

# KEY FINANCIAL SECRECY INDICATORS

## Key Financial Secrecy Indicator 4: Public Company Ownership

### What is measured?

KFSI 4 considers whether a jurisdiction requires all available types of company with limited liability to publish updated beneficial ownership or legal ownership information on public records accessible for free via the internet.<sup>1</sup> If beneficial ownership (BO) information is published for free, a full transparency credit is awarded. If there is a fixed cost for accessing the data not exceeding US\$10, €10 or £10, only half the credit (0.5) is awarded. If only legal ownership (LO) information is available for all types of company for free, a 0.2 transparency credit is awarded. If access to legal ownership data entails a cost not exceeding US\$10, €10 or £10, a 0.1 credit is awarded.

For practical purposes we consider ownership information to be publicly available when it is not necessary to establish complex payment or user-registration arrangements for accessing the data (e.g. registration of bank account, requirement of a local identification number or sending of hard-copy mails).<sup>2</sup> We performed a random search on each of the relevant corporate registries to ensure that all relevant information is effectively available and that technical problems do not persistently prevent access to information. As a precondition, the information must be updated at least once yearly (see KFSI 3).

To meet a reasonable standard, published ownership information must comply with minimum requirements. In the case of beneficial owners, the information must relate to the natural human beings who have the right to enjoy ownership of the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards<sup>3</sup>. For this purpose, trusts, foundations, partnerships, limited liability corporations and other legal persons or structures do not qualify as beneficial owners. The published details of beneficial owners must include:

- a) the full names of all beneficial owners holding 10% or more of ownership rights in the entity<sup>4</sup>, and for each
- b) country of residence, and
- c) full address, or passport ID-number or birthdate and place, or Taxpayer Identification Number (TIN).

In the case of only legal ownership (that is, the nominee and/or trustee and/or corporate shareholders of the company) being published, a partial transparency credit of 0.1 (cost)/0.2 (for free) is awarded because such availability may, in some circumstances, reduce the time required to identify the beneficial owners of the company.

The minimum details required to be published online about legal owners must include:

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

When access to relevant data involves a fee it can be prohibitively expensive to import this information into an open data environment, even if the cost per record is low. This creates substantial hurdles for conducting real time network analyses, for constructing cross-references between companies and jurisdictions, and for new creative data usages.<sup>5</sup> These innovative ways to exploit the data are both widespread in the open data community and would greatly increase the likelihood of identifying illicit activity hidden behind corporate vehicles. Therefore, a full credit is only awarded when access to the information is free.

The indicator draws information mainly from five sources<sup>6</sup>: first, the Global Forum peer reviews<sup>7</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 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 2010<sup>8</sup>: 189). A governmental authority is defined as including “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 private sector websites (Lowtax.net, Odra.com, Offshoresimple.com, etc.), the third, Financial Action Task Force (FATF) peer reviews<sup>9</sup> and fourth, the results of the TJN-Survey 2015 or previous.

Finally, where the above sources indicate that 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.

This indicator resembles KFSI 3 relating to registered company ownership information. However, KFSI 4 assesses whether the ownership information is available online, while KFSI 3 only checks if beneficial owner information must be recorded at a government agency and updated (including regarding bearer shares), without the provision that the information is available online. Unlike KFSI 4, which gives a partial credit to legal ownership details published

online, KFSI 3 awards a credit if beneficial ownership is recorded without giving partial credit for recording legal ownership.

As is explained in detail in KFSI 3, on 20th May 2015 the [European Parliament approved](#)<sup>10</sup> the 4<sup>th</sup> EU Directive on Anti-Money Laundering. Article 30 of the 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 4<sup>th</sup> Anti-money laundering directive also prescribes public access to the data subject to a legitimate interest test. Since the registries are not yet in place and public access cannot be tested, KFSI 4 does not yet take the new provisions for EU countries into account.

### Why is this important?

The absence of readily available beneficial ownership information obstructs law enforcement and distorts markets due to information asymmetries, for example in public procurement. 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.

There is an abundance of cases where the absence of beneficial ownership information has allowed the abuse of legal entities. For example, the proceeds of bribery and corruption can be hidden and transferred by anonymous 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>11</sup>.

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 times” ([UNODC/World Bank 2011: 93](#))<sup>12</sup>.

Furthermore, in cases where a company has been used for criminal purposes and the real identity of the beneficial ownership is required to be recorded in an online directory but is

not correctly disclosed, the responsible party (company secretary, company administrator, etc.) is also open to being prosecuted for failure to disclose accurate information.

