Solution for Russian zombie trusts and foundations

A Greek polar bear structure addresses zombie trusts for Russians who are not specially designated nationals

Liechtenstein trustees declined to manage Russian trusts and their underlying companies due to fear of US secondary sanction. Trustees have abandoned trusts and their subsidiaries are inactive because there is no longer any management. Without instructions from Liechtenstein, registration fees go unpaid, investments are not made, and employee salaries cannot be processed. **Johannes Gasser** said, «it is vital for Liechtenstein to resolve paralyzed trusts and their offshore subsidiaries». Ideas, such as central management of all zombie trust structures have stalled.

The proposed Greek polar bear structure is to use companies, which are not regarded as similar to trusts, and also to use a Custodial Institution located in Svalbard, for each client to hold the company. We utilise EU jurisdictions whose authorities explicitly rule companies are not similar to trusts for article 5m, and we also use a SPV custodial institution to hold the company is also not similar to a trust as there is fiduciary bond relationship.

Misconceptions Regarding Service Provision to Russian-Owned Companies

It is important to address the prevailing misconception concerning the scope of sanctions and service bans. There is unwarranted fear that providing services for companies owned by Russians is subject to bans. Current restrictions apply only to trusts and similar legal structures, not directly to companies. This distinction is crucial for Liechtenstein trustees and service providers, as it clarifies that the prohibition does not automatically extend to companies, even if they are owned by Russian individuals who are not explicitly named as sanctioned persons or entities.

The fear of breaching sanctions by servicing Russian-owned companies is not supported by the regulatory framework. The present paralysis is largely a consequence of over-caution, rather than a direct legal requirement. This has significant implications for the ongoing management and operation of companies associated with the affected trusts, and highlights the need for a clearer, fact-based approach when interpreting sanction-related obligations.

1 Some EU authorities rule the ban on trust services does not extend to companies

Several EU countries' authorities have publicly taken the position that the article 5m «trust services» ban in EU Russia sanctions does not automatically extend to ordinary company administration or corporate services where no trust or similar legal arrangement is involved.

This means that while the overarching EU regulations have caused considerable uncertainty, especially amongst service providers wary of inadvertently breaching sanctions, there remains a clear distinction made by several national regulators between trust-related prohibitions and the administration of ordinary companies. In practice, this allows for the continuation of standard company management services for Russian-owned entities, provided there is no underlying trust or comparable structure involved.

However, the approaches subtly differ, make it complex and ambiguous. **Cyprus** is one of the clearest examples, where guidance distinguishes between "trust or similar legal arrangements" and standard corporate/ASP work for companies with Russian ownership, and concludes that article 5m does not by itself prohibit services to such companies if no qualifying trust relationship exists.

Cyprus excludes companies from sanctions on trusts

- Cyprus Bar Association (CBA) and the Cyprus Ministry of Finance[1] confirms the **term «similar legal arrangements' does not extend to companies»**.
- MoF issued an announcement making clarifications on the 5th package of sanctions of the European Commission against Russia, specifically addressing the recent prohibition introduced under Article 5m of Regulation (EU) 833/2014 which prohibits the provision of certain trust services.
- The MoF's announcement clarified that:
  - **The Cyprus MoF clarification «Companies are not similar to trusts».** The prohibition in Article 5m is equivalent to the prohibitions set out in Article 5b of Regulation 833 in respect of deposits.
  - The prohibition refers to:
    - The registration, provision of registered office, business or administrative address, as well as management services to new trusts or new similar legal arrangements, which trigger the application of Article 5m

[1] MoF Article 5m Guidance - Cyprus' sanction guidelines explicitly clarifies that the term «**similar legal arrangements**» does **not extend to companies**. This clarification was issued by Cyprus's Ministry of Finance on April 12, 2022, regarding Article 5m of EU Regulation 833/2014, which prohibits certain trust services as part of EU sanctions against Russia. The guidance makes clear that while the sanctions target trusts and similar legal arrangements, companies are treated as separate entities and are not considered trusts for these purposes.
https://www.harneys.com/our-blogs/regulatory/guidance-issued-by-cyprus-authorities-on-prohibition-of-certain-trust-services-under-fifth-wave-of-eu-sanctions-on-russia/

- The provision of services of trustee, nominee shareholder, director, secretary or similar position for a new trust or new similar legal arrangement, which trigger the application of Article 5m
- The EU sanctions against Russia prohibit the provision of «trust services» to Russian nationals or residents. There was initial uncertainty about whether standard corporate services (forming a company, acting as a director, providing a registered address) would be caught under this broad term.

