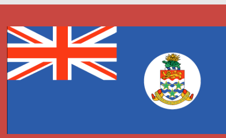
financial secrecy index 2020

tax justice network

Narrative Report on the Cayman Islands



PART 1: NARRATIVE REPORT

Cayman is ranked first on the 2020 Financial Secrecy Index, based on a secrecy score of 76 and a large global scale weight for the size of its offshore financial services sector, which comprise 4.58 per cent of the world total.

Cayman Islands: history of a secrecy jurisdiction

The Cayman Islands, known locally as 'Cayman', is an Overseas Territory of the United Kingdom. As such, it operates with considerable political and economic autonomy from the UK but with considerable support and oversight from UK officials. This link provides a crucial reassurance for skittish owners of global financial assets that they have recourse to the British courts system and that the UK will ensure the islands' political stability. The British Queen is Head of State, and her Privy Council is responsible for oversight of all laws emanating from the Cayman Parliament. The Cayman Governor,[1] appointed by London, presides over the Cayman cabinet and appoints members of the judiciary and the police commissioner. The UK has responsibility for defence, foreign affairs, internal security, the police, the civil service and the "good governance" of Cayman.

Formerly a rather lawless turntable for drugs smuggling and money laundering, Cayman has steadily moved upmarket and much of its business today comes from the world's biggest banks, corporations, hedge funds and other entities and arrangements. In general terms Cayman offers a low-tax, regulation-light environment for financial players from around the world, particularly Europe and the United States. In terms of its ratio of GDP to foreign assets, Cayman is the most intensive offshore financial centre[2] in the world, with foreign assets at 1,500 times the size of the domestic economy. Cayman is by far the world's leading domicile for hedge funds, and the second leading domicile[3] for captive insurance companies. Financial services account for about one-third of gross domestic product.[4]

Cayman is also a significant recipient of corporate profits being shifted out of other countries. Research by the US Congress's Joint Committee on Taxation[5] found that in 2010, 6 per cent of US corporate foreign earnings and profits were reported earned in companies incorporated in Cayman. This is obviously not representative of economic activity taking place in Cayman. In 2004, US affiliate corporate profits were 547 per cent of the Cayman Islands' GDP, and by 2010 had increased to 2,065 per cent of Caymans GDP (p.18)[6]. This suggests that profit shifting to Cayman[7] is increasing fast — and these figures only cover US companies.

The dangers that emanate from Cayman are now less about money laundering and criminal activity — although it hosts plenty of that as an inevitable side-effect of being a secrecy jurisdiction — and more about the risks to global financial stability and public finances posed by its role as an opaque conduit for large international financial institutions, enabling them to avoid "onshore" regulation and taxes. Cayman's role in the 2008 banking crisis is a clear illustration of this, and the risks in this realm have not gone away.

Rank: 1 of 133

How Secretive? 76

Moderately secretive	0 to <25
	25 to <50
	50 to <75
Exceptionally secretive	75 to 100

How big? 4.58%

huge

large

small

tiny

huge: >5% large: >1% to 5% small: >0.1% to 1% tiny <0.1%

The Cayman Islands accounts for 4.58 per cent of the global market for offshore financial services. This makes it a large player compared to other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Full data is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit

http://www.financialsecrecyindex.com.

The FSI project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 727145.

If you have any feedback or comments on this report, contact us at info@taxjustice.net

Early days

Like many islands in the Caribbean, the Cayman Islands served as a minor "offshore" pirate sanctuary as early as the 18th Century, a tradition that is now celebrated annually.[8] Yet it was not until the middle of the last century that the first seeds of the modern tax haven (or secrecy jurisdiction) were sown.

In the early 1950s Cayman was a backwater dependency of British-ruled Jamaica. It had no telephone service, limited electricity supplies, no piped water, a heavy reliance on seamen's remittances and no banks. Mosquitoes were sometimes thick enough in the air to suffocate cows, according to the Cayman Financial Review.[9]

But by the late 1950s, offshore activity was beginning to develop nearby, notably in Curaçao (see here for details) [10] as a tax haven for US corporations, and in the Bahamas, which the Chicago-based mobster Al Capone and his associates were using as an offshore centre to avoid scrutiny by the US authorities. An academic account[11] explains:

> Caymanians began to consider a model based on Bermuda and the Bahamas' nascent tax and exchange control avoidance businesses, Curaçao's "ring-fenced" tax regime... and the tax structuring business in the Channel Islands and Europe generally.

Still, any change to the status quo faced stiff resistance from the existing merchant class: a letter from Britain's resident Commissioner in 1956 estimated that of a population of 8,300 people at the time there was a maximum potential electorate of 750 (women could not vote then) and "the Dependency is in fact one rotten borough." (p 1310)[12]

However, with the support of the British Administrator, Jack Rose, and the Cayman Vanguard Progressive party, Cayman pushed towards more autonomy from Jamaica. "Thus," wrote Tony Freyer and Andrew Morriss in their history[13] of the Cayman offshore financial centre, "both a British official and local Caymanians collaborated on this initial step in establishing the OFC [Offshore Financial Centre.]"[14]

Strikingly, the promise of offshore financial service revenues seems to have been a spur to Cayman's decision to separate from Jamaica in 1959:

> For Cayman to enter this business would require new legal infrastructure, however, and as Caymanians explicitly feared, legislation at the [Jamaican] Federation level could prevent it, should Cayman join the Federation.

The Companies Law of 1960

The Cayman Islands Companies Law of 1960, written by a Jamaican law firm and passed "as written" by the UK's Colonial Office (p1327)[15], was very much the work of expatriate professionals — the start of a pattern of Cayman rubber-stamping legislation effectively written by offshore financial interests. Indeed, as Cayman official Benson Ebanks remarked at the time, the law was "the beginning [...] of a conscious effort to go after the off-shore business."

