

The Polar Bear Custodian is the most confidential structure in the world

Article I Polar Bear Custodian has unrivalled, incomparable confidentiality, not subject to exchange of information for any tax treaty.

Article II Polar Bear Structure not subject to Common Reporting Standard (CRS).

Article III Polar Bear Structure not subject to Foreign Account Tax Compliance Act (FATCA).

Article IV Polar Bear Structure not subject to Crypto Asset Reporting Framework (CARF).

Article V Decant the Polar Bear Custodian to any trust globally, maintaining confidentiality of settlor.

Article III – Polar Bear Structure not subject to FATCA

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Article III – Polar Bear Structure not subject to FATCA

A narrative of the world's most confidential arrangement

Article I – Unrivalled incomparable confidentiality:

The Polar Bear arrangement is a UK governing trust with a Svalbard resident trustee, holding a professionally managed investment entity or a non-financial nominee entity or a Private Placement Life Insurance Policy. Describes why Svalbard is explicitly excluded from Norway's 89 double tax treaties, multilateral competent authority agreements¹, and bilateral agreements². Thus, it's not subject to automatic exchange of information, nor exchange upon request. The trust is not recorded on any beneficial owner register, nor registered with tax authorities. The arrangement is not subject to the OECD³, EU⁴ and UK⁵ Mandatory Disclosure Rules (MDR)⁶. The registered Person of Significant Control of the UC is only the Trustee.

Article II – Legitimately exempt from CRS:

Chronicles why the described arrangement is explicitly excluded from the OECD's Common Reporting Standard (CRS)⁷. This unique exception is not based on CRS misinterpretations / omissions, as are commonly used loopholes.

Article III – Legitimately out of FATCA's scope:

The arrangement is not subject to the obligations of the Foreign Account Tax Compliance Act (FATCA)⁸. Penalties and recalcitrant reports for non-compliance are not applicable. It has none of the downsides of hiding assets in the US.

Article IV – Legitimately exempt from CARF:

The arrangement is not subject to the OECD's Crypto Asset Reporting Framework (CARF)⁹

Article V – Distributing to another trust maintains the confidentiality of the settlor:

The Trust can resetttle to any trust worldwide. The confidentiality of the economic settlor is maintained if the Trust decants to another named beneficiary trust.

¹ Reservations and Declarations for Treaty No.127 - Convention on Mutual Administrative Assistance in Tax Matters
<https://www.coe.int/en/web/conventions/full-List?module=declarations-by-treaty&numSte=127&codeNature=4&codePays=NOR>

² Limited scope treaties such as aviation earnings with Uruguay and Uzbekistan.

³ "MDR" refers to the OECD Base Erosion and Profit Shifting Project Mandatory Disclosure Rules.

⁴ "EU MDR" refers to Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

⁵ "UK MDR" refers to HMRC's mandatory disclosure rules where an arrangement will be reportable if it involves the use of opaque offshore structures or if it circumvents reporting under the Common Reporting Standard (CRS).

⁶ MCAA-MDR the term "Jurisdiction" means a country or a territory in respect of which the Convention is in force and is in effect, either through signature and ratification in accordance with Article 28, or through territorial extension in accordance with Article 29, and which is a signatory to this Agreement.

⁷ "CRS" refers to OECD, "Standard for Automatic Exchange of Financial Account Information in Tax Matters".

⁸ <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca>

⁹ "CARF" refers to OECD, "Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard".

