

KEY FINANCIAL SECRECY INDICATORS

Key Financial Secrecy Indicator 3: Recorded Company Ownership

What is measured?

This indicator assesses whether a jurisdiction requires all available types of companies to submit beneficial ownership information upon incorporation to a governmental authority, and whether it requires this information to be updated upon subsequent transfers or issuance of shares (or upon any other event or action which changes beneficial ownership information), regardless of whether or not this information is made available on public record.

To receive a full credit on this indicator, registered ownership information must comply with minimum requirements. It should include:

- a) the full names of all beneficial owners holding at least 10% of ownership in the entity¹, and for each beneficial owner:
- b) their country of residence, and
- c) full address, or a passport ID-number, or a birthdate and place or a Taxpayer Identification Number.

Alternatively, countries subject to the 4th EU Directive on Anti-Money Laundering will receive 0.25 credits. Adopted on May 20th, 2015 by the [European Parliament](#)², Article 30 of this Directive contains provisions regarding the registration of beneficial ownership information in all EU Member States for companies and other legal entities incorporated within their territories. The directive needs to be implemented by each EU member state by 2017.

The recorded beneficial owners must be the natural human beings who have the right to enjoy ownership or the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards.³ For this purpose, trusts, foundations, partnerships, limited liability corporations and other legal persons do not count as beneficial owners.

A precondition for awarding a positive result is that all available types of companies with limited liability must be required to submit beneficial ownership information except for publicly listed companies, where owners of the listed shares are not required to be recorded. In addition, bearer shares⁴ should not be available in the jurisdiction or, if available, there should be mechanisms to ensure that all existing bearer shares are⁵ immobilised or registered (for instance, by a custodian) and that updated information on holders of bearer shares is also filed with a government authority. Furthermore, appropriate disclosure mechanisms should be in place to disallow recording of specific discretionary legal structures such as trusts and foundations or their trustees and nominees as alleged beneficial owners of companies.

This indicator is mainly informed by four different types of sources.⁶ First, the Global Forum peer reviews⁷ 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 which “refers to the registered owner of the share, which may be an individual, but also a nominee, a trust or a company, etc.” (OECD 2010⁸: 189). A governmental authority is defined so 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 the aforementioned 4th EU Directive on Anti-Money Laundering. While in the Financial Secrecy Index 2013 no jurisdiction was considered to have any beneficial ownership registration, this has changed in 2015. Subsequent to the adoption of the 4th EU Directive on Anti-Money Laundering all EU members will receive a partial credit. The new directive entails minimum standards for the registration of adequate, accurate and current information on the beneficial owners of corporates and other legal entities to be accessed by competent authorities, FIUs, entities obliged to conduct customer due diligence (such as banks) and persons and organizations with a legitimate interest. Member States may choose to go beyond this standard and publish the information on registries accessible by the public.

The definition of ‘beneficial owner’ under the Directive, however, is subject to a threshold above 25% ownership rights. In line with various other international developments, we consider any threshold above 10% ownership rights to be too high for effective identification of company ownership.⁹ In addition, at time of writing it remains unclear whether the new requirements will pierce through legal structures such as discretionary trusts and foundations or bearer shares. The Directive does not prohibit bearer shares but merely requires EU Member States to prevent their misuse. Given that the obligation to register beneficial ownership is incompatible with the existence of bearer shares, it can be expected that effective mechanisms will need to be implemented to immobilise bearer shares or require their registration. Taking account of these uncertainties, European jurisdictions which are subject to the adopted proposal will be awarded only 0.25 credit.

The third type of source used was private sector websites (Lowtax.net, Odra.com, Offshoresimple.com, etc.), the fourth, Financial Action Task Force (FATF) peer reviews¹⁰, and the fifth, the results of the TJN-Survey 2015 (or earlier).

