

## Key Financial Secrecy Indicators

### 4: Public Company Ownership

#### What is measured?

This indicator considers whether a jurisdiction requires all available types of company with limited liability to publish updated beneficial ownership or legal ownership information on public records accessible via the internet<sup>1</sup>. If beneficial ownership (BO) is published, a full transparency credit is awarded. If only legal ownership (LO) information is available for all types of company, a 0.2 transparency credit is awarded.

A precondition for awarding a positive result is that all available types of companies with limited liability are required to publish ownership information, except for publicly listed companies, where the owners of the listed shares are not required to be made public. For practical purposes we consider this information to be publicly available when it can be accessed at a fixed cost of maximum US\$10 or €10 and access does not require the establishment of complex payment arrangements (e.g. registration of bank account)<sup>2</sup>. The information must be updated at least once a year.

To meet a reasonable standard, published ownership information must comply with minimum requirements. In the case of beneficial owners, the information must relate to the natural human beings who have the right to enjoy ownership of the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards<sup>3</sup>. For this purpose, trusts, foundations, partnerships, limited liability corporations and other legal persons or structures do not count as beneficial owners. The published details of beneficial owners must include:

- a) the full names of all beneficial owners, and for each
- b) country of residence,
- c) passport ID-number or birthdate and place or Taxpayer Identification Number (TIN) or full address.

In the case of only legal ownership (that is, the nominee and/or trustee and/or corporate shareholders of the company) being published, a partial transparency credit of 0.2 is awarded because such availability may, in some circumstances, reduce the time required to identify the beneficial owners of the company. The minimum details required to be published online about legal owners must include:

- a) the full names of nominees and/or trustees and/or legal entities acting as legal owners or shareholders, and for each

- b) country of residence or incorporation, plus
  - a. in case of individuals, passport ID-number or birthdate and – place or Taxpayer Identification Number (TIN) or full address;
  - b. in case of legal entities, company registration number and address of principle place of business or registered address.

The indicator draws information mainly from five sources<sup>4</sup>: First, the Global Forum peer reviews<sup>5</sup> have been analysed to find out what sort of ownership information companies must register with a government agency. An important distinction is made between beneficial ownership information which refers to the ultimate human beings owning the company on the one hand, and legal ownership that “refers to the registered owner of the share, which may be an individual, but also a nominee, a trust or a company, etc.” (OECD 2010<sup>6</sup>: 189). A governmental authority is defined as to include “corporate registries, regulatory authorities, tax authorities and authorities to which publicly traded companies report” (ibid.) and is used interchangeably here with “government agency” or “public institution”.

The second source was private sector websites (Lowtax.net, Ocracom.com, Offshoresimple.com, etc.), the third, Financial Action Task Force (FATF) peer reviews<sup>7</sup> and fourth, the results of the TJN-Survey 2013. Finally, where the above sources indicate that beneficial or legal ownership information is recorded by a government agency and may be made available online, we have searched for this information on the corresponding websites.

This indicator resembles KFSI 3 relating to registered company ownership information. However, KFSI 4 assesses whether the ownership information is available online, while KFSI 3 only checks if beneficial owner information must be recorded at a government agency and updated, without the proviso that the information is available online. However, KFSI 3 only gives credit if beneficial ownership is recorded without giving partial credit for recording legal ownership, different to KFSI 4 which gives a partial credit to legal ownership details published online.

### Why is it important?

The absence of readily available beneficial ownership information obstructs law enforcement and distorts markets due to information asymmetries, for example in public procurement. Incentives to break laws are greatly increased when companies or individual traders can hide behind anonymity in combination with limited liability. Law enforcement is drastically impeded when there is little or no chance of revealing the true identity of the real human-beings hidden behind corporate structures.

There are plenty of cases where absence of beneficial ownership information has allowed the abuse of legal entities. For example, the proceeds of bribery and corruption can be hidden and transferred by anonymous shell companies. The World Bank reported in 2011:

“Our analysis of 150 grand corruption cases shows that the main type of corporate vehicle used to conceal beneficial ownership is the company [...] Companies were used to hide the proceeds of corruption in 128 of the 150 cases of grand corruption reviewed.” [\(World Bank 2011: 20, 34\)](#)<sup>8</sup>.

