

Secrecy Indicator 6: Transparency of Company Ownership

What is measured?

This indicator considers whether a jurisdiction requires all available types of companies with limited liability to publish updated beneficial ownership or legal ownership information on public records accessible via the internet.¹ A zero secrecy score can be achieved if both beneficial and legal ownership is published for free in a format which can be easily copied. If there are types of companies for which no or incomplete or outdated ownership information is published online, the secrecy score is 100 points. Partial reductions of the secrecy scores can be achieved by making data on either beneficial or legal ownership information publicly accessible for a fixed cost not exceeding US\$10, €10 or £10. This indicator only assesses companies which are not listed on a public stock exchange.

The secrecy scoring matrix can be found in Table 1, and full details of the assessment logic can be found in Table 2.

To meet a reasonable standard, published ownership information must comply with minimum requirements. The recorded beneficial owners must be the natural human beings who enjoy the right to ownership or the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards.² For this purpose, trusts, foundations, partnerships, limited liability corporations and other legal persons do not count as beneficial owners. Different percentage thresholds of control or ownership applied in the definition of the beneficial owner are disregarded in this indicator as long as the definition and threshold of a beneficial owner is the same or stronger than the requirements of the Financial Action Task Force (FATF) and the European Union (see SI 3).³

For ownership information to be considered updated, the relevant data should be required to be updated at least annually. For ownership information to be

Table 1. Secrecy Scoring Matrix: Secrecy Indicator 6

Regulation [Secrecy Score: 100 points= full secrecy; 0 points = full transparency]	Online for free in a format which can be easily copied	Online for free, but not in a format which can be easily copied	Online at small cost [i.e. up to US\$10, €10 or £10]
Incomplete ownership or high cost Complete and updated ownership information is not always published for a cost of up to US\$10, €10 or £10, or unknown.	100		
Legal Ownership All companies publish updated and complete legal owners, but fail on beneficial owners.	80	85	90
Beneficial Ownership All companies publish updated and complete beneficial ownership, but fail on legal owners.	50	55	60
Beneficial and Legal Ownership All companies publish both updated and complete beneficial and legal ownership.	0	5	10

considered complete, it needs to comprise specific minimal elements. It should include in the case of beneficial owners:

1. the full names of all beneficial owners of the entity, where a beneficial owner is identified in line with or stricter than the requirements of the Financial Action Task Force (FATF) and the European Union; and for each beneficial owner:
2. full address, or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

In case of legal owners, the minimum details required to be published online include:

1. The full names of nominees and/or trustees and/or legal entities acting as legal owners or partners, and for each:
2. The full address or company registration number (for legal persons), or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

If this data is available online but there is a cost to access it, the secrecy score will be reduced but not to zero. To obtain a zero secrecy score the data must be accessible online for free in a format which can be easily copied.

Even if the cost per record is low, it can be prohibitively expensive to effectively analyse the data depending on the format in which it is made available. For example, access costs create substantial hurdles for conducting real time network analyses, for constructing cross-references between companies and jurisdictions, and for new creative data usages. Furthermore, complex payment or

user-registration arrangements for accessing the data (eg registration of bank account, submission of a copy of the passport, requirement of a local identification number or sending of hard copy documents) should not be required.⁴

From this indicator's perspective, a zero secrecy score was granted for a search mechanism in which legal and beneficial ownership information could be freely accessed, in a format that could be easily copied. This means that search mechanisms for which the information was not available in a format which is easily copied (for instance, a non searchable PDF), received a worse score.

This indicator mainly builds on analysis undertaken in Secrecy Indicator 3 as regards company ownership registration.⁵ If that analysis indicated that complete and updated 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 of the company registrars. Therefore, the sources for this indicator are identical to SI 3 with the only additional sources being the results of the random searches on the respective jurisdiction's online company registry.

The only difference applies to the requirements around the registration of birthdates. Whereas in SI 3, we require the birthdate to be registered, SI 6 only requires the year and month of birth to be disclosed.

Following the weakest link principle⁶ which we follow for the purposes of Financial Secrecy Index research, a precondition for reducing the secrecy score in this component is that all available types of companies are required to publish the relevant information online and that the information is required to be updated at least annually (including strict registration/immobilisation of bearer shares). If any exceptions are allowed for certain types of companies, we assume that anyone intending to conceal information from public view will simply opt for company types where information can be omitted.

