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Technology, cyber and international offshore banks: financial services for asset recovery of indonesian convicts

Tecnologia, cyber e banche offshore internazionali: servizi finanziari per il recupero dei beni dei detenuti indonesiani

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Abstract

Offshore banks are characterized by their comparatively relaxed regulatory frameworks, setting them apart from the more stringent regulations governing onshore banks. This leniency renders offshore banks vulnerable to exploitation for illicit purposes, as demonstrated by prominent events such as the Panama Papers (2016), Paradise Papers (2017), and Pandora Papers (2021). While offshore banking is not inherently illegal, and legitimate reasons exist for individuals to open offshore bank accounts, concerns arise regarding the potential abuse of banking secrecy within this sphere. The strict adherence to banking secrecy can significantly hinder investigation and asset recovery efforts once illicit funds are deposited in offshore banks.

One approach to address this is the implementation of Mutual Legal Assistance Treaties (MLATs). These treaties play a crucial role in international cooperation, facilitating the exchange of evidence and assets between jurisdictions to combat financial crimes and promote global accountability. In addition, advancements in cyber forensics and digital traceability technologies have enhanced the capacity to track illicit financial flow, even in jurisdictions protected by banking secrecy. Cybersecurity tools such as blockchain analytics, artificial intelligence (AI), and machine learning (ML) can now identify money laundering patterns, fraud, and other financial crimes across complex global networks. By integrating these technologies, investigators can better collaborate internationally, making it more difficult for illicit actors.

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Abstract
Le banche offshore sono caratterizzate da quadri normativi relativamente flessibili, che le distinguono dalle normative più severe che regolano le banche onshore. Questa clemenza rende le banche offshore vulnerabili allo sfruttamento per scopi illeciti, come dimostrato da eventi di spicco come i Panama Papers (2016), i Paradise Papers (2017) e i Pandora Papers (2021). Sebbene l'attività bancaria offshore non sia intrinsecamente illegale ed esistano motivi legittimi per cui gli individui aprono conti bancari offshore, sorgono preoccupazioni in merito al potenziale abuso del segreto bancario in questa sfera. La rigorosa aderenza al segreto bancario può ostacolare in modo significativo le indagini e gli sforzi di recupero dei beni una volta che i fondi illeciti vengono depositati nelle banche offshore. Un approccio per affrontare questo problema è l'implementazione dei trattati di mutua assistenza legale (MLAT). Questi trattati svolgono un ruolo cruciale nella cooperazione internazionale, facilitando lo scambio di prove e beni tra giurisdizioni per combattere i reati finanziari e promuovere la responsabilità globale. Inoltre, i progressi nella cyber forensics e nelle tecnologie di tracciabilità digitale hanno migliorato la capacità di tracciare i flussi finanziari illeciti, anche nelle giurisdizioni protette dal segreto bancario. Strumenti di sicurezza informatica come analisi blockchain, intelligenza artificiale (AI) e apprendimento automatico (ML) possono ora identificare modelli di riciclaggio di denaro, frodi e altri reati finanziari attraverso reti globali complesse. Integrando queste tecnologie, gli investigatori possono collaborare meglio a livello internazionale, rendendo più difficile per gli attori illeciti.

Keywords: technology cyber; asset recovery; bank secrecy; offshore banks

Summary: 1. Introduction. – 2. The International Standards Regarding Offshore Banking. – 3. Best Practice Offshore Banking in Several Countries. – 4. The Utilization of Cyber Technology in Tracking the Assets of Convicts in Foreign Countries. – 5. The Intersection of Bank Secrecy, National Sovereignty, and Mutual Legal Assistance. – 6. The Optimal Approach for Asset Sharing. – 7. Conclusions.

1. Introduction.

The beginnings of “offshore banking” are obscured by myths and mystique, mainly due to widespread misunderstandings regarding its true definition. “Offshore banking” is erroneously perceived as individuals residing in one legal jurisdiction holding assets within financial institutions incorporated in another jurisdiction. This misconception leads to frequent expressions that someone has their funds placed “*offshore*.” However, the reality of offshore financial transactions holds a distinct meaning. Financial entities operating in "*offshore*" jurisdictions enjoy exemptions from regulations typically imposed on "*onshore*" institutions. These exemptions entail tax-free transactions, freedom from reserve requirements, absence of interest rate constraints, and often, though not universally, relief from regulatory oversight regarding liquidity or capital

adequacy. They are '*offshore*' because they are beyond the grasp of regulations and regulators.[1]

Beyond the fact that offshore banking is not inherently illegal and there are perfectly legal reasons to open an offshore bank account, what draws law enforcement attention is, in most cases, when it is interconnected with shell companies.[2] To simplify, shell companies can significantly complicate the tracking of offshore bank accounts. According to Gabriel Zucman, an assistant professor of economics at the University of California, Berkeley, and the author of "The Hidden Wealth of Nations," in many jurisdictions, the owners of shell companies are not required to disclose their identities. This lack of disclosure makes it exceedingly challenging for tax authorities or law enforcement agencies to determine ownership. Once established, shell companies enable their owners to create bank accounts worldwide while maintaining anonymity. Zucman's estimations reveal that approximately 60 percent of funds held in Swiss bank accounts are held under the names of shell corporations. Graham Stack also stated that "…*the current public interest in the issue of shell companies understates the problem by viewing it as a question of opportunism – shell companies assist individual wrongdoers to make crime pay – instead of as a mass phenomenon comprising part of a specific banking model*".[3]

We can see examples of how offshore banks are now being used on a large scale in successive events in 2016, 2017, and 2021. The first was the Panama Papers, with about 11.5 million leaked documents published beginning April 3, 2016. This case emerged as a prominent focus in the global media, marking the largest data leak in history and surpassing well-known cases such as Watergate, WikiLeaks, Luxembourg Tax Files, HSBC Files, and Pentagon Papers. Those facts were one of the biggest acts of journalism in recent history, involving more than 370 journalists from 80 countries and covering 100 leading news media organizations. The papers revealed corruption, secrecy, and double-dealing in public life. They exposed how political leaders and corporate bosses from across the world were involved in secret offshore business deals – some of them financing war and terrorism. This revelation exposed the widespread practice of utilizing offshore bank accounts and shell companies by influential global figures to conceal personal wealth or evade tax obligations. Originating from leaked documents traced back to the law firm Mossack Fonseca in Panama, millions of confidential records unveiled the participation of international politicians, business leaders, and prominent figures in a series of questionable financial transactions. Notable individuals implicated included Vladimir V. Putin (President of Russia), the Xi Jinping family (President of China) alongside members of the Communist Party of China's Permanent Politburo Committee, King Salman (Saudi Arabia), Mauricio Macri (President of Argentina), as well as prominent figures like football player Lionel Messi, and

[1] MP Hampton, 'Creating spaces. The political economy of island offshore finance centres: the case of Jersey' (1996) Geographische Zeitschrift 103-113.
[2] J Zarroli, 'Want To Set Up A Shell Corporation To Hide Your Millions? No Problem' (2016) https://www.npr.org/2016/04/13/474101127/want-to-set-up-a-shell-corporation-to-hide-your-millions-no-problem.
[3] G Stack, 'Shell companies, Latvian-type correspondent banking, money laundering and illicit financial flows from Russia and the former Soviet Union' (2015) Journal of Money Laundering Control 18 (4) 496–512.

