

KEY FINANCIAL SECRECY INDICATORS

Key Financial Secrecy Indicator 20 International Legal Cooperation

What is being measured?

KFSI 20 measures the extent to which a jurisdiction participates in international transparency commitments¹ and engages in international judicial cooperation on money laundering and other criminal matters.

Both components are worth an equal 50 points of the secrecy score, and each component is subdivided into four or five subcomponents. Each of the four subcomponents of international transparency commitments is given a maximum 12.5 points of the secrecy score. Each of the five subcomponents of international judicial cooperation is given a maximum 10 points of the secrecy score. All subcomponents are combined by simple addition to arrive at the secrecy score of KFSI 20. The Secrecy Scoring Matrix is shown in Table 20.1 below, and full details of the assessment logic can be found in Table 20.3 underneath.

Component I: International Transparency Commitments (50 points)

In the case of the International Transparency Commitments, we have focused on the extent to which a jurisdiction adheres to widespread international legal conventions which support transparency in international financial and tax matters. For the first four subcomponents², a failure to ratify the relevant international legal instruments results in a secrecy score of 10 points for each, which are simply added to result in the component's secrecy score.


Subcomponent 1: The Tax Convention aims to promote “administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion”³. The amending protocol stipulates that bank secrecy cannot be deployed as grounds for denying the exchange of information upon request and opened the Convention up to countries which are not members of either the Council of Europe or the OECD. It allows for spontaneous and automatic information exchange, but requires the signatory parties only to implement upon request information exchange. A detailed analysis of this Tax Convention [can be found here](#).⁴

Subcomponent 2: The 2003 UN Convention against Corruption (UNCAC) aims to promote the prevention, detection and sanctioning of corruption, as well as cooperation between State Parties on these matters⁵. Relevant provisions include the prohibition of tax deductibility of bribe payments (Art. 14, Para. 4), a requirement to include bribery within the context of an effective anti-money laundering framework (Art. 23 and 52), and to rule out bank secrecy as a reason to object against investigations in relation to bribery (Art. 40).

Table 20.1: Secrecy Scoring Matrix KFSI 20

Regulation	Secrecy Score Assessment (Sum; 100 points= full secrecy; 0 points = full transparency)
Component I: International transparency commitments (50 points)	
(1) Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters ⁶ ("Tax Convention")	12.5
(2) 2003 UN Convention against Corruption (UNCAC) ⁷	12.5
(3) 1999 UN International Convention for the Suppression of the Financing of Terrorism ⁸	12.5
(4) 2000 UN Convention against Transnational Organised Crime ⁹	12.5
Component II: International Judicial Cooperation (50 points)	
(1) Will mutual legal assistance be given for investigations, prosecutions, and proceedings (old FATF-recommendation 36/ New FATF 2013/2017 methodology, recommendation 37)?	10
(2) International co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets (New FATF 2013/2017 methodology, Immediate Outcome 2 of the effectiveness assessments)? Or	10

Regulation	Secrecy Score Assessment (Sum; 100 points= full secrecy; 0 points = full transparency)
Is mutual legal assistance given without the requirement of dual criminality (old FATF methodology, recommendation 37)?	
(3) Is mutual legal assistance given concerning identification, freezing, seizure and confiscation of property (FATF recommendation 38)?	10
(4) Is money laundering considered to be an extraditable offense (FATF recommendation 39)?	10
(5) Is the widest possible range of international co-operation granted to foreign counterparts beyond formal legal assistance on anti-money laundering and predicate crimes (FATF recommendation 40)?	10

All underlying data can be accessed freely in the  [Financial Secrecy Index database](#) (IDs 33, 35, 36, 309 – 314 and 469)

Subcomponent 3: The 1999 UN Terrorist Financing Convention requires its parties to prevent and counteract financing of terrorists. The parties must identify, freeze and seize funds allocated to terrorist activities.¹⁰

Subcomponent 4: The UN Convention Against Transnational Organised Crime seeks to prevent and combat transnational organised crime, notably by obliging the State Parties to adopt new frameworks for extradition, through mutual legal assistance and law enforcement cooperation, the promotion of training and technical assistance for building or upgrading the capacity of national authorities.¹¹