Where online disclosure of beneficial ownership information does not exist, the availability of detailed legal ownership information may enable a foreign authority 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 provision of tipping-off provisions may frustrate law enforcement efforts. For these reasons we only award a 0.2 credit for legal ownership being made 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 compliance. 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.

The recent case of [Swiss Leaks](#)<sup>13</sup> about secret bank accounts held at HSBC private bank, many of which were related to tax evasion and money laundering, revealed that some authorities had failed to request access to the data, and some others did not use the information they had 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 somebody 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.

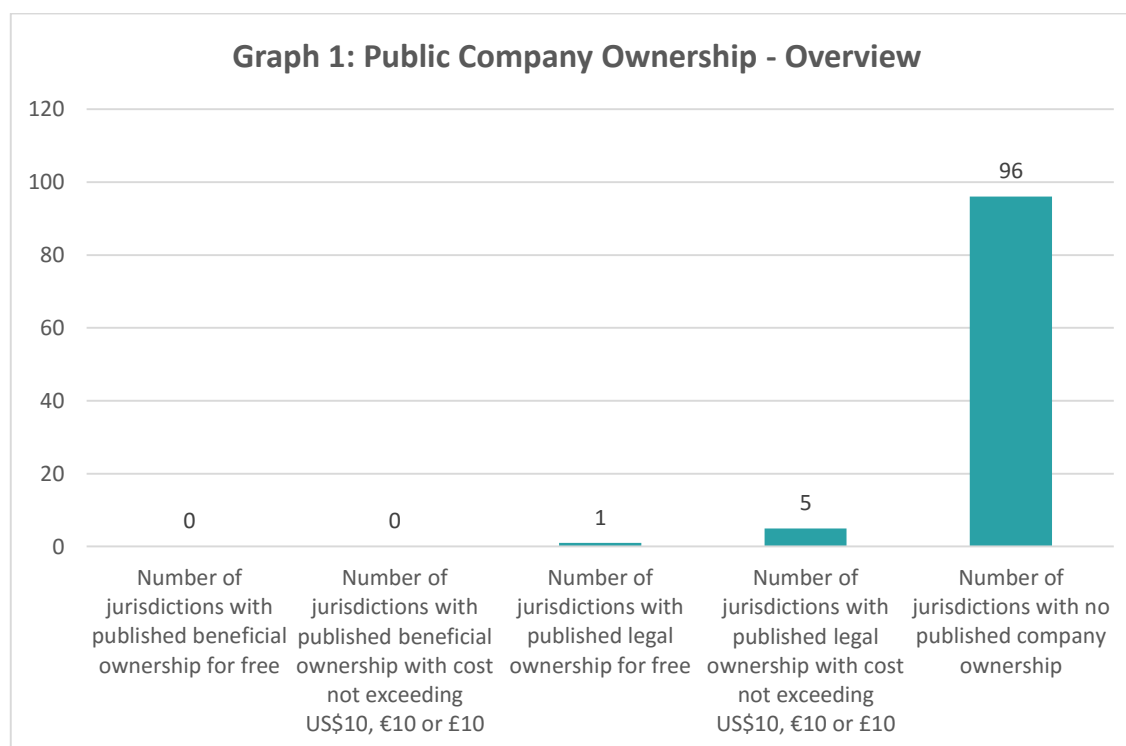
Limited liability is a privilege conferred by society at large. In exchange, the minimum safeguard it legitimately requires for the functioning of markets and the rule of law is that the identity of owners must be publicly available. This holds true especially for private companies that do not trade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

