Key Financial Secrecy Indicators
10: Harmful legal vehicles

What is being measured?

This indicator has two components. On the one hand, it shows whether a jurisdiction allows the creation of "protected cell companies" (PCC) in its territory. This type of company is also known as an "incorporated cell company" or "segregated account company". On the other, it measures whether the administration of trusts with flee clauses is prohibited.

The main sources[1] for this information are the Global Forum peer reviews[2] and private internet websites such as www.lowtax.net, www.ocra.com and www.offshoresimple.com. These sources display the availability of protected cell companies either in a tabular or textual format. They have also helped us determine whether trusts with flee clauses are prohibited. In some cases the TJN-Survey 2013 also provided useful information. We have also referred to local regulators' websites.

Protected Cell Companies are a rare 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.

As for the flee clause in trust agreements[3] (also termed flight clause), we have defined it in our glossary[4] as follows:

> "A flee clause is a provision included in a tax haven / secrecy jurisdiction trust deeds requiring that the management and administration of a trust be changed to a different jurisdiction if a disadvantageous event occurs such as the breakdown of law and order in the place in which the trust is administered or the imposition of taxation on the trust."

Importantly, the definition of a "disadvantageous event" in this context includes awareness on the part of a trustee of any investigation involving the trust. The flee clause may mandate a trustee to relocate the trust from one secrecy jurisdiction to another as soon as anyone attempts to find any information about it, for example who the real people behind the trust are (beneficiaries and settlors). This mechanism allows the settlor or beneficiary to remain one step ahead of law enforcement authorities or private investigators and therefore provides factual impunity to users of trusts.

We award half a credit each if a jurisdiction does not allow the creation of protected cell companies and prohibits the administration of trusts with flee clauses.

Why is this important?

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 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 the potential benefits these structures might allow to the reinsurance sector justify the broader risks and costs 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 plenty of time to erase evidence 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 serious doubts remain 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 purposefully created to conceal fully-fledged ownership of a cell within the “wrapper”.

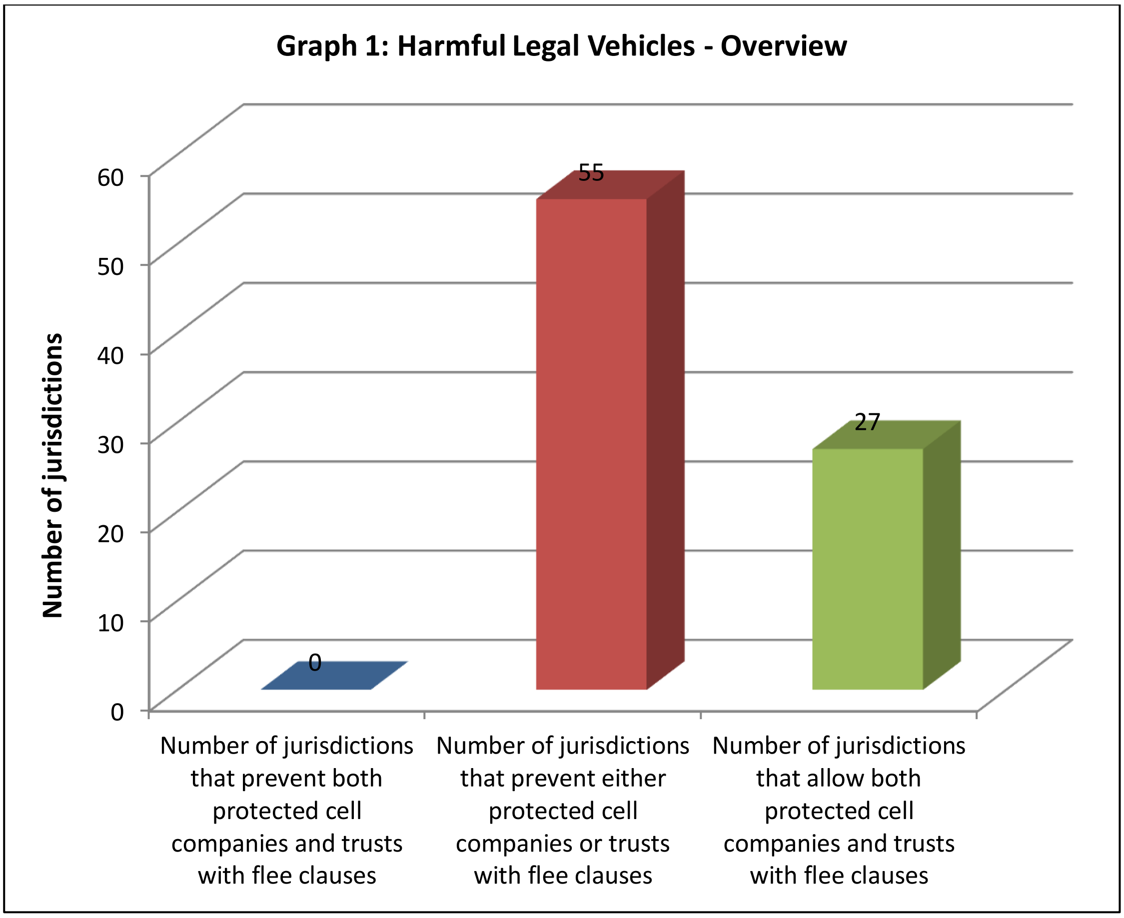
Trust flee clauses are particularly obstructive of effective law enforcement. There are very few situations we can think of in which flee clauses are not useful for some kind of evasion of the consequences of illegal actions. The marketing and use of trusts as “asset protection” facilities including flee clauses often advertise the advantages in terms of “shielding” corporate assets from creditors, fleeing bankruptcy orders, spouses or inheritance provisions of the resident state of the settlor and/or beneficiary.

