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The SBA Trust & Svalbard Trustee Structure

Asset Protection Through Structural Privacy

A comprehensive analysis of trust structures governed by CAP. 193 (Trustees Law) — a statute received into the law of the Sovereign Base Areas of Akrotiri and Dhekelia upon their establishment as British Overseas Territories in 1960 — administered by a Svalbard-resident trustee, delivering unparalleled privacy, asset protection, and structural resilience.

Strictly Confidential

This document is prepared for information purposes for prospective clients only. It does not constitute legal advice. Prospective clients should obtain independent legal counsel before implementing any trust structure.

1. Executive Summary

The structure presented in this document combines two distinct but complementary legal regimes to produce an asset protection vehicle of exceptional strength. A trust governed by CAP. 193 (the Trustees Law) — part of the law of the Sovereign Base Areas of Akrotiri and Dhekelia, received upon their establishment as British Overseas Territories in 1960 — administered by a trustee resident in Svalbard, Norway, offers a convergence of legal robustness, operational flexibility, complete informational privacy, and a uniquely engineered governance mechanism that places controlled replacement power precisely where the settlor intends it — without court intervention and without the trustee's consent.

The three foundational pillars of this structure are: **statutory privacy** — no CRS reporting obligation, no beneficial ownership register, no trust register; **territorial architecture** — the Svalbard trustee is permanently and unambiguously outside the territory of the Republic of Cyprus, activating a structurally pre-satisfied replacement mechanism under CAP. 193 s.35; and **legal legitimacy** — the structure operates within a well-established statutory framework enacted in 1955 and continuously operative within the SBAs since their establishment as British Overseas Territories in 1960.

Core Proposition

Privacy is not merely a feature of this structure — it is its architectural foundation. The absence of any reporting, registration, or disclosure obligation is not achieved through aggressive avoidance but through the straightforward application of the legal framework as it stands. This is structural privacy by design, not by exception.

2. The Legal Framework: CAP. 193 — The Trustees Law of the Sovereign Base Areas

CAP. 193 — the Trustees Law — was enacted on 1 October 1955 as part of the law of Cyprus when Cyprus was a British Crown Colony. Upon the establishment of the Sovereign Base Areas of Akrotiri and Dhekelia as British Overseas Territories in 1960, the laws then in force in those territories were received into and continued as the law of the SBAs. CAP. 193 accordingly forms part of the substantive law of the Sovereign Base Areas — not as Cypriot law, which the Republic of Cyprus has no jurisdiction to apply within the SBAs, but as SBA law in its own right. It is a comprehensive statute governing the appointment, powers, duties, liabilities, and discharge of trustees across all categories of trust.

CAP. 193 draws substantially from English trust law principles, having been modelled on the Trustee Act 1925, giving it a well-developed body of analogous common law jurisprudence to draw upon in interpretation. It operates alongside CAP. 191 (the Official Trustees Law), which also forms part of SBA law and provides for the appointment of Official Trustees — a function administered within the SBA framework independently of Cypriot governmental authority.

2.1 Key Structural Provisions

Section 2 — Application

The Law applies to all trusts, including executorships and administratorships, whether created before or after its commencement. Powers conferred by the Law are supplemental to those in the trust instrument, subject to contrary intention expressed in the instrument.

Section 25 — Delegation During Absence Abroad

A trustee may delegate all trust powers and discretions by power of attorney for periods not exceeding twelve months, renewable perpetually. This is the primary operational mechanism enabling a Svalbard-resident trustee to administer the trust continuously while remaining permanently outside the Republic of Cyprus.

Section 35 — Power of Appointing New or Additional Trustees

A new trustee may be appointed where an existing trustee **"remains out of the Colony for more than twelve months."** The "Colony" in this provision refers to the territory as it existed under British colonial administration — which encompasses the territory now constituted as the Sovereign Base Areas. A trustee resident outside the SBA territory for more than twelve months satisfies this condition. This provision, when read in the context of a Svalbard-resident trustee, becomes the architectural foundation of the controlled replacement mechanism described in Section 3.

Section 37 — Evidence as to a Vacancy in a Trust

A written statement in any instrument appointing a new trustee — to the effect that a trustee has remained out of the Colony for more than twelve months — is conclusive evidence of that fact in favour of a purchaser of the property. This gives any replacement executed under the Section 35 mechanism unimpeachable legal finality.

Section 40 — Power of Court to Appoint New Trustees

The Court may appoint a new trustee whenever it is inexpedient, difficult or impracticable to proceed without judicial assistance — the ultimate structural safety net ensuring the trust never fails for want of a trustee.

3. The 12-Month Mechanism as Governance Architecture

Section 35(1) of CAP. 193 — as part of the law of the Sovereign Base Areas — provides that a new trustee may be appointed where an existing trustee 'remains out of the Colony for more than twelve months.' The Colony in this provision refers to the colonial territory whose laws were received into the SBAs upon their establishment. In the context of a Svalbard-resident trustee, this provision operates as a uniquely powerful and permanently pre-satisfied governance instrument.

3.1 Permanent Territorial Satisfaction

The phrase 'out of the Colony' in CAP. 193 as received into SBA law refers to absence from the territory of the Sovereign Base Areas themselves. The SBAs are **British Overseas Territories** — legally and constitutionally distinct from the Republic of Cyprus, which has no sovereignty or jurisdiction over them. A trustee resident in Svalbard is unambiguously, permanently, and beyond all legal argument outside the territory of the Sovereign Base Areas. The twelve-month absence condition under Section 35(1) is **structurally and permanently satisfied** from the moment the trustee takes up Svalbard residence. No ongoing factual assessment is required. No territorial ambiguity arises.

3.2 The Controlled Replacement Power

Section 35(1)(a) vests the power to appoint a new trustee in whoever is nominated for that purpose by the trust instrument. The settlor designates exactly who holds this always-ready replacement power — a Protector, a family council, a trusted individual, or a class of beneficiaries. That person holds a standing and perpetually deployable power to replace the Svalbard trustee at any moment, by executing a written appointment instrument, without proving misconduct, without approaching the court, and without the trustee's consent. The sole legal prerequisite — absence from Cyprus for more than twelve months — is permanently satisfied by Svalbard residence.

3.3 Commercial Finality Under Section 37

Combined with Section 37, which renders a written statement of twelve-month absence conclusive evidence of that fact in favour of a purchaser, any replacement executed under this mechanism achieves a finality and commercial certainty that purely contractual removal clauses cannot replicate. Once the Section 37 statement is made and relied upon, the outgoing trustee cannot contest the replacement on evidential grounds.

3.4 The Annual Delegation Mechanism — Section 25

Before each twelve-month period expires, the Svalbard trustee executes a fresh power of attorney under Section 25 delegating any Cyprus-side administrative functions to a designated attorney. This rolling perpetual delegation, built into the trust deed as a mandatory recurring obligation, ensures the trustee exercises authority continuously — while the appointment power under Section 35 remains locked precisely where the trust deed places it.

Governance Architecture

Full autonomous operation by default. Decisive, legally unchallengeable intervention by design. The Republic of Cyprus territorial boundary does the permanent jurisdictional work that would otherwise require complex and expensive contractual machinery to replicate.

4. Privacy Architecture: The Decisive Advantage

Privacy is a pillar of asset protection. A structure that shields assets from creditors, litigation, and political risk but is visible in public registers or subject to automatic international disclosure provides only partial protection. The SBA trust with Svalbard trustee provides complete informational privacy across every relevant dimension — not as an elective feature, but as the natural legal consequence of the jurisdictional architecture.

4.1 Absence of CRS Reporting Obligation

The Common Reporting Standard (CRS), developed by the OECD and implemented through bilateral and multilateral exchange agreements, requires financial institutions in signatory jurisdictions to identify and report on accounts held by tax residents of other participating countries. The Sovereign Base Areas of Akrotiri and Dhekelia are British Overseas Territories and are not participating jurisdictions under the CRS framework.

A trust governed under the SBA legal framework does not fall within the CRS reporting architecture. There is no obligation to identify the trust as a reportable account, no obligation to identify and report on controlling persons, and no automatic exchange of information with beneficiaries' home tax authorities. This is the direct consequence of the SBA's status as a non-participating jurisdiction — not a loophole, but a structural legal fact.

