WHAT WAS THE CAUSE OF THE 2014-2016 UK OVERSEAS TERRITORIES FINANCIAL SERVICES REFORM?

A THESIS

SUBMITTED TO THE DEPARTMENT OF PUBLIC ADMINISTRATION
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE MASTER OF PUBLIC ADMINISTRATION DEGREE

BY

RICARDO L. WHEATLEY
S1906798

LEIDEN UNIVERSITY

ADVISOR: CELESTE BRAUN
SECOND READER: ALEXANDRE AFONSO

AUGUST 2017

ABSTRACT

PUBLIC ADMINISTRATION

RICARDO L. WHEATLEY M.A. CLARK ATLANTA UNIVERSITY, 2009

WHAT WAS THE CAUSE OF THE 2014-2016 UK OVERSEAS TERRITORIES FINANCIAL SERVICES REFORM?

Advisor: Dr. Celeste Braun
Second Reader: Dr. Alexandre Afonso

Thesis dated August 2017

In the aftermath of the 2007-08 financial crisis, the United Kingdom's Overseas Territories came under significant pressure to implement reform policies in their financial services industry. Yet the reform pressures in the form of policies prescribed by multiple regulatory authorities contained significant elements of overregulation that would undermine their international competitive advantage in financial services. The UKOTs had to devise a strategy by which to satisfy international regulatory requirements while protecting their ability to compete as industry leaders. From 2014 through 2016 they adopted eight key pieces of financial services legislation on Beneficial Ownership, Exchange of Information, and Common Reporting Standards. Together the policy and legislative adoptions constituted a long term reform policy within the financial services industries' of the UKOTs. This study attempts to explain the choice of policy adoptions that comprise the reform from among the policies prescribed by regulatory authorities. It seeks to develop a minimally sufficient explanation for the reform outcome through use of a mixed method Process Tracing-QCA model.

Table of Contents

ACKNOWLEDGEMENTS

First, I want to thank my twin brother Benito Wheatley, without whom the completion of this document and my graduate education would not have been possible. Second, I want to thank my mother Medita Wheatley for all the support you have granted me in pursuing my graduate education. Next, I want to grant very special thanks to professors Dr. Celeste Braun, Dr. Peter van Wijck, and Dr. Pierre W.C. Koning for entertaining my curiosity and granting me the opportunity to grow both in and outside the classroom. Last, I want to thank my closest friend Oren Hodge who supported me unconditionally through the matriculation process.

LIST OF FIGURES

LIST OF TERMS & ABBREVIATIONS

ALMD4-Anti Money Laundering Directive

CDOT-Crown Dependencies and Overseas Territories

CFATF-Caribbean Financial Action Task Force

CRS & AEOI-Common Reporting Standard and Automatic Exchange of Information

EU-European Union

FATCA-Foreign Account Tax Compliance Act

FATF-Financial Action Task Force

G20-Group of 20

OECD-Organization for Economic Cooperation and Development

OTs-Overseas Territories

Territories-United Kingdom Overseas Territories

UKOTs-United Kingdom Overseas Territories

CHAPTER 1

INTRODUCTION

1.1 Research Question

What explains the adoption of the 2014-16 financial services reforms by the UK Overseas Territories?

1.2 Introduction

From 2014 through 2016 seven of the UK Overseas Territories (UKOTs/territories) adopted eight key pieces of financial services legislation on Beneficial Ownership, Exchange of Information, and Common Reporting Standards: *UK-CDOT (2014), US-UKOT FATCA IGA (2014), UK-Central Registers of Beneficial Ownership (2016), Global Common Reporting Standard(CRS) for Automatic Exchange of Financial Account Information(2016), FATF-Recommendations and Guidance on Transparency and Beneficial Ownership (2016), G20-High Level Principles on Beneficial Ownership Transparency (2016), G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters (2016), EU –Fourth Money Laundering Directive of the European Union (2016).*[1]

[1] The British Overseas Territories holding significant Financial Services sectors – (7) in total (Anguilla, British Virgin Islands, Cayman Islands, Montserrat, Gibraltar, Bermuda, Turks and Caicos). In regard to Financial Services the British Overseas territories generally lobby as a bloc of 14, but only the bloc of 7 adopts and implements legislation. Peter Clegg & Peter Gold, "The UK Overseas Territories: a decade of progress and prosperity?," Commonwealth & Comparative Politics, 49:1 (2013): 115-135. DOI: 10.1080/14662043.2011.541117.

Together the policy and legislative adoptions constitute a long term reform policy within the financial services industries of the UKOTs.[2] The last major reforms instituted by the territories occurred over a decade earlier between 2000 & 2002, and again in 2005 as part of greater global level financial center reforms initiated by the OECD.[3] Thereafter the territories have largely been deemed compliant with international regulatory standards in the pre-reform period.[4]

In the aftermath of the 2007-08 Global Financial Crisis, the UKOTs faced increasing pressures to institute financial services reforms from the unilateral (US, UK), bilateral (UK), regional (EU), and multilateral (FATF, OECD, G20) levels of regulatory authority. The reform pressures were comprised of a series of prescribed policies for the territories to adopt, most at the threat of penalty for noncompliance or non-adoption. The final reform package included a combination of the prescribed policies, of which some were adopted in a form different than its original presentation by regulatory authorities.

Given the territories' status as UK Overseas Territories sharing sovereignty with the United Kingdom, the literature largely attributes their financial services reforms either

---

[2] The Exchange of Notes between the Government of the UK and UKOTs on sharing beneficial ownership information describes the adoption as a major reform. "Beneficial ownership: UK Overseas Territories and Crown Dependencies," Gov.UK., Last modified April 21, 2016, accessed June 2, 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518300/Exchange_of_information_between_UK_government_and_the_government_of_the_British_Virgin_Islands.pdf.