The United Nations Treaty Collection served as a source for all three UN conventions.¹² A chart of the signatures and ratifications of the Tax Convention can be found on the OECD website.¹³

Component II: International Judicial Cooperation (50 points)

The second component of KFSI 20 examines the extent to which a jurisdiction engages in international judicial cooperation on anti-money laundering and other criminal matters. We use the level of compliance with five of the [Financial Action Task Force \(FATF\) recommendations](#)¹⁴ as the appropriate measures. These recommendations review the laws,

institutional structures, and policies deemed necessary to counter money laundering and terrorist financing. For more details on the FATF and its recommendations, please read [KFSI 17 on Anti-Money Laundering](#).¹⁵

Depending on whether a jurisdiction has been assessed according to the old or to the new FATF recommendations (which took effect from 2013 onwards), this component's methodology is adjusted in two main ways. First, the contents of the recommendations reflecting judicial cooperation have changed slightly. We reflect these changes by selecting those new recommendations for assessment which most closely match with the content of the old recommendations. We provide a quick comparison of the main content of the new and the old recommendation below.

Second, for one of the five subcomponents a different type of recommendation is applied to jurisdictions for which there is already a report available prepared under the new FATF methodology. This is because the total number of recommendations dealing with international judicial cooperation has reduced from five to four in the new FATF recommendations. However, eleven effectiveness measures, so-called "immediate outcomes" (IO), have been added. One of these IO measures reviews effectiveness of judicial cooperation in practice. This is the indicator we have adopted under the new methodology. In both the old and new FSI methodology, the total number of subcomponents thus remains at five.

FATF's assessment methodology for both old and new recommendations rates compliance with every recommendation on a four-tiered scale, from "compliant" to "largely compliant" to "partially compliant" to "non-compliant". Analogously, the assessment of the immediate outcomes ranges from "high-level of effectiveness" to "substantial level of effectiveness" to "moderate level of effectiveness" to "low level of effectiveness". These four tiers are linearly scaled to values between 0 and 10 points.¹⁶

Thus, a non-compliant rating will result in a secrecy score of 10 points for each subcomponent. All subcomponents are simply added to result in the overall component's secrecy score.

Subcomponent 1: The old recommendation 36¹⁷ encourages countries to "provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings".

The new recommendation 37¹⁸ (formerly old recommendation 36 combined with old special recommendation 5) exhorts countries to "provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and

related proceedings". In addition, countries must "Maintain the confidentiality of mutual legal assistance requests they receive, and the information contained in them [...]". Furthermore, countries should "make best efforts to provide complete factual and legal information that will allow for timely and efficient execution of requests [...]". Finally, they should ensure that their authorities "maintain high professional standards, including standards concerning confidentiality [...]".

Subcomponent 2: Old recommendation 37¹⁹ requires that countries "to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality". Extradition or mutual legal assistance should take place irrespective of legal technicalities as long as the underlying conduct is treated as a criminal offence (is a predicate offence) in both countries.

This old recommendation has no direct correspondent in the new recommendations. As a substitute, as explained above, for jurisdictions assessed under the new recommendations/methodology, we include the effectiveness assessment of immediate outcome 2 (IO2). It requires that "International co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets". For a discussion of these new effectiveness measures, please read [KFSI 17 on Anti-Money Laundering](#).²⁰

Subcomponent 3: Old recommendation 38²¹ requires a country to have "authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value". In addition, there should also be arrangements in place for coordinated action and sharing of confiscated assets.

New recommendation 38²² (formerly old recommendation 38) requires a country to have "authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value". In addition, countries' authority should be "able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures [...]" as well as to "have effective mechanisms for managing such property [...]". Finally, there should also be arrangements in place for coordinated action and sharing of confiscated assets.

Subcomponent 4: Old recommendation 39²³ asks a country to “recognise money laundering as an extraditable offence”. It further details the grounds on which extradition is to take place, and in what manner.

New recommendation 39²⁴ (formerly old recommendation 39) requires a country to “ensure money laundering and terrorist financing are extraditable offences”. It further details the grounds on which extradition must take place, and in what manner. It also calls on countries to “take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations”.

Subcomponent 5: Old recommendation 40²⁵ prompts countries to “ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts”. The competent authority denotes “all administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including the FIU and supervisors”.

