

## 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 information on beneficial ownership and/or on legal ownership, 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/legal ownership information), regardless of whether or not this information is made available on public record. This indicator only assesses companies that are not listed on a public stock exchange.

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.<sup>1</sup> For this purpose, trusts, foundations, partnerships, limited liability corporations and other variants of legal persons do not count as beneficial owners.

With the adoption of the 4<sup>th</sup> EU Directive on Anti-Money Laundering on May 20<sup>th</sup>, 2015 by the [European Parliament](#),<sup>2</sup> all EU member states had to legislate for a central register of beneficial ownership by 26 June 2017 (Article 30, 67). Since then, progress towards central registries of beneficial ownership has accelerated not only in the European Union; yet analyses have also revealed weaknesses, loopholes and slippery language<sup>3</sup> as legislation is passed in more [countries](#).<sup>4</sup>

Because beneficial ownership regulation is not yet ideal (even under domestic laws fully compliant with the FATF and the EU Directive it is easy for a company not to have any beneficial owner at all and to identify the senior manager instead), it is important to know at least whether legal ownership is properly registered. Therefore, any meaningful company ownership assessment would need to take a holistic, comprehensive perspective. Instead of reviewing only beneficial ownership (BO) in isolation, we have created a combined indicator that takes into account nuances of beneficial ownership registration requirements and combines these with legal ownership (LO) registration requirements. The secrecy scoring matrix is shown in Table 1, with full details of the assessment logic given in Table 4 below.

**Table 1: Secrecy Scoring Matrix KFSI 3**

Regulation  [Secrecy Score: 100% = full secrecy;  0% = full transparency]		Legal Ownership (LO)	
		<u>Incomplete LO</u>  Secrecy score if not for all companies not all legal owners are recorded / not all legal owners are updated:	<u>Complete LO</u>  Secrecy score if for all companies all legal owners are recorded and updated (no bearer shares):
<b>Beneficial Ownership (BO)</b>	<b><u>Incomplete BO</u></b>  Complete and updated beneficial ownership information is not always recorded, or unknown	100%	90%
	<b><u>Complete BO @&gt;25%</u></b>  Complete and updated beneficial ownership information is always recorded at a threshold of more than 25% (no bearer shares)	75%	65%
	<b><u>Complete BO @&gt;10-25%</u></b>  Complete and updated beneficial ownership information is always recorded at a threshold of more than 10% up to 25% (no bearer shares)	50%	40%
	<b><u>Complete BO @&gt;0-10%</u></b>  Complete and updated beneficial ownership information is always recorded at a threshold of more than 0% up to 10% (no bearer shares)	25%	15%
	<b><u>Complete BO @1 share%</u></b>  Complete and updated beneficial ownership information is always recorded for any share/influence.	0%	
	<b><u>Senior Manager not as BO</u></b>  The definition of beneficial owner does not have a “senior manager clause”	-25%	

For ownership information to be considered **updated**, the relevant data should be required to be updated at least annually. Furthermore, bearer shares<sup>5</sup> should not be available in the jurisdiction or, if available, there should be mechanisms to ensure that all existing bearer shares are<sup>6</sup> immobilised or registered (for instance, by a custodian) and that updated information on holders of bearer shares is also filed with a government authority.

For ownership information to be considered **complete**, it needs to comprise specific minimal elements. It should include in case of beneficial owners:

- a) the full names of all beneficial owners holding the specified percentage thresholds of shares, interest or control in the legal entity; and for each beneficial owner
- b) their country of residence, and
- c) full address, or a passport ID-number, or birthdates, or a Taxpayer Identification Number.

In the case of legal owners, registered ownership information should include:

- a) the full names of nominees and/or trustees and/or legal entities acting as legal owners or shareholders, and for each
- b) their country of residence or incorporation, plus
  - i. in case of individuals, full address, or a passport ID-number, or birthdates, or a Taxpayer Identification Number (TIN);
  - ii. in case of legal entities, company registration number plus address of principle place of business or registered address.