What are the crimes that might hide behind the availability of protected cell companies and flee clauses?

By enhancing “asset protection” through a double locked structure, protected cell companies can be used to shelter illicit assets from view and might therefore facilitate fraud, infringement of competition rules, tax evasion, aggressive tax avoidance, transfer pricing manipulation, non-payment of alimonies, hiding the proceeds of corruption, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, the covering of illicit intelligence activity, bankruptcy fraud and more besides. The same holds true for flee clauses of trusts.

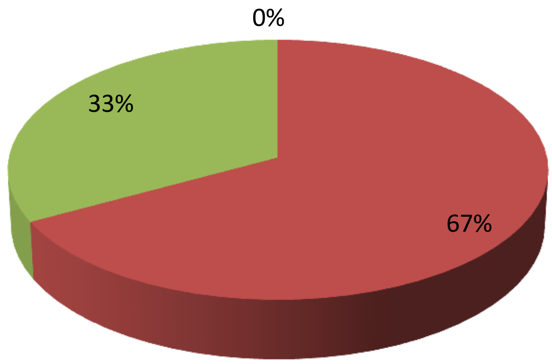
Results Overview

Table 1: Harmful Legal Vehicles – Overview	
Number of jurisdictions that prevent both protected cell companies and trusts with flee clauses	0
Number of jurisdictions that prevent either protected cell companies or trusts with flee clauses	55
Number of jurisdictions that allow both protected cell companies and trusts with flee clauses	27



Results Detail

Graph 2: Harmful Legal Vehicles - Details



- Number of jurisdictions that prevent both protected cell companies and trusts with flee clauses: No jurisdictions
- Number of jurisdictions that prevent either protected cell companies or trusts with flee clauses: All other jurisdictions
- Number of jurisdictions that allow both protected cell companies and trusts with flee clauses: AE; AG; AI; BB; BM; BN; BS; BZ; GG; GI; IM; JE; KY; LC; LU; MH; MT; MU; MY; SC; TC; US; VC; VG; VI; VU; WS

It is worth noting that *all* of the 55 jurisidictions preventing either protected cell companies or trusts with flee causes, gained credits for preventing protected cell companies.

Table 2: Jurisdictions Preventing Protected Cell Companies Only								
ID	Country	ISO	ID	Country	ISO	ID	Country	ISO
1	Andorra	AD	55	Montserrat	MS	57	Netherlands	NL
4	Aruba	AW	30	Grenada	GD	58	New Zealand	NZ
5	Australia	AU	31	Guatemala	GT	59	Norway	NO
6	Austria	AT	33	Hong Kong	HK	60	Panama	PA
8	Bahrain	BH	34	Hungary	HU	61	Philippines	PH
10	Belgium	BE	35	India	IN	62	Portugal (Madeira)	PT
13	Botswana	BW	36	Ireland	IE	63	Russia	RU
14	Brazil	BR	38	Israel	IL	65	San Marino	SM
17	Canada	CA	39	Italy	IT	66	Saudi Arabia	SA
19	Cook Islands	CK	40	Japan	JP	68	Singapore	SG
20	Costa Rica	CR	42	Korea	KR	69	South Africa	ZA
21	Curacao	CW	43	Latvia	LV	70	Spain	ES
22	Cyprus	CY	44	Lebanon	LB	71	St Kitts and Nevis	KN
23	Denmark	DK	45	Liberia	LR	74	Sweden	SE
24	Dominica	DM	46	Liechtenstein	LI	75	Switzerland	CH
25	Dominican Republic	DO	48	Macau	MO	78	United Kingdom	GB
26	France	FR	50	Maldives	MV	79	Uruguay	UY
27	Germany	DE	54	Monaco	MC			
28	Ghana	GH	56	Nauru	NR			

