Key Financial Secrecy Indicator 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 "series limited liability companies (Series LLCs)" and/or "protected cell companies" (PCC) in its territory. The latter 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.offshoreinvestment.com/, www.lowtax.net, www.ocra.com and www.offshoresimple.com. These sources display the availability of Series LLCs and/or 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 2015 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 legal 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 sole owner of one cell but owns only a percentage of the overall PCC. Series LLCs serve the same purpose as PCCs and are available in Delaware[3] and other states of the United States.

Flee clauses in trust agreements[4] (also termed flight clause) are defined in our glossary[5] 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 secrecy 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?

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 key, 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 costly and time-consuming information request), the occupant of that particular room 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".

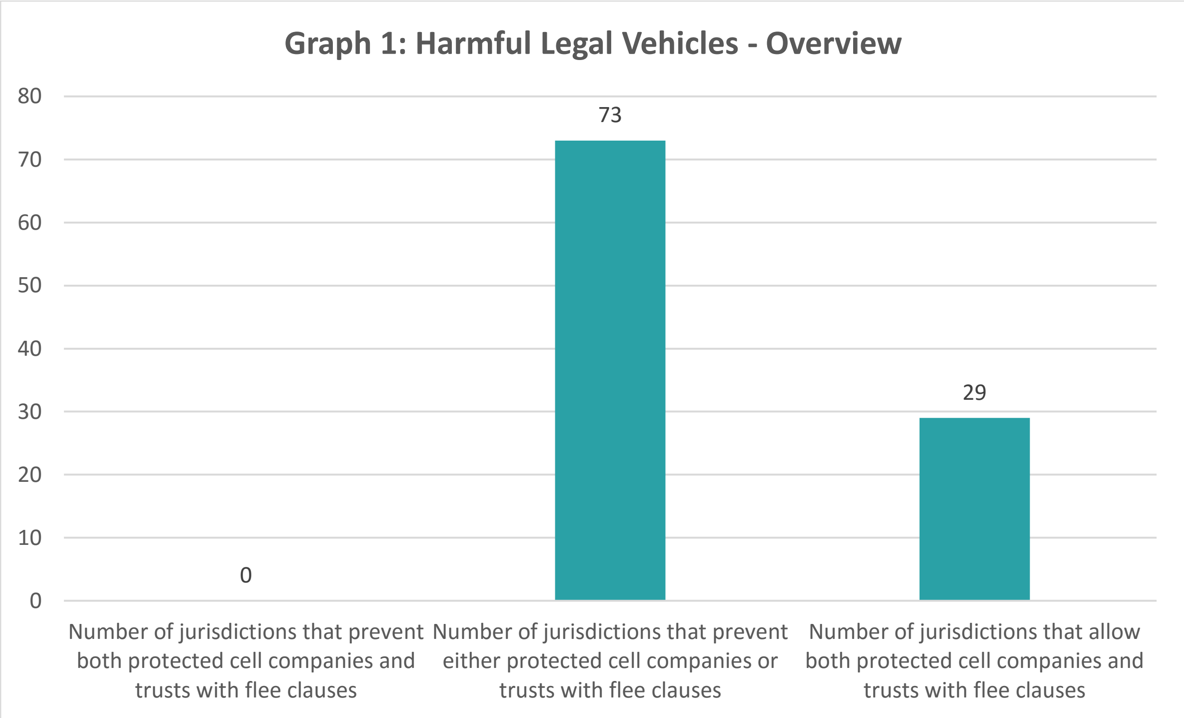
Trust flee clauses are particularly obstructive of law enforcement. There are few situations in which flee clauses cannot be deployed for some kind of evasion of the consequences of illegal actions. The marketing and use of trusts as "asset protection" facilities including flee clauses often advertise 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 crimes might be hidden behind the provision of protected cell companies and flee clauses?

