

## KEY FINANCIAL SECRECY INDICATORS

## Key Financial Secrecy Indicator 2: Trust and Foundation Register

### What is measured?

KFSI -2 indicates whether a jurisdiction has a central register which is publicly accessible via the internet at a cost not exceeding 10 €/US\$<sup>1</sup> for:

(i) all trusts (those created according to the local law and called 'domestic law trusts' as well as those created under a 'foreign law' but which have a connection to the jurisdiction because they are administered by a local trustee), and

(ii) all private foundations.

Alternatively, this indicator considers whether a jurisdiction precludes the creation of trusts or similar arrangements such as *Treuhands*, *fideicomisos* or *waqfs* under its domestic laws, and/or whether it prevents its residents from administering trusts created under a foreign law, and/or if its legislation prevents the creation of private purpose foundations.

The logic behind this indicator is that a jurisdiction may neutralise the risks embedded in the opacity of trusts and private foundations either (i) by requiring the registration and publication of relevant information relating to all the parties involved in both types of legal entities, or (ii) by prohibiting their creation or administration in their territories.

To obtain a positive transparency assessment for this indicator, all trusts (domestic law trusts and foreign law trusts administered by a resident trustee) and all private foundations must be required to register with a central agency. However, in most circumstances, registration alone is not sufficient: all the related parties of trusts and private foundations (or similar structures) must be publicly disclosed, as long as their overall payments either exceed €15.000 per year or their underlying asset value exceeded €100.000 at any moment in a calendar year.<sup>2</sup> In these cases, for a full credit, disclosure should include the appropriate information for assessing its tax and ownership implications, at least comprising the full names and birthdates (or passport IDs) or addresses or TINs and country of residence for the settlor(s), the trustee(s), protector(s) and identified beneficiaries of the arrangement.<sup>3</sup> Under specific circumstances, partial credit is given when all trusts are being registered or partial information is published online for all foundations.

Alternatively, a full transparency credit can be obtained if a jurisdiction does not provide legislation for the creation of private foundations (half credit), and does not provide legislation for the creation of trusts as well as ruling out the administration of foreign law trusts by domestic trustees (half credit).

However, we also differentiate between situations in which countries merely by omission fail to regulate and register foreign law trusts administered by domestic lawyers, tax advisers and notaries, and other situations in which jurisdictions actively attract foreign law trusts, either by adherence to the Hague Convention on the Law Applicable to Trusts and on their Recognition<sup>4</sup> or by legislating equivalent domestic rules which regulate aspects of foreign law trusts for use in a domestic economic and legal context.

KFSI-2 draws upon a variety of sources, mainly using information contained in the Global Forum peer reviews<sup>5</sup>, but also private sector internet sources, FATF and IMF reports, the TJN-Survey 2015 and original legal analysis. In cases where there is indication that online registries on trusts/foundation registries are available, related websites have also been consulted.

For full details of the assessment, please consult Annex 1 with a mind map of KFSI 2.

### Why is this important?

Trusts change property rights. That is their purpose. A trust is formed whenever a person (the settlor) gives legal ownership of an asset (the property) to another person (the trustee) on condition that they apply the income and gains arising from that property for the benefit of another person or persons (the beneficiaries).

Trusts have many legitimate purposes, but they can easily be abused for the purpose of concealing illicit activity, for example, by concealing the identity of a settlor or beneficiary. There is a particular risk when the trust is a 'sham' i.e. the settlor is also a beneficiary and controls the activities of the trustee. This is a commonplace mechanism for evading tax since their principal effect is to conceal the actual controlling ownership of assets.

