DENTONS

The disclosure of information about trusts: the common law, how it has evolved, and how it has been modified by legislation - a Singapore perspective

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Abstract

The disclosure of trust information to beneficiaries is a contentious topic. Whether and what information about a trust is disclosed to beneficiaries has vexed trustees, lawyers, and judges for decades. The common law has evolved over centuries, and lawmakers in some jurisdictions have prescribed their own rules. This paper examines the conflicting duties of confidentiality and accountability, considers the position in Singapore following the High Court's express adoption of *Schmidt v Rosewood Trust Ltd* in *Mustaq Ahmad v Providentia Wealth Management Ltd*, and surveys how other jurisdictions have codified, modified, or excluded the common law position.

1 Introduction

1.1 Disclosure of trust information to beneficiaries is a contentious topic. It is also, for practitioners in Singapore, a newly settled one - at least as to first principles. In 2023, the High Court expressly endorsed and applied the Privy Council's approach in *Schmidt v Rosewood Trust Ltd*, confirming that Singapore sits among the jurisdictions in which disclosure is treated as an incident of the trustee's duty to account, supervised by the court. How that principle is applied in practice - and how it compares with the very different answers reached elsewhere - is the subject of this paper.

1.2 The traditional common law position regarding beneficiaries' rights to information has evolved over centuries, guided by the principles of equity. Judges in common law jurisdictions are constantly called upon to balance the competing interests of beneficiaries with the duties of trustees to manage the trust according to its terms and intended purpose.

1.3 There are several reasons why a settlor may want to limit or exclude a beneficiary's rights to trust information, including:

a maintaining the confidentiality of commercially sensitive information;

b preventing some beneficiaries from becoming reliant on trust funds and losing the motivation to create their own wealth independent from the family;

c reducing the risk of a beneficiary being the target of external influences, fraud, scams or frivolous litigation; or

d it may be otherwise genuinely undesirable or inappropriate to disclose particular trust information.

1.4 On the other hand, by withholding information from one or more of the beneficiaries, a trustee may effectively become unaccountable, increasing the potential for mismanagement and breach of fiduciary duty. This may also cause a trustee to risk failing

to fulfil the duty to account, which is at the very core of the trust relationship; without it, no trust exists.

1.5 This paper examines the conflicting duties of confidentiality and accountability by discussing:

a the traditional common law position regarding beneficiaries' rights to information;

b how the common law has evolved through case law;

c the position in Singapore, including the decision in *Mustaq Ahmad v Providentia Wealth Management Ltd* and the potential relevance of the Personal Data Protection Act 2012;

d how the common law has been modified by statute in other jurisdictions; and

e the practical implications for trustees and advisers in Singapore.

2 The traditional common law position regarding rights to information

2.1 The starting point is that a trustee must keep trust information confidential. The trust documents belong to the trustee as the legal owner of the assets. But trust property is held by a trustee subject to the equitable rights of the beneficiaries.

2.2 At the core of the common law position is the fiduciary duty owed by trustees to beneficiaries. As Millett LJ famously said in *Armitage v Nurse*[1]:

> … there is an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust. If the beneficiaries have no rights enforceable against the trustees there are no trusts.

2.3 This is considered the minimum necessary to give substance to a trust. Beneficiaries have an interest in accessing trust information if trustees are to be held accountable for their administration of a trust. If beneficiaries cannot access that information, they will not be able to hold the trustee accountable either directly or by asking the court to intervene in the exercise of its supervisory powers.

2.4 However, trust law has traditionally distinguished between beneficiaries with a proprietary interest in trust assets and those who are objects of a discretionary trust or fiduciary power of appointment and, therefore, have only a hope or expectation of benefiting from the trust.[2] Historically, this distinction played a pivotal role in determining beneficiaries' rights to trust information, including a trustee's duty to volunteer information to a beneficiary.

Disclosure on request

2.5 In one of the earliest cases on this subject, *Clarke v Earl of Ormonde*[3], the court ordered access to information as part of its supervisory role over trustees. From the latter part of the 19th century, however, the courts adopted a 'proprietary approach' to trust information

[1] Armitage v Nurse [1998] Ch 241 (CA) at 253.
[2] Nicola Peart, 'Trustee Information Obligations Under the Trusts Act 2019' [2022] 1 NZLR 9.
[3] Clarke v Earl of Ormonde (1821) Jacob 108; 37 ER 791.

cases. Over time, this approach became untenable as discretionary trusts became the dominant model for holding property on trust.

2.6 The traditional rules for disclosure on demand can be summarised as follows[4]:

a a beneficiary has a right to call upon the trustee for accurate information as to the state of the trust, and the trustee was bound to be ready to account; and

b a beneficiary has a right, at all reasonable times, to inspect the documents relating to the trust and be provided copies at their own expense.

2.7 A trustee must be prepared to disclose to the beneficiaries details regarding the assets held in trust, including relevant trust documents. The beneficiaries do not need to give reasons for why the trustee should disclose this information.

2.8 This does not mean beneficiaries have an absolute right to inspect all trust documents. A trustee may be able to reject a beneficiary's request if, in the circumstances, they are justified in doing so. However, the issue was (and arguably still is) that the circumstances in which a trustee could reasonably refuse to disclose information were quite unclear.

2.9 The case of *Re Londonderry's Settlement*[5] marked a significant milestone by clarifying that beneficiaries had a right to information beyond mere accounts, but disclosure could be reasonably refused in certain circumstances.

2.10 In that case, the Court of Appeal of England and Wales endorsed earlier authority by stating that trustees exercising a discretionary power are not bound to disclose reasons for their decisions. The court determined that a beneficiary is entitled to see documents concerning the administration of the trust; however, this general entitlement did not apply to documents which would, or might, disclose the reasons for a discretionary decision.

2.11 Such documents included[6]:

a the agenda for a meeting of the trustees;

b correspondence between trustees, and correspondence between trustees and individual beneficiaries;

c minutes of meetings of the trustees; and

d any other documents disclosing the deliberations of the trustees as to the manner in which they should exercise the discretionary power, or disclosing the reason for any exercise of such power or the material upon which such reasons were or might have been based.