2 Companies are regarded as similar to trusts when there is a fiduciary bond and simultaneously a separation of ownership from beneficiaries.

- It would be relevant to assess such an arrangement's structure or function as compared to that of a trust, such as **a) the establishment of a fiduciary bond between parties** and **b) a separation or disconnection of legal and beneficial ownership of assets.**

a) What is a fiduciary bond

- Its primary function is to manage and administer assets for the benefit of another person, according to the terms of a legal agreement (e.g., a trust deed or a will), A «Settlor» creates a trust, transfers assets to it, and appoints a «Trustee» as the fiduciary. The Trustee's job is to manage those assets for the "Beneficiaries.
- The Trustee must make active decisions to fulfil this duty.
- The fiduciary has active decision-making power and is legally bound to use that power solely for the benefit of the beneficiaries, not for themselves.
- Fiduciary's primary role is to act in the client's best interest. Provides advice or makes decisions that are solely for the benefit of the client.
- Standard of Care: Legally bound to the highest standard of care, known as the fiduciary duty. This includes Duty of Loyalty, Duty of Care. Duty of Good Faith.
- Function: Its primary function is to manage and administer assets for the benefit of another person, according to the terms of a legal agreement (e.g., trust deed or a will).
- A person (the «Settlor») creates a trust, transfers assets to it, and appoints a «Trustee» (the fiduciary). The Trustee's job is to manage those assets for the Beneficiaries. The Trustee must make active decisions to fulfil this duty.
- Key Point: The fiduciary has active decision-making power and is legally bound to use that power solely for the benefit of the beneficiaries, not for themselves.

b) Separation or disconnection of legal and beneficial ownership of assets.

- A Custodial Institution «vault keeper»:
  - A custodian's primary role: To safeguard assets.
  - Core function: Holding and protecting client assets to prevent loss or theft.
  - Key Responsibilities:
    - Physical and electronic safekeeping of assets.
    - Settling trades (exchanging money for securities).
    - Processing corporate actions (like dividends or stock splits).
    - Providing account statements and transaction records. Standard of Care:
    - They have a duty of care to protect the assets from physical loss or unauthorized access. Primarily about safety and accurate record-keeping.
- Key Point: The client retains all decision-making power. The custodian is a passive, service-oriented entity.