The new law freed companies and individuals from direct taxation, and allowed for companies to be separated from the individual so that owners could be shielded behind nominees. The combination of secrecy with zero taxes on corporations is a classic tax haven combination. Administrator Rose sold the plan to the politicians and the population by promising to earmark funds from company registration fees to the mosquito eradication programme. The law, which was revised several times in the intervening years, would prove to be successful on its own terms:

Year	1986	1996	2002	2014
No. of registered companies	16,791	37,919	64,495	95,000
No. of banks and trusts	456	575	-	210*
Assets US$bn	202	507.8	800+	1,500*
No. of captive insurance cos	107	378	542	760
Mutual funds	0	1379	3648	11379

*banks only
Source: Tim Ridley[16] and Cayman Islands Monetary Authority[17]

Cayman's thoroughly British constitutional setup meant that City of London firms were immediately familiar with the legislation and could quickly start creating strategies for tax avoidance and evasion. Cayman was still a British dependency, however, after its separation from Jamaica, and the Companies Law coincided with demands for stronger self-government. As Freyer and Morriss explain:

> "Cayman's challenge was to secure sufficient legal and fiscal autonomy from Britain while creating a climate of fiscal stability that could attract business and fund the infrastructure necessary for both business and development."

Over time, Britain's colonial powers to directly control economic development in Cayman gave way to a greater degree of constitutional autonomy — in contrast to France, whose post-colonial overseas territories remained integral parts of the French state without the ability to set up their own independent and "offshore" legislative frameworks. British decolonisation more broadly provided a further push to Cayman, as one account explains:

> The post-war push for decolonization created the political space needed... by reducing British control and empowering interests within the British government which focused on the territories' economic sustainability rather than on the impact "tax havenry" might have on the British Treasury.[18]

The impact of "tax havenry" on other countries, rich and poor, was of no concern, as Bank of England internal reporting (p108[19]) illustrates:

> "there is of course no objection to their providing bolt holes for non-residents."

Jamaica's independence from Britain in 1962 provided Cayman with an early boost, as many international business interests active in Jamaica shifted to Cayman, attracted by the bedrock link with Britain as its mother country, not to mention Cayman's more harmonious politics and race relations. A mosquito control programme made the islands far more liveable and infrastructure was following in its wake: Investments were made in electricity and phone networks, and the airport was expanded to accommodate jet aircraft.

The late 1960s: new personalities, new trust laws

According to Tim Ridley, a top Cayman official, it was a flurry of lawmaking in 1966 that really got the offshore sector off the ground, notably the Banks and Trust Companies Regulation Law (copied from the Bahamas); the Trusts Law (influenced by Liechtenstein trusts and British laws), and the Exchange Control Regulations Law. All were built on the laissez-faire, zero-tax, secrecy-enhancing foundation of the 1960 companies law.

In the words of Sir Vassal Johnson (p150)[20], appointed Cayman Financial Secretary in 1968, the core principle behind the offshore industry was "to afford international investors a legitimate expectation of a level of privacy [...] void of tax deductions in the Cayman Islands."

He later described secrecy as "the prime support of the country, of promoting the tax haven business."

A handful of other people are worth mentioning as architects of the early tax haven activity. One influential person who attended the launch of the Companies Act was James MacDonald, a Canadian lawyer who became a resident and began aggressively to promote Cayman's tax facilities overseas. From the 1960s onwards, Canadian interests played an especially important early role in pushing an "offshore"model. Royal Bank of Canada was one of the first banks in Cayman (alongside Barclays) with a retail presence; and Cayman's first trust company was the Bank of Nova Scotia Trust Company (Cayman). The Canadian Imperial Bank of Commerce (CIBC) which entered soon afterwards was also influential. Canadian banks in Cayman were particularly helpful to US tax evaders, because US banks were scrutinised more heavily by US criminal, tax and regulatory authorities.

Another early architect of the Cayman offshore financial centre was an attorney called William S. Walker, who arrived in 1964 and found it to be "just like the Bahamas, but new and better." Walker helped draft the trust legislation which, as a UK official later said, "blatantly seeks to frustrate our own law for dealing with our own taxpayers." The laws targeted inheritance taxes in particular, contributing to the beginning of a fast rise in inequality in the UK and many other countries.

Walker, who was Cambridge-educated, and the Oxford-educated lawyer John Maples (later to become a British Conservative MP) were also instrumental in bringing British clients to Cayman. The Cayman Financial Review summarises:

> "between Walker and Maples, they had access to most of the influential business people in London."

Cayman steadily became more important in helping City of London businesses, and others, escape exchange control regulations, while also helping to spur the explosive growth of the offshore, unregulated Eurodollar markets based out of London (see our UK report[21] for more details, and the "Bigger Bang" chapter on Eurodollars in *Treasure Islands*). As one account put it (p1324):[22]

> "Eurodollar transactions were 'behind much of the financial activity based on Grand Cayman.'
>
> [...] The appearance of the Euromarkets

> in currencies weakened domestic efforts at financial regulation throughout the world, creating space for offshore business strategies that had not existed under the tighter national control of banking possible when the Euromarket alternative was not available."

In 1967 another external event boosted Cayman when the Bahamas, then awash with US mob money, elected its first black premier, Lynden Pindling. Financial capital owners, already worried about the Cuban threat nearby, and with rising racial tensions in the Bahamas and the prospect for full independence looming (it came in 1973), began to shift their attention to Cayman, once again attracted by the reassuring bedrock of the protective, unthreatening link to London. Milton Grundy, another architect of Cayman's early trust legislation, explained the psychological impact of Pindling's election on mobile global capital: (p106)[23]

> "It wasn't that Pindling said or did anything to damage the banks," he said, "it was just that he was black."

As Bahamas business moved in, a solidly British (plus Canadian and to a lesser extent US) offshore sector started to attract a new pan-American clientèle, including Latin American elites. Top names in international law, such as Marshall Langer, promoted the Caymans in the US, helped by the fact that Miami is just one hour's flight away. The decision in 1970 to detach the Cayman currency from Jamaica's (and subsequently to peg it to the US dollar in 1974) helped cement the burgeoning US link.