2.12 Accordingly, a trustee may lawfully refuse to disclose any trust information or documents that relate to the reasons why, or the method by which, the trustee has exercised a discretionary, administrative, or dispositive power. Even where a beneficiary had a prima

[4] Lynton Tucker, Nicholas Le Poidevin and James Brightwell, Lewin on Trusts (20th ed, Sweet & Maxwell, London, 2020) at 21-020.

[5] Re Londonderry's Settlement [1965] Ch 918 (CA).

[6] Re Londonderry's Settlement, above n 5, at 939–940.

facie right to disclosure (such as a fixed entitlement under a trust), circumstances might justify the trustee exercising discretion to restrict or limit disclosure.[7]

Voluntary disclosure of information to beneficiaries

2.13 The long-standing traditional view was that a trustee has a duty to inform an adult beneficiary of their entitlement if the beneficiary had a vested interest in possession.[8] Whether this duty extended to other types of interests, such as discretionary, defeasible, or contingent interests, has long been contentious. For beneficiaries with a mere discretionary interest, there was no indication that a trustee was required to volunteer information or notify them of their potential beneficial interest in the trust.

2.14 In *Re Manisty's Settlement*, Templeman J stated that[9]:

> The court cannot insist on any particular consideration being given by the trustees to the exercise of the power. If a settlor creates a power exercisable in favour of his issue, his relations and the employees of his company, the trustees may in practice for many years hold regular meetings, study the terms of the power and the other provisions of the settlement, exercise it only in favour, for example, of the children of the settlor. During that period the existence of the power may not be disclosed to any relation or employee. In my judgment it cannot be said that the trustees in those circumstances have committed a breach of trust and that they ought to have advertised the power or looked beyond the persons who are most likely to be the objects of the bounty of the settlor.

2.15 Despite the view taken in *Re Manisty's Settlement* and the lack of authority on the issue, some academics, including the authors of *Lewin on Trusts*, support the view that a trustee must make voluntary disclosure to discretionary beneficiaries to give substance to the duty of accountability. Lewin's position is that no bright dividing line can be drawn between discretionary trusts and fiduciary powers, although non-disclosure may be easier to justify for discretionary powers - particularly where the objects of a power are very wide, or the trustees have properly determined that the power should not presently be exercised. The fact that a discretionary trust or power is not presently operative is a relevant consideration, but not of itself a reason to refuse all disclosure.[10]

2.16 On this view, trustees have a duty of disclosure without demand under the traditional principles. As a general rule, the information that should be disclosed is the existence of the trust, the beneficiary's interest under it, and sufficient information about the trustee to enable the beneficiary to seek further information if desired.

3 How the common law has evolved through case law

3.1 Towards the end of the 20th century, common law courts began challenging the proprietary approach to disclosure of trust information as the legal landscape evolved. Modern cases have refined and expanded beneficiaries' rights to information in response to changing societal expectations, legal complexities, and the need for a more nuanced approach.

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[7] Lynton Tucker et al, above n 4, at 21-022.
[8] Hawkesley v May [1956] 1 QB 304.
[9] Re Manisty's Settlement [1974] Ch 17 at 25.
[10] Lynton Tucker et al, above n 4, at 21-011.

3.2 The most important of these cases - and, as discussed in Part 4 below, now the law of Singapore - is the Privy Council decision in *Schmidt v Rosewood Trust Ltd*[11]. Following this decision, it became broadly accepted that disclosure of trust information is part of the trustee's duty to account to beneficiaries.

3.3 In *Schmidt*, the applicant was neither a beneficiary nor the object of a power of appointment in relation to two trusts. However, he could be appointed as a discretionary beneficiary of one trust, and his father - the settlor - had indicated to the trustees that he wanted his son to benefit from one trust after he died.

3.4 The Privy Council rejected the view that the beneficiary's right, or claim, to disclosure of trust documents should be regarded as a proprietary right. Even if a beneficiary could be said to have a proprietary interest in trust property, it did not follow that they would automatically be entitled to trust information. Equally, although the applicant had no such proprietary right, it did not follow that access to trust information should be denied.

3.5 The Privy Council introduced a new approach, whereby the right to seek disclosure of trust documents is one aspect of the court's inherent jurisdiction to supervise and, if necessary, to intervene in the administration of a trust. Beneficiaries are entitled to receive information that will enable them to ensure the accountability of the trustees in terms of the trust deed. They are also entitled to have the trust property properly managed and for the trustee to account for its management.

3.6 The factors affecting the exercise of the court's discretion included:

a whether there are issues of personal or commercial confidentiality;

b the nature of the interests held by the beneficiaries seeking access;

c the impact on the trustees, other beneficiaries, and third parties;

d whether some or all of the documents can be withheld in full or redacted form;

e whether safeguards can be imposed on the use of the trust documentation; and

f whether (in the case of a family trust) disclosure would likely embitter family feelings and the relationship between the trustees and beneficiaries to the detriment of the beneficiaries as a whole.

3.7 While the decision in *Schmidt* seemed logical, ensuring that all beneficiaries, irrespective of their equitable status, can supervise the trust created some issues for trustees, because no single beneficiary has an entitlement as of right to trust information. Whether a trustee should, or would be compelled by a court to, disclose trust information will depend on the specific circumstances of the trust.

3.8 *Breakspear v Ackland*[12] further reaffirmed that beneficiaries had the right to seek disclosure of documents relating to the administration of the trust, even where the trustee had broad discretionary powers, and emphasised the importance of a flexible approach that considers each trust's specific circumstances. The New Zealand Supreme Court in *Erceg v Erceg*[13] likewise followed *Schmidt*, holding that the court's function in a disclosure

[11] Schmidt v Rosewood Trust Ltd [2003] 3 All ER 76.
[12] Breakspear v Ackland [2008] EWHC 220 (Ch).
[13] Erceg v Erceg [2017] NZSC 28 at [50]–[62] and [68].

dispute is not a review of whether trustees exercised their discretion correctly, but a fresh consideration in each instance of whether disclosure ought to be made at all and, if so, to what extent and on what conditions.