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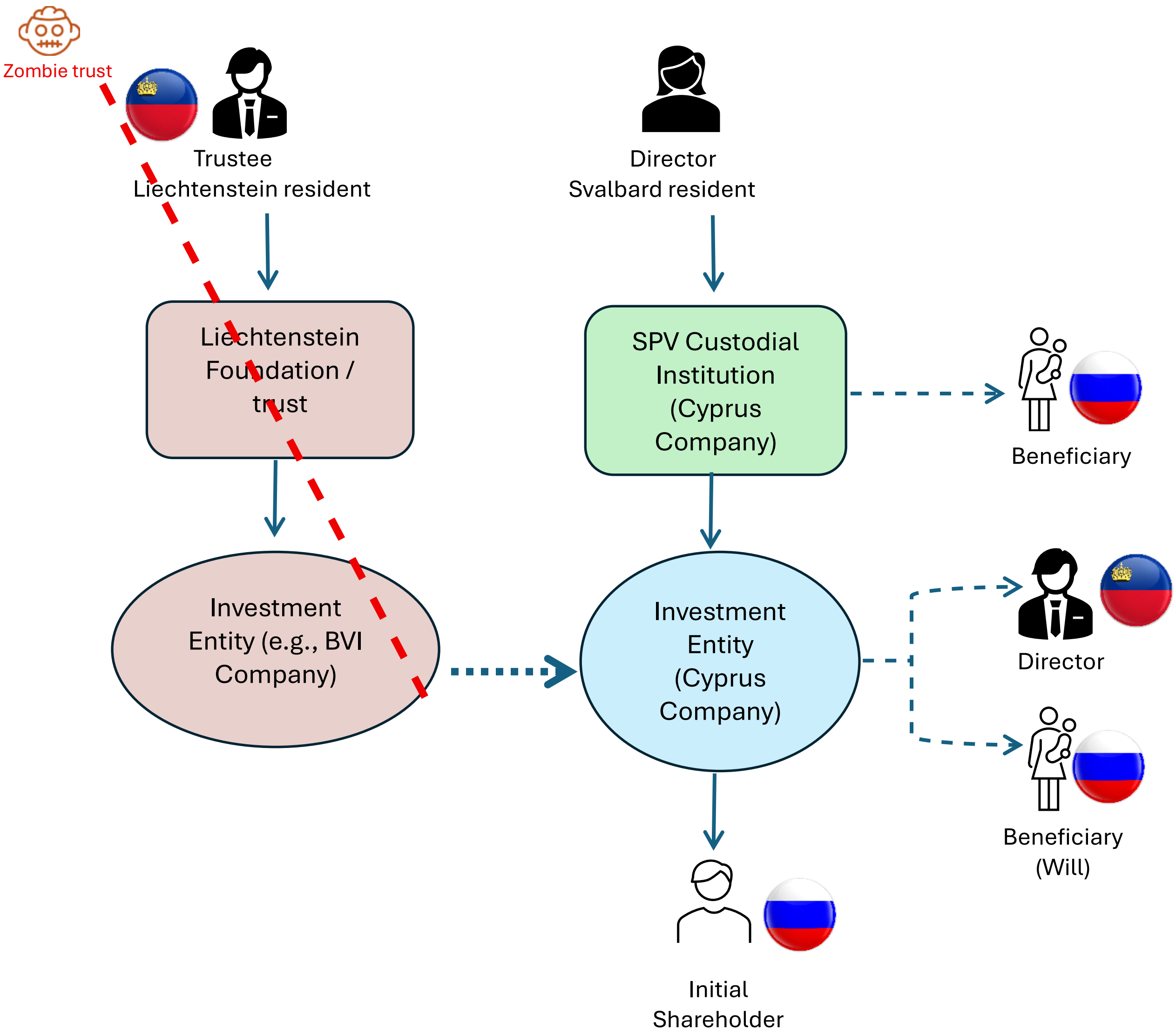
Permitted structure on services to Russians, whilst excluded from AEoI



The deceased shareholder's Will:

- A company can transfer shares to a third party upon the death of a shareholder, but it is not automatic. The process depends almost entirely on the company's governing documents and the deceased shareholder's estate plan.
- If the company's documents (Shareholders agreement and Articles) allow a transfer to a beneficiary, then the shares will pass according to the shareholder's Will.
- The shares become part of the deceased's estate.
- The Executor of the Will is responsible for administering the estate, which includes these shares.
- The Executor will transfer the shares to the beneficiary named in the Will
- If there is no Will, the rules of intestacy apply, and the shares will pass to the next of kin.

1. **Upper tier company (Custodial Institution):**
    - The articles and memorandum permit the shares to be automatically transferred to third parties (family) upon death of initial shareholder.
    - **This is not equivalent to a trust as there is no fiduciary bond.** It is a custodial relationship. The owner is not a third party, hence not similar to a trust.
    - Place of effective management of the SPV is Svalbard (CRS non-participating).
    - Therefore, it is a non-reporting Financial Institution (Custodial Institution) and thus no CSS look-through. Furthermore, entities with management and control located in Svalbard[2] are not subject to any exchange of information because the territory is uniquely excluded from all of Norway's tax agreements

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[2]**a. The Core Principle of the Svalbard Treaty: Non-Discrimination**

The 1925 treaty, signed by 48 countries, grants Norway "full and absolute sovereignty" over Svalbard. However, this sovereignty is crucially conditioned on one fundamental principle: equal treatment for all nationals and companies of the treaty's signatory states.

- Article 8 states that taxes levied in Svalbard shall be devoted exclusively to Svalbard and shall not exceed what is required to support its administration and local needs. Most importantly, the spirit and specific articles of the treaty require that all economic activities (like fishing, mining, hunting, and maritime, commercial, and industrial operations) be conducted on a completely non-discriminatory basis.

b. The Conflict with Modern Tax Agreements

- Modern tax transparency and information exchange agreements like CRS and FATCA are inherently bilateral or multilateral in nature. They are based on reciprocity between specific countries.
- If Norway were to include Svalbard in, for example, a CRS agreement with the United States, it would mean that U.S. tax residents with accounts in Svalbard would have their data reported to the U.S., while Russian, Chinese, or other treaty nationals' data would not be automatically shared (unless their countries also had such an agreement with Norway covering Svalbard).
- This creates a system of different treatment based on nationality, which directly violates the non-discrimination principle of the Svalbard Treaty. Granting one treaty nation's citizens the "advantage" of financial privacy (by not reporting) while denying it to others would be illegal under the treaty.