### What crimes might be hidden behind a lack of public company ownership information?

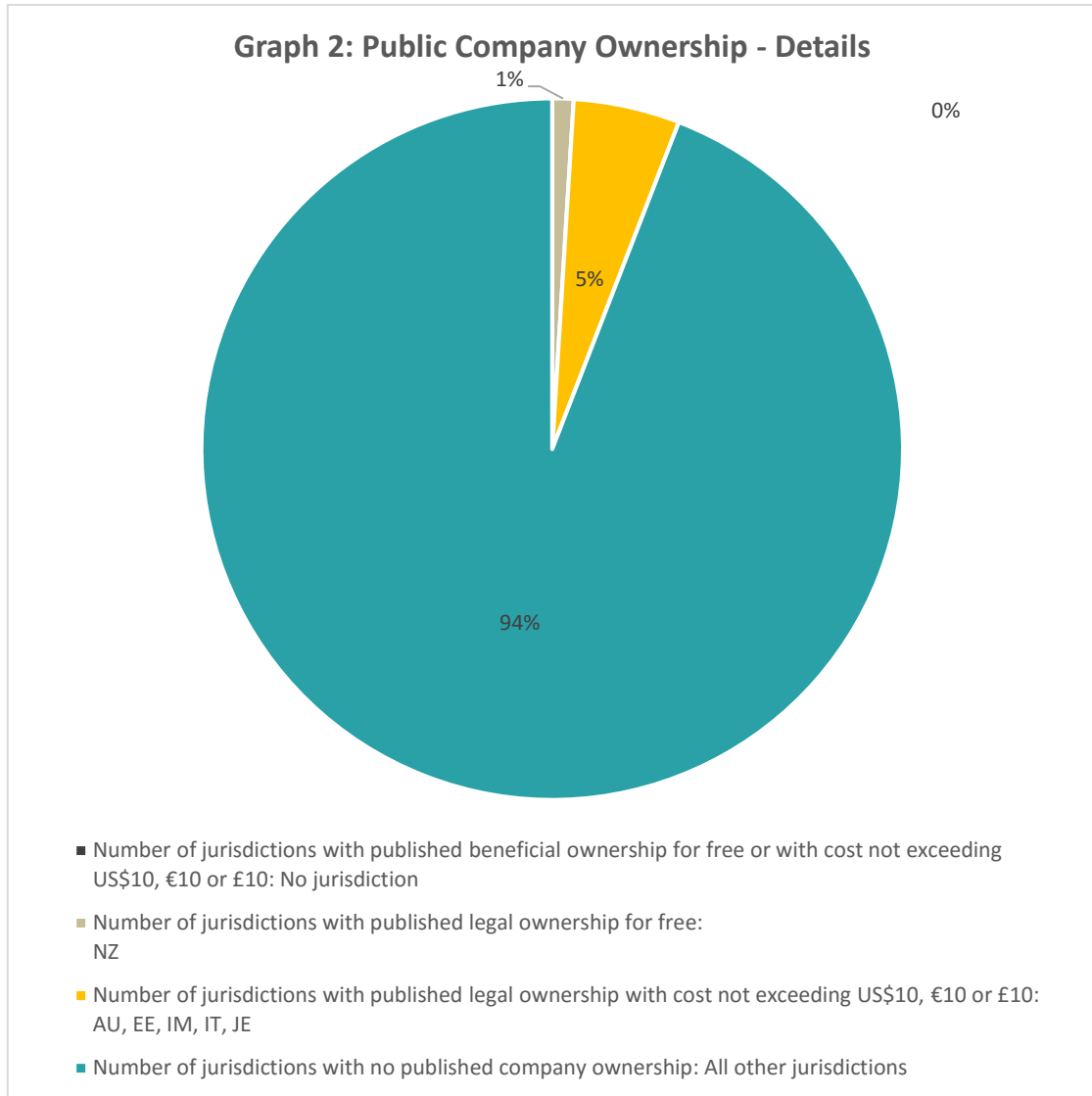
Criminals might hide behind unpublished company ownership to perpetrate any or all of the following crimes: tax evasion, embezzlement, financial fraud, infringement of competition and public procurement rules, non-payment of alimonies, bankruptcy fraud, hiding of the proceeds of corruption, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, the covering of illicit intelligence activity and more besides.

## Results Overview

Table 1: Public Company Ownership - Overview	
Number of jurisdictions with published <i>beneficial</i> ownership for free	0
Number of jurisdictions with published <i>beneficial</i> ownership with cost not exceeding US\$10, €10 or £10	0
Number of jurisdictions with published <i>legal</i> ownership for free	1
Number of jurisdictions with published <i>legal</i> ownership with cost not exceeding US\$10, €10 or £10	5
Number of jurisdictions with no published company ownership	96



