

# Trusts and beneficial ownership

## Guidance for data collection and sharing

### Introduction

Information about trusts is a critical element of beneficial ownership transparency, as set out in Open Ownership’s briefing *Coverage of corporate vehicles in beneficial ownership disclosure regimes*.<sup>1</sup> This is because within beneficial ownership networks trusts can own assets, including stakes in legal entities, and legal entities can be party to a trust.

Various international standards and laws – including the Financial Action Task Force (FATF) Recommendations, the European Union’s Anti-Money Laundering Directives and Regulations, and the United Nations Convention Against Corruption – require or recommend the collection of beneficial ownership information about trusts. Establishing trust registries is the best way for governments to facilitate the flow of relevant information, and to assess and discourage the use of trusts for illegal purposes. Open Ownership emphasises the need for user-friendly data collection forms which support the filing of adequate, accurate, and up-to-date information on parties to trusts, whether they are natural persons or legal entities.

This guidance sets out precisely what trust information should be collected (as a minimum). It stresses the importance of breaking information down into structured data at the point of collection. When the data needs to be shared, it is then possible to tailor its scope to the needs of different types of data users. A primary need of many data users will be using trust information to understand the beneficial ownership networks of trusts themselves and of larger corporate structures. For this reason, the guidance touches on the issue of trust identifiers and the need for them to be widely available.

In this guidance, the term “trust” is used to mean “express trusts and similar legal arrangements”. Any government agency considering improved transparency of trusts should make efforts to identify *which* legal arrangements are similar enough to express trusts to warrant official oversight. As advised by the FATF,<sup>2</sup> a risk-based approach should be taken to this identification process.

This guidance builds on Open Ownership’s advice relating to legal entities, *Beneficial ownership declaration forms: Guide for regulators and designers*.<sup>3</sup>

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<sup>1</sup> See: Alanna Markle, *Coverage of corporate vehicles in beneficial ownership disclosure regimes* (s.l.: Open Ownership, 2023), <https://www.openownership.org/en/publications/coverage-of-corporate-vehicles-in-beneficial-ownership-disclosure-regimes/>.

<sup>2</sup> See: FATF, *Guidance on Beneficial Ownership and Transparency of Legal Arrangements* (Paris: FATF, 2024), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.html>.

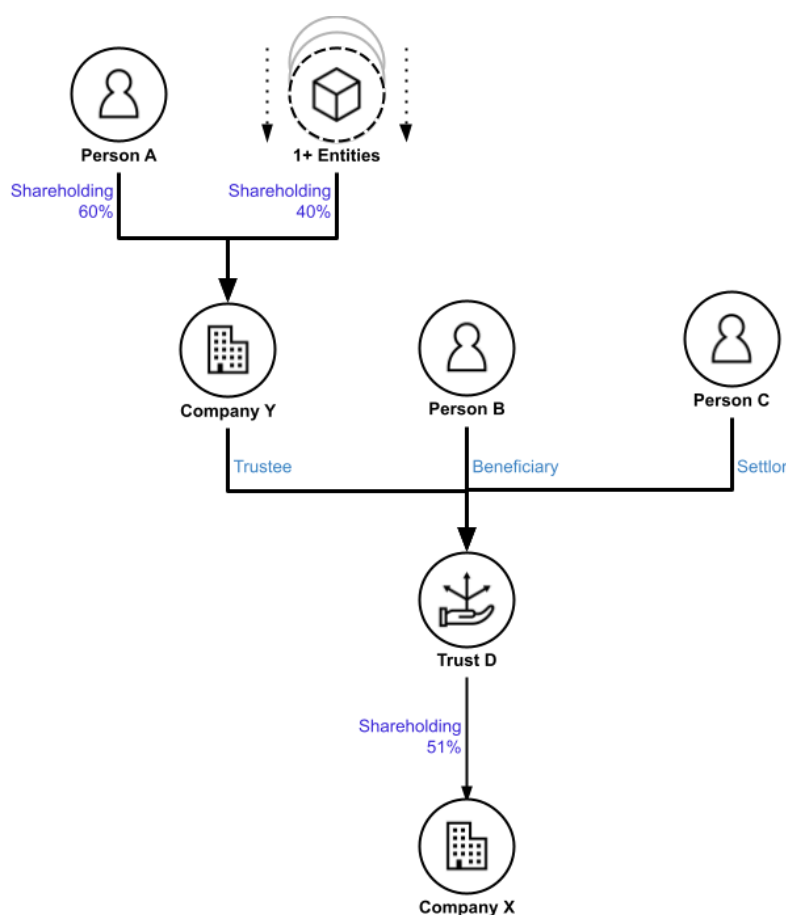
<sup>3</sup> See: Open Ownership, *Beneficial ownership declaration forms: Guide for regulators and designers* (s.l.: Open Ownership, 2021),