New recommendation 40²⁶ (formerly old recommendation 40) prompts countries to ensure that their competent authorities “provide the widest range of international co-operation in relation to money laundering, associated predicate offences and terrorist financing”. The competent authorities “should have clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information received”.

Why is this important?

In today’s globalised world, organised crime, bribery, terrorism and large-scale tax evasion are essentially international problems that easily cross national borders. Some jurisdictions aim to attract substantial amounts of that criminal money by offering a thin fabric of weak national rules and regulations or by an absence of cross-border cooperation. Against this background, it is important to verify to what extent a jurisdiction is committed to certain principles.

Regarding the jurisdiction’s international transparency commitments, while the ratification of international conventions does not necessarily translate into commitment to take positive actions, it is certainly a step in the right direction. It signals to treaty partners as well as to offenders a willingness to cooperate internationally and a proactive stance with respect to national legislation and policing.

The Conventions will contribute to varying degrees to solving the problems they are intended to address. They have already or are likely to become means through which civil society within the countries concerned can begin to hold governments and others to account. Similarly, they are likely

to improve the chances of government authorities, such as tax administrations, public prosecuting offices, financial crime investigative police, and counter terror agencies, to successfully request cooperation from a foreign counterpart.


As with all commitments, however, implementation is what ultimately matters. Out of the three international Conventions, only one (UNCAC) has started to implement a systematic and partly transparent review process of adherence to commitments made under that Convention.²⁷

Regarding the second component of KFSI 20, i.e. the jurisdiction's international judicial cooperation on money laundering and other criminal matters, it is crucial that judicial cooperation across borders is as seamless as the criminal money flowing between two companies or bank accounts. Otherwise, law enforcement agencies, such as public prosecutors or police, inevitably remain one step behind the criminals.

From the stages of investigation and prosecution to extradition of perpetrators and the confiscation and repatriation of criminal assets, law enforcement processes are fragile and require cross-border cooperation at every stage. Without established means of cooperation, a judge may only have letters of rogatory as a last resort, which is a time-consuming, costly and uncertain process

"In terms of efficiency, exchange of information through letters of rogatory may take months or years since some requests may have to be processed through diplomatic channels."²⁸

Compliance with old recommendations 36 through 40, and with new recommendations 37 through 40 and IO 2, respectively, can be seen as indicators of the minimum threshold of judicial cooperation required to take part in the international financial system.

All underlying data can be accessed freely in the  Financial Secrecy Index 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 33, 35, 36, 309 – 314 and 469)** in the database report of the respective jurisdiction.