For illustrative purposes, two examples are provided below:

On March 1, 2010, BAE Systems plc. (BAE) was ordered to pay a US\$400 million criminal fine following its admission of guilt, among others, of conspiracy to defraud the United States and to making false statements about its Foreign Corrupt Practices Act (FCPA) compliance programme<sup>9</sup>. BAE’s conspiracy involved the use of offshore shell companies - most of which were owned by BAE - to conceal the role of intermediaries it was hiring to assist in promoting the Saudi Arabian fighter deals. One of the shell companies used by BAE in the deals was incorporated in the British Virgin Islands (BVI), where incorporation of a legal entity does not require the disclosure of the physical location of the place of business nor the legal and beneficial ownership information<sup>10</sup>. In 2001, BAE used the BVI offshore company to make payments of over £135.000.000 and over US\$14.000.000 to its marketing advisers and agents. The payments to these intermediaries were made by BAE despite the fact that they failed to perform the requisite due diligence under the FCPA and even when there was a high probability that the payments would be used to ensure that BAE was favoured by the foreign government.

According to the United States District Court, for reasons related to its business interests, BAE gave the US authorities inadequate information related to the identity and work of its advisers and at times avoided communicating with its advisers in writing. Furthermore, the contracts and other relevant materials related to the intermediaries were maintained by secretive legal trusts in offshore locations<sup>11</sup>.

The use of shell entities not only allowed BAE to conceal the stream of payments to these agents and to circumvent laws in countries that did not allow agency relationships, but also hindered the ability of authorities to detect the schemes and trace the money<sup>12</sup>.

Another example is the case of Haiti’s state-owned national telecommunications company (‘Haiti Teleco’), which used corporate vehicles to accept bribes and launder funds. Bribes were paid to Haiti Teleco’s officials, including the director of Haiti Teleco, by representatives of three international telecommunications companies, based in the U.S., with which Haiti Teleco contracted. In exchange, Haiti Teleco’s officials provided these companies

commercial advantages (e.g. preferential and reduced telecommunications rates), at the expense of Haiti Teleco's revenue. The representatives systematically used intermediary shell companies to funnel wire transfers and cheque payments for fake consulting services that were never rendered.

The funds were transferred from the intermediary accounts to Haiti Teleco's officials, among others, by false notations (e.g. fabricated invoice reference numbers in the memo section of the cheques), routinely made in order to conceal the true nature of the payments<sup>13</sup>. Once Haiti Teleco's director completed his tenure, he was employed by two of the three U.S. companies that had paid him bribes, and from that position he continued to facilitate the same corruption scheme, paying bribes to the person who had succeeded him as director in Haiti Teleco. The use of shell companies as intermediaries concealed the names of the individual bribe-givers and bribe-takers as direct counterparties in any transactions transferring bribe money<sup>14</sup>.

In a joint publication of 2011 by the United Nations and the World Bank relating to stolen assets (by embezzlement, bribery, etc.), both argue that company registries should be searchable online:

"Jurisdictions should develop and maintain publicly available registries, such as company registries, land registries, and registries of nonprofit organizations. If possible, such registries should be centralized and maintained in electronic and real-time format, so that they are searchable and updated at all times" ([UNODC/World Bank 2011: 93<sup>15</sup>](#)).

Furthermore, in cases of abuse of corporate structures through individuals, if beneficial ownership is required to be recorded in an online directory but is not correctly disclosed, the perpetrator of impropriety is also open to being prosecuted for failure to disclose accurate information. On occasion such simple methods of prosecution are essential when all other ways of pursuing criminality are blocked.

However, in the absence of online disclosure of beneficial ownership information, the online availability of detailed legal ownership information may enable a foreign authority to follow up some initial suspicions on wrong-doing and may enable it to successfully file a request for information exchange with its foreign counterpart. The legal owner can be addressed by an information request and will sometimes be required to hold beneficial ownership information which it then must provide to an enquiring authority. At the same time, delays are created through an absence of beneficial ownership information, and the allowance of tipping off provisions may warn and ultimately frustrate any law enforcement effort. Therefore, we give only a 0.2 credit for legal ownership being publicly available.

If ownership information is only held secretly on a government database to which there is no public access, there is little likelihood of appropriate checks being undertaken to ensure that the registry actually complies with its obligation to collect and regularly update beneficial

ownership information. It is third party use that is likely to create the pressure to ensure this is complied with. In a global setting of fierce regulatory and tax competition for capital, the likely outcome of this scenario would be registries that are not diligently maintained, and whose data is outdated or gets lost.