## Trust registries

Generally, trusts are created to manage assets and distribute the benefits and income derived from them within the terms laid down by the settlor.<sup>4</sup> When considering transparency of beneficial ownership and the role of trusts, it can be helpful to distinguish between:

- I. the beneficial ownership of the *parties* to the trust (where they are legal entities or arrangements);
- II. the beneficial ownership of the *trust*;
- III. the beneficial ownership of *assets held* in trust.

In reality, these may overlap depending on legal definitions, and information about (I) will be necessary to clarify (II) and (III). This can be seen in the following example:



To establish who the beneficial owners of Company X are (III), we also need to know the identity of the parties involved in Trust D (II). One of the parties, the trustee, is itself a company. Who the beneficial owners of Company Y are (I) is then relevant. Ultimately, whether Person A’s indirect relationship with Company X constitutes beneficial ownership will then depend on the applicable legal definitions.

<https://www.openownership.org/en/publications/beneficial-ownership-declaration-forms-guide-for-regulators-and-designers/>.

<sup>4</sup> The term “settlor” refers to the role that an individual plays when creating a trust and transferring assets to it. Other equivalent terms, such as “founder”, “grantor”, and “trustor”, also exist.

The FATF supports this kind of transparency of trust arrangements, and the parties to them, in its Recommendation 25:

[C]ountries should ensure that there is adequate, accurate and up-to-date information on express trusts and other similar legal arrangements including information on the settlor(s), trustee(s) and beneficiary(ies), that can be obtained or accessed efficiently and in a timely manner by competent authorities.<sup>5</sup>

This information may be maintained by trustees and communicated on demand. However, experience from implementation of the FATF’s Recommendation 24 suggests that the information becomes easier to use and access in a timely manner if a well-defined subset of the information is collected and shared via a registry in a structured format.

Trusts can be registered via a dedicated trusts registry or a general registry for corporate vehicles, which has been extended to include such arrangements. Here, “trust registry” or “registry” are used to refer to both approaches.

This guidance focuses on how to collect relevant information about parties to a trust (and potentially their onward beneficial ownership) when trust arrangements are registered. Particularly for beneficiaries, regulations should be clear about the conditions under which a person identified by the trustee(s) becomes registrable.<sup>6</sup> Here “registrable person” is used to refer to a person meeting such conditions. What these conditions should be, and how they relate to a relevant definition of “beneficial owner”, are not within the scope of this guidance.

## Information submission

Well-designed registration forms make it as easy as possible for the people completing them to provide accurate and unambiguous information. This reduces accidental errors. Submitting more accurate information becomes easier, whilst disguising deliberately false information as mistakes becomes harder.

Registration forms that are robust and well designed will generally meet all of the following criteria:

- it is clear whose identities (people as well as corporate vehicles) will need to be disclosed via trust registration (it is essential to provide detailed guidance alongside the form, and referenced from the form, in order to achieve this);
- the form is easy to understand and navigate;
- it is easy for people to supply good-quality data for each field;
- it is easy for trustees of trusts with very simple structures to submit their information;
- the full range of arrangement structures, registrable by law, can be disclosed via the form(s);
- form submissions can be linked to data in other official databases so that corporate vehicles do not have to file the same information multiple times.

<sup>5</sup> FATF, *The FATF Recommendations: International standards on combating money laundering and the financing of terrorism & proliferation* (Paris: FATF, updated 2023), 22, <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>.