major institutions such as UEFA.[4] Djoko Soegiarto Tjandra (Indonesia), a well-known figure in the property sector, has been linked to entries within the "Panama Papers,"[5] purportedly indicating ownership of assets in a jurisdiction renowned for its preferential tax regulations. Notably, Djoko is currently a fugitive sought by the Attorney General's Office in Indonesia due to his involvement in a case relating to transferring debt claims at Bank Bali.[6] Overall, the Panama Papers identified 899 individuals and companies in Indonesia who had established shell companies in several tax havens, comprising 803 shareholders, ten corporations, 28 newly formed companies, and 58 related entities.[7]

After the Panama Papers case, the International Consortium of Investigative Journalists (ICIJ) released the Paradise Papers in 2017.[8] Paradise Papers is a collection of documents from 1950 to 2016 that contains records of over 120,000 individuals and companies. Around 30,000 entries are attributed to the U.S.; the rest hail from the U.K., China, and Hong Kong. This data details roughly 25,000 offshore companies used within legal frameworks to manage assets like real estate, yachts, and stock investments in jurisdictions with minimal taxation or tax-free environments. However, these documents also shed light on the association of offshore banking with illegal practices like money laundering and tax evasion.[9] Last, in recent times, particularly in 2021, the Pandora Papers[10] surfaced, uncovering a wealth of previously undisclosed information. This investigation revealed the hidden beneficiaries behind offshore entities, secretive bank accounts, opulent assets such as private jets, luxury yachts, lavish residences, and prestigious artworks by renowned creators like Picasso, Banksy, and other masters. The revelations offer extraordinary detail, surpassing the typical access available to law enforcement agencies and financially constrained governments.[11] The Pandora Papers investigation also illuminates the collaborative efforts between banks, law firms, and offshore service providers in crafting intricate corporate structures. Despite the legal mandate to exercise the "know your customers" principle and avoid transactions with individuals involved in dubious activities, the records indicate instances where providers lack knowledge about their clients. The

[4] L Stack et al., 'Panama Papers Explainer' (2016) The New York Times https://www.nytimes.com/2016/04/05/world/panama-papers-explainer.html.

[5] Indonesia Investments, 'Indonesia and the Panama Papers: Names and Numbers' (2016) https://www.indonesia-investments.com/news/todays-headlines/indonesia-and-the-panama-papers-names-and-numbers/item6674 accessed 20/01/2024.

[6] Kontan.co.id, 'Aset Djoko Tjandra dalam Panama Papers diusut' (2016) https://nasional.kontan.co.id/news/aset-djoko-tjandra-dalam-panama-papers-diusut acessed 01/09/2023.

[7] Tempo.co, "803 Indonesians Named in Panama Papers." (2016) https://en.tempo.co/read/760378/803-indonesians-named-in-panama-papers accessed 01/09/2023.

[8] BBC.com, Paradise Papers: Everything you need to know about the leak. (2017) https://www.bbc.com/news/world-41880153 accessed 20/01/2024.

[9] E Mathias, A Wardzynski, 'Leveraging Anti-money Laundering Measures to Improve Tax Compliance and Help Mobilize Domestic Revenues' (2023) https://www.elibrary.imf.org/view/journals/001/2023/083/article-A001-en.xml acessed 11/02/2024.

[10] International Consortium of Investigative Journalists, 'Pandora Papers: An offshore data tsunami' (2021) https://www.icij.org/investigations/pandora-papers/about-pandora-papers-leak-dataset/ accessed 11/02/2024.

[11] PBS, 'Paradise Papers reveal offshore accounts of world's wealthy" (2017) https://www.pbs.org/newshour/world/paradise-papers-reveal-offshore-accounts-of-worlds-wealthy accessed 11/02/2024.

investigation also outlines how U.S. trust providers have capitalized on certain states' legislation promoting secrecy. These laws have facilitated the concealment of wealth for affluent international clients, aiding them in evading taxes within their home countries, based on the Pandora Papers in 2021.[12] These three leaked papers indicate how wealthy people relatively often use offshore banks.

Indonesia Corruption Watch provides its opinion on this matter, stating that from the Panama Papers to the Pandora Papers, there is a crucial need for increased transparency regarding company ownership and beneficial ownership (BO) or actual owners for the public. They emphasize that such transparency is essential for enabling public accountability, ensuring corporate actions are attributed to the responsible parties, and aiding law enforcement in pursuing appropriate action against those most culpable. Given the recurrence of scandals involving shell company ownership in tax haven jurisdictions, implicating both public officials and Indonesian business figures, the government must undertake substantial measures to address regulatory gaps and rectify deficiencies in law enforcement. The strategies should address loopholes exploited for the evasion, concealment, and accumulation of personal assets through complex transnational schemes. Failure to adequately respond to this issue reflects the dominance of Indonesian politicians and business figures over public interests and democratic principles.[13]

Katherine Alfonso and Gary Kalman provide their perspective on the scandal. They argue that when major cases like the Panama Papers or FinCEN Files are revealed, they are often perceived as stories about the wealthy exploiting loopholes in the system, appearing unfair and detached from the everyday lives of ordinary people. The hidden nature of this wealth is often passively accepted by society, increasing skepticism toward the modern financial system. However, Alfonso and Kalman contend that this has significant consequences, affecting both Americans and citizens of developing countries. They emphasize the crucial role of the media in uncovering the hidden implications of offshore financial activities. They advocate for a shift in journalistic focus from explaining complex financial maneuvers to understanding the real human consequences of diverted funds and undisclosed wealth held in offshore accounts. Alfonso and Kalman highlight the importance of investigating how offshore investments, particularly in bustling real estate markets like Miami or New York, impact property prices and lead to the displacement of middle-income families, or how offshore-owned properties are left vacant, disrupting local businesses and communities. They also assert that offshore finance negatively impacts various social aspects beyond the visible impacts on housing availability and local entrepreneurship. While developing countries often bear the brunt of these impacts, their implications are felt globally, underscoring the need for collaborative efforts from all nations to address this issue.[14]

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[12] The Pandora Papers are 11.9 million leaked documents with 2.9 terabytes of data that the International Consortium of Investigative Journalists (ICIJ) published beginning on 3 October 2021.
[13] The full version of Indonesian Corruption Watch article please see this: https://www.antikorupsi.org/id/article/pandora-papers-kegagapan-negara-atas-kejahatan-lintas-negara
[14] K Alfonso, G Kalman, 'Offshore Finance Hurts Us—All of Us', (2022) https://gfintegrity.org/offshore-finance-hurts-us-all-of-us/ accessed on 01/02/2024.

