

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 beneficial ownership or legal ownership information on public record accessible via the internetⁱ. 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.

The indicator draws information from four sources:

First, table D1 of the OECD-report (2010ⁱⁱ) displays what sort of ownership information companies must register with a governmental authority. Accurate ownership information can only be made available online when there is a requirement for it to be registered and kept up to date.

Second, private sector internet sources have been consulted (Lowtax.net, Ocracom, Offshoresimple.com, etc.).

Third, results of the TJN-Survey 2011 have also been included.

Fourth, where the above sources indicate that beneficial or legal ownership information is available online, we have checked the corresponding websites.

For practical purposes we consider this information to be publicly available when it can be accessed at a fixed cost below 10US\$ and does not require the establishment of complex payment arrangements (e.g. registration of bank account)ⁱⁱⁱ.

A precondition for this indicator to be fully credited is that all available types of companies with limited liability must be required to publish beneficial ownership information online. Even if only one type of company has derogation from the requirement to publish beneficial ownership information, we can reasonably assume that anyone intending to conceal his or her identity from public view will simply opt for that type of company.

However, we award a partial transparency credit of 0.2 where legal ownership information (that is, the nominee and/or trustee and/or corporate shareholders of the company) is accessible online because such availability may, in some circumstances, reduce the time required to identify the beneficial owners of the company.

We also require minimum standards for registered ownership information. First, all owners must be named with full names plus either addresses or birthdates and –place or passport ID. Second, unless the owner is a publicly quoted company, the beneficial owners must be

real human beings as prescribed by anti-money laundering standards^{iv}. If the published owners are trusts, nominees or other companies, we award a minimal credit.

Why is it important?

The absence of readily available beneficial ownership information obstructs law enforcement and distorts markets due to information asymmetries. 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.

Furthermore, with the prevalence of limited liability, even in the highly unlikely case of specific human individuals being identified as directing or benefiting from corporate structures that facilitate impropriety without this information being required on public record the chances of successful prosecution by proper authorities are drastically reduced when there is no legal requirement for certification and registration of this information. 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, the online availability of detailed legal ownership information may enable foreign authorities 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 remain anonymous in her business relations, 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.

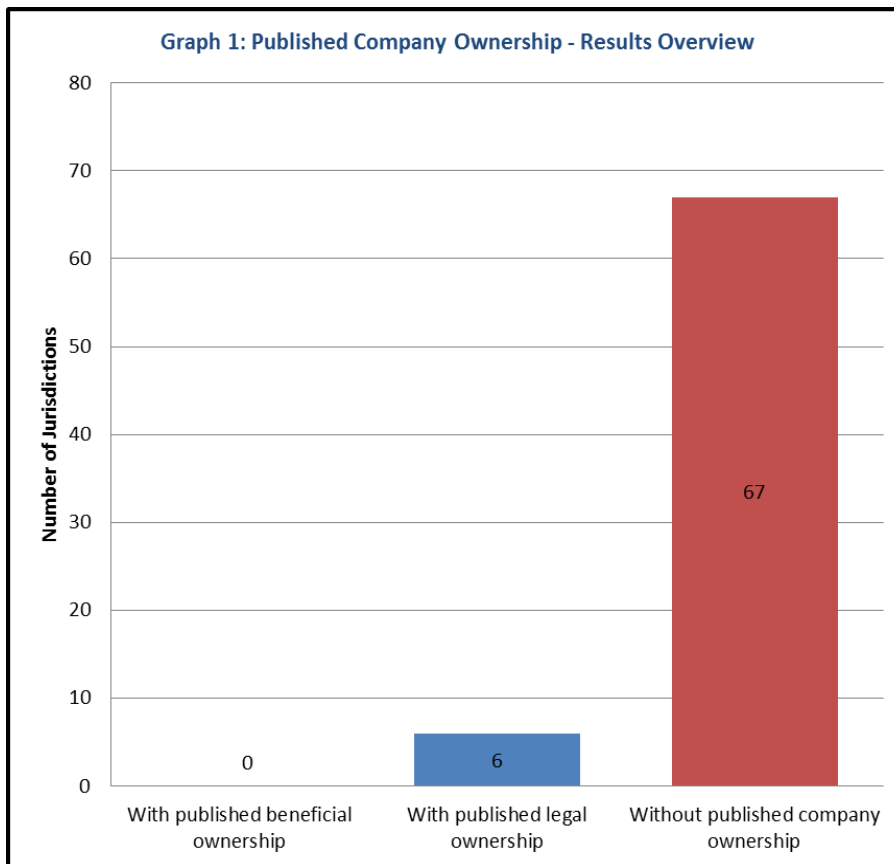
Limited liability is a privilege conferred by society at large. In exchange, the minimum safeguard it legitimately requires for the functioning of markets and the rule of law is that the identity of owners must be publicly available. This holds true especially for private companies that are not trading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

