

KEY FINANCIAL SECRECY INDICATORS

Key Financial Secrecy Indicator 2: Trust and Foundation Register

What is measured?

This indicator analyses whether a jurisdiction has a central register which is publicly accessible via the internet at a cost not exceeding US\$ 10, € 10 or £10¹ with information on:

- (i) all trusts (those created according to the local law and called ‘domestic law trusts’ as well as those created under a ‘foreign law’ but which have a connection to the jurisdiction because they are administered by a local trustee); and
- (ii) for all private foundations, the identities of all the parties to the foundation.

Alternatively, this indicator considers whether a jurisdiction prevents the creation of trusts or similar arrangements such as *Treuhandstiftung*, *fideicomisos* or *waqfs* under its domestic laws, and/or whether it blocks its residents from administering trusts created under a foreign law. Similarly, the indicator reviews if its legislation prohibits the creation of private purpose foundations (for example, if foundations are allowed, not for the benefit of a private person or family, but only for “public interests”, such as foundations that focus on education, religion, sports, poverty, etc. in favour of the whole community).

The logic behind this indicator is that a jurisdiction may neutralise the risks embedded in the opacity of trusts and private foundations either (i) by requiring the registration and publication of relevant information relating to all the parties involved in both types of legal arrangements (trusts are not considered legal entities), or (ii) by prohibiting their creation or administration in their territories. The Secrecy Scoring Matrix is given in Table 1 below, and full details of the assessment logic can be found in Table 6 underneath.

There is one important distinction between the assessments of trusts and foundations. For trusts the secrecy score depends on whether all trusts are registered and/or disclosed online, but we ignore the type and amount of information about trusts that is registered and/or published (if any). For foundations, in contrast, we go beyond this analysis by checking if all the parties of a foundation need to be registered, updated and/or disclosed online.

This distinction is made because the registration of trusts is incomplete, if not absent, in most jurisdictions worldwide, whereas the registration of foundations is widely the norm. For foundations, it is therefore appropriate to transitionally require a higher standard than for trusts.

Table 1: Secrecy Scoring Matrix KFSI 2

COMPONENT 1: Trusts (50% of KFSI 2's Secrecy Score)				
Regulation [Secrecy Score: 100% = full secrecy; 0% = full transparency]		Domestic Law Trusts		
		<u>Available</u> (Trusts can be created according to local laws)	<u>Not Available</u> (Trusts cannot be created according to local laws)	
Foreign Law Trusts	<u>Active Promotion</u> (Jurisdiction is a party to the Hague Convention on Trust recognition)	<u>No Disclosure</u> (in all circumstances, or unknown)	50%	50% (Lack of domestic law trusts is "neutralized" by Active Promotion)
	<u>No Active Promotion</u> (Jurisdiction is not a party to the Hague Convention on Trust recognition)	<u>No Registration</u> (in all circumstances, or unknown)	50%	25% (At least domestic law trusts do not create a secrecy problem)
		<u>Registration either/or</u> Registration (but no disclosure) of either foreign or domestic law trusts (in all circumstances)	37,5% (At least domestic or foreign law trusts are registered)	0% (No secrecy problem: no domestic law trusts and foreign law trusts are registered)
		<u>Registration of both</u> Registration (but no disclosure) of both foreign and domestic law trusts (in all circumstances)	25% (Although both are registered, no disclosure)	-
		<u>Disclosure of domestic</u> Registration plus disclosure of domestic law trusts, but no registration of foreign law trusts	25% (Although domestic are disclosed, no registration of foreign)	-
		<u>Disclosure of domestic & registration of foreign</u> Registration plus disclosure of domestic law trusts & registration (only) of foreign law trusts	0%	-
		<u>Active Promotion is Irrelevant</u>	<u>Disclosure of both, if applicable</u> Registration plus disclosure of both domestic and foreign law trusts (if applicable); or neither domestic nor foreign law trusts are allowed to be created and administered respectively.	0% (Even if active promotion exists, it is "neutralized" by full disclosure of both domestic and foreign law trusts, if applicable)

COMPONENT 2: Private Purpose Foundations (50% of KFSI 2's Secrecy Score)	
<u>No Online Disclosure</u> No updated online disclosure of key parties of all private foundations, irrespective of registration, or unknown	50%
<u>Partial Online Disclosure</u> Updated registration of key parties of all private foundations plus partial online disclosure	25%
<u>Complete Online Disclosure</u> Updated registration of key parties of all private foundations plus complete online disclosure, or no private purpose foundations law	0%

Disclosure should comprise appropriate information for assessing its tax and ownership implications, including updated and complete information on the identities of all parties.