3.9 It is now broadly accepted that disclosure is given as part of the trustee's duty to account to their beneficiaries. At the outset, trustees have administrative control over whether, what, and how disclosure should be made and to whom. But this control is reviewed and policed by the courts. It is, therefore, a careful exercise of judgment by the trustees as to what disclosure is necessary to discharge their duty to account. If the court disagrees with this exercise of judgment, it will substitute its judgment for that of the trustees.[14]

3.10 In most circumstances, it will be a straightforward exercise of discretion by the trustees. The presumption is that a beneficiary is entitled to see trust documents such as the trust deed, other relevant trust instruments, trust accounts, and financial information that shows how trust property has been dealt with. Any beneficiary who requests information ought ordinarily to be given these 'core' documents, unless there is a good reason to refuse disclosure in the circumstances.

3.11 Of course, factors will weigh against the presumption of disclosure - for example, where disclosure would reveal personal or confidential information about other beneficiaries, or where there are issues of commercial confidentiality. As a general rule, the court will permit a trustee to disclose trust information when it is in the best interests of the beneficiaries as a whole, and a trustee may refuse disclosure when circumstances make it contrary to those interests.

3.12 Notably, the courts have attempted to maintain a careful balance of divergent values. Trustees need to be held accountable, and beneficiaries need sufficient information to do this. However, this must be balanced against the trustees' need to get on with administering a trust and not be impeded by constant demands from difficult beneficiaries. Tipping the balance in either direction risks making some trusts dysfunctional.[15]

4 The position in Singapore

4.1 There are no statutory provisions relating to the disclosure of information to beneficiaries under trust law in Singapore. The position is governed by the common law, and it has become broadly accepted, following the English position, that disclosure is part of the trustee's duty to account to beneficiaries.

4.2 The building blocks have long been recognised by the Singapore courts. It has been observed that trustees have:

a a duty to maintain estate accounts and generally provide them upon a beneficiary's request;[16] and

b arguably, a duty to disclose information to beneficiaries when the trustee enters into a transaction where there is a conflict of interest.[17]

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[14] Eason Rajah QC, 'Trust Confidentiality' (2015) 21 The Journal of International Tax, Trust and Corporate Planning 95.

[15] Law Commission (NZ), The Duties, Office and Powers of a Trustee: Review of the Law of Trusts — Fourth Issues Paper (NZLC IP26, 2011).

[16] Chiang Shirley v Chiang Dong Pheng [2015] 3 SLR 770.

[17] Loh Sze Ti Terence Peter v Gay Choon Ing [2008] SGHC 31. See also Tsun Hang Tey, 'Trustee's Duty of Disclosure' (2012) 24 SAcLJ at fn 145, observing that while the case concerned a trustee's duty of full and frank disclosure when

Mustaq Ahmad v Providentia Wealth Management Ltd

4.3 Until recently, there was no local authority specifically addressing whether a beneficiary of a trust has any right to disclosure of communications between the trustee and other beneficiaries. That gap was closed in *Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) v Providentia Wealth Management Ltd*[18].

4.4 The Singapore courts have now expressly endorsed and applied the approach in *Schmidt*: a beneficiary's right to seek disclosure of trust documents, and of communications between trustee and beneficiaries, is to be regarded as one aspect of the court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts.

4.5 In exercising its inherent jurisdiction to order disclosure of communications between the trustee and other beneficiaries, the court will take into account the following considerations:

a whether disclosure is proper, as communications from beneficiaries - particularly the sort divulged in unilateral communications - may involve sensitive or confidential information;

b the need to promote transparency between beneficiaries and trustees or administrators; and

c the need to avoid placing onerous obligations on the trustee or administrator that will impede their ability to administer the trust, as such obligations are likely to increase prospective confrontation and satellite litigation.

4.6 The effect is that Singapore is squarely a 'default transparency' jurisdiction in the classification used in Part 5 of this paper. Trustees of Singapore-law trusts hold first-instance administrative control over whether, what, how, and to whom disclosure is made - but that judgment is reviewed and policed by the court, which will substitute its own view if it disagrees. The working presumption is that a requesting beneficiary should ordinarily receive the core documents - the trust deed, other relevant instruments, the accounts, and financial information showing how trust property has been dealt with - unless there is good reason to refuse in the circumstances.

A note on personal data

4.7 As discussed in Part 5 below, a series of English judgments in the *Dawson-Damer* litigation permitted discretionary beneficiaries to use data protection legislation to obtain personal information held by a trustee's solicitors, even where trust law imposed no such disclosure obligation. Singapore has its own data protection regime in the Personal Data Protection Act 2012, which confers on individuals rights of access to their personal data, subject to a schedule of exceptions.[19]

4.8 The application of the PDPA in the trust context remains untested in Singapore, and the English legislative sequel (discussed at paragraphs 5.13 to 5.16 below) suggests that data

entering into a conflicted transaction, it allows a measure of exploration as to how the courts approach the duties of trusteeship.

[18] Mustaq Ahmad (alias Mushtaq Ahmad s/o Mustafa) v Providentia Wealth Management Ltd and others [2023] SGHCF 52.

[19] Personal Data Protection Act 2012 (Singapore). The access obligation is subject to exceptions, including where the requested data could reveal personal data about another individual and in respect of opinion data kept solely for an evaluative purpose.

protection regimes may in any event be construed or amended so as not to override principles such as the *Londonderry* non-disclosure rule. Nevertheless, trustees and their professional advisers in Singapore should be conscious that personal information held by them may be subject to access requests framed in data protection terms rather than trust law terms, and should understand what personal data they in fact hold.

5 How the common law has been modified by statute in other jurisdictions

5.1 In addition to case law, statutory developments have shaped the evolution of beneficiaries' rights to trust information. Many jurisdictions have enacted statutes codifying and expanding these rights; several have attempted to remove, or at least reduce, the uncertainties produced by the common law by enacting legislation that seeks to exclude, modify, or codify this aspect of the common law. For a Singapore practitioner advising international families, these differences matter: as Part 6 explains, the governing law of a trust will generally determine the disclosure rules that apply to it.