A new constitution in 1972, entrenching the Privy Council[24] in London as the final appeal court, solidified the British link but gave Cayman yet more scope for self-governance, providing space to create its own offshore legislation with even less input or "interference" from London. The authorities in London were only too happy to oblige.

Cayman settles down as a 'captured state'

Cayman's role as a state "captured" by the offshore financial services was helped, as in many small tax havens, by the fact that there was little local understanding of the offshore sector, which reduced the potential for domestic democratic opposition or debate, giving free rein to expatriate or offshore financial interests. One British government team (p107)[25] described a "frightening lack of local expertise," which enabled skilled lawyers and accountants to get what they wanted without any queries from inexperienced local legislators. Financial Secretary Vassal Johnson said in 1973 that the islands did not have a single economist, and added:[26] "we have written away to the United Nations to get one."

While democratic local debate on other legislation was often vigorous, the offshore laws were typically passed with "virtually no debate" (e.g. p41),[27] as we have seen[28] in numerous offshore centres. One common feature of this capture is what has been called, in Cayman's case, "the usual solidarity over measures to protect the financial industry" (p62[29]) and what Michael Austin, one of the first accountants on Cayman, calls "a hugely friendly relationship between the government and the private sector." In essence, the government would provide the laws that private sector practitioners asked for. This is formalised in a "Private Sector Consultative Committee",[30] a structure set up in the 1960s where private sector operators discuss the legislation they needed — and typically draft it — with relatively little substantive input from Cayman civil servants and almost never any dissent from London (p120)[31].

The offshore sector was also deliberately ring-fenced from turbulent domestic politics. Freyer and Morriss 's political history of Cayman notes how Britain plays a part in this capture:

> "The checks-and-balances maintained through the British Governor and the Caymanian civil service removed much of the regulatory system from direct political pressures. Moreover, the independent judiciary led by the Chief Justice possessed autonomy, with final appellate review lodged, as it had been throughout colonial history, in the Privy Council" (p57[32])

Captured state becomes a free-for-all, and scandals erupt

In this permissive environment, it is no surprise that Cayman became something of a free-for-all. Drugs profits and other nefarious money flew in by the planeload. If there was enough cash, it would get a police escort to the bank. Time magazine in 1973 cited[33] an investment banker who explained the islands' attraction succinctly: "We like the place because it is suitably devoid of law."

In this environment, a succession of major scandals began to surface. There are too many to describe here, but a few choice episodes give a flavour.

One concerns a Canadian banker, Jean Doucet, who set up the International Bank and began mailing out pamphlets about Cayman to tens of thousands of clients worldwide. Chris Johnson, a local accountant, wrote a qualified audit report on Doucet's businesses that he said was "basically telling the government to close the bank down." Instead Johnson was fired. Doucet became the largest employer on the islands, threw lavish parties and must have felt untouchable. When his financial empire collapsed in 1974 he fled to Monaco, where he was later extradited to Cayman and convicted.

Other countries, noticing Cayman's increasing ability to undermine their own laws and tax systems, began to complain. Cayman's response was always essentially the same: robust denial of wrongdoing and pointing the finger of blame elsewhere.

In 1976, US authorities at the Miami airport served a subpoena on Anthony Field, managing director of Cayman-based Castle Bank and Trust, on suspicion that he had been helping US clients evade taxes. Before a Florida Grand Jury (p120)[34] Field was ordered to divulge client details. This was the first time that Cayman's secrecy, then based on common law, had been directly challenged by a major foreign power. Cayman responded with some extremely fast legal drafting to bolster Field's case, defiantly passing a new law, the Confidential Relationships (Preservation) Law under which people can go to jail not only for divulging information, but merely for asking[35] for it. As one account puts it (p121)[36]

> "it was a giant, fist-pumping Fuck You aimed squarely at US law enforcement — and it became a cornerstone of Cayman's success."

The law remains in place today: while there are "exceptions" where it does not apply, it has had a chilling effect on potential exposures of malfeasance, and penalties can be as high as eight years in jail.

The breaking open of the Bank of Credit and Commerce (BCCI)[37] in large part by New York District Attorney Robert Morgenthau and Jack Blum (now a Tax Justice Network senior adviser) in 1991, opened up what could easily be argued was the most corrupt bank in global history. With its fingers in heroin trafficking, arms dealing to terrorist regimes, trafficking in nuclear materials, global-scale corruption, the bribery and subversion of governments and much more, BCCI concealed its crimes by splitting itself three ways: it located its headquarters in London with two operating subsidiaries in Luxembourg and Cayman. This split evaded centralised regulation and - when the balloon went up - allowed officials in Cayman and Luxembourg to point fingers elsewhere.

Cayman responds to scandal

As the US and other countries increasingly sought to push back against Cayman's harmful secrecy offerings, Cayman responded with a three-pronged strategy.

The first was to mount a public relations campaign, which was already in full swing by the 1970s. Cayman has routinely described itself as a "legitimate financial centre" and "not a tax haven." Yet the essential model remained intact: the attraction of foreign money, with plenty of secrecy and few questions asked. "What we sell is confidentiality; they can't match it," a banker said[38] in 1981.

The second prong was to concede particular, usually narrow, exemptions to its secrecy. Typically, a scandal or outside pressure would result in incremental reforms, often tailored only to the particular concerns raised, and often designed to address (and then typically only in part) the concerns of the particular (usually powerful) country that had made the complaint. The signature of a narcotics agreement with the US in 1984 and then a tripartite US-UK-Cayman Mutual Legal Assistance treaty in July 1986 were early steps in tackling some of the most outrageous drugs (and other) crimes committed via Caymans, though these still left doors open for criminals, particularly from outside the US and UK. Yet over time, Cayman has steadily moved to squeeze out drugs-related business as it has focused on more lucrative opportunities elsewhere.

