Methodological Notes on
Key Financial Secrecy Indicators (KFSI)

This exercise was not undertaken for curiosity's sake. The 'mapping' in the project's title required us first to evaluate which places contribute to the secrecy that facilitates illicit financial flows, including flows from developed to developing countries of up to US$1 trillion a year. Second, we needed to say how these jurisdictions contribute to the faultlines that enable those flows.

Elsewhere we define the meaning of the term 'secrecy jurisdiction'[i], and in another paper we explain how we selected the secrecy jurisdictions surveyed in the Mapping the Faultlines project[ii].

A secrecy jurisdiction is not a natural phenomenon that is, or is not, observable. All countries have some attributes of secrecy jurisdictions, ranging on an imagined continuum from highly secretive to perfectly transparent. Therefore, we have selected a set of indicators which allow an assessment to be based on how the legal and regulatory systems of a country or its dependent territories contribute to the secrecy that enables illicit financial flows.

This paper outlines the methodology we used to assess the contribution each location has made to the secrecy that facilitates illicit financial flows.

Methodological Principles

We had three aims in mind when we agreed the methodology for creating the Key Financial Secrecy Indicators (KFSI).

First and foremost, we selected indicators that would most accurately capture a jurisdiction's status as a secrecy jurisdiction ("laws for the primary benefit for those not resident" and "veil of secrecy"). The choice of these indicators has necessarily been subjective, but it must be acknowledged that an objective choice of indicators does not exist, and never will: the issue boils down to whether or not our selected indicators are plausible.

We have attempted to increase the plausibility by relying on expert input and knowledge and by discussing the available choices with other people working in this area. Our aim is to be open and transparent about our choices and not to claim objectivity when all we can hope for is an understanding based on a wide range of different perspectives. If the reader feels uncomfortable with some of the choices made we would welcome suggestions for improving our methodology. In fact, with the database containing data on more than 200 variables we have made publicly available the resources for testing alternative indicators at relatively low cost.

Second, we wanted to be as parsimonious as possible by selecting a relatively small number of indicators. We did this largely to avoid unnecessary complexity and therefore ensure that this work can be carried forward without undue cost or delay caused by data gaps.

Third, we considered it important that the index should be sufficiently simple and transparent to provide clear indication of what steps a secrecy jurisdiction should take to enhance its secrecy ranking. Our approach is based on encouraging secrecy jurisdictions to take positive steps to improve performance.

Chosen indicators

Using these criteria, we chose to base our assessment of the 60 secrecy jurisdictions on the following issues (shown in no particular order):

- The existence of formal banking secrecy;
- Available access to a trust or foundation registry;
- Its FATF rating;
- Whether accounts of companies and other entities registered within it can be accessed by the public;
- Whether information about the beneficial ownership of entities registered in the secrecy jurisdiction are disclosed on public record;
- Whether information on the beneficial ownership of entities registered in the secrecy jurisdiction is recorded by its authorities, even if not made available to the public;
- Whether the secrecy jurisdiction responded to our request for information sent as part of the Mapping the Faultlines survey work;
- Whether the secrecy jurisdiction participates in automatic information exchange;
- Whether the secrecy jurisdiction has shown serious commitment to bilateral information exchange;
- Whether the authorities in the secrecy jurisdiction have effective access to banking information within their domain;
- Whether the secrecy jurisdiction allows redomiciliation of entities;
- Whether the secrecy jurisdiction allows the registration of protected cell companies within their domain.

We consider this range of issues sufficiently broadly based to provide a plausible indication of a jurisdiction’s approach to secrecy.

Assessment process

Having determined the issues to be assessed, it is important to note that the criteria used for awarding a credit for achieving transparency were tough. It is our opinion that both the standards and the assessment procedures used by bodies such as the Organisation for Economic Cooperation Development (OECD) are too lenient. The OECD's Global Forum on Taxation generally assesses on the basis of the "highest available denominator" within a jurisdiction. The Global Forum may commend a jurisdiction for requiring accounts to be filed with a government authority, while writing in footnotes that this requirement does not hold for "non-resident" companies or holds only for certain providers of financial services.