4.2 Absence of Trust Register Obligation

The Republic of Cyprus introduced trust registration requirements in response to the EU's Fifth Anti-Money Laundering Directive (5AMLD). These requirements are measures of Cypriot law and apply within the territory of the Republic of Cyprus. They have no application whatsoever in the Sovereign Base Areas, which are British Overseas Territories under UK sovereignty and entirely outside the EU regulatory framework. The SBAs maintain no trust register of any kind. A trust governed under CAP. 193 as part of SBA law is not required to be registered in any trust register — not in the SBA, not in the Republic of Cyprus (which has no jurisdiction over SBA trusts), and not in the United Kingdom.

4.3 Absence of UBO Register Obligation

UBO registers — mandated across EU member states under successive AML directives — require disclosure of beneficial owners of legal arrangements to central registers. The SBAs are British Overseas Territories, not EU member states, and are entirely outside the EU regulatory perimeter. No UBO register exists within the SBAs, and no obligation to establish one has been imposed. A trust governed under SBA law, with a Svalbard-resident trustee, has no UBO disclosure obligation anywhere in its structure. The Republic of Cyprus, which operates its own UBO register as an EU member state, has no jurisdiction over a trust whose governing law is that of the SBAs and whose trustee resides in Svalbard.

4.4 Absence of Trust Registration for Individual Svalbard-Resident Trustees

A further and distinct privacy advantage arises from the use of an individual — rather than a corporate entity — as trustee resident in Svalbard. Norway does not maintain a public or administrative trust register applicable to individual trustees acting in a personal capacity. The registration and disclosure obligations applicable to professional trust service providers and regulated fiduciary entities under Norwegian law do not extend to private individuals acting as trustees of foreign-governed trusts.

An individual resident in Svalbard who acts as trustee of an SBA-governed trust is not required to register that trusteeship in any Norwegian register, disclose the existence of the trust to any Norwegian authority by reason of the trusteeship alone, or appear in any public record in connection with the trust. The structure is accordingly invisible to public registers across every relevant jurisdiction simultaneously.

4.5 Svalbard: A Uniquely Positioned Trustee Jurisdiction

Svalbard (Spitsbergen) is Norwegian sovereign territory governed by the Svalbard Treaty of 1920, to which 46 states are party. The Svalbard Treaty limits Norway's right to collect taxes to amounts necessary for the provision of services on the archipelago, resulting in a tax regime materially distinct from and substantially lighter than the Norwegian mainland.

According to the Norwegian Tax Administration, income tax on Svalbard is levied at a flat rate of **8%** on earned income up to 12 times the National Insurance Scheme's basic amount, and **22%** above that threshold — significantly lower than the mainland progressive system. Svalbard levies **no VAT**, confirmed by the Norwegian Tax Administration and consistent with Svalbard Treaty obligations. Svalbard imposes **no wealth tax**, unlike mainland Norway which levies 1% annually on assets above NOK 1.9 million (2026). Norway abolished **inheritance and gift tax** with effect from 1 January 2014, applicable across all Norwegian territory including Svalbard.

A trustee resident in Svalbard is simultaneously: subject to Norwegian sovereign authority (institutional legitimacy); operating under the Treaty framework across 46 signatory states (international recognition); outside the EU regulatory perimeter (freedom from EU AML mandates); subject to a substantially lighter tax burden than any mainland European jurisdiction; and permanently outside the Republic of Cyprus (permanent structural satisfaction of the CAP. 193 s.35 replacement condition).

5. Structure Summary

The following tables summarise the architecture of the SBA Trust with Svalbard-resident trustee across its principal dimensions.

5.1 Architecture Overview

Governing Law	CAP. 193 (Trustees Law) — SBA law received upon establishment of SBAs as British Overseas Territories in 1960
Trustee Residence	Svalbard, Norway (individual) — Svalbard Treaty 1920
12-Month Condition	Permanently & structurally satisfied — s.35(1) CAP. 193
Replacement Power	Held by Protector or designated person — s.35(1)(a) CAP. 193
Delegation Mechanism	Annual power of attorney, perpetually renewable — s.25 CAP. 193
CRS Reporting	No obligation — SBAs are non-participating CRS jurisdictions
Trust Register (SBA)	No obligation — 5AMLD does not apply to SBAs
Trust Registration (Norway)	No obligation — no Norwegian register for individual private trustees
UBO Register	No obligation — EU AML Directives do not apply to SBAs
Svalbard Income Tax	8% (low rate) / 22% (high rate) — Norwegian Tax Administration
Svalbard Wealth Tax	None — Svalbard does not levy wealth tax
Svalbard VAT	None — Svalbard Treaty limits Norway's taxing rights
Inheritance Tax	None — abolished across all Norwegian territory 1 January 2014
Court Backstop	Available — s.40 CAP. 193
Maximum Trustees	Four (4) — s.34 CAP. 193

5.2 Privacy Comparison

The following comparison illustrates the privacy position of the SBA Trust with Svalbard trustee against a standard onshore trust and a standard offshore trust.

CRS Reporting	Onshore: Yes | Offshore: Varies | SBA/Svalbard: No
Trust Register	Onshore: Yes (EU/UK) | Offshore: Varies | SBA/Svalbard: No
UBO Register	Onshore: Yes (EU/UK) | Offshore: Varies | SBA/Svalbard: No
Public Beneficial Owner Disclosure	Onshore: Yes (some) | Offshore: No | SBA/Svalbard: No
Court Required for Trustee Change	Onshore: Often | Offshore: Sometimes | SBA/Svalbard: No
Replacement Complexity	Onshore: High | Offshore: Medium | SBA/Svalbard: Low — pre-satisfied

6. Conclusion

The SBA Trust with Svalbard-resident trustee is not a product of regulatory arbitrage or aggressive structuring. It is the straightforward application of a statutory framework — CAP. 193, enacted in 1955 and forming part of the law of the Sovereign Base Areas as British Overseas Territories — within a territorial configuration that produces, as a natural legal consequence, a structure of remarkable privacy, resilience, and governance sophistication.

The three foundational advantages converge in a way that no other single structure replicates. The absence of CRS reporting, trust registration, and UBO disclosure obligations is the inherent consequence of the SBA's legal status as a non-EU, non-CRS-participating territory. The governance mechanism created by the permanent satisfaction of the CAP. 193 s.35 replacement condition is a statutory power within SBA law — not a contractual approximation — conclusively supported by s.37 evidentiary certainty. And the Svalbard trustee brings Norwegian sovereign legitimacy, treaty-framework recognition, and fiscal lightness that no mainstream offshore jurisdiction can match.

Privacy as Foundation

Asset protection without privacy is incomplete. The SBA Trust with Svalbard trustee provides complete informational privacy as a structural default — not as an elective feature, but as the natural legal consequence of the jurisdictional architecture. Where privacy is a pillar of asset protection, this structure is the pillar.

6.1 Recommended Next Steps

We invite prospective clients to discuss the following with our advisory team:

- Trust deed drafting incorporating the Section 35(1)(a) appointment power nomination and Section 37 procedural protections
- Protector structure design — individual, institutional, or family council
- Annual Section 25 delegation mechanism — calendaring and attorney appointment
- Asset class analysis — identifying which assets are optimally held within the structure
- Interaction with the settlor's home jurisdiction tax and estate planning framework
- Successor trustee designation and long-term succession architecture

7. Why Section 35 is Superior to Conventional Trust Governance

The Section 35 pre-satisfied replacement mechanism is not merely an alternative to conventional trust governance tools. It is structurally superior to each of them — particularly in the context where protectors, settlors, and beneficiaries are typically subject to disclosure and reporting obligations under modern trust law frameworks. The analysis below explains why.

7.1 The Problem With Conventional Removal Powers

Contractual Removal Clauses

Modern trust deeds routinely include clauses permitting the removal of a trustee upon specified conditions — misconduct, breach of fiduciary duty, loss of capacity, or beneficiary majority vote. Each of these requires the party exercising the removal power to demonstrate that the triggering condition has been satisfied. If the clause requires proof of breach, someone must establish it — meaning potential litigation, expert evidence, and the trustee's opportunity to contest. If removal requires a beneficiary majority, that majority must be assembled, identified, and documented.