The third prong, building on the second, was to move into new financial markets while seeking to expand its offshore offerings, to become somewhat less reliant on secrecy and to develop offshore financial regulatory approaches. The focus began to shift beyond private client business towards more institutional investors. A key offering was light-touch (or lax) financial regulation, another classic offshore offering. The setting up of the Cayman Islands Monetary Authority in the early 1990s, a response to the BCCI scandal, was designed to help remove some of the taint; its independence from local politics has helped insulate it from periodic corruption scandals. Other legislation in the 1990s, notably on money-laundering, helped mitigate the taint from more egregious financial crimes. New legislation allowed foreign authorities to pierce Cayman's Confidential Relationships (Preservation) Law, later repealed by the Confidential Information

Disclosure Law, 2016 (the "Law"), though still only in limited circumstances.[39]

Instead of drug dealers, Cayman increasingly began to court captive insurance companies, mutual funds, hedge funds and private equity, particularly from the late 1980s. Tax avoidance[40] was increasingly pursued and marketed, as opposed to wholly illegal evasion. The unregulated Eurodollar markets, already long established, remained ripe for abusive activities, with Cayman offering all sorts of opportunities to escape exchange controls and other regulations. This is not to say that these high-society vehicles weren't rife with clients engaging in tax evasion and other misdemeanours — they were and still are — but this was less often the prime reason for selecting Cayman as the jurisdiction of choice.

The days of BCCI-styled wholesale criminal activity fuelled by Cayman's secrecy were giving way to financial services that posed new kinds of dangers for the world.

Scandals return, but of a different nature

As the turn of the century approached, Cayman began to attract more business from US and other banks seeking to evade regulatory controls and engage in risky off-balance sheet trades via Cayman-incorporated Structured Investment Vehicles (SIVs)[41], for instance, which began to pop up like mushrooms away from regulators' (and the general public's) eyes.

Official justification for Cayman's see-no-evil approach was that supposedly "sophisticated" investors can look after themselves and that "the markets" always know best. Until the Mutual Funds Law of 1993, for example, there were no laws regulating funds. Eduardo d'Angelo Silva, former president of the Cayman Islands Bankers Association, said[42] in 2000 that while Cayman did have laws to curb criminality and money laundering, the sectors were, in effect, "self regulating." Anthony Travers, later a chairman of the Cayman Islands Monetary authority, explained:[43]

> "the only effective regulatory mechanism with respect to the sophisticated institutional business that Cayman attracted... was a *caveat emptor* [buyer beware] system... the responsibility of the Cayman government was managed by avoiding the concept of prudential regulation."

Alongside an unwillingness to apply financial regulation to curb risk-taking, Cayman took a similar approach to corporate governance.

This willingness to give offshore investors free rein was a version of that generic offshore offering: "we won't steal your money – but we will turn a blind eye if you want to steal someone else's." This see-no-evil approach was hugely attractive to managers seeking to engage in corporate skulduggery, of course, and the implications for financial stability — in other countries — would soon enough become apparent.

The first real public sign of a major financial stability issue, though few noticed it at the time, concerned the US hedge fund Long Term Capital Management (LCTM)[44] whose collapse in 1998 under a US$1.2 trillion swaps book threatened the financial stability of the US economy. What was hardly noticed at the time, even in the landmark book about the episode, When Genius Failed, was that the swaps were all booked in a Cayman affiliate which, in the words of[45] US regulator Gary Gensler, "wasn't much more than a P.O. box." This was, however, but a warm-up for the Global Financial Crisis, which would be found out to have a significant Cayman contribution too.

In the 2000s a raft of other scandals, all linked to lax oversight, implicated Cayman. The discovery that the fraudulent US energy company Enron had used hundreds of unregulated Cayman subsidiaries to keep billions off its balance sheet caused severe market disruption for a while when the company collapsed in 2001 in a blaze of publicity and recriminations. The collapse the following year of the US telecoms giant MCI/WorldCom was found to have involved the use of Cayman companies to hide losses. Hot on its heels came the Parmalat scandal, which involved a Cayman structure used to create a veil over fictitious assets that it supposedly held to offset huge liabilities elsewhere.

When the global financial crisis hit, Cayman was once again behind many of the big collapses. When Citigroup suddenly reported massive losses from its subprime activities, it turned out that it had set up Special Investment Vehicles (SIVs), based in Cayman,[46] to move the positions off its balance sheet and shield them from regulation. These were responsible[47] for two separate taxpayer bailouts. When Bear Stearns collapsed, it turned out that two of the largest hedge funds it had bailed out in 2007 were incorporated in Cayman. The collapse of Lehman brothers was found to have[48] involved the parking of tens of billions in off-balance sheet toxic assets in Cayman special purpose vehicles (SPVs).

In each of these cases Cayman-based financial and legal professionals creamed off significant fees from these companies' activities while the going was good, and when crisis came the losses were shouldered by others, elsewhere. As Gary Gensler put it:[49]

> "The U.S.'s largest banks each have somewhere between 2,000 and 3,000 legal entities around the globe. Some of them have hundreds of legal entities just in the Cayman Islands alone [...] when a run starts on any part of an overseas affiliate or branch of a modern financial institution, risk comes crashing right back to our shores."

Again, this has been core to Cayman's business model.

What is more, after the "hot" period of the crisis, studies suggest that Cayman, along with a number of other classic tax havens, remains core to the "contagion" from subsequent crises, such as those emanating from Greece. An IMF report from 2010[50] is suggestive of the role the offshore system plays:

The presence of the United Kingdom plus no less than six of its Overseas Territories and Crown Dependencies at the core of this chart provides an indication of the overwhelming part played by light-touch regulation tax havens and secrecy jurisdictions in the global financial crisis.