In contrast, we have examined the lowest standard (or denominator) available in each jurisdiction. If a jurisdiction offers three types of companies, two of which are required to file beneficial ownership information, but the third is not required to disclose ownership information if the owner is foreign resident, then we have not awarded a transparency credit on this particular indicator. We have followed this 'lowest common denominator' principle throughout our assessment process.

During the data collection process we erred on the side of caution: where doubt existed on data quality we marked the relevant field as 'unknown' or 'information not available'. However, when applying the 12 indicators to the selected jurisdictions we awarded transparency credits only in cases where we were able to collect the corresponding data. Absence of data received an opacity score.

At the same time, an assessment procedure on the scale of this project cannot be rooted in facts alone, but will involve occasional use of reasoned judgement. Where this was the case, we have tried to be transparent about our criteria and reasons. As a result, in addition to references to all the sources we used, the database also includes a huge amount of supporting information and notes relating to data analysis.

Detailed commentary

We have as part of our work prepared a detailed commentary on each of the twelve indicators we have chosen to assess for the Mapping the Faultlines project. In each such commentary we have justified the choice of the indicator used. Those sections of the individual commentaries are reproduced here to explain why each of the twelve indicators is, in our opinion an important measure of an individual secrecy jurisdiction's attitude to secrecy.

KFSI 1: Formal Banking Secrecy

Formal banking secrecy laws can help to obstruct information gathering requests from both national and international competent authorities such as tax administrations or financial regulators. It is, therefore, an obstacle to regulation and as such significantly increases the chance that illicit financial flows will take place and remain undetected in a secrecy jurisdiction.

Until 2005, most of the concluded double tax agreements did not specifically include provisions to override banking secrecy laws when responding to information requests by foreign treaty partners. Bank secrecy was, and remains in these cases, a massive obstacle to progress in obtaining information required to secure tax enforcement.

Since most trusts, shell companies, partnerships and foundations need to maintain a bank account, the beneficial ownership information banks are required to hold on the accounts they operate is often the only way to identify the people behind these corporate structures. Together with the recorded transfers, ownership records of bank accounts therefore are often the only available proof of criminal or illicit activity of individuals. This means it is of utmost importance that authorities with appropriate confidentiality provisions in place can access such banking data without being constrained by formal banking secrecy.

This indicator shows if the jurisdiction has formal, legally enforced, banking secrecy.

The main source for this indicator is table B1 of the OECD-report (Tax Co-operation 2007 and 2008[1]).

KFSI 2: Trust Registry

Trusts change property rights. That is their purpose. A trust is formed whenever a person (the settlor) gives legal ownership of an asset (the trust property) to another person (the trustee) on condition that they apply the income and gains arising from that asset for the benefit of one or other people (the beneficiaries). It is immediately obvious that such an arrangement could easily be abused for concealing illicit activity should, for example, the identities of settlers and beneficiaries, or the relationship between settler and trustee, be obscured. There is particular risk when the trust is in fact a sham i.e. the settlor as the beneficiary and controls the activities of the settlor. This is a commonplace mechanism for evading tax since their only effect is to conceal the actual controlling ownership of assets from everybody else's view.

[1] The full title of this annual publication is "Tax Co-operation. Towards a Level Playing Field". Because the OECD published its 2008 report during the research process, both the 2007 and 2008 report have been used. These publications served as a main source for many variables and, in the following, are referred to by "OECD-report" or "OECD publication". See reference section for more details. The OECD writes the following explanation to this variable: "Table B 1 shows for all of the countries reviewed whether the basis for bank secrecy arises purely out of the relationship between the bank and its customer (e.g. contract, privacy, common law) […or] whether it is reinforced by statute […]." (OECD 2008: 48; TJN-notes in [brackets]).

The most basic secrecy jurisdiction "product" comprises a secrecy jurisdiction company that operates a bank account. That company is in turn usually run by nominee directors on behalf of nominee shareholders who act for the nominee trustees that own the company's shares. The whole structure actually usually works on behalf of the beneficial owner who will be 'elsewhere' 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 this structure can be endlessly delayed because of the complexity it offers. This is facilitated if there is a lack of a central, publicly-accessible trust register.

