

## Key Financial Secrecy Indicators 2: Trust and Foundation Register

### What is measured?

This indicator reveals whether a jurisdiction has a central register of trusts and foundations which is publicly accessible via the internet<sup>1</sup> (whether these are local structures, or foreign law structures administered by locals), and/or if a country prevents resident trustees from administering foreign law trusts, and if a country provides legislation for the creation of private purpose foundations.

To obtain a positive transparency assessment for this indicator, all trusts (half credit) and private foundations (half credit) formed and administered in a jurisdiction must be required to register with a central agency in order to become legally effective. Even if there is a registry, we do not consider it effective unless all relevant structures are required to register (since anybody intending to conceal their financial arrangements will simply not register the structure). We define relevant structures as all legal arrangements whose overall payments either exceed €15.000 per year or whose underlying asset value exceeded €100.000 at any moment in the year<sup>2</sup>. Disclosure should include the appropriate information for assessing its tax and ownership implications, at least comprising the full names and birthdates (or passport IDs) and country of residence for the settlor(s), the trustee(s) and identified beneficiaries of the arrangement<sup>3</sup>.

Alternatively, a full transparency credit can be obtained as well if a jurisdiction does not provide legislation for the creation of private foundations (half credit), and does not provide legislation for the creation of trusts as well as ruling out or regulating effectively the administration of foreign law trusts by domestic trustees (half credit).

However, 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 Recognition<sup>4</sup> or by legislating equivalent domestic rules which regulate aspects of foreign law trusts for use in a domestic economic and legal context.

The indicator builds on a variety of sources, mainly drawing on information contained in the the Global Forum peer reviews<sup>5</sup>, but also including tables D2 and D3 of the OECD 2010 report<sup>6</sup>, private sector internet sources, FATF and IMF reports, and the TJN-Survey 2013. In cases where there is indication that online registries on trusts/foundation registries are available, related websites have also been consulted.

For all the details of the assessment, please consult Annex 1 with a mind map of KFSI 2.

### Why is it important?

Trusts change property rights. That is their purpose. A trust is formed whenever a person (the settlor) gives legal ownership of an asset (the trust property) to another person (the trustee) on condition that they apply the income and gains arising from that asset for the benefit of another person or persons (the beneficiaries). It is immediately obvious that such an arrangement could easily be abused for concealing illicit activity should, for example, the identities of settlors and beneficiaries, or the relationship between settlor and trustee, be obscured. There is particular risk when the trust is in fact a sham i.e. the settlor is the beneficiary and controls the activities of the trustee. This is a commonplace mechanism for evading tax since their only effect is to conceal the actual controlling ownership of assets from everybody else's view.

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'<sup>7</sup> 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 incurred when 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 and depend upon 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 within this type of structure. The prospects of proper law enforcement would be greatly enhanced as a result.