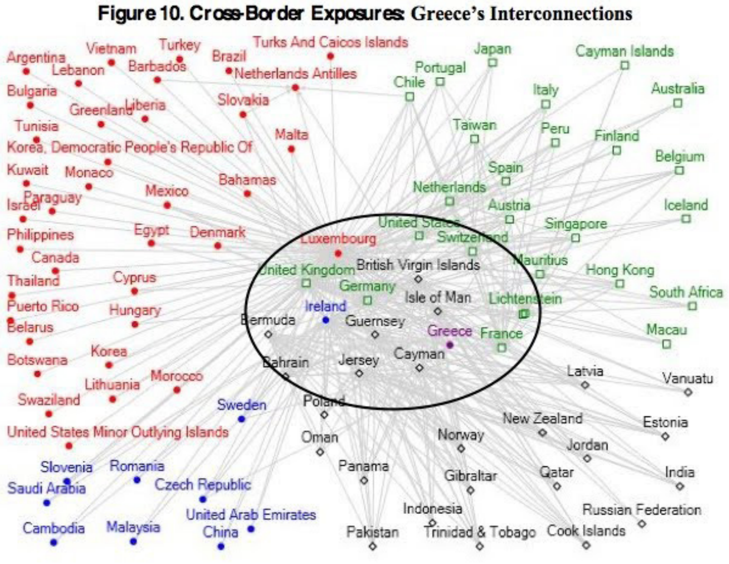
Cayman officials have long responded to scandals such as these with what might be described as a fourth prong to the public relations strategy: deflecting blame elsewhere. In the case of BCCI, it was the Bank of England's fault. In Parmalat's case, Italian auditors were blamed.[51] In the multiple US scandals, it was the fault of US regulators. Regulation in places like Delaware and the City of London is often worse than in Cayman, they say, which may well be true, but this is a classic instance of the pot calling out the defects in the kettle!

These defences contain an inner kernel of truth. But ultimately, these crimes and misdemeanours take two (or more) to tango. The unavoidable truth is that Cayman carries a joint share of the blame. And the fact that Cayman has still failed to put adequate safety mechanisms in place since these disasters, as explained below, shows that it continues, true to half a century of past form, to turn a blind eye to the problems.

Meanwhile, the classic tax-havenry continues too. In March 2016 two Cayman financial companies, Cayman National Securities Ltd. and Cayman National Trust Co. Ltd., pleaded guilty in the US to helping American taxpayers hide more than US$130 million in Cayman bank accounts. Accounts were opened in the name of sham Cayman companies and trusts, helping disguise the beneficial ownership. The US Department of Justice[52] noted the significance of this:

> "The guilty pleas of these two Cayman Island companies today represent the first convictions of financial institutions outside Switzerland for conspiring with US taxpayers to evade their lawful and legitimate taxes."

Figure 10. Cross-Border Exposures: Greece's Interconnections



Sources: Lipper (Thomson Reuters); and Fund staff calculations.

Cayman today: a clean-up — but only front of house

Every offshore financial centre strives to portray itself as a "clean", cooperative and transparent jurisdiction, and Cayman is no exception. Its officials repeat this claim routinely and point, among other things, to Cayman's "white listing" by august bodies such as the OECD, the IMF and others.

Since the global financial crisis, a flurry of new regional and global initiatives have emerged to tackle the problem of international financial secrecy, and Cayman's response has been, while mixed, better than many. These initiatives come in several areas.

• The US Foreign Account Tax Compliance Act (FATCA: see our USA narrative report:[53] this

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is primarily about the US seeking information about its own taxpayers. Cayman is among 113 jurisdictions that have engaged[54] on this, signing an Intergovernmental Agreement.

- The European Union Savings Tax Directive, a mechanism for automatic information exchange among 43 European and affiliated countries. Cayman was one of relatively few classic tax havens to opt for the "automatic information exchange" option, giving it further transparency credits. Nevertheless, the EUSTD was very narrowly focused, full of loopholes and hardly impacted Cayman.

- The OECD's Common Reporting Standards (CRS),[55] the global standard of automatic information exchange.

- Cayman abolished bearer shares in 2016 under pressure from the Global Forum (p29).[56]

- In April 2017[57] Cayman joined the OECD's Inclusive Framework[58] on BEPS, which commits it to implementing the country-by-country reporting component[59] of the BEPS action plan. This is limited, however, to requiring country-by-country reports from a) large multinationals headquartered in a jurisdiction, and b) domestic branches or subsidiaries of large groups in that jurisdiction — but only subject to strict OECD conditions. This is a much lower and less effective level of disclosure than full public reporting of this information would be (see KFSI 9).[60] Cayman has not yet met the OECD standard.[61]

- Cayman has also removed the criminal sanction from its secrecy law. The old Confidential Relationships (Preservation) Law, which had prison terms not only for handing over information to unauthorised parties, but merely for asking for it, was repealed in 2016 and replaced by the Confidential Information Disclosure Law.[62] Breaching confidentiality is no longer a criminal offence, although the person whose confidentiality is breached can sue. The new law even offers some protection for whistleblowers, provided they act in good faith and have evidence either of wrongdoing or a serious threat to life, health, safety, or the environment.

- The Minister for Financial Services said[63] "the bill's overarching aim is to confirm, beyond doubt, that this legislation is not secrecy legislation; but rather maintains a respect for privacy whilst providing appropriate gateways to information by local competent authorities."