In 2018 the 4th EU anti-money laundering Directive was amended (known as AMLD 5) requiring all EU Member states to allow public access to beneficial ownership information for companies and other legal persons.⁷ The last transposition date of AMLD 5 was set to 10 January 2020. However, public access does not necessarily have to be online. Article 30 of AMLD 5 states the following: "5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to: [...] (c) any member of the general public [...] 5a. Member States may choose to make the information held in their national registers referred to in paragraph 3 available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register."⁸

Therefore, transposition of AMLD 5 does not necessarily ensure that beneficial ownership information of companies will be publicly accessible online. In

addition, access conditions may lead us to consider information to not be available online even for those cases in which it was supposed to be.

Why is this important?

The reasoning in favour of public registries of beneficial ownership has been laid out in great detail and through many case studies.⁹ The Panama Papers¹⁰ illustrate the abundance of cases where the absence of beneficial ownership information has allowed the abuse of legal entities. In essence, these revelations added value by proving the identities of beneficial owners of otherwise anonymous shell companies. The secrecy provided by law firm Mossack Fonseca through shell companies, the largest number of which were registered in the British Virgin Islands, enabled criminals to launder illicit proceeds of corruption, tax evasion, drug trafficking and human trafficking as well as to finance terrorism. In a nutshell, the absence of readily available beneficial ownership information obstructs law enforcement and creates a criminogenic environment. Incentives to break laws are greatly increased when individuals can hide behind anonymity in combination with limited liability.

The value of public beneficial ownership registers was illustrated by the OpenLux investigation, led by Le Monde and journalists from another 17 media outlets which analysed information available in Luxembourg's Beneficial Ownership Register. Differently from previous leaks, which consisted of private information leaked by whistleblowers, the OpenLux investigation scraped and analysed information held in Luxembourg's public beneficial ownership register¹¹. The investigation shed light on how the country has been employed as an entry point to Europe for non-European Business.

The benefits of publicity, however, did not stop at the information that was actually registered. In fact, one of the main merits of the investigation was highlighting the limitations of the current system. As OCCRP showed, the "administrators were listed as UBOs for almost a third of all Luxembourg companies in the register", a number which went to 80% when focusing on the investment fund industry.¹² This result clearly indicates that the current framework is not sufficient to guarantee that ownership information is adequately registered. Thus, as we have argued previously, publicity and openness is fundamental to keeping the Registrars accountable, and to evaluate whether institutional frameworks are being effective in achieving their intended purpose.

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 collects and regularly updates accurate beneficial ownership information. The reliability, accuracy and timeliness of data availability cannot be checked independently.

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 non-existent. Without public scrutiny, misleading or fraudulent data entries about the alleged owners of companies become almost impossible to detect until a criminal investigation attempts to reveal the corporate veil of such an entity – at which point it is too late, the fruits of the crime have been realised and crime prevention has failed. It is third party use that is likely to create the pressure to ensure compliance.

The Panama Papers revealed how misleading, if not fraudulent, ownership recordings were provided on a commercial basis to clients seeking secrecy. Parts of this practice might have even been legal under the EU's 4th Anti-Money Laundering Directive and in conformity with FATF's recommendations. These rules allow the registration of a company's senior manager instead of a beneficial owner under certain conditions. The Panama Papers revealed how the law firm Mossack Fonseca has provided so-called premium sham directors. By using these, the real beneficial owners could remain hidden and a premium sham director was recorded by the law firm instead: "For a five-digit sum, the law firm offered to have a person pose as the true company owner".¹³ The same kind of misleading or fraudulent ownership recording is possible whenever beneficial ownership information is not made public but kept on confidential government registries.

Publishing beneficial ownership information online will maximise the deterrent effect of data transparency. In cases where a company has been used for criminal purposes and the real identity of the beneficial ownership was falsely recorded in an online directory, board members or other parties responsible for supervision of the legal entity should face scrutiny, and/or prosecution. This will greatly increase the willingness of all parties to record accurate information.