[3] The 2000-2002 & 2005 reforms adopted by the territories included the Model Agreement on Exchange of Information on Tax Matters, Controlled Bilateral on-request Arrangements for assisting OECD member states in tax as well as the Tax Information Exchange Agreement for automatic reporting of interest payments under the EU Savings Directive. "Tax Co-operation: Towards a Level Playing Field 2007 ASSESSMENT BY THE GLOBAL FORUM ON TAXATION," OECD PUBLICATIONS, No. 44430286 2006, 6-8.

[4] "Exchange of Information on Request Ratings," OECD: Global Forum on Transparency and Exchange of Information for Tax Purposes, accessed April 15, 2017, http://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/#d.en.342263.

to negotiations, protection, or pressure from the UK.[5] The UK and UKOTs constitutional relationship at present makes Britain ultimately responsible for ensuring the territories comply with international standards of economic and financial regulation.[6] The public record further substantiates that following the UK's 2013 hosting of the G8 summit, the UK Parliament began pressuring the territories to adopt greater transparency policies on beneficial ownership and public registers.[7]

However, given the existence of simultaneous competing reform pressures on the territories in addition to the UK, it cannot be simply assumed that the UK is primarily responsible for the reforms. The US, EU, FATF, OCED, and FATF all were making regulatory demands on the territories in the pre-reform period. It is not clear that UKOT policy adoptions such as the US FATCA IGA or OECD CRS & AEOI were made at the behest of the UK given the direct negotiations of territories with the US Treasury and their steering group representation in the OECD Global Forum. These and other independent activities of the UKOTs give indications of a competing explanation to the UK centered hypothesis proliferating the literature. Yet little further speculation has been undertaken within the literature as to the basis for the structure of the UKOTs 2014-2016 reforms and the details of how they came to be. The question remains as to what was the primary basis for the selection of policies from among those prescribed by regulatory authorities both prior and during the reform period. The objective of this study is to

---

[5] Houlder, "UK reaches tax agreement with overseas territories." Rogers, British Overseas Territories in the Caribbean agree to central registries of beneficial ownership information – the first step on the slippery slope to full disclosure has been taken."

[6] "2010 to 2015 government policy: UK Overseas Territories - Policy paper," GOV.UK, last modified May 8, 2017, accessed January 10, 2017, https://www.gov.uk/government/publications/2010-to-2015-government-policy-uk-overseas-territories/2010-to-2015-government-policy-uk-overseas-territories.

[7] Ibid.

identify the basis for the choice of policy adoptions that ultimately comprise the reform package.

Questions of regulation and regulatory reform in the financial services sectors of Small Offshore Financial Centers (OFCs) generally, and those of the UK Overseas Territories specifically, has in the past been examined primarily within the context of geopolitics, international political economy, international law, tax law, and shared sovereignty approaches. Within these approaches regulatory reform is either the product of a global power struggle between economic powers, financial services competition between large onshore financial centers and small offshore financial centers, struggles for extraterritorial application of regulation vs traditional concepts of territorial jurisdiction and nationality, or based on examination of the relational precedent for the imposing of British direct rule in the territories.

Yet these conventional approaches are characterizing by an agency deficit in which little agency is attributed to the territories in the reform of their financial services industries. The international political economy and tax law approaches attribute financial services reform in small OFCs to efforts by states with large onshore financial centers, including Britain, to regulate transparency gaps and harmful tax competition by small offshore financial centers both unilaterally and via multilateral institutions. The geopolitics and shared sovereignty approaches attribute regulation and regulatory reform of the territories' financial services to the UK's efforts to protect the territories from regulation harmful to the OT economies, and itself from potential liabilities caused by the territories' financial services industries.

Common to each approach is the regarding of the UKOTs as merely principals in regulatory processes in which they are actively involved for their own survival. OFCs actively lobby large states bilaterally as well as lobby multilateral institutions to constrain regulatory efforts harmful to their financial services industries.[8] In multilateral financial and economic institutions where large states have sought to delegitimize the financial services model of small OFCs, the OFCs have used the same institutions as forums by which to levy international law to demand a level playing field with large countries in terms of regulatory requirements.[9] The most effective OFCs have found the means to effectively preserve their financial services industries despite their small size and power deficit. As such, the presentation of the UKOTs merely as principals is not wholly accurate as the literature does give indications of agency exercised by the small offshore financial centers.

While indeed suffering from an agency deficit, the conventional approaches do sufficiently account for the conditions and context within which the reform pressures were exerted on the territories. In the UKOTs financial services case, the policy prescriptions contained considerable elements of overregulation in which the territories were under pressure to adopt early non-universal policies targeting specific jurisdictions.[10] Adoption and compliance with those policies stood to significantly undermine the territories ability to compete internationally. Geopolitics, international

---

[8] Gregory Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty," Law & Policy January (2007): 51-66.

[9] Ibid.

[10] The deduction is made from Baldwin, Cave, and Lodge's definition of over-regulation. Baldwin, Robert, and Martin Cave, and Lodge, Martin. Understanding Regulation: Theory, Strategy, and Practice 2nd Ed. Oxford: Oxford University Press, 2012, 70. Vanessa Houlder, "UK reaches tax agreement with overseas territories," Financial Times, December 3, 2015, accessed June 2, 2017, https://www.ft.com/content/749e219e-99e3-11e5-9228-87e603d47bdc.

political economy, and international law approaches sufficiently account for process by which the elements of overregulation emerge as a part of both geopolitical and economic competition.

