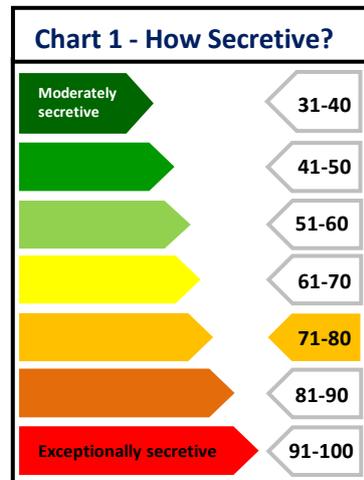


Narrative Report on Jersey

Jersey is ranked at ninth position on the 2013 Financial Secrecy Index. This ranking is based on a combination of its secrecy score and a scale weighting based on its share of the global market for offshore financial services.

Jersey has been assessed with 75 secrecy points out of a potential 100, which it towards the top end of the secrecy scale (see *chart 1*).

Jersey accounts for less than 1 per cent of the global market for offshore financial services, making it a tiny player compared with other secrecy jurisdictions (see *chart 2*).



Part 1: Telling the story¹

The Jersey financial centre: history and overview

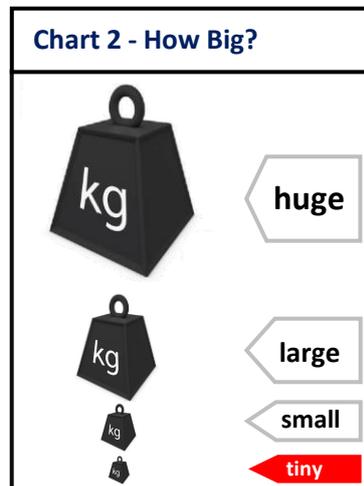
Jersey, the largest of the Channel Islands, lies 135 kilometres south of the UK and just 45 minutes by jet from London. Proximity to the UK means that the island's financial centre is intimately linked to London and the majority of inflows to Jersey are ultimately destined to the City.

Despite its tiny size, with a population of around 95,000, the island hosts a major offshore financial centre in its capital, Saint Helier, with a sophisticated cluster of international banks, trust companies and law firms – including many top players in the self-styled 'Offshore Magic Circle'. For decades offshore trusts have been a mainstay of the island's wealth management sector, which attracts capital inflows from around the world. Jersey also hosts hedge funds, shadow banks and has specialised in offshore securitisation of loans.

With its tiny population and economy, and a long history of weak political governance, Jersey is very significantly 'captured' by the financial services sector. Despite regular protestations that it is clean and transparent, Jersey's very high secrecy score and large financial sector means it fully deserves its place in the top ten global secrecy jurisdictions.

History

For centuries, part-British Jersey has taken advantage of its peculiar constitutional relationship with Britain to maintain its fiscal autonomy. It was a relatively early entrant to



the offshore financial services market. In the 1920s UK high net worth individuals either emigrated to the island or shifted their wealth to Jersey registered offshore trusts and companies for estate planning purposes. Income tax was originally introduced in 1928 at a rate of 2.5 percent, but subsequently raised to 20 percent in 1940 by the German military government. The personal income tax rate remains 20 percent, but corporate profits and capital gains are not taxed. As academic researchers have noted (*Offshore Finance Centres and Tax Havens*, [p181](#)): “a large proportion of the transactions conducted in Jersey are tax driven (that is, transactions that are booked there without the requirement of adding value so that there is little real activity) which is a key identifier of a tax haven.”

Before the abolition of British exchange controls in 1979 under Prime Minister Margaret Thatcher, all banks in Jersey came under the Bank of England exchange control regulations, but the Bank of England has historically been relatively content to operate a regime of benign negligence with respect to Jersey. Offshore banking expanded rapidly from the 1960s as London-based secondary banks expanded their offshore Euromarket activities: Hill Samuel from 1961, then Kleinwort Benson and Royal Trust of Canada in 1962, Hambros Bank in 1967 and then the first U.S. bank, First National City, the following year. Within a decade 30 international banks were operating from Saint Helier, including Citibank, Bank of America, Deutsche Bank, Banque Nationale de Paris, Barclays Wealth, HSBC and Bank of India.