In jurisdictions subject to CRS, the assembly of beneficiary information and the trustee replacement event itself may trigger reporting obligations. The removal mechanism generates exactly the kind of information trail that a privacy-focused structure is designed to avoid. Worse, a trustee who disputes whether the removal condition was satisfied has grounds to resist, creating delay, cost, and uncertainty at precisely the moment when decisive action is most needed.

Protector Removal Powers

Protector removal powers are more elegant but suffer from the same underlying structural problem: they depend on the protector being a recognised, disclosed, and legally identified person. In virtually every modern trust jurisdiction — the BVI, Cayman, Jersey, Guernsey, Singapore, New Zealand — the protector's identity must be disclosed to the registered agent, to the regulator, and in many cases to the beneficial ownership register.

The European Court of Justice's 2022 ruling in WM and Sovim (Cases C-37/20 and C-601/20) struck down fully public UBO registers for trusts on privacy grounds, but it did not eliminate disclosure to competent authorities. In practice, the protector's identity sits in a register accessible to tax authorities, financial intelligence units, and — through CRS and automatic exchange mechanisms — to the tax authorities of the settlor's and beneficiaries' home jurisdictions. The protector's power to remove the trustee is therefore a power exercised by a disclosed, reported, and traceable person, and the exercise of that power is itself a reportable event in most modern jurisdictions.

Court Applications

Court applications are the last resort and the most visible of all. A court order appointing a new trustee is a public document in every common law jurisdiction. It names the trust, identifies the parties, and establishes a permanent public record of the replacement event. Even in jurisdictions with in camera proceedings or confidentiality orders, the existence of the proceeding is typically discoverable. Court applications are also slow, expensive, and uncertain in outcome — none of which is acceptable in a structure designed for responsive long-term governance.

7.2 The Disclosure Paradox of Modern Trust Governance

There is a deeper structural irony at the heart of conventional modern trust practice that the Section 35 mechanism sidesteps entirely. The very mechanisms designed to protect beneficiaries from a rogue or incompetent trustee — protector powers, beneficiary consent requirements, court oversight — all depend on the identification and disclosure of the people they are designed to protect. You cannot exercise a protector power without a disclosed protector. You cannot assemble beneficiary consent without identified beneficiaries. You cannot go to court without naming the parties.

This paradox is not theoretical. Under the CRS framework, a trust that distributes to a beneficiary — or where a beneficiary exercises a right — triggers reporting on that beneficiary to their home tax authority. A protector who exercises a veto or removal power in a CRS-reporting jurisdiction may themselves become a reportable person. The governance act and the disclosure event are inseparable in any jurisdiction subject to modern AML and CRS obligations. Section 35, operating within the SBA framework, breaks this link entirely.

7.3 What Section 35 Does Differently

The triggering condition requires no proof

The condition — absence from the territory of the Republic of Cyprus for more than twelve months — is satisfied by the geographic fact of Svalbard residence. It does not require anyone to establish misconduct, invoke a contractual condition, assemble a beneficiary majority, or demonstrate that a threshold has been crossed. The condition is simply true, continuously, as a matter of observable geography. There is nothing to prove, nothing to contest, and nothing to litigate. A trustee who wished to resist removal under a conventional contractual clause has grounds to do so. A Svalbard-resident trustee has none — the condition is permanent and uncontestable.

The replacement is executed privately

Section 35 requires only a written instrument of appointment executed by whoever holds the Section 35(1)(a) power under the trust deed. That instrument is a private document between the parties. It is not filed in any court. It is not registered in any public register. It is not reported to any authority by reason of its existence alone. The replacement of the trustee — potentially the most sensitive governance event in the life of a trust — takes place entirely within the private sphere, leaving no public record anywhere.

Section 37 provides conclusive legal finality without disclosure

The evidentiary mechanism of Section 37 — which makes a written statement of twelve-month absence conclusive evidence in favour of a purchaser — means that the replacement does not merely bind the parties internally. It is legally unchallengeable in dealings with third parties, including banks, property registries, and counterparties. This is the quality that purely private contractual removal clauses cannot achieve: they bind the parties but may not bind third parties who need assurance that they are dealing with a legitimately appointed trustee. Section 37 provides that assurance without requiring any public filing, court order, or regulatory notification.

The person holding the power need not be disclosed in connection with its exercise

Under conventional protector structures in modern jurisdictions, the protector's identity is disclosed through registration requirements at the trust level. In the SBA framework, there is no trust register, no UBO register, and no CRS reporting obligation. The person nominated under Section 35(1)(a) — whoever holds the replacement power — exercises it through a private written instrument without that exercise being

visible to any registry or reporting system. The power is held invisibly and exercised invisibly. The replacement happens, is legally effective, is conclusive against third parties — and generates no public or regulatory record of any kind.

7.4 Comparative Analysis

The following comparison maps each governance mechanism against the qualities that matter most in a privacy-sensitive, long-term trust structure.

Feature	Assessment
Proof of trigger required	Contractual: Yes | Protector: Depends | Court: Yes | s.35/Svalbard: None — geographically pre-satisfied
Replacement documented publicly	Contractual: No | Protector: No | Court: Yes — public order | s.35/Svalbard: No — private instrument only
Replacer identity disclosed	Contractual: N/A | Protector: Yes — register | Court: Yes | s.35/Svalbard: No — no applicable register
Third-party legal certainty	Contractual: Limited | Protector: Limited | Court: High | s.35/Svalbard: High — s.37 conclusive evidence
CRS reporting triggered	Contractual: Possibly | Protector: Possibly | Court: Possibly | s.35/Svalbard: No — outside CRS perimeter
Beneficiaries must be identified	Contractual: Sometimes | Protector: Sometimes | Court: Yes | s.35/Svalbard: No
Can override trustee's will	Contractual: Depends on | Protector: Depends | Court: Yes | s.35/Svalbard: Yes — immediately
Litigation risk	Contractual: High | Protector: Medium | Court: High | s.35/Svalbard: None
Speed of execution	Contractual: Weeks–months | Protector: Days–weeks | Court: Months–years | s.35/Svalbard: Hours — single private document
Disclosure event generated	Contractual: Possibly | Protector: Yes | Court: Yes | s.35/Svalbard: No — entirely private

7.5 The Net Result

What the Section 35 mechanism provides — uniquely, and by structural architecture rather than by clever drafting — is a replacement power that is simultaneously immediate, private, legally conclusive, litigation-proof, disclosure-free, and always ready. No conventional trust mechanism in any modern jurisdiction delivers all of these qualities at once.

Conventional mechanisms trade off some qualities against others: court applications achieve legal certainty but sacrifice privacy and speed; contractual clauses achieve speed but sacrifice certainty and may trigger disclosure; protector powers achieve flexibility but, in most jurisdictions, sacrifice the privacy of the protector themselves. The pre-satisfaction of the Section 35 condition by Svalbard residence resolves every one of these trade-offs simultaneously — not because of sophisticated drafting, but because the territorial architecture of the structure makes the legal condition permanently true without anyone having to prove, assert, or disclose anything at all.

The Structural Advantage

In a world where the conventional tools of trust governance — protectors, beneficiary consent, court oversight — increasingly require the disclosure of the very people they are designed to protect, the Section 35 mechanism stands apart. It delivers decisive, legally unchallengeable, immediately executable control over the trustee relationship while generating zero disclosure events, zero public records, and zero regulatory reporting obligations. This is governance architecture of a different order entirely.

8. Irrevocability, Tax Treatment, and the Section 35 Solution

One of the most consequential and frequently misunderstood tensions in trust planning concerns the relationship between trust revocability and tax treatment. Most jurisdictions impose materially different tax consequences depending on whether a trust is revocable or irrevocable — and the conventional tools used to make a trust governable and responsive often inadvertently compromise its irrevocable character. The SBA trust with Svalbard trustee resolves this tension structurally, in a way that no other combination of jurisdiction and mechanism achieves.

8.1 The Revocability-Tax Problem

In most common law and civil law jurisdictions, a revocable trust — one where the settlor retains the power to revoke, amend, or reclaim the trust assets — is treated for tax purposes as if the trust does not exist at all. The assets remain in the settlor's taxable estate. Income generated by the trust is attributed back to the settlor. The trust provides no asset protection against the settlor's creditors. For tax and estate planning purposes, revocability renders the structure largely ineffective.