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

For more detail on trusts please read TJN's extensive blog here.

This indicator shows if a jurisdiction has a central registry of trusts and foundations that is publicly accessible via the internet[2].

The indicator builds on a variety of sources, among them table D2 and D3 of the OECD-report (Tax Co-operation 2007 and 2008), private sector internet sources, occasionally FATF and IMF reports, and the TJN-Survey 2009. In cases where there is indication that online information on trust registries is available, the corresponding websites have been consulted as well.

A precondition for this indicator to be answered affirmatively is that all trusts and foundations in a jurisdiction must be required to register with a central agency for it to become legally effective. If a trust is valid without registering there is no reason to believe that such a registry adds to financial transparency since anybody intending to conceal the existence of their financial arrangements will simply not register a trust if that option is available.

Following the same logic, it is not sufficient to secure a positive score if, for instance, a jurisdiction has a stringent registration requirement for foundations, but not for trusts. Both legal arrangements need to be covered unless, of course, one is unavailable in the relevant jurisdiction. There is an exception: where neither foundations nor trusts are available in a

[2] We believe this is a reasonable criteria given a) the prevalence of the internet in 2009, b) as international financial flows are now completely cross border through 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.

jurisdiction we have given that jurisdiction credit for this contribution to financial transparency.

If there is a generalised registration requirement for trusts and foundations, we have given credit only if it requires that information be disclosed that is relevant for assessing its tax and ownership implications. For example, the published information must at least comprise information on the identity of the settlor, the trust deed, the names of the trustees, the annual accounts, and details on the (ultimate) beneficiaries of the arrangement.

KFSI 3: FATF-Ratings

Many of FATF's anti-money laundering (AML) recommendations touch upon minimal financial transparency safeguards required within the legal and institutional fabric of a jurisdiction. If it has low compliance ratios with AML recommendations a jurisdiction wittingly invites domestic money launderers and those from around the world to deposit and launder the proceeds of crime (e.g. drug trafficking or massive tax evasion) in their own financial system.

For example, recommendation five sets out minimal standards for the identification of customers of financial institutions (such as banks and foreign exchange dealers). If this recommendation is rated "partially compliant", as is the case for instance with the Cayman Islands, then it is a clear signal that money laundering is easier in this jurisdiction than elsewhere.

In the particular case of the Cayman Islands this is because there is "No legislative requirement to verify that persons purporting to act on the behalf of a customer is so authorised and identify and verify the identity of that person." (see Cayman Islands-assessment here; page 146). Put into plain language, this means that a bank employee does not need to ask questions of, or seek to prove the identity of, a person who routinely runs a bank account although the bank account is effectively in the name of somebody else and the person the bank routinely deals with is only a nominee. This means that the ultimate and effective bank account holder need not be identified, which is a clear money laundering weakness.

Another example of the issues the FATF assesses relates to its recommendation eighteen on shell banks. In the case of Ireland, a "partially compliant" location, it is revealed that "There is no prohibition on financial institutions from entering into, or continuing correspondent banking relationships with shell banks." (FATF 2006, V2: 157). The FATF defines a shell bank as "a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group." (FATF website). Many secrecy jurisdictions still allow shell banks to operate. Often these are little more than money laundering schemes. Therefore, the absence of targeted measures at shell banks allows banks in an apparently respectable jurisdiction (such as Ireland) to enter into business relationships with a shell bank and so to become the connecting interface between a highly dubious shell bank jurisdiction and the regulated banking world. Individual tax evaders and banks willing to help facilitate this process can take advantage of this absence of scrutiny.

We consider the swift and thorough implementation of all FATF recommendations by all jurisdictions to be of high importance to global financial transparency, to stop the undermining of democracies by organized and financial crime, and to curb harmful tax and capital flight from developing countries.