The link with Britain and the City of London

A British [Crown Dependency](#) since the 13th Century, Jersey’s key officials, including senior law officers, the president of the States of Jersey (the legislature), and the island’s Lieutenant Governor are all appointed by the British monarch.

One commentator describes (*The offshore Interface*, [p154](#)) Jersey’s relationship with Britain as “within and yet without, of being under the UK umbrella and yet with the space to have a surprising amount of freedom”. Jersey Finance, the self-styled Voice of the International Financial Centre, [admits](#):

“For many corporate treasurers, institutional bankers and treasury specialists, fund promoters, brokers and other corporate financiers, Jersey represents an extension of the City of London.”

All legislation agreed by the island’s legislature must be ratified by the UK monarch’s Privy Council before being enacted. And yet politically Jersey is not part of the UK and, through smoke and mirrors, regularly projects itself as being free from UK interference. This provides comfort to British elites using Jersey for tax cheating, while at the same time reassuring them that if the worst arises they can protect their interests through appeal to the UK Supreme Court. This odd relationship with the UK is echoed in the peculiar relationship between Jersey (and its fellow Bailiwick of Guernsey) and the European Union. Strictly,

Jersey is inside the Customs Union for the purposes of trade in tangible goods, but is not party to EU Directives or treaties such as the Single Market Act or the Maastricht Treaty.

This inside-outside relationship with Britain is also reflected in the island's culture and social relations. Superficially the island feels very British, but with Norman-French street names. And, as author Nick Shaxson notes in his book [Treasure Islands](#), the tiny scale amplifies many of the problems of contemporary Britain: conflicts of interest and corruption are rife and the elite have made their own interests synonymous with the interests of the entire population. In the near-absence of opposition politics and independent media this is a recipe for stifling dissent – especially when it challenges the dominant offshore financial sector.

Sun, sea and secrecy

Although Jersey does not have formal banking secrecy backed by criminal law (as is the case in Switzerland or the Bahamas, for example) secrecy is provided in various other ways, including via Jersey trusts, offshore companies and, since 2009, foundations. These legal arrangements, combined with judicial separation from the UK, provide an effective secrecy space that attracts illicit financial flows from across the world. While the funds were flooding in during the 1980s and 1990s the island's regulatory authorities did little to intervene to prevent dirty money from rushing through Saint Helier en route to London. On September 17, 1996, in a searing article about an accumulation of scandals in Jersey, the *Wall Street Journal* described this secrecy jurisdiction as “an offshore hazard . . . living of lax regulation.” Two years later, in response to a major regulatory failure involving the Jersey subsidiary of Swiss banking giant UBS and a convicted foreign exchange dealer operating from offices in the island, New York assistant district attorney John Moscow was quoted in the *Financial Times*:

“The Isle of Man authorities see their job as keeping the bad guys out. Jersey sees its job as co-operating with criminal authorities when the law requires it, without necessarily keeping the bad guys out.”

Such articles are usually met by a frenzy of public relations activity, along the line ‘we are clean, well regulated and cooperative; and our critics are motivated by foul motives.’ In addition, when major wrongdoing has been uncovered and publicised, Jersey authorities argue that this kind of activity all happened a long time ago, and point to their position (alongside nearly every other secrecy jurisdiction) on the OECD's failed 2009 white list.