The safeguarding of financial privacy, with roots tracing back to ancient Rome, emerges as a longstanding and extensively discussed legal principle. Over twenty percent of nations incorporate varying degrees of banking secrecy, maintaining accounts as confidential, shielding them from foreign scrutiny, and sometimes even domestic investigations.[15] Disputes regarding the legitimacy of banking secrecy and the resulting conflicts of interest are practically unavoidable.[16] Financial privacy - which embraces bank secrecy - is an inseparable part of the concept of privacy (where the individual right to privacy is a fundamental concept of democracies).[17] Financial privacy is paramount in the United States, surpassing many other domains. The legitimate concern arises from the fact that an analysis of an individual's bank account can unveil significant personal information. To illustrate this point, Robert S. Pasley cited a commentator:

"*Financial information has become such an important concern because an individual's banking transactions directly reflect that individual's lifestyle, personal interests, and political beliefs. With access to an individual's financial records, interested parties can easily determine the groups and associations to which the individual belongs (e.g., through membership dues or contributions) and the social causes the individual supports (e.g., through contributions). With access to banking records, interested parties can identify the books and publications an individual buys (e.g., through subscription payments or receipts) and the material items an individual purchases (e.g., through receipts or credit charges). Prying eyes with access to bank records can even identify the political party and causes supported by the individual (e.g., through contributions to an election campaign or a lobbying group). Financial records further allow interested observers to recreate a financial "snapshot" of the individual. Stocks and bonds, insurance, real estate, retirement funds, cars, homes, personal property, loans, mortgages, alimony, and child support are all discoverable from financial records. Credit card records can trace individuals in their every physical movement to different countries, states, cities, restaurants, stores, airline travel, and hotels.".* [18]

Banking secrecy can be understood from multiple perspectives, each offering a distinct interpretation of the principles underpinning client information confidentiality within the financial sector. One perspective suggests that banking secrecy is fundamentally 'contractual in nature,' emphasizing that it arises from the contractual obligations between a financial institution and its customer. In this view, the relationship between the bank and the client is governed by the principle of good faith, whereby the financial institution, as one of the parties to the contract, must protect the privacy of the customer's financial information.[19] This duty compels the institution to avoid unauthorized disclosure of the client's personal and financial data to

[15] AA Lytvynenko, 'Data Privacy and Banking Secrecy: Topical Issues in Commonwealth, Continental Europe and International Jurisprudence' (2019) 5 Athens Journal of Law 303.
[16] Basel Institute on Governance. Basel AML Index 2023: A Risk Ranking of Money Laundering and Terrorist Financing Around the World. Basel Institute on Governance, (2023)
[17] B Zagaris, 'The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas' Law and Policy in International Business (1999) 30 53-108.
[18] RS Pasley, 'Privacy rights v. anti-money laundering enforcement' (2002) 6 North Carolina Banking Inst. 147.
[19] J Martínez Calvo, 'I dati personali come corrispettivo contrattuale: appunti di diritto europeo' (2024) EJPLT, Special Issue, 1-15. https://universitypress.unisob.na.it/ojs/index.php/ejplt/article/view/2052/1584.

third parties, ensuring that trust remains intact within the banking relationship.[20]

Conversely, another viewpoint conceptualizes banking secrecy as 'professional secrecy,' aligning it closely with the legal privileges typically observed in other professional relationships, such as those between lawyers and their clients or doctors and their patients. Advocates of this perspective argue that the confidentiality of information shared within these relationships serves as a fundamental source of public interest by fostering an environment of trust and openness. For example, just as clients must feel secure when disclosing sensitive information to their lawyers—knowing it will not be exposed or used against them in any legal proceedings—or as patients must feel assured that their medical records will remain confidential to receive proper diagnosis and treatment, customers of financial institutions are entitled to a similar assurance of privacy.

Supporters of this analogy further assert that banking secrecy laws are justified on similar grounds to those that uphold confidentiality in legal and medical professions. They argue that clients must be able to share information freely and without fear of exposure to enable financial institutions to provide optimal services, whether that involves investment advice, loan arrangements, or any other financial transactions. The absence of confidentiality could undermine the trust necessary for effective legal representation or medical care. Hence, a breach of banking secrecy erodes confidence in the financial system, potentially deterring clients from fully engaging with their banks. Thus, these perspectives collectively highlight the essential role of confidentiality in maintaining the integrity and functionality of various professional relationships, including those within the financial sector.[21]

Secrecy obligations are often accompanied by legal sanctions, a phenomenon explored in the context of capital protection and financial stability. Emmenegger highlights that Swiss banking secrecy is reinforced by criminal penalties to sustain trust in financial institutions amid globalization and economic crises.[22] Consequently, Germany implemented foreign exchange controls on August 1, 1931. Shortly after that, numerous German operatives were apprehended while attempting to extract information from Swiss bank personnel. The situation escalated markedly following Hitler's rise to power in 1933, leading to the enactment of a German law aimed at confiscating Jewish assets. Compelled by this law, German citizens were coerced into signing waivers granting German authorities permission to gather information from Swiss banks. In a rapid response, the Swiss National Bank prohibited the disclosure of information. However, foreign agents remained undeterred, as no legal provision rendered such activities punishable. Consequently, the criminalization of bank secrecy was hastily enacted at the eleventh hour.

Regardless of the rationale or the specific implementation of banking secrecy measures, it is crucial to recognize that their purpose should not be to

[20] JA Blum et al. 'Financial Havens, Banking Secrecy and Money Laundering' (1998) 4 Trends in Organized Crime 68.
[21] H Ping, 'Banking Secrecy and Money Laundering' (2004) 7(4) Journal of Money Laundering Control. 376-382.
[22] P Emmenegger, 'The politics of Financial Intransparency: The case of Swiss banking Secrecy' (2014) 20(1) Swiss Political Science Review 146-164.

shield illicit interests but to uphold legal benefits. Nonetheless, it is undeniable that banking secrecy can have adverse effects. For instance, the introduction of banking secrecy legislation in Switzerland was initially intended to safeguard the legal assets of Jewish individuals. However, this measure hindered the ability of descendants of Holocaust victims to identify and reclaim funds deposited in Swiss banks, potentially amounting to millions or even billions of dollars. What was once a shield protecting assets from the Nazis has now become a barrier for their rightful heirs. It is widely acknowledged that banking secrecy is a primary tool for money launderers. Countries such as Switzerland, Luxembourg, Panama, Hong Kong, the Grand Cayman Islands, the Netherlands Antilles, and the Bahamas are commonly labeled as notorious "bank secrecy havens," amplifying the severity and prevalence of money laundering crimes in these jurisdictions.[23]

In the journal titled "Mutual Legal Assistance Treaties as a Way to Pierce Bank Secrecy," James I.K. Knapp, who serves as the Deputy Assistant Attorney General in the Tax Division of the U.S. Department of Justice, presents a compelling argument for the necessity of establishing specific legal frameworks to overcome the significant barriers posed by bank secrecy laws when attempting to obtain critical evidence for criminal investigations. Knapp emphasizes that traditional evidence-gathering methods, which often prove inadequate or ineffective due to the stringent confidentiality requirements upheld by many banking jurisdictions, can be circumvented only through the negotiation and implementation of carefully crafted Mutual Legal Assistance Treaties (MLATs).

