

# KEY FINANCIAL SECRECY INDICATORS

## Key Financial Secrecy Indicator 1: Banking Secrecy

### What is measured?

This indicator assesses whether a jurisdiction provides banking secrecy. We go beyond the statutory dimension to assess the absence or inaccessibility of banking information as a form of banking secrecy. For a jurisdiction to obtain a full credit on this indicator, the jurisdiction must ensure that banking data exists, and that it has effective access to this data. We consider that effective access exists if the tax authorities can obtain account information without the need for separate authorisation, for example, from a court, and if there are no undue notification requirements or appeal rights against obtaining or sharing this information.

In order to measure whether banking secrecy enjoys legal status in a jurisdiction, we use data<sup>1</sup> from table B1 of the OECD 2010 report<sup>2</sup> and from the Global Forum peer reviews<sup>3</sup>. If a jurisdiction does not legally endorse banking secrecy, we award 0.2 credit points.

The availability of relevant banking information is measured by a jurisdiction's compliance with FATF-recommendations 5 and 10<sup>4</sup>.

Recommendation 5 states that "financial institutions should not keep anonymous accounts or accounts in obviously fictitious names". The recommendation specifies that the financial institution must be able to identify not just the legal owner but also the beneficial owner(s), both in the case of natural and legal persons<sup>5</sup>. If a jurisdiction fully complies with this recommendation, we award a further 0.2 credit points<sup>6</sup>.

FATF-recommendation 10 requires financial institutions to "maintain, for at least five years, all necessary records on transactions, both domestic and international"<sup>7</sup>. A further 0.2 credits are awarded if a jurisdiction fully applies this recommendation. We have relied mainly on the mutual evaluation reports by the FATF, FATF-like regional bodies or the IMF for the assessment of these two criteria<sup>8</sup>.

In addition, and in order to diversify our sources, we have also used data contained in the 2014 International Narcotics Control Strategy Report (INCSR, Volume 2 on Money Laundering and Financial Crimes)<sup>9</sup>. This report indicates for a large number of countries a) whether banks are required to maintain records over time, especially of large or unusual transactions, and b) whether banks are required to report large transactions. We award 0.1 credit points for a positive answer for each a) and b)<sup>10</sup>.

However, since it is not sufficient for banking data to merely exist, we also measure whether this data can be obtained and used for information exchange purposes, and if no undue notification<sup>11</sup> requirements or appeal rights<sup>12</sup> prevent effective sharing of banking data. We rely on Global Forum's element B.1<sup>13</sup> for addressing the first issue at hand (powers to obtain

and provide data), and we use Global Forum’s element B.2<sup>14</sup> for the second issue (notification requirements/appeal rights). Each will be attributed 0.1 credits if no qualifications apply to the elements and underlying factors<sup>15</sup>. An overview of the rating for B.1 and B.2 can be seen below:

KFSI 1 – Assessment of Global Forum Data		
Assessment Credits	Results as in table of determinations of Global Forum B.1 / B.2, “ <b>Determination</b> ” <sup>16</sup>	Results as in table of determinations of Global Forum B.1 / B.2, “ <b>Factors</b> ” <sup>17</sup>
0.1	“The element is in place.”	No factor mentioned.
0	“The element is in place.”	Any factor mentioned.
0	“The element is in place, but certain aspects of the legal implementation of the element need improvement.”	Irrelevant.
0	“The element is not in place.”	Irrelevant.

## KFSI 1: BANKING SECRECY

All of KFSI 1 is summarized in the following table:

KFSI 1 – Banking Secrecy			
Dimensions	Condition(s)	Assessment	Source(s)
Statutory standing	Banking secrecy does not have legal standing	0.2 credit points	OECD Tax-Cooperation report 2010, table B.1; Global Forum peer reviews
Availability of relevant information	No anonymous accounts – FATF Rec. 5	0.2 credit points	FATF, FATF-like regional bodies, or IMF
	Keep banking records for at least five years– FATF Rec. 10	0.2 credit points	
	Maintain records over time, especially of large or unusual transactions	0.1 credit points	Bureau for International Narcotics and Law Enforcement Affairs (INCSR 2014)
	Report large transactions	0.1 credit points	
Effective access	Sufficient powers to obtain and provide banking information	0.1 credit points	Global Forum peer reviews elements B.1 and B.2 (incl. factors and text)
	No undue notification and appeal rights against information exchange	0.1 credit points	

## Why is this important?

Factual and formal banking secrecy laws can obstruct information gathering requests from both national and international competent authorities such as tax administrations or financial regulators. Until 2005, most of the concluded [double tax agreements](#)<sup>18</sup> did not specifically include provisions to override formal banking secrecy laws when responding to information requests by foreign treaty partners.