5.2 The following paragraphs examine a selection of jurisdictions and classify them under three broad categories:

a Category 1 — default transparency jurisdictions (which, following *Mustaq Ahmad*, include Singapore);

b Category 2 — flexible approach jurisdictions; and

c Category 3 — deliberately opaque jurisdictions.

Australia (Category 1)

5.3 Australia is a federal system, but none of its states and territories has codified the law regarding disclosure of information to beneficiaries.[20] There is no general duty on trustees to volunteer documents or information to beneficiaries or possible beneficiaries, or to consult their wishes.[21] However, upon a request by a beneficiary, the trustee must provide information about the trust property even if the beneficiary's interest is only contingent.

5.4 Most Australian judges have endorsed the approach taken in *Schmidt*[22]. However, in *McDonald v Ellis*, Bryson AJ denounced *Schmidt*'s precedent value and the reasoning on which it was founded, stating that[23]:

> [a]n obiter dictum in the Privy Council about trust law in the Isle of Man has … very little claim to be followed at first instance in New South Wales where a different view has been accepted.

5.5 On Bryson AJ's approach, a beneficiary is, as a starting point, entitled to see trust documents and receive information about the trust. His Honour considered that the rule in *Schmidt* introduces discretion and promotes resistance and debate in substitution for a relatively concrete rule: where there is a judicial discretion, there is room for litigious

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[20] With thanks to Professor Katy Barnett of Melbourne Law School for assistance with this section.

[21] McDonald v Ellis (2007) 72 NSWLR 605.

[22] Avanes v Marshall (2007) 68 NSWLR 595; Silkman v Shakespeare Haney Securities Ltd (2011) 8 ASTLR 117; Mercanti v Mercanti [2014] WASC 64; AIT Investment Group Pty Ltd v Markham Property Fund No 2 Pty Ltd [2015] NSWSC 216; Wright v Stevens [2018] NSWSC; Webster (Trustee) v Murray Goulburn Co-Operative Co Ltd (No 3) [2018] FCA 990; Smorgon v ES Group Operations Pty Ltd (2021) 64 VR 146; McFarlane v Jeffery Condon Smith [2023] WASC 336.

[23] McDonald v Ellis, above n 22, at [50].

debate about its exercise, and no certainty on so elementary a matter as whether a beneficial owner is entitled to information about property in which they have an equitable interest.[24] That approach is closely aligned with the leading Australian case, *Hartigan Nominees Pty Ltd v Rydge*[25]. More recently, in *Rinehart v Rinehart*[26], Leeming JA sidestepped the question, noting the existence of *McDonald v Ellis* but not developing the law further.

England and Wales (Category 1)

5.6 There are no express statutory provisions for disclosing information to beneficiaries under trust law in England and Wales.[27] As discussed above, it has become broadly accepted that disclosure is part of the trustee's duty to account to beneficiaries, which requires providing information (not just documentation) to the relevant beneficiaries.

5.7 A series of judgments in the UK has further expanded the analysis by considering whether discretionary beneficiaries of a trust could obtain personal information about themselves under the United Kingdom Data Protection Act 1998 - even where they would not be entitled to such information as a matter of trust law.[28]

5.8 The cases arose from a dispute regarding the Glenfinnan Settlement. Mrs Ashley Dawson-Damer and her two adopted children were discretionary beneficiaries of a trust together with Mr John Dawson-Damer (deceased) and his brother, the Seventh Earl of Portarlington. In 2006 and 2009, the trustee (a Bahamian company) appointed substantial sums in favour of the Earl's descendants. Ashley and her children challenged the transfers as prejudicial and sought disclosure of the settlor's memorandum of wishes. The trust was governed by Bahamian law, meaning the trustees were not required to disclose those documents.

5.9 In an attempt to obtain trust information, the appellants served a 'subject access request' under the Data Protection Act 1998 on the trustee company's solicitors, Taylor Wessing, seeking personal data relating to themselves. Taylor Wessing, based in London and therefore subject to the Act, refused, citing the legal professional privilege exemption.

5.10 In the English Court of Appeal, Taylor Wessing argued that the privilege exception should be read to include a trustee's right of non-disclosure, as Parliament could not have intended information requests to circumvent the body of trust law developed over decades. The court did not agree: neither legal professional privilege nor any other exception applied. Taylor Wessing was an agent of the 'data controller' (the trustee), and the information request was permitted.

5.11 On remand, the court held that the personal data had to be disclosed even though the trustee had no obligation under trust law to disclose it. The court applied the rule of joint privilege: if the requestor has a joint interest in the information with the agency that holds it, the agency is not entitled to rely on legal professional privilege to refuse disclosure.

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[24] McDonald v Ellis, above n 22, at [47]; GE Dal Pont, Equity and Trusts in Australia (8th ed, Thomson Reuters, 2023).

[25] Hartigan Nominees Pty Ltd v Rydge (1992) 29 NSWLR 405.

[26] Rinehart v Rinehart [2022] NSWCA 66 at [28].

[27] With thanks to Alastair Glover, Emily Osborne, Jenny McKeown and Peter Gillis of Stephenson Harwood LLP for their assistance with this section.

[28] Dawson-Damer & Ors v Taylor Wessing LLP [2017] EWCA Civ 74; Dawson-Damer v Taylor Wessing LLP [2020] EWCA Civ 352.

5.12 Importantly, however, the scope of exceptions applying to a subject access request has been significantly expanded by the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, which replaced the legislation examined in *Dawson-Damer*.

5.13 The GDPR contains a provision not considered by *Dawson-Damer* stating that a data subject's right to obtain a copy of their personal data 'shall not adversely affect the rights and freedoms of others'.[29] In the Hansard debates, the Government's view was that this meant information subject to the *Londonderry* non-disclosure principle (e.g. reasons for decisions) could not be obtained through a subject access request, since compelling its production would adversely affect the trustees' right to preserve the confidentiality of the reasons for their dispositive decisions. Whilst untested, this provision is likely to allow a trustee to argue that *Dawson-Damer* would be decided differently under the GDPR regime.