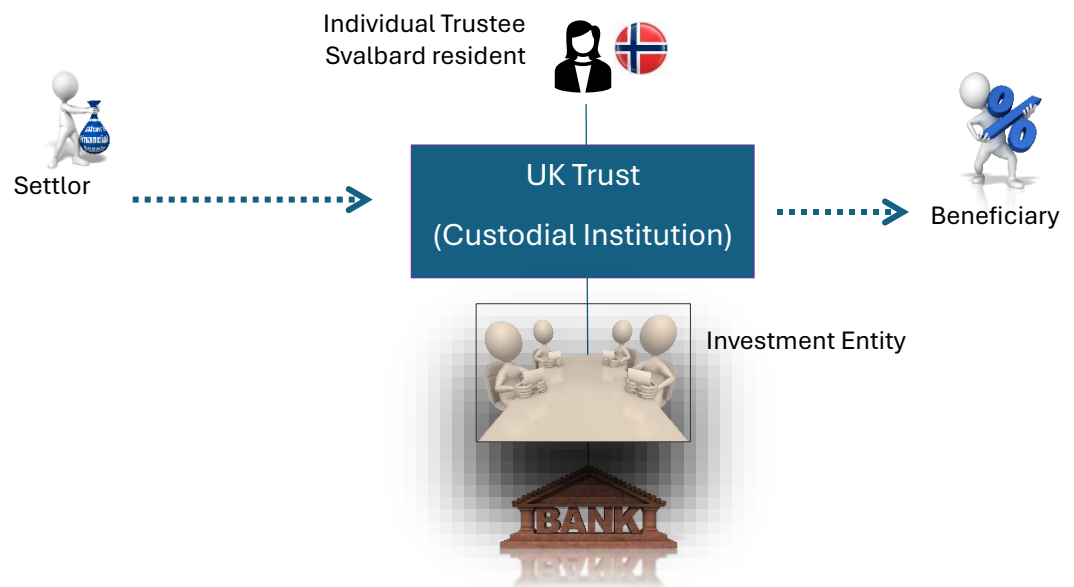
Article III – Polar Bear Structure not subject to FATCA

Backbone of the world's most confidential structure

MCAA, IGAs and tax treaties¹⁰ oblige Financial Institutions to automatic exchange of information and exchange on demand regarding financial assets. OECD extends this to crypto transactions. Structures using offshore jurisdictions no longer provide previously assured confidentiality and asset protection. Remarkably, the strongest confidential and asset protection structure in the world is onshore, formed in the respected jurisdictions of the UK and Norway.

In the 1920 Treaty of Spitsbergen, 14 countries recognized Norway's sovereignty over the Arctic Archipelago. Additionally, 34 more nations acceded to the treaty after it was ratified in 1925. The archipelago was incorporated as a part of Norway and renamed Svalbard. It is the only visa free jurisdiction in the world and has autonomy in 31 areas including immigration and tax. Hence is not part of the EU, EEA, Nordic association of countries, Schengen or NATO. Consequently, the OECD's Multilateral Competent Authority Agreements and all of Norway's bilateral tax treaties explicitly exclude the territory of Svalbard. It thus does not participate in CRS, FATCA, and CARF. Neither does exchange of information on request apply. Svalbard does not participate in any other OECD BEPS¹¹ project requiring an MCAA, such as Mandatory Disclosure Rules.

The UK-Svalbard Polar Bear Custodian



The structure results in minimal AEOI due diligence and no reporting duties.

¹⁰ Multilateral Competent Authority Agreements (MCAA) and tax treaties are the legal basis for exchange of information.

¹¹ Domestic tax base erosion and profit shifting (BEPS) relates to tax planning strategies that multinational enterprises use to exploit loopholes in tax rules to artificially shift profits to low or no-tax locations as a way to avoid paying tax. The OECD/G20 BEPS Project equips governments with rules and instruments to address tax avoidance, ensuring that profits are taxed where economic activities generating them take place and where value is created. <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html>

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Under the Foreign Account Tax Compliance Act (FATCA)

The classifications of (i) a trust and (ii) the company underlying the trust and holding Financial Asset depends on several factors, namely the IGA jurisdictions of the two entities and their operations with respect to those Financial Assets. Moreover, those FATCA classifications determine the FATCA due diligence and reporting obligations of the two entities and any third-party Foreign Financial Institutions (FFIs) where the assets are held.

