financial secrecy index 2020

tax justice network

Narrative Report on Guernsey

PART 1: NARRATIVE REPORT

Guernsey, a UK Crown Dependency, is in 11th place in the 2020 Financial Secrecy Index, down 1 place from 2018. The small tax haven jurisdiction in the English Channel has a secrecy score of 71. It accounts for 0.41 per cent of the global trade in offshore financial services.

Government and politics in Guernsey

The Bailiwick of Guernsey is a group of islands in the English Channel off the coast of France. Together with the Bailiwick of Jersey this Bailiwick forms the British Channel Islands.

The Bailiwick has been self-governed since 1204, when King Henry III declared that the islands were not part of England.

The government of Guernsey is spread across three separate jurisdictions, Guernsey, Alderney, and Sark. Each has its own legislature.

The States of Guernsey is the parliament of Guernsey and has 38 deputies, including two representatives from Alderney. The States legislates on a Bailiwick-wide basis for criminal law, but in civil matters Alderney and Sark can differ. The OECD Global Forum considers Guernsey and Alderney a common jurisdiction for tax purposes.

The States of Alderney has ten elected members. Sark, with a population of around 600 has a parliament, called the Chief Pleas, with 28 members.

Sark only recently transitioned to a democratic system from an ancient feudal system. Before 2008 members of Sark's parliament were selected on the basis of landholdings. Although technically Sark's representatives are now democratically elected, the change can hardly be described as a democratic revolution. In 2014 and 2016 there were no more candidates for election than there were posts available, and no vote was required. The head of state of Sark, the Seigneur, is a hereditary position.

There are no political parties in Guernsey and this so-called "political stability" is seen as a benefit to the offshore industry. One of the revelations of the Paradise Papers was that companies (in this case Apple) sent questionnaires[1] to potential offshore locations asking if the jurisdiction had a political opposition, which might mean a change of policy in the future.

With such dominance of the financial industry in Guernsey, there is little chance that politics in the Bailiwick will do anything other than work in the interests of the financial industry, and to that extent it should be considered a captured state.

Relationship with the UK

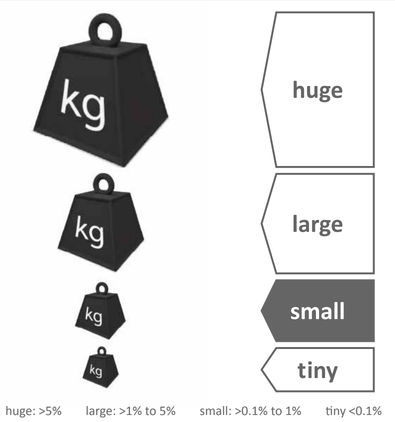
Guernsey is a British Crown Dependency. Although the UK government does not by custom exert direct control over the domestic affairs of the islands, legislation passed by the States must be approved by the UK Privy Council. UK law can be extended to the States, though this has historically been handled on the basis of consent.

Rank: 11 of 133

How Secretive? 71

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

How big? 0.41%



Guernsey accounts for 0.41 per cent of the global market for offshore financial services. This makes it a small 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.

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Guernsey

The UK maintains responsibility for defence and the foreign relations of the islands. At the time of joining the European Economic Community in 1973, Britain negotiated a special provision of its accession treaty which kept Guernsey outside the EEC – and subsequently the European Community – while allowing for free movement of goods within the Customs Union but outside the regulatory framework of the Single Market.

The offshore industry in Guernsey

Guernsey is a major offshore financial centre. As of 2016 the Bailiwick had £255bn of assets under management.[2] To put this into context, the GDP of Guernsey was £3.3bn in 2018, though this statistic includes significant volumes of profit generated outside the island but booked into a Guernsey registered subsidiary company for tax purposes.[3] A large amount of these assets, around £100bn, is held[4] in private equity vehicles, where Guernsey has developed a particular specialism.

In the FSI, Guernsey has a global scale weight of 0.5 per cent, meaning that its market share in the global trade in offshore financial services is 0.5 percent. This is an island, however, with a population of just 60,000. Germany on the other hand, has a market share of 5 per cent of global offshore services, ten times that of Guernsey, but a population around 80 million and a GDP of US$4 trillion[5] – an economy approximately one thousand times larger than Guernsey's.