This does not mean that we argue that everybody has to put his or her identity online for everybody else to view. Far from it: if somebody prefers to keep her financial dealings and identity confidential, she can dispense with opting for limited liability status in the company type chosen and deal in her own name instead. In such a case, personal identity information would not be required to be revealed online and thus the link between an individual and a business ownership would remain confidential.

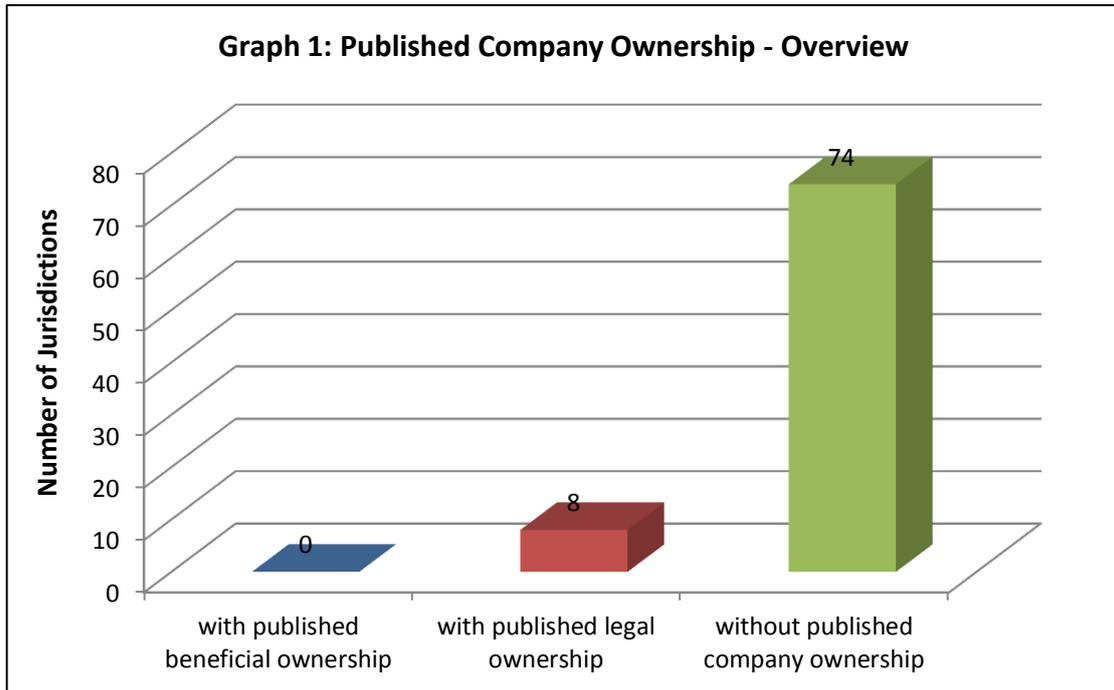
Limited liability is a privilege conferred by society at large. In exchange, the minimum safeguard it legitimately requires for the functioning of markets and the rule of law is that the identity of owners must be publicly available. This holds true especially for private companies that are not trading their shares on a stock exchange.