In summary, where the underlying company holding the Financial Account with the third-party FFI qualifies as a Professionally Managed Investment Entity (PMIE) FFI in a IGA Jurisdiction, the bank or other FFI maintaining the account will neither look through the PMIE to document its owners nor report on the entity. Likewise, the PMIE underlying company will neither look through the trust to document its owners nor report on the trust because the trust will adopt the classification of Custodial Institution FI.

Finally, the trust, as an FFI entity not resident in any jurisdiction participating in a FATCA IGA, incurs no FATCA compliance duties directly. FATCA imposes a withholding penalty on any payment made to a FFI that does not register for a GIIN or report on its account holders, but only if a US source payment is made. As no payment is made to the trust, no withholding penalty applies. Also there is no recalcitrant report made on the trust as no payment is made to the trust FFI.

The structure

The wealth management structure envisioned for holding Financial Assets through an foreign trust (the “Svalbard Trust Structure”) consists of the following:

- A trust (“the Trust”) administered in the Svalbard territory of Norway by an individual trustee and governed by United Kingdom (“UK”) law.
- The Trust owns 100% percent of the shares of a UK company (the “UC”).
- The UC directly holds assets qualifying as Financial Assets; and some of these Financial Assets are subject to professional management by other FFIs, such as depositary institution or managing investment entity..

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FATCA classification analysis of the structure

The threshold inquiry for any entity classification process under FATCA is whether the entity is governed by the FATCA rules in force in any jurisdiction implementing FATCA and, if so, which ones. The criteria for identifying a jurisdictional nexus with any jurisdiction tend to mirror that jurisdiction's concept of "tax residence" for purposes of its income tax regime.

FATCA classification analysis of the Trust

Accordingly, corporations tend to be resident where incorporated and partnerships tend to be resident where managed and controlled. Trusts, however, are subject to a special rule because few of them are resident for income tax purposes in any jurisdiction. Accordingly, for purposes of FATCA, trusts are deemed to be resident in any jurisdiction where one or more of the trustees of the trust is resident.

In the current structure, all trustees will be resident in the Norwegian territory of Svalbard.

As Norway is an IGA¹² Participating Jurisdiction, the Norwegian FATCA laws and regulations would seem the intuitive rule set to apply to a trust administered by one or more trustees in Svalbard. Consistently though, Svalbard is explicitly excluded from tax treaties entered by Norway.

More specifically, it is expressly excluded under the "Norwegian Declaration" section of the country's FATCA accession instrument¹³ Accordingly, Svalbard is not a participant in FATCA as part of Norway. Moreover, Svalbard has neither independently entered into a FATCA exchange agreement nor joined FATCA as part of another grouping. As such, entities resident in Svalbard (or, more precisely, those not deemed to be resident in any Participating Jurisdiction for purposes of FATCA) are not directly subject to FATCA and thus are not obliged to classify themselves and fulfil the compliance duties corresponding to their classification.

Accordingly, this classification analysis must next query whether any other jurisdiction that implemented FATCA can claim governance over the Trust. As the Trust is governed by UK laws, the intuitive alternative to Norway is the United Kingdom. However, the United Kingdom disclaims jurisdiction over any trusts not administered by one or more UK trustees.

¹² On April 15, 2013, the Government of the United States of America and the Government of the Kingdom of Norway signed an intergovernmental agreement ("IGA") entitled, "Agreement Between the Government of the United States of America and the Government of the Kingdom of Norway to Improve International Tax Compliance and to Implement FATCA."
<https://home.treasury.gov/system/files/131/FATCA-Agreement-Norway-4-15-2013.pdf>

¹³ See <https://home.treasury.gov/system/files/131/FATCA-Agreement-Norway-4-15-2013.pdf> page 2 FATCA IGA agreement between Government of the United States of America and the Government of the Kingdom of Norway – definitions The term "Norway" means the Kingdom of Norway, and includes the land territory, internal waters, the territorial sea and the area beyond the territorial sea where the Kingdom of Norway, according to Norwegian legislation and in accordance with international law, may exercise her rights with respect to the seabed and subsoil and their natural resources; the term does not comprise **Svalbard**, Jan Mayen and the Norwegian dependencies ("biland").