The information asymmetries resulting from non-public beneficial ownership information also distort markets, for example in public procurement. Public officials and members of the inner circle of powerful politicians can easily hide behind shell companies. When these companies then participate in public tenders and win public contracts, they will benefit, behind the scenes, the very same politicians, ministers or presidents who are responsible for overseeing the public tendering process. As a consequence, public trust in fair market competition and in government is eroding.

In Slovakia, where a new law for disclosure of beneficial owners in public procurement processes came into force on 1 January 2017, the effects are remarkable. As an opposition party source noted:

Some notorious Slovak tycoons that were previously hidden behind foreign structures (and the public could only guess who owned them) actually admitted in the public register that they are beneficial owners of these companies. One case of particular interest is company Vahostav that builds most of Slovakia's highways and public buildings.¹⁴

While Panama Papers were extraordinary in scale, detail and impact, these revelations were not the first instance that revealed the problems caused by hidden ownership. The World Bank reported in 2011 how the proceeds of bribery and corruption can be hidden and transferred by anonymous shell companies:

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.¹⁵

In a joint publication of 2011 by the United Nations and the World Bank relating to stolen assets (by embezzlement, bribery, etc.), both argued 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 times¹⁶

Where online disclosure of beneficial ownership information does not exist, the availability of at least detailed legal ownership information would enable a foreign authority to follow up some initial suspicions on wrong doing and enable that authority 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 failure to prevent tipping off may frustrate law enforcement efforts.

However, another reason for placing the ownership information on publicly accessible online record is that tax administrations and public prosecutors do not always have the political support and freedom to investigate cases of large scale tax evasion and big ticket money laundering. This is well illustrated through the Swiss Leaks¹⁷ investigation into secret bank accounts held at HSBC private bank. While many of the accounts were related to tax evasion and money laundering, it was revealed¹⁸ how some authorities had failed to request access to the data, and some others did not use the information they received to investigate. Some authorities only started to take action after the data had been leaked to the media.

This does not mean that we demand that everybody must put his or her identity online for everybody else to view. Far from it: if someone 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 do not trade their shares on a stock exchange.

In a decision of March 2017,¹⁹ the European Court of Justice appears to support these principles in the face of counter arguments²⁰ based on data protection and privacy. The court denies that there is a right to be forgotten for personal data recorded in a business registry. In the press release on the verdict, the court states:

By today's judgment, the Court notes first of all that the public nature of company registers is intended to ensure legal certainty in dealings between companies and third parties and to protect, in particular, the interests of third parties in relation to joint stock companies and limited liability companies, since the only safeguards they offer to third parties are their assets. The Court further notes that matters requiring the availability of personal data in the companies register may arise for many years after a company has ceased to exist. Having regard to (1) the range of legal rights and relations which may involve a company with actors in several Member States (even after its dissolution), and (2) the diversity of limitation periods provided for by the various national laws, it seems impossible to identify a single period after which the entry of the data in the register and their disclosure would no longer be necessary.

(...) The Court considers that this interference with the fundamental rights of the persons concerned (in particular the right to respect for private life and the right to protection of personal data guaranteed by the Charter of Fundamental Rights of the Union) is not disproportionate in so far as (1) only a limited number of personal data items are entered in the company register and (2) it is justified that natural persons who choose to participate in trade through such a joint stock company or limited liability company, whose only safeguards for third parties are the assets of that company, should be required to disclose data relating to their identity and functions within that company.²¹

Two important aspects stand out in the European Court of Justice's decision. First, the court clearly endorsed the principle of requiring (more) public disclosure of the identities of those natural persons who choose to use legal entities that confer the privilege of limited liability. Second, the court ruled as commensurate and proportionate to the risks emanating from limited liability companies that the identities of those persons involved in the company should remain accessible on public record long after the dissolution of the company.

In relation to this and as described above, AMLD 5, which was required to be transposed by 10 January 2020, requires all Member states to enable public access to beneficial owners' of companies and other legal persons such as partnerships and private foundations (and also for trusts' beneficial owners as long as they can prove a legitimate interest).

All underlying data, including the sources we use for each jurisdiction, can be viewed in the [country profiles](#) on the Financial Secrecy Index website.