However, with respect to the completeness of the legal ownership details, we exceptionally gave jurisdictions the benefit of the doubt if we were unable to determine whether a jurisdiction requires the registration of complete ownership details. Thus, a lack of information on the completeness of legal ownership details was treated as if the details were complete for the purposes of the secrecy score. This exception to the “unknown is secrecy” principle is made for two reasons. The first and main reason is that we did not include this question in the questionnaire to our [FSI survey 2017](#).<sup>7</sup> Second, this level of detail was not specified in most of the available current sources (e.g. Global Forum peer reviews).

The null secrecy score (full transparency) applies only to the ideal transparency scenario where registration encompasses absolutely all natural persons who have at least one share in the company. However, secrecy scores can be reduced (instead of a 100% secrecy score) if jurisdictions have comprehensive beneficial ownership registration (e.g. covering all companies), but where the definition of beneficial ownership is triggered by thresholds of control/ownership higher than just one share (e.g. a 25% of ownership).

In a case where a European Union (EU) member state has not transposed by 31 August 2017 the EU's 4<sup>th</sup> Anti-Money Laundering Directive into domestic law, the relevant secrecy score for not having beneficial ownership registration will be applied. The deadline to transpose the Directive into national law was 26 June 2017,<sup>8</sup> so any delayed jurisdiction is or was in breach of the EU AMLD.

A clean transposition of the EU 4<sup>th</sup> Anti-Money Laundering Directive into domestic law by EU member states would still result in a secrecy score of 65-75% in this Key Financial Secrecy Indicator (KFSI), because the Directive applies a minimum floor of control or ownership of 'more than 25%' of the 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 suffice to frustrate this BO registration threshold if each held 25% of the shares.<sup>9</sup> The recommendations of the international anti-money laundering agency Financial Action Task Force (FATF) suffer from the same weakness.

Both the FATF's recommendations and the EU's 4<sup>th</sup> Anti-Money Laundering Directive provide for another problematic clause in the definition of the BO. Under certain conditions it allows the "relevant natural person who holds the position of senior managing official" to be registered as a BO of a company ([FATF 2012: 60, 10.C.5.b.i.iii](#); see more details in section below).<sup>10</sup> If a jurisdiction dispenses with a senior manager opt out clause, the quality of the BO data increases, resulting in a 25% reduction of the secrecy score in this KFSI. In this better case, a company would at least disclose to have no BOs (which could raise alerts or red flags) instead of giving the appearance that the company has a regular BO, who is in reality the senior manager.

This indicator is mainly informed by five different types of sources. First, the Global Forum peer reviews<sup>11</sup> 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 natural persons who ultimately own 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 2010: 189)<sup>12</sup> 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".

Second, where doubts or data gaps existed, and to the extent this was possible, we have directly analysed domestic legislation that implements beneficial ownership registration. Given that many countries in and outside the EU<sup>13</sup> have started to regulate beneficial ownership registration in 2017 and these new laws have not yet been assessed by either the Global Forum or the FATF, the FSI team has assessed the laws directly, to the extent capacity and language permitted, and has relied on comments by local experts. It is possible that these assessments may change after the Global Forum or FATF conduct an in-depth review of these new laws.

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 reviews,<sup>14</sup> and the fifth, the results of the TJN-Survey 2017 (or earlier).

KFSI 3 resembles KFSI 6 relating to public company ownership information. However, KFSI 3 assesses only whether complete and updated beneficial information needs to be recorded at a government agency.

**All underlying data can be accessed freely in the [FSI database](#) .** To see the sources we are using for particular jurisdictions please consult the assessment logic in Table 4 at the end of this document and search for the corresponding info IDs (**IDs 388, 470, 471, 472, 473, 485 and 486**) in the database report of the respective jurisdiction.