However, those approaches do not characterize efforts to excessively regulate small OFCs as overregulation. Those efforts are instead framed as minimizing contingent liability, ameliorating harmful tax competition, extraterritorial application of national regulatory authority, and geopolitical economic rivalry. Likewise, they also do not examine the responses to excessive regulation as overregulation responses. They are instead defined as efforts to achieve a level playing field, the levying & financializing of sovereignty, or leveraging of sovereign ambiguity.[11]

An assessment of the structure of the 2014-2016 reforms warrants a theoretical approach framing the reform within an overregulation context in which the viability of UKOTs financial services industry is threatened by a series of prescribed regulations decreasing their comparative advantage. Framing is necessary that considers the reforms a response by smaller actors to attempted overregulation by larger actors given their power and size deficit. This study begins with the assumption of agency on the part of the territories and that the undermining of their ability to compete in financial services is an existential threat they actively seek to avert.

1.3 Significance of the Study:

Academically, this study will add to the existing body of knowledge by filling a research gap in the study of the regulation of Small Offshore Financial Centers generally,

[11] The terms are explained in depth in the review of literature.

and financial services regulatory reform in the UK Overseas Territories specifically. The case of the UKOTs 2014- 2016 financial services reforms has not been addressed in the literature to date. Theoretically, this study stands to give some indication as to whether the case meets the predictions of overregulation theory and the theory of comparative advantage. While the findings of the case are not generalizable, they are based on systematic causal mechanisms from general theories. The case does having some capacity for illustrating the efficiency of explanation of the two theories.

The study also holds practical importance in identifying how the territories as microstates were able to successfully navigate international demands for reform policies that stood to ultimately undermine the viability of their financial services industries. The power deficit in the global economy suggests that microstates do not wield a significant enough degree of economic or political power to resist the demands of larger actors. Yet the UKOTs as micro states are successfully meeting their national interests relative to larger actors in the center of the international financial architecture of the global economy.

The overregulation approach changes the context of the discussion from international regulators seeking to safeguard against the harmful practices of small offshore financial centers due to inadequate regulation, to consideration of the possibly harmful effects of those regulatory efforts on the territories' financial services economic lifeline. The approach is distinct in this granting of agency to the territories where the conventional approaches maintain an agency deficit. The territories are not regarded as mere principals, but instead as actors actively involved in the regulatory process seeking

to defend their own national interests.

1.4 Organization of the Study

Chapter 1 of this study was dedicated to the introduction of the research question and topic area, giving justifications for its pursuit and stating the fundamental problem it seeks to address. Chapter 2 of this study includes an extensive literature review of the regulation of small Offshore Financial Centers generally, and the UK Overseas Territories in particular. Chapter 3 outlines the theoretical framework employed in this study, specifically over-regulation theory and the theory of competitive advantage. Chapter 4 is dedicated to the research design, presenting the hypothesis and details of the methodology utilized to answer the stated research question. The chapter presents and justifies the units of analysis, operationalizes all theoretical concepts, and discusses the reliability and validity of the measures in both processes. The research parameters and basic assumptions and limitations of the study are defined in this chapter. Chapter 5 is dedicated to process tracing, outlining the steps leading to the reform. Qualitative Comparative Analysis is undertaken in the chapter as a tool for tracing the key decision making stage in which the reform is populated by policy adoptions. Chapter 6 presents a summary of the research findings and goes on to discuss how they complement existing research on the question. The chapter closes with a discussion of the limitations of the analysis and identifies future research possibilities emerging from the findings.

CHAPTER 2

LITERATURE REVIEW

The review of literature is dedicated to both regulatory reform in the UKOTs and the competitive advantages they enjoy in financial services. Regulation and regulatory reform in small Offshore Financial Centers (OFCs), often micro-states, has been addressed within academic literature from a broad variety of perspectives including geopolitics, international political economy, tax law, and international law. Financial services regulation and regulatory reform specific to the UKOTs has been discussed within the context of shared sovereignty inclusive of contingent liability considerations and existing precedent for the imposing of direct rule. In both groupings of approaches, the literature does not discuss nor consider regulation of the UKOTs in terms of overregulation. Rather, they address regulation of small OFCs in the contexts of limiting harmful tax competition, facilitating greater financial transparency, and minimizing the contingent liabilities posed by the UKOTs. While not directly addressing overregulation, both groupings of approaches provide the context within which overregulation of the territories' financial services industries has emerged.

Competitive Advantage, with regard to small OFCs and the UKOTs specifically, is discussed within international political economy and tax law approaches. Within the literature specific emphasis has been placed on the differential and focus advantages in financial services built by the territories within the international financial regulatory framework over time. The review of literature will concisely cover both regulatory reform and competitive advantage in financial services of the UKOTs as small OFCs.

2.1 Geopolitics, International Political Economy, Tax Law & International Law

The geopolitical approach describes the regulation of offshore financial centers as the product of geopolitical struggles among great and regional economic powers in the global economy to protect and preserve the Offshore Financial Centers of vital interest to their economies.[12] Stability or changes in the international financial and economic regulatory framework are reflective of the greater geopolitical conflict for dominance or balance among the economic poles of the world.[13]

The International Political Economy approach discusses regulation and regulatory reform of OFCs as the product of economic competition between large onshore financial centers and small offshore financial centers within the global economy.[14] The competition is centered in financial services as microstates with small populations, territory, resources, and economic activity, have relatively few means to compete in the global economy or raise sufficient revenue from their tax base to fund state activity. They have successfully adopted an economic model that leverages their sovereignty, financialzing or commercializing it within the legal structure of the global economy to offer low tax (or no tax) transparency thin financial services.[15] Large onshore centers in states with massive tax revenue requirements are unable to compete with these lower tax rates creating a political-economic conflict between small and large financial centers.[16]

This political-economic conflict and resulting tax competition between large and

---

[12] Vincent Piolet, "The city of London: Geopolitical Issues Surrounding the World's Leading Financial Center," Hérodote No 151 (2013/4): 102-119. DOI 10.3917/her.151.0102.
[13] Ibid.
[14] Iris H-Y Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," Connecticut Journal of Int'l Law, Vol. 31:123 (2015): 3-24.
[15] Ibid, 4-8.
[16] Ibid.

small financial centers has been primarily mediated in multilateral liberal international financial institutions including the OECD, FACTA, G20, IMF, and EU.[17] The multilateral institutions have sought to simultaneously minimize the harm to the large financial centers while maintaining the economic viability of the small centers. Financial and economic regulation has been the institutional tool to limit the harmful tax competition between jurisdictions and contain a race to the bottom in tax rates and transparency.[18] The flux and change in international regulatory requirements is reflective of the ongoing conflict between large and small financial centers in the global economy.