The most basic secrecy jurisdiction 'product' comprises a secrecy jurisdiction company that operates a bank account. That company is run by nominee directors on behalf of nominee shareholders who act for an offshore trust that owns the company's shares. Structures like these are created primarily to avoid disclosing the real identity of the settlor and beneficiaries who hide behind the trust: these people will be 'elsewhere'<sup>6</sup> in another jurisdiction as far as the secrecy jurisdiction 'secrecy providers' (the lawyers, accountants and bankers actually running this structure) are concerned. If - as is often the case - these structures are split over several jurisdictions then any enquiries by law enforcement authorities and others about the structure can be endlessly delayed by the difficulties incurred when trying to identify who hides behind the trust.

Private foundations serve a similar purpose to trusts. By definition they do not have any owners, being designed to allow wealth owners to continue to control and use their wealth hidden behind the façade of the foundations. Discretionary foundations - equivalent to discretionary trusts - are a speciality of Liechtenstein, though they are also available in other secrecy jurisdictions.

Private foundations have a founder, a foundation council and beneficiaries. Foundations are created around a foundation statute, often complemented by secret by-laws. In all secrecy jurisdiction contexts, private foundations need to be registered, though only very limited information, for example about a registered office or some foundation council members, is required to be held in government registries. These registries are normally subject to strict secrecy rules.

The existence of a central register recording the true beneficial ownership of trusts and foundations would break down the deliberate opacity surrounding this type of structure. The prospects of proper law enforcement would be greatly enhanced as a result.

For more information and analysis of the uses and abuses of trusts please read [TJN's extensive blog here](#)<sup>7</sup>.

For more background on the way discretionary trusts and foundations can be used to hide offshore wealth, read [this analysis](#)<sup>8</sup>.

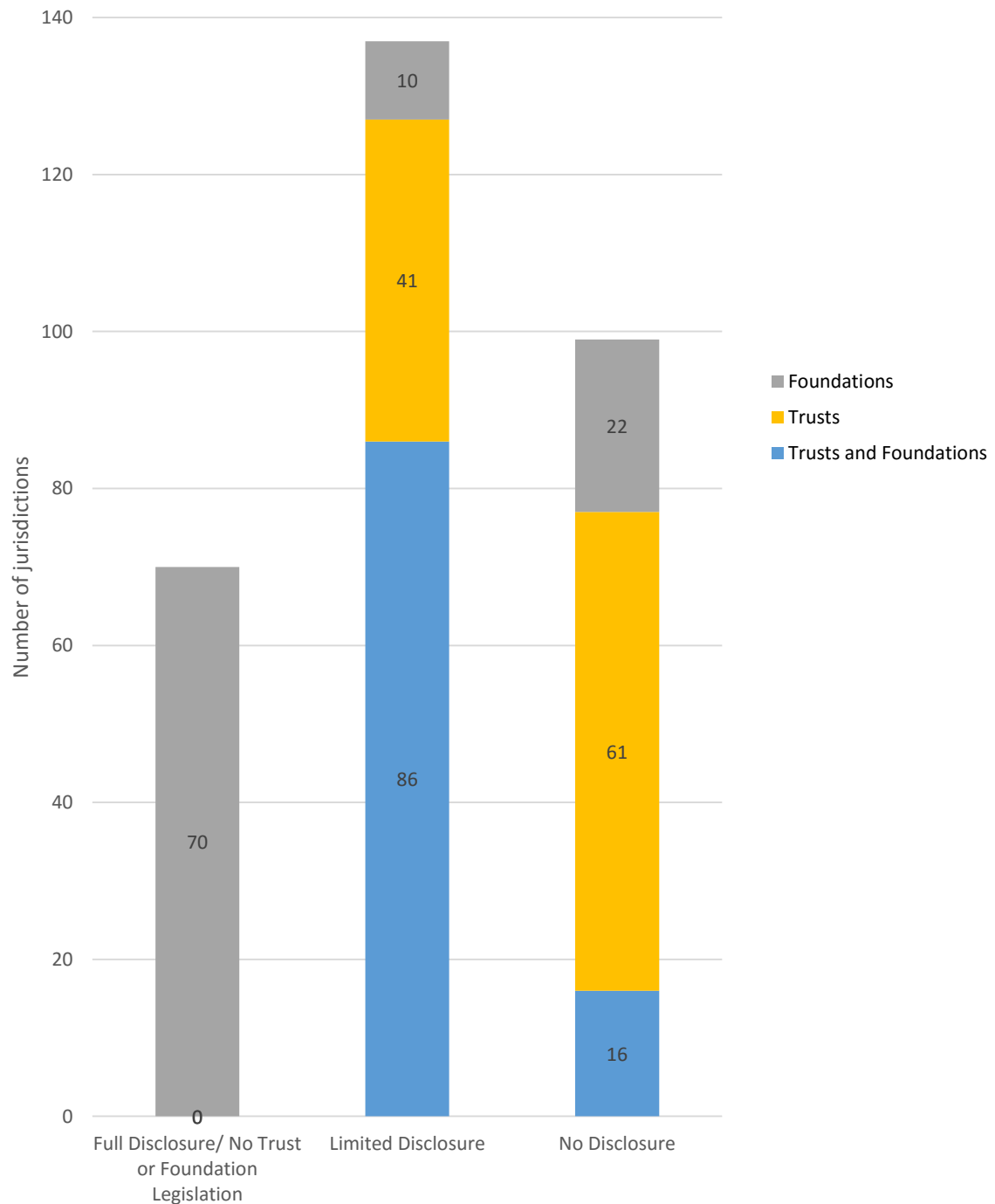
## What crimes might be hidden behind trust secrecy?