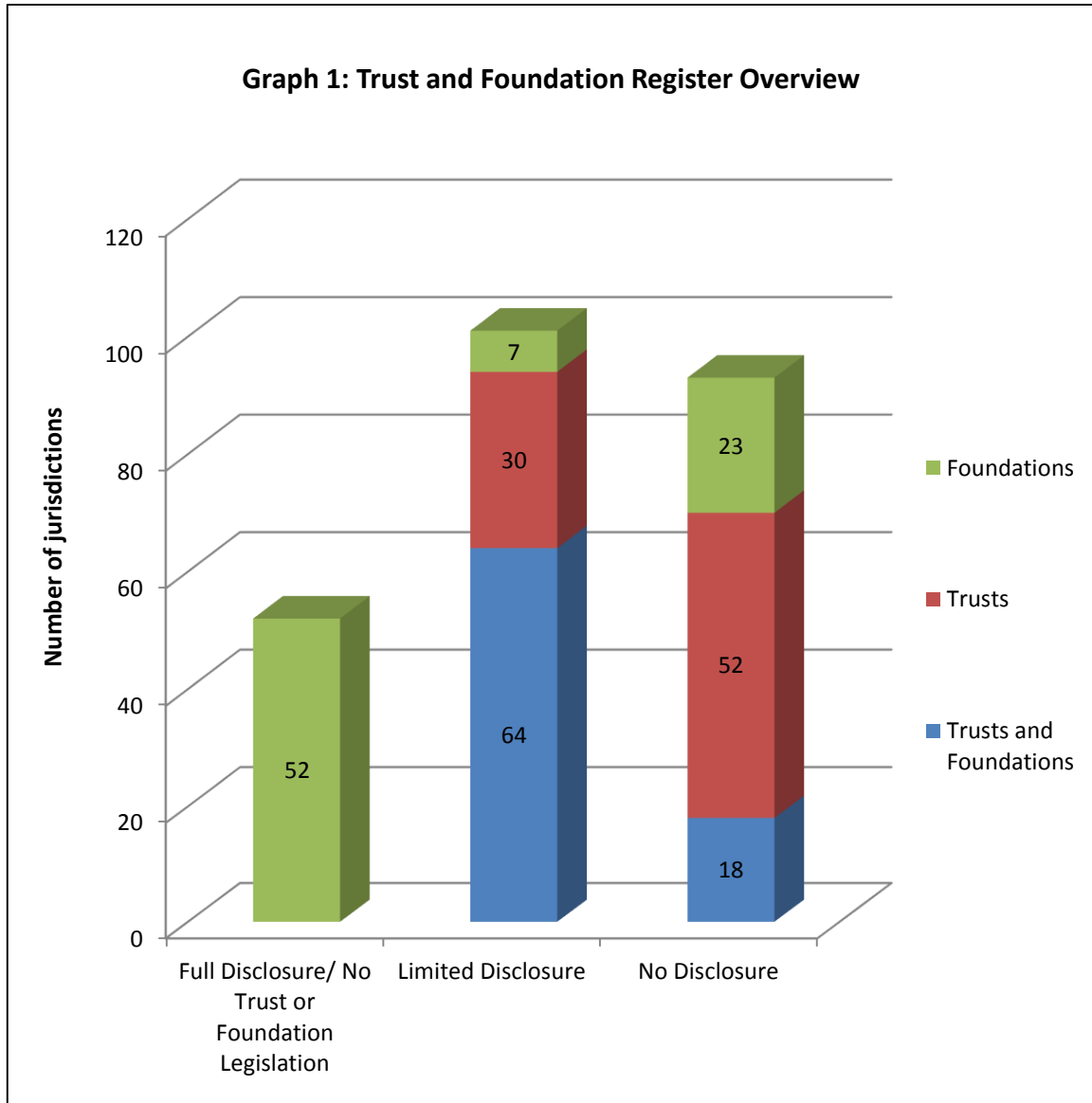
For more details on trusts please read [TJN's extensive blog here](#)<sup>8</sup>, and on the way discretionary trusts and foundations are used to hide offshore wealth, read [this analysis](#)<sup>9</sup>.

### What are the crimes that might hide behind trust secrecy?

Tax evasion, concealment of the proceeds of corruption, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, the covering of illicit intelligence activity, non-payment of alimonies, infringement of competition rules, bankruptcy fraud, and more besides might hide behind the secrecy that trusts and foundations can provide.

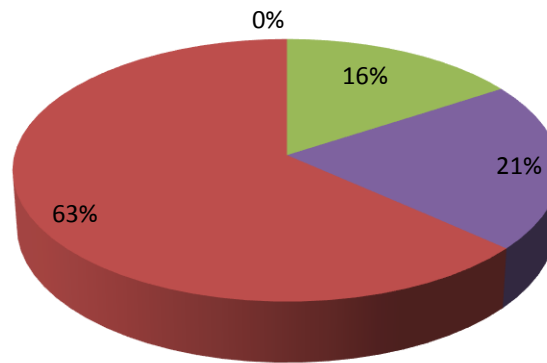
### Results Overview

Table 1: Trust and Foundation Register - Overview			
	Trusts and Foundations	Trusts	Foundations
Full Disclosure/No Trust or Foundation			
Legislation	0	0	52
Limited Disclosure	64	30	7
No Disclosure	18	52	23



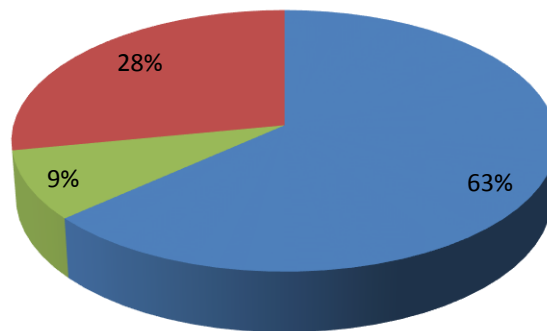
Results Details

Graph 2: Trust Disclosure Details



- Full Disclosure/No Trust Legislation: No jurisdictions
- Limited (0.25 credits): AD; AW; BR; DK; HU; LV; MO; MV; NO; PT; RU; ES; SE
- Very Limited (0.125 credits): BH; CW; DO; FR; IE; IN; JP; KN; KR; LR; MH; NZ; PH; SA; SC; UY; ZA
- No Disclosure: All other jurisdictions