5.14 The Data Protection Act 2018 also expands the legal professional privilege exemption to include 'information in respect of which a duty of confidentiality is owed by a professional legal adviser to a client of the adviser'.[30] It may therefore now be possible for a trustee's legal adviser to resist a subject access request where the documents contain information subject to a duty of confidentiality to the trustee client, even absent legal professional privilege. This provision also remains untested.

5.15 Due to these legislative amendments, the power of a trustee in the UK (or a solicitor to a foreign trustee) to withhold information from a beneficiary, so far as personal data are held, may now be less materially eroded by the data protection regime than *Dawson-Damer* suggests. The application of privacy law to trust relationships nonetheless remains an important development - and, as noted at paragraphs 4.7 and 4.8 above, one with a potential Singapore analogue.[31]

Jersey (Category 2)

5.16 An amendment in 2018 to the Trusts (Jersey) Law 1984 tightened the provisions (specifically Article 29) relating to a trustee's duty to disclose information to beneficiaries and provided more drafting flexibility.[32] A trust deed may be drafted in terms that permit the trustee to refuse or restrict any form of disclosure. Even if the terms of the trust are not restrictive, a trustee may still refuse to provide information and documents if it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to refuse the request. Both scenarios are nonetheless subject to any order of the court made on an application by a trustee, enforcer, beneficiary, or (with leave) any other person.

United States of America (Category 1 under the model law; Category 3 in some states)

5.17 The Uniform Trust Code 2000 (UTC) is a model law described by its drafters as a comprehensive codification of the common law on trusts.[33] States are not required to adopt all or any part of the UTC and can modify it as they see fit. Under the UTC, the duty to keep the beneficiaries reasonably informed of the administration of the trust is

[29] GDPR, art 15(4).
[30] Data Protection Act 2018 (UK), sch 2, para 19.
[31] See also Jeremy Bell-Connell and Joseph Corbett, 'Check your privilege New Zealand' [2022] NZLJ 243.
[32] With thanks to Craig Swart of Dickinson Gleeson for assistance with this section.
[33] With thanks to Howard Neiswender of Dentons Sirote for assistance with this section.

a fundamental duty of a trustee. Section 813 requires trustees to keep the 'qualified' beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to provide a copy of the trust instrument upon request.

5.18 The UTC is primarily a default statute, and the settlor is generally free to override its rules in the trust instrument. Some exceptions are set out in section 105(b), including the duty to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the trust's existence, the trustee's identity, and their right to request reports; and the duty to respond to a qualified beneficiary's request for reports and other information reasonably related to the administration of the trust.[34] The age-based approach reflects settlors' concerns that younger beneficiaries should not know details of the trust or its assets until they have reached maturity and self-sufficiency.

5.19 As of 2021, 37 states had adopted the UTC, and 17 of those had omitted entirely the mandatory disclosure requirements described above. These states have enabled a type of trust often referred to as a 'silent' or 'quiet' trust, and there has been a trend towards 'beneficiary quiet trust statutes' giving settlors flexibility to waive notice and keep trust information silent from certain beneficiaries.[35] Where this method is used, it is vital to include language demonstrating the settlor's intent to withhold information; otherwise, the trustee may be considered to be acting disloyally or in bad faith.

5.20 Delaware has omitted the UTC reporting provisions, but the exclusion is time-restricted, and Delaware law requires the appointment of a designated representative - presumably a fiduciary - to represent and bind beneficiaries during the silent period, in anticipation of the court ensuring that trustees are always required to account to someone and to act in good faith. Nevada and South Dakota have similar exclusions without the time restriction.

5.21 The limits of engineered silence are illustrated by *Wilson v Wilson*[36], a North Carolina appellate decision. North Carolina adopted the UTC in 2006 but omitted sections 105(b)(8) and (9), making the accounting and reporting requirements default only. Beneficiaries alleged that the trustee had permitted the settlor to take control of trust assets and invest them in highly speculative ventures resulting in substantial depreciation, and had failed to distribute income as required. The trustee refused discovery, citing the silent trust provisions, and the trial court agreed.

5.22 On appeal, the court emphasised that non-waivable provisions of the UTC require a trustee to act in good faith and in the interests of the beneficiaries, and recognise the court's power to act in the interest of justice. The mandatory good faith requirement means that beneficiaries are always entitled to information 'reasonably necessary to enforce their rights under the trust', which could not be legally withheld notwithstanding the terms of the trust instrument.[37]

5.23 *Wilson v Wilson* highlights the continuing uncertainties for trustees and settlors in the USA seeking to restrict trust information where there are legitimate reasons to do so. The courts will always require that a trustee acts in good faith, honestly, and in the interests of

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[34] Uniform Trust Code, ss 105(b)(8) and (9), 813.
[35] Al W King III, 'Silent Trusts' (7 August 2024) STEP Journal.
[36] Wilson v Wilson 690 SE 2d 710 (NC Ct App 2010).
[37] Alan Taylor, 'Memorandum by Cook Islands Finance to Trustee Companies Association titled Silent Trusts' (20 August 2023).

beneficiaries, and that there is always someone to whom the trustee must account. The court might have ruled differently had the trust been formed in a state such as Delaware, South Dakota, or Nevada, with statutes specifically providing for quiet trusts, rather than in a state that had merely omitted the UTC provisions.

Canada (Category 1)

5.24 The Uniform Trustee Act (UTA) has been used by the Canadian provinces as a model for their own trustee acts, with varying modification.[38] The UTA defines a 'qualified beneficiary' as a beneficiary with a vested interest, or one who has given written notice of their desire to be treated as such, and imposes on trustees a duty to report to those beneficiaries regularly. Section 28 codifies and expands the common law duty to account, requiring a report for each fiscal period covering the trust's assets and liabilities and their values, the basis of valuation where practicable, receipts and their sources, and disbursements and payees. On request, a qualified beneficiary may inspect the source documents, subject to exceptions - including where disclosure would be detrimental to the best interests of any beneficiary or prejudicial to the trust. Section 39 permits the court to order disclosure of information not provided by the trustee, on such terms as it considers appropriate.[39]

The Bahamas (Category 2)

