

The Role of Trusts in Facilitating Cross-Border Transactions: Legal Functions, Regulatory Fragmentation, and Pathways to Coordination

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ABSTRACT

This paper primarily explores the role of trusts in cross-border transactions and the challenges they face. As global economic exchanges deepen, trusts—due to their unique ability to segregate assets, mitigate bankruptcy risks, and enhance the efficiency and security of cross-border transactions—play a significant role not only in private wealth management but also in financing, investment, and digital assets. However, differences in national legal systems create numerous conflicts in trust application. For instance, the concept of "dual ownership" under common law systems often faces non-recognition in non-common law jurisdictions. Simultaneously, stricter scrutiny regarding beneficial owner disclosure and anti-money laundering compliance increases operational costs for trusts. Furthermore, the tension between transparency requirements and privacy protection within trust structures further complicates cross-border compliance. The article concludes by proposing solutions to these challenges, such as promoting the Hague Trust Convention, implementing the latest FATF standards, establishing mutual recognition mechanisms among major jurisdictions, and leveraging new technologies to improve disclosure practices. Overall, as trusts assume greater importance in cross-border finance, bridging institutional gaps across legal systems and reducing compliance burdens are critical to unlocking their full potential.

KEYWORDS

Cross-Border Transactions; Trusts; Beneficial Owners; Securitization.

1. INTRODUCTION

With the continuous flow of global capital, the process of global economic integration is accelerating. This demonstrates that trusts extend beyond private wealth management, gradually becoming an integral component of the international financial system. While the growth of cross-border capital flows is positive, it simultaneously amplifies certain risks in international trade. Cases such as the 2020 Wirecard collapse and the 2023 Swiss trust transparency dispute highlight numerous issues within the current cross-border financial framework. These problems reveal gaps in existing laws, disparities in compliance oversight, and a need for enhanced enforcement by regulatory bodies.

Beyond this, trusts possess unique characteristics—including asset independence and the distinct nature of fiduciary duties—which have led to their widespread application in securitization, project financing, trade finance, and family wealth planning. However, these very attributes can create opportunities for regulatory arbitrage due to legal conflicts between different legal systems. For instance, trusts established under English law are generally not recognized in civil law jurisdictions like Germany and France. Moreover, these distinctive attributes necessitate stricter oversight of trusts—including anti-money laundering (AML), counter-terrorist financing (CTF), beneficial ownership transparency,

and international tax reporting standards (CRS[12], FATCA)-collectively intensifying the compliance burden for cross-border trusts.

Academic and research discussions on this issue are currently vigorous. Lehmann (2023)[17] notes that "trusts can only serve as the 'lubricant of cross-border transactions' when operating within transparent and compliant environments." As Zimmermann (2022)[18] observes, failure to bridge the gap between common law and civil law systems may exacerbate uncertainty in international transactions. This underscores the importance of examining security and transparency issues in cross-border trusts.

2. CORE LEGAL FUNCTIONS OF TRUSTS IN CROSS-BORDER TRANSACTIONS (EXPANDED EDITION)

2.1. Asset Segregation and Bankruptcy Isolation

The primary value of a trust lies in its "property independence": in other words, trust assets are segregated from the personal property of the settlor and trustee, and remain unaffected by bankruptcy proceedings. This function of trusts holds significant importance in cross-border transactions.

Examples include:

- Cayman Islands STAR Trust (Trusts Act 2021 Revision, pt VIII)[2]: Permits non-charitable trusts supervised by an "enforcer" rather than ordinary beneficiaries. This design reduces beneficiary litigation risks and is widely used in securitization and structured finance.
- BVI VISTA Trust (Virgin Islands Special Trusts Act 2003, rev 2020)[3]: Exempts trustees from obligations to intervene in company operations, enabling them to hold SPV equity without interfering in directorial functions. This facilitates cross-border investment funds and project financing structures. Such institutional innovations render trusts indispensable tools in global financial markets.

2.2. "Safe Holding" and "Centralized Enforcement" in Financing Structures

In cross-border syndicated loans, trade finance, and securitization, trusts frequently serve as security trustees or mortgage trustees.

- In syndicated loans, the security trustee centrally holds collateral and enforces rights uniformly on behalf of all lenders, avoiding the inefficiency of "individual registration."
- In securitization, the trustee manages the "waterfall distribution" of cash flows, ensuring the orderly realization of interests for investors at different seniority levels (senior, mezzanine, junior).