Some countries defend their banking secrecy by means of criminal prosecution which provides a way to silence, retaliate against, and prosecute critics as well as whistle-blowers. Bank secrecy was, and in many cases remains, a significant obstacle to progress in obtaining information required to secure law enforcement and deter tax dodging.

Another way of achieving factual banking secrecy which has become [increasingly fashionable](#)<sup>19</sup> since formal banking secrecy came under attack by the OECD in 2009 consists of not properly verifying the identity of the account holders, or in allowing nominees such as custodians, trustees, or foundation council members to be acceptable as the only names on bank records. Furthermore, the absence of or neglect in enforcing record keeping obligations for large transactions, for instance through wire transfers, is another way in which banks are complicit in aiding their clients to evade investigation.

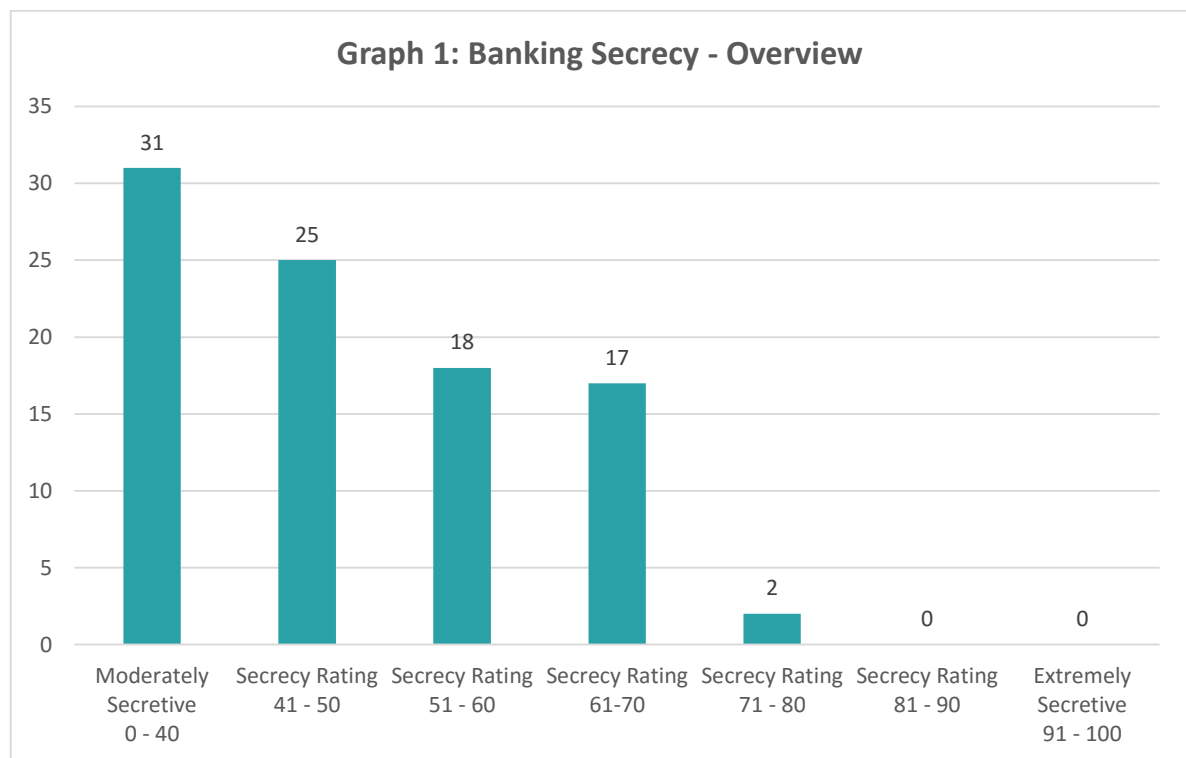
Since most trusts, shell companies, partnerships and foundations need to maintain a bank account, the beneficial ownership information banks are required to hold on the accounts they operate is often the most effective route for identifying the natural persons behind these legal structures. Together with the recorded transfers, ownership records of bank accounts therefore are often the sole available evidence of criminal or illicit activity of individuals, such as the payment of bribes, illegal arms trading or tax fraud. Therefore, it is of utmost importance that authorities with appropriate confidentiality provisions in place can access relevant banking data routinely without being constrained by additional legal barriers such as formal banking secrecy or factual barriers, such as missing or outdated records.