Parties to a foundation, for the purposes of the foundation section are all founder(s), foundation council member(s), beneficiaries and protectors. For information on all parties to be considered **updated**, the relevant data should be required to be updated at least annually. For information on all parties to be considered **complete**, it needs to comprise specific minimal elements. It should include at least:

- a) the full names of all parties of the entity; and for each party:
- b) country of residence or incorporation, plus
 - i. in case of individuals, full address, or passport ID-number, birthdate (for registration) or year and month of birth (for online disclosure), or a Taxpayer Identification Number (TIN); or
 - ii. in case of legal entities, company registration number plus address of principle place of business or registered address.

For founders, information must include beneficial ownership (e.g. if the founder is an entity or nominee, the natural person who is the beneficial owner of that entity or on whose behalf the nominee is acting²). However, if we were unable to determine whether a jurisdiction requires founder's information to include beneficial ownership, we exceptionally gave jurisdictions the benefit of the doubt, and the founder was assumed to be the beneficial owner, unless any evidence suggested that a legal entity may be registered as a founder. This exception to the "unknown is secrecy" principle is made for three reasons. The first and main

reason is that we did not include this question in the questionnaire to our [FSI survey 2017](#).³ Second, this requirement has been embedded explicitly for the first time in the Common Reporting Standard (CRS) for automatic exchange of bank account information (see [KFSI 18](#)⁴), but is not explicitly stated in FATF standards. Third, this level of detail was not specified in most of the available current sources (e.g. Global Forum peer reviews).

For other parties to a foundation (e.g. protectors, foundation council and beneficiaries), registration of complete and updated legal ownership is sufficient to consider full registration, including the identification of a “class of beneficiaries” (instead of a pre-determined beneficiary). This provision is transitional and in future will be tightened to require complete and updated beneficial ownership of all parties to a foundation, and ruling out a “class of beneficiaries”. The same will apply to trusts after a transitional period.

Alternatively, a zero secrecy score will be awarded in cases where a jurisdiction does not provide legislation for the creation of private foundations, and does not provide legislation for the creation of trusts while ruling out the administration of foreign law trusts by domestic trustees.

We also differentiate between situations in which countries merely by omission fail to regulate and register foreign law trusts administered by domestic lawyers, tax advisers and notaries, and other situations in which jurisdictions actively attract foreign law trusts, either by adherence to the Hague Convention on the Law Applicable to Trusts and on their Recognition⁵ or by legislating equivalent domestic rules which regulate aspects of foreign law trusts for use in a domestic economic and legal context.

This indicator draws upon a variety of sources, mainly using information contained in the Global Forum peer reviews,⁶ but also private sector internet sources, FATF and IMF reports, the TJN-Survey 2017 and original legal analysis. In cases where there is indication that online registries on trusts/foundation registries are available, related websites have also been consulted.

All underlying data can be accessed freely in the [FSI database](#) . To see the sources we are using for particular jurisdictions please consult the assessment logic in Table 6 at the end of this document and search for the corresponding info IDs (**IDs 204, 206, 214, 234, 236, 237, 238, 239, 240, 244, 355, 384, 393, 395 and 396**) in the database report of the respective jurisdiction.

Why is this important?

Trusts alter property rights. That is their purpose. A trust is formed whenever a person (the settlor) gives legal ownership of an asset (the property) to another person (the trustee) on condition that they apply the income and gains arising from that property for the benefit of another person or persons (the beneficiaries).