Varying multilateral strategies have been attempted to mediate the tax competition each with limited success. Morris & Moberg describe the attempted cartelization of international tax policy by G7 countries within the OECD as a basis for the regulating international tax competition prior to the 2007-08 financial crisis.[19] This cartelization strategy was intended to create and formalize an institutional definition of harmful tax competition, establish international regulatory standards around the concept, and enforce it by sanctions in the form of a blacklist that restricts access to their markets.[20] It was ultimately unsuccessful due to opposition from powerful G20 states outside the OECD including China and India who did not wish to see their OFCs (Hong Kong, Macau, Mauritius) under sanction.[21] As a result no international consensus could be built multilaterally on harmonization or convergence of national tax rates via

---

[17] Chew, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 9-11.
[18] Ibid.
[19] Andrew P. Morriss Lotta Moberg, "Cartelizing Taxes: Understanding the OECD's Campaign against Harmful Tax Competition," Columbia Journal of Tax Law, Vol. 4:1 (2012): 1-64.
[20] Ibid, 1-5, 45-46.
[21] Ibid, 53-55.

cartelization.

In the absence of attaining agreement on regulating tax competition via cartelization, multilateral approaches then focused on transparency and automatic exchange of information strategies. These new approaches were pursued via responsive regulation based on dialogue teamed with meta-regulation.[22] In this paradigm dialogue, negotiation, and progressively escalating sanctions were perceived as effective tools. This new regime paralleled the pre-crisis regulatory strategies where in the first decade of the 2000's economics and finance was governed by a paradigm of state deregulation and industry self-regulation. [23]

However, the crisis and post-crisis conditions initiated a crisis in international public law in regards to regulating financial and economic transnational flows in a world economy characterized by globalization.[24] Globalization created an ambiguous and often conflicting space between jurisdictional authority, territoriality, nationality, in the application and enforcement of regulations in industry's dominated by cross border flows. [25] State authority's legal enforcement reach is limited to their own jurisdiction over their own nationals or those choosing to reside, as well as businesses originated in the state. Yet globalization grants the ability to participate in cross border trade and investment from different registration and domiciling jurisdictions bringing into question

[22] Gregory Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty," Law & Policy January (2007): 51-66.
[23] Ibid, 52-54.
[24] Mahmood Bagheri and Mohammad Jafar Ghanbari Jahromi, "Globalization and extraterritorial application of economic regulation: crisis in international law and balancing interests," European Journal of Law and Economics, No. 41 (2016): 292-329.
[25] Ibid, 398-400.

whose regulatory authority and rules individuals or companies legally fall under.[26]

The issue is particularly problematic in terms of taxation and profit shifting as the legal regulatory gap is exploited by aggressive tax planners as well as financial criminals to avoid paying little or no taxes (through the use of other jurisdictions such as OFCs).[27] There are no legal means to balance between the interests of states on their sovereign rights to determine the level of taxation within their own jurisdiction. Classical legal concepts of territoriality and nationality within international regimes of state sovereignty do not have an answer for this question.[28] There is little or no legal recourse for states to recoup lost tax revenue or halt the supposed harm caused by exploitation of these sovereignty and territorial gaps.

However, with occurrence of the global financial crisis, governments' faith in the industry self-regulation paradigm was largely eroded given the numerous scandals at the heart of the economic collapse.[29] There was a general consensus within the post-crisis regulatory paradigm that government needed to play a greater role in economic and financial regulatory matters beyond monitoring, sanctioning, or combatting terrorism & rogue regime financing.[30] Chiu argues that these changes in international political economy in turn led to changes in the international legal order, resulting in a reversion to unilateral approaches to financial and economic regulation that parallel the command and control approaches of the past.[31] Bagheri and Jahromi describe how concerned states

---

[26] Ibid, 394-396.
[27] Ibid, 403, 408-411.
[28] Ibid, 399-400.
[29] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 11-15.
[30] Ibid, 11, 16-19.
[31] Ibid, 3.

have implemented unilateral policies granting extraterritorial application of their national economic and financial regulations and laws in regard to their citizens and businesses operating within foreign jurisdictions. [32] The US, UK, and EU have each sought to impose their regulatory authority beyond their territorial jurisdictions (extraterritoriality) via Automatic Information Reporting Regimes (inclusive of the US's Foreign Account Tax Compliance Act, the UK's Finance 2016 Bill, and the EU's Administration Cooperation Directive).[33]

Lesage and Vermeiren describe this reversion to unilateral and pseudo command and control regulatory structures as a part of the new constitutionalism of disciplinary neo-liberalism in the post-crisis period.[34] The structure of globalization created a political-geographical mismatch between private economic activity, the mobility of finance and capital, and political regulation. The financial crisis highlighted the weakness of lackluster financial regulation in managing this mismatch, which threatened the short term viability of neo-liberal globalization.[35] Taxation is one of the key areas in which the mismatch is exploited, proving to be particularly problematic, ultimately requiring a new regulatory framework by which to address it.[36]

Post-financial crisis neoliberalism has assumed disciplinary elements to govern the movement of capital within globalization which was partially responsible for the

---

[32]Mahmood Bagheri and Mohammad Jafar Ghanbari Jahromi, "Globalization and extraterritorial application of economic regulation: crisis in international law and balancing interests," European Journal of Law and Economics, No. 41 (2016): 292-329.