#### **What are the crimes that might hide behind a lack of public company ownership information?**

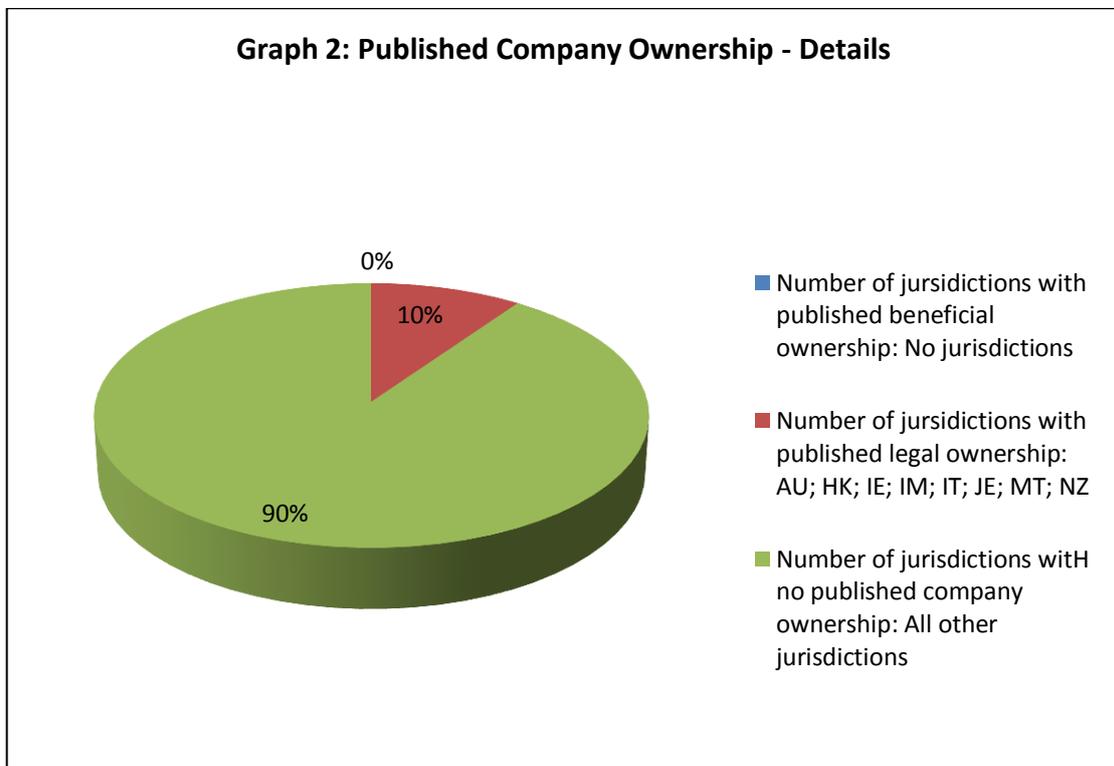
Criminals might hide behind unpublished company ownership to perpetrate any or all of the following crimes: tax evasion, embezzlement, financial fraud, infringement of competition and public procurement rules, non-payment of alimonies, bankruptcy fraud, hiding of the proceeds of corruption, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, the covering of illicit intelligence activity and more besides.

#### **Results Overview**

<b>Table 1: Public Company Ownership - Overview</b>	
Number of jurisdictions with published beneficial ownership	0
Number of jurisdictions with published legal ownership	8
Number of jurisdictions with no published company ownership	74



**Results Detail**



**Table 2: Published Company Ownership - Details**

ID	Country	ISO	Public	ID	Country	ISO	Public
1	Andorra	AD	No	42	Korea	KR	No
2	Anguilla	AI	No	43	Latvia	LV	No
3	Antigua & Barbuda	AG	No	44	Lebanon	LB	No
4	Aruba	AW	No	45	Liberia	LR	No
5	Australia	AU	Legal	46	Liechtenstein	LI	No
6	Austria	AT	No	47	Luxembourg	LU	No
7	Bahamas	BS	No	48	Macau	MO	No
8	Bahrain	BH	No	49	Malaysia (Labuan)	MY	No
9	Barbados	BB	No	50	Maldives	MV	No
10	Belgium	BE	No	51	Malta	MT	Legal
11	Belize	BZ	No	52	Marshall Islands	MH	No
12	Bermuda	BM	No	53	Mauritius	MU	No
13	Botswana	BW	No	54	Monaco	MC	No
14	Brazil	BR	No	55	Montserrat	MS	No
15	British Virgin Islands	VG	No	56	Nauru	NR	No
16	Brunei	BN	No	57	Netherlands	NL	No
17	Canada	CA	No	58	New Zealand	NZ	Legal
18	Cayman Islands	KY	No	59	Norway	NO	No
19	Cook Islands	CK	No	60	Panama	PA	No
20	Costa Rica	CR	No	61	Philippines	PH	No
21	Curacao	CW	No	62	Portugal (Madeira)	PT	No
22	Cyprus	CY	No	63	Russia	RU	No
23	Denmark	DK	No	64	Samoa	WS	No
24	Dominica	DM	No	65	San Marino	SM	No
25	Dominican Republic	DO	No	66	Saudi Arabia	SA	No
26	France	FR	No	67	Seychelles	SC	No
27	Germany	DE	No	68	Singapore	SG	No
28	Ghana	GH	No	69	South Africa	ZA	No
29	Gibraltar	GI	No	70	Spain	ES	No
30	Grenada	GD	No	71	St Kitts and Nevis	KN	No
31	Guatemala	GT	No	72	St Lucia	LC	No
32	Guernsey	GG	No	73	St Vincent & Grenadines	VC	No
33	Hong Kong	HK	Legal	74	Sweden	SE	No
34	Hungary	HU	No	75	Switzerland	CH	No
35	India	IN	No	76	Turks & Caicos Islands	TC	No
36	Ireland	IE	Legal	77	United Arab Emirates (Dubai)	AE	No
37	Isle of Man	IM	Legal	78	United Kingdom	GB	No
38	Israel	IL	No	79	Uruguay	UY	No
39	Italy	IT	Legal	80	US Virgin Islands	VI	No
40	Japan	JP	No	81	USA	US	No
41	Jersey	JE	Legal	82	Vanuatu	VU	No