Tax evasion, concealment of the proceeds of bribery 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, infringement of competition rules, bankruptcy fraud, and other crimes might be hidden behind the secrecy that trusts and foundations can provide.

## Results Overview

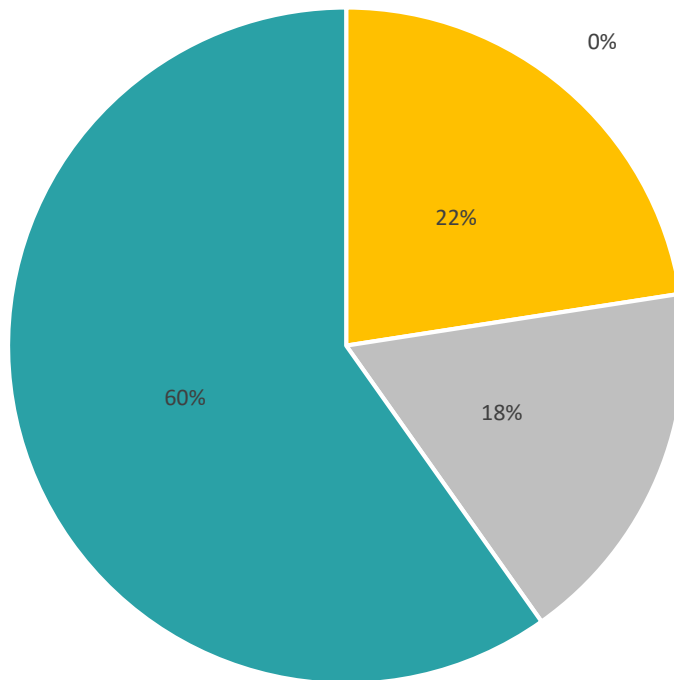
Table 1: Trust and Foundation Disclosure - Overview			
	Trusts and Foundations	Trusts	Foundations
Full Disclosure/ No Trust or Foundation Legislation	0	0	70
Limited Disclosure	86	41	10
No Disclosure	16	61	22