The complexity and challenges of cross-border investigations necessitate that treaties explicitly incorporate several key provisions. Galli emphasizes that such treaties must unequivocally permit the use of foreign government procedures to gather evidence at all stages of the investigative and prosecutorial processes, including preliminary inquiries, grand jury proceedings, and trials. This measure is crucial to ensure that evidence obtained through international cooperation is admissible within domestic legal frameworks without procedural impediments, thereby enhancing the efficiency and legitimacy of judicial proceedings.[24]

Furthermore, Nessi underscores the importance of authorizing the use of foreign procedures to obtain evidence for a wider range of offenses, particularly those not universally recognized across legal systems. This approach enables the inclusion of emerging or specialized forms of criminal activity, such as cybercrime and transnational corruption, ensuring that variances in legal definitions or categorizations of crimes do not obstruct international cooperation. Such flexibility is indispensable for aligning the objectives of different jurisdictions and facilitating seamless collaboration.[25]

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[23] E Eberhartinger, R Speitmann, C Sureth-Sloane 'Banks' Tax Disclosure, Financial Secrecy, and Tax Haven Heterogeneity' (2021) WU International Taxation Research Paper Series. (2020-01).
[24] F Galli, 'Law Enforcement Access to Electronic Data in the Framework of Cross-Border Criminal Investigations: State of the Art and Fundamental Rights' (2023) Judicial Cooperation in Criminal Matters.
[25] G Nessi, 'International Cooperation to Tackle Transnational Corruption: Issues and Trends in Mutual Legal Assistance, Extradition and Asset Recovery' (2015) Bocconi University Working Papers.

In addition, treaties must incorporate mechanisms for waiving foreign bank secrecy laws under specific, legally defined circumstances.[26] Galli notes that this is particularly critical when bank secrecy is invoked to shield individuals or entities implicated in criminal activities, such as corruption, terrorism financing, or organized crime. By establishing clear, binding conditions under which bank secrecy can be overridden, these provisions ensure that vital financial information becomes accessible, thereby supporting robust case-building against offenders and reducing the potential for abuse of secrecy protections.

Finally, Nessi highlights the necessity for an expedited procedural framework within such treaties to ensure that evidence is not only accessible but also obtained in a legally admissible format in the requesting jurisdiction. Delays in accessing evidence can significantly undermine the effectiveness of cross-border investigations and prosecutions. An expedited mechanism enhances the timeliness and relevance of evidence, ensuring that international cooperation remains effective in addressing transnational crime. In conclusion, Knapp's analysis underscores the importance of establishing comprehensive and well-defined MLATs that guide the use of foreign government procedures, the scope of crimes covered, the conditions for waiving bank secrecy, and the mechanisms for rapidly obtaining admissible evidence. These treaties represent the most viable solution for overcoming the legal and procedural obstacles posed by bank secrecy laws, ultimately enhancing the ability of law enforcement agencies to combat complex, cross-border criminal activities effectively.[27]

2. The International Standards Regarding Offshore Banking.

The focus on cross-border and offshore banking has been a central priority for the Basel Committee on Banking Supervision since the mid-1970s, reflecting the growing complexity and globalization of financial markets. Over the years, the Committee has actively promoted closer and more effective cooperation between 'home' supervisors (those based in the jurisdiction where a banking institution is headquartered) and 'host' supervisors (those based in the jurisdictions where the institution operates branches or subsidiaries). This emphasis on international collaboration was evident in the formulation of the 'Basel Concordat' of 1975, a landmark document that outlined the division of responsibilities between home and host country authorities regarding the supervision of cross-border banking activities. Recognizing the evolving dynamics of global finance and the increasing interconnectedness of financial institutions, the Basel Concordat was subsequently revised in 1983 to reflect the growing necessity for the consolidated supervision of international banking groups, ensuring that all activities of a banking group, regardless of location, are comprehensively monitored and assessed.[28]

[26] JH Schottenstein, 'Is Bank Secrecy Still Bankable: A Critical Review of Bank Secrecy Law, Tax Evasion and UBS' (2015) 5 Entrepreneurial Business Law Journal 351.
[27] JIK Knapp, 'Mutual Legal Assistance Treaties as a Way to Pierce Bank Secrecy' (1988) 20 Case W. res. J. Int'l l. 405.
[28] H Sato, 'The UK's Initiative on International Banking Supervision in the 1980s: Basel Process and International Cooperation on Prudential Policies' (2019) Kanazawa University.

The significance of these supervisory frameworks was further underscored by the collapse of the Bank of Credit and Commerce International (BCCI) in 1991, a major international bank that operated across numerous jurisdictions and was embroiled in extensive fraud and misconduct.[29] The BCCI collapse exposed significant weaknesses in the existing supervisory arrangements and highlighted the critical need for stronger, more cohesive international cooperation. In response to this crisis, the Basel Committee swiftly developed and published the Minimum Standards for the Supervision of International Banking Groups and their Cross-Border Establishments in 1992. Studies suggest that international banking supervisory initiatives, including the Basel framework, have significantly contributed to enhancing the stability of the global financial system by improving cross-border supervision. Moreover, challenges in European cross-border banking supervision have underscored the need for more effective resolution mechanisms to minimize hidden information risks between banks and regulators.[30]

Building on these initiatives, in 1996, the Basel Committee established a Working Group on Cross-Border Banking, which included members from both the Basel Committee itself and the Offshore Group of Banking Supervisors (a body representing the supervisors of offshore financial centers). This Working Group was tasked with addressing the practical challenges encountered during the implementation of the 1992 Minimum Standards. The group's efforts culminated in the publication of the 1996 Report, which contained 29 detailed recommendations aimed at enhancing the effectiveness of cross-border banking supervision. These recommendations covered a wide range of issues, including the need for greater clarity in defining supervisory responsibilities, improved mechanisms for information sharing between home and host supervisors, and the establishment of frameworks for coordinated supervisory actions in response to emerging risks.

While none of these initiatives were specifically directed at Offshore Financial Centers (OFCs), the issues surrounding the clear delineation of supervisory responsibilities and the development of effective collaboration mechanisms between home and host supervisors were particularly relevant to the unique challenges faced by OFC supervisors. The inherent complexity of offshore banking, characterized by its cross-jurisdictional nature, heightened the need for robust supervisory cooperation to prevent regulatory arbitrage, financial misconduct, and other risks that could undermine global financial stability.[31]

In addition to these efforts, the Basel Committee continued to advance its supervisory agenda by issuing the Core Principles for Effective Banking Supervision in 1997. These principles established a comprehensive framework designed to guide both domestic and international supervisory authorities in achieving sound and effective banking supervision practices. The Core Principles covered a wide array of supervisory areas, including requirements

[29] International Consortium of Investigative Journalists, 'Offshore havens and hidden riches of world leaders and billionaires exposed in unprecedented leak' (2021) https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/ accessed 01/02/2023.

[30] D Singh, 'European Cross-Border Banking and Banking Supervision' (2020) Yale University - EliScholar.

[31] A Rosdol, 'Are OFCs Leading the Fight Against Money Laundering?" (2007) 10 (3) Journal of Money Laundering Control. 337–351.

for licensing, capital adequacy, risk management, corporate governance, and information disclosure. Importantly, they also included provisions for effective consolidated supervision, which is particularly critical for offshore banking activities, where the risks and exposures of a banking group might be spread across multiple jurisdictions with varying regulatory environments. Together, these efforts by the Basel Committee have significantly shaped the landscape of international banking supervision, fostering a more integrated and cooperative approach that aims to ensure the stability and resilience of the global financial system.[32]

Offshore banks are defined as financial institutions in the form of banks located outside the country where their customers live and are not regulated by the central bank where the bank was established. If someone resides in Australia, a bank in the United States becomes an offshore bank for that customer. On the other hand, if someone lives in the United States, then a bank in Australia becomes an offshore bank for him. Based on previous research entitled "Offshore Banks: A Brief Introduction and Related International Financial Crimes," explains that regulations from the jurisdiction of the offshore banking system play an important role in influencing customers to give their wealth to be managed by offshore banks. Small differences in the regulations applied regarding tax charges will likely cause customers to deposit or withdraw their wealth from offshore banks. Some small countries or jurisdictions will choose not to make regulations and eliminate tax charges on customers in the hope that they will choose offshore banks in that country as a place to put their wealth. [33] Due to the high level of bank secrecy implemented, offshore banks are known to the world community as financial institutions that receive money from illegal transactions, money laundering, underground economic activities, and other illegal activities. As additional information, offshore banks are also suspected of facilitating acts of terrorism, such as the case of terrorists who crashed a plane into the World Trade Center (WTC) building in New York on September 9, 2001.[34]

Organization	Topic:	Key Deliverable(s)
Basel Committee (Basel Committee and Offshore Group of Banking Supervisors)	Supervision of cross-border banking.	Survey on the implementation of the 1996 Report.
Offshore Group of Banking Supervisors (OGBS)	Working closely with the Basel Committee to evaluate OGBS members' compliance with Basel's Core Principles.	Survey on the implementation of the 1996 report.