c. Norway's Consistent Stance and Practical Solution

- Norway is extremely careful to avoid any action that could be interpreted as breaching the Svalbard Treaty, as this could invite international disputes.
- Uniform Exclusion: The simplest and legally safest way to comply is to exclude Svalbard from all bilateral and multilateral agreements that could create differential treatment. This is why you see a standard clause in Norway's tax treaties stating something like: "This agreement shall not apply to Svalbard, Jan Mayen, and the Norwegian dependencies."
- Separate, Simpler Tax Regime: Svalbard has its own, much simpler tax system, designed to comply with Treaty Article 8. The tax rates are low and meant only to cover the costs of local administration in Longyearbyen and Barentsburg. Implementing the complex reporting systems of CRS/FATCA for such a small, unique economy would be disproportionate and legally problematic.
- Fear of Setting a Precedent: If Norway made an exception for one tax agreement, it could be forced to include Svalbard in all, or face accusations of selective discrimination. Uniform exclusion is the cleanest legal policy.

d. The Consequence: Svalbard as a "Black Hole" for Tax Transparency

- This exclusion has a significant side effect: Svalbard becomes a gap in the global tax transparency network.
- Financial institutions in Svalbard are not obligated to perform due diligence or report under CRS or FATCA.
- This, combined with the low-tax regime, has historically made Svalbard attractive for certain corporate registrations and activities aimed at minimizing tax transparency, although Norway has taken some domestic legislative steps to curb the most aggressive forms of avoidance.

e. The Legal Logic Chain

- Svalbard Treaty: Establishes absolute non-discrimination among signatory states' nationals.
- Modern Tax Agreements: Are based on reciprocal, country-pair-specific data exchange, inherently creating differential treatment.
- Conflict: Applying these agreements to Svalbard would violate the Treaty by treating nationals of some signatory states (those with an agreement) differently from others (those without).
- Norway's Solution: Universally exclude Svalbard from all such agreements to uphold its Treaty obligations and avoid international legal challenges.
- In essence, Norway prioritizes its binding obligations under the 1920 Svalbard Treaty over the newer, voluntary frameworks of international tax cooperation when it comes to the archipelago. The exclusion is a deliberate and necessary legal choice to prevent a breach of a foundational international treaty.

2. Lower tier company (Professionally Managed Investment Entity):

- Its classification is based on its own activities and management. The fact that its investment portfolio is managed by a bank (a Financial Institution) is sufficient to classify it as an Investment Entity, regardless of its shareholder.
- Therefore, it is a Financial Institution . This is the core of the issue. The bottom company (the Investment Entity) has an equity interest held by the top company (the Custodial Institution is located in Svalbard).
- The CRS rules specifically state that an Equity Interest is not considered a «Financial Account» if it is held by a Financial Institution, unless it's an Investment entity in a non-participating jurisdiction.

Conclusion[3]

Companies in structure are not similar to trusts

- The use of Cyprus companies are not subject to the EU ban on providing trust services, as Cyprus excludes companies from the EU sanctions (unless shareholder is named in the SDN), the company is not a fiduciary bond, and there is no separation of legal ownership from beneficial ownership.
- The upper company is a custodial institution and as there is no fiduciary bond, it is not similar to a trust.
- The lower company has a Liechtenstein director.
- No AEOI and Exchange on Request/Demand:
    - The equity interest held by the top company (Custodial Institution) is not reportable as the Custodial Institution company is located Svalbard, a non-participating CRS jurisdiction.
    - The bottom Company (the Investment Entity) looks at its owner, sees a Non-Reporting Financial Institution, and has no obligation to look through it or report any controlling persons in relation to that equity interest.
    - The Russian resident shareholder is not reported because the entity that owns the Investment Entity is itself a Non-Reporting FI, breaking the reporting chain.
    - The bottom Investment Entity has no reporting obligation
    - Note there is no Exchange on Demand on this structure as the owner is resident in Svalbard, which has no tax agreements with any country.