Matters became particularly bad in the 1990s and 2000s amid a phase of management buyouts, whose financial arrangements meant that the directors of trust companies were under tremendous and unprecedented pressure to maximise short-term financial performance. This led to a wave of particularly unscrupulous practices and tolerance of a wave of financial criminality. In more recent years, however, Jersey has had to respond to

changes, which in some cases have led to reforms of its offshore sector. These pressures have come in several forms. First, external pressure from the OECD, the Financial Action Task Force, the European Union and other groupings have forced Jersey to make some changes. Second, the global financial and economic crisis has impacted Jersey's financial sector, although the response has typically be to respond to falling revenues by increasing taxes on local people. Third, these external pressures have to some extent weakened the inter-relationships of a previously closely intertwined and mutually protective elite among the owners of Jersey trust companies and other offshore firms, somewhat mitigating though not eliminating a feeling of impunity in the face of potential criminal actions against them. Insiders also tell us that cultural changes now underway in Jersey have made some practitioners, particularly younger ones, less tolerant of some of the more egregious and illegal acts. One other change of the past few years is that the Jersey Financial Services Commission, previously an unresponsive rubber-stamp, has started to become more aggressive (and hence more unpopular) in trying to stamp out some of the more outrageous practices.

The 2013 Financial Secrecy Index demonstrates through undisputed legal facts and assessments by international financial institutions, that these repeated claims of probity and transparency, don't hold water. Jersey's sophisticated wealth management structures, notably its trust industry, keeps the island open to tax-evading/tax-avoiding and other illicit financial flows from around the world.

In addition, the OECD-backed [Global Forum on Transparency and Exchange of Information for Tax Purposes](#) in a (leaked) Peer Review report on Exchange of Information (EOI) shared our view when it started to look at the detail of how Jersey actually implements tax information exchange:

“The highlighted provisions in some of Jersey's EOI agreements may limit the effectiveness of information exchange. Further, in one case to date, the interpretation applied by Jersey appears to be inconsistent with the definition of 'criminal tax matters', and is preventing the exchange of information under that TIEA.

...

Jersey's domestic legislation which provides access powers to obtain information for exchange contains impediments which may significantly affect access to relevant information although to date they have not restricted access.”

Even less reassuring is the fact that Jersey remains outside the EU's automatic information exchange process, even though fellow Crown Dependencies Guernsey and Isle of Man signed up since 2009. Local officials justified this on the grounds that they felt the need to be “internationally competitive”, though this raises questions about what they are competing for. Legitimate activities have no need to hide behind ineffective tax information

exchange agreements.

Foundations: a new step backwards

Our concerns that Jersey remains largely an unreconstructed secrecy jurisdiction have been reinforced by the recent adoption of foundations into Jersey law. Private foundations do sometimes have legitimate purposes, but they can also provide a particularly malign form of secrecy. As an offshore law firm in Panama [puts it](#):

“Foundations were designed not by the rich but by the super rich to protect their assets, insulating them from seizure and confiscation. These [asset protection tools](#) are so good they should be illegal but they are not illegal. The big difference between a trust and a foundation is the foundation is a separate judicial person. The term judicial person means an unnatural person.”

The Jersey Foundations (2009) Law, which mimics similar laws in Liechtenstein and Panama, appears to be an attempt in part to move in on Asian wealth management markets, amid rising pressure from European countries seeking to tackle their own domestic tax evaders.

Another angle on the adoption of the Jersey Foundations Law was provided to us (hat-tip to Richard Murphy at Tax Research UK) by an experienced and highly qualified industry insider:

. . . the main reason for the foundation law was to avoid fiduciary responsibility. A number of court decisions in Jersey held trustees responsible for the activities of the corporations they controlled. Obviously this increased trustee risk to a very high level. When a foundation is involved the new foundation law absolves the agents creating and managing them from responsibility.

This interpretation of the rationale for enacting the Jersey Foundations Law illustrates the insidious nature of the offshore-led regulatory race to the bottom: when managing agents are effectively absolved of responsibility for the activities of the legal entities they create and manage, legal protection of third parties effectively ceases to exist.

Enactment of this new law has directly fed through into an increase in the island’s secrecy score and is clear evidence of the authorities’ commitment to maintaining a development strategy based largely on providing secrecy and lax regulation to non-residents.