Graph 3: Foundation Disclosure - Details

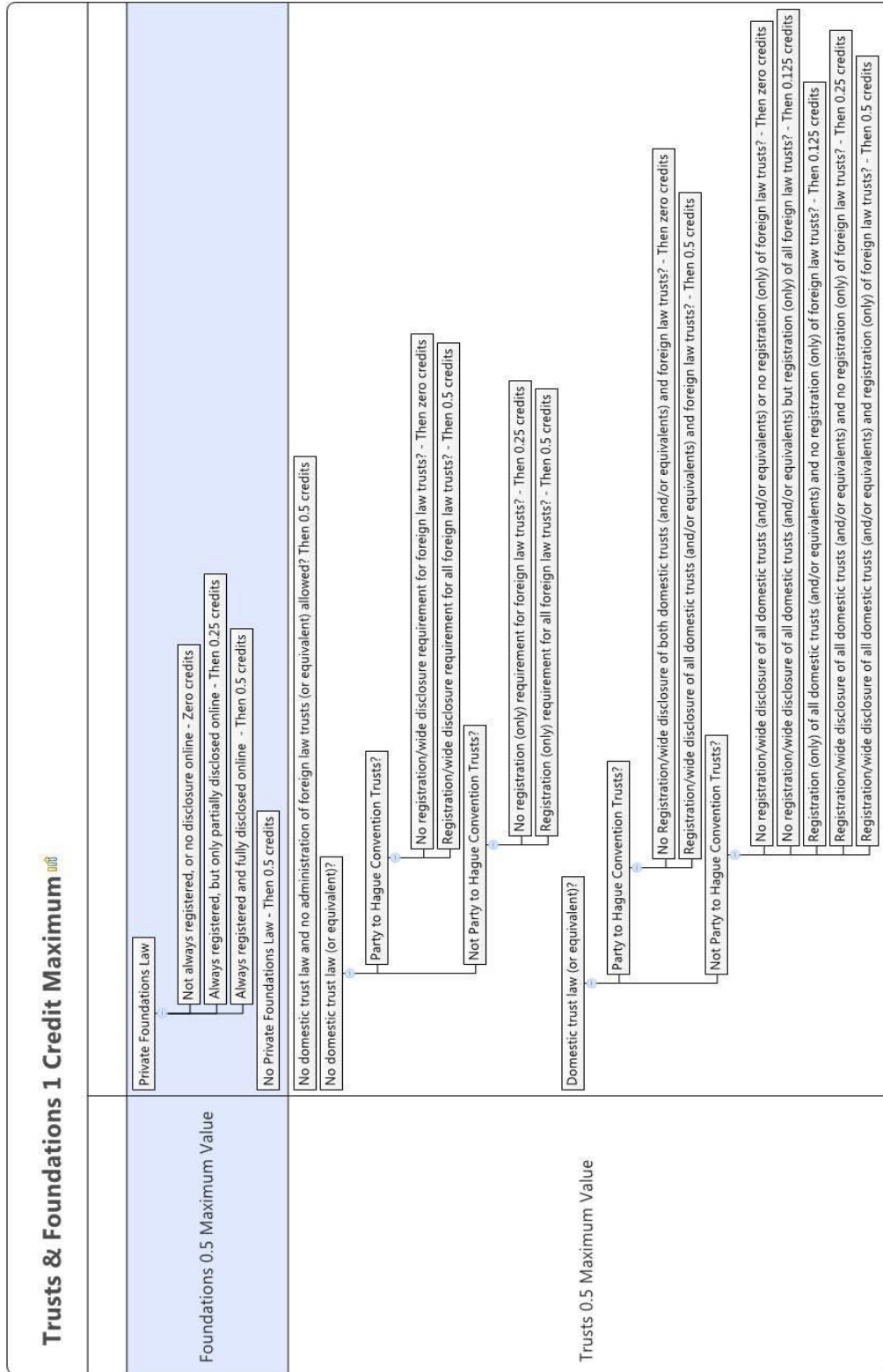


- Full Disclosure/No Foundation Legislation: All other jurisdictions
- Limited Disclosure (0.25 credits): BE; CW; GG; LU; NL; NO; PA
- No Disclosure: AG; AI; AT; BS; BZ; CH; CK; DE; DK; IM; IT; JE; KN; LI; LR; MT; MU; MY; SC; SE; SM; VU; WS