Common law courts have actively recognized such arrangements:

- In *Carreras Rothmans Ltd v Freeman Mathews Treasure Ltd* [1985] Ch 207[13], the court affirmed the validity of security trusts even where no direct contractual relationship existed between the creditor and trustee.
- In *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567[14], the UK House of Lords established the "purpose trust" doctrine. This principle holds that arrangements providing funds for specific purposes create a trust if the purpose fails, thereby preventing funds from flowing into the trustee's own estate. This doctrine remains widely applied in modern financing transactions as a legal tool to prevent misappropriation of funds.

2.3. Cross-Border Investment and Private Wealth Arrangements

Trusts also serve as a vital tool for high-net-worth individuals (HNWIs) in cross-border wealth management. Their key advantages include:

- 1) Estate Planning: Trust-based asset allocation circumvents mandatory inheritance rules, enabling intergenerational wealth transfer.
- 2) Asset Protection: The trust's isolation mechanism shields family assets from risks.
- 3) Cross-border holding: Utilizing trusts in jurisdictions like Singapore or Jersey enables global asset holding, minimizing legal conflicts and enhancing management efficiency.

Most jurisdictions have implemented trust reforms to attract cross-border wealth (e.g., Hong Kong and Singapore):

- Hong Kong: The 2013 amendment to the Trustee Ordinance (Cap. 29) [4] expanded trustees' investment authority, clarified reserved powers, and introduced "statutory duty of care." Concurrently enacted, the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)[5] regulates Trust and Company Service Providers (TCSPs), mandating Customer Due Diligence (CDD) and beneficial owner registration systems.
- Singapore: Implemented a licensing regime for trust companies through the Trust Companies Act[7], supplemented by the Monetary Authority of Singapore (MAS) Anti-Money Laundering/Counter-Terrorist Financing Guidelines (2024 Edition)[8]. These guidelines require trust companies to adopt a risk-based approach for verifying beneficial owner information and strengthen cross-border information exchange obligations.

2.4. Emerging Application Scenarios

1) Digital Asset Custody Trusts

With the development of virtual assets like Bitcoin and Ethereum, as well as Central Bank Digital Currencies (CBDCs), secure custody of digital assets has become an emerging market demand. In 2024, both the UK and Singapore proposed draft regulations permitting regulated trust companies to serve as trustees for digital assets, ensuring private key security and compliance reporting. Scholar David Pollard (2024) [19] notes that the logic of Quistclose-type fund trusts can be extended to digital asset "custody wallets" to prevent misappropriation or misuse.

2) Green Finance and Carbon Market Trusts

In green bonds and carbon credit trading, trusts are employed to hold carbon emission allowances or green bond proceeds, ensuring funds are used for designated purposes. For instance, in the EU green bond market, trustees oversee whether issuers allocate raised capital to eligible green projects; investors may seek legal remedies through trustees if violations occur.

3) Islamic Finance Trust Arrangements

Within Islamic law frameworks, while the concept of "trust" aligns more closely with waqf (religious endowment) or mudarabah (profit-sharing contracts), certain cross-border Islamic financing transactions also draw upon trust logic to achieve asset segregation and capital transparency. For instance, the Dubai International Financial Centre (DIFC) 2022 sukuk guidelines recommend using trust structures to hold underlying assets, ensuring clear rights separation between investors and projects.

3. CHALLENGES AND REGULATORY FRAGMENTATION: PRIVATE LAW DIFFERENCES AND PUBLIC LAW OVERLAP

3.1. Private Law Structural Differences and Recognition Challenges

The dual structure of “legal title/equitable title” in the trust system is central to the common law tradition, yet lacks direct equivalents in most civil law systems. For instance:

- France's Civil Code (Articles 2011–2030) defines the “fiducie,” which requires notarization and registration to take effect. Its legal effect resembles a hybrid of “assignment of claims + entrusted management” rather than full property independence.
- Germany's Treuhand is not codified as a separate chapter in the Civil Code but is recognized in practice through contractual arrangements. Its nature leans more toward contract law, lacking dual ownership in the sense of property rights.
- Although Switzerland ratified the Hague Trust Convention in 2007[1], recognizing the validity of foreign trusts, it explicitly announced in 2023 that it would not establish a domestic trust system. Instead, it will advance modernization reforms for its domestic foundations (Stiftung) and family fund structures (Swiss Federal Council, Press Release 15 March 2023)[21]. This decision reflects the civil law tradition's lingering reservations about “introducing trusts,” fearing they could undermine established systems of compulsory inheritance and matrimonial property regimes.