KFSI 3 resembles KFSI 4 relating to public company ownership information. However, KFSI 3 assesses only whether the beneficial ownership information needs to be recorded at a government agency and updated, without the provision that the information is available online. Therefore, if a jurisdiction is credited for published beneficial ownership in KFSI 4, it was credited for this indicator too. However, the opposite does not hold true: some jurisdictions may require beneficial ownership information to be submitted and updated, but do not require its publication online.

Why is this important?

Absence of beneficial ownership information obstructs law enforcement. When a jurisdiction, such as the US state of Wyoming (see [here](#)¹¹, page 236, or [here](#)¹²), allows private companies to be formed without recording beneficial ownership information, the scope for domestic and foreign law enforcement agencies to look behind [the corporate veil](#)¹³ is very restricted.

These so-called 'shell companies' are nothing more than letterboxes serving as conduits for financial flows in many different guises. Non-resident persons (both natural and legal) can use a shell company to shift money illicitly while claiming to their domestic government authorities that they have no ownership interest in the company. For example, the proceeds of bribery and corruption can be hidden and transferred via 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](#))¹⁴.

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 programme¹⁵. BAE's conspiracy involved the use of offshore shell companies - most of which were owned by BAE - to conceal the role of intermediaries it had hired to assist in promoting Saudi Arabian fighter deals. One of the shell companies used by BAE was incorporated in the British Virgin Islands (BVI), where incorporation of a legal entity does not require disclosure of the physical location of the place of business nor the legal and beneficial ownership information¹⁶.

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 locations¹⁷. The use of shell entities allowed BAE to conceal the stream of payments to these agents and to circumvent laws in countries that did not allow agency relationships. It also hindered the ability of authorities to detect the schemes and trace the money¹⁸.

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 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 money¹⁹.

With respect to tax evasion, consider this hypothetical example: suppose that a Kenyan national, normally resident in Nairobi, claims that a Wyoming registered company delivers consultancy services to his Kenyan business and the Wyoming company charges US\$1,000 a month for these services. As a consequence the Kenyan national pays US\$1,000 every month to the Wyoming company and claims that a) he is no longer in possession of these funds since he paid them to a foreign company for services supplied, and b) that the US\$1,000 paid monthly is a business expense that he may off-set against his income in his next tax return.

In reality, however, the Wyoming company is a shell owned and controlled by the Kenyan national. While the Kenyan tax authority might have a suspicion that these fund transfers are for illicit purposes e.g. tax evasion, in the absence of registered ownership information the only way for the Kenyan tax authority to confirm its suspicions may be - under certain conditions - to contact its US-counterpart.

However, the US-tax authority cannot readily access the required data on behalf of the Kenyan authorities if the ownership information is not registered. In order to find out it could undertake the lengthy exercise of going through the judicial system to summon the registered company agent in Wyoming. But the due process necessary may take months to initiate and even then, a possible outcome is that the required beneficial ownership information is unavailable in the USA and is held in a third country. That third country may, of course, be a secrecy jurisdiction where a trust has been placed into the ownership structure for exactly this reason.