The [lack of an alternative development strategy](#) should be a cause of great concern, not least for the islanders themselves. Jersey is already highly dependent on its role as a secrecy jurisdiction and has all the hallmarks of a captive state. The offshore financial centre in Saint Helier accounts for over 50 per cent of gross value added in the local economy, and virtually every other sector operates downstream of its activities. In such a monoculture economy,

and without any serious prospects to break free from such extreme economic dependence, Jersey's authorities are loath to introduce effective regulation to curtail illicit financial flows and tax evasion. As researchers have [recently argued](#), they are locked into a political economy over which they have little control:

“They have limited scope for reducing their dependence on offshore financial services. With approximately one quarter of its economically active population directly employed in the OFC, and the majority of the remaining workforce employed in secondary sectors like construction, distributive trades and catering, there is virtually no alternative skills base on which new industries can draw. This path dependence has been reinforced by the extraordinary high costs of land and labour, which have crowded-out pre-existing industries. Taking measures to diversify the local economy will therefore require politically unpalatable steps to significantly reduce the domestic cost base.”

For all of the above reasons, plus the continued lack of transparency of Jersey trusts and offshore companies, and despite the flurry of tax information exchange agreements signed since 2009 (which are highly ineffective anyway), Jersey is assessed with a secrecy score of 75 and clearly well deserves its position at number nine in the overall ranking.

Sources and further reading

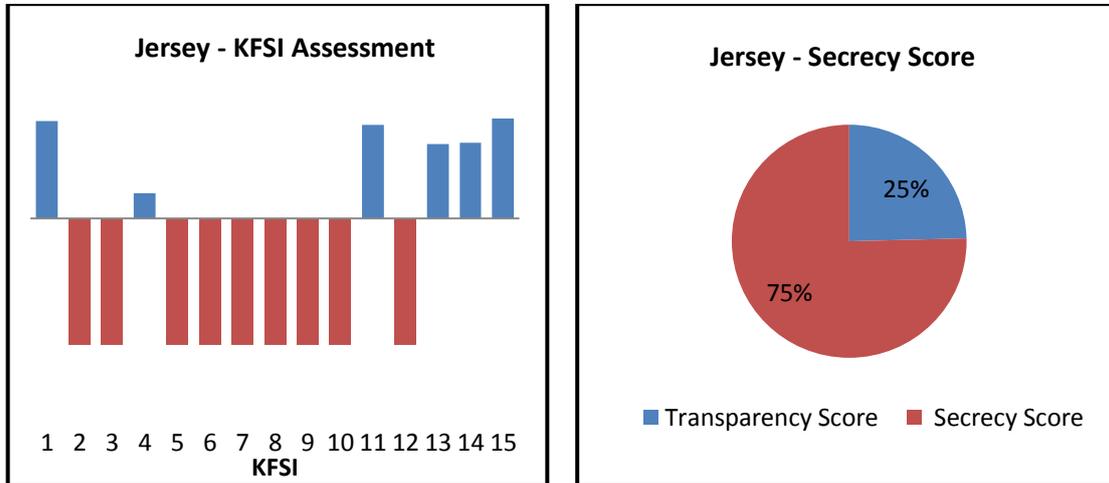
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- Shaxson, N (2012), *Treasure Islands: Tax Havens and the Men who Stole the World*, Vintage Books: London.

Next steps for Jersey

Jersey's 75 per cent secrecy score shows that it must still make major progress in offering satisfactory financial transparency. If it wishes to play a full part in the modern financial community and to impede and deter illicit financial flows, including flows originating from tax evasion, aggressive tax avoidance practices, corrupt practices and criminal activities, it should take action on the points noted where it falls short of acceptable international standards. See part 2 below for details of Jersey's shortcomings on transparency. See this link <http://www.financialsecrecyindex.com/kfsi> for an overview of how each of these shortcomings can be fixed.

Part 2: Secrecy Scores

The secrecy score of 75 per cent for Jersey has been computed by assessing the jurisdiction’s performance on the 15 Key Financial Secrecy Indicators, listed below.



The numbers on the horizontal axis of the bar chart on the left refer to the Key Financial Secrecy Indicators (KFSI). The presence of a blue bar indicates a positive answer, as does blue text in the KFSI list below. The presence of a red bar indicates a negative answer as does red text in the KFSI list. Where the jurisdiction’s performance partly, but not fully complies with a Key Financial Secrecy Indicator, the text is coloured violet in the list below (combination of red and blue).