Trusts have many legitimate purposes, but they can easily be abused for the purpose of concealing illicit activity, for example, by concealing the identity of a settlor or beneficiary. Particular risks arise when the trust is a ‘sham’, i.e. the settlor is also a beneficiary and controls the activities of the trustee. This is a commonplace mechanism for evading tax since trusts can be used to conceal the actual controlling ownership of assets.

The most basic secrecy jurisdiction ‘product’ comprises a secrecy jurisdiction company that operates a bank account. That company is run by nominee directors on behalf of nominee shareholders who act for an offshore trust that owns the company’s shares. Structures like these are created primarily to avoid disclosing the real identity of the settlor and beneficiaries who hide behind the trust: these people will be ‘elsewhere’⁷ in another jurisdiction as far as the secrecy jurisdiction ‘secrecy providers’ (the lawyers, accountants and bankers actually running this structure) are concerned. If – as is often the case – these structures are split over several jurisdictions, then any enquiries by law enforcement authorities and others about the structure can be endlessly delayed by the difficulties involved in trying to identify who hides behind the trust.

Private foundations serve a similar purpose to trusts. By definition they do not have any owners, being designed to allow wealth owners to continue to control and use their wealth hidden behind the façade of the foundations. Discretionary foundations – equivalent to discretionary trusts – are a speciality of Liechtenstein, though they are also available in other secrecy jurisdictions.

Private foundations have a founder, a foundation council and beneficiaries. Foundations are created around a foundation statute, often complemented by secret by-laws. In all secrecy jurisdiction contexts, private foundations need to be registered, though only very limited information, for example about a registered office or some foundation council members, is required to be held in government registries. These registries are normally subject to strict secrecy rules.

The existence of a central register recording the true beneficial ownership of trusts and foundations would break down the deliberate opacity surrounding this type of structure. The prospects of proper law enforcement would be greatly enhanced as a result.

For more information and analysis of the uses and abuses of trusts please read [TJN’s papers on Trusts here](#).⁸ For more background on the way discretionary trusts and foundations can be used to hide offshore wealth, read [this analysis](#).⁹

All underlying data can be accessed freely in the [FSI database](#)  (IDs 204, 206, 214, 234, 236, 237, 238, 239, 240, 244, 355, 384, 393, 395 and 396).

Results Overview

Table 2: Trust Registration and Disclosure

	Secrecy score	Number of Jurisdictions
<p><u>Secretive</u></p> <p>Jurisdiction is a party to the Hague Convention on Trust Recognition (active promotion of trusts) and doesn't require disclosure of registered information (if any), or the jurisdiction is not a party to the Convention, but allows both domestic and foreign law trusts, without requiring their registration in all cases</p>	50%	58
<p><u>Very Limited</u></p> <p>Registration (but not disclosure) of either domestic or foreign law trusts (and jurisdiction is not a party to the Hague Convention on Trust Recognition)</p>	37,5%	22
<p><u>Limited</u></p> <p>Full registration (but no disclosure) of both domestic and foreign law trusts; or no registration of foreign law trusts (but at least domestic law trusts cannot be created); or registration and disclosure of domestic law trusts, but no registration of foreign law trusts</p>	25%	29
<p><u>Complete</u></p> <p>Jurisdiction is a party to the Hague Convention on Trust Recognition (active promotion of trusts) but there is full registration and disclosure of both domestic and foreign law trusts (if applicable);</p> <p>or without "active promotion":</p> <p>(i) Neither domestic law trusts nor administration of foreign law trusts are allowed; or</p> <p>(ii) There is registration of foreign law trusts (and domestic law trusts aren't allowed).</p>	0%	3