These differences create challenges for cross-border recognition. For instance, an express trust established under English law may have full opposability against assets located in the British Virgin Islands or Singapore. However, if the trust involves French real estate or shares in a German company, it may be partially invalidated due to local mandatory rules (such as compulsory inheritance regimes or matrimonial property regimes).

While the Hague Trust Convention provides a framework for cross-border recognition (allowing parties to choose the applicable law), its Article 15 explicitly reserves national mandatory rules in areas like inheritance, matrimonial property, and bankruptcy. This provision effectively legitimizes the “limited recognition of trusts” by civil law jurisdictions, further exacerbating uncertainties in cross-border trust enforcement.

3.2. Pressure from Overlapping Public Laws

1) FATF Standards and High-Risk Jurisdictions

The Financial Action Task Force (FATF) updated its interpretative guidance on Article 25 (Beneficial Ownership of Legal Arrangements) in March 2024[16], emphasizing that countries must ensure “full, accurate, and timely availability” of beneficial owner (BO) information for trusts and similar legal arrangements. The guidance proposes a multi-tiered approach:

- Establishing a BO registry where feasible;
- Requiring trustees to hold verified BO information;
- Allowing regulators to access intermediaries' customer due diligence (CDD) files;
- Facilitating rapid information exchange through cross-border mechanisms.

Simultaneously, the FATF issued warnings regarding certain high-risk jurisdictions. The 2024 “grey list” includes financial centers such as Turkey and the UAE, partly due to significant deficiencies in their trust and foundation regimes concerning BO transparency and cross-border cooperation. This implies that cross-border trust structures involving such jurisdictions will directly impact their risk ratings and financing costs.

2) EU 2024 Anti-Money Laundering Legislation Package

The EU's Anti-Money Laundering Regulation (AMLR, Reg (EU) 2024/1624)[10] and new Anti-Money Laundering Directive (AMLD, Dir (EU) 2024/1640)[11], adopted in June 2024, mark a comprehensive upgrade to the EU's anti-money laundering framework. Article 12 of the Regulation mandates that all member states ensure beneficial ownership (BO) information for trusts and similar arrangements is centrally collected and made accessible to third parties with a "legitimate interest" under specific circumstances.

This institutional reform follows the European Court of Justice's ruling in *WM v Luxembourg Business Registers* (Joined Cases C-37/20 & C-601/20, 2022)[15]. The Court held that fully public BO registries violated privacy and data protection rights enshrined in the EU Charter of Fundamental Rights. Consequently, the new EU regulations seek a balance between transparency and privacy rights, permitting access to law enforcement agencies, financial institutions, and applicants with a "legitimate interest," while rejecting a "fully public" model.

This reform has sparked academic debate: some scholars argue that excessive restrictions on public access undermine societal oversight functions (K Schmidt, *Trusts & Trustees* 2024)[20]; others emphasize that personal data protection holds constitutional status under the General Data Protection Regulation (GDPR) and must be prioritized.

3) Regulatory Overlap Between Anglo-American and Asia-Pacific Regions

- Since 2022, the UK has expanded its Trust Registration Service (TRS), requiring registration and annual updates for most express trusts and offshore trusts with UK connections. Non-compliant trustees face civil penalties or even criminal liability.

- The United States implemented the Corporate Transparency Act (CTA) in January 2024[9], requiring most corporations and limited liability companies to report their beneficial ownership (BO) information to the Financial Crimes Enforcement Network (FinCEN). While trusts are not "reporting entities," they must indirectly disclose BO information if they control or hold shares in a reporting entity.

- Hong Kong imposes stringent oversight on Trust and Company Service Providers (TCSPs) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)[6], requiring companies to maintain a Significant Controllers Register (SCR). Singapore establishes a risk-based ongoing due diligence framework through the Trust Companies Act[7] and MAS AML/CFT guidelines[8].

The cumulative effect of these regulations significantly increases compliance costs for cross-border trusts. Trust companies operating simultaneously in the EU, UK, US, and Asia often face redundant burdens, requiring preparation of four or more sets of BO compliance documentation for the same trust.

3.3. The Conflict between Data Protection and Transparency

The case of *EU WM v. Luxembourg Commercial Register*[15] highlights the tension between transparency and privacy rights. In this case, the European Court of Justice ruled that the full disclosure of beneficial ownership information for trusts and companies violates Articles 7 (right to privacy) and 8 (right to data protection) of the EU Charter of Fundamental Rights. Consequently, Member States must adapt their systems to limit access to data to individuals or entities with a "legitimate interest."