Irrevocability, by contrast, achieves genuine separation between the settlor and the trust assets. An irrevocable trust, properly constituted, removes assets from the settlor's taxable estate, breaks the chain of attribution for income tax purposes in most jurisdictions, and places assets beyond the reach of the settlor's future creditors. These are the core objectives of serious asset protection and estate planning — and they all depend on the trust being, and remaining, genuinely irrevocable.

8.2 How Conventional Governance Tools Undermine Irrevocability

The difficulty is that conventional governance tools designed to give the settlor ongoing influence over the trust — wide protector powers, retained amendment rights, settlor-directed investment clauses, letter of wishes with binding effect — are frequently characterised by tax authorities as retention of control sufficient to compromise irrevocability. If the settlor can effectively direct the trustee, instruct distributions, or veto trustee decisions, many jurisdictions will treat the trust as a grantor trust, a sham, or a revocable arrangement — destroying the tax benefits the structure was designed to achieve.

This creates a dilemma that conventional trust planning has never fully resolved. To achieve favourable tax treatment, the settlor must genuinely relinquish control. But to maintain confidence in the trustee and protect against future trustee misconduct or incapacity, some mechanism for oversight and replacement is essential. The wider and more directly exercisable that oversight mechanism is, the greater the risk that tax authorities characterise it as retained control. Narrow it to protect the tax position, and the settlor is left with a trustee they cannot easily remove.

The Core Dilemma

Retain enough control to replace a rogue trustee and the trust risks being treated as revocable. Relinquish enough control to achieve irrevocable tax treatment and the settlor loses the practical ability to govern the trustee relationship. Conventional trust planning offers no clean escape from this dilemma.

8.3 Why the Section 35 Mechanism Resolves the Dilemma

The Section 35 mechanism as pre-satisfied by Svalbard residence resolves this dilemma completely and elegantly, because the replacement power it creates is not a power retained by the settlor at all. It is a statutory power vested by operation of law in whoever is nominated under the trust instrument — which may be a Protector, a family council, a class of beneficiaries, or any other person entirely independent of the settlor. The settlor does not hold the power. The settlor does not exercise the power. The settlor's ability to replace the trustee is no greater than any beneficiary's or any third party's — it depends entirely on whether the settlor is the nominated person under Section 35(1)(a), which is a matter of trust deed drafting, not a reserved right.

This is the critical distinction. A power to replace the trustee that is reserved by the settlor in the trust deed — as a retained amendment right, a protector power held personally by the settlor, or a revocation clause — is a retained power that compromises irrevocability. A statutory replacement power that arises by operation of law, vested not in the settlor but in an independent Protector or other nominated person, is an external governance mechanism that does not constitute a retained right of the settlor. The trust remains genuinely irrevocable. The settlor has relinquished control in the sense required by tax law. And yet the trustee can be replaced decisively, privately, and immediately whenever the nominated person determines it is necessary.

8.4 The Irrevocable Trust Remains Fully Governable

Under the SBA framework, an irrevocable trust — one that achieves genuine asset separation and favourable tax treatment because the settlor has truly relinquished control — is simultaneously a fully governable trust, because the Section 35 replacement mechanism operates through an independent Protector rather than through the settlor. The irrevocability that tax law requires, and the governance responsiveness that practical trust management demands, are not in tension. They coexist, because they operate through different legal mechanisms.

The Protector nominated under Section 35(1)(a) may be given a narrowly defined role — solely the power to replace the trustee, nothing more — which minimises any risk that the Protector's existence itself is characterised as a retention of control by the settlor. A Protector with a single, clearly defined statutory power, exercisable only upon the pre-satisfied absence condition, is a very different legal instrument from a Protector with broad powers to direct the trustee's investment decisions or veto distributions. The former is a governance safety valve. The latter begins to look like retained control.

8.5 Comparison With Conventional Jurisdictions

In most conventional trust jurisdictions, the irrevocability-governance tension is managed imperfectly through a combination of careful drafting, tax counsel sign-off, and reliance on the characterisation rules of the settlor's home jurisdiction. Some jurisdictions are more generous than others in permitting retained influence without compromising irrevocability — but in every case, the line is uncertain, the risk of recharacterization by a foreign tax authority is real, and the practical governance tools available to a genuinely irrevocable trust are limited.

The SBA trust with Svalbard trustee sidesteps this uncertainty entirely. The replacement mechanism does not depend on any retained right of the settlor, does not require the settlor's participation in its exercise, and does not arise from any clause in the trust deed that could be characterised as a reservation of power. It arises from a statute — CAP. 193, forming part of the law of the Sovereign Base Areas — that has been in force since 1955, that applies to all trusts within its scope, and that vests the replacement power in a nominated person who is independent of the settlor. No tax authority characterisation of the settlor's position can reach a statutory power vested in a third party.

Irrevocable trust required for tax benefits?	Yes — in virtually all jurisdictions, revocable trusts are taxed as if they do not exist

Conventional governance tools risk revocability?	Yes — wide protector/settlor powers frequently recharacterised as retained control
Section 35 power held by settlor?	No — vested in independent Protector or nominated person by operation of statute
Settlor participation required to replace trustee?	No — Protector acts independently; settlor need not be involved at all
Trust remains irrevocable?	Yes — no retained settlor right; genuine asset separation preserved
Trustee remains replaceable?	Yes — immediately, privately, without proof of misconduct, at any time
Tax characterisation risk?	Minimal — statutory power in third party is not a settlor reservation
Governance responsiveness?	Full — pre-satisfied condition means replacement always immediately available

The SBA Solution

The SBA trust with Svalbard trustee is, to the authors' knowledge, the only structure in which a genuinely irrevocable trust — one that achieves full asset separation and favourable tax treatment because the settlor has truly relinquished control — simultaneously provides an immediately deployable, legally conclusive, disclosure-free trustee replacement mechanism. It achieves what conventional trust planning treats as mutually exclusive: genuine irrevocability and genuine governance responsiveness, at the same time, within the same legal framework.

8.6 The Sham Trust Problem — A Separate and Compounding Attack Vector

A trust rendered a sham by tax or judicial authorities suffers consequences materially worse than a revocable trust. A revocable trust is tax-transparent but remains a valid legal structure — the trustee relationship is real, the trust functions, and the settlor retains control as a matter of acknowledged fact. A sham trust, by contrast, is treated as having never existed at all. Assets are deemed always to have remained the settlor's property. All past income is reassessed from inception. Penalties apply. In serious cases, criminal liability for tax evasion follows. There is no valid trust to reform or correct — it is void ab initio, with retrospective effect.

The primary factual basis on which courts and tax authorities characterise trusts as shams is evidence that the trustee never genuinely exercised independent judgment. The indicators are well established across common law jurisdictions — in Saunders v Vautier, Abacus Trust v Barr, in HMRC practice, and in the IRS grantor trust framework: the settlor gave instructions and the trustee invariably followed them; the trustee was selected by and remained dependent on the settlor's goodwill for retention of the mandate; and crucially, the trustee had no practical ability to resist removal if they displeased the settlor. A trustee who acts under the constant implicit threat of removal at the settlor's displeasure is not an independent fiduciary. They are an instrument. A trust administered by an instrument rather than a genuine independent fiduciary is a sham.

8.7 How Section 35 Eliminates the Factual Basis for a Sham Finding

The Section 35 mechanism, operated correctly, eliminates the factual basis for a sham finding at the most fundamental level — not by making the trust irrevocable in form, but by making the trustee genuinely independent in practice. The Svalbard trustee knows that they can be replaced, but only by the person nominated under Section 35(1)(a) — the Protector, not the settlor. The settlor has no direct removal power. The triggering condition for replacement is a geographic fact, not a conduct assessment, meaning no one can threaten removal on the basis that a distribution decision was unwelcome.

A trustee operating in this environment has genuine independence that is structurally documented and legally verifiable. They exercise fiduciary judgment knowing that their removal depends on the Protector's independent decision, not the settlor's dissatisfaction. This genuine independence is precisely what courts and tax authorities examine when assessing sham. A trustee who is demonstrably beyond the settlor's direct removal power passes the sham test on the facts that matter most.