**Graph 1: Trust and Foundation Register - Overview**



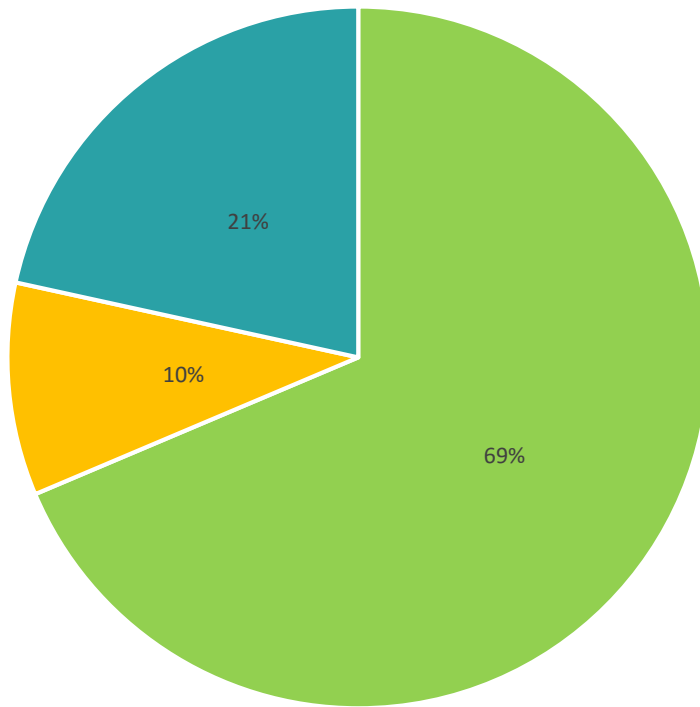
## Results Detail

Graph 2: Trust Disclosure - Details



- Full Disclosure/No Foundation Legislation: No jurisdiction
- Limited Disclosure (0,25 credits): AD, AW, BR, CZ, DK, EE, FI, GR, HU, IS, LV, MO, MK, MV, ME, NO, PL, PT, RU, SK, SI, ES, SE
- Very Limited Disclosure (0,125 credits): BZ, CL, CK, CW, DO, FR, IN, IE, JP, KR, MH, NZ, PH, SA, SC, ZA, KN, UY
- No Disclosure: All other jurisdictions

### Graph 3: Foundation Disclosure - Details



- Full Disclosure/No Foundation Legislation: All other jurisdictions
- Limited Disclosure (0.25 credits): AT, BE, CW, EE, GG, IS, JE, NL, NO, PA
- No Disclosure: AI, AG, BS, BZ, CK, DK, GM, DE, IM, IT, LR, LI, MY, MT, MU, WS, SC, KN, SE, CH, TR, VU