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In the absence of further viable alternatives, evidently no jurisdiction's FATCA rules govern the Trust's FATCA classification or assign any compliance duties to the Trust. That does not end the Trust's FATCA entity classification process though.

In addition to needing a FATCA classification as a standalone entity with its own potential Account Holders to document and report if resident in a FATCA Participating Jurisdiction, an entity may also need a FATCA classification for where it is itself the Account Holder of a Participating Jurisdiction FFI. Usually, these are one and the same classification. However, in the circumstance of an entity not resident in a FATCA jurisdiction but with accounts held with an FFI, the entity – as an Account Holder – applies the rules governing the Participating Jurisdiction FFI to determine its FATCA status for that account.

As the UC is likely to qualify as a PMIE (per the analysis in the below section) and the Trust holds 100% of its equity interests, the Trust is an Account Holder of the UC. As the UC is resident in the United Kingdom, the Trust must therefore classify itself under the UK FATCA rules. Pursuant to these rules, the Trust may be classified as a Custodial Institution FFI with respect to the Financial Account held in the UC according to the reasoning set forth in the following paragraphs.

A common approach for trusts under FATCA analyses them initially as potential PMIE-FFIs. An entity qualifies as a PMIE¹⁴ if it (a) is managed¹⁵ by a Financial Institution (other than a PMIE) and (b) earns at least 50 percent of its gross income from Financial Assets.

Provided that a discretionary trust holds Financial Assets (e.g. a portfolio of securities or the shares of an underlying company), many jurisdictions automatically categorize them as PMIE based on the assumption that the trustee of a discretionary trust conducts sufficiently management-like activities. However, that applies only where the one or more of the trustees is also an entity, which is not the case here. Thus, the Trust cannot qualify as a PMIE due to the management authority vested in its trustee because that trustee is an individual. There is, however, another FFI category for which it may be eligible.

The definition of a **Custodial Institution** FFI is any entity that a) "holds...Financial Assets for the account of others" and b) earns 20% or more of its gross income from providing such services.

¹⁴ There are different definitions for an "investment entity" under the Treasury Regulations and IGAs. Under the Treasury Regulations, a two-part test must be satisfied: (i) an income test; and (ii) the entity must be managed by a "professional manager". Under the IGA definition, only professional management is required to meet the investment entity definition unless the local IGA allows the US Treasury Regulations to be applied in lieu of corresponding definitions in the Agreement.

¹⁵ A professionally managed trusts is where (i) the trustee is a Financial Institution, or (ii) The trustee (on behalf of the trust) engages a Financial Institution to manage the trust, or (iii) The trustee (on behalf of the trust) engages a Financial Institution to manage the trust's financial assets, usually be where the trust has appointed a discretionary fund manager to manage some or all of the portfolio, and at least one discretionary investment is made annually.

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The text of the first criterion seems to squarely apply to the classic purpose of a trust scenario: To hold legal title in a fiduciary capacity over assets at the behest of the settlor. The United Kingdom's FATCA guidance concurs, contemplating that FI trusts may be either Custodial Institutions or PMIEs and, furthermore, providing guidance on how to comply with FATCA where the trust is classified as Custodial Institution FI. Thus, it is impossible to state that the Trust does not satisfy the first criterion of the test for a Custodial Institution FI and the United Kingdom's FATCA rules plainly tolerate such classifications.

As for the gross income criterion – that 20% or more of the entity's gross income derives from providing such services the United Kingdom provides a useful list of which types of fees would qualify as compensation for "holding financial assets and providing related financial services".¹⁶ These include, but are not limited to, financial advisory, custody and account maintenance fees. Such fees, irrespective of their label, are the lifeblood of fiduciary service providers. That conclusion settles the analysis, if and only if those fees are paid to the custodian for such services and they amount to 20 percent or more of the entity's income.