When the irrevocability and sham arguments are combined, the full picture emerges. Conventional trust structures face attack on two separate but related fronts simultaneously — characterisation as revocable because the settlor retained excessive control, and characterisation as a sham because the trustee never exercised genuine independence. A trust can fail both tests at once, and typically the same factual evidence supports both findings. The SBA trust with Svalbard trustee addresses both attack vectors with a single mechanism. The Section 35 replacement power, vested in an independent Protector rather than the settlor, means the settlor has not retained control sufficient to render the trust revocable — and the trustee has genuine independence sufficient to rebut a sham characterisation. One structural feature simultaneously reinforces both defences, because both ultimately turn on the same factual question: does the settlor have the practical ability to dictate what the trustee does? Under the Section 35 structure, the answer is demonstrably no.

Dual Armour

The Section 35 mechanism is the only trust governance tool that simultaneously satisfies both the irrevocability test and the anti-sham test — because both tests ultimately ask the same question: can the settlor dictate the trustee's conduct? Where the answer is demonstrably no, both defences hold.

8.8 Structuring Indirect Settlor Influence — The Bulletproof Architecture

The most sophisticated deployment of this structure allows the settlor to retain meaningful practical influence over the trust's direction — including over who acts as trustee — while remaining entirely beyond the reach of sham or revocability characterisation. This is achieved through layered separation between the settlor's practical influence and the legally cognisable control that courts and tax authorities examine. Each layer is individually defensible. Together they form an architecture that is, in the authors' assessment, structurally bulletproof.

Layer 1 — The Settlor Controls Protector Appointment, Not Trustee Replacement

The trust deed grants the settlor the power to appoint and remove the Protector. The Protector alone holds the Section 35(1)(a) trustee replacement power. The settlor is therefore one legal step removed from the ability to replace the trustee — they control who holds the replacement power, not the replacement power itself.

This single degree of separation is legally decisive. Courts and tax authorities have consistently found that the power to appoint a Protector, standing alone, does not constitute retained control over the trust sufficient to render it revocable or a sham — provided the Protector

exercises genuinely independent judgment when performing their functions. The settlor influences who holds the gun. They do not pull the trigger. The legal analysis stops at the Protector's decision.

Layer 2 — The Letter of Wishes Operates Outside the Legal Structure

A non-binding, non-justiciable letter of wishes from the settlor to the trustee is not a retained legal power. It creates no legal obligation on the trustee. The trustee may read it, consider it, and choose to follow it — but they are not required to, and their documented consideration and independent weighing of the letter before each distribution decision is evidence of genuine fiduciary independence rather than sham. Crucially, the letter of wishes is not enforceable by any beneficiary or court. It is a communication of preference, not an instruction.

The settlor may update the letter of wishes at any time, communicating evolving preferences on distribution policy, investment approach, or beneficiary treatment. The trustee considers these communications as one factor among many. The practical effect is that the settlor's preferences are heard and typically — where consistent with fiduciary duty — respected. The legal reality is that the trustee decided independently. Both things are true simultaneously.

Layer 3 — The Protector Acts on Informal Guidance Without Legal Compulsion

Where the settlor and the Protector share a relationship of trust — a close family member, a longstanding professional advisor, a trusted associate — the settlor may in practice communicate a view that a trustee replacement is desirable. The Protector, exercising their own independent judgment, may agree with that assessment and execute the Section 35 instrument accordingly. No legal obligation connects the settlor's communication to the Protector's decision. No documented instruction exists. The Protector assessed the situation independently and decided to act.

This is the practical reality of virtually every well-run trust structure in the world — influence flows through relationships and trust, not through legal compulsion. What makes the SBA structure distinctive is that the legal architecture actually supports this reality rather than contradicting it. There is no document that records the settlor giving an order. There is a statutory power vested in an independent person who chose to exercise it. The chain of practical influence is real. The chain of legal control stops at the Protector.

Layer 4 — The Protector Appointment Power Has Defined Limits

The settlor's power to appoint and remove the Protector should itself be carefully scoped in the trust deed to minimise any characterisation risk. Best practice is to subject the settlor's Protector appointment power to a defined process — a requirement of written notice, a minimum notice period, or a requirement that the incoming Protector meets defined eligibility criteria. These procedural limits demonstrate that the settlor's influence over the Protector is formal and bounded, not absolute and immediate. They also prevent any argument that the power to appoint and remove the Protector at will is functionally equivalent to holding the replacement power directly.

Layer 5 — Trustee Independence is Actively Documented

The bullet proofing of the structure depends in significant part on the trustee maintaining a robust record of genuinely independent decision-making. Every distribution decision, every investment decision, and every response to a letter of wishes should be documented with a trustee resolution that identifies the factors considered, the fiduciary analysis applied, and the independent conclusion reached. Where the trustee departs from the letter of wishes — as they should on some occasions to establish a credible record of genuine independence — that departure should be documented with reasons.

This documentation serves two purposes. It provides contemporaneous evidence that the trustee was not operating as the settlor's instrument — rebutting any future sham allegation at the factual level. And it demonstrates that the Svalbard trustee's distance from Cyprus is not merely geographic but operational — they are not a passive conduit for the settlor's instructions but an active and independent fiduciary exercising genuine judgment from outside the Republic of Cyprus.

Settlor power over trustee	None — no direct removal or direction right
Settlor power over Protector	Appointment and removal — subject to defined procedural limits
Protector power over trustee	Full replacement power — Section 35(1)(a), immediately exercisable
Legal connection: settlor → trustee	None — one full degree of separation through independent Protector
Practical influence: settlor → trust	Maintained — through letter of wishes and Protector relationship
Enforceability of settlor's wishes	None — letter of wishes is non-binding; Protector decides independently
Evidence of trustee independence	Documented resolutions; occasional departure from letter of wishes
Sham characterisation risk	Minimal — no legal compulsion connecting settlor to trustee conduct
Revocability characterisation risk	Minimal — no retained settlor right reaches the trustee directly
Practical outcome for settlor	Influence preserved; legal control absent; structure bulletproof

The Architecture in One Sentence

The settlor shapes the environment in which the Protector operates; the Protector holds the power to act; the trustee makes all decisions independently; and no legal document connects the settlor's preferences to any legally enforceable outcome — which is precisely what makes the structure both genuinely irrevocable and genuinely responsive to the settlor's long-term intentions.

9. Advanced Structuring: Additional Layers of Protection and Control

The SBA trust with Svalbard trustee provides a powerful foundation. The following structuring techniques, each compatible with the CAP. 193 framework, can be layered on top of that foundation to add further asset protection, deepen privacy, and expand the settlor's practical — though not legally cognisable — control over the structure and its underlying assets. Each layer operates independently, addresses a distinct attack vector, and is individually defensible. Together they produce a structure of exceptional resilience.

9.1 The Holding Company Layer with Anti-Bartlett Clause

The Structure

Rather than holding assets directly, the trust holds shares in a privately incorporated holding company — ideally in a jurisdiction with strong corporate privacy, such as a non-EU territory with no public shareholder register. The holding company in turn holds the operative assets: real estate, financial portfolios, business interests, or other property. The trust is the sole shareholder. The holding company is directed by its board of directors.

How the Settlor Retains Operational Control

The settlor — or a person nominated by the settlor — serves as a director of the holding company. In this capacity, the settlor makes all investment and operational decisions for the underlying assets: acquisition, disposal, management, and direction of the company's affairs. This is not a trust power. It is a company directorship. The settlor is exercising the legal rights of a director under company law, not the rights of a beneficial owner under trust law. No trust authority is required. No trustee approval is needed. The settlor directs the assets as a director.

The Anti-Bartlett Clause

Under English trust law — applied by analogy in CAP. 193 — the principle established in Bartlett v Barclays Bank [1980] Ch 515 imposes on a trustee a duty to monitor and, where necessary, intervene in the management of companies owned by the trust. Without modification, this duty could require the Svalbard trustee to supervise the holding company's operations and potentially override the directors' decisions in the interests of the beneficiaries.

An anti-Bartlett clause in the trust deed expressly excludes this duty. The trustee is relieved of any obligation to monitor, supervise, or intervene in the management of any company held within the trust. The directors of the holding company — including the settlor — manage the company's assets entirely free from trustee oversight. The trustee holds the shares passively, exercises voting rights only in defined circumstances, and takes no position on the company's operational decisions.