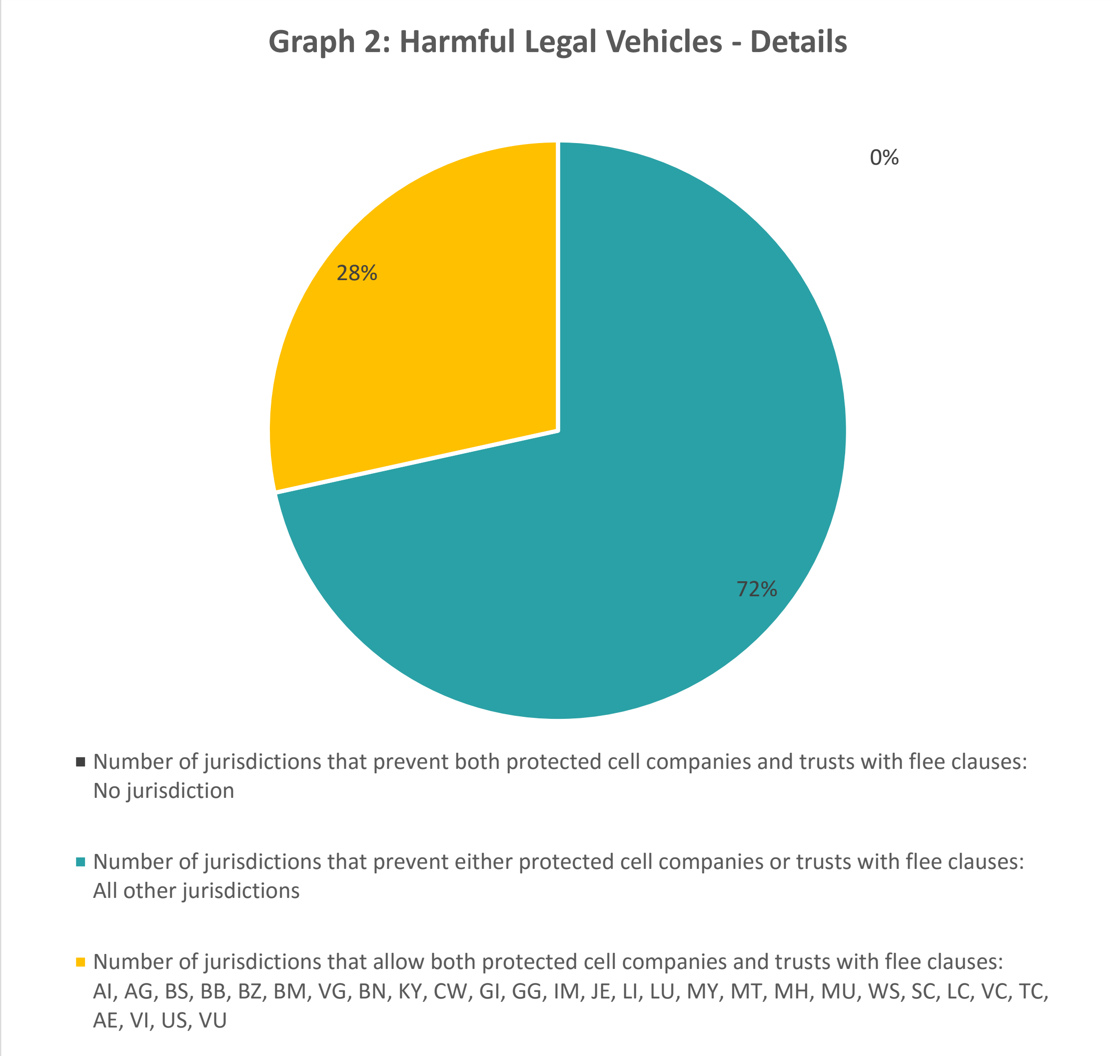
By enhancing "asset protection" through a double locked structure, protected cell companies can be used to shelter illicit assets from view and might therefore facilitate fraud, infringement of competition rules, tax evasion, aggressive tax avoidance, transfer pricing manipulation, non-payment of alimonies, hiding the proceeds of bribery, 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	73
Number of jurisdictions that allow both protected cell companies and trusts with flee clauses	29