5.25 The Bahamas has a comprehensive statutory rule on disclosure, which has primarily replaced the common law.[40] Under section 83(1)(a) of the Trustee Act 1998, trustees must take reasonable steps to inform each beneficiary with a vested interest of the trust's existence and the nature of their interest; there is no obligation to disclose to contingent beneficiaries or objects of discretionary powers. Trustees must also take reasonable steps to ensure that at least one person capable of enforcing the trust is aware of its existence - so that the trustee can always comply with its duty to account. Notwithstanding this, Bahamian trustees are not required to disclose any information if, in their absolute discretion, they consider it would not be in the best interests of the beneficiary. Sections 83(8) and 83(10) limit disclosure in hostile litigation by providing that a trustee cannot be compelled by way of discovery to disclose trust documents; a 2017 Supreme Court ruling, however, held that a court is not precluded from ordering disclosure where a trustee has acted fraudulently or in bad faith.[41]

New Zealand (Category 1)

5.26 The Trusts Act 2019 resulted from an extensive review that sought to modernise, clarify, and simplify New Zealand trust law. New Zealand has effectively codified the general principle from *Schmidt* that all beneficiaries are entitled to receive the information that will allow them to hold trustees to account in the circumstances of the particular trust. Despite there being no presumption of disclosure at common law, the Act introduces one at section 51(1): a trustee must disclose 'basic trust information' to every beneficiary - the fact that a person is a beneficiary; the name and contact details of a trustee; the occurrence of and

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[38] Uniform Trustee Act 2012; Albert H Oosterhoft, 'Trust Law Reform: The Uniform Trustee Act' (2014) 34 Est Tr & Pensions J 329. With thanks to Doris Bonora KC of KPMG Law LLP for her assistance with this section.

[39] Provincial implementations include the Trustee Act, RSBC 1996, c 464 (British Columbia); Trustee Act, RSA 2000, c T-8 (Alberta); The Trustee Act, CCSM, c T160 (Manitoba); and Trustees Act, SNB 2015, c 21 (New Brunswick). See Donovan Waters, Lionel Smith and Mark Gillen, Waters' Law of Trusts in Canada (5th ed, Thomson Reuters, 2021).

[40] With thanks to Arthur Seligman of Lennox Paton for assistance with this section.

[41] Dawson-Damer v Grampian Trust Company Ltd (2015/CLE/gen/0034).

details about any change to the trusteeship; and the right to request a copy of the terms of the trust or trust information.[42]

5.27 The presumption does not apply if, after considering the factors listed in section 53, the trustee reasonably considers that basic trust information should not be disclosed. The factors include the nature and extent of the beneficiary's interest and the likelihood of receiving trust property; personal or commercial confidentiality; the settlor's expectations and intentions at the creation of the trust; the age and circumstances of the beneficiary and of other beneficiaries; the effect of disclosure on the beneficiary, the trustees, other beneficiaries, and third parties; in a family trust, the effect on family relationships and on the trustee-beneficiary relationship; practicality where beneficiaries are numerous or unascertainable; the practicality of restrictions, safeguards, or redaction; the nature and context of any request; and any other relevant factor.[43]

5.28 To ensure there is always someone to hold the trustee accountable, the trustee must consider at regular intervals whether basic trust information should be made available to each beneficiary, and if it withholds basic trust information from every beneficiary it must apply to the court for directions.[44] Whilst basic trust information is presumptively available to every beneficiary, 'trust information' need only be disclosed to those who request it, and does not include reasons for trustees' decisions[45] - the *Londonderry* principle survives codification.

5.29 When enacted, the disclosure provisions were expected to lead to an increase in litigation, both directions applications by trustees and claims by beneficiaries. At this stage, the anticipated increase does not appear to have eventuated. The reasons may be a lack of knowledge on the part of settlors and their advisers - or it may be that settlors are generally taking a more humanistic view and seeking to encourage beneficiaries to take more interest in trust matters.

Cook Islands (Category 3)

5.30 In the Cook Islands, subject to certain material exceptions (such as those permitted by the terms of the trust, required by law, or to discharge any duty), it is an offence for a person to disclose any other information relating to an international trust. Section 23(1) of the International Trusts Act 1984 prohibits disclosing or sharing any information about an international trust; section 23(4) gives the trustee discretion, unless the trust instrument provides otherwise, to disclose information to persons deemed necessary for the effective management and administration of the trust. This is a statutory provision typical of the asset protection framework of that Act: the trustee of an international trust has full discretion to decide when, what, and how information regarding the trust should be disclosed.[46]

Hong Kong (Category 1)

5.31 There are no statutory provisions relating to disclosure to beneficiaries under Hong Kong trust law. Hong Kong has accepted *Schmidt* as the applicable law: in *Tam Mei Kam v*

[42] Trusts Act 2019 (NZ), s 51.
[43] Trusts Act 2019 (NZ), s 53.
[44] Trusts Act 2019 (NZ), s 54(2).
[45] Trusts Act 2019 (NZ), s 49.
[46] International Trusts Act 1984 (Cook Islands), s 23.

HSBC International Trustee Ltd the court referred to *Schmidt* without adverse comment, and in *Hotung v Ho Yen Ki* the trustees were obliged to disclose trust documents or information forming part of the performance of a duty owed to the beneficiaries.[47]

Mauritius (Category 1)

5.32 Section 33 of the Trusts Act 2001 of Mauritius prescribes which categories of documents can be disclosed by a trustee and which documents a trustee cannot be compelled to disclose - the latter including documents relating to the conduct of trust administration and the trustee's deliberations on how a power or discretion is to be exercised. Section 33(5) provides that the Supreme Court of Mauritius can order disclosure where satisfied it is bona fide required for the purpose of civil proceedings, on the application of any person having an interest in the trust. In case law under that section, the Supreme Court has cited *Schmidt* with approval and held that it can order disclosure as part of its inherent discretion and general power to supervise the administration of a trust.[48]

Dubai (DIFC) (Category 2)

5.33 Article 66 of the DIFC Trust Law No 4 of 2018 provides that, in the first instance, the trust instrument governs the rights of a beneficiary to trust information.[49] Absent provision in the instrument, beneficiaries are entitled on request to the accounts of the trust, but not to details of deliberations leading to the exercise of discretionary powers or materials taken into account in those deliberations. In addition, an 'interested person' (necessarily including a beneficiary) can apply to the court for a declaration that, pursuant to the trust's provisions, the trustees are not sufficiently or appropriately accountable to the beneficiaries; if successful, the court can extend or restrict the rights of beneficiaries to trust information. The scheme thus permits the instrument to define the trustees' accountability, subject to the court's power to override terms that make the trustees insufficiently accountable - reflecting the notion of an irreducible core of trust obligations that cannot be overridden. The DIFC Laws Amendment Law No 1 of 2024 does not affect this position.