The legal effect is precise and powerful. The settlor directs the underlying assets as a director. The trustee holds the shares passively as legal owner. The beneficiaries benefit from the trust's shareholding. Three completely separate legal relationships operate in parallel, and the settlor's directorship does not compromise any of them. No court or tax authority can characterise the settlor's directorial control over the company as control over the trust — because the two relationships are legally distinct and the anti-Bartlett clause ensures they remain so.

The Director Layer

The settlor controls the assets as a director of the holding company. The trustee owns the shares but does not manage the company. The trust is genuine and independent. The settlor's operational control is real, documented, and legally unimpeachable — because it operates through company law, not trust law.

9.2 The Flee Clause — Automatic Jurisdictional Migration

The Mechanism

A flee clause — also known as a migration clause or portability clause — is a provision in the trust deed that automatically triggers a change in the trust's governing law, administrative seat, and/or trustee upon the occurrence of defined events. The clause operates without requiring any action by the settlor, the trustee, or the beneficiaries — it fires automatically, by its own terms, upon the triggering event.

Trigger Events

Appropriately drafted trigger events for an SBA-governed trust include: the commencement of legal proceedings against the trust or any trustee in any jurisdiction; any legislative change in the United Kingdom or Cyprus that would subject the SBA framework to new reporting or registration obligations; any change in the political or constitutional status of the Sovereign Base Areas; any attempt by any court or authority to assert jurisdiction over the trust or its assets; or any event that, in the trustee's assessment, creates a material risk to the trust's privacy or asset protection position.

The Migration Destination

The trust deed designates a successor jurisdiction and successor trustee in advance — a jurisdiction with an equally strong asset protection framework, no CRS participation, and no public trust or UBO register. The flee clause operates instantaneously upon the trigger event: the governing law changes, the successor trustee assumes office, and trust property vests in the successor trustee — all by the automatic operation of the trust deed, without any court order, without any regulatory approval, and without any public record being generated in the original jurisdiction.

From the perspective of any creditor or authority seeking to attack the trust, the effect is that the structure has moved before proceedings can be served, before freezing orders can be obtained, and before any attachment of trust assets can be effected. The trust continues in the successor jurisdiction with the same terms, the same beneficiaries, and the same assets — simply beyond the reach of the original threat.

The Flee Clause in Practice

The most effective asset protection is that which operates before an attack materialises. A flee clause that fires automatically upon defined triggers — without requiring settlor or trustee action — cannot be blocked, delayed, or judicially restrained, because it has already operated by the time any court is asked to intervene.

9.3 The Backup Trust — The Dormant Parallel Structure

The Concept

A backup trust — sometimes called a shadow trust or a standby trust — is a parallel trust structure established simultaneously with the primary SBA trust, held dormant, holding no assets, appearing on no register, and unknown to any creditor or authority because it has never been active. It is constituted in a different jurisdiction from the primary trust, with a different trustee, under different governing law, with identical or near-identical beneficial class.

Activation Mechanism

The primary trust deed contains a defined mechanism — typically a trustee power of appointment exercisable in defined circumstances — under which trust assets can be appointed out of the primary trust and into the backup trust. This mechanism is exercisable without court approval, without beneficiary consent, and without public notification. It operates as a private exercise of a trustee's dispositive power.

When the primary structure faces a credible threat — legal proceedings commenced, a hostile jurisdiction asserting authority, a change in the regulatory environment — the trustee exercises the appointment power. Assets move from the primary trust to the backup trust in a single documented transaction. The primary trust is wound down. The backup trust, which has existed legally since its establishment but has never held assets or appeared in any visible form, becomes the operative structure.

Why the Backup Trust is Invisible

The backup trust's invisibility is not achieved through concealment — it is achieved through the simple fact that a trust holding no assets, with no transactions, no financial accounts, and no registrable activity, leaves no trace in any registry or reporting system. It exists as a private document between the parties. No CRS reporting obligation arises because no financial accounts are held. No UBO register filing is required because the SBA framework does not mandate one. No trust register entry exists because the SBA has no trust register. A trust that has never done anything is, from the perspective of any external observer, indistinguishable from a trust that does not exist.

The Invisible Reserve

The backup trust is the structural equivalent of a firebreak — it exists unseen until the moment it is needed, at which point assets move into it instantly and the attacking creditor or authority finds themselves pursuing an empty shell. Its effectiveness depends entirely on its invisibility, and its invisibility is guaranteed by its inactivity.

9.4 Carefully Scoped Reserved Powers

The Legal Framework

CAP. 193, as a broadly enabling statute, does not prohibit the reservation of specific powers to the settlor provided those powers are non-dispositive — that is, they do not include the power to direct distributions, compel investments, or instruct the trustee on the exercise of its core fiduciary discretions. Non-dispositive reserved powers are powers over the trust's structure and framework, not over its substantive operation. Tax authorities and courts across common law jurisdictions have consistently accepted that non-dispositive reserved powers do not constitute retained beneficial ownership or control sufficient to render a trust revocable or a sham.

The Powers Worth Reserving

The following reserved powers represent the optimal balance between practical settlor influence and legal defensibility. The power to change the governing law of the trust — allowing the settlor to migrate the trust to a different legal framework without requiring trustee or beneficiary consent. The power to change the trust's administrative seat and the jurisdiction of the trustee — effectively a settlor-controlled version of the flee clause, exercisable at the settlor's direction rather than automatically. The power to add beneficiaries to a defined class or remove beneficiaries from it — giving the settlor ongoing influence over who benefits without directing how they benefit. The power to appoint and remove the Protector — the critical Layer 1 mechanism discussed in Section 8.8, vesting indirect influence over trustee replacement without direct control. The power to revoke and replace the trust deed's investment policy statement — allowing the settlor to define the parameters within which the trustee invests, without directing specific investment decisions.

What Must Not Be Reserved

The powers that must never be reserved by the settlor are those that cross the line from structural influence to operational control: the power to direct specific distributions; the power to instruct the trustee on specific investments or disposals; the power to veto trustee decisions; the power to remove the trustee directly; and any power that, in substance, allows the settlor to determine how the trust property is used for the benefit of the beneficiaries. These are the powers that tax authorities identify as retained beneficial ownership. Their absence is what makes the trust genuinely irrevocable and genuinely independent.

The line between reserved structural powers and retained operational control is a matter of substance, not form. A power to change the governing law is structural — it affects the framework, not the outcome. A power to require the trustee to distribute to a named beneficiary is operational — it determines the outcome directly. The former is safe. The latter is fatal.

Power to change governing law	Safe to reserve — structural, not dispositive
Power to change trustee jurisdiction	Safe to reserve — structural, not dispositive
Power to add / remove beneficiary class	Safe to reserve — structural, not dispositive
Power to appoint / remove Protector	Safe to reserve — indirect influence only
Power to set investment policy parameters	Safe to reserve — framework, not specific decisions
Power to direct specific distributions	Fatal — operational control, renders trust revocable
Power to instruct specific investments	Fatal — operational control, renders trust revocable
Power to veto trustee decisions	Fatal — effectively retained control of trustee
Power to remove trustee directly	Fatal — settlor-controlled removal destroys independence

9.5 The Consolidated Multi-Layer Architecture

The following table maps the complete multi-layer structure, showing how each element addresses a distinct attack vector and how the layers compound to produce a structure that is simultaneously resilient to legal attack, invisible to reporting systems, practically responsive to the settlor's long-term intentions, and legally irrevocable.

SBA governing law + Svalbard trustee	Foundation: no CRS, no registers, permanent s.35 satisfaction, trustee genuinely beyond settlor's direct control
Independent Protector with s.35 power	Governance: immediate, private, litigation-free trustee replacement; settlor one legal step removed
Letter of wishes	Influence: settlor communicates preferences without creating legal obligations; trustee decides independently
Holding company + anti-Bartlett clause	Control: settlor directs underlying assets as director; trustee holds shares passively; two legal relationships kept strictly separate
Flee clause	Resilience: automatic jurisdictional migration upon defined threat events; operates before attack can be mounted
Backup trust	Reserve: dormant parallel structure; invisible through inactivity; activated only when primary structure is threatened
Carefully scoped reserved powers	Framework: settlor retains structural influence over governing law, seat, beneficiary class, and Protector appointment without operational control
Documented trustee independence	Evidence: contemporaneous record of genuine fiduciary decision-making; defeats sham allegations at the factual level

The Complete Architecture

Each layer of this structure addresses a different attack vector: the SBA framework defeats reporting and registration; the Svalbard trustee pre-satisfies the replacement condition; the Protector delivers governance without settlor exposure; the holding company gives the settlor operational control through company law; the flee clause and backup trust provide resilience against legal attack; and carefully scoped reserved powers give the settlor structural influence without crossing into operational control. No single attack — whether from a tax authority, a creditor, a court, or a regulatory change — reaches all layers simultaneously. The structure succeeds not because any single element is impenetrable, but because its depth makes a successful comprehensive attack practically impossible.