## Why is this important?

Absence of reliable and comprehensive ownership information obstructs law enforcement and creates a criminogenic environment, as illustrated powerfully by the Panama Papers. In essence, these revelations provided proof about the identities of beneficial owners of otherwise anonymous shell companies. The common thread in the Panama Papers was secrecy, enabling perpetrators to launder illicit proceeds of corruption, tax evasion, drugs money and much more. They depend on secrecy – very often through using shell companies, trusts and foundations available in most countries worldwide. Intermediaries such as lawyers, notaries, family offices and banks help create and handle those structures. But Panama or the British Virgin Islands are not the only problematic jurisdictions.

When a jurisdiction, such as the US state of Wyoming (see [here](#)<sup>15</sup>, page 236, or [here](#)<sup>16</sup>), 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](#)<sup>17</sup> 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](#))<sup>18</sup>

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 programme.<sup>19</sup> 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 information.<sup>20</sup>

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 locations.<sup>21</sup> 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 money.<sup>22</sup>

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 money<sup>23</sup>.

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.

The US-tax authority in turn 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.

However, beneficial ownership registration alone is no guarantee for law enforcement to be able to find ownership data. Even if a jurisdiction's laws require the recording of beneficial owners controlling more than 25% of interest in a company, not a single beneficial owner might be recorded if four or more natural persons are jointly colluding to control the entity. If the same jurisdiction's laws fail to require registering the legal owners of that company, law enforcement might end up without any lead to follow for investigating that company. No ownership information whatsoever would be available in such a case. Therefore, a jurisdiction requiring all legal owners to register increases the chances of successfully investigating wrongdoers, and thus enhances accountability.

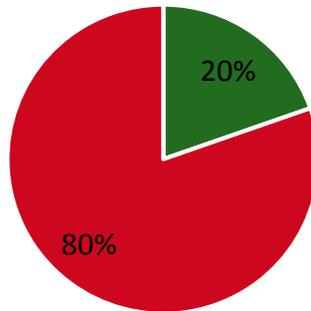
All underlying data can be accessed freely in the [FSI database](#)  (IDs 388, 470, 471, 472, 473, 485 and 486).

## Results Overview

**Table 2: Company Ownership Registration Overview**

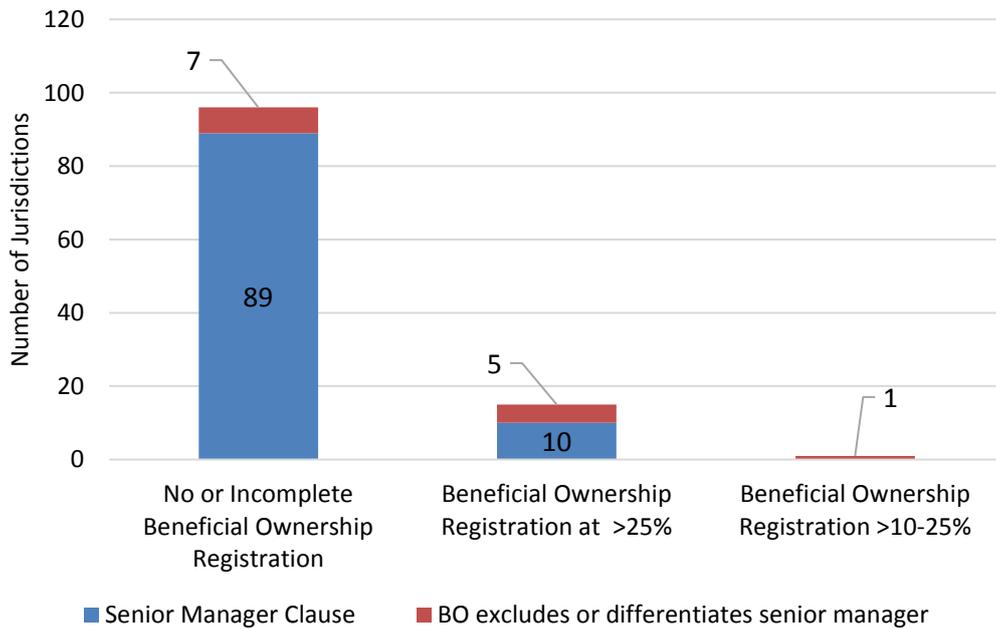
	Incomplete Legal Ownership	Complete Legal Ownership
Number of jurisdictions without beneficial ownership registration (or incomplete BO registration)	79 (7)	17
Number of Jurisdictions with complete and updated beneficial ownership registration ( >25% )	10 (2)	5 (3)
Number of jurisdictions with complete and updated beneficial ownership registration ( >10-25% )	1 (1)	0
(X) : Jurisdictions in each category where the definition of BO excludes or differentiates senior managers		