[33] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 11, 16-19.

[34] Lesage and Vermeiren, "Neo-liberalism at a Time of Crisis: the Case of Taxation," 43-46.

[35] Ibid, 46-49.

[36] Ibid, 48-51.

crisis.[37] New constitutional arraignments at the international level have been put in place to legally encode the regulatory dimension of neo-liberal globalization where gaps previously existed; particularly in regard to free movement of the products, production factors, and property rights.[38] The result is unilaterally imposed reporting regimes coexisting alongside multilateral reporting regimes characterizing the international financial regulatory landscape. These reporting regimes have been the formal means through which overregulation of the UKOTs has been pursued in the post-crisis period.

2.2 Shared Sovereignty: Contingent Liability and Direct Rule Precedents

Specific to the UK Overseas Territories, the regulation of their financial services industries has been discussed within the context of the territories' constitutional relationship with the United Kingdom.[39] There are 14 populated United Kingdom Overseas Territories (UKOTs) located in the Caribbean (Anguilla, British Virgin Islands, Cayman Islands, Montserrat, Turks & Caicos Islands), West Atlantic (Bermuda), South Atlantic (St Helena, Tristan Da Cunha, Ascension, South Georgia and the South Sandwich Islands, Falkland Islands,), Indian Ocean (British Indian Ocean Territory), Pacific (Pitcairn Islands), and Europe (Gibraltar).[40] Most of the Territories are largely self-governing, each with its own constitution and its own government, which enacts local laws. The people of each territory freely choose whether or not to remain a UK

---

[37] Ibid, 48-51, 53.
[38] Ibid.
[39] Peter Clegg & Peter Gold, "The UK Overseas Territories: a decade of progress and prosperity?," Commonwealth & Comparative Politics, 49:1 (2013): 115-135. DOI: 10.1080/14662043.2011.541117.
[40] "The Overseas Territories: Security, Success and Sustainability," Foreign & Commonwealth Office, Cm 8374, (November 22, 2013): 11-15, Accessed May 5, 2017. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14929/ot-wp-0612.pdf.

Overseas Territory presently and in the future.[41] The majority of UKOTs are economically self-sufficient among a range of industries between them. Large offshore financial centers & tourism (Bermuda, BVI and Cayman Islands), extensive shipping trade and an online gaming (Gibraltar), and fisheries & agriculture (Falkland Islands) are the pillars of the wealthier territories.[42] Nine of the UKOTs are directly associated with the European Union under the banner of Overseas Countries and Territories (OCTs) Association (OCTA) since 2013 including Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, St Helena and Turks and Caicos Islands.[43] The OCTs have entered into an association agreement with the EU, but are not members and not directly subject to EU law.[44] The OCT relationship with the EU serves to reinforce the sovereignty and self-determination of the UKOTs raising their international profiles.

The millennial relationship between the UK and its OTs has been governed by a New Paradigm established by the 1999 white paper (Overseas Territories Bill: Partnership for Progress and Prosperity) and reaffirmed in the 2012 White Paper (OT: Security, Success and Sustainability). [45] The Partnership for Progress and Prosperity re-organized and restructured the post-colonial relationship to allow for shared post-colonial

---

[41] Ibid.

[42] Peter Clegg, "Brexit and the Overseas Territories: Repercussions for the Periphery," The Round Table, (2016): 1-13, DOI: 10.1080/00358533.2016.1229420.

[43] Ibid, 1-3. **Gibraltar, is an exception as a member of the EU.

[44] Ibid.

[45] Helen Hintjens & Dorothea Hodge, "The UK Caribbean Overseas Territories: governing unruliness amidst the extra-territorial EU," Commonwealth & Comparative Politics, 50:2 (2012): 190-225. DOI: 10.1080/14662043.2012.671604. The 1999 White paper was reaffirmed by the 2012 White Paper on the OTs sub-titled Security, Success and Sustainability. Peter Clegg, "The United Kingdom and its Caribbean Overseas Territories: Present Relations and Future Prospects," Caribbean Journal of International Relations & Diplomacy Vol. 1, No. 2 (2013): 53-64.

sovereignty after almost three decades of ambiguity following the British decolonization period.[46] The territories were to be economically viable and self-sustaining, with the local governments responsible for localized governance, management of the economy inclusive of fiscal and taxation policy, and social stability. The UK government is responsible for internal security (police forces), external security (military), and the adherence of the territories to international standards of financial and economic regulation in their financial services industries, human rights, and environmental protection.[47]

The UK recommitted itself to assuming responsibility for the contingent liabilities of the territories which included financial sector failures, corruption, drug trafficking, money laundering, migrant pressure and natural disasters. [48] The territories as UKOTs must also meet the UK's legal obligations to comply with international standards of financial and economic regulation set by international bodies.[49] The UK has the responsibility to ensure their territories are not facilitating financial crime, money laundering, drug trafficking, terrorist financing, or harmful tax competition practices. Clegg examines existing precedent for the imposition of instances of direct rule by the UK in the territories within the context of the new millennial relationship. All areas of contingent liability, including regulation of the financial services industry, may justify the imposition of direct rule to preserve or restore the social stability and economic

[46] Ibid, 190-200.
[47] Ibid.
[48] Peter Clegg & Peter Gold, "The UK Overseas Territories: a decade of progress and prosperity?" 115-120.
[49] Ibid, 127-129.

independence of the state.[50]

While holding the territories to meeting international standards of regulation, particularly in regard to harmful tax competition and transparency, the UK government has been committed to defending the financial services industries of the territories in order to maintain their self-sustaining economic viability.[51] The OT's s economies suffer from acute economic vulnerability due to their narrow revenue bases.[52] Their economies are housed on a few pillars including financial services, tourism and construction, of which financial services and tourism generate roughly some 50% of government revenue in the Caribbean and North Atlantic territories.[53] Wherever possible, the UKOT governments seek to defend their financial services industries from harmful legislation emerging out of the UK, EU, or OECD. This shared sovereignty regime is intended to meet both the interests of the UK and its OTs.