One early controversy under FATCA was whether the fee income relevant to the gross income test had to be paid directly to the entity providing the services. Or, alternatively, could the custodian's fees be bundled together with associated fees and paid to another (unrelated) party? The OECD resolved that uncertainty by stating that "all remuneration for the relevant activities... independent of whether that remuneration is paid directly" counts towards the gross income thresholds of the entity in question.

The UK FATCA guidance notes adopted a similar approach, contending that where fees from multiple service providers are bundled together, a portion of the aggregate fee must be attributed to each entity providing a service and thus "consideration should be given to what would have been paid by an arm's length customer when applying the 20% test [i.e. the gross test income]."

The fees paid by the settlor for the services provided through the Svalbard Trust Structure must be apportioned to the Trust. To the extent that the Trust does not earn a substantially greater amount of other income, it meets the gross income test for a Custodial Institution. Accordingly, the Trust may assume a FATCA classification as a Custodial Institution FFI with respect to its equity interests in the UC.

¹⁶ , The following types of income attributable to holding financial assets and providing related financial services:

- Custody, account maintenance and transfer fees
- Commissions and fees earned from executing and pricing securities transactions
- Income earned from extending credit to customers
- Income earned from contracts for differences and as the bid-ask spread of financial assets
- Fees for providing financial advice
- Fees for providing clearance and settlement services.

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FATCA classification analysis of the UC

As an entity holding solely Financial Assets and with no other purpose or capacity, the UC's options for FATCA classification narrow down instantly to a PMIE FFI or a Passive NFE. The determination pivots on whether the UC is subject to professional management (as defined for FATCA) by another FFI.

The United Kingdom defines such professional management relatively narrowly, insisting that the managing entity must “have discretionary authority to manage the entity’s assets either in whole or in **part**.” Accordingly, where a third-party FFI has the authority to determine the investment decisions of the entity – either as part of the entity’s management team or through a Power of Attorney (including a discretionary portfolio agreement with the custodial bank where the assets are held) – the entity will be a PMIE. As the UC will engage such a third-party FFI to make binding investment decisions over some or all of its assets, the UC will qualify as a PMIE FFI.

Compliance consequences due to the FATCA classifications

The compliance consequences for each of the parties in the chain of entities holding the assets consist of the following FATCA due diligence and reporting obligations.

1. The custodial bank or other FFI maintaining the Financial Account containing the UC assets.

- For due diligence, it will need to request a self-certification from the UC as the Account Holder of the Financial Account it maintains and validate the status of PMIE claimed by the UC, but not need to look through the UC to identify, document and potentially report its Controlling Persons.
- For reporting, it will not need to report on the Financial Account because the Account Holder is an FFI and FFIs are excluded Reportable Persons for FATCA.
- Nil reports may be required, depending on the jurisdiction.

2. For the Underlying Company

- For due diligence, it will need to request self-certification from the Trust as the Account Holder of the Financial Account in the form of its equity interests owned by the Trust.
- The UC will need to validate the status of Custodial Institution FFI claimed by the Trust on the self-certification form, but not need to look through the Trust to identify, document and potentially report its Controlling Persons.
- For reporting, it will not need to report on the Financial Account because the Account Holder is a FFI and FFIs are not Reportable Persons for FATCA.
- Even more specifically, where the equity interests in a PMIE are held through a Custodial Institution FFI, the PMIE is not responsible for reporting on them.
- Nil reports may be required, depending on the jurisdiction.

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3. *For the Trust*

- As the Trust is not resident for FATCA purposes in any jurisdiction that has implemented FATCA, the Trust (or, more specifically, the trustees on behalf the Trust) has no due diligence or reporting obligations under the regime.