Results Detail



It is worth noting that *all* of the 73 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	37	**Greece**	GR	71	**Norway**	NO
4	**Aruba**	AW	38	**Grenada**	GD	72	**Panama**	PA
5	**Australia**	AU	39	**Guatemala**	GT	73	**Paraguay**	PY
6	**Austria**	AT	41	**Hong Kong**	HK	74	**Philippines**	PH
8	**Bahrain**	BH	42	**Hungary**	HU	75	**Poland**	PL
10	**Belgium**	BE	43	**Iceland**	IS	76	**Portugal (Madeira)**	PT
13	**Bolivia**	BO	44	**India**	IN	77	**Russia**	RU
14	**Botswana**	BW	45	**Ireland**	IE	79	**San Marino**	SM
15	**Brazil**	BR	47	**Israel**	IL	80	**Saudi Arabia**	SA
18	**Canada**	CA	48	**Italy**	IT	82	**Singapore**	SG
20	**Chile**	CL	49	**Japan**	JP	83	**Slovakia**	SK
21	**China**	CN	51	**Korea**	KR	84	**Slovenia**	SI
22	**Cook Islands**	CK	52	**Latvia**	LV	85	**South Africa**	ZA
23	**Costa Rica**	CR	53	**Lebanon**	LB	86	**Spain**	ES
25	**Cyprus**	CY	54	**Liberia**	LR	87	**St Kitts and Nevis**	KN
26	**Czech Republic**	CZ	57	**Macao**	MO	90	**Sweden**	SE
27	**Denmark**	DK	58	**Macedonia**	MK	91	**Switzerland**	CH
28	**Dominica**	DM	60	**Maldives**	MV	92	**Taiwan**	TW
29	**Dominican Republic**	DO	64	**Mexico**	MX	93	**Tanzania**	TZ
30	**Estonia**	EE	65	**Monaco**	MC	94	**Turkey**	TR
31	**Finland**	FI	66	**Montenegro**	ME	97	**United Kingdom**	GB
32	**France**	FR	67	**Montserrat**	MS	98	**Uruguay**	UY
33	**Gambia**	GM	68	**Nauru**	NR	102	**Venezuela**	VE
34	**Germany**	DE	69	**Netherlands**	NL			
35	**Ghana**	GH	70	**New Zealand**	NZ			