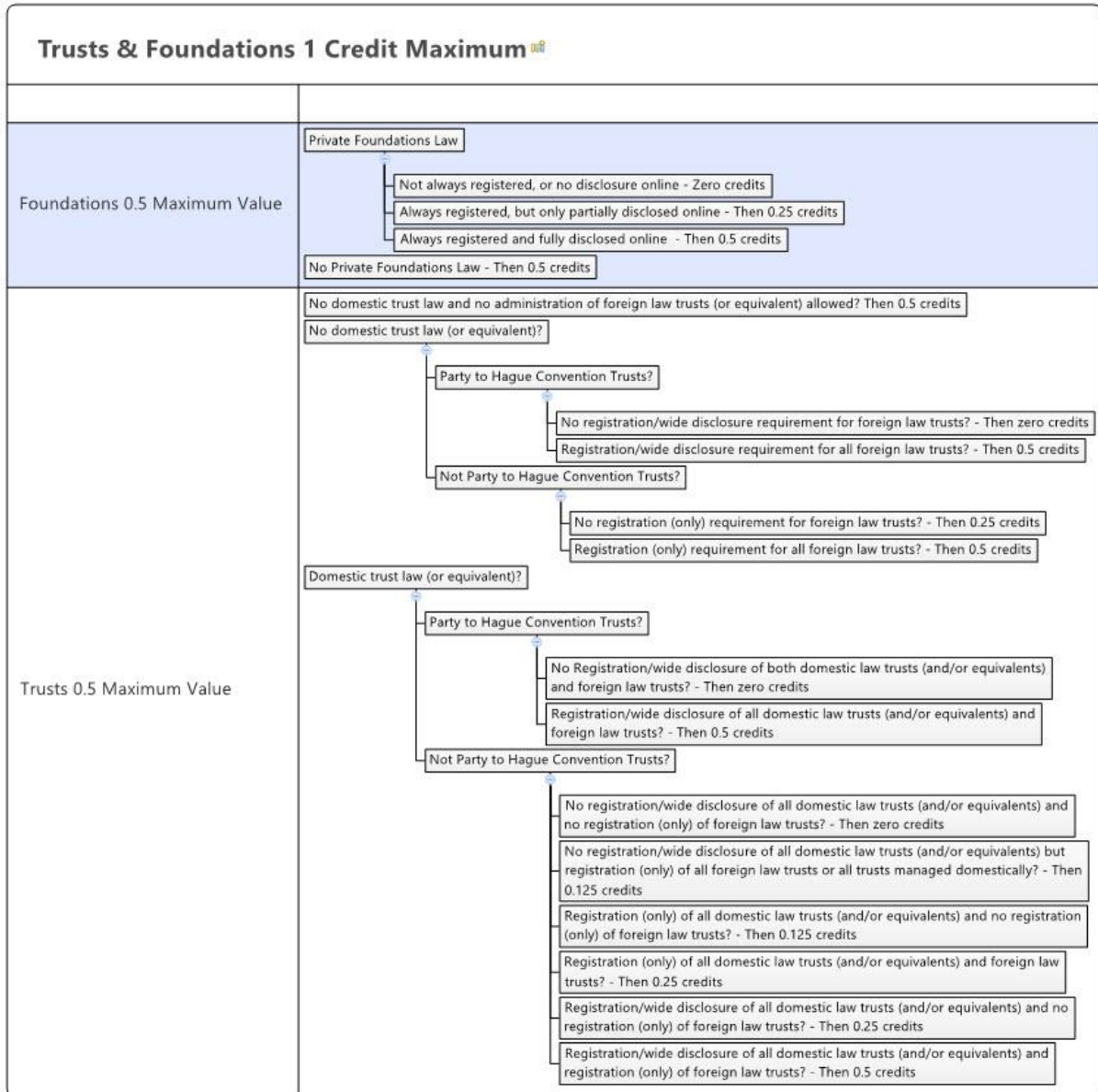
## KFSI 2: TRUST AND FOUNDATION REGISTER