**Graph 1: Company Legal Ownership Registration**



- Complete Legal Ownership: AD, CL, EE, GH, ID, IE, IN, IT, JE, ME, MT, MV, NO, NZ, RU, SE, SI, SK, SM, TT, VE
- Incomplete Legal Ownership: all other jurisdictions

**Graph 2: Beneficial Ownership Registration Overview**



**Table 3: Company Ownership Secrecy Scores**

Country Name	Score	ISO	Country Name	Score	ISO
Andorra	0,9	AD	Lebanon	1	LB
Anguilla	1	AI	Liberia	1	LR
Antigua & Barbuda	1	AG	Liechtenstein	1	LI
Aruba	1	AW	Lithuania	0,75	LT
Australia	1	AU	Luxembourg	1	LU
Austria	1	AT	Macao	1	MO
Bahamas	1	BS	Macedonia	1	MK
Bahrain	1	BH	Malaysia (Labuan)	1	MY
Barbados	1	BB	Maldives	0,9	MV
Belgium	0,75	BE	Malta	0,9	MT
Belize	1	BZ	Marshall Islands	1	MH
Bermuda	0,75	BM	Mauritius	1	MU
Bolivia	1	BO	Mexico	1	MX
Botswana	1	BW	Monaco	1	MC
Brazil	0,75	BR	Montenegro	0,9	ME
British Virgin Islands	0,75	VG	Montserrat	1	MS
Brunei	1	BN	Nauru	1	NR
Bulgaria	1	BG	Netherlands	1	NL
Canada	1	CA	New Zealand	0,9	NZ
Cayman Islands	0,75	KY	Norway	0,9	NO
Chile	0,9	CL	Panama	1	PA
China	1	CN	Paraguay	1	PY
Cook Islands	1	CK	Philippines	1	PH
Costa Rica	1	CR	Poland	1	PL
Croatia	1	HR	Portugal (Madeira)	0,75	PT
Curacao	0,75	CW	Puerto Rico	1	PR
Cyprus	1	CY	Romania	1	RO
Czech Republic	0,75	CZ	Russia	0,9	RU
Denmark	1	DK	Samoa	1	WS
Dominica	1	DM	San Marino	0,9	SM
Dominican Republic	1	DO	Saudi Arabia	1	SA
Estonia	0,9	EE	Seychelles	1	SC
Finland	1	FI	Singapore	1	SG
France	0,75	FR	Slovakia	0,9	SK
Gambia	1	GM	Slovenia	0,65	SI
Germany	1	DE	South Africa	1	ZA
Ghana	0,4	GH	Spain	1	ES
Gibraltar	0,75	GI	St Kitts and Nevis	1	KN
Greece	1	GR	St Lucia	1	LC
Grenada	1	GD	St Vincent & Grenadines	1	VC
Guatemala	1	GT	Sweden	0,4	SE
Guernsey	0,75	GG	Switzerland	1	CH
Hong Kong	1	HK	Taiwan	1	TW
Hungary	0,75	HU	Tanzania	1	TZ
Iceland	0,9	IS	Thailand	1	TH
India	0,9	IN	Trinidad & Tobago	0,9	TT
Indonesia	0,9	ID	Turkey	1	TR
Ireland	0,9	IE	Turks & Caicos Islands	0,75	TC
Isle of Man	0,5	IM	Ukraine	1	UA
Israel	1	IL	United Arab Emirates (Dubai)	1	AE
Italy	0,65	IT	United Kingdom	0,5	GB
Japan	1	JP	Uruguay	0,25	UY
Jersey	0,4	JE	US Virgin Islands	1	VI
Kenya	1	KE	USA	1	US
Korea	1	KR	Vanuatu	1	VU
Latvia	0,75	LV	Venezuela	0,9	VE