This paper draws on key data collected on Jersey. Our data sources include regulatory reports, legislation, regulation and news available at 31.12.2012². The full data set is available [here](#)³. Our assessment is based on the 15 Key Financial Secrecy Indicators (KFSIs, below), reflecting the legal and financial arrangements of Jersey. Details of these indicators are noted in the following table and all background data can be found on the [Financial Secrecy web site](#)⁴.

The Key Financial Secrecy Indicators and the performance of Jersey are:

TRANSPARENCY OF BENEFICIAL OWNERSHIP – Jersey	
1.	Banking Secrecy: Does the jurisdiction have banking secrecy? Jersey does not adequately curtail banking secrecy

2.	Trust and Foundations Register: Is there a public register of trusts/foundations, or are trusts/foundations prevented? Jersey does not disclose or prevent trusts and private foundations
3.	Recorded Company Ownership: Does the relevant authority obtain and keep updated details of the beneficial ownership of companies? Jersey does not maintain company ownership details in official records
KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – Jersey	
4.	Public Company Ownership: Does the relevant authority make details of ownership of companies available on public record online for less than US\$10/€10? Jersey partly requires that company ownership details are publicly available online
5.	Public Company Accounts: Does the relevant authority require that company accounts are made available for inspection by anyone for a fee of less than US\$10/€10? Jersey does not require that company accounts be available on public record
6.	Country-by-Country Reporting: Are all companies required to comply with country-by-country financial reporting? Jersey does not require country-by-country financial reporting by all companies
EFFICIENCY OF TAX AND FINANCIAL REGULATION – Jersey	
7.	Fit for Information Exchange: Are resident paying agents required to report to the domestic tax administration information on payments to non-residents? Jersey does not require resident paying agents to tell the domestic tax authorities about payments to non-residents
8.	Efficiency of Tax Administration: Does the tax administration use taxpayer identifiers for analysing information efficiently, and is there a large taxpayer unit? Jersey does not use appropriate tools for efficiently analysing tax related information
9.	Avoids Promoting Tax Evasion: Does the jurisdiction grant unilateral tax credits for foreign tax payments? Jersey does not avoid promoting tax evasion via a tax credit system

10.	Harmful Legal Vehicles: Does the jurisdiction allow cell companies and trusts with flee clauses? Jersey allows harmful legal vehicles
INTERNATIONAL STANDARDS AND COOPERATION – Jersey	
11.	Anti-Money Laundering: Does the jurisdiction comply with the FATF recommendations? Jersey partly complies with international anti-money laundering standards
12.	Automatic Information Exchange: Does the jurisdiction participate fully in Automatic Information Exchange such as the European Savings Tax Directive? Jersey does not participate fully in Automatic Information Exchange
13.	Bilateral Treaties: Does the jurisdiction have at least 46 bilateral treaties providing for information exchange upon request, or is it part of the European Council/OECD convention? As of 31 May, 2012, Jersey had less than 46 tax information sharing agreements complying with basic OECD requirements
14.	International Transparency Commitments: Has the jurisdiction ratified the five most relevant international treaties relating to financial transparency? Jersey has partly ratified relevant international treaties relating to financial transparency
15.	International Judicial Cooperation: Does the jurisdiction cooperate with other states on money laundering and other criminal issues? Jersey partly cooperates with other states on money laundering and other criminal issues

¹ This narrative report is based on information up to date at 21st October 2013, however all references to FSI scores or ratings reflect the 2013 results.

² With the exception of KFSI 13 for which the cut-off date is 31.05.2013. For more details, look at the endnote number 2 in the corresponding KFSI-paper here:

<http://www.financialsecrecyindex.com/PDF/13-Bilateral-Treaties.pdf>.

³ That data is available here: <http://www.financialsecrecyindex.com/database/menu.xml>.

⁴ <http://www.financialsecrecyindex.com>.