As a result of the huge relative size of the offshore industry, the finance sector dominates the local economy. According to the States of Guernsey statistical office, 21 per cent of the labour force is employed in the finance sector,[6] which accounted for around 40 per cent of Gross Value Added.[7] This economic dependence, is significantly higher when account is taken of the jobs in downstream sectors of the economy – including retail, hospitality, construction, and many others – that depend on the finance sector.

The growth of Guernsey's offshore industry comes from its closeness to the UK, a captured political system happy to facilitate the legislative desires of the finance industry, and low taxes.

Guernsey charges zero capital gains tax, and zero taxes on inheritance and other wealth. Income tax is a flat 20 per cent but comes with generous rules, including the possibility of capping[8] worldwide income tax liability at £220,000. Guernsey eliminated corporation taxes in 2008 except for banks, which pay a 10 per cent rate.

Guernsey and international standards on tax and transparency

Guernsey is related to the UK but is not part of the UK. It is inside the EU Customs Union but is not a member of the EU. This allows Guernsey to pick and choose regulations that suit it, whilst maintaining access to these markets. Guernsey financial services have passporting rights in the EU, meaning they can sell directly to EU citizens, but are not subject to all EU regulations.

A report for the UK Government published in 1998 put it like this:

> "Compared with other offshore centres, they have developed reputations for stability, integrity, professionalism, competence and good regulation. Their links with the UK and Europe have encouraged others to see them as "Offshore UK" or "Offshore Europe"."[9]

The UK, in its role managing the foreign relations of the Islands has continued to protect the status of Guernsey and the other Channel Islands. It has been alleged[10] that the financial services industry in the Crown Dependencies lobbied the UK Government to water down G8 anti-tax haven proposals in 2013.

With the impending exit of the UK from the European Union, however, and the hardening of the European position on tax avoidance and tax evasion, there is a prospect that Guernsey's access to the European Union markets could be difficult to maintain.

In 2017 the EU placed Guernsey and Jersey on the grey list of jurisdictions not compliant with EU standards on taxation, due to their policies on low taxation for companies. The grey list has no real effect, but the EU has left open the possibility of imposing sanctions on countries on the list in the future.

Guernsey continually defends itself against claims that it is a tax haven or a secrecy jurisdiction by referencing its adherence to international norms and rules regarding tax transparency. After the OECD threatened the jurisdiction with blacklisting in 2009, the island became an early adopter of Automatic Exchange of Information and has signed up to international standards on anti-money laundering controls.

When it comes to public access to important corporate data, however, Guernsey is much less forthcoming. Although Guernsey and Alderney have implemented registers of beneficial ownership, these are not available to the public, and company accounts also are not available to the public. These factors score as negatives in the FSI 2020 analysis.

It is also the case, as the Tax Justice Network has argued for a long time, that international standards for cooperation in financial crime, tax evasion and money laundering is woefully inadequate, as is amply demonstrated by statistics detailing the number of cases dealt with by the Guernsey authorities.

The last evaluation by the OECD's Global Forum on Tax and Transparency, which was concluded in 2013, sets out how many requests for financial information were received by the Guernsey authorities from foreign jurisdictions. In 2009 there was one request, in 2010 there were nine, while there were 22 in 2011 and 25 in 2012.[11] Given the size of the Guernsey financial industry this demonstrates the ineffectiveness of the OECD's previous on-request information exchange system, where jurisdictions could only request data on offshore companies if they had evidence of wrongdoing. Often this evidence was difficult to find without the information in the first place.

Enforcement

Where there has been a serious concern in Guernsey is with regards to the issue of enforcement. In the 2020 FSI the Bailiwick scores poorly on Tax Administration Capacity, which is an indicator of whether tax administrations have the resources in place to investigate complex tax offences.

Enforcement has been a long term problem for Guernsey. In 2011 the IMF published a report on anti-money laundering in Guernsey. It found that whilst the anti-money laundering framework in the jurisdiction met international standards, there were concerns about the lack of prosecutions, despite cases being opened by law enforcement agencies.