The FATF assessment methodology rates the compliance with every recommendation on a four-tiered scale, from “compliant” to “largely compliant” to “partially compliant” to “non-compliant”. For our indicator at least 90% of the 49 recommendations of a jurisdiction’s anti-money laundering regime must be rated either “compliant” or “largely compliant” and no recommendation must be rated “non-compliant”.

KFSI 4: Public Access to Company Accounts

Access to timely and accurate accounting information of limited liability entities contained in their annual accounts is crucial for a variety of reasons.

First, accounts allow society (the public) to assess the risk they face in trading with limited companies. This cannot be done unless accounts are available for public scrutiny.

Second, in times of financial globalisation, financial regulators and tax authorities more than ever need to be able to assess cross-border implications of the dealings of companies. Unhindered access to foreign companies’ and subsidiaries’ accounts empower regulators and authorities to double check the veracity of locally submitted information and to assess many of the macro-consequences of corporate undertakings without imposing excessive costs .

Thirdly, no company can be considered accountable to the community that gives it the licence to operate and the privilege of limited liability without responding to that grant of privilege by accounting for it by placing data on its trading on public record.

Having accounts available on line is a key part of any jurisdiction’s commitment to transparency.

Only if the access or downloading of accounts was possible at a fixed cost below 10US$ and did not require the establishment of complex payment arrangements (e.g. registration of bank account) did we qualify it as being on public record[3].

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

A precondition for this indicator to be answered affirmatively is that all available types companies must be required to publish their annual accounts online. If there are types of company available that dispense with the requirement to publish detailed annual accounts, there is no reason to believe that other company types' annual accounts do add significantly to financial transparency since anybody intending to conceal the accounts from public view will simply opt for company types where no accounts need to be prepared or published.

KFSI 5: Beneficial ownership data

Absence of readily available beneficial ownership information obstructs law enforcement and distorts markets because of information asymmetries. If multinational companies or individual traders can rely upon anonymity in combination with limited liability, incentives to break the law are drastically increased because there is no realistic chance that law enforcement agents would ever discover the real human beings individuals committing impropriety, hidden behind the corporate structures.

In addition, with the prevalence of limited liability, even in the highly unlikely case of specific human individuals being identified as directing or employing corporate structures that facilitate impropriety without this information being required on public record, the chances of successful prosecution by proper authorities is drastically reduced if certification of correct data having been made available is not required. If beneficial ownership must be recorded in an on-line directory and is not correctly disclosed amongst the offences the perpetrator of impropriety might be charged with is simple failure to disclose. On occasion such simple methods of prosecution are essential when all other ways of pursuing criminality are blocked.

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 done. 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 kept, and whose data is outdated or gets lost.

A precondition for this indicator to be answered affirmatively is that all available types of companies must be required to publish beneficial ownership information online. If there are types of companies available that dispense with the requirement to publish beneficial ownership information, there is no reason to believe that the remaining company types' ownership information does significantly add to financial transparency since anybody intending to conceal his or her identity from public view will simply opt for company types where no beneficial ownership information needs to be registered and/or published.

We also require that the registered ownership information must meet a minimum standard. This is in two parts: firstly all beneficial owners must be named with full names and addresses given. Second, unless the owner is a publicly quoted company the beneficial owners must be real human beings: other companies or trusts are not sufficient to meet the test since this would not be acceptable for anti-money laundering purposes either.

Only if the access of beneficial ownership information is possible at a fixed cost below 10US$ and does not require the establishment of complex payment arrangements (e.g. registration of bank account) did we credit here.

KFSI 6: Registered Company Ownership Data

Absence of beneficial ownership information obstructs law enforcement. When a jurisdiction, such as the US state of Delaware (see FATF evaluation 2006 for details, pages 231-233), allows private companies to be formed without recording beneficial ownership information, the chances for domestic and foreign law enforcement agencies alike to look behind the corporate veil are very few indeed.

These so-called “shell companies” are in effect nothing more than letterboxes, but they thereby serve as conduits for financial flows in many different guises. Foreign individuals can run such front companies, whilst claiming to their domestic government authorities that they are unrelated to these same companies, and yet use them to transfer money out of their country.