FATCA consequences for a non-participating FFI (NP FFIs)

1. *No withholding penalty on NP FFIs*

- The Trust is a non-participating FFI (NP FFI) for FATCA¹⁷ because Svalbard is explicitly excluded from Norway's Intergovernmental Agreement (IGA) with the USA. The US Norway tax treaty, ratified in 1971, explicitly excludes Spitsbergen, the previous name for Svalbard.¹⁸ Norway has not entered into any other FATCA agreement with the US.
- US financial institutions and other types of US withholding agents (such as participating FFIs) are required to withhold 30% on certain US source payments made to foreign entities ("withholdable payments"¹⁹), if they are unable to document such entities for purposes of FATCA.²⁰
- In the Trust structure, the role of the Trust as Custodial Institution is exclusively to hold the shares of an UC. No income will be paid to the Trust. Therefore, no withholding will be applicable.

¹⁷ See <https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim401300> A Non-Participating Financial Institution (NPFI) is a Financial Institution that is not FATCA compliant. This non-compliance arises either

- Where the Financial Institution is located in a jurisdiction that does not have an Intergovernmental Agreement with the US and the Financial Institution has not entered into a FATCA agreement with the US that requires direct reporting of information to the IRS, or
- The Financial Institution is classified by the IRS as being a NPFI following the conclusion of the procedures for significant non-compliance being undertaken [see IEIM405040]. In this case a UK Financial Institution will only be classed as an NPFI where there is significant non-compliance with the UK legislation and, after a period of enquiry, that non-compliance has not been addressed to HMRC's satisfaction. In such circumstances the UK Financial Institution's details may be published electronically by the IRS and the Financial Institution will cease to be covered by the Agreement.

¹⁸ See US Norway tax treaty 1971 <https://www.irs.gov/pub/irs-trty/norway.pdf> Article 2 2 General Definitions the term "Norway" means the Kingdom of Norway; and when used in a geographical sense, the term "Norway" includes (a) the territorial sea thereof and (b) the seabed and subsoil of the submarine areas adjacent to the territorial sea, over which Norway exercises sovereign rights in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

However, the term "Norway" does not include **Spitzbergen**

¹⁹ Among withholdable payments, FATCA applies to are payments of (i) interest, dividends, rents, and certain other specified items of income from U.S. sources, and (ii) gross proceeds from the sale or other disposition of property of a type which can produce interest or dividends from U.S. sources (such as a sale of stock or a debt instrument of a U.S. issuer) (ii) gross proceeds from the sale or other disposition of an asset that produces U.S.-source income, and (iii) "passthru payments" attributable to U.S. assets. Proposed regulations eliminate withholding on gross proceeds and defer withholding on passthru payments.

²⁰ If an institution fails to comply with FATCA they will be subject to a 30% US. withholding tax on any US-sourced income paid after 1 July 2014. The withholding tax may be avoided if the FFI enters into an agreement (FFI agreement) with the US Government by registering on a portal.

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2. *No recalcitrant reporting*

- The US. has provided guidance²¹ that if an FFI (which would include a Reporting FI) fails to report required US TINs for US Reportable Accounts, the IRS may notify Inland Revenue that the Reporting FFI has been significantly non-compliant in accordance with the IGA.
- If the Reporting FFI remains non-compliant for 18 months after such notification, the US may treat the FFI as a non-participating financial institution, subject to the 30% withholding.
- However, as the Trust receives no payment from its UC, there is no determination if the Trust is recalcitrant or has recalcitrant account holders.
- Therefore, there is no reporting to anyone regarding the Trust being a NP FFI.
- In any event, in the case where payments are deemed to be made to the Trust, a report by the underlying paying agent to the IRS on the FATCA non-participation status of the Trust is a moot exercise as Svalbard is excluded from the Norwegian IGA.

Summary

The Svalbard Trust Structure, as analyzed throughout this document, results in minimal FATCA due diligence and no reporting duties for any of the parties involved in the chain of entities holding the assets.

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²¹ See IRS Notice 2017-46 (at page 5) issued on 25 September 2017 <https://www.irs.gov/pub/irs-drop/n-17-46.pdf>.