Table 2: Trust and Foundation Register: Combined Rating – Transparency Credits

ID	Country	ISO	Credits	ID	Country	ISO	Credits
1	Andorra	AD	0.75	42	Korea	KR	0.625
2	Anguilla	AI	0	43	Latvia	LV	0.75
3	Antigua & Barbuda	AG	0	44	Lebanon	LB	0.5
4	Aruba	AW	0.75	45	Liberia	LR	0.125
5	Australia	AU	0.5	46	Liechtenstein	LI	0
6	Austria	AT	0	47	Luxembourg	LU	0.25
7	Bahamas	BS	0	48	Macau	MO	0.75
8	Bahrain	BH	0.625	49	Malaysia (Labuan)	MY	0
9	Barbados	BB	0.5	50	Maldives	MV	0.75
10	Belgium	BE	0.25	51	Malta	MT	0
11	Belize	BZ	0	52	Marshall Islands	MH	0.625
12	Bermuda	BM	0.5	53	Mauritius	MU	0
13	Botswana	BW	0.5	54	Monaco	MC	0.5
14	Brazil	BR	0.75	55	Montserrat	MS	0.5
15	British Virgin Islands	VG	0.5	56	Nauru	NR	0.5
16	Brunei	BN	0.5	57	Netherlands	NL	0.25
17	Canada	CA	0.5	58	New Zealand	NZ	0.625
18	Cayman Islands	KY	0.5	59	Norway	NO	0.5
19	Cook Islands	CK	0	60	Panama	PA	0.25
20	Costa Rica	CR	0.5	61	Philippines	PH	0.625
21	Curacao	CW	0.375	62	Portugal (Madeira)	PT	0.75
22	Cyprus	CY	0.5	63	Russia	RU	0.75
23	Denmark	DK	0.25	64	Samoa	WS	0
24	Dominica	DM	0.5	65	San Marino	SM	0
25	Dominican Republic	DO	0.625	66	Saudi Arabia	SA	0.625
26	France	FR	0.625	67	Seychelles	SC	0.125
27	Germany	DE	0	68	Singapore	SG	0.5
28	Ghana	GH	0.5	69	South Africa	ZA	0.625
29	Gibraltar	GI	0.5	70	Spain	ES	0.75
30	Grenada	GD	0.5	71	St Kitts and Nevis	KN	0.125
31	Guatemala	GT	0.5	72	St Lucia	LC	0.5
32	Guernsey	GG	0.25	73	St Vincent & Grenadines	VC	0.5
33	Hong Kong	HK	0.5	74	Sweden	SE	0.25
34	Hungary	HU	0.75	75	Switzerland	CH	0
35	India	IN	0.625	76	Turks & Caicos Islands	TC	0.5
36	Ireland	IE	0.625	77	United Arab Emirates (Dubai)	AE	0.5
37	Isle of Man	IM	0	78	United Kingdom	GB	0.5
38	Israel	IL	0.5	79	Uruguay	UY	0.625
39	Italy	IT	0	80	US Virgin Islands	VI	0.5
40	Japan	JP	0.625	81	USA	US	0.5
41	Jersey	JE	0	82	Vanuatu	VU	0

Annex 1: Mind Map of KFSI 2 – All Details



<sup>1</sup> We believe this is a reasonable criteria given a) the prevalence of the internet in 2013, b) as international financial flows are now completely relying on the use of modern technology, it would be ridiculous if that technology were not used 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.

<sup>2</sup> See our research on bank account registries (2012), chapter 8, pages 46-49, for more background of these relevant structures and the suggested registries (<http://www.taxjustice.net/cms/upload/pdf/BAR2012-TJN-Report.pdf>; 15.4.2013).

<sup>3</sup> For comprehensive policy guidelines on what features an effective registry of trusts should possess, please read pages 46-49 here: [www.taxjustice.net/cms/upload/pdf/BAR2012-TJN-Report.pdf](http://www.taxjustice.net/cms/upload/pdf/BAR2012-TJN-Report.pdf); 15.1.2013.

<sup>4</sup> [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59); 14.1.2013.

<sup>5</sup> 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/>; 11.1.2013.

<sup>6</sup> The full title of this publication is “Tax Co-operation. Towards a Level Playing Field” (henceforth “OECD-report”). OECD-table D2 details which countries have domestic trust laws, which have specific trust laws applying to non-residents only and which countries do not have trust laws but allow their residents to act as trustees of foreign trusts (OECD 2010: 210). Table D3 in turn details what kind of information needs to be submitted to a government authority, defined as including “trust registries, regulatory authorities and tax authorities.” (OECD 2010: 241).

<sup>7</sup> 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: [www.secrecyjurisdictions.com/PDF/Glossary.pdf](http://www.secrecyjurisdictions.com/PDF/Glossary.pdf); 15.1.2013.

<sup>8</sup> <http://taxjustice.blogspot.de/2009/07/in-trusts-we-trust.html>; 15.1.2013.

<sup>9</sup> [www.taxjustice.net/cms/upload/pdf/TJN\\_1110\\_UK-Swiss\\_master.pdf](http://www.taxjustice.net/cms/upload/pdf/TJN_1110_UK-Swiss_master.pdf); 15.1.2013.