Graph 1: Trusts Registration and Disclosure

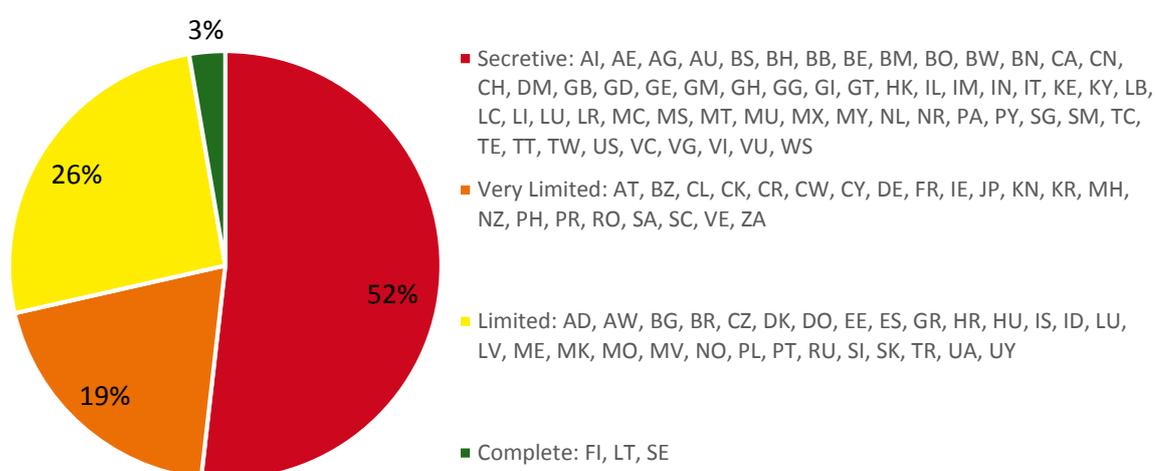
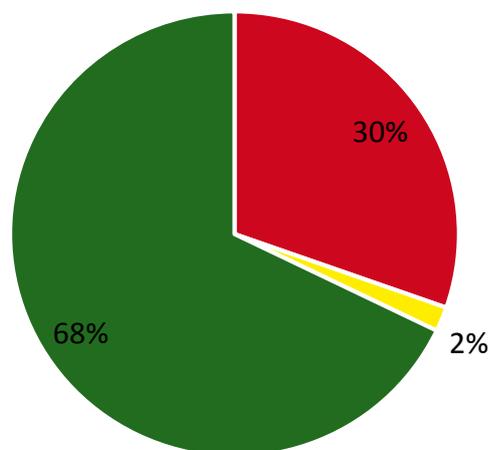


Table 3: Foundations Registration and Disclosure

	Secrecy Score	Number of Jurisdictions
<p><u>No Online Disclosure</u> No updated online disclosure of key parties of all private foundations, irrespective of registration, or unknown</p>	50%	34
<p><u>Limited Online Disclosure</u> Updated registration of key parties of all private foundations plus partial online disclosure</p>	25%	2
<p><u>Complete Disclosure/ No Foundations Law</u> Updated registration of key parties of all private foundations plus complete online disclosure, or no private purpose foundations law</p>	0%	76