The report noted that between 2006 and 2010 there were 31 investigations opened, but just five prosecutions and 2 convictions for money laundering offences. It should be noted that most of these investigations involved drug trafficking and only one of the 26 cases opened until 2009 involved the financial sector, which the IMF felt was disproportionate given the size of the sector.[12]

When Moneval re-evaluated the jurisdiction in 2015, they noted there had been some effort to improve enforcement on money laundering in the financial sector, but that there were still relatively few cases and that the jurisdiction had room for improvement. According to the report there were just eight convictions for money laundering between 2011 and 2013.[13]

In 2012, Cees Schrauwers became chairman of the Guernsey Financial Services Commission. In the 2016 annual report the chairman notes that he had inherited a number of significant enforcement cases that had been making slow progress. The last two cases, which both involved the collapse of the Arch Cru fund, were finally resolved in 2016.[14] Arch Cru was a Guernsey-listed fund which collapsed in 2009,[15] impacting 20,000 investors. Most of the investors were savers who had been recommended to invest in the fund by their financial advisers and given the impression that it was a low risk fund.

Despite the resolution of these cases there are still clearly concerns circulating in the financial community. In his statement attached to the 2016 report, Schrauwers wrote that there were "mischievous rumours circulating in 2016 relating to the scale of the commission's enforcement activity." The chairman is open about the fact that the commission only pursues the most serious cases where companies or individuals have breached regulations, saying, "We have been very selective about the firms and individuals referred to enforcement. The Commission has no desire to take forward petty cases, life is too short; we have no desire to spend our finite time on them and our resources are far too modest for that to be an appropriate response given the serious malfeasance with which we are dealing… staff are almost fully consumed with a small number of complex investigations which we have prioritised because of their seriousness." [16]

Trusts

Trusts are an important part of Guernsey's offshore offerings. Guernsey was one of the first jurisdictions in the world to regulate fiduciary services – the people who manage and administer trusts. This, together with the adoption of the Hague Convention in 1993, allowed the industry to grow rapidly. A UK Government report stated that by 1998 there were 25,819 trusts settled in Guernsey.[17] The Hague Convention extended the legal recognition of Guernsey trusts to a number of important jurisdictions around the world, including the UK, USA, Canada, France, Luxembourg and Hong Kong.

The number of trusts in Guernsey has remained relatively stable since then. In 2012, it was reported that there were 23,698 trusts in Guernsey.[18]

As noted in the 2020 FSI, there is no register of trusts in Guernsey. Companies in Guernsey openly advertise[19] the Guernsey trust as a mechanism to avoid taxation and to keep the ownership of assets confidential.

Companies in Guernsey

Guernsey and Alderney have separate companies law and maintain separate companies registers. Sark has no companies law, but as is dealt with below, that has not blocked people from trying to set up Sark companies.

Guernsey is by far the bigger of the two corporate registries. In 2013, the OECD Global Forum peer review reported that there were over 17,500 companies registered in Guernsey, whereas there were just 462 companies registered in Alderney. Of the Alderney companies, 200 held a license to perform some sort of regulated activity. Of these 51 were involved in e-gaming (online gambling), and the majority of the rest were local businesses.[20]

The vast majority of companies established in Guernsey are shell companies, as highlighted in a publication of the Guernsey Statistical Office for 2016:

"Of the 1,823 companies that were incorporated by the Guernsey Registry during the year ending March 2016, 1,491 were Finance sector companies. Of these, 90 per cent were asset holding companies or trusts and companies or other structures administered by fiduciaries, which do not employ staff."[21]

Guernsey companies also are important stepping stones for international companies looking to list on the London Stock Exchange. With 124 companies, Guernsey has more companies listed[22] on the LSE than any other (non-UK) jurisdiction in the world, according to Guernsey Finance, the industry association for the Guernsey finance industry.

A significant number of companies – 2,200 – provide financial services, according to the Guernsey Financial Services Commission. This presents an obvious difficulty for the corporate governance of these companies since they require 7,200 directors, of which about 4,500 are non-executive directors.[23]

Finding suitably qualified non-executive directors who can provide genuine accountability to these companies has been highlighted by the Guernsey Financial Services Commission as a challenge. In total, 6,825 people worked in the financial services industry in 2016, fewer than the total number of directorships in companies regulated by the Guernsey Financial Services Commission.

The Sark lark

Sark, a tiny island three miles long and one-and-a-half miles wide and with a population of just 600, has an interesting past in the Guernsey tax haven story. It has no public administration and a government budget of just £1.35mn, which comes from a variety of sources, including a property tax, a dog tax, a bicycle tax and customs duties. A single tax assessor collects property and income taxes, and is employed for the first 40 days a year, receiving a small honorarium for his role. According to the Chief Pleas of Sark, the jurisdiction has never received a request to enter into a tax information exchange agreement, and has no infrastructure to do so.[24]

In the 1980s the island became notorious for the so-called Sark Lark. In order to avoid Guernsey's income tax on domestic revenue, board meetings for Guernsey offshore companies had to be held outside the Island of Guernsey. As a result, residents of Sark engaged in a profitable practice of selling addresses on Sark that did not exist, and offering themselves up as directors of companies. By the 1990s it was thought that the majority of the island's adult population[25] was involved in the practice.