[32] International Monetary Fund, 'Offshore Financial Centers: IMF Background Paper' 2000 https://www.imf.org/external/np/mae/oshore/2000/eng/back.htm#box2 acessed date 11/02/2024.
[33] B Warf, 'Tailored for Panama: Offshore Banking at the Crossroads of the Americas' (2002) (84)1 Geografiska Annaler: Series B, Human Geography 33-47.
[34] V de Rugy, G Leff 'The 2020 Bailouts Left Airlines, the Economy, and the Federal Budget in Worse Shape than Before' (2022) Mercatus Policy Brief Series.

Registrar of Offshore Financial and Banking Services (Created in 1998 to provide a Pacific regional grouping)	Envisages to focus the attention of regional centers on internal standards.	

The principle of banking confidentiality, a fundamental obligation for financial institutions, is designed to protect and maintain their customers' financial information, keeping it confidential from third parties. This principle is intended to instill a sense of trust and security in customers, assuring them that their financial information is legally protected and not shared with unauthorized parties.[35] However, this principle, while serving its purpose, can present intriguing challenges in investigating funds suspected to be the result of unlawful acts.

The research method used in writing this article is a literature study exploring data sources and information from various references and literature. The references in question are articles in journals, websites, bank reports, or regulations relating to offshore banks that apply in a country. Apart from that, look for data that explains the positive and negative impacts that have always been part of the existence of offshore banks in contemporary financial discussions and academic debates. The offshore banking system is believed to legalize international financial crimes for its customers, such as money laundering, tax evasion, etc. On the other hand, this banking system contributes several positive things to the country.[36]

3. Best Practices Offshore Banking in Several Countries.

Several countries have stringent regulations regarding offshore banking[37] to prevent money laundering, tax evasion, and other financial crimes. Some nations known for strict regulations in this regard include:

a) United States

From the viewpoint of U.S. taxation and reporting, offshore accounts refer to accounts situated beyond the borders of the United States. [38] These accounts need not be held in a "traditional" offshore tax haven like the Cayman Islands, the Bahamas, or Bermuda to be deemed offshore. Therefore, accounts in countries such as Japan, Korea, and India are also classified as "offshore" (alternatively termed foreign accounts or accounts abroad). The Internal Revenue Service (IRS) has identified compliance with foreign accounts as a

[35] P Xie, *China's monetary policy: 1998-2002* (Stanford Center for International Development Working Paper 217, 2004).
[36] NA Burney, N Al-Mussallam, 'Wagner's Law and Public Expenditure Growth in Kuwait' (1999) 23(2) OPEC review 139-171.
[37] EN Roussakis, 'Offshore Banking at the Close of the Twentieth Century' (1992) 22 Academia Revista Latinoamericana de Administración 99-112.
[38] A Christians, 'Sovereignty, Taxation and Social Contract' (2009) 18 Minnesota. Journal of International Law 99.

significant enforcement priority. Each year, the U.S. government actively pursues American taxpayers who possess undisclosed offshore accounts, investments, assets, and income, subjecting them to fines and penalties. Various international information reporting forms are used for offshore accounts, including the Foreign Bank and Financial Account Reporting (FBAR, also known as FinCEN Form 114), Form 8938 (Foreign Account Tax Compliance Act), Form 8621 (Passive Foreign Investment Company), Form 5471, Form 3520-A, and Form 3520. Each of these forms has specific threshold requirements for reporting, with varying complexities (FATCA, 2023). In cases where U.S. individuals fail to comply with reporting their offshore accounts and investments, the IRS has established several offshore tax amnesty programs, such as the Voluntary Disclosure Program (VDP or "New" OVDP), Streamlined Domestic Offshore Procedures, Streamlined Foreign Offshore Procedures, Delinquency Procedures, and Reasonable Cause, to assist taxpayers in achieving compliance.[39]

b) China

China has specific regulations governing offshore banking units operating within its jurisdiction, known as the Self-Regulatory Rules for Offshore Banking Units (OBUs), for Accepting Account Openings from Offshore Customers and Investing in Trust Products on Behalf of Offshore Customers:

Money Laundering Prevention	"OBU shall set and implement the procedures of Know Your Customer, strengthen the control of money laundering prevention and conform with the relevant laws and regulations on money laundering prevention." (Article 2).
Customer Due Diligence	Before commencing a business relationship with a customer, an OBU must perform procedures such as identifying the customer, continuously reviewing their identity and monitoring their accounts or transactions. Also, if required, an understanding of its funding source. A risk-based approach will be employed for the level of implementation during the execution of procedures for confirming the customer's identity, ongoing review mechanisms, and monitoring. Enhanced due diligence will be applied in high-risk scenarios (as outlined in Article 2).
Penalties for Non-Compliant Customers	In the relevant business contracts or applications, the OBU (Offshore Banking Unit) will stipulate that the bank holds the authority to temporarily halt transaction(s), suspend, or end the business association with a customer who demonstrates a lack of cooperation in the Customer Due Diligence process, for instances where the customer refuses to furnish information regarding the ultimate

[39] Golding Lawyers, 'Offshore Accounts: IRS Compliance Reporting Rules 2023' https://www.goldinglawyers.com/offshore-accounts-irs/#:~:text=Having%20an%20offshore%20account%20is,FBAR%20fines%20are%20not%20common.

	beneficial owner or the individual exercising significant control over the customer or is reluctant to provide clarifications regarding the transaction's nature and purpose or the source of funds. The closure of the account will be conducted in line with the internal operational procedures established by the bank (as outlined in Article 4).
Alterations in the validity of an offshore juristic person customer's juridical personality are affected due to changes in the laws and regulations in the State (country) of registry or its place of registration: Close the account. However, OBU may, at its discretion following a risk-based evaluation, opt to maintain the business relationship with the offshore juristic person by recognizing the relocated registration as a continuation of its original juridical personality, adhering to internal operational protocols (as outlined in Article 5).	
Internal Control System and Employees' Code of Conduct	OBU is mandated to create a specific and practical internal control framework upon establishing business relationships with customers, accompanied by employee codes of conduct that encompass principles such as compliance with the law, upholding confidentiality, and adhering to self-discipline (as outlined in Article 6).