## Which crimes might be hidden behind banking secrecy?

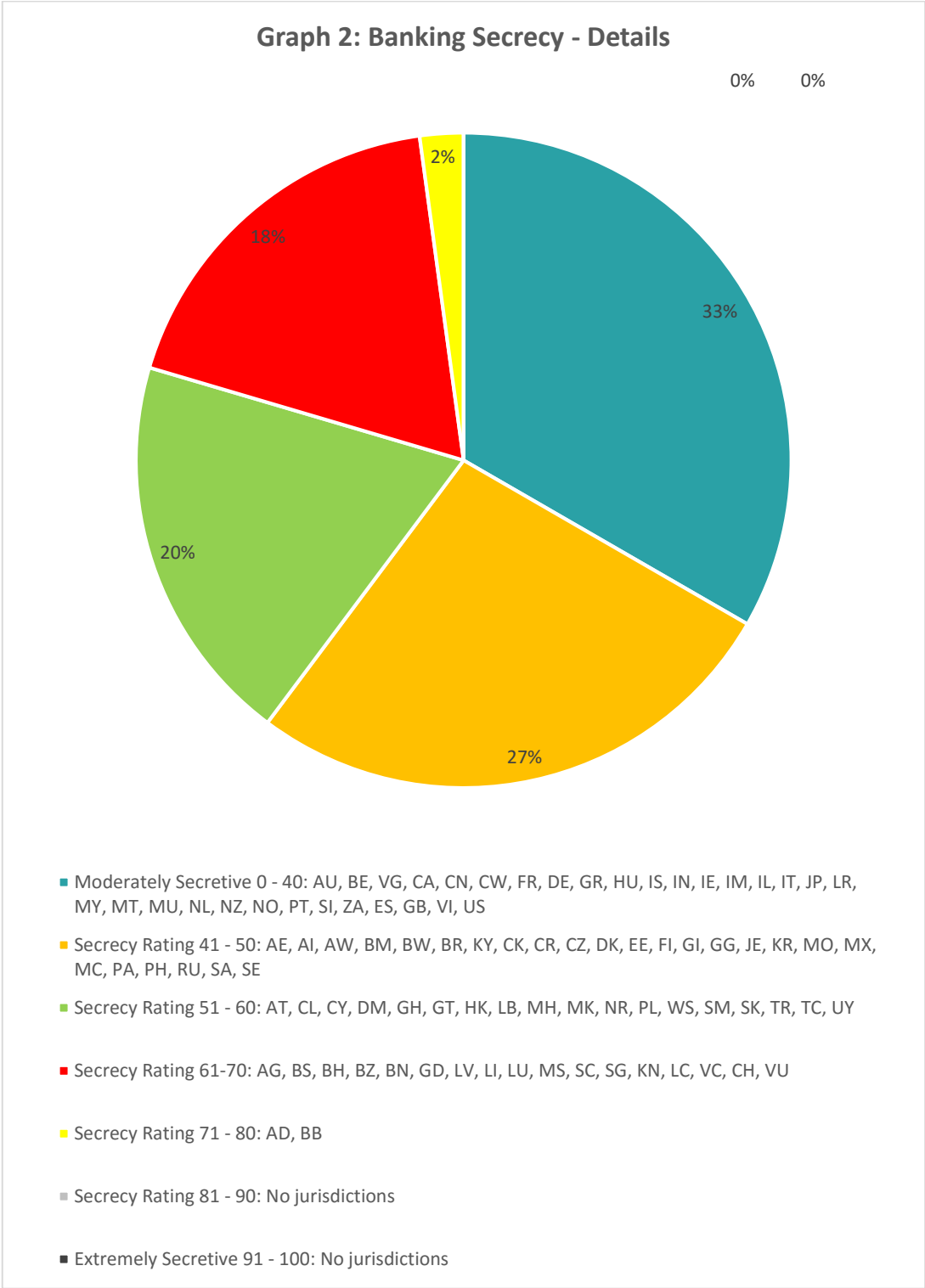
Tax evasion, concealment of bribes and embezzlement, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, the covering of illicit intelligence activity, non-payment of alimonies, and other financial crimes might be hidden behind banking secrecy.