Results Overview

Figure 20.1: International Legal Cooperation – Overview of Secrecy Scores

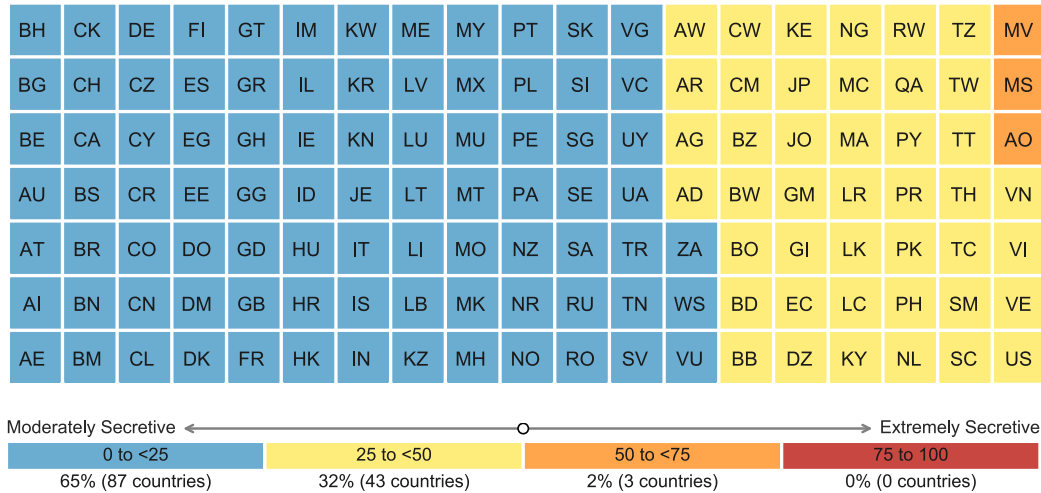


Figure 20.2: International Transparency Commitments

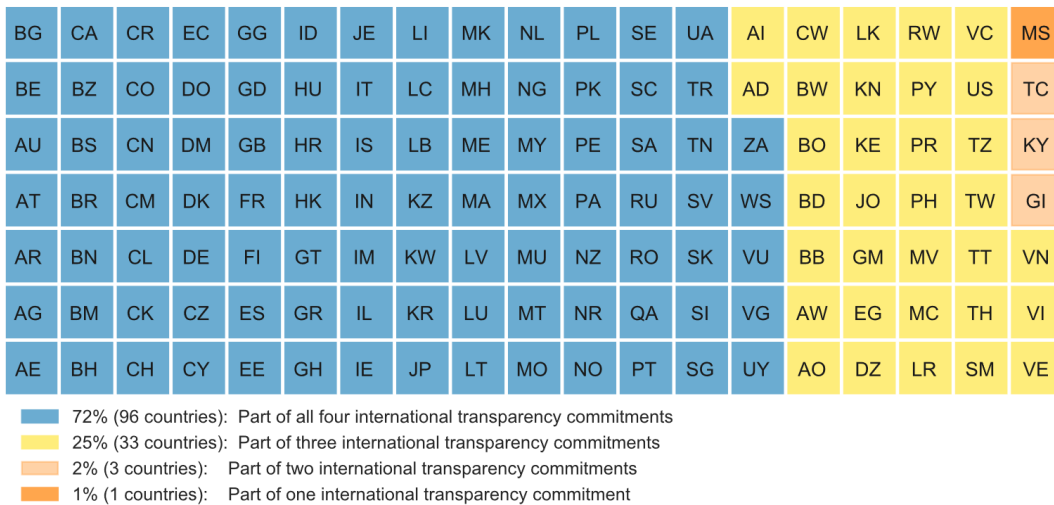


Figure 20.3: Mutual legal assistance be given for investigations, prosecutions, and proceedings (Old FATF-recommendation 36 / new FATF-rec 37)



Figure 20.4: Mutual legal assistance given without the requirement of dual criminality (only old FATF recommendation 37)?



Figure 20.5: Mutual legal assistance given concerning identification, freezing, seizure and confiscation of property (FATF recommendation 38)

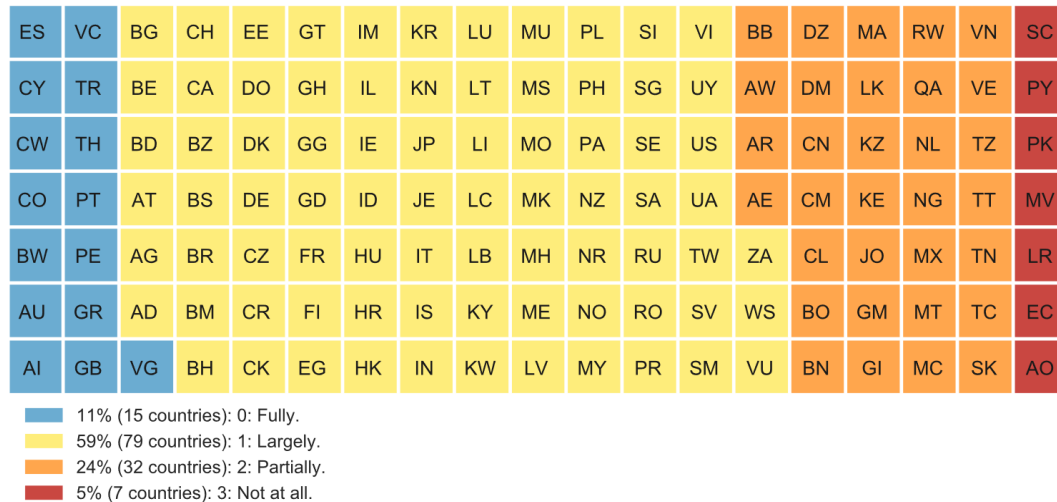


Figure 20.6: Countries effectively and constructively executing extradition requests in relation to money laundering and terrorist financing, without undue delay (FATF recommendation 39)