c) United Kingdom

The Requirement to Correct amendment empowers H.M. Revenue and Customs (HMRC) to address individuals who fail to accurately report the appropriate tax amounts owed on their offshore income and assets. Under Section 67 and Schedule 18 of the Finance (No.2) Act 2017, this legislation mandates individuals with undisclosed taxable income from offshore interests to rectify this by disclosing the relevant information to HMRC. HMRC anticipates that the majority of taxpayers will fulfill their obligation under the Requirement to Correct by disclosing through the Worldwide Disclosure Facility (WDF) and the Digital Disclosure Service (DDS) available online[40]. More than 100 nations have pledged to adhere to new international agreements allowing HM Revenue and Customs (HMRC) greater access to details regarding accounts held overseas. If you have dutifully disclosed your taxable income and profits, there is no cause for concern. However, failing to declare an income and gains may lead to HMRC discovering this later, resulting in an investigation and the obligation to pay the undisclosed tax, a penalty (potentially double the tax owed), and potential prosecution. By utilizing the WDF to provide a comprehensive disclosure of any undisclosed offshore liabilities, one might avoid the necessity of a future investigation that could incur a higher penalty. Financial institutions are currently gathering information regarding offshore accounts. HMRC will receive extensive details about Overseas accounts, Insurance products, and other investments, including those held through

[40] Government U.K., 'Offshore Disclosure Facilities' 2018 https://www.gov.uk/guidance/offshore-disclosure-facilities#:~:text=Print%20this%20page-Overview,their%20offshore%20income%20and%20assets.

overseas structures like companies and trusts. This information encompasses specifics about either the account or asset holder or the entity's owner holding the asset, including details such as name, address, date of birth, account balance, and payments made into it. HMRC will leverage this information to pursue individuals who have neglected their tax obligations.

d) Brazil

On April 20, 2023, the Brazilian Federal Government enacted Provisional Measure (M.P.) No. 1,171 brought significant modifications to the tax regulations governing offshore investments undertaken by Brazilian citizens. Financial investments conducted overseas by Brazilian residents will incur taxation solely upon redemption, sale, or maturity, with income tax levied in Brazil according to the following progressive rates:[41]

Income	Tax Rate
Up to BRL 6,000	0%
From BRL 6,000 to BRL 50,000	15%
Over BRL$ 50,000.01	22.5%

One of the primary revisions introduced by MP No. 1,171/2023 pertains to the taxation of offshore entities under the control of Brazilian residents. Which types of offshore entities does MP No. 1,171/2023 impact? Companies and other entities (including those lacking legal personality), such as investment funds and foundations controlled by Brazilian individuals, are encompassed by MP No. 1,171/2023 if they meet the following criteria: (1) The entity is situated in jurisdictions offering Favorable Tax Jurisdictions (FTJ) or subject to Privileged Tax Regimes (PTR) as defined by relevant Brazilian legislation; or (2) The entity's active income constitutes less than 80% of its total income. Active income excludes royalties, interest, dividends, equity interests, property leases, capital gains from assets held for less than two years, and financial investments.

e) Switzerland

As the institution prioritized confidentiality, the foreign individual chose to open a Swiss bank account. However, conscientious consumers need to understand that Switzerland has enforced various regulations and adheres to significant international standards and guidelines, enhancing bank account security. Additionally, Swiss tax authorities are obligated to uncover suspicious transactions. Like financial institutions worldwide, Swiss banks possess the authority to suspend customer funds and bank accounts for various reasons. The latter falls outside the purview of bankers and international entities' mandates. Swiss banks have begun exercising this authority, including freezing the accounts of Russian individuals impacted by Western sanctions. It is important to note that this action will not entail a blanket freeze on all Russian accounts but solely those associated with individuals affected by the sanctions. Swiss bankers retain the prerogative to freeze accounts in cases where they

[41] M Filho, 'New tax rules in Brazil for offshore assets' 2023, https://www.mattosfilho.com.br/en/unico/new-tax-rules-brazil-offshore/

suspect information concealment or when dealing with individuals listed under sanctions. Each transaction undergoes thorough scrutiny and verification, with the bank reserving the right to request confirmation of all transfer details. In Switzerland, accounts are blocked under FATF and other global obligations in instances where there are indications of money laundering or terrorist financing (The Kingdom Bank, 2023)[42].

4. The Utilization of Cyber Technology in Tracking the Assets of Convicts in Foreign Countries.

In an era of rapid globalization and digitalization, cross-border economic transactions have become increasingly complex and fast-paced. However, the potential of cyber technology to counter these challenges is immense. Many individuals and legal entities exploit modern technologies to conceal assets or engage in cross-border tax evasion. Governments and regulatory authorities have also started leveraging cyber technologies to detect and trace assets illegally hidden in other jurisdictions. Cyber technology offers solutions to these challenges by enabling deeper data analysis and access to global information, instilling optimism for the future of asset tracking.

This study will comprehensively explore various forms of cyber technology utilization in tracking the assets of legal subjects in foreign countries. It will not only analyze the impacts but also examine the limitations encountered. The research will be supported by a wide range of relevant academic references, ensuring a thorough and detailed overview that covers all aspects of the topic. Cyber technology encompasses a range of tools and techniques, including big data analysis, blockchain forensics, open-source intelligence (OSINT), and digital forensics. Each method operates with specific functionalities, allowing authorities to access and analyze data related to the ownership of assets concealed abroad by individuals or legal entities.

a) Big Data Analysis

Big data refers to the processing and analysis of very large and complex datasets, often derived from multiple open and closed data sources. This data includes banking transactions, public documents, social media activity, and property and stock records.[43] revealed that big data analysis can help identify patterns not immediately visible to traditional investigative methods. In asset tracking, big data enables the integration of data from multiple international sources to create a more accurate profile of an individual or entity. For example, banking transaction information crossed with property ownership records or shell companies can provide a clearer picture of hidden assets abroad. One of the benefits of big data is that it can transcend national borders, providing a global reach in asset tracking. Information extracted from multiple

[42] The Kingdom Bank, 'Switzerland Offshore Bank Account in 2023 (Detailed Guide)' https://blog.thekingdombank.com/switzerland-offshore-bank-account/.
[43] J Manyika et. al., *Big data: The Next Frontier for Innovation, Competition, and Productivity* (McKinsey Global Institute 2011).

platforms (such as social media or corporate records) can provide critical clues. However, in the process, the data quality is highly dependent on the availability of the right sources and accessibility to international databases. Privacy and data regulations in some countries also pose barriers to accessing this information.

b) Blockchain Scope and Forensic Cryptocurrency

Along with the increasing use of cryptocurrencies to hide or move assets across borders, blockchain technology and related analytics have become essential to international asset tracking. [44] explain that although cryptocurrency transactions are pseudonymous (not anonymous), blockchain analysis can trace transactions from one wallet to another. By leveraging data from blockchain explorers and digital forensics tools, cyber investigators, including financial analysts and law enforcement agencies, play a crucial role in identifying patterns of cross-border fund transfers and linking them to the individuals or entities involved. Blockchain technology is open and immutable, allowing these professionals to trace the full history of transactions. Cryptocurrency forensics tools can link transactions to real-world accounts or individuals, especially if there is a connection to regulated fiat transactions. In practice, blockchain and cryptocurrency have limitations, including privacy-conscious users' ability to use mixing or tumbling services to break up transaction flows, making them harder to trace. Additionally, jurisdictions that do not regulate cryptocurrencies can be safe havens for hiding assets. The audience's work is integral in combating financial crimes.

c) Open Source Intelligence (OSINT)

OSINT refers to the use of publicly available data for investigations. OSINT resources include social media, corporate reports, legal documents, and websites that store data about assets such as property and stocks.[45] points out that OSINT allows investigators to gather information often overlooked by traditional methods. For example, someone who owns property or investments overseas may inadvertently post photos or information on social media that indicate the location of the asset. Financial reports and corporate records published in various countries can also provide information about hidden ownership structures. OSINT is particularly useful for accessing information that is difficult to obtain through official or closed channels. Investigations can gain extensive insight without involving state- or government-controlled entities. However, it's important to consider the ethical implications of using OSINT, such as respecting privacy laws and the potential for misuse. Data obtained through OSINT may only sometimes be accurate or complete. Additionally, too deep searches can violate privacy laws in some countries, especially if they involve personal information.