With published beneficial ownership	0
With published legal ownership	6
Without published company ownership	67



Results Detail

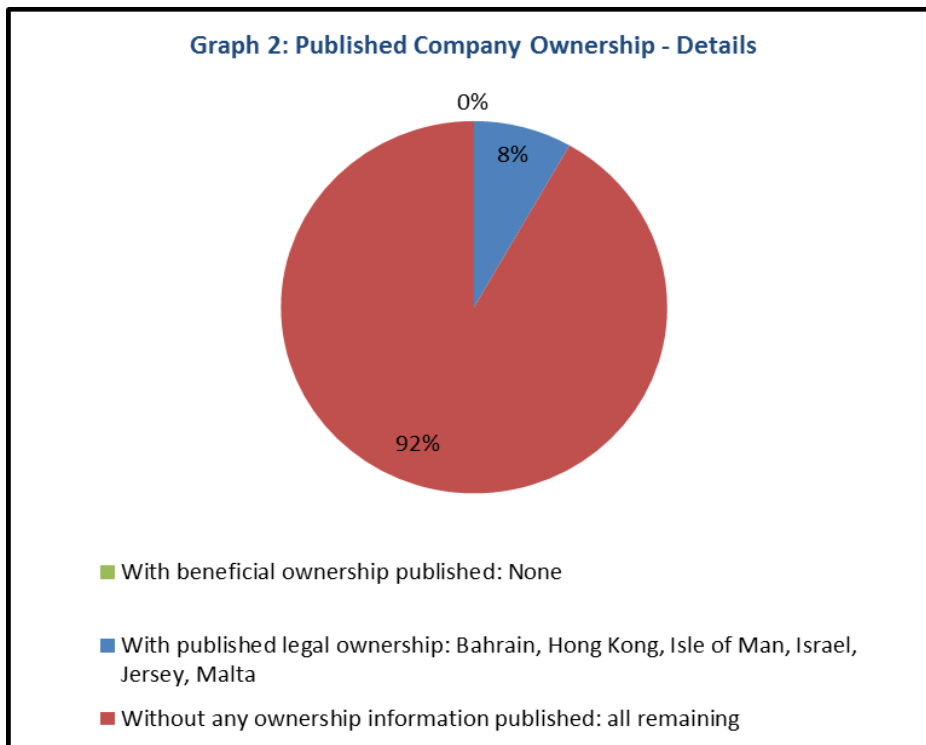


Table 2: Published Company Ownership - Details

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

ⁱ We consider this a reasonable criteria given a) the prevalence of the internet in 2011, b) as international financial flows are now completely relying on the use of modern technology, it would be ridiculous if that technology were not used 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.

ⁱⁱ The full title of this annual publication is “Tax Co-operation. Towards a Level Playing Field”. This publication served as a main source for many variables and, in the following, is referred to by “OECD-report” or “OECD publication”. The OECD writes of table D1: “Table D.1 shows the type of ownership information required to be held by governmental authorities (column 2), at the company level (column 3) and by service providers, including banks, corporate service providers and other persons (column 4).” (OECD 2010: 189). An important distinction is made between beneficial ownership information which refers to the ultimate human beings owning the company 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” (ibid.). A governmental authority is defined as to include “corporate registries, regulatory authorities, tax authorities and authorities to which publicly traded companies report” (ibid.).

ⁱⁱⁱ We consider that for something to be truly ‘on public record’ there must not exist prohibitive cost constraints, be they financial or in terms of time lost or unnecessary inconvenience caused.

^{iv} FATF the “natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted.”: Financial Action Task Force 2004a: Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations. 27 February 2004 (Updated as of February 2009) Paris, in: <http://www.fatf-gafi.org/dataoecd/16/54/40339628.pdf>; 25.1.2010.