<sup>6</sup> For more information on the specific intricacies of beneficiaries, please see the section “Beneficiaries” in Chapter 2: Scope of R.25: Trusts and other similar legal arrangements: FATF, *Guidance for a risk-based approach: Beneficial ownership and transparency of legal arrangements* (Paris: FATF, 2024), <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/Guidance-Beneficial-Ownership-Transparency-Legal-Arrangements.pdf.coredownload.inline.pdf>.

In many jurisdictions, a trust registration form would be produced as an online form. However, in some cases, factors like the number of registrations or the level of digitisation of related systems might make paper or spreadsheet forms a more feasible option. However, these will make onward data management and data sharing more challenging. In all cases, a registration form in an appropriate format, designed for and tested with domestic firms, will be best suited for local use.

Incorporating the following features at the design stage gives the best chance of collecting good-quality, structured<sup>7</sup> data:

- offering definitions of terminology at the point where they are needed;
- hiding sections of forms that are not applicable, or providing clear signposting (for example: “If you answered ‘yes’, skip section B and go straight to section C”);
- using plain language;
- providing examples where it will aid understanding;
- being clear about the format in which answers are expected (for example: “Provide dates in DD/MM/YYYY format”);
- providing selection lists rather than free-text entry where relevant (for example, when asking for the country of residence of non-resident people);
- stating clearly which fields are required and which are optional;
- stating which information is for internal use only.

## Information scope

When a trust is registered, its basic information should be submitted, including, where they exist:

- its name;
- any tax identification number (TIN) or other authoritative identifier;<sup>8</sup>
- the jurisdiction under which the trust has been established;
- the local term for the type of trust or trust-like arrangement.

The trust deed (or equivalent legal contract), and any other relevant documentation, such as a letter of wishes, may also be submitted as part of the registration process. Even if the deed is required to be submitted, *structured data*<sup>9</sup> about the known parties and other registrable persons related to the trust should be submitted via a form, plus any information that cannot be accessed elsewhere about the beneficial owners of any parties.

## Parties to the trust

As a minimum, a trust registry will collect and manage, as structured data, information necessary to identify:

- all **trustees**;

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<sup>7</sup> See: Jack Lord and Tymon Kiepe, *Structured and interoperable beneficial ownership data* (s.l.: Open Ownership, 2022), <https://www.openownership.org/en/publications/structured-and-interoperable-beneficial-ownership-data/>.

<sup>8</sup> See: Kadie Armstrong and Stephen Abbott Pugh, *Using reliable identifiers for corporate vehicles in beneficial ownership data* (s.l.: Open Ownership, 2023), <https://www.openownership.org/en/publications/using-reliable-identifiers-for-corporate-vehicles-in-beneficial-ownership-data/>.

<sup>9</sup> See: Open Ownership, *Open Ownership Principles – Structured data* (s.l.: Open Ownership, updated 2024), <https://www.openownership.org/en/principles/structured-data/>.

- current **beneficiaries**;<sup>10</sup>
- the **settlor**;
- any **protector**;
- other **registrable persons** (see “Special cases” below).

A trust or trust-like arrangement may have equivalent, or similarly well-defined but different, roles. Any of the above (or equivalent) roles might be performed by a legal entity or a natural person, or mediated via a further legal arrangement.

Where a **natural person** is party to a trust, or is otherwise registrable, information necessary to identify them includes:<sup>11</sup>

- their full name;
- their nationality(ies);
- their full date and place of birth;
- all countries of residence (and related residential address(es));
- for countries of residence or nationality: type of national identification document (e.g. passport, biometric residence card, or national identity card) and reference number, and tax identification number.

(Some types of individuals may not be registrable or may be legally exempt from disclosure of their identity, for example, minors. If this is the case, submission forms and guidance should make this clear.)

Where a **legal entity** is party to a trust, or is otherwise registrable, its basic identifying information and beneficial ownership information may be available to competent authorities via a corporate registry or similar platform.<sup>12</sup> Therefore, information necessary to identify it and its beneficial owners should be:

- the entity name;
- its legal form;
- the jurisdiction in which it operates;
- the jurisdiction’s corporate registry and the entity’s unique identifier in that registry (and any other identifier or reference needed to access its beneficial ownership information).