However, UK membership in the European Union also subjects the territories to some degree to regional regulatory standards. According to Woolard, once the British OTs citizens became UK citizens, and thereby European Union citizens with the right of abode in UK and EU, their new status required that standards of governance in human rights and financial and economic regulation meet EU standards.[54] The UKOT's integration into the EU-OCT Association (OCTA) created the EU expectation that the territories not only international financial and economic regulatory standards, but also

---

[50] Ibid.
[51] Peter Clegg, "The United Kingdom and its Caribbean Overseas Territories: Present Relations and Future Prospects," Caribbean Journal of International Relations & Diplomacy Vol. 1, No. 2 (2013): 53-64.
[52] Ibid, 57-59.
[53] Ibid.
[54] Suzanne Woollard, "The British Overseas Territories: Does Mother Know Best? A Cayman Islands Perspective," Commonwealth Law Bulletin Volume 26, No. 2 (2000): 1300-1312.

conforming to EU specific standards and initiatives. [55]

2.3 Competitive Advantage in Financial Services

The UKOTs among other small OFCs have successfully built international competitive advantage among their competitors in the financial services industry to become industry leaders globally.[56] The financial services model (competitive advantage strategy) utilized among the territories allows the UKOTs to lure significant enough numbers of clients to their jurisdictions to compete with large states hosting substantial populations, economic productivity, and tax bases.[57] Chiu describes how the economic model of small OFCs leverages their sovereignty, financialzing and commercializing it within the legal structure of the global economy to offer low tax (or no tax) transparency thin financial services.[58] The UKOTs financial services model structures their services around the governing international regulatory regimes in a manner enabling them to offer not only low taxation rates, but also competitive prices and financial innovation that their competitors cannot. Their form of economic modelling drives international constituents such as multinational corporations with highly mobile international investment capital to the jurisdictions rather than to onshore competitors.[59]

The competitive advantage strategy of the UKOTs has been based primarily on focus leadership and differentiation. The UKOTs have pursed a focus strategy of

---

[55] Ibid, 1301-1307. The UKOTs are official members of OCTA, "2001/822/EC: Council Decision of 27 November 2001 on the association of the overseas countries and territories with the European Community ("Overseas Association Decision") Official Journal L 314, 30/11/2001 P. 0001 – 0077.

[56] Iris H-Y Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," Connecticut Journal of Int'l Law, Vol. 31:123 (2015): 3-24.

[57] Ibid.

[58] Ibid, 3-9.

[59] Ibid, 7.

specialization within niche markets. [60] The four larger financial centers specialize, with Bermuda having the third largest center for reinsurance in the world, and second largest captive insurance domicile; Cayman Islands having the world's leading center for hedge funds; the British Virgin Islands being the world's leading domicile for international business company registrations; and Gibraltar providing all three services as Europe's financial services gateway to the UK, and the UK's gateway to Europe. [61] The smaller OFCs of Anguilla, Montserrat, and Turks & Caicos Islands focus primarily on company incorporations.

The differentiation strategy of the UKOTs centers on the provision of low tax rates, regulatory efficiency, privacy, UK based common law, political stability, and the provision of high quality customer service by a highly skilled labor force.[62] Based on their small size and the minimal fiscal requirements of the UKOTs as microstates, they offer low to zero national and corporate tax rates.[63] Due to the large scale of the fiscal requirements of the larger states, large onshore centers cannot significantly lower their taxation rates to compete with this level of taxation; granting the territories a distinct advantage.

The territories are efficiently regulated, up to date and in compliance with international standards at the unilateral (US, UK), bilateral (UK), regional (EU) and multilateral levels (FATF, OECD, G20).[64] They advertise themselves as safe, efficient,

---

[60] Clegg and Gold, "The UK Overseas Territories: a decade of progress and prosperity?" 127.
[61] Ibid.
[62] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 3-9.
[63] Ibid.
[64] Rawlings, 58-63.

well regulated jurisdictions continually instituting sound regulation backed by stable government administration.[65] They have built their brands on reputations as credible jurisdictions for corporations and financial structuring relative to their often larger competitors.[66] The territories have steered clear of financial crime, money laundering, black markets, low transparency activities, or exploitative arbitrage. This track record of regulatory efficiency and adherence to international standards provides a safe environment for the movement of capital given that it will not be frozen by law enforcement due to illegal practices and financial crime.[67]

Local privacy laws guarantee a great degree of comfort for clientele while not compromising legal transparency in financial matters.[68] The UKOTs financial services sectors utilize UK based common law, the preferred international legal standard utilized by London (as the world's leading financial center) and other major financial centers globally (including Hong Kong, Singapore, and Mauritius).[69] This allows for a great degree of compatibility with the laws of other financial center worldwide as well as for great mobility among lawyers and accountants between jurisdictions.