## Results Overview

Table 1: Banking Secrecy Results - Overview <sup>20</sup>	
Number of jurisdictions rated moderately secretive 0 - 40	31
Number of jurisdictions with secrecy rating 41 - 50	25
Number of jurisdictions with secrecy rating 51 - 60	18
Number of jurisdictions with secrecy rating 61-70	17
Number of jurisdictions with secrecy rating 71 - 80	2
Number of jurisdictions with secrecy rating 81 - 90	0
Number of jurisdictions rated extremely secretive 91 - 100	0



Results Detail



# KFSI 1: BANKING SECRECY

Table 2: Formal Banking Secrecy - Transparency Credits

ID	Country	ISO	Credits	ID	Country	ISO	Credits
1	Andorra	AD	0.23	48	Korea	KR	0.50
2	Anguilla	AI	0.50	49	Latvia	LV	0.34
3	Antigua & Barbuda	AG	0.37	50	Lebanon	LB	0.47
4	Aruba	AW	0.53	51	Liberia	LR	0.67
5	Australia	AU	0.80	52	Liechtenstein	LI	0.37
6	Austria	AT	0.37	53	Luxembourg	LU	0.30
7	Bahamas	BS	0.34	54	Macao	MO	0.50
8	Bahrain	BH	0.30	55	Macedonia	MK	0.47
9	Barbados	BB	0.27	56	Malaysia (Labuan)	MY	0.73
10	Belgium	BE	0.93	57	Malta	MT	0.63
11	Belize	BZ	0.37	58	Marshall Islands	MH	0.30
12	Bermuda	BM	0.53	59	Mauritius	MU	0.60
13	Botswana	BW	0.53	60	Mexico	MX	0.57
14	Brazil	BR	0.50	61	Monaco	MC	0.50
15	British Virgin Islands	VG	0.80	62	Montserrat	MS	0.30
16	Brunei	BN	0.37	63	Nauru	NR	0.40
17	Canada	CA	0.73	64	Netherlands	NL	0.70
18	Cayman Islands	KY	0.50	65	New Zealand	NZ	0.63
19	Chile	CL	0.40	66	Norway	NO	0.80
20	China	CN	0.60	67	Panama	PA	0.56
21	Cook Islands	CK	0.50	68	Philippines	PH	0.50
22	Costa Rica	CR	0.50	69	Poland	PL	0.47
23	Curacao	CW	0.60	70	Portugal (Madeira)	PT	0.63
24	Cyprus	CY	0.40	71	Russia	RU	0.50
25	Czech Republic	CZ	0.50	72	Samoa	WS	0.44
26	Denmark	DK	0.57	73	San Marino	SM	0.40
27	Dominica	DM	0.40	74	Saudi Arabia	SA	0.57
28	Estonia	EE	0.56	75	Seychelles	SC	0.37
29	Finland	FI	0.57	76	Singapore	SG	0.36
30	France	FR	0.66	77	Slovakia	SK	0.40
31	Germany	DE	0.60	78	Slovenia	SI	0.73
32	Ghana	GH	0.47	79	South Africa	ZA	0.74
33	Gibraltar	GI	0.54	80	Spain	ES	0.73
34	Greece	GR	0.60	81	St Kitts and Nevis	KN	0.33
35	Grenada	GD	0.33	82	St Lucia	LC	0.30
36	Guatemala	GT	0.40	83	St Vincent & Grenadines	VC	0.33
37	Guernsey	GG	0.53	84	Sweden	SE	0.50
38	Hong Kong	HK	0.44	85	Switzerland	CH	0.37
39	Hungary	HU	0.73	86	Turkey	TR	0.40
40	Iceland	IS	0.67	87	Turks & Caicos Islands	TC	0.47
41	India	IN	0.80	88	United Arab Emirates (Dubai)	AE	0.53
42	Ireland	IE	0.77	89	United Kingdom	GB	0.67
43	Isle of Man	IM	0.67	90	Uruguay	UY	0.47
44	Israel	IL	0.64	91	US Virgin Islands	VI	0.60
45	Italy	IT	0.77	92	USA	US	0.60
46	Japan	JP	0.73	93	Vanuatu	VU	0.34
47	Jersey	JE	0.57				

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<sup>1</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>2</sup> The full title of this annual publication is “Tax Co-operation: Towards a Level Playing Field” (henceforth “OECD-report”). The OECD provides the following explanation: “Table B1 shows for all of the countries reviewed whether the basis for bank secrecy arises purely out of the relationship between the bank and its customer (e.g. contract, privacy, common law) [...or] whether it is reinforced by statute [...]” (OECD 2010: 142; [TJN-note]).

<sup>3</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>4</sup> These recommendations refer to the 49 FATF recommendations of 2003. 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 only began in 2013. The corresponding recommendations in the new 2012 set of recommendations are numbers 10 (replacing old Rec. 5) and 11 (replacing old Rec. 10). FSI 2015 takes into account the results of the new assessments. The old recommendations can be viewed at: [www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf); 01.06.2015; the new recommendations are available at: [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); 16.7.2015.