- Cayman has reacted less enthusiastically to pressure from the United Kingdom for improved transparency. The UK passed the Sanctions and Anti-Money Laundering Act in 2018 requiring all Overseas Territories to disclose all company owners via public register.[64] Premiere Alden McLaughlin called the law "colonial despotism"[65] and said, "The position of the Cayman Islands government is the attempt by parliament to legislate for this territory … is unlawful and we do not accept it."[66] Nevertheless, in October 2019, McLaughlin announced that Cayman would create a public registry of beneficial owners by 2023.[67]

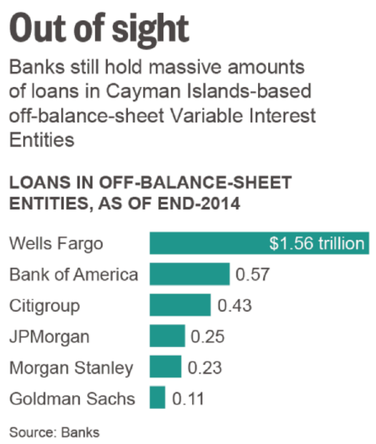
- In late 2018, Cayman passed the International Tax Co-operation (Economic Substance) Law,[68] which says companies must have an "adequate" physical presence — offices or factories, for example — in Cayman, as well as "an adequate number of full-time employees or other personnel." [69] Several OFCs, including Bermuda and the British Virgin Islands, were required to pass similar economic-substance legislation to avoid being placed on a European Union blacklist. Investment funds and companies that have tax residency elsewhere are excluded from the requirements. Cayman's government has said "outsourcing these activities to a local service provider" is sufficient to meet the substance demands.

- After a Caribbean Financial Action Task Force report[70] found in early 2019 that Cayman had "major deficiencies" in how its regulators understand fraud risk and that there "remains fundamental challenges in how the jurisdiction identifies instances of (money laundering and tax fraud) for investigation", Cayman amended some legislation in the summer of 2019. One provision says it would respond to anti-money laundering and combatting-terrorism-finance requests within 48 hours. Another makes the names of company directors public information. Cayman also raised its fines and said it would create 100 new enforcement jobs.[71]

Yet despite these improvements, many things have not changed. When David Legge, publisher of the Cayman Compass, criticised widespread Cayman-based corruption in the wake of the giant, Caymanrelated FIFA scandal, Premier Alden McLaughlin described it as "treasonous" and Legge fled the country[72] in June 2015, saying he feared for his safety. Bucket shops offering hardly-supervised corporate directorships for hire remain common,[73] with some corporate directors "overseeing" hundreds of companies, and facing many conflicts of interest. New legislation in 2014,[74] responding to negative publicity, has addressed some of the worst concerns but has left the most laissez-faire aspects in place.

Meanwhile Cayman continues to introduce new vehicles to the arsenal of entities available, such as the Cayman LLC, launched in 2016[75] and modelled loosely on Delaware's version. It combines the limited liability benefits of a company with the greater flexibility of a partnership.

And while Cayman has, under international pressure, been tackling some of the worst secrecy-peddling aspects of its offering, it has left the facilitation of shadow banking largely intact, and in this area, there has been much less international attention to prompt change. As Professor Thomas Rixen points out,[76] "the policies adopted toward OFCs hardly touch on the shadow banking strategy and financial instability." The risks associated with off-balance sheet behaviour of US banks are again building up in Cayman. Reuters reported in 2015 that just six US banks were holding a total of US$3.3 trillion of securitised loans[77] in off-balance sheet entities in Cayman, as this chart suggests:



Though this is anecdotal, it does point to Cayman continuing to be an offshore jurisdiction of particular concern. The nature of the hazards created by Cayman has changed, but they are no less important than before.

It is worth noting that the ability to move assets off the balance sheet has other potentially antisocial implications, too. Extolling the benefits of a Cayman trust for the shipping industry, the PR arm of the financial centre, Cayman Finance, notes:[78]

> "the off-balance sheet treatment may mitigate a financier's exposure to the commercial, legal and reputational risk associated with ship ownership and operation. One of the more extreme examples of this would be an oil spill. In the US, potential financial liability under the US Oil Pollution Act 1990 can be, in certain circumstances, unlimited. This as well as the reputational and political risk attached to extensive environmental damage."

Further reading:

- History of the Cayman Islands, in six parts, Cayman Financial Review.[79]
- 'Creating Cayman as an Offshore Financial Center: Structure & Strategy since 1960'[80], Tony Freyer, Andrew P. Morriss, *Arizona State Law Journal*, 2013. While almost wholly uncritical and pro-tax haven, it nevertheless contains a wealth of interesting data, analysis and original source material.
- *Treasure Islands*,[81] particularly pp103-121 in the UK edition, which provides much political context, and explores some of the subtleties of the relationship with Britain.
- Jan Fichtner, 'The anatomy of the Cayman Islands offshore financial center: Anglo-America, Japan, and the role of hedge funds',[82] *Review of International Political Economy*, Vol 23, 2016, pp 1034-1063.
- The UK narrative report[83] provides background about the Overseas Territories and Crown Dependencies.
- The Cayman database report[84] for our index provides more on the secrecy jurisdiction.
- Watch TJN director Alex Cobham's presentation to Cayman officials[85] at a conference in Cayman on 'Tax Transparency in the Global Financial Services Ecosystem', April 2017.

Endnotes

1 http://www.gov.ky/portal/page/portal/cighome/government/roleofthegovernor; 26.1.2020.

2 http://www.tandfonline.com/doi/full/10.1080/09692290.2016.1243143; 26.1.2020.

3 http://www.cayman.finance/industry-sectors/insurance/; 23.9.2019.

4 http://www.gov.ky/portal/page/portal/pfehome/announcements/strong-economy-robust-government-finances; 04.02.2020.

5 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2711968; 26.1.2020.

6 https://fas.org/sgp/crs/misc/R40623.pdf; 26.1.2020.

7 http://www.taxanalysts.org/content/effect-profit-shifting-corporate-tax-base; 26.1.2020.

8 https://www.piratesweekfestival.com/; 26.1.2020.

9 http://www.caymanfinancialreview.com/2009/10/05/the-cayman-islands-from-obscurity-to-offshore-giant/; 26.1.2020.

10 http://www.financialsecrecyindex.com/PDF/Curacao.pdf;26.1.2020.

11 https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1022&context=facscholar; 26.1.2020.

12 https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1022&context=facscholar; 26.1.2020.