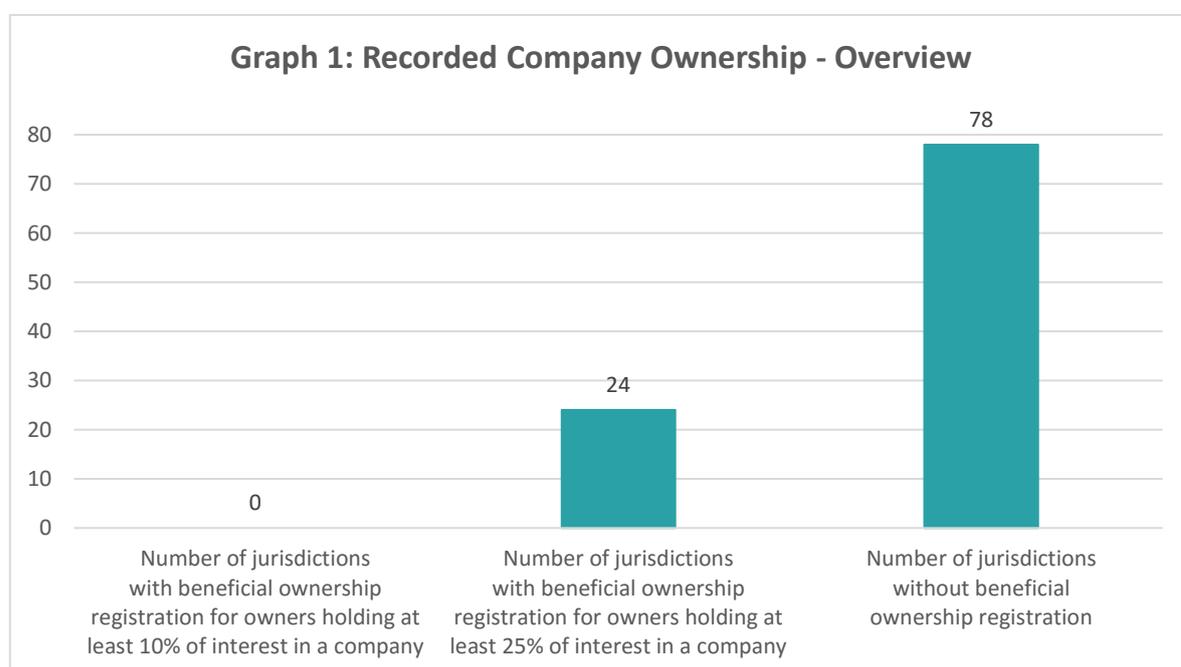
Faced with such time consuming and expensive obstacles to obtaining correct information on beneficial ownership of offshore companies, most national authorities seldom, if ever, pursue investigations.

What crimes might be concealed behind a lack of company ownership information?

Tax evasion by individuals, financial fraud, hiding of the proceeds of bribery and embezzlement, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, infringement of competition rules, non-payment of creditors, bankruptcy fraud, the covering of illicit intelligence activity and more besides might be hidden behind the absence of registration requirements of company ownership.

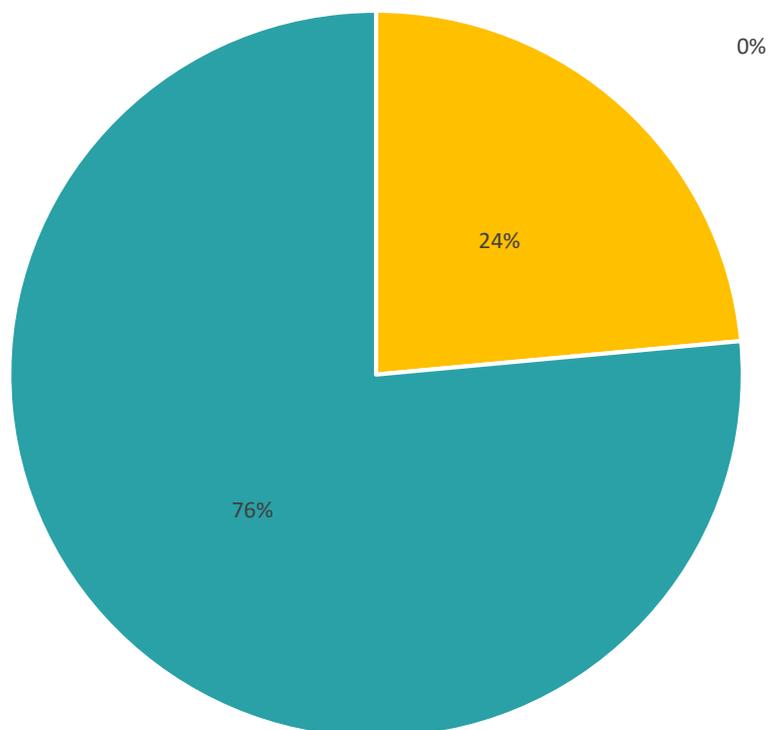
Results Overview

Table 1: Recorded Company Ownership - Overview	
Number of jurisdictions with beneficial ownership registration for owners holding at least 10% of interest in a company	0
Number of jurisdictions with beneficial ownership registration for owners holding at least 25% of interest in a company	24
Number of jurisdictions without beneficial ownership registration	78