[3] Google «**Mark Morris CRS expert**» or AI search such as ChatGPT on «Mark Morris CRS Custodial Institution loophole.» CRS does not mandate a broad look-through for all non-participating financial institutions (FFIs), especially custodial ones. Normally, if an account holder is an FI (custodial, depository, etc.), then the account is not treated as a "Reportable Account" under CRS, because the holder is itself an FI rather than a "reportable person." However, there is an important exception: if the FI is an Investment Entity and is resident in a Non-Participating Jurisdiction then under CRS it is treated as a Passive NFE, not as a "Participating-Jurisdiction FI." In that case the "look-through" rules apply: the FI is treated as a passive NFE, and its Controlling Persons (beneficial owners) must be identified and reported (if they are reportable persons). Because custodial institutions (non-participating) are typically treated as FIs rather than Passive NFEs, their existence can create a gap: assets held by such non-participating FIs may not trigger reporting under CRS. That is essentially the "loophole" relied upon by some structuring-schemes. Importantly: this divergence between how non-participating custodians is treated vs. non-participating investment FIs appears to be by design, not an oversight; CRS authors made a specific carve-out.

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The US warning is for "bad" Russians, viz Russian military industrial base and those operating in specific sectors such as technology, defence, construction aerospace and manufacturing). Perhaps Liechtenstein's zero tolerance policy is too overly cautious, throwing the baby out with the bath water.

The U.S. has warned foreign financial institutions that they risk secondary sanctions for conducting or facilitating significant transactions involving Russia's military-industrial base, even if the specific Russian client is not individually sanctioned. This authority was expanded in late 2023 and mid-2024.

Key aspects of this policy:

Executive Order 14114: Issued on December 22, 2023, this executive order granted the U.S. Treasury the authority to impose sanctions on FFIs for two types of activities:

Conducting significant transactions with persons already designated under E.O. 14024 for operating in specific sectors (technology, defence, construction, aerospace, or manufacturing) of the Russian economy.

Conducting or facilitating any significant transaction, or providing any service, involving Russia's military-industrial base, including the sale, supply, or transfer to Russia of certain identified military-related items.

Expanded Definition of "Military-Industrial Base": On June 12, 2024, the U.S. broadened the interpretation of "Russia's military-industrial base" to include all persons designated under E.O. 14024, which encompasses thousands of individuals and entities, including most major Russian banks like Sberbank and VTB.

This means that FFIs conducting significant transactions with any E.O. 14024 sanctioned entity risk U.S. secondary sanctions, regardless of the sector or the presence of a U.S. nexus to the transaction.

OFAC Guidance and "Red Flags":

The U.S. Treasury's Office of Foreign Assets Control (OFAC) has issued advisories and FAQs to guide FFIs on compliance, including "red flags" to watch for, such as:

Joining or using Russia's System for Transfer of Financial Messages (SPFS), the Russian alternative to SWIFT, is considered a significant sanctions risk.

Engaging in transactions with exposure to supply chains for military-related goods.

OFAC has also stressed the need for enhanced due diligence, especially for business in jurisdictions that continue significant trade with Russia, such as China, Turkey, and the UAE.

This expanded authority has significantly raised the sanctions risk for non-U.S. financial institutions and has led many to cease or reduce their Russia-related transactions to avoid potential penalties.

Sanctioned Liechtenstein trustees

The main Liechtenstein entity that the United States has explicitly penalized with sanctions for dealings with Russians is Sequoia Treuhand Trust Reg.

Named Liechtenstein entities

Sequoia Treuhand Trust Reg, a trust services company based in Ruggell, was sanctioned by the U.S. Treasury for providing services to Russian elites, including Gennady Timchenko and associates of Alisher Usmanov, and thus helping them manage assets and structures despite existing sanctions.

U.S. authorities described the firm as part of a wider facilitation network supporting sanctioned Russian oligarchs through complex trust and asset-holding arrangements.

Other Liechtenstein links to Russia sanctions

Separate from Sequoia Treuhand Trust, Liechtenstein has seen hundreds of Russia-linked trusts and structures come under pressure or become “zombie” trusts as managers resign to avoid exposure to U.S. sanctions risk, but these structures are generally not individually named as sanctioned entities.

Reports also describe broader U.S. pressure on Liechtenstein’s financial sector and regulators to avoid dealings with sanctioned Russians, leading to tighter oversight and a zero-tolerance approach, even where formal U.S. sanctions designations are not public for each individual trust.

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