Graph 2: Foundations Registration and Disclosure

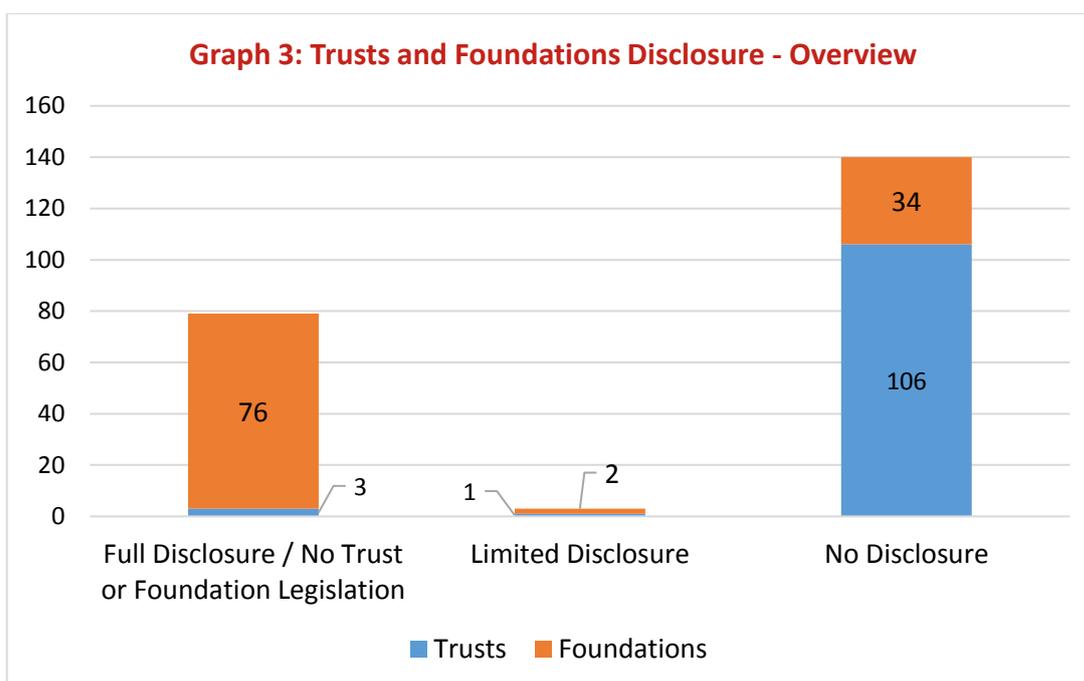


- No Online Disclosure: AI, AG, BB, BG, BS, BZ, CH, DE, CK, CW, DK, EE, GI, GG, GM, IM, IS, JE, LI, KN, KY, LR, MT, MU, MY, NL, NO, PA, PR, SC, SE, TR, VU, WS
- Limited Disclosure: AT, BE
- Complete Online Disclosure/ No Foundations Law: AD, AE, AU, AT, AW, BE, BH, BM, BN, BO, BR, BW, CA, CL, CN, CR, CY, CZ, DM, DO, FI, ES, FR, GB, GD, GH, GR, GT, HK, HR, HU, ID, IL, IN, IT, JP, KE, KR, LB, LC, LT, LU, LV, MC, ME, MH, MK, MO, MS, MV, MX, NR,

Table 4: Trusts and Foundations Disclosure Overview

	Trusts	Foundations
Number of jurisdictions with complete online disclosure or without trust/ foundation legislation	3	76
Number of Jurisdictions with partial online disclosure	1	2
Number of jurisdictions without registration or without online disclosure	106	34