Results Detail

Graph 2: Recorded Company Ownership - Details



- Number of jurisdictions with beneficial ownership registration for owners holding at least 10% of interest in a company: No jurisdiction
- Number of jurisdictions with beneficial ownership registration for owners holding at least 25% of interest in a company: AT, BE, CY, CZ, DK, EE, FI, FR, DE, GR, HU, IE, IT, LV, LU, MT, NL, PL, PT, SK, SI, ES, SE, GB
- Number of jurisdictions without beneficial ownership registration: All other jurisdictions

¹ While the ideal transparency scenario would encompass registration of absolutely all beneficial owners, we believe a threshold of at least 10% of ownership in a company is reasonable. Opposite to this, we consider that the Financial Action Task Force's definition of beneficial owner (which is triggered by 'more than 25%' of ownership) is too high a threshold because it allows easy avoidance of beneficial ownership registration (e.g. by appointing a spouse and two children as owners). Therefore, jurisdictions requesting registration of those individuals holding more than 25% of interest in a company (e.g. the United Kingdom and EU countries subject to the 4th AML Directive, as explained hereinafter) will receive only 0.25 credit.

²<http://www.consilium.europa.eu/en/press/press-releases/2015/04/20-money-laundering-strengthened-rules/>; <http://register.consilium.europa.eu/pdf/en/15/st05/st05933.en15.pdf>; <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0201+0+DOC+XML+V0//EN&language=EN>; <https://euobserver.com/justice/128776>; 13.7.2015.

³ FATF defines 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; 26.05.2015.

⁴ Bearer shares are shares which are not registered, where the owner can be any person holding the share certificate and the transferring of the ownership involves only delivering the physical certificate.

⁵ We consider that the obligation to register bearer shares exists when legal provisions establish a timeframe for immobilization/registration of all existing bearer shares before 2017 and where the consequence for non-compliance is the loss of those shares. Provisions where the only consequence of non-compliance is the loss of voting rights or rights to dividends are not considered to be sufficient because this would involve the mere suspensions of rights. In such case, the holders of bearer shares may still transfer those shares or avoid identification until they are able to regain their rights.

⁶ 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.

⁷ 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/>; 26.05.2015.

⁸ 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.

⁹ For instance, 10% of shares/capital in an entity is FATCA's threshold to define a US substantial ownership ("FATCA + AML = an equation with too many variables?", Weis, Thinnes, PWC Luxembourg, May 2012, at: <http://www.pwc.lu/en/press-articles/2012/fatca-aml-an-equation-with-too-many-variables.jhtml>); 20.7.2014).

¹⁰ The FATF consolidated its 49 (40 plus 9 special) recommendations to a total of 40 in 2012 (the "new recommendations"). Because the mutual evaluation of compliance with the new recommendations has only begun in 2013, we are predominantly using the old evaluations.

¹¹ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf>; 26.05.2015.

¹² <http://www.economist.com/node/21529021>; 26.05.2015.

¹³ <http://www.oecdbookshop.org/en/browse/title-detail/?ISBN=212001131P1>; 26.05.2015.

¹⁴ <http://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>; 26.05.2015.

¹⁵ See <http://www.justice.gov/opa/pr/2010/March/10-crm-209.html>; 26.05.2015.

¹⁶ See British Virgin Islands Bus. Co's Act § (9)(1)(2004), British Virgin Islands Bus. Co's Act § (41)(1)(d) (2004).

¹⁷ See <http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/02-01-10baesystems-info.pdf>; 26.05.2015.

¹⁸The 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.

¹⁹ 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); 15.07.13; *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.