Table 3: Harmful Legal Vehicles - Details

ID	Country	ISO	Credits	Prevention	ID	Country	ISO	Credits	Prevention
1	**Andorra**	AD	0.5	Partial	52	**Latvia**	LV	0.5	Partial
2	**Anguilla**	AI	0	None	53	**Lebanon**	LB	0.5	Partial
3	**Antigua & Barbuda**	AG	0	None	54	**Liberia**	LR	0.5	Partial
4	**Aruba**	AW	0.5	Partial	55	**Liechtenstein**	LI	0	None
5	**Australia**	AU	0.5	Partial	56	**Luxembourg**	LU	0	None
6	**Austria**	AT	0.5	Partial	57	**Macao**	MO	0.5	Partial
7	**Bahamas**	BS	0	None	58	**Macedonia**	MK	0.5	Partial
8	**Bahrain**	BH	0.5	Partial	59	**Malaysia (Labuan)**	MY	0	None
9	**Barbados**	BB	0	None	60	**Maldives**	MV	0.5	Partial
10	**Belgium**	BE	0.5	Partial	61	**Malta**	MT	0	None
11	**Belize**	BZ	0	None	62	**Marshall Islands**	MH	0	None
12	**Bermuda**	BM	0	None	63	**Mauritius**	MU	0	None
13	**Bolivia**	BO	0.5	Partial	64	**Mexico**	MX	0.5	Partial
14	**Botswana**	BW	0.5	Partial	65	**Monaco**	MC	0.5	Partial
15	**Brazil**	BR	0.5	Partial	66	**Montenegro**	ME	0.5	Partial
16	**British Virgin Islands**	VG	0	None	67	**Montserrat**	MS	0.5	Partial
17	**Brunei**	BN	0	None	68	**Nauru**	NR	0.5	Partial
18	**Canada**	CA	0.5	Partial	69	**Netherlands**	NL	0.5	Partial
19	**Cayman Islands**	KY	0	None	70	**New Zealand**	NZ	0.5	Partial
20	**Chile**	CL	0.5	Partial	71	**Norway**	NO	0.5	Partial
21	**China**	CN	0.5	Partial	72	**Panama**	PA	0.5	Partial
22	**Cook Islands**	CK	0.5	Partial	73	**Paraguay**	PY	0.5	Partial
23	**Costa Rica**	CR	0.5	Partial	74	**Philippines**	PH	0.5	Partial
24	**Curacao**	CW	0	None	75	**Poland**	PL	0.5	Partial
25	**Cyprus**	CY	0.5	Partial	76	**Portugal (Madeira)**	PT	0.5	Partial
26	**Czech Republic**	CZ	0.5	Partial	77	**Russia**	RU	0.5	Partial
27	**Denmark**	DK	0.5	Partial	78	**Samoa**	WS	0	None
28	**Dominica**	DM	0.5	Partial	79	**San Marino**	SM	0.5	Partial
29	**Dominican Republic**	DO	0.5	Partial	80	**Saudi Arabia**	SA	0.5	Partial
30	**Estonia**	EE	0.5	Partial	81	**Seychelles**	SC	0	None
31	**Finland**	FI	0.5	Partial	82	**Singapore**	SG	0.5	Partial
32	**France**	FR	0.5	Partial	83	**Slovakia**	SK	0.5	Partial
33	**Gambia**	GM	0.5	Partial	84	**Slovenia**	SI	0.5	Partial
34	**Germany**	DE	0.5	Partial	85	**South Africa**	ZA	0.5	Partial
35	**Ghana**	GH	0.5	Partial	86	**Spain**	ES	0.5	Partial
36	**Gibraltar**	GI	0	None	87	**St Kitts and Nevis**	KN	0.5	Partial
37	**Greece**	GR	0.5	Partial	88	**St Lucia**	LC	0	None
38	**Grenada**	GD	0.5	Partial	89	**St Vincent & Grenadines**	VC	0	None
39	**Guatemala**	GT	0.5	Partial	90	**Sweden**	SE	0.5	Partial
40	**Guernsey**	GG	0	None	91	**Switzerland**	CH	0.5	Partial
41	**Hong Kong**	HK	0.5	Partial	92	**Taiwan**	TW	0.5	Partial
42	**Hungary**	HU	0.5	Partial	93	**Tanzania**	TZ	0.5	Partial
43	**Iceland**	IS	0.5	Partial	94	**Turkey**	TR	0.5	Partial
44	**India**	IN	0.5	Partial	95	**Turks & Caicos Islands**	TC	0	None
45	**Ireland**	IE	0.5	Partial	96	**United Arab Emirates (Dubai)**	AE	0	None
46	**Isle of Man**	IM	0	None	97	**United Kingdom**	GB	0.5	Partial
47	**Israel**	IL	0.5	Partial	98	**Uruguay**	UY	0.5	Partial
48	**Italy**	IT	0.5	Partial	99	**US Virgin Islands**	VI	0	None
49	**Japan**	JP	0.5	Partial	100	**USA**	US	0	None
50	**Jersey**	JE	0	None	101	**Vanuatu**	VU	0	None
51	**Korea**	KR	0.5	Partial	102	**Venezuela**	VE	0.5	Partial

[1] To see the sources we are using for particular jurisdictions please check out the corresponding information 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/; 21.07.2015.
[3] http://www.delawarellc.com/learning/Series-LLC.htm; 21.07.2015.
[4] An excellent introduction to trusts can be found in this blog: http://taxjustice.blogspot.com/2009/07/in-trusts-we-trust.html; 21.07.2015.
[5] http://www.financialsecrecyindex.com/PDF/Glossary.pdf.