## Results Detail



# KFSI 4: PUBLIC COMPANY OWNERSHIP

Table 2: Published Company Ownership - Details										
ID	Jurisdiction	ISO	Credits	Public		ID	Jurisdiction	ISO	Credits	Public
1	Andorra	AD	0	No		52	Latvia	LV	0	No
2	Anguilla	AI	0	No		53	Lebanon	LB	0	No
3	Antigua & Barbuda	AG	0	No		54	Liberia	LR	0	No
4	Aruba	AW	0	No		55	Liechtenstein	LI	0	No
5	Australia	AU	0.1	Legal		56	Luxembourg	LU	0	No
6	Austria	AT	0	No		57	Macao	MO	0	No
7	Bahamas	BS	0	No		58	Macedonia	MK	0	No
8	Bahrain	BH	0	No		59	Malaysia (Labuan)	MY	0	No
9	Barbados	BB	0	No		60	Maldives	MV	0	No
10	Belgium	BE	0	No		61	Malta	MT	0	No
11	Belize	BZ	0	No		62	Marshall Islands	MH	0	No
12	Bermuda	BM	0	No		63	Mauritius	MU	0	No
13	Bolivia	BO	0	No		64	Mexico	MX	0	No
14	Botswana	BW	0	No		65	Monaco	MC	0	No
15	Brazil	BR	0	No		66	Montenegro	ME	0	No
16	British Virgin Islands	VG	0	No		67	Montserrat	MS	0	No
17	Brunei	BN	0	No		68	Nauru	NR	0	No
18	Canada	CA	0	No		69	Netherlands	NL	0	No
19	Cayman Islands	KY	0	No		70	New Zealand	NZ	0.2	Legal
20	Chile	CL	0	No		71	Norway	NO	0	No
21	China	CN	0	No		72	Panama	PA	0	No
22	Cook Islands	CK	0	No		73	Paraguay	PY	0	No
23	Costa Rica	CR	0	No		74	Philippines	PH	0	No
24	Curacao	CW	0	No		75	Poland	PL	0	No
25	Cyprus	CY	0	No		76	Portugal (Madeira)	PT	0	No
26	Czech Republic	CZ	0	No		77	Russia	RU	0	No
27	Denmark	DK	0	No		78	Samoa	WS	0	No
28	Dominica	DM	0	No		79	San Marino	SM	0	No
29	Dominican Republic	DO	0	No		80	Saudi Arabia	SA	0	No
30	Estonia	EE	0.1	Legal		81	Seychelles	SC	0	No
31	Finland	FI	0	No		82	Singapore	SG	0	No
32	France	FR	0	No		83	Slovakia	SK	0	No
33	Gambia	GM	0	No		84	Slovenia	SI	0	No
34	Germany	DE	0	No		85	South Africa	ZA	0	No
35	Ghana	GH	0	No		86	Spain	ES	0	No
36	Gibraltar	GI	0	No		87	St Kitts and Nevis	KN	0	No
37	Greece	GR	0	No		88	St Lucia	LC	0	No
38	Grenada	GD	0	No		89	St Vincent & Grenadines	VC	0	No
39	Guatemala	GT	0	No		90	Sweden	SE	0	No
40	Guernsey	GG	0	No		91	Switzerland	CH	0	No
41	Hong Kong	HK	0	No		92	Taiwan	TW	0	No
42	Hungary	HU	0	No		93	Tanzania	TZ	0	No
43	Iceland	IS	0	No		94	Turkey	TR	0	No
44	India	IN	0	No		95	Turks & Caicos Islands	TC	0	No
45	Ireland	IE	0	No		96	United Arab Emirates (Dubai)	AE	0	No
46	Isle of Man	IM	0.1	Legal		97	United Kingdom	GB	0	No
47	Israel	IL	0	No		98	Uruguay	UY	0	No
48	Italy	IT	0.1	Legal		99	US Virgin Islands	VI	0	No
49	Japan	JP	0	No		100	USA	US	0	No
50	Jersey	JE	0.1	Legal		101	Vanuatu	VU	0	No
51	Korea	KR	0	No		102	Venezuela	VE	0	No



<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> 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.

<sup>3</sup> FATF defines the 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](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf); 25.05.2015.

<sup>4</sup> 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).

<sup>5</sup> For more information about this see <http://opencorporates.com/>; 26.05.2015.

<sup>6</sup> To see the sources we are using for particular jurisdictions please see the corresponding information in our database, available at [www.financialsecrecyindex.com/database/menu.xml](http://www.financialsecrecyindex.com/database/menu.xml).

<sup>7</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/>; 25.05.2015.

<sup>8</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>9</sup> 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.

<sup>10</sup> <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.

<sup>11</sup> <http://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>; 25.05.2015.

<sup>12</sup> <http://star.worldbank.org/star/publication/barriers-asset-recovery>; 25.05.2015.

<sup>13</sup> <http://www.independent.co.uk/news/business/hsbc-leaks-email-from-whistleblower-to-hmrc-proves-authorities-were-told-of-tax-evasion-10043456.html>; 25.05.2015.