**Table 2: Trust and Foundation Register - Combined Rating – Transparency Credits**

ID	Country	ISO	Credits	ID	Country	ISO	Credits
1	Andorra	AD	0.75	52	Latvia	LV	0.75
2	Anguilla	AI	0.00	53	Lebanon	LB	0.50
3	Antigua & Barbuda	AG	0.00	54	Liberia	LR	0.00
4	Aruba	AW	0.75	55	Liechtenstein	LI	0.00
5	Australia	AU	0.50	56	Luxembourg	LU	0.50
6	Austria	AT	0.25	57	Macao	MO	0.75
7	Bahamas	BS	0.00	58	Macedonia	MK	0.75
8	Bahrain	BH	0.50	59	Malaysia (Labuan)	MY	0.00
9	Barbados	BB	0.50	60	Maldives	MV	0.75
10	Belgium	BE	0.25	61	Malta	MT	0.00
11	Belize	BZ	0.13	62	Marshall Islands	MH	0.63
12	Bermuda	BM	0.50	63	Mauritius	MU	0.00
13	Bolivia	BO	0.50	64	Mexico	MX	0.50
14	Botswana	BW	0.50	65	Monaco	MC	0.50
15	Brazil	BR	0.75	66	Montenegro	ME	0.75
16	British Virgin Islands	VG	0.50	67	Montserrat	MS	0.50
17	Brunei	BN	0.50	68	Nauru	NR	0.50
18	Canada	CA	0.50	69	Netherlands	NL	0.25
19	Cayman Islands	KY	0.50	70	New Zealand	NZ	0.63
20	Chile	CL	0.63	71	Norway	NO	0.50
21	China	CN	0.50	72	Panama	PA	0.25
22	Cook Islands	CK	0.13	73	Paraguay	PY	0.50
23	Costa Rica	CR	0.50	74	Philippines	PH	0.63
24	Curacao	CW	0.38	75	Poland	PL	0.75
25	Cyprus	CY	0.50	76	Portugal (Madeira)	PT	0.75
26	Czech Republic	CZ	0.75	77	Russia	RU	0.75
27	Denmark	DK	0.25	78	Samoa	WS	0.00
28	Dominica	DM	0.50	79	San Marino	SM	0.50
29	Dominican Republic	DO	0.63	80	Saudi Arabia	SA	0.63
30	Estonia	EE	0.50	81	Seychelles	SC	0.13
31	Finland	FI	0.75	82	Singapore	SG	0.50
32	France	FR	0.63	83	Slovakia	SK	0.75
33	Gambia	GM	0.00	84	Slovenia	SI	0.75
34	Germany	DE	0.00	85	South Africa	ZA	0.63
35	Ghana	GH	0.50	86	Spain	ES	0.75
36	Gibraltar	GI	0.50	87	St Kitts and Nevis	KN	0.13
37	Greece	GR	0.75	88	St Lucia	LC	0.50
38	Grenada	GD	0.50	89	St Vincent & Grenadines	VC	0.50
39	Guatemala	GT	0.50	90	Sweden	SE	0.25
40	Guernsey	GG	0.25	91	Switzerland	CH	0.00
41	Hong Kong	HK	0.50	92	Taiwan	TW	0.50
42	Hungary	HU	0.75	93	Tanzania	TZ	0.50
43	Iceland	IS	0.50	94	Turkey	TR	0.00
44	India	IN	0.63	95	Turks & Caicos Islands	TC	0.50
45	Ireland	IE	0.63	96	United Arab Emirates (Dubai)	AE	0.50
46	Isle of Man	IM	0.00	97	United Kingdom	GB	0.50
47	Israel	IL	0.50	98	Uruguay	UY	0.63
48	Italy	IT	0.00	99	US Virgin Islands	VI	0.50
49	Japan	JP	0.63	100	USA	US	0.50
50	Jersey	JE	0.25	101	Vanuatu	VU	0.00
51	Korea	KR	0.63	102	Venezuela	VE	0.50

# KFSI 2: TRUST AND FOUNDATION REGISTER

## Annex 1: Mindmap of Logic of KFSI 2





---

<sup>1</sup> We believe this is a reasonable criteria given a) the prevalence of the internet in 2015, 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.

<sup>2</sup> See our research on bank account registries (2012), chapter 8, pages 46-49, for more background of these relevant structures and the suggested registries (<http://www.taxjustice.net/cms/upload/pdf/BAR2012-TJN-Report.pdf>; 22.7.2015).

<sup>3</sup> For comprehensive policy guidelines on what features an effective registry of trusts should possess, please read pages 46-49 here: [www.taxjustice.net/cms/upload/pdf/BAR2012-TJN-Report.pdf](http://www.taxjustice.net/cms/upload/pdf/BAR2012-TJN-Report.pdf); 22.7.2015.

<sup>4</sup> [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59); 22.7.2015.

<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/>; 22.7.2015.

<sup>6</sup> By 'elsewhere' we mean 'An unknown place in which it is assumed, but not proven, that a transaction undertaken by an entity registered in a secrecy jurisdiction is regulated'. See our glossary here: <http://www.financialsecrecyindex.com/glossary/glossary.html>; 22.7.2015.

<sup>7</sup> <http://taxjustice.blogspot.de/2009/07/in-trusts-we-trust.html>; 22.7.2015.

<sup>8</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); 22.7.2015.