This indicator shows if a jurisdiction requires all available types of company to submit beneficial ownership information upon incorporation, and whether this information must be kept updated.

The indicator resembles KFTI 5 regarding public access to company beneficial ownership information. The difference is that this indicator measures only if the ownership information needs to be recorded and updated, but not whether this information is on public record. Therefore, if a jurisdiction gets credit for KFTI 5, it will automatically have a credit for this indicator as well. However, the opposite does not hold true: some jurisdictions require beneficial ownership information to be submitted and updated, but do not publish this information.

Points made regarding beneficial ownership above relating to information on public record apply equally here if credit is to be given.

KFSI 7: TJN-Survey 2009

The absence of published financial sector data is at the core of financial secrecy. Unless details of the legal and institutional frameworks of a jurisdiction are published in a user-friendly way, those laws and regulations become a matter for a few experts who effectively “privatise” economic regulation for their own benefit by monopolising knowledge of the system. Furthermore, independent assessments of a financial regulator’s effectiveness are either impossible to undertake in that case or are only carried out under the terms and conditions of the regulators themselves, or in opaque fashion, as is, for example, the IMF review process.

As a result the general public is often kept in the dark about the true nature of what is happening in a jurisdiction. However, the public needs to be able to understand what sort of economic activity is taking place (or is pretended to take place) in every given jurisdiction without facing deliberately-created veils of secrecy, of complexity, or a mixture of both.

Because it is difficult to discern what jurisdictions deliberately create opacity and secrecy, we suggest that the participation of a jurisdiction's regulators in a survey asking plain and straightforward questions about the legal / administrative and tax structure of a jurisdiction's financial sector is a fair preliminary test to identify a minimum commitment to financial transparency.

This indicator shows if the jurisdiction participated in the TJN-Survey 2009. In January/February 2009, TJN-International Secretariat sent out two questionnaires to each of the 60 jurisdictions monitored[4] by registered delivery post. One questionnaire was addressed to the Financial Services Authority (FSA; click here for a copy) of the jurisdiction, and another sought information from the Financial Intelligence Unit (FIU; click here for a copy) of each place surveyed. Financial Services Authorities usually regulate banks, security markets and insurance companies. Financial Intelligence Units are responsible for anti-money laundering investigations.

If both agencies of a jurisdiction answered our questionnaire, we fully credited participation as an expression of openness and of the wish to enhance financial transparency. If only one of the two agencies answered, we credited the jurisdiction with a half mark. In the letter accompanying the questionnaire we made it clear that participation in the survey would be credited for these purposes.

KFSI 8: Automatic Information Exchange

Currently, tax authorities around the world face immense difficulties when trying to get foreign-country based evidence when investigating suspected domestic tax evasion and/or aggressive tax avoidance schemes. The current international "standard" for information exchange promoted by the OECD is weak and largely ineffective (as we have pointed out in great detail in our briefing paper here and time and time again in our blog here).

To date the OECD standard has not resulted in any Tax Information Exchange Agreement between secrecy jurisdictions and one of the world's poorer countries, the latter having been sidelined it seems in this process. We are concerned that when and if they are included within it they may not be able to make application for data on an 'on request' basis due to the considerable effort required to establish any such request. Tax administrations in such

[4] Except Austria and Belgium for using an erroneous, preliminary list of secrecy jurisdictions.

locations suffer from very limited resources that are likely to make such request prohibitively expensive. Automatic information exchange would overcome this problem.

This indicator shows if the jurisdiction participates in automatic information exchange on tax matters. As there is currently no global mechanism to exchange information except for the European Savings Directive (EUSD), we have taken participation in the EUSD-information exchange mechanism as a proxy for this indicator. If a jurisdiction exchanges information automatically within the confines of the EUSD, we credit it with contributing to financial transparency.

We do not give credit here to any country that has opted for the withholding tax option instead of automatic information exchange under the EUSD.