Additionally, any role in a trust might be mediated via a **further legal arrangement** (e.g. guardianship, nomination, or a different trust or power of attorney). For these reasons, a registry should also collect information necessary to identify any natural or legal person exercising control over a mediating arrangement, including:

- the type of mediating arrangement;
- the mediating arrangement’s role in relation to the trust;
- details identifying (as above) the natural or legal persons who are party to the mediating arrangement (or an identifier or reference for the mediating arrangement which will allow access to such details).

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<sup>10</sup> Persons who are currently benefiting or who will benefit from a trust arrangement are referred to here as “current beneficiaries”.

<sup>11</sup> See FATF Recommendation 24: FATF, *The FATF Recommendations*.

<sup>12</sup> See FATF Recommendation 24: FATF, *The FATF Recommendations*.

Forms for information submission should be designed to handle all the permutations described above. And it should be clear from the information submitted whether a natural person or legal entity has multiple roles in a trust arrangement.

## Special cases

### Beneficiary classes

In cases where the beneficiaries of a trust arrangement are a large class of persons, or where membership of the class changes regularly, regulations should set out the conditions under which beneficiaries are not registrable. (For example, regulations might specify that if all the individuals in a class cannot be reasonably identified by the trustees, only those individuals in receipt of benefits from the trust are registrable.) In all cases, a description of the **class** should be submitted.

### Objects of a power

In a discretionary trust, trustees may be bound by the trust deed or other relevant documents to select beneficiaries from a list or class of natural or legal persons. These persons are “objects of a power” (of the trustees).

Where an identified person will only become a beneficiary of a trust at the discretion of the trustees (or if trustees fail to exercise their discretion), regulations should set out the conditions under which they are registrable.

### Effective control

A natural person who is not directly a party to a trust may nonetheless exercise effective control over its operation. Regulations should set out the conditions under which they are registrable.

### Onward beneficial ownership information

It may be that a legal entity is party to a trust and its beneficial ownership information *is not* available from another register.

In such a case, information about the entity’s identity should be submitted as above. Regulations may also require that each natural person who is a beneficial owner of the entity is registrable.

## Information updates

Information about trusts is not static: the parties to a trust and its beneficial owners may change. Alongside a registration process, designers of trust registries should also consider how information should be updated, and under what circumstances.

Designers should take into account that:

- processes and guidance for information updates will be different from those for initial registration;
- the full range of events that trigger an update to information held will impact the design of processes and systems. Trigger events extend from trust-centred events, such as a minor reaching the age of majority and becoming registrable as a beneficiary, to register-centred administrative events, such as an annual information-confirmation process;
- the system should collect information about beneficiaries over the full lifetime of the trust, including the final beneficiaries of a trust when it is wound up;

- historic information about a trust will need to be retained for a designated period of time.

## Final considerations

This guidance has focused on data collection surrounding the registration of trusts and the beneficial ownership of related parties. The purpose of collecting such information will also require that the information is *accessible* and *useful*. For example, if the purpose of trust registration is to help various actors find the beneficial owners of assets *held* in trusts, then designers of a registry will need to consider how those actors access information, and what information they need.

In particular, designers should consider building features into registration systems which will aid wider, global efforts toward beneficial ownership transparency. Those features should enable the interoperability of beneficial ownership information across different registers and jurisdictions. For example, assigning reference numbers or similar identifiers to trusts on their registration is a significant aid to administering a registry. If these references are unique to each trust, well managed, and made accessible to a wide variety of people, then they can be used to uniquely identify trusts within wider beneficial ownership networks. This is a valuable contribution to transparency efforts.<sup>13</sup>

Additionally, designers should consider allowing layered access to information<sup>14</sup> – that is, creating data downloads, application programming interfaces (APIs) or administrative processes which make different sets of information available to different types of users based on need. Where possible, this information should be provided as structured data.<sup>15</sup>

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<sup>13</sup> See: Armstrong and Abbott Pugh, *Using reliable identifiers for corporate vehicles in beneficial ownership data*.

<sup>14</sup> See: Tymon Kiepe, “Striking a balance: Towards a more nuanced conversation about access to beneficial ownership information”, Open Ownership, 18 October 2023, <https://www.openownership.org/en/blog/striking-a-balance-towards-a-more-nuanced-conversation-about-access-to-beneficial-ownership-information/>.

<sup>15</sup> See: Open Ownership, *Open Ownership Principles – Structured data*.