<sup>5</sup> [www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf); 01.06.2015. Also see footnote above.

<sup>6</sup> In order to measure compliance the FATF uses the following scale: 1 = non-compliant; 2 = partially compliant; 3 = largely-compliant; 4 = fully compliant. We give 0 credits for non-compliant, 0.7 for partially compliant, 0.13 for largely compliant and finally 0.2 credit points for fully compliant jurisdictions.

<sup>7</sup> [www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf); 01.06.2015. Also see footnote above.

<sup>8</sup> We ignored the results of updated reports to mutual evaluations, and instead only included the results of full mutual evaluations. This is because only a comprehensive re-assessment of all recommendations gives a complete picture of the anti-money laundering system and offers a fair basis for comparison across jurisdictions.

<sup>9</sup> This report is available here: <http://www.state.gov/documents/organization/222880.pdf>; 17.07.2015.

<sup>10</sup> The information is presented in this table: [www.state.gov/documents/organization/191500.pdf](http://www.state.gov/documents/organization/191500.pdf) (01.06.2015) under the columns “Report Large Transactions” and “Maintain records over time”.

<sup>11</sup> While the GF peer reviews assess whether a notification (to the taxpayer) could delay or prevent the exchange of information, we also consider whether any notification to the taxpayer takes place at all, even if it is after the exchange of information, because the taxpayer could start taking actions (transfer assets, leave the country, etc.) to prevent the legal and economic consequences of the requesting jurisdiction’s investigation or proceedings. By becoming aware, he/she could also take precautionary measures with respect to assets, bank accounts, etc. located in other jurisdictions.

<sup>12</sup> In those cases when the taxpayer is not notified (either because it is not a legal requirement or because there are exceptions to this notification), we still evaluate whether the information holder has any right to appeal or to seek judicial review. In this case, we consider whether there are legally binding timeframes for the appeal procedures and appropriate confidentiality safeguards which would ensure that the exchange of information would not be delayed or prevented.



<sup>13</sup> The full element B.1 reads as follows: “Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).” (See page 27 in: Global Forum on Transparency and Exchange of Information for Tax Purposes 2010: Implementing the Tax Transparency Standards. A Handbook For Assessors and Jurisdictions, Paris).

<sup>14</sup> The full element B.2 reads as follows: “The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.” (See page 28, in Global Forum 2010, op. cit.).

<sup>15</sup> Because under Global Forum’s methodology there are no clear criteria to determine when identified problems as described in “factors” are going to affect the assessment of an “element”, we are only awarding a credit if no problems (factors) have been identified, irrespective of the element’s assessment. However, we do consider both: (i) whether the factors mentioned are related to bank information; and (ii) whether information described in the report (even if not mentioned as a factor) is also relevant to assess a jurisdiction’s power to obtain and exchange bank information. Also see footnotes below for more background.

<sup>16</sup> The Global Forum peer review process analyses and determines if the 10 elements considered by the OECD to be necessary for “upon request” information exchange are in place. A three-tier assessment is available (element “in place”, “in place, but”, “not in place”), and this assessment is called “determination”. See footnote above and below for more details.

<sup>17</sup> Each of the “determinations” (as explained in footnotes above) of the 10 elements may have underlying factors which justify the element’s determination and the recommendations given. They are shown in a column next to the determination in the “table of determinations” in the corresponding peer review reports.

<sup>18</sup> [http://www.taxjustice.net/cms/upload/pdf/Tax\\_Information\\_Exchange\\_Arrangements.pdf](http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf);

01.06.2015.

<sup>19</sup> [www.taxjustice.net/cms/upload/pdf/TJN\\_1110\\_UK-Swiss\\_master.pdf](http://www.taxjustice.net/cms/upload/pdf/TJN_1110_UK-Swiss_master.pdf); 01.06.2015.

<sup>20</sup> Nine of the countries in our 2015 index are either not members of the Global Forum or had not had their treaties reviewed by the Global Forum as of 31 May 2015 (the cut-off date for KFSI 13). These are Bolivia, Gambia, Maldives, Montenegro, Paraguay, Taiwan, Venezuela: not members of the Global Forum; Tanzania and Dominican Republic: members of the Global Forum, but treaties not yet reviewed. Because this data availability problem is acute in KFSI 13, and results in a clear risk of distortion, a KFSI assessment for KFSIs 1 and 13 is not established for these nine jurisdictions. Nor, as a consequence, are they given an overall secrecy score. The total of assessed jurisdictions in KFSIs 1 and 13 is therefore 93, not 102.