At the same time, we are aware of the potential of Eurocentrism resulting from basing our indicator on the European Savings Directive. However, there is no other automatic information exchange on tax matters currently available to which adherence could be checked. As soon as there is a truly international and effective automatic information exchange regime we will switch from using the EUSD to the global regime. Similarly, if there should be another regional initiative creating automatic information exchange in tax matters, we will happily use it as the basis for our indicator with regard to any jurisdictions to which it might apply.

KFSI 9: Number of Bilateral Treaties

Currently, tax authorities around the world face immense difficulties when trying to secure foreign-country based evidence relating to suspected domestic tax evasion and/or aggressive tax avoidance schemes. While tax authorities domestically often have the powers to cross-check data obtained through tax returns, for instance though having access to bank account information, this does not hold true internationally. Whereas economic activity has become increasingly global, the tax collectors' efforts remain locally based and those efforts are very often deliberately obstructed by secrecy jurisdictions. Therefore, the rule of law is severely constrained by the inability of tax authorities to readily and affordably collect information about the international economic activity of their populations and companies.

While a system of bilateral treaties for tax information exchange has serious flaws (as can be read in our briefing paper on information exchange, here), such a system may be helpful if covering many countries. In April 2009, the OECD announced that the conclusion of twelve bilateral agreements for information exchange is sufficient to be taken off the OECD's grey list of tax havens. It was completely arbitrary that the OECD chose to pass judgement about adherence to its "standards" based on a threshold of twelve treaties. This number appears to have been picked at random and there is no reason to believe that the requirement to have twelve agreements in place changes in any material way the level of secrecy found in a jurisdiction.

This indicator shows if a jurisdiction has at least 60 bilateral treaties with broad tax information exchange clauses for both civil and criminal tax matters. These bilateral treaties can either be full double taxation agreements (DTA) or they can be tax information exchange agreements (TIEAs) which have a much reduced scope. See our briefing paper on TIEAs for more details. Some DTAs are outdated and do not therefore include effective information exchange provisions. These have not been counted as a result.

The main source for this is indicator is table A3 of the OECD-report (Tax Co-operation 2007 and 2008). This table displays the number of bilateral agreements for information exchange in both civil and criminal tax matters as of January 2008. This number has been updated to 30 June 2009 to include all TIEAs reported by the OECD by that date[5]. Where the OECD did not cover the jurisdiction we did consult other private sources such as Lowtax.net or the jurisdiction's finance ministries.

We only give a credit here if a jurisdiction has at least 60 qualifying treaties in place. This number of agreements was selected because it is the average number of double tax agreements a G20-country has[6]. As many secrecy jurisdictions claim to be major financial services centres we have taken them at their word and concluded that it is fair to compare their treaty network with that of the major trading nations, represented by the G20-nations. This does also imply that the figure of 60 qualifying agreements is a moving target. When G20-nations increase their average number of treaties, so will the average we use also increase and therefore the minimum number of treaties for the purpose of this indicator will increase.

KFSI 10: Effective Access on Banking Information

Currently, tax authorities around the world face immense difficulties when trying to obtain foreign-country based bank account information relating to suspected domestic tax evasion and/or aggressive tax avoidance schemes. While tax authorities domestically often have the powers to cross-check data obtained through tax returns through access to domestic bank account information, this does not hold true internationally. Whereas economic activity has become increasingly global, the tax collectors' efforts have remained locally based and are often deliberately obstructed by secrecy jurisdictions. Therefore, the rule of law is severely constrained by the inability of tax authorities to easily collect information about the foreign bank accounts of their citizens and companies, so undermining the rule of law.

In many jurisdictions, information requests from abroad are seriously hindered by insufficient provision in domestic legislation allowing access to bank information. This

[5] The website is
http://www.oecd.org/document/7/0,3343,en_2649_33767_38312839_1_1_1_1,00.html (11.8.2009).
[6] More precisely, the average number is 61.21 according to the same sources we mentioned above. This was rounded to 60 for assessment purposes to eliminate spurious accuracy.

absence of adequate regulations extends way beyond formal banking secrecy but is equally effective in declining legitimate information requests by foreign competent authorities. Secrecy jurisdictions clearly have considerable incentive to engineer their domestic laws to avoid information disclosure because it is precisely this sort of secrecy that such jurisdictions 'sell' and which makes them attractive to those seeking financial secrecy. Third-party countries can as a result be in the position of requesting banking information in vain simply because many secrecy jurisdictions lack legal provisions to provide the requested data even if the requesting country provides the most compelling evidence of crime.