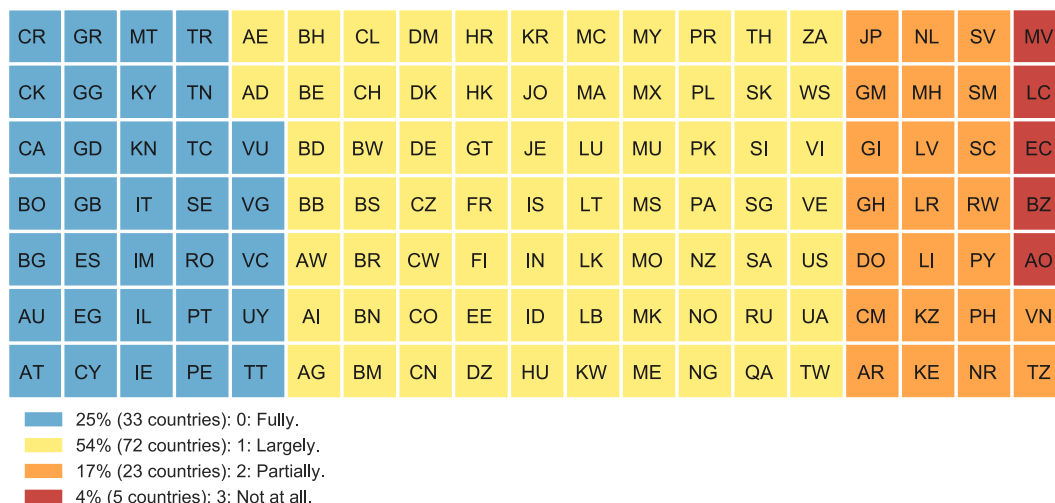


Figure 20.7: Widest range of international cooperation rapidly, constructively and effectively provided by competent authorities to their foreign counterparts in relation to anti-money laundering and terrorist financing (FATF recommendation 40)



Figure 20.8: International co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets (Immediate Outcome 2 of the effectiveness assessments under FATF 2013/2017 methodology)?