Table 2. Assessment Logic: Secrecy Indicator 6 - Transparency of Company Ownership

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
470	LO Record: Does the registration of domestic companies comprise legal owner’s identity information?	0: No. Companies available without recorded legal ownership information; 2: All LO: Yes, all companies require recording of all legal owners.	Integrated assessment of BO and LO as per Table 1. If all beneficial owners and all legal owners are always registered and updated with all details and made available for free and in a format which can be easily copied, 0 points of secrecy score. If not even legal owners are always registered, or incomplete, or not updated, or not made public against a cost of up to US\$10, €10 or £10, 100 points of secrecy score. Eight intermediate scores apply for partial compliance.
472	LO Update: Is the update of information on the identity of legal owners mandatory?	0: No; 1: No, because bearer shares are available/circulating/not registered with a public authority (see below); 2: Yes.	
486	What information has to be registered for those legal owners who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus countries of residence plus either addresses or TINs or birthdates, passport or personal IDs are always registered.	
471	BO Record: Does the registration of domestic companies comprise beneficial owner’s identity information?	0: No. Companies available without recorded beneficial ownership information; 1: Yes, more than 25%. All companies require recording of all beneficial owners at threshold of more than 25% (FATF); 2: Yes, 10%-25%: All companies require recording of all beneficial owners at threshold of more than 10%, up to 25%; 3: Yes, up to 10%. All companies require recording of all beneficial owners at threshold of more than any share/influence, up to 10%; 4: Yes all. All companies require recording of every single natural person with any share/influence (‘beneficial owner’).	
473	BO Update: Is the update of information on the identity of beneficial owners mandatory?	0: No; 1: No, because bearer shares are available/circulating/not registered with a public authority (see below); 2: Yes.	

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
485	What information has to be registered for those beneficial owners who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus countries of residence plus either addresses or TINs or birthdates, passport or personal IDs are always registered.	
475	LO Online: Are companies' legal owners available on a public online record (up to US\$10, €10 or £10)?	0: No, information on partners/legal owners is not always available online (up to 10 EUR/GBP/USD); 1: COST: Yes, information on partners/legal owners is always available but only at a cost of up to US\$10, €10 or £10; 2: FREE: Yes, legal ownership is always available for free, but cannot be easily copied; 3: FREE & EASILY COPIED: Yes, legal ownership is always available for free & can be easily copied.	
474	BO Online: Are companies' beneficial owners available on a public online record (up to US\$10, €10 or £10)?	0: No, information on legal owners is not always available online (up to US\$10, €10 or £10); 1: COST: Yes, legal ownership is always available but only at a cost of up to US\$10, €10 or £10; 2: FREE: Yes, beneficial ownership is always available for free, but cannot be easily copied.; 3: FREE & EASILY COPIED: Yes, beneficial ownership is always available for free & can be easily copied.	

Results Overview

Figure 1. Transparency of Company Ownership: Secrecy Score Overview

GB	AE	AT	BH	BZ	CO	DM	GD	HK	IT	KW	LR	MO	NG	PE	QA	SG	TR	VC	XK	
FR	AD	AS	BG	BW	CN	DK	FJ	GU	IN	KR	LK	MH	NA	PA	PY	SE	TN	UY	WS	
RS	SI	AR	BE	BS	CM	DE	FI	GT	IM	KN	LI	ME	MY	OM	PT	SC	TH	US	VU	
MT	MK	AO	BD	BR	CL	CZ	ES	GR	IL	KE	LC	MC	MX	NZ	PR	SA	TC	UA	VN	
IE	LV	AL	BB	BO	CK	CY	EG	GM	ID	JP	LB	MA	MV	NR	PL	RW	SV	TZ	VI	
EE	IS	AI	AW	BN	CH	CW	DZ	GH	HU	JO	KZ	LU	MU	NO	PK	RU	SM	TW	VG	
EC	GI	AG	AU	BM	CA	CR	DO	GG	HR	JE	KY	LT	MS	NL	PH	RO	SK	TT	VE	ZA