Graph 3: Trusts and Foundations Disclosure - Overview



KFSI 2: TRUSTS AND FOUNDATIONS REGISTER

Table 5: Trusts and Foundations Register – Secrecy Scores

Country Name	Score	ISO	Country Name	Score	ISO
Andorra	0,25	AD	Lebanon	0,5	LB
Anguilla	1	AI	Liberia	1	LR
Antigua & Barbuda	1	AG	Liechtenstein	1	LI
Aruba	0,25	AW	Lithuania	0	LT
Australia	0,5	AU	Luxembourg	0,5	LU
Austria	0,625	AT	Macao	0,25	MO
Bahamas	1	BS	Macedonia	0,25	MK
Bahrain	0,5	BH	Malaysia (Labuan)	1	MY
Barbados	1	BB	Maldives	0,25	MV
Belgium	0,75	BE	Malta	1	MT
Belize	0,875	BZ	Marshall Islands	0,375	MH
Bermuda	0,5	BM	Mauritius	1	MU
Bolivia	0,5	BO	Mexico	0,5	MX
Botswana	0,5	BW	Monaco	0,5	MC
Brazil	0,25	BR	Montenegro	0,25	ME
British Virgin Islands	0,5	VG	Montserrat	0,5	MS
Brunei	0,5	BN	Nauru	0,5	NR
Bulgaria	0,75	BG	Netherlands	1	NL
Canada	0,5	CA	New Zealand	0,375	NZ
Cayman Islands	1	KY	Norway	0,75	NO
Chile	0,375	CL	Panama	1	PA
China	0,5	CN	Paraguay	0,5	PY
Cook Islands	0,875	CK	Philippines	0,375	PH
Costa Rica	0,375	CR	Poland	0,25	PL
Croatia	0,25	HR	Portugal (Madeira)	0,25	PT
Curacao	0,875	CW	Puerto Rico	0,875	PR
Cyprus	0,375	CY	Romania	0,375	RO
Czech Republic	0,25	CZ	Russia	0,25	RU
Denmark	0,75	DK	Samoa	1	WS
Dominica	0,5	DM	San Marino	0,5	SM
Dominican Republic	0,25	DO	Saudi Arabia	0,375	SA
Estonia	0,75	EE	Seychelles	0,875	SC
Finland	0	FI	Singapore	0,5	SG
France	0,375	FR	Slovakia	0,25	SK
Gambia	1	GM	Slovenia	0,25	SI
Germany	0,875	DE	South Africa	0,375	ZA
Ghana	0,5	GH	Spain	0,25	ES
Gibraltar	1	GI	St Kitts and Nevis	0,875	KN
Greece	0,25	GR	St Lucia	0,5	LC
Grenada	0,5	GD	St Vincent & Grenadines	0,5	VC
Guatemala	0,5	GT	Sweden	0,5	SE
Guernsey	1	GG	Switzerland	1	CH
Hong Kong	0,5	HK	Taiwan	0,5	TW
Hungary	0,25	HU	Tanzania	0,5	TZ
Iceland	0,75	IS	Thailand	0,25	TH
India	0,5	IN	Trinidad & Tobago	0,5	TT
Indonesia	0,25	ID	Turkey	0,75	TR
Ireland	0,375	IE	Turks & Caicos Islands	0,5	TC
Isle of Man	1	IM	Ukraine	0,25	UA
Israel	0,5	IL	United Arab Emirates (Dubai)	0,5	AE
Italy	0,5	IT	United Kingdom	0,5	GB
Japan	0,375	JP	Uruguay	0,25	UY
Jersey	1	JE	US Virgin Islands	0,5	VI
Kenya	0,5	KE	USA	0,5	US
Korea	0,375	KR	Vanuatu	1	VU
Latvia	0,25	LV	Venezuela	0,375	VE

Moderately Secretive 0 – 0,40	Secrecy Score 0,41 – 0,50	Secrecy Score 0,51 – 0,60	Secrecy Score 0,61 – 0,70	Secrecy Score 0,71 – 0,80	Secrecy Score 0,81 – 0,90	Extremely Secretive 0,91 – 1
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Table 6: Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation % Secrecy
204	Are Trusts Available?	0: Foreign law trusts cannot be administered and no domestic trust law; 1: Foreign law trusts can be administered, but no domestic trust law; 2: Domestic trust law and administration of foreign law trusts.	Integrated assessment of domestic and foreign law trusts as per assessment matrix in KFSI 2, table 1 (see FSI-methodology or KFSI 2 paper). If both domestic and foreign law trusts are always registered and details published online, 0% secrecy score. If domestic trust law exists, and/or foreign law trusts are legally endorsed, and no registration nor disclosure is required, 50% secrecy.
355	Is the jurisdiction a party to the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition?	YN	
206	Trusts: Is any formal registration required at all?	0: NEITHER: Neither domestic law trusts nor foreign law trusts domestically managed have to register; 1: BOTH: Domestic law trusts have to register and foreign law trusts domestically managed have to register; 2: TRUSTEE: Only domestically managed trusts have to register (both foreign and domestic law trust); 3: FOREIGN, BUT NO DOMESTIC: Domestic law trusts cannot be created and foreign law trusts domestically managed have to register; 4: NEITHER, BUT NO DOMESTIC: Domestic law trusts cannot be created, but no registration of domestically managed foreign law trusts; 5: ONLY DOMESTIC: Domestic law trusts have to register, but no registration of domestically managed foreign law trusts; 6: ONLY FOREIGN: Domestic law trusts do not have to register, but foreign law trusts domestically managed have to.	
214	Trusts: Is registration data publicly available ('on public record')?	0: No, neither for foreign law trusts nor domestic law trusts (if applicable); 1: Only for domestic law trusts, but not for foreign law trusts (if applicable); 2: Yes, for both domestic and foreign law trusts (if applicable).	
234	Are Private Foundations available?	YN	
236	Foundations: Is any formal registration required at all?	YN	
237	Are the settlors/founders named?	0: No, nobody has to be named; 1: Yes, but a legal entity or nominee could be named; 2: Yes, but it is not clear if this refers to a natural person (beneficial owner); 3: Yes, a natural person (beneficial owner) has to be registered.	