In addition, if a court decision is required before obtaining access to banking information, the information request may be seriously delayed. In many cases this makes it impossible for a country to pursue an enquiry as investigations are time limited in duration. Further, such applications are often hard to make because of legal obstacles. Examples include the requirement that access to bank information is allowed only in connection with bilateral treaties such as a DTA, TIEA or MLAT[7] (Barbados and Grenada being examples); that a domestic tax interest must be present (Singapore); a dual criminality requirement must exist and/or restrictive definitions of criminality prevent access to data (St. Vincent and the Grenadines, Luxembourg), or regional limitations restrict the range of permitted requesting countries (limited to Commonwealth in St. Lucia, for example).

This indicator shows if the jurisdiction has effective access to bank information for the purposes of information exchange for both criminal and civil tax matters. Effective access on bank information is defined here as a government having direct access to account information without the need for separate authorisation (e.g. by a court). Only if a country allows access on banking information unrelated to specific treaties do we give it credit here.

The main source for this indicator is table B2 and B3 of the OECD-report (Tax Co-operation 2007 and 2008). Table B2 shows in rather general terms "to what extent the countries reviewed have access to bank information for exchange of information purposes in all tax matters" (table B2; OECD 2008: 52). Table B3 instead details "for each of the countries reviewed whether the country's competent authority has the power to obtain bank information directly or if separate authorisation is required" (ibid: 68). Only if both instances - "having access" and "obtaining information directly"- are answered "yes" without strings attached do we credit the jurisdiction.

If a jurisdiction is not monitored by the OECD, we did not inquire further because it would have required a depth of legal analysis that is impossible for us to carry out with the resources at our disposal. However, we would appreciate further information about any of the jurisdictions for which we lack data and would consider including relevant information in the database if it can be sourced to an appropriate reference.

[7] Mutual Legal Assistance Treaties.

A word of explanation on our methodology is important here: we have not given credit if access to banking information is only possible when a bilateral treaty request has been made. In a number of cases we are aware that this is a necessary pre-condition of access. That, of course, is better than having no access but given the difficulty of raising such requests, and the very limited number of them ever submitted this is not the basis of effective regulation or an indication of transparency. As such credit is only given when access is allowed to domestic authorities without the need for a third party request for data.

KFSI 11: Company Redomiciliation

Redomiciliation is an unfamiliar concept to most people, including many who work in finance. It describes a procedure which allows a company incorporated in one jurisdiction (A) to move its place of incorporation to another jurisdiction (B) after which it is then registered under the laws of that second location (B) whereas it was previously registered in and subject to the regulation of jurisdiction A.

This process is a little like a person who is a citizen of one country foregoing their right to that citizenship and acquiring instead the citizenship of another place. They were previously a citizen and subject to the international protection of one place; after he change they are a citizen of another place.

Redomiciliation, along with protected cell companies (see separate report), is one of the major innovations in the secrecy world of secrecy jurisdictions. It has, we believe, seriously degraded opportunities for effective regulation over the last decade, and has provided opportunity for abuse that did not previously exist. This is for a number of reasons.

Firstly, redomiciliation allows a company to flee a jurisdiction if any hint of an enquiry about its affairs is perceived to exist. These enquiries usually emanate from outside the secrecy jurisdiction where a company is incorporated, cost a considerable amount to pursue, are specific to a jurisdiction to which they are addressed, and are time consuming. If a company can flee before the enquiry is complete, then such an enquiry is rendered almost entirely futile by the fact of redomiciliation. This undermines prospects of effective information exchange.