This action contradicts the transparency rules of the Financial Action Task Force (FATF). While the FATF mandates "maximum accessibility," the EU imposes numerous restrictions under its privacy regulations. This institutional tension exacerbates compliance challenges for cross-border trusts, deepening the "information gap" in practice. Trustees must provide complete beneficiary information

to local regulators, yet banks or businesses in other jurisdictions may lack sufficient data for due diligence.

Hong Kong and Singapore's new regulations similarly face such conflicts. Hong Kong's Personal Data (Privacy) Ordinance (2025) draft amendments strengthen protections for sensitive personal data, while Singapore's Personal Data Protection Act has already established stricter requirements for cross-border data transfers.

3.4. Application of Regulatory Arbitrage in Practice

1) Jurisdiction Selection and Arbitrage

Some cross-border transactions establish trusts in jurisdictions with more lenient regulations to circumvent strict beneficial owner disclosure requirements. For instance, after 2022, certain family trusts relocated from Luxembourg to the Dubai International Financial Centre (DIFC) solely because Luxembourg lacks a public beneficial owner registry.

2) Additional Effects of High-Risk Ratings

Lists such as the FATF and EU grey lists and blacklists directly impact banks' risk assessment standards. For instance, after Turkey was placed on the FATF grey list in 2024, multiple European banks swiftly intensified due diligence on Turkish trust structures, resulting in substantial financing costs.

3) Barriers to Cross-Border Enforcement

Trusts may be fully compliant in their jurisdiction of establishment but pose issues elsewhere. For instance, French or German courts often refuse to recognize UK trusts on grounds of violating inheritance laws, creating unpredictability for cross-border trusts and significant uncertainty in judicial rulings.

4. INSTITUTIONAL AND PRACTICAL PATHWAYS TOWARD HARMONIZATION

4.1. Expansion and Practical Application of the Hague Trust Convention

The Hague Trust Convention (1985)[1], the sole international treaty specifically addressing trusts, holds core value in:

- 1) Allowing parties to choose the governing law for trusts;
- 2) Requiring Contracting States to recognize fundamental trust characteristics, including property independence, fiduciary duties, and beneficiary rights;
- 3) Providing courts with a unified framework for recognition in cross-border judicial proceedings.

However, the Convention's limitations are equally evident:

- First, its scope of contracting states is limited, primarily concentrated in common law jurisdictions (UK, US offshore financial centers) and select civil law countries (e.g., Italy, Switzerland), with many emerging market nations remaining non-signatories.
- Second, Article 15 reserves mandatory rules for areas such as succession, matrimonial property regimes, and insolvency, leaving civil law countries with significant discretion in practical recognition.

Recommendations for improvement:

1) Encourage more jurisdictions active in cross-border finance (e.g., Singapore, Hong Kong, UAE) to accede and refine domestic recognition mechanisms.

2) The HCCH (Hague Conference on Private International Law) may issue supplementary guidelines clarifying:

- Cross-border recognition of digital assets as trust property;
- Cross-border trustee replacement mechanisms;
- The status of settlor trusts in insolvency proceedings.

3) At the regional level, explore “mutual recognition arrangements for trusts” within ASEAN or the Greater Bay Area (Guangdong-Hong Kong-Macao) frameworks to reduce judicial barriers caused by non-participation in conventions.

4.2. Fully Implement FATF Recommendation 25 (2024 Edition)

The latest guidelines issued by FATF in 2024[16] impose higher requirements for beneficial ownership transparency in legal arrangements.

Key Points:

- Requires multi-tiered BO information sources, including registration layer, trustee layer, intermediary layer, and cross-border exchange layer;
- Emphasizes the triple standard of “accurate, timely, and accessible”;
- Clarifies that the scope of BO includes settlors, trustees, protectors, beneficiaries, and beneficial owners.

Practical Pathways:

- 1) Registration Layer: Establish trust BO registries in countries with the necessary infrastructure;
- 2) Trustee Layer: Legally mandate trustees to maintain verified BO records with ongoing update obligations;
- 3) Intermediary Layer: Utilize KYC/CDD files from professional intermediaries (lawyers, accountants, banks) as supplementary compliance measures;
- 4) Cross-border exchange layer: Establish rapid response mechanisms under bilateral or multilateral cooperation frameworks.