393	What information has to be registered for those who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus countries of residence plus either addresses or TINs or birthdates, passport or personal IDs, or incorporation numbers are always registered.	need to disclose online all their key parties, 0% secrecy score. If private foundations exist but do not make available online any information on their key parties, 50% secrecy.
238	Are the members of the foundation council named?	See categories for ID 237 above.	
394	What information has to be registered for those who need to be named (above)?	See categories for ID 393 above.	
239	Is the enforcer/protector named?	See categories for ID 237 above.	
395	What information has to be registered for those who need to be named (above)?	See categories for ID 393 above.	
240	Are the beneficiaries named?	0: No, nobody has to be named; 1: Yes, but a legal entity or nominee could be named, or a class of beneficiaries is identified; 2: Yes, but it is not clear if this refers to a natural person (beneficial owner), or a class of beneficiaries is identified; 3: Yes, every natural person mentioned as a trust beneficiary, and everyone who receives a payment from the foundation has to be registered, and classes of beneficiaries or indetermined/discretionary beneficiaries are not allowed.	
396	What information has to be registered for those who need to be named (above)?	See categories for ID 393 above.	
384	Is it mandatory to update the identity of those related parties (e.g. founders, council members, etc.) that have to be registered?	YN	
244	Is registration data available online ('on public record') for up to 10 €/US\$?	0: No online disclosure for all private foundations; 1: Partial online disclosure for all private foundations; 2: Yes, full online disclosure of all private foundations	

¹ We consider this a reasonable criterion given a) the prevalence of the internet in 2017, b) as international financial flows are now completely relying on the use of modern technology, it would be an omission not to use that technology to make information available worldwide especially as c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence *need* information to be on the internet to get hold of it.

² The FATF defines beneficial owners as the “natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.” See page 113 in Financial Action Task Force 2012: The FATF Recommendations. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (Updated in October 2016), Paris, in: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; 31.8.2017.

³ <http://www.financialsecrecyindex.com/PDF/FSI2017-Questionnaire-MoF.pdf>

⁴ <http://www.financialsecrecyindex.com/PDF/18-Automatic-Info-Exchange.pdf>. The corresponding passage in the Commentaries to the CRS is on page 199, in para 134: “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.” The subsequent paragraph 136 specifies that for foundations similar provisions apply (p. 199). See OECD 2014: Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries., in: http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en; 14.2.2017.

⁵ http://www.hcch.net/index_en.php?act=conventions.text&cid=59; 22.7.2015.

⁶ The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. They can be viewed at: <http://www.eoi-tax.org/>; 24.10.2017.

⁷ By ‘elsewhere’ we mean ‘An unknown place in which it is assumed, but not proven, that a transaction undertaken by an entity registered in a secrecy jurisdiction is regulated’. See our glossary here: <http://www.financialsecrecyindex.com/glossary/glossary.html>; 22.7.2015.

⁸ Knobel, Andres 2017: Trusts: Weapons of Mass Injustice?, in: www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf; 15.2.2017. See also Knobel, Andres/Meinzer, Markus 2016: Drilling down to the real owners – Part 2. Don’t forget the Trust: Amendments Needed in FATF’s Recommendations and in EU’s AML Directive, London, in: www.taxjustice.net/wp-content/uploads/2016/06/TJN2016_BO-EUAMLDFATF-Part2-Trusts.pdf; 28.11.2016. And see also https://www.taxjustice.net/wp-content/uploads/2016/06/TJN2016_BO-EUAMLDFATF-Part2-Trusts.pdf<http://taxjustice.blogspot.de/2009/07/in-trusts-we-trust.html>; 22.7.2015.

⁹ www.taxjustice.net/cms/upload/pdf/TJN_1110_UK-Swiss_master.pdf; 22.7.2015.