Table 3: Harmful Legal Vehicles - Details							
ID	**Country**	**ISO**	**Prevention**	**ID**	**Country**	**ISO**	**Prevention**
1	Andorra	AD	Partial	42	Korea	KR	Partial
2	Anguilla	AI	None	43	Latvia	LV	Partial
3	Antigua & Barbuda	AG	None	44	Lebanon	LB	Partial
4	Aruba	AW	Partial	45	Liberia	LR	Partial
5	Australia	AU	Partial	46	Liechtenstein	LI	Partial
6	Austria	AT	Partial	47	Luxembourg	LU	None
7	Bahamas	BS	None	48	Macau	MO	Partial
8	Bahrain	BH	Partial	49	Malaysia (Labuan)	MY	None
9	Barbados	BB	None	50	Maldives	MV	Partial
10	Belgium	BE	Partial	51	Malta	MT	None
11	Belize	BZ	None	52	Marshall Islands	MH	None
12	Bermuda	BM	None	53	Mauritius	MU	None
13	Botswana	BW	Partial	54	Monaco	MC	Partial
14	Brazil	BR	Partial	55	Montserrat	MS	Partial
15	British Virgin Islands	VG	None	56	Nauru	NR	Partial
16	Brunei	BN	None	57	Netherlands	NL	Partial
17	Canada	CA	Partial	58	New Zealand	NZ	Partial
18	Cayman Islands	KY	None	59	Norway	NO	Partial
19	Cook Islands	CK	Partial	60	Panama	PA	Partial
20	Costa Rica	CR	Partial	61	Philippines	PH	Partial
21	Curacao	CW	Partial	62	Portugal (Madeira)	PT	Partial
22	Cyprus	CY	Partial	63	Russia	RU	Partial
23	Denmark	DK	Partial	64	Samoa	WS	None
24	Dominica	DM	Partial	65	San Marino	SM	Partial
25	Dominican Republic	DO	Partial	66	Saudi Arabia	SA	Partial
26	France	FR	Partial	67	Seychelles	SC	None
27	Germany	DE	Partial	68	Singapore	SG	Partial
28	Ghana	GH	Partial	69	South Africa	ZA	Partial
29	Gibraltar	GI	None	70	Spain	ES	Partial
30	Grenada	GD	Partial	71	St Kitts and Nevis	KN	Partial
31	Guatemala	GT	Partial	72	St Lucia	LC	None
32	Guernsey	GG	None	73	St Vincent & Grenadines	VC	None
33	Hong Kong	HK	Partial	74	Sweden	SE	Partial
34	Hungary	HU	Partial	75	Switzerland	CH	Partial
35	India	IN	Partial	76	Turks & Caicos Islands	TC	None
36	Ireland	IE	Partial	77	United Arab Emirates (Dubai)	AE	None
37	Isle of Man	IM	None	78	United Kingdom	GB	Partial
38	Israel	IL	Partial	79	Uruguay	UY	Partial
39	Italy	IT	Partial	80	US Virgin Islands	VI	None
40	Japan	JP	Partial	81	USA	US	None
41	Jersey	JE	None	82	Vanuatu	VU	None

[1] To see the sources we are using for particular jurisdictions please check out the assessment logic table in Annex C here http://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf and the corresponding information for individual countries in our database, available at www.financialsecrecyindex.com/database/menu.xml.

[2] 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/; 15.07.2013.

[3] An excellent introduction to trusts can be found in this blog: http://taxjustice.blogspot.com/2009/07/in-trusts-we-trust.html; 15.07.2013.

[4] http://www.financialsecrecyindex.com/PDF/Glossary.pdf.