legal arrangements;
  - there is an *equivalent and unified* BOT reform for both legal entities and legal arrangements; and
- identifying and establishing appropriate BO disclosure principles for trusts and other legal arrangements, taking into consideration different types of legal



arrangements of trusts, methods of describing classes of beneficiaries, trust documents, methods for exerting and changing ownership and control of trusts, disclosure and publication barriers depending upon domestic laws and feasibility of reforms.



## Endnotes

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