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<sup>1</sup> We consider this a reasonable criteria given a) the prevalence of the internet in 2013, b) since international financial flows are now completely reliant on the use of modern technology, it would be ridiculous if that technology were not used to make information available worldwide especially since c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence *need* information to be accessible on the internet.

<sup>2</sup> We consider that for something to be truly ‘on public record’ prohibitive cost constraints must not exist, be they financial or in terms of time lost or unnecessary inconvenience caused. The open data movement goes even further by demanding that all available company registry information should be made available for free in open and real time data format so that network analyses, cross-references between companies and jurisdictions, and new creative data usages become possible. This would greatly increase the likelihood of identifying illicit activity hidden behind corporate vehicles. In the future, it is likely that the requirements of this KFSI may change to better reflect the requirements of open data, which, among others, is a zero cost requirement. For more information about this see <http://opencorporates.com/> (15.07.2013).

<sup>3</sup> FATF defines the beneficial owners as the “natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.” See page 110 in Financial Action Task Force 2012: The FATF Recommendations. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (February 2012), Paris, in: [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf); 15.07.2013.

<sup>4</sup> To see the sources we are using for particular jurisdictions please check out the assessment logic table in Annex C here <http://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf> and the corresponding information for individual countries in our database, available at [www.financialsecrecyindex.com/database/menu.xml](http://www.financialsecrecyindex.com/database/menu.xml).

<sup>5</sup> The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. They can be viewed at: <http://www.eoi-tax.org/>; 15.07.2013.

<sup>6</sup> Organisation for Economic Co-Operation and Development 2010, Tax Co-operation 2010: Towards a Level Playing Field - Assessment by the Global Forum on Transparency and Exchange of Information, Paris.

<sup>7</sup> While the FATF consolidated its recommendations to a total of 40 in 2012, the old recommendations are used here because the assessment of compliance with the new recommendations will only begin in 2013. The relevant new FATF recommendations from 2012 are recommendations 37, 38, 39 and 40. In the next FSI, the results of the new assessments will be taken into account.

<sup>8</sup> <http://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>; 23.07.2013

<sup>9</sup> See <http://www.justice.gov/opa/pr/2010/March/10-crm-209.html>; 15.07.2013.

<sup>10</sup> See British Virgin Islands Bus. Co’s Act § (9)(1)(2004), British Virgin Islands Bus. Co’s Act § (41)(1)(d) (2004).

<sup>11</sup> See <http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/02-01-10baesystems-info.pdf>; 15.07.2013.

<sup>12</sup> The World Bank & UNDOC, “The Puppet Masters- How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About it” (2011) (hereinafter: “The Puppet Masters”), pp.198-202.

<sup>13</sup> The Puppet Masters, p. 212.

<sup>14</sup> The Puppet Masters, pp. 212-217. According to the U.S. Department of Justice, in 2010, following the admission of guilt to money laundering conspiracy by Haiti Teleco's director, he was sentenced to four years in prison and was ordered to pay US\$1,852,209 in restitution and to forfeit US\$1,580,771. Additional individuals involved in the bribery scheme were also sentenced to prison terms and were ordered to pay high monetary fines as a result of their convictions. As of July 2012, additional indictments were made against new defendants involved in the scheme. See Press Release, U.S. Department of Justice, "Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme" (March 12, 2010); 27.9.12; *See also* Plea Agreement pp. 8-9, United States v. Antoine, No. 09-cr-21010 (S.D. Fla. February 19, 2010); 27.9.12. *See also* The Puppet Masters, pp. 212-217.

<sup>15</sup> <http://star.worldbank.org/star/publication/barriers-asset-recovery>; 24.07.2013.