In one particularly outrageous case, a man called Phil Crowshaw was banned from being a director by the Guernsey Financial Services Commission in 1999 after he was found to have been a director of between 3,000 and 4,000 companies. This came after court action began in the UK against a number of UK-based Crowshaw companies for various criminal offences. It is thought that Mr Crowshaw had no knowledge of what these companies did, which is often the case with nominee directors of offshore companies.

Despite this action, Mr Crowshaw appears to have continued his trade. in 2012, an investigation by the ICIJ and the Guardian[26] found him to be a director of 4,000 companies, the vast majority of which were domiciled in Ireland.

Despite the Island of Sark having no company law, that has not stopped people trying to set up a corporate register on Sark. In 2017 the Guernsey Financial Services Commission issued a press release[27] stating that it had become aware of a nonprofit organisation registered in Sar, calling itself the Sark Company Registry. The press release encouraged anyone who had contacted the organisation to seek legal advice as to the standing of "anything that is 'registered' with it." The Chief Pleas issued a statement reiterating that no companies can be registered in Sark, since Sark has no corporate law.

The Sark Company Registry is a creation of Stanislovas Thomas, a Lithuanian lawyer. He has stated[28] that he wants the registry to include a register of the beneficial ownership of companies registered with it and to take advantage of Sark's lack of a corporation tax.

As of January 2020, the website of the Sark Company Registry[29] was still active.

Post-Panama Papers Changes

By 2023, Guernsey will unveil its own public registry, thanks to pressure from the UK on its overseas territories and crown dependencies to disclose the beneficial owners of companies.[30]

Guernsey also will comply with new economic-substance requirements by the EU Code of Conduct Group on Business Taxation meant to prevent companies from shifting profits offshore to avoid tax. The Income Tax (Substance Requirements) (Implementation) Regulations, 2018, calls for covered companies to be managed and directed in Guernsey and to have an "adequate" number of employees based there as well as an "adequate" physical presence, among other requirements.

But Guernsey's financial services industry is benefiting from stricter EU rules in another way. Thirty per cent – US$26 billion – of all junk-bond issuance in Europe moved to Guernsey's International Stock Exchange in 2018, according to *The Wall Street Journal*.[31] That business was almost nonexistent in Guernsey two years earlier, before new EU regulations requiring transparency on bond issues came into effect. Those regulations don't apply in Guernsey.

Endnotes

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12 IMF, Guernsey: *Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism,* January 2011, pp. 63-65

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17 Andrew Edwards, *Review of the Financial Regulation in the Crown Dependencies,* Command Paper CM4109, available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265705/4109.pdf; 26.01.2020.

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Guernsey

PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

- 57 — 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

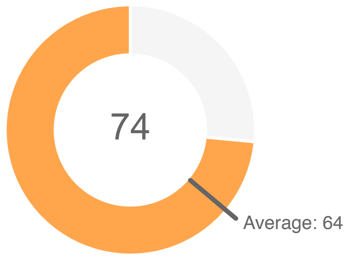
INTEGRITY OF TAX AND FINANCIAL REGULATION

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

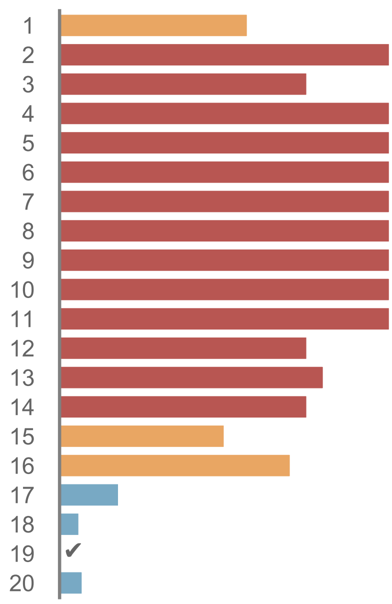
INTERNATIONAL STANDARDS AND COOPERATION

- 18 — 17. Anti-Money Laundering
- 6 — 18. Automatic Information Exchange
- 0 — 19. Bilateral Treaties
- 7 — 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.