Complimentary to competent local workforces educated in the English language, the UKOTs financial services sectors have been able to successfully recruit a sufficient amount of specialists in accounting, law, and IT services from around the globe.[70] With few exception (Montserrat, Anguilla), the UKOTs have a relatively high quality of life

---

[65] Ibid.
[66] Chiu, "From Multilateral To Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 9.
[67] Rawlings, 58-63.
[68] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 3-9.
[69] Ibid.
[70] Ibid.

with the basic infrastructure, comforts, and amenities as most areas of the developed world. They are all politically stable democracies in the Westminster tradition with shared sovereignty with the UK who serves as the defacto maintainer of order and stability.[71] There is little fear of the likelihood of political disorder that would disrupt business. The combined differentiation elements of the UKOTs financial services sectors attract clients to their jurisdictions rather than their competitors.

The comparative advantage strategy (cost strategy) of the UKOTs centers on multiple tiers of cost.[72] The first tier of costs is derived from the territories differentiation strategy in which financial services companies operating within the jurisdiction charge premium prices for international access to high quality financial services products that take advantage of the privacy, low taxation, and regulatory security of the jurisdiction.[73] Those services are provided via a highly skilled workforce providing efficient customer services and quick turn around and response times, and command a higher price. The second centers on providing cheaper government based rates for incorporations, insurance, domiciling and other services that are paid directly to the regulatory authorities in the territories.[74]

However, international financial and economic regulation hold the possibility of crippling the territories' competitive advantages.[75] Regulation can restrict competitive advantage factor endowments and create uneven competition (uneven playing field),

---

[71] Peter Clegg & Peter Gold, "The UK Overseas Territories: a decade of progress and prosperity?" 115-120.
[72] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 3-9.
[73] Ibid.
[74] James McConville, An Island of Captives: The BVI and its not so little Secrets," Original Law Review, Vol. 6, No 2 (2010): 40-56.
[75] Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty," 58-63.

advantaging some parties, while placing others at a competitive disadvantage.[76] The UKOTs have had to guard and defend against policies that would impede their ability to differentiate their product at a lower comparative cost than their competitors within their chosen niche markets.[77]

Rawlings describes the manner in which the new regulatory regimes increase due diligence, labor, facilities, technology, and specialist cost. [78] Jurisdictions may lack the regulatory infrastructure in terms of personnel, technology, security, and political access necessary to maintain compliance with new international standards. Transparency and reporting regimes in the post crisis period have increased operating costs in the UKOTs and all jurisdictions globally, complicating the process of maintaining regulatory due diligence.[79] Substantially increased due diligence costs lower the monetary benefits gained by governments hosting offshore facilities; possibly even below the price of profitability.[80]

Regulation that minimizes the UKOTs' ability to differentiate themselves from their competitors places them at a competitive disadvantage relative to their competitors. In practical terms, regulations that decrease privacy, penalize low or no taxation, and complicates or decrease regulatory inefficiency harm the ability of the UKOTs to compete. The combination of the decrease in comparative and differential advantages in turn undermines the ability of the UKOTs to effectively service niche markets or pursue

---

[76] Ibid.
[77] Peter Clegg, "The United Kingdom and its Caribbean Overseas Territories: Present Relations and Future Prospects," 57-59.
[78] Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty," 58-63.
[79] Ibid.
[80] Ibid.

specialization within their focus strategy. Without being able to offer significant jurisdictional advantages, clients will choose different financial centers with whom to do business. The entire process may serve to eliminate any competitive advantages the UKOTs have built over time and collapse the entire financial services industry.

2.4 Shortcomings of the Literature

The literature's conventional approaches are characterized by an agency deficit in which little agency is attributed to the territories in the regulatory reform process. The international political economy and tax law approaches attribute financial services reform in small OFCs to efforts by states with large onshore financial centers, including the UK, to regulate transparency gaps and harmful tax competition by small offshore financial centers unilaterally and via multilateral institutions. The geopolitics and shared sovereignty approaches attribute regulation and regulatory reform of the territories' financial services to the UKs efforts to protect both the territories from regulation harmful to their economies and itself from potential liabilities caused by the territories' financial services industries. Common to each approach is the regarding of the UKOTs as merely principals in regulatory processes in which they are actively involved for their own survival.

Contrary to this paradigm, OFCs exercise agency actively lobbying both large states bilaterally as well as multilateral institutions to constrain regulatory efforts harmful to their financial services industries. In multilateral financial and economic institutions where large states have sought to delegitimize the financial services model of small OFCs, the OFCs have used the same institutions as forums by which to levy international

law to demand a level playing field with large countries in terms of regulatory requirements.[81] The most effective OFCs have found the means to effectively preserve their financial services industries and bolster their sovereignty despite their small size and power deficit.[82] While small OFCs do not place regulation or regulatory reform on the agenda of regulatory authorities, they are active in their responses to both the regulations and authorities. As such, the presentation of the UKOTs merely as principals is not wholly accurate as the literature does give some indications of agency exercised by small OFCs in their ability to respond to regulatory pressures.

In the area of competitive advantage, the financial services literature on small OFCs and the UKOTs focuses primarily on differential and focus advantages, with little attention given cost advantages (comparative advantage). Costs are addressed primarily in terms of due diligence costs with little attention to labor, facilities, and technology expenses. However, cost is a significant factor in the success of the UKOT model. The fee structure in particular charged by OT governments is comparatively low in comparison to onshore competitors. By contrast firms working within the industry charge premium prices based on quality of service. Firms pay top salaries to attract a highly competent cadre of specialists (lawyers, accountants) to very small islands, often distant from their place of origin. Cost structure, while not the most important factor in the success of UKOTs financial services model, is never the less important in their success warranting increased attention.

---

[81] Morris and Moberg, "Cartelizing Taxes: Understanding the OECD's Campaign against "Harmful Tax Competition,"49-51.

[82] Rawlings, 58-63.