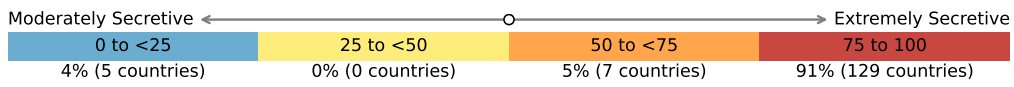


Figure 2. Transparency of Company Ownership: Secrecy Scores



Endnotes

1. We believe this is a reasonable criterion given a) the prevalence of the internet in 2022, b) as international financial flows are now completely relying on the use of modern technology, it would be an omission not to use that technology to make information available worldwide especially as c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence need information to be on the internet to get hold of it. This criterion is informed by the open data movement according to which all available company registry information, including accounts, should be made available, for free, in open and machine-readable format. For more information about this, see.²²
2. 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.²³
3. Both the recommendations of the international anti-money laundering agency Financial Action Task Force (FATF) and the 5th Anti-Money Laundering Directive of the European Union apply a minimum floor of control or ownership of ‘more than 25%’ of the company in the definition of a beneficial owner (BO) of a company. Under these rules, a natural person who directly or indirectly owns or controls 25% or less of a company’s shares would not be identified as BO. Four members of one family are able to frustrate this BO registration threshold by each holding 25% of the shares. For further details, see.²⁴
4. 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.
5. Tax Justice Network. *Secrecy Indicator 3: Recorded Company Ownership*. Tax Justice Network, 2022. URL: <https://fsi.taxjustice.net/fsi2022/KFSI-3.pdf>.
6. The term “weakest link“ research principle is used synonymously with “lowest common denominator” approach. During the assessment of a jurisdiction’s legal framework, the review of different types of legal entities each with different transparency levels might be necessary within one indicator. For example, to ascertain the secrecy score, a choice between two or more types of companies might have to be taken. In such a case, we choose the least transparent option available in the jurisdiction. This least transparent option will determine the indicator’s secrecy score.
7. *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*. May 2018. URL: <http://data.europa.eu/eli/dir/2018/843/oj/eng> (visited on 05/04/2022).
8. *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money*

Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance).

9. For example see.²⁵ These studies provide further detail.;^{26,27,28,29,30,31}
10. ICIJ. *The Panama Papers: Exposing the Rogue Offshore Finance Industry*. 2018. URL: <https://www.icij.org/investigations/panama-papers/> (visited on 03/05/2022); James O'Donovan et al. 'The Value of Offshore Secrets Evidence from the Panama Papers'. *SSRN Electronic Journal* (2016). URL: <https://www.ssrn.com/abstract=2771095> (visited on 06/05/2022).
11. Given that the registrar currently does not allow the registered data to be downloaded in its entirety, journalists had to scrape and clean the data.
12. Antonio Baquero et al. *Shedding Light on Big Secrets in Tiny Luxembourg*. 2020. URL: <https://www.occrp.org/en/openlux/shedding-light-on-big-secrets-in-tiny-luxembourg> (visited on 20/04/2022).
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16. Kevin M. Stephenson et al. *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*. Washington, DC: World Bank, 2011. URL: <https://openknowledge.worldbank.org/handle/10986/2320> (visited on 08/05/2022), p.93.
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18. Alex Cobham. *#SwissLeaks – Tax Transparency for Accountability*. Feb. 2015. URL: <http://uncounted.org/2015/02/09/swissleaks-tax-transparency-accountability/> (visited on 20/04/2022).
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20. Hera Hussain and Chris Taggart. *Germany: Do Not Let 'Personal Security' Be the Bait and Switch for Public Accountability*. Feb. 2017. URL: <https://blog.opencorporates.com/2017/02/28/germany-do-not-let-personal-security-be-the-bait-and-switch-for-public-accountability/> (visited on 20/04/2022); Markus Meinzer. *Germany Rejects Beneficial Ownership Transparency*. 2017. URL: <https://www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency/> (visited on 03/05/2022).
21. Court of Justice of the European Union, *Press Release: The Court Considers That There Is No Right to Be Forgotten in Respect of Personal Data in the Companies Register*.

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31. Andres Knobel and Markus Meinzer. *Drilling down to the Real Owners – Part 2. Don’t Forget the Trust: Amendments Needed in FATF’s Recommendations and in EU’s AML Directive*. June 2016. URL: http://www.taxjustice.net/wp-content/uploads/2016/06/TJN2016_BO-EUAMLD-FATF-Part2-Trusts.pdf (visited on 03/05/2022).

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