[44] S Meiklejohn et. al., 'A Fistful of Bitcoins: Characterizing Payments Among Men with No Names' (2013) Proceedings of the Internet Measurement Conference.
[45] KKR Choo, 'Cryptocurrency and Virtual Currency: Corruption and Money Laundering/Terrorism Financing Risks?' (2015) Handbook of Digital Currency 283-307.

d) Digital Forensic

Digital forensics involves collecting, analyzing, and recovering data from digital devices, such as computers, servers, and mobile phones. In international asset tracing, digital forensics is used to find evidence of transactions, communications, or other activities related to the movement or hiding of assets abroad.[46] emphasized that this technique can effectively trace the digital footprints left by transactions or communications related to assets. For example, financial documents hidden on a particular device or email communications related to a transaction can be important clues in tracing international assets. Digital forensic evidence is very powerful in court and can provide concrete clues about hidden assets. This data can be retrieved, even if deleted, using recovery techniques. However, privacy laws and data regulations in various jurisdictions may limit access to digital devices, especially in an international context. In addition, data encryption and the security of modern devices can be significant barriers to investigation teams, highlighting the challenges and complexities involved in digital forensics.

Cyber technology in cross-border asset tracking offers great potential for law enforcement and legal authorities to combat criminal activities such as tax evasion, money laundering, and other economic crimes. However, several challenges need to be considered: (1) Privacy Protection and Data Regulation: Many countries have strict data privacy protection and cybersecurity regulations that can limit the ability to investigate across borders. Privacy policies such as the GDPR in Europe restrict access to individual information. (2) International Cooperation: The success of cross-border asset tracking often depends on the willingness of other countries to share information and cooperate in investigations. Tax havens[47] and countries with lax banking regulations often pose major obstacles. (3) Advanced Technology Requirements: Cyber technology tools used in asset tracking require sophisticated infrastructure and high technical expertise. Not all countries or law enforcement agencies have the resources to utilize this technology effectively.Cyber technology has revolutionized the way assets of individuals and legal entities are tracked across borders. Through big data analysis, blockchain, OSINT, and digital forensics, authorities can gain deeper insights into how assets are hidden or moved. While this technology is highly effective, significant challenges related to privacy, regulation, and international cooperation must be overcome. Further research and innovation in cyber technology will continue to play a critical role in improving the effectiveness of international asset tracking and combating global financial crime.

[46] E Casey, *Digital evidence and computer crime: Forensic science, computers, and the internet* (Academic Press 2011)

[47] International Consortium of Investigative Journalists, 'Offshore havens and hidden riches of world leaders and billionaires exposed in unprecedented leak' 2021, https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/ accessed on 15/05/2023.

5. The Intersection of Bank Secrecy, National Sovereignty, and Mutual Legal Assistance.

"*No matter what the motivation, the value of confidentiality depends on what may happen if the confidentiality cover is blown, the "damage function," and the probability of disclosure. Damage can range from execution, exile, prison, and political ostracism to confiscation of assets, fines, incremental taxes, social opprobrium, and familial tension. Avoidance of damage is what the confidentiality seeker is after. Since damage usually is a matter of probabilities, the attitude toward the risk of exposure is a critical factor in how people value this benefit."*[48]

The veil of secrecy enveloping financial transactions through offshore havens imposes significant and far-reaching consequences that must not be underestimated. Experts estimate that less-developed economies are losing financial resources at a rate three times greater than the amount they receive in foreign aid, resulting in a devastating impact on their development and growth prospects. These hidden outflows of capital undermine the fiscal stability of nations, erode public trust in governance, and severely curtail opportunities for economic development.

For instance, Nicaragua, once seen as a beacon of economic promise in Central America, now finds itself mired in severe political and economic turmoil. The country's challenges have been exacerbated by the actions of its President and his close associates, who have reportedly siphoned millions of dollars from the national treasury and channeled these funds into offshore bank accounts. This massive misappropriation of public funds has led to the suspension of critical infrastructure projects, ranging from road construction to healthcare facilities, that are vital for the nation's development. Furthermore, the rampant corruption and financial malfeasance have created a hostile environment for foreign investors, further diminishing Nicaragua's economic potential and growth prospects. Similarly, in Venezuela, the effects of offshore secrecy have been profoundly detrimental. A high-ranking general took advantage of his position to embezzle vast sums of public money, which he then funneled into offshore accounts through complex financial maneuvers, often involving family members. This illicit activity allowed him to circumvent international sanctions and continue to profit even as the nation's economy collapsed and poverty levels surged. The misuse of public funds in Venezuela has led to widespread social and economic dislocation, severely impacting the country's ability to provide basic services to its citizens and pushing millions into hardship and deprivation.

An even more striking example of the damage inflicted by offshore financial secrecy involves the recent scandal in Malaysia. The Malaysian President was implicated in an audacious scheme to divert a staggering $4.5 billion from a state development fund into offshore accounts, with the facilitation of major financial institutions such as Goldman Sachs. This sum represents an amount nearly twenty times greater than Malaysia's annual receipts of foreign aid. The

[48] I Walter, 'Use and Misuse of Financial Secrecy in Global Banking' in HK Baker and JR Nofsinge (eds), *Socially Responsible Finance and Investing: Financial Institutions, Corporations, Investors, and Activists* (Wiley 2012) 275–295.

illicit transfer of such a colossal sum of money has had dire consequences, potentially affecting the lives of over seven million rural Malaysians who depend on state-funded development projects and social welfare programs. With such resources being siphoned away, communities face deteriorating infrastructure, reduced access to healthcare and education, and diminished economic opportunities, all of which hamper their prospects for a better future.