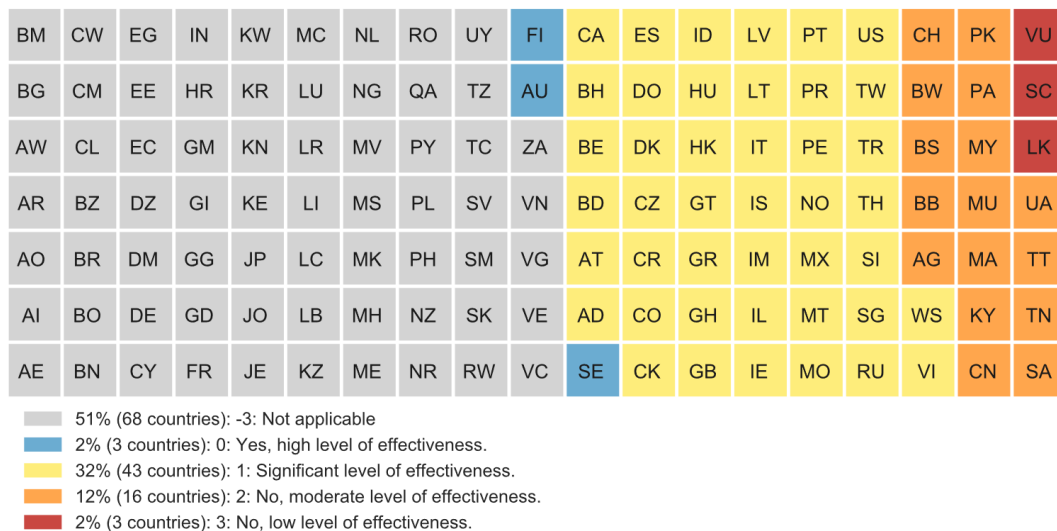


Table 20.2: International Legal Cooperation – Secrecy Scores

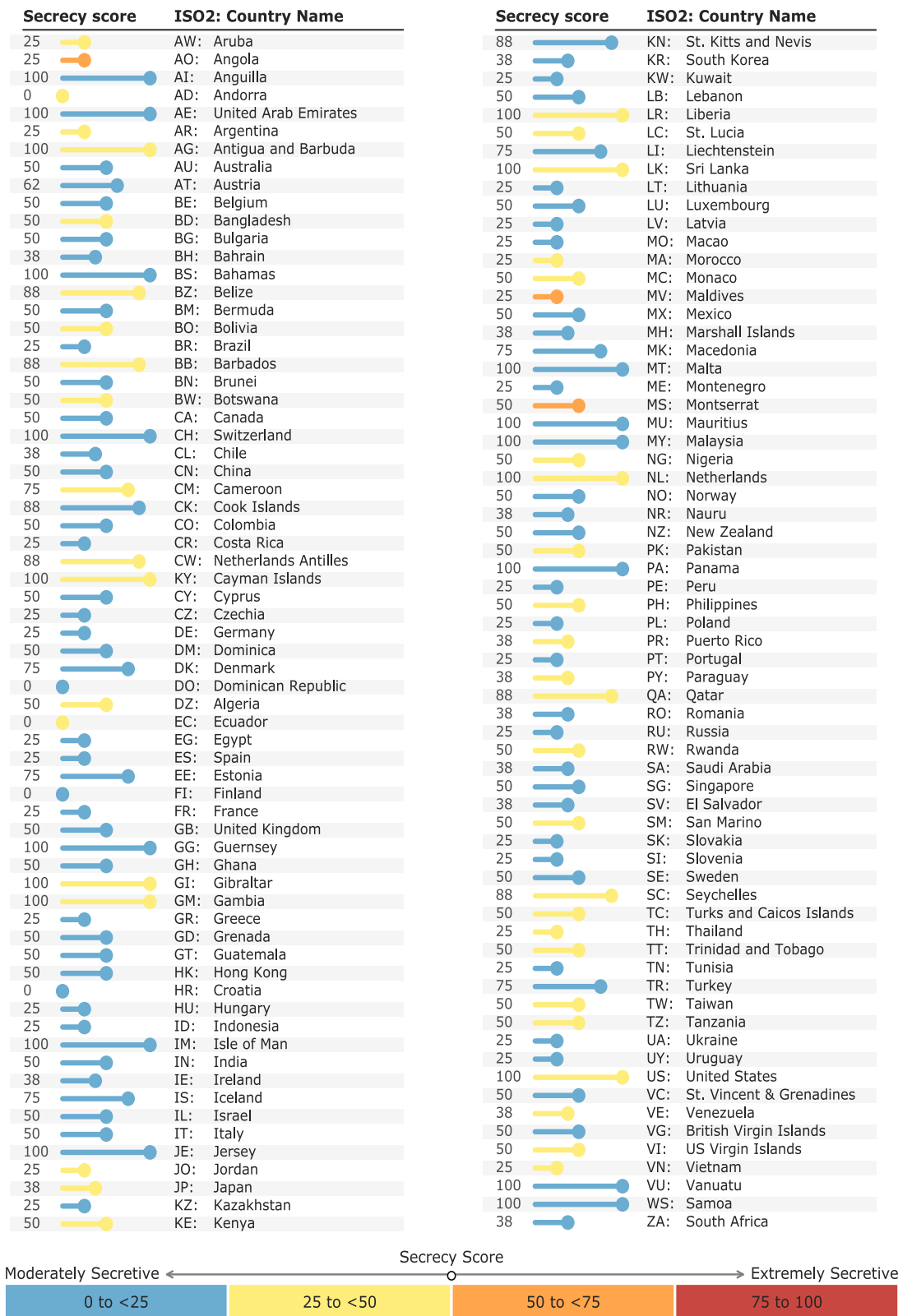


Table 20.3: Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
309	Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters (Tax Convention)	1: No, jurisdiction is not part to the Convention; 2: Yes, but only part to the original Convention; 3: Yes, part to the Amended Convention.	1: 12.5 points; 2: 12.5 points; 3: 0 points
33	UN Convention Against Corruption	YN	Y: 0 points; N: 12.5 points
35	UN International Convention for the Suppression of the Financing of Terrorism	YN	Y: 0 points; N: 12.5 points
36	UN Convention Against Transnational Organized Crime	YN	Y: 0 points; N: 12.5 points
310	Will mutual legal assistance be given for investigations, prosecutions, and proceedings (FATF-recommendation 36)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points
311	Is mutual legal assistance given without the requirement of dual criminality (old FATF recommendation 37)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	if old FATF: 0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points
312	Is mutual legal assistance given concerning identification, freezing, seizure and confiscation of property (FATF recommendation 38)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points
313	Is money laundering considered to be an extraditable offense (FATF recommendation 39)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
314	Is the widest possible range of international co-operation granted to foreign counterparts beyond formal legal assistance on anti-money laundering and predicate crimes (FATF recommendation 40)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points
469	International co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets (Immediate Outcome 2 of the effectiveness assessments under new FATF 2013 methodology)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	if new FATF: 0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points

List of references

FATF, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 2003 <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf>> [accessed 28 January 2020]

Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, 2017 <www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology-March%202017-Final.pdf> [accessed 28 January 2020]

OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, 2001 <<http://www.oecd.org/daf/ca/43703185.pdf>> [accessed 27 January 2020]

¹ Signature alone is insufficient, ratification is required.

² As of FSI 2018, we do not include as a sub-component the [Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#).² This is because by 2018, the convention had already been ratified by all FSI assessed jurisdictions.

³ <http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>; 28.01.2020.

⁴ Meinzer, Markus, 'Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010', 2012 <<http://www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf>> [accessed 24 January 2020].

⁵ The official site of the convention is here:

<http://www.unodc.org/unodc/en/treaties/CAC/index.html>; 28.01.2020. A succinct summary of the convention's measures can be found here:

<http://www.uncaccoalition.org/about-the-uncac>; 28.01.2020.

⁶ <http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>; 27.01.2020.

⁷ <http://www.unodc.org/unodc/en/treaties/CAC/index.html>; 28.01.2020.

⁸ <http://www.un.org/law/cod/finterr.htm>; 27.01.2020.

⁹ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>; 28.01.2020.

¹⁰ <http://www.un.org/law/cod/finterr.htm>; 27.01.2020.

¹¹ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>; 28.01.2020.

¹² <https://treaties.un.org/>; 28/01.2020. The specific source for each jurisdiction and convention can be found in the corresponding database report for each jurisdiction, here: <http://www.financialsecrecyindex.com/database/>.

¹³ https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf; 28.01.2020.

¹⁴ The (new) 2013/2017 recommendations and corresponding methodology to assess compliance can be viewed at: <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>; 28.01.2020. The (old) 2003 recommendations can be viewed at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf>; 28.01.2020. The 2003 recommendations include 40 recommendations and 9 special recommendations on terrorist financing, and referred to jointly as the FATF Recommendations. For the methodology for assessing compliance with the FATF Recommendations, see: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/methodologyforassessingcompliancewiththefatf40recommendationsandfatf9specialrecommendations.html>; 28.01.2020.

¹⁵ <http://www.financialsecrecyindex.com/PDF/17-Anti-Money-Laundering.pdf>; 21.7.2017.

¹⁶ In order to keep the measurement in line with KFSI 1 (where we are including some recommendations from the FATF), we attribute a 10% secrecy score for non-compliant, 6.5% for partially compliant, 3.5% for largely compliant and zero secrecy for fully compliant answers.

¹⁷ FATF, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 2003, 10 <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf>> [accessed 28 January 2020].

¹⁸ Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, 2017, 27–28 <www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology-

March%202017-Final.pdf> [accessed 28 January 2020]. While old recommendation 37 was officially omitted, most of its content was merged to new recommendation 37.

¹⁹ FATF, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 10.

²⁰ <http://www.financialsecrecyindex.com/PDF/17-Anti-Money-Laundering.pdf>; 21.7.2017.

²¹ FATF, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 10.

²² Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, 28.

²³ FATF, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 10–11.

²⁴ Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, 29.

²⁵ FATF, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 11.

²⁶ Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, 29–30.

²⁷ <http://www.uncaccoalition.org/uncac-review/uncac-review-mechanism>; 28.01.2020.

²⁸ OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, 2001, 66 <<http://www.oecd.org/daf/ca/43703185.pdf>> [accessed 27 January 2020].