Moderately Secretive 0 – 0,4	Secrecy Score 0,41 – 0,50	Secrecy Score 0,51 – 0,60	Secrecy Score 0,61 – 0,70	Secrecy Score 0,71 – 0,80	Secrecy Score 0,81 – 0,90	Extremely Secretive 0,91 – 1
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**Table 4: Assessment Logic**

Info ID	Text_Info_ID	Answers	Valuation % Secrecy
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 assessment matrix in KFSI 3, Table 1 (see FSI-methodology or KFSI 3 paper). If all beneficial owners are always registered and updated with all details at the 1 share level, 0% secrecy score. If not even legal owners are always registered, or incomplete, or not updated, 100% secrecy score. Seven intermediate scores for partial compliance. Absence of a senior manager clause in the definition of the beneficial owner results in a reduction of 0.25 of the secrecy score.
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, or incorporation numbers 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.	
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.	
388	Can a senior manager ever be registered as a beneficial owner (because no individual passed the threshold to be considered a beneficial owner)?	0: Yes, a senior manager may be registered as a beneficial owner, making it impossible to distinguish him/her from a real beneficial owner; 1: No, even if the senior manager is registered (because no individual passed the threshold to be considered a beneficial owner), he/she is registered as such, but not as an ordinary 'beneficial owner'; 2: No, if no individual has passed the threshold to be considered a beneficial owner, then the top 10 owners have to be identified as beneficial owners, or the company is struck off the registry.	

<sup>1</sup> 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 113 in Financial Action Task Force 2012: The FATF Recommendations. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (Updated in October 2016), Paris, in: [http://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); 31.8.2017.

<sup>2</sup> European Parliament/Council of the European Union 2015: Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, Brussels, in: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&rid=1>; 4.6.2016.

<sup>3</sup> See page 21, (aa) und (ab), in: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8-2017-0056%2b0%2bDOC%2bPDF%2bV0%2f%2fEN>; 13.4.2017; Knobel, Andres/Meinzer, Markus 2016: Drilling down to the real owners – Part 1. “More than 25% of ownership” & “unidentified” Beneficial Ownership: Amendments Needed in FATF’s Recommendations and in EU’s AML Directive, in: [http://www.taxjustice.net/wp-content/uploads/2013/04/TJN2016\\_BO-EUAML-D-FATF-Part1.pdf](http://www.taxjustice.net/wp-content/uploads/2013/04/TJN2016_BO-EUAML-D-FATF-Part1.pdf); 6.9.2016; Knobel, Andres/Meinzer, Markus 2016: 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, London, in: [http://www.taxjustice.net/wp-content/uploads/2016/06/TJN2016\\_BO-EUAML-D-FATF-Part2-Trusts.pdf](http://www.taxjustice.net/wp-content/uploads/2016/06/TJN2016_BO-EUAML-D-FATF-Part2-Trusts.pdf); 28.11.2016.