13 https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1022&context=facscholar; 26.1.2020.

14 Morriss' and Freyer's history is fascinating but extremely pro-Cayman: it should be noted that Morriss has reportedly served as a consultant to Cayman Finance. Morriss was also the co-author of a subsequent paper attacking the Tax Justice Network, discussed here.

15 https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&ar-

ticle=1022&context=facscholar; 26.1.2020.

16 https://www.bis.org/review/r070627f.pdf; 26.1.2020.

17 https://www.cima.ky; 04.02.2020.

18 See *Creating Cayman as an Offshore Financial Center: Structure & Strategy since 1960*, Tony Freyer, Andrew P. Morriss, Arizona State Law Journal, 2013, p4.

19 https://www.amazon.co.uk/Treasure-Islands-Havens-Stole-World/dp/1847921108/ref=sr_1_1?s=books&ie=UTF8&qid=1294155747&sr=1-1; 26.1.2020.

20 https://www.amazon.co.uk/As-See-Cayman-Leading-Financial/dp/1857765966; 26.1.2020.

21 http://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf; 26.1.2020.

22 https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1022&context=facscholar; 26.1.2020.

23 https://www.amazon.co.uk/Treasure-Islands-Havens-Stole-World/dp/1847921108/ref=sr_1_1?s=books&ie=UTF8&qid=1294155747&sr=1-1; 26.1.2020.

24 http://www.taxjustice.net/cms/upload/pdf/Privy_Council_and_Secrecy_Scores.pdf; 26.1.2020.

25 http://treasureislands.org/; 26.1.2020.

26 http://content.time.com/time/magazine/article/0,9171,903662,00.html; 26.1.2020.

27 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2329827; 26.1.2020.

28 https://www.financialsecrecyindex.com/introduction/introducing-the-fsi; 26.1.2020.

29 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2329827; 26.1.2020.

30 http://www.gov.ky/portal/page/portal/cighome/find/organisations/azpublicbodies/pscc; 26.1.2020.

31 https://www.amazon.co.uk/Treasure-Islands-Havens-Stole-World/dp/1847921108/ref=sr_1_1?s=books&ie=UTF8&qid=1294155747&sr=1-1; 26.1.2020.

32 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2329827; 26.1.2020.

33 http://content.time.com/time/magazine/article/0,9171,903662,00.html; 26.1.2020.

34 https://www.hive.co.uk/Product/Nicholas-Shaxson/Treasure-Islands--Tax-Havens-and-the-Men-Who-Stole-the-World/148437; 26.1.2020.

35 http://taxjustice.blogspot.lu/2009/05/oecd-to-look-at-cayman.html; 26.1.2020.

36 https://www.hive.co.uk/Product/Nicholas-Shaxson/Treasure-Islands--Tax-Havens-and-the-Men-Who-Stole-the-World/148437; 26.1.2020.

37 https://fas.org/irp/congress/1992_rpt/bcci/09ny.htm; 26.1.2020.

38 http://www.caymanfinancialreview.com/2009/07/07/Part-3-The-Transitionary-1980%E2%80%99s-The-Cayman-Islands/; 26.1.2020.

39 https://web.archive.org/web/20161024144103/https://higgsjohnson.com/blog/articles/cayman-promotes-transparency-with-disclosure-bill/; 24.9.2019.

40 https://aaajournals.org/doi/10.2308/accr.2008.83.1.61; 26.1.2020.

41 http://www.mondaq.com/caymanislands/x/19933/Structured+Investment+Vehicles+The+Cayman+Perspective; 26.1.2020.

42 http://www.caymanfinancialreview.com/2009/10/01/part-5-the-boom-and-gloom-decade-of-the-2000s/; 26.1.2020.

43 http://www.caymanfinancialreview.com/2009/10/05/the-cayman-islands-from-obscurity-to-offshore-giant/; 26.1.2020.

44 http://www.businessinsider.com/the-fall-of-long-term-capital-management-2014-7?IR=T; 26.1.2020.

45 http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-141; 26.1.2020.

46 http://www.cftc.gov/PressRoom/Spe-

echesTestimony/opagensler-141; 26.1.2020.

47 https://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-141; 24.9.2019.

48 https://www.forbes.com/forbes/welcome/?toURL=https://www.forbes.com/2010/03/19/lehman-brothers-markets-streettalk-dick-fuld.html&refURL=&referrer=; 26.1.2020.

49 http://www.cftc.gov/PressRoom/SpeechesTestimony/genslerstatement071213; 26.1.2020.

50 http://www.imf.org/external/np/pp/eng/2010/100410.pdf; 26.1.2020.

51 https://books.google.de/books?id=C1NhQyTqnbUC&pg=PA210&lpg=PA210&dq=anthony+travers+parmalat+cayman&source=bl&ots=YA2-fW5OMl&sig=GB_LTnk2fmZ-8l7BsXe-YPoSvX5U&hl=de&sa=X&ved=0ahUKEwjM-7fqUyvPYAhWSKewKHUGWAOcQ6AEIRTAI#v=onepage&q=anthony%20travers%20parmalat%20cayman&f=false; 26.1.2020.

52 https://www.justice.gov/opa/pr/two-cayman-island-financial-institutions-plead-guilty-manhattan-federal-court-conspiring-hide; 26.1.2020.

53 http://www.financialsecrecyindex.com/PDF/USA.pdf; 26.1.2020.

54 https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx; 26.1.2020.

55 http://www.taxjustice.net/2014/02/13/press-release-tjn-responds-new-oecd-report-automatic-information-exchange/; 26.1.2020.

56 http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-cayman-islands-2017-second-round_9789264280168-en#.Wmn6Nzco9PZ; 26.1.2020.

57 https://home.kpmg/xx/en/home/insights/2015/03/beps-in-taxnewsflash.html; 24.9.2019.

58 https://www.oecd.org/ctp/beps/inclusive-framework-on-beps-composition.pdf; 26.1.2020.