Guernsey (Category 2)

5.34 Section 22 of the repealed Trusts (Guernsey) Law 1989 required trustees, at all reasonable times, to provide full and accurate information as to the state and amount of trust property whenever a beneficiary requested it. Following *Schmidt*, the law was reformed to permit the terms of a trust to exclude beneficiaries' rights to some forms of trust information. A beneficiary nonetheless retains the right to apply to the court for disclosure orders, albeit bearing the evidential burden of proving entitlement to the information requested. Section 26 of the Trusts (Guernsey) Law 2007 could, in theory, make it more difficult for a beneficiary to compel disclosure - a beneficiary will often need to view trust documents in the first place to discover whether there is evidence supporting an application. In practice, trustees of Guernsey law trusts are usually reluctant to refuse

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[47] Tsun Hang Tey, 'Trustee's Duty of Disclosure' (2012) 24 SAcLJ; Tam Mei Kam v HSBC International Trustee Ltd [2010] HKCU 1460; Hotung v Ho Yen Ki [2007] 4 HKCU 1416. With thanks to Professor Lusina Ho of the University of Hong Kong for assistance with this section.

[48] Trusts Act 2001 (Mauritius), s 33. With thanks to Sivakumaren (Robin) Mardemootoo and Emmanuel Luchmun of Dentons Mauritius for assistance with this section.

[49] Previously art 52 of the DIFC Trust Law No 11 of 2005. With thanks to David Russell KC of Outer Temple Chambers and Alastair Glover of Stephenson Harwood LLP for assistance with this section.

disclosure of key trust documents and accounts, because of their immutable duty to account to beneficiaries.[50]

Cayman Islands (Category 1 for ordinary trusts; Category 3 for STAR trusts)

5.35 As a matter of Cayman Islands law, a trustee is not normally obliged to disclose any document revealing the trustee's deliberations as to the exercise of its functions, the reasons for any decision, any material on which such a decision was or might have been based, or any letter of wishes. A trustee normally does have a duty to provide copies of the trust instrument and supplemental trust documents, and information regarding the state and amount of the trust property (normally trust accounts), at the request of any beneficiary.[51]

5.36 Different rules apply to trusts created under the Special Trusts (Alternative Regime) (STAR) provisions of the Trusts Act (2021 Revision). A beneficiary of a STAR trust is not entitled, in that capacity, to any information or documents concerning the trust; only persons appointed as enforcers have those rights - although beneficiaries can (and, where the trust benefits particular individuals, typically will) be enforcers.[52] Whilst STAR trusts are classified here as 'deliberately opaque', it has fairly been noted that opacity is not the intent of the legislation but rather an unavoidable and appropriate consequence of it: accountability is redirected to the enforcer, not abolished.

British Virgin Islands (Category 1)

5.37 English common law rules apply in the British Virgin Islands. *Schmidt* is the leading authority, and the position is much the same as in the Cayman Islands for ordinary trusts - albeit the BVI statutory trust regime (VISTA) does not disapply common law rules in the same way as STAR. The Virgin Islands Special Trusts Act 2003 exists for the altogether different purpose of removing the trustee's duty to monitor and intervene in the conduct of directors and management of a BVI company held in a VISTA trust.[53]

Bermuda (Category 1)

5.38 The common law principle that trustees should be accountable to beneficiaries - and that beneficiaries must be sufficiently informed in order to hold them to account - is respected in Bermuda.[54] The courts usually lean towards ordering disclosure of certain types of trust information unless there are good reasons not to - financial statements, details of investments held, fees and expenses, the trust deeds, advice paid for from the trust fund, and minutes of meetings. However, no beneficiary is entitled to trust information 'as of right' without consideration of the facts of the particular case, and information relating to the reasons for the exercise of fiduciary powers is not normally disclosed. The courts have refused disclosure of letters of wishes on two grounds: they are confidential documents which must remain so as a result of a duty owed by the trustees to the settlor; and they are likely to be material to the exercise by the trustees of a power or discretion.

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[50] Trusts (Guernsey) Law 2007, s 26. With thanks to Matt Guthrie of Ogier (Guernsey) LLP for assistance with this section.

[51] With thanks to Tony Pursall of Mourant Ozannes (Cayman) LLP for assistance with this section. A trust not subject to the STAR regime is an 'ordinary trust': Trusts Act (2021 Revision), s 95(1).

[52] Antony Duckworth, 'STAR Trusts' (2013) 8 Trusts & Trustees 215 at 218.

[53] Virgin Islands Special Trusts Act 2003. With thanks to Tony Pursall of Mourant Ozannes, BVI, for assistance with this section.

[54] With thanks to Ashley Fife of Carey Olsen Bermuda Limited for assistance with this section.

DENTONS

6 Jurisdictional selection and governing laws of convenience

6.1 Historically, a beneficiary challenging a trustee's decision faced practical difficulties in obtaining the necessary evidence, partly because beneficiaries were sometimes unaware of the existence of the trust or denied information about it. In many cases this suited settlors. As the common law has evolved, so have new structures and legislation to reflect and protect these concerns.

6.2 Some commentators take the view that disclosure obligations need to be balanced against the practicality of identifying and providing information to beneficiaries, and the reality that some beneficiaries were never intended to benefit from the trust in the first place. Rather than imposing broad disclosure obligations on trustees, a better approach may be to tailor the trust deed to the circumstances of the settlor and the beneficiaries intended to receive a benefit, ensuring that trustees provide information only to those with a legitimate interest in receiving it and in holding the trustees to account.