These examples collectively underscore the grave consequences of financial secrecy in offshore havens, revealing a pattern of elite exploitation and systemic corruption that deprives nations of critical resources needed for their development. The misappropriation of public funds to offshore accounts not only exacerbates poverty and inequality but also poses a significant challenge to global financial transparency and economic justice.[49]

Switzerland, renowned for its excellence in chocolate and precision timepieces and its commitment to military neutrality, faced an unexpected challenge in 2009 amidst the global financial crisis. This predicament involved a significant aspect of the Swiss political-economic constitution: banking secrecy. The United States and Switzerland were embroiled in a notable international legal dispute, as American tax law clashed with longstanding and rigorously protected Swiss legal principles.[50] The focal point of the conflict was the demand from the U.S. Department of Justice for Switzerland-based UBS AG (UBS) to disclose the identities of 52,000 Americans suspected of establishing private Swiss bank accounts to evade taxes. This clash underscored the tension between the U.S. pursuit of tax compliance and Switzerland's commitment to preserving a tradition of 300 years, ensuring confidentiality for its banking clients in banking secrecy.[51]

As we know, taxation is an inherent or essential component of sovereign status. Some perspectives even posit that the importance of taxation to sovereignty is such that safeguarding autonomy in shaping the tax system merits more significant protection than autonomy in other regulatory domains. By their functions, tax administrations necessitate access to information stored within the financial system. Knowledge regarding actual financial flows is needed to ensure tax compliance, which can result in tax administrations adopting myopic approaches. Acknowledging the relevance of safeguarding personal data (privacy) and commercial confidentiality as fundamental rights is imperative.[52] The concept of "financial secrecy" is crucial in upholding such protection. However, in this context, tax administrations should be able to access pertinent information, and this action should not be construed as violating privacy and confidentiality rights. It is crucial to recognize that accessing information does not breach confidentiality; "bank secrecy" is

[49] MA Young, 'The exploitation of offshore financial centres: Banking confidentiality and money laundering' (2013) 16(3) Journal of Money Laundering Control 198–208.
[50] Offshore Protection, 'Swiss Offshore Bank Account Benefits', 2023, https://www.offshore-protection.com/swiss-offshore-banking accessed on 15/03/2024.
[51] JH Schottenstein, 'Is Bank Secrecy Still Bankable: A Critical Review of Bank Secrecy Law, Tax Evasion and UBS'
[52] D Lopes, 'GDPR – Main International Implications' (2020) EJPLT Special Issue 9-17. https://universitypress.unisob.na.it/ojs/index.php/ejplt/article/viewFile/1123/364

safeguarded by "tax secrecy," ensuring an equivalent level of confidentiality. It is important to balance the need for tax administrations to access information for effective tax enforcement with protecting individual rights to privacy and commercial confidentiality. Individuals' rights to privacy must be weighed against the necessity for physical security and efficient law enforcement overall, particularly in the context of anti-money laundering enforcement.
"*Money laundering is customarily thought to involve three stages: (i) the placement stage, where the criminal proceeds are placed in a financial institution or used to purchase an asset (e.g., a deposit into a bank account), (ii) the layering stage, where complex schemes are used to disguise the funding source and obscure the financial trail (e.g., multiple and convoluted wire transfers), and (iii) the integration stage, where the criminal proceeds are integrated into the formal economy (e.g., buying a luxury real estate). As noted by Tucker, this commonly referenced three-stage illustration is a simplification of a dynamic and complex scheme. The respective stages may not occur sequentially, can overlap, and blur together. Moreover, in some countries money laundering charges may not always require proving concealment.*".

In general, the advantage of money laundering lies in the ability of criminals to obscure the origin of illegally acquired assets into legally legitimate funds. This practice creates the impression that the proceeds of criminal activities are legitimate, thus allowing illicit funds to blend undetected with legitimate funds in the lawful financial sector. Offshore financial centers are often the preferred choice for criminals to launder money due to their higher level of confidentiality, providing a more secluded environment to clean ill-gotten gains. More specifically, banking confidentiality is an effective shield for money launderers from investigative efforts, as client confidentiality (the right to protect financial information from disclosure) is guaranteed for account holders in many offshore financial centers. The money laundering process remains hidden, known only to those involved, and successful launderers will adapt their behavior according to recent law changes, as observed in Switzerland. It should be emphasized that the practice of laundering criminally obtained proceeds remains hidden until detected, at which point the laundered money becomes vulnerable to confiscation. However, authorities seeking access to crucial bank records to track and seize proceeds of crime often encounter legal barriers designed to uphold the statutory duty of confidentiality. For criminals, the assurance of banking confidentiality means no need to alter their behavioral patterns. Realizing the importance of bank secrecy, one of the things that can be done to eradicate crimes involving bank secrecy is through the Mutual Legal Assistance Treaty (MLAT)

In the journal titled 'Mutual Legal Assistance Treaties as a Way to Pierce Bank Secrecy,' James I.K. Knapp, Deputy Assistant Attorney General, Tax Division, U.S. Department of Justice, highlights the sole solution to circumvent the restrictions imposed by traditional methods for obtaining evidence within bank secrecy, as well as in many other jurisdictions, is to establish a treaty that: 1) explicitly allows the utilization of foreign government procedures to obtain evidence throughout the entire investigative and prosecutorial process, including grand jury proceedings; 2) explicitly sanctions the use of foreign government procedures to obtain evidence for crimes that may not be familiar

or universal, in addition to traditional forms of crime; 3) explicitly permits the waiver of foreign bank secrecy privileges under specified circumstances; and 4) offers an expedited mechanism for obtaining this evidence in a legally admissible format.

6. The Optimal Approach for Asset Sharing.

The most desired form of assistance involves obtaining documentary evidence, particularly bank or other corporate records. Once implemented, the treaty typically authorizes the foreign prosecutor to obtain the desired records directly or through a court order, thereby overcoming local bank secrecy or similar legal restrictions. However, "legal assistance" encompasses more than just providing documentary evidence. It includes supplying authenticating evidence, such as live or deposed testimony from banks or other corporate officers, or specific certification forms. Additionally, a mutual legal assistance treaty usually requires the production of non-privileged public documents and records, allows discretionary access to law enforcement records, aids in locating individuals, serves subpoenas and other documents, executes requests for search and seizure, facilitates taking testimony or depositions, arranges transportation of prisoners in custody for testimony abroad, enables the seizure and forfeiture of criminals' assets, and occasionally involves the sharing of those assets between the two governments. Implementing asset sharing can be one of the considerations in international legal cooperation. One of the main reasons is the potential to foster closer cooperation between countries in law enforcement efforts within the scope of offshore banking. With the financial incentives to participate in cross-border crime investigation and prosecution processes, countries are likely to be more proactive in sharing information and collaborating in addressing transnational crimes.

7. Conclusions.

In conclusion, the discourse surrounding offshore banking and banking secrecy reveals a complex interplay between legal principles, historical contexts, and contemporary financial practices. While offshore banking is not inherently illegal and may serve legitimate purposes, its association with shell companies and opaque financial structures often draws law enforcement scrutiny, particularly in tax evasion and money laundering cases. The Panama Papers, Paradise Papers, and Pandora Papers leaks have brought to light the extensive use of offshore banking by individuals and entities worldwide, including prominent figures and institutions. These revelations underscore the need for greater transparency and accountability in financial systems and collaborative efforts among nations to address the challenges posed by offshore finance. The debate over banking secrecy spans various perspectives, from viewing it as a fundamental right to privacy to recognizing its potential for abuse in shielding illicit activities. Historical precedents, such as the origins of banking secrecy in response to Nazi asset confiscation, highlight the

evolving nature of financial regulations and their unintended consequences. Efforts to pierce banking secrecy, such as mutual legal assistance treaties, are essential in combating financial crimes and enhancing international cooperation. However, navigating the complexities of cross-border investigations and balancing privacy rights with law enforcement needs remains a persistent challenge. Overall, the discourse on offshore banking and banking secrecy underscores the importance of balancing individual privacy rights with the broader imperatives of financial integrity, transparency, and accountability in the global economy.