Secondly, the process of redomiciliation considerably increases secrecy. It is often difficult, or nigh-on impossible, to prove whether a company is incorporated in a particular location, a fact not helped by many secrecy jurisdictions allowing corporations established in their domains to mimic those created in mainstream economies, e.g. by using entity descriptions such as Ltd, Inc, SA, etc that imply location in those mainstream jurisdictions. If it is also possible for companies to flit from location to location at modest cost (we have seen redomiciliation services offered for around US$1,000) then opacity is increased, especially if names are changed in the process, which is easily done. Corporations thus become effectively untraceable which can only benefit those wishing to perpetrate illicit activities and avoid the gaze of proper regulators and authorities.

Thirdly, property rights can be avoided or evaded using this procedure. It is unfortunately the case that few countries offer any effective cooperation to other countries pursuing tax due to them. If a company proven to have a tax liability to the state in which it is incorporated redomiciles to another location that offers no assistance to the state pursuing a debt for tax, then it is likely that the tax obligation will be successfully evaded.

For all these reasons we believe redomiciliation a significant contribution to opacity.

This indicator shows if the jurisdiction allows companies to change their jurisdiction of incorporation by redomiciling.

KFSI 12: Protected Cell Companies

Protected Cell Companies are a little known type of corporate entity, found almost exclusively in secrecy jurisdictions. Essentially a PCC is a corporate entity that contains within itself, but not legally distinct from it, a number of cells which behave as if they are companies in their own right, but are not. Every cell has its own share capital, assets and liabilities and the income and costs of each cell are kept separate. Moreover, each cell is assigned its own share of the overall company share capital so that each owner can be the single owner of one cell but owns only a percentage of the overall PCC.

We are aware that PCCs originated in Guernsey in 1997 with the intention of providing a cost-saving mechanism for the reinsurance sector where many deals look much like one another, and where assets and liabilities need to be ring fenced to prevent inappropriate exposure to claims. We question whether the presence of reinsurance business in secrecy jurisdictions is now acceptable given the current political climate and the lower levels of regulation within a key financial sector that must inevitably result and given the implicit tax subsidy that this provides to the insurance sector, but this apart we are also aware that PCCs are now readily available in locations such as the Seychelles and that they may now be used for other, illicit, purposes rather than that for which they were originally created. We think it likely that the level of asset protection that a PCC provides might allow illicit financial flows to escape the attention of law enforcement authorities. We therefore question whether any cost saving these structures might allow to the reinsurance sector justify the other risks they impose on society at large.

The structure of PCCs has been compared to a house with a lock at the entrance and many rooms inside, each room locked separately with its own door, but also with an escape tunnel only accessible from inside the room. If an investigator seeks to find out what is going on in one room inside the house, she first needs to unlock the main outer door. But imagine that by opening that first door everybody inside the building is alerted to the fact that someone has entered the house. Anybody seeking to flee the investigator will be given enough time to do so thanks to the second lock at the individual room door. While the investigator tries to unlock the second door (by filing a second costly information request), the perpetrator has enough time to erase all traces of guilt and escape through the secret tunnel. This colourful metaphor neatly illustrates how a PCC might work in practice.

We have been advised that procedures to make international enquiries about PCC structures have not yet been developed by law enforcement agencies and there remain serious doubts about the effectiveness of current mutual legal assistance agreements when applied to them, meaning there is significant restriction in scope for law enforcement in this area. This is, of course, in part a function of the considerable opacity they provide in hiding potentially illicit activity behind a single corporate front.

PCCs can be used to conceal identities and obscure ownership of assets because what appears to be a minority ownership from the outside may in fact be an artificial shell deliberately created to conceal fully-fledged ownership of a cell within the “wrapper” that in reality functions in the same way as a company.

This indicator shows whether the jurisdiction allows the creation of “protected cell companies” (PCC) in its territory.

The main sources for this indicator were internet websites such as Lowtax.net, Ocra.com and Offshoresimple.com. These sources display the availability of protected cell companies either in a tabular or textual format. The other sources used were the local regulators’ websites.

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[i] http://www.secrecyjurisdictions.com/PDF/SecrecyWorld.pdf.
[ii] http://www.secrecyjurisdictions.com/PDF/SJ_Mapping.pdf.