59 https://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf; 26.1.2020.

60 https://www.financialsecrecyindex.com/PDF/9-Corporate-Tax-Disclosure.pdf; 26.1.2020.

61 According to Cayman Islands‘ Ministry of Finance, they do not have domestic legislation yet (TJN Survey 2017: http://www.financialsecrecyindex.com/PDF/FSI2018-Questionnaire-MoF.pdf and https://www.financialsecrecyindex.com/PDF/FSI2018-Questionnaire-FIU.pdf).

62 https://www.caymanfinancialreview.com/2017/02/01/the-new-confidential-information-disclosure-law-2016/; 24.9.2019.

63 http://web.caymanchamber.ky/news/newsarticledisplay.aspx?ArticleID=2569; 26.1.2020.

64 https://www.natlawreview.com/article/britain-lifts-veil-financial-secrecy-overseas-territories; 04.02.2020.

65 https://guernseypress.com/news/2018/05/03/public-register-vote-colonial-despotism--cayman-premier/; 04.02.2020.

66 https://www.caymancompass.com/2018/05/23/premier-uk-orders-on-beneficial-ownership-will-be-fought-in-cayman/; 04.02.2020.

67 https://www.internationalinvestment.net/news/4005765/cayman-commits-public-register-beneficial-ownership; 04.02.2020.

68 https://home.kpmg/cn/en/home/insights/2019/03/new-cayman-islands-economic-substance-law.html; 04.02.2020

69 https://www.walkersglobal.com/index.php/overview-cayman-islands-economic-substance-requirements; 04.02.2020.

70 http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/CFATF-Cayman-Islands-Mutual-Evaluation.pdf; 04.02.2020.

71 https://www.caymancompass.com/2019/07/25/companies-law-amendments-to-increase-sanctions-reporting/; 04.02.2020.

72 https://www.nytimes.com/2015/06/09/sports/soccer/critical-of-fifa-publishers-flee.html?_r=1; 26.1.2020.

73 https://www.nytimes.com/2015/06/09/sports/soccer/critical-of-fifa-publishers-flee.html?_r=1; 26.1.2020.

74 http://www.caymanfinances.com/wp-content/uploads/2014/05/Directors-Registration-and-Licensing-Bill-2014-12-2nd-Final-Cabinet.pdf; 26.1.2020.

75 https://cnsbusiness.com/2016/01/cayman-copies-delaware-law-for-limited-liability-legislation/; 26.1.2020.

76 http://onlinelibrary.wiley.com/doi/10.1111/rego.12024/full; 26.1.2020.

77 http://www.taxjustice.net/2015/09/03/why-tax-havens-will-be-at-the-heart-of-the-next-financial-crisis/; 26.1.2020.

78 http://www.cayman.finance/2017/07/cayman-islands-orphan-spvs-shipping/; 26.1.2020.

79 http://taxjustice.blogspot.lu/2011/06/cayman-from-obscurity-to-offshore-giant.html; 26.1.2020.

80 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2329827; 26.1.2020.

81 http://treasureislands.org/; 26.1.2020.

82 http://www.tandfonline.com/doi/full/10.1080/09692290.2016.1243143; 26.1.2020.

83 http://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf; 26.1.2020.

84 https://www.financialsecrecyindex.com/database; 26.1.2020.

85 https://www.taxjustice.net/2017/04/12/open-cayman-reputation-rhetoric-reality/; 26.1.2020.

CAYMAN ISLANDS

PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

- 27 — 1. Banking Secrecy
- 100 — 2. Trust and Foundations Register
- 75 — 3. Recorded Company Ownership
- 100 — 4. Other Wealth Ownership
- 100 — 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

- 100 — 6. Public Company Ownership
- 100 — 7. Public Company Accounts
- 100 — 8. Country-by-Country Reporting
- 100 — 9. Corporate Tax Disclosure
- 100 — 10. Legal Entity Identifier

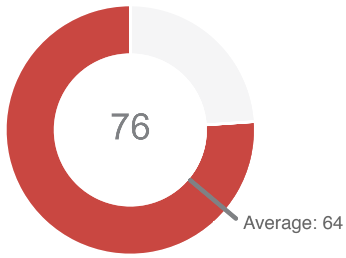
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 100 — 11. Tax Administration Capacity
- 100 — 12. Consistent Personal Income Tax
- 100 — 13. Avoids Promoting Tax Evasion
- 100 — 14. Tax Court Secrecy
- 50 — 15. Harmful Structures
- 60 — 16. Public Statistics

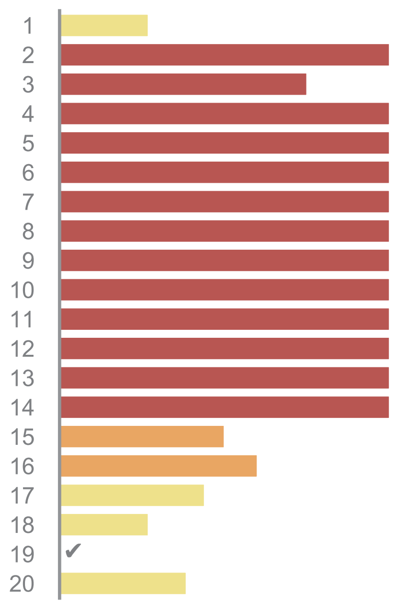
INTERNATIONAL STANDARDS AND COOPERATION

- 44 — 17. Anti-Money Laundering
- 27 — 18. Automatic Information Exchange
- 0 — 19. Bilateral Treaties
- 39 — 20. International Legal Cooperation

Secrecy Score



Key Financial Secrecy Indicators



Notes and Sources

The FSI ranking is based on a combination of a country's secrecy score and global scale weighting (click here to see our full methodology).

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

A grey tick in the chart above indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

Full data is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit http://www.financialsecrecyindex.com.