6.3 The authors of *Lewin* state that the rights of beneficiaries to seek disclosure of documents on demand under trust law are, by virtue of the Hague Convention on the Law Applicable to Trusts and on their Recognition, governed by the proper law of the trust.[55] The Hague Convention provides that a trust shall be governed by the law chosen by the settlor, and that the law specified shall govern the validity of the trust, its construction, its effects, and the administration of the trust - including the duty of trustees to account for their administration.[56]

6.4 The Convention's provisions may be disregarded when their application would be manifestly incompatible with public policy,[57] but there is scant judicial precedent for an interventionist approach. It has, for example, become common and accepted practice in Australia for trusts to be established under the laws of South Australia by residents of other states for the sole reason that the rule against perpetuities has been abolished there.[58]

6.5 Various other rules of private international law permit a settlor in one country to select the proper law of another country to govern a trust, in much the same way that parties to a contract can select a law of convenience.[59] Such rules also extend, by analogy and principles of judicial comity, to settlors in a common law country that is not a signatory to the Hague Convention - a point of particular relevance in Singapore, which is not a signatory. The general view is that the Convention replicates what was, or would have been, the common law on the private international law of trusts,[60] though the common law did not allow a free choice of law to govern a trust of foreign land.[61]

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[55] Lewin on Trusts (18th ed) at 23–85.

[56] Hague Convention on the Law Applicable to Trusts and on their Recognition, arts 6 and 8.

[57] Hague Convention, art 18.

[58] Law of Property Act 1936 (South Australia), s 61.

[59] See, in the European Union, art 3 of the Rome I Regulation (Regulation (EC) No 593/2008); in the USA, s 107 of the Uniform Trust Code and s 268 of the Restatement (Second) of Conflict of Laws; in England, the Trusts (Choice of Governing Law) Act 1989; and in Switzerland, the Swiss Private International Law Act.

[60] Presentation at the STEP Australia Conference 2024 by Professor Ying Khai Liew of Melbourne Law School; A Wallace, 'Choice of Law for Trusts in Australia and the United Kingdom' (1987) 36 ICLQ 454; A Briggs, Private International Law in English Courts (2nd ed, OUP, 2023) 664 fn 176; Chellaram v Chellaram (No 2) [2002] EWHC 632 (Ch); Re Carapiet's Trusts [2002] EWHC 1304 (Ch).

[61] Re Piercy [1895] 1 Ch 83.

6.6 Accordingly, if a Jersey-law trust is being administered in Singapore and a question concerning disclosure to beneficiaries comes before a Singapore court applying common law conflicts principles, the applicable governing law would be that of Jersey - whose Article 29 regime, discussed at paragraph 5.16 above, permits the trust instrument to restrict disclosure and confers a wider discretion on the trustee than the general law. The same analysis applies equally elsewhere: a Bahamian-law trust administered in England, for example, would be judged by the Bahamas' statutory rules, which are more restrictive of disclosure than the general law.

6.7 This suggests that, at the same time as a trust deed is tailored, a governing law of convenience could be chosen to suit the circumstances of the settlor and beneficiaries, with the effect of restricting disclosure to beneficiaries. Whilst there is a risk that this choice of law could be held contrary to public policy, in our view that risk is significantly mitigated where the trustee's duty to account is fulfilled through some other mechanism, such as reporting to a protector or other third party.

7 Practical implications for Singapore practice

7.1 Drawing the threads together, the following points may assist trustees, trust companies, and advisers in Singapore:

a Treat every disclosure request as a *Schmidt* exercise - and document it. Record the factors weighed, the redactions considered, and any safeguards or undertakings offered. Following *Mustaq Ahmad*, the court will review the trustee's judgment and substitute its own if it disagrees; a considered, documented decision is the best protection;

b Remember the presumption. Core documents - the trust deed, relevant instruments, accounts, and financial information - should ordinarily be provided to a requesting beneficiary. A bare refusal is now the riskier course;

c The *Londonderry* principle remains available. Deliberations, reasons for discretionary decisions, and the materials on which they were based generally need not be disclosed; letters of wishes will usually attract similar protection, consistently with the approach taken in Bermuda and in *Breakspear v Ackland*;

d Audit personal data holdings. Although untested in the trust context, the PDPA provides an access route framed in data protection rather than trust law terms. Trustees and their advisers should understand what personal data they hold and how the statutory exceptions would apply;

e For international structures, governing-law selection is a disclosure decision. The proper law of the trust will generally determine the disclosure regime; where restriction is a legitimate objective, consider a governing law and structure that channel accountability through a protector, enforcer, or designated representative rather than attempting to eliminate it - the lesson of *Wilson v Wilson* and of the irreducible core;

f Consider engagement before restriction. As discussed in the conclusion below, a well-designed programme of staged disclosure and beneficiary education will often serve the settlor's objectives better than silence.

8 Conclusion

8.1 The issue of whether and what information about a trust is disclosed to beneficiaries has vexed trustees, lawyers, and judges for decades. Lawmakers in some jurisdictions have prescribed that certain information must be disclosed, whilst others have purported to permit settlors to write their own rules regulating disclosure. Singapore's courts have now given a clear answer of their own, adopting the *Schmidt* framework of supervised, circumstance-specific disclosure in aid of the trustee's duty to account.

8.2 At an intellectual level, this evolution and exercise in comparative law is fascinating. However, on balance, we contend that there has been too much emphasis on this topic.

8.3 At their best, trusts protect a family legacy, work to ensure financial security for future generations, and meet the objectives of the settlor. At their worst, trust structures can deny families their agency over decisions critical to their financial and personal wellbeing - especially if information is restricted from beneficiaries and the trust structure is rigid and opaque. Although the settlor may have created a generational legacy, there is an increased risk of family disharmony and the subsequent fracturing of the family wealth.

8.4 As our society changes, trust documents and practices must evolve to meet the modern needs of families - in Singapore as elsewhere. The best approach is to focus on the objectives of the settlor and then make a plan from there. More often than not, the settlor will wish to preserve and enhance family wealth through the generations. In our view, transparency and engagement with beneficiaries will, most of the time, be a better way of achieving this objective.

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