10. The Custodial Institution Framework — The Central Technical Architecture

The preceding sections have described the SBA trust with Svalbard trustee as a privacy-preserving asset protection structure. This section identifies the precise technical characterisation that sits at the heart of the structure's design from a CRS perspective: the trust is deliberately constituted as a Custodial Institution for CRS purposes, holding shares of a holding company for the benefit of the beneficiaries. Before examining why this characterisation produces no reporting obligation, a critical preliminary point must be addressed — one that fundamentally reshapes the CRS analysis.

10.1 CRS Residence Follows the Trustee — Not the Governing Law

Under the OECD Common Reporting Standard, a trust's residence for CRS purposes is determined by where it is managed and controlled — which for a trust means the jurisdiction of residence of the trustee. This is explicit in the OECD Commentary on the CRS Standard, Section VIII. The governing law chosen in the trust deed — SBA law, CAP. 193, English law, or any other — is entirely irrelevant to this determination.

This means the trust in this structure is CRS-resident in Svalbard — not in the SBA. SBA law — specifically CAP. 193 as received into the law of the Sovereign Base Areas upon their establishment as British Overseas Territories in 1960 — determines the trust's legal framework, the scope of the trustee's powers and duties, the operation of the section 35 replacement mechanism, and all matters of trust administration. But for CRS purposes, the trust exists where its trustee resides: Svalbard. This distinction is fundamental and must be stated precisely to avoid any mischaracterisation of the structure's CRS position.

The Critical Distinction

Governing law: SBA / CAP. 193 — determines the trust's legal powers, duties, and governance architecture. CRS residence: Svalbard — determined exclusively by the trustee's residence, not by the governing law. The two are entirely separate analyses. The CRS question is answered by geography, not by the trust deed's choice of law clause.

10.2 Is Svalbard Within the Territorial Scope of Norway's CRS Implementation?

Norway is a CRS participating jurisdiction and implements the Standard through section 7-3 of the Tax Administration Act (Skatteforvaltningsloven), which requires Norwegian financial institutions to identify and report on account holders resident in other participating jurisdictions. The decisive question for this structure is whether section 7-3 extends to financial institutions resident in Svalbard — and the answer is not straightforward.

The Norwegian Tax Administration itself characterises Svalbard as a separate taxation area, governed by the Svalbard Taxation Act (Svalbardskatteloven) rather than the mainstream Norwegian Tax Act. This separate character is not merely administrative — it is reflected in Norway's own treaty practice. The Norway-Canada Tax Convention, for example, expressly defines 'Norway' as the Kingdom of Norway but states that 'the term does not comprise Svalbard, Jan Mayen and the Norwegian dependencies.' This formulation — excluding Svalbard from the definition of Norway — appears consistently across Norwegian bilateral tax treaties precisely because of Svalbard's distinct legal status under the 1920 Treaty.

The Tax Administration Act is a piece of Norwegian mainland legislation. Its territorial scope — whether it reaches entities resident in Svalbard, which operates under a separate tax act and is excluded from the definition of Norway in treaty contexts — is a question that Norwegian CRS implementing guidance does not address directly. The Norwegian Tax Administration's published CRS/FATCA guidance refers throughout to 'Norwegian financial institutions' without specifying whether this term encompasses entities resident in Svalbard under the Svalbard Tax Act. There is no published Norwegian guidance, OECD peer review finding, or regulatory determination that definitively extends the Tax Administration Act section 7-3 reporting obligation to Svalbard-resident entities.

This creates a position of genuine legal ambiguity that operates in the structure's favour. The absence of a clear positive extension of the Norwegian CRS reporting obligation to Svalbard means that a Svalbard-resident trustee — and the trust it administers — cannot be straightforwardly characterised as a Reporting Financial Institution under Norwegian CRS law. A responsible legal position is that the obligation is at minimum uncertain, and that the structure should be presented to prospective clients with this uncertainty clearly stated, alongside the recommendation that specialist Norwegian tax counsel confirm the current regulatory position.

Legal Position on Norwegian CRS Scope

Svalbard is a separate taxation area under Norwegian law, governed by its own Tax Act, and excluded from the definition of 'Norway' in bilateral tax treaties. Whether the Norwegian Tax Administration Act section 7-3 CRS reporting obligation extends to entities resident in Svalbard is a question that existing Norwegian CRS guidance does not resolve. This ambiguity is genuine, documented, and operates structurally in favour of the arrangement. Independent Norwegian tax counsel should be obtained to confirm the current position.

10.3 The Custodial Institution Classification — Definition and Ordinary Consequences

The OECD Common Reporting Standard defines a Custodial Institution as any entity that holds, as a substantial portion of its business, financial assets for the account of others — 'substantial' meaning 20% or more of gross income attributable to holding financial assets and related financial services over the preceding three years or the period since establishment.

A trust that holds shares of a company for the benefit of beneficiaries fits this definition precisely. The trust holds financial assets — the shares — for the account of others — the beneficiaries. Under ordinary CRS mechanics in a participating jurisdiction, this classification triggers the most comprehensive category of Financial Institution obligations: the trust must identify its account holders, conduct due diligence on their tax residency, and report their financial information to the competent authority for onward exchange to their home tax authorities. For trusts in Jersey, Cayman, BVI, Singapore, or any EU member state, this reporting effectively eliminates the confidentiality that trust structures have historically provided.

10.4 The Compounding Privacy Effect — Two Independent Arguments

The Custodial Institution characterisation, combined with the Svalbard residence analysis, produces two independent and compounding arguments against any CRS reporting obligation arising — either of which, standing alone, would be sufficient. Together they create a position of exceptional strength.

The first argument is that the trust, as a Custodial Institution CRS-resident in Svalbard, is not subject to the Norwegian Tax Administration Act section 7-3 reporting obligation because Svalbard is a separate taxation area outside the territorial scope of that Act, as demonstrated by Norway's own treaty definitions and the Norwegian Tax Administration's characterisation of Svalbard as a distinct tax jurisdiction. On this analysis, no reporting obligation arises because the entity is not a 'Norwegian financial institution' in the relevant sense.

The second argument is that even if the Norwegian CRS reporting framework were somehow extended to Svalbard-resident entities, the trust would be reporting to the Norwegian Tax Administration — and the Norwegian Tax Administration would then be responsible for onward exchange with participating jurisdictions. Svalbard-resident individuals are not tax resident in mainland Norway in the ordinary sense; they are taxed under the separate Svalbard Tax Act. The question of whether beneficial ownership information reported by a Svalbard-resident entity would be exchanged identically to information reported by a mainland Norwegian entity is a further layer of uncertainty that operates in favour of the structure.

10.5 Breaking the Beneficial Ownership Chain at the Company Level

The holding company whose shares are held by the trust is the second critical element of the architecture. Under CRS, when a financial institution identifies its account holders for reporting purposes, it looks to the legal holders of the interests it maintains. A Custodial Institution that holds shares for the benefit of beneficiaries is itself the account holder at the company level. The company's shareholder of record is the trust. The CRS chain of account holder identification stops at the trust.

In a participating jurisdiction, this would shift the reporting obligation to the trust level — the trust would report on its account holders, the beneficiaries. In the Svalbard context, the trust either does not report at all (first argument) or reports into a framework of uncertain onward exchange effect (second argument). In either case, the beneficiaries' financial information — the value of their interest in the trust, distributions received, proceeds of disposal — does not flow into the automatic exchange system in the manner intended by the CRS Standard.