Additionally, BO disclosure clauses should be incorporated into contractual practices: Specify in financing and investment agreements that failure by trustees to update BO information as required constitutes a “default event,” triggering mandatory disclosure or termination of financing. This reinforces FATF requirements at the contractual level.

4.3. “Equivalence Bridges” between Key Jurisdictions

Given significant regulatory divergence among major jurisdictions, establishing “equivalence bridges” emerges as a critical cross-border compliance solution.

1) EU–UK

Following Brexit, there is no direct mutual recognition between the TRS and the EU's AMLR. It is recommended to establish an “attestation” mechanism whereby trusts registered in the TRS and maintained with annual updates can be directly recognized by EU member states as meeting AMLR requirements, thereby avoiding duplicate registration.[10]

2) Contractual Compliance in the United States

The United States lacks a national trust registration system, but the CTA requires the reporting of BO information. It is recommended that cross-border financing contracts include a clause: the trustee commits to providing counterparty with beneficial ownership information compliant with CTA standards and promptly updating it upon changes, thereby achieving “contractual compliance.”[9]

3) Singapore–Hong Kong

Both jurisdictions implement licensing systems for Trust and Company Service Providers (TCSPs)/trust companies and have similar AML/CFT guidelines. Recommend establishing a “mutual recognition mechanism” between the Monetary Authority of Singapore (MAS)[8] and Hong Kong's Companies Registry to cross-recognize licensed entities and share enforcement information. This would reduce duplicative due diligence in cross-border transactions.

4.4. Integration and Technological Advancement in Tax Reporting

The 2025 consolidated Common Reporting Standard (CRS) issued by the OECD expands coverage to include electronic money and central bank digital currencies.[12] Trusts, as “reporting financial institutions,” must identify beneficial owners and submit information to tax authorities.

Improvement proposals:

- Single collection, multi-purpose reuse: Trustees gather beneficial owner information during account opening and due diligence, simultaneously applying it for CRS and FATCA reporting to avoid duplicate filings.
- Automated interfaces: Encourage trustees to develop compliant IT systems that automatically interface with tax authorities, enhancing accuracy and efficiency.
- Unified Definitions: Clarify beneficial owner definitions in cross-border contracts using the OECD CRS 2025 version as the standard to reduce conflicts between jurisdictions.[12]

4.5. Soft Law Framework for the “Finance Trusts Toolkit”

The HCCH, UNIDROIT, and UNCITRAL may jointly develop a “Finance Trusts Toolkit” as a soft law reference for cross-border practices, covering:

- 1) Bankruptcy Treatment of Purpose Trusts: Clarify priority status in liquidation proceedings;
- 2) Enforcer Mechanism: Define supervisory authority and scope of responsibility;
- 3) Cross-Border Trustee Replacement: Prescribe replacement procedures, notification obligations, and information handover standards;
- 4) Arbitration clauses and dispute resolution: Encouraging the incorporation of international arbitration mechanisms in trust deeds to reduce uncertainties in cross-border litigation.

4.6. Practical Framework

Based on the above analysis, this paper will make the following ideas to improve the dilemma faced by cross-border trusts:

- 1) Jurisdiction Selection: Prioritize mature trust jurisdictions (England, Cayman Islands[2], BVI[3], Singapore[7], Hong Kong[4]).
- 2) Governance Design: Clearly define trustee obligations and liability exemptions; introduce an executor mechanism in purpose trusts.
- 3) Security and Enforcement: Centralize security interests under unified trustee holding and enforcement.

- 4) Beneficial Ownership (BO) and AML/CFT: Embed standardized BO disclosure clauses in contracts, aligning with EU[10], UK, US[9], and Asian regulatory requirements[7][8].
- 5) Tax Exchange: Embed CRS 2025[12] and FATCA beneficial owner definitions into trust deeds to prevent reporting conflicts.
- 6) Privacy-Transparency Balance: Establish legitimate interest review and minimized disclosure mechanisms compliant with GDPR and CJEU 2022 case law[15].

5. CONCLUSION AND FUTURE OUTLOOK

Trusts have expanded their role in cross-border transactions beyond traditional financing and wealth management.

However, regulatory fragmentation remains the greatest obstacle to their continued development. The coexistence of the “recognition dilemma” under private law and the “compliance burden” under public law, significantly increases compliance costs for cross-border trusts. The conflict between transparency and privacy rights has also emerged as a new and urgent contradiction requiring resolution.

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