<sup>4</sup> [www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency/](http://www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency/); 23.8.2017. Meinzer, Markus 2017: Stellungnahme von Netzwerk Steuergerechtigkeit Deutschland und Tax Justice Network zu dem „Entwurf eines Gesetzes zur Umsetzung der Vierten EU-Geldwäscherichtlinie, zur Ausführung der EU- Geldtransferverordnung und zur Neuorganisation der Zentralstelle für Finanztransaktionsuntersuchungen“, BT-Drucksache 18/11555 (Öffentliche Anhörung des Finanzausschusses des Deutschen Bundestages am 24. April 2017), in: <http://www.bundestag.de/blob/503626/549f0248366374270c293ac20cec95a7/12-data.pdf>; 1.8.2017.

<sup>5</sup> Bearer shares are shares which are not registered, where the owner can be any person physically holding the share certificate and the transferring of the ownership involves only delivering the physical certificate.

<sup>6</sup> 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 2020 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 intending to regain their rights.

<sup>7</sup> <http://www.financialsecrecyindex.com/PDF/FSI2017-Questionnaire-MoF.pdf>

<sup>8</sup> See Article 67, page 111, in: European Parliament/Council of the European Union 2015: Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, Brussels, in: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L0849&rid=1>; 4.6.2016.

<sup>9</sup> For full details, please read Knobel, Andres/Meinzer, Markus 2016: Drilling down to the real owners – Part 1. “More than 25% of ownership” & “unidentified” Beneficial Ownership: Amendments Needed in FATF’s Recommendations and in EU’s AML Directive, op. cit.

<sup>10</sup> Financial Action Task Force 2012: The FATF Recommendations. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, Paris, in: [http://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); 6.6.2013.

<sup>11</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/>; 26.05.2015.

<sup>12</sup> 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.

<sup>13</sup> As for the situation in the EU, we have reviewed the 4<sup>th</sup> EU Directive on Anti-Money Laundering and, to the extent possible, corresponding implementing legislation of EU member states. While in the Financial Secrecy Index 2013 no jurisdiction was considered to have any beneficial ownership registration, this has changed in 2015 and again in the FSI 2018. The said 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 of more than 25% ownership rights. In line with various other international developments, we consider this threshold to be too high and therefore only provide a partial reduction of the secrecy score if this threshold is implemented.

For instance, see EU Commission proposal: [http://europa.eu/rapid/press-release\\_IP-16-2380\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2380_en.htm); 23.8.2017. Compare also with FATCA, where 10% of shares/capital in an entity is 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). And consider Transparency International EU/Financial Transparency Coalition/Eurodad 2016: European Commission Proposal on AMLD4. Questions and Answers, in: [http://www.pastoral.at/dl/KKmsJKKKmnOMJqx4KJK/QA\\_final.pdf](http://www.pastoral.at/dl/KKmsJKKKmnOMJqx4KJK/QA_final.pdf); 23.2.2017.

<sup>14</sup> The FATF consolidated its 49 (40 plus 9 special) recommendations to a total of 40 in 2012 (the “new recommendations”). We used the latest available report for our analysis.

<sup>15</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf>; 26.05.2015.

<sup>16</sup> <http://www.economist.com/node/21529021>; 26.05.2015.

<sup>17</sup> <http://www.oecdbookshop.org/en/browse/title-detail/?ISB=212001131P1>; 26.05.2015.

<sup>18</sup> <http://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>; 26.05.2015.

<sup>19</sup> See <http://www.justice.gov/opa/pr/2010/March/10-crm-209.html>; 26.05.2015.

<sup>20</sup> See British Virgin Islands Bus. Co’s Act § (9)(1)(2004), British Virgin Islands Bus. Co’s Act § (41)(1)(d) (2004).

<sup>21</sup> See <http://www.justice.gov/criminal/fraud/fcpa/cases/bae-system/02-01-10baesystems-info.pdf>; 26.05.2015.

<sup>22</sup> The 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.

<sup>23</sup> 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); 15.07.2013; See also Plea Agreement pp. 8-9, United States v. Antoine, No. 09-cr-21010 (S.D. Fla. February 19, 2010); 27.9.2012. See also The Puppet Masters, pp. 212-217.