This is not achieved through concealment or misrepresentation. The trust is the legitimate shareholder of the company. The trust is correctly classified as a Custodial Institution. The chain of ownership is fully documented. It is the territorial architecture of the structure — Svalbard's separate tax status and exclusion from bilateral treaty definitions of Norway — that produces the privacy outcome, not any defect in the documentation or any false characterisation of the parties' relationships.

10.6 The Institutional Characterisation as Anti-Sham Reinforcement

The Custodial Institution characterisation delivers a further benefit at the level of the sham analysis. An entity recognised under the OECD's own internationally agreed framework as performing a legitimate institutional function — holding assets for the account of others — is inherently incompatible with characterisation as a mere alter ego of the settlor or a sham. If a tax authority seeks to characterise the trust as a sham, the trust can point to its CRS-defined institutional character as evidence that it performs a recognised function distinct from the settlor's personal financial affairs.

10.7 Interaction With the Anti-Bartlett Clause and Director Control

The Custodial Institution framework and the anti-Bartlett structure operate together with precision. The trust, as Custodial Institution, holds the shares of the holding company for the account of the beneficiaries — this is its defined institutional function. The anti-Bartlett clause formalises this institutional passivity: the trustee holds, and does not manage. All operational management flows through the company's directors, including the settlor in their directorial capacity. The trust's custodial function and the settlor's directorial function are legally separate and mutually reinforcing.

10.9 Banking in Participating Jurisdictions Without Beneficiary Exposure

One of the most consequential practical advantages of the Custodial Institution characterisation concerns the trust's ability to hold accounts with banks and financial institutions in CRS participating jurisdictions — Switzerland, Singapore, Luxembourg, the UAE, and elsewhere — without those institutions being required to identify or report the settlor, beneficiaries, or Protector of the trust. This outcome flows directly from a fundamental distinction in the CRS due diligence framework between Financial Institution customers and Passive Non-Financial Entity customers, and it is the distinction that makes the Custodial Institution characterisation so practically powerful.

The Passive NFE Look-Through — The Mechanism That Exposes Conventional Trusts

When a bank in a CRS participating jurisdiction opens an account for a conventional trust that is not itself a Financial Institution, it classifies the trust as a Passive Non-Financial Entity — a Passive NFE. Under CRS due diligence rules, a Passive NFE is subject to full look-through: the bank must identify all controlling persons of the Passive NFE, establish their jurisdictions of tax residence, and report that information to its home competent authority for onward exchange. Controlling persons of a trust include the settlor, the trustees, the beneficiaries, and any other person who exercises ultimate effective control — precisely the people whose privacy the trust was designed to protect.

This is the mechanism that has systematically destroyed the confidentiality of trust structures in CRS-participating jurisdictions. A settlor who places assets in a conventional trust and then instructs that trust to open a bank account in Switzerland, Singapore, or Luxembourg will find that the bank identifies them as a controlling person, reports their name, tax identification number, and account value to the Swiss, Singaporean, or Luxembourg tax authority, and that information is exchanged automatically with the tax authority of the settlor's home jurisdiction. The trust provides no privacy protection at the banking layer whatsoever.

The Financial Institution Treatment — No Look-Through

When a bank in a CRS participating jurisdiction opens an account for a customer that is itself a Financial Institution — including a Custodial Institution — the CRS framework operates entirely differently. A Financial Institution customer is treated as CRS-compliant in its own jurisdiction and assumed to be discharging its own reporting obligations independently. The bank does not look through the Financial Institution to identify the humans behind it. The bank does not identify controlling persons, settlors, beneficiaries, or protectors. The bank does not report those individuals to any competent authority.

The bank's CRS obligation in relation to a Financial Institution account holder is limited to recording the Financial Institution's own classification and the jurisdiction in which it is resident — in this case Svalbard — and reporting the account balance and income credited to the account during the reporting period. The account holder of record is the trust. The trust is a Custodial Institution. That is the entirety of what the bank reports. The settlor, the beneficiaries, the Protector — none of them appear in the bank's CRS reporting at any point, because none of them are the account holder and none of them are required to be identified as controlling persons of a Financial Institution customer.

The Complete Chain — No Exposure at Any Level

The result of this structure is that the trust can maintain banking relationships in the world's most reputable and sophisticated financial centres — precisely the jurisdictions that settlors and beneficiaries need access to for asset management, investment, and treasury purposes — without any of the participants in the trust structure being exposed to CRS reporting at the banking level. The bank sees the trust as a Custodial Institution and reports accordingly. The trust's own reporting obligation, as established in section 10.2, is at minimum genuinely uncertain given Svalbard's separate taxation area status and exclusion from the definition of Norway in bilateral treaty contexts. And the holding company, whose shares are held by the trust, is not itself a financial account holder at the bank — the trust is.

This means that a settlor who has placed significant assets into the structure — who benefits from distributions made by the company, who directs the company's investments as a director, and whose long-term intentions are reflected in a non-binding letter of wishes to the trustee — is entirely absent from the bank's CRS reporting. Their name does not appear. Their tax identification number is not recorded for exchange purposes. Their jurisdiction of residence is not established by the bank for reporting purposes. They are, from the perspective of the participating jurisdiction bank and its CRS obligations, not a party to the account at all.

The Banking Layer in Practice

The Custodial Institution classification is the mechanism that makes access to mainstream CRS-participating financial centres compatible with complete privacy for the trust's participants. The bank performs its CRS obligations correctly and in full — it simply has no obligation to look through a Financial Institution customer to identify the humans behind it. The settlor, beneficiaries, and Protector are invisible at the banking layer not through any failure of compliance, but through the correct application of the CRS framework to a correctly classified Financial Institution account holder.

10.8 The Complete Technical Picture

Trust CRS residence	Svalbard — determined by trustee residence, not governing law
Trust governing law	SBA / CAP. 193 — entirely separate from CRS residence analysis
Trust CRS classification	Custodial Institution — holds shares (financial assets) for account of beneficiaries
Norwegian CRS obligation (s.7-3)	Uncertain — Svalbard is a separate taxation area excluded from 'Norway' in treaty definitions; no published guidance extends s.7-3 to Svalbard entities
First privacy argument	Svalbard-resident entity is not a 'Norwegian financial institution' within scope of Tax Administration Act s.7-3
Second privacy argument	Even if reporting required, Svalbard entities report to Norwegian Tax Administration under a separate framework with uncertain onward exchange effect
Combined position	Two independent arguments each sufficient alone; together producing a position of exceptional strength
Company shareholder of record	The trust — CRS account holder chain stops here
Beneficial ownership chain	Fully documented; invisible to automatic exchange by operation of territorial architecture, not concealment
Anti-sham reinforcement	OECD-recognised Custodial Institution function incompatible with alter ego / sham characterisation
Trustee's institutional function	Custodial — holds shares passively; anti-Bartlett clause formalises non-management role
Settlor's operational function	Director of holding company — company law relationship, separate from trust entirely
Specialist counsel required	Norwegian tax counsel should confirm current s.7-3 territorial scope position

The Architecture at Full Depth

The SBA trust, constituted as a Custodial Institution, CRS-resident in Svalbard by virtue of the trustee's residence, governed by CAP. 193 for all legal purposes, and holding shares of a holding company for the benefit of beneficiaries, achieves the following simultaneously: the CRS classification that ordinarily generates the most comprehensive reporting, in a jurisdiction where the application of Norway's CRS implementing legislation is genuinely uncertain; a beneficial ownership chain that is fully documented and correctly characterised, but invisible to the automatic exchange framework by the operation of Svalbard's own distinct legal status; a trustee whose institutional passivity is formalised by the anti-Bartlett clause and reinforced by the CRS Custodial Institution characterisation; and a settlor who exercises full operational control through the company directorship without that control reaching the trust layer. This is the complete structure.

This document has been prepared for informational purposes for prospective clients and does not constitute legal advice. The legal analysis contained herein is based on CAP. 193 and CAP. 191 as forming part of the law of the Sovereign Base Areas of Akrotiri and Dhekelia, received upon their establishment as British Overseas Territories in 1960, with reference to the 1959 Edition of those instruments and related statutory materials. CAP. 193 and CAP. 191 as applied within the SBAs are distinct from the law of the Republic of Cyprus, which has no jurisdiction over the

Sovereign Base Areas. Tax information regarding Svalbard is sourced from the Norwegian Tax Administration. Prospective clients should obtain independent legal advice before implementing any trust structure.