CHAPTER 3

THEORETICAL FRAMEWORK

The review of literature pertinent to the case points to two possible causal mechanisms within the reform process capable of explaining the reform outcome: overregulation and competitive advantage. The literature implies that elements of overregulation are present in the post-crisis regulatory architecture/regimes, and would likely have a negative effect on the competitive advantages the UKOTs built in financial services over time. Overregulation theory is based on core principles identified within other aspects of positivist regulatory theory including public interest and market failure, capture and private interests, regulatory design & regulatory failure, and unintended consequences. The review of literature identifies very explicit references to competitive advantage in the financial services models of small OFCs. The theory of competitive advantage within economics and business was popularized by Michael Porter's strategy based application of competitive advantage, and thereafter extended within those fields for greater application. Together, the theories of overregulation and competitive advantage in tandem form the theoretical framework upon which the study is built. They provide the foundation upon which the research method and design are constructed, informing the choice of method and type of evidence deemed necessary to substantiate the case.

3.1 Hypothesis

The reform pressures facing the UKOTs were characterized by elements of overregulation, and the adoption or rejection of each prescribed reform policy was based

on its negative or positive impact on the territories' international competitive advantage in financial services. If a policy did not impose a likely decrease on competitive advantage, it was met with a compliance response and adopted as part of the reform. If a policy was likely to impose a decrease on competitive advantage, it was rejected, forgoing compliance and followed by an alternative response to overregulation.

3.2 Over-Regulation Theory

Overregulation theory is used within the study to provide the regulatory context within which the reform pressures are interpreted by the UKOTs.[83] The theory provides a framework for explaining the territories' responses to excessive regulation of their financial services industries by regulatory authorities. Over-regulation, defined as 'over-stringent' and 'over-prescriptive' regulation that reduces the possibilities for innovation and research, is largely executed via command and control regulatory mechanisms.[84] Overregulation theory itself is founded on the assumption that government or institutional regulations imposed on firms or industry undermine their positive effects on the market place.[85] Over-regulation constitutes a form of regulatory failure characterized by over-precision, over-formalism, and punitive enforcement that may reduce the possibilities for cooperative relationships and healthy regulatory communications that produce self-

---

[83] The deduction is made from Baldwin, Cave, and Lodge's definition of over-regulation. Baldwin, Robert, and Martin Cave, and Lodge, Martin. *Understanding Regulation: Theory, Strategy, and Practice 2nd Ed.* Oxford: Oxford University Press, 2012, 70. Vanessa Houlder, "UK reaches tax agreement with overseas territories," Financial Times, December 3, 2015, accessed June 2, 2017, https://www.ft.com/content/749e219e-99e3-11e5-9228-87e603d47bdc.

[84] Ibid.

[85] Bruno, Paul "Overregulation Theory isn't enough to explain negative voucher effects," *Brown Center Chalkboard: The Brookings Institute*, Monday, February 29, 2016, accessed April 17, 2017, https://www.brookings.edu/blog/brown-center-chalkboard/2016/02/29/overregulation-theory-isnt-enough-to-explain-negative-voucher-effects/.

defeating outcomes.[86] Over-regulation is most commonly associated with command and control mechanisms and may come about as the product of either capture (private interests), ill-suited world views (ideas), poor regulatory design, as an unintended consequence of a meaningfully intended regulation, as the product of competing multiple regulatory regimes, or as a part of meeting public interest objectives.[87]

Over-regulation as the product of capture suggests that the dominant entities within a given industry (private interests) lobby politically the institutions and individuals central to the development of regulation to structure the regulation in a manner granting them advantages over their competitors.[88] In exchange for resources and political support those key individuals and institutions support the regulatory agenda of the dominant entities in the given industry. Over-regulation as an extension of a predominating world view or idea is subjectively assessed based on the ideas and economic climate of the governing authorities.[89] Liberalization and privatization typically are associated with a positive view towards less regulation and are used to justify large scale de-regulation of industry; while redistributionism tends to be equated with greater regulation.[90]

Overregulation may also come about as a product of regulatory designs that ill target the problem it seeks to solve through over and under inclusion, by emphasizing precision over objective based compliance, by valuing sanctions over persuasion, and by

---

[86] Baldwin, and Cave, and Martin , 69-70.
[87] Ibid, 72-77.
[88] Dudley, Susan E., and Brito, Jerry. *Regulation: A Primer 2nd ed*. Arlington, Va: Mercatus Center at George Mason University, 2012, 15.
[89] Lodge, M. K. & Wegrich, D. A., *Managing Regulation: Regulatory Analysis, Politics and Policy: The Public Management and Leadership*. New York: Palgrave, 2012, 36-39. Baldwin, and Cave, and Martin, 75-76.
[90] Dunne, Niamh. *Competition Law and Economic Regulation: Making and Managing Markets*. Cambridge: Cambridge University Press, 2015, 148-150.

penalizing ignorance and inability rather than creative compliance.[91] Over-regulation may also come about as an unintended consequence of the unforeseen (or unknown) effects of a regulation.[92] Those possible effects were not taken into consideration nor planned for in establishing the given regulation undermining the actual intended effect of the regulation.[93] Competing regulatory regimes may also give rise to over-regulation, where individually each regime itself would be adequate and non-burdensome.[94] Over-regulation may be deemed as an acceptable regulatory outcome necessary to protect the public interest by rectifying select market failures or achieving social objectives related to equity, justice, solidarity, and safety.[95]

Positivist regulatory theory largely suggests that overregulation over time will likely result in *non-compliance, creative compliance (regulatory gaming), attempted capture, unregulated market emergence (black markets/black trade), innovation stagnation, firm/industry collapse, or regulatory rollback (deregulation or reregulation)*. In response to excessive regulation firms will likely first conduct an assessment of the regulator's ability to monitor, enforce, and sanction those who do not comply. If the regulator cannot adequately perform one or a combination of these, firms are likely to opt for noncompliance.[96] Firms will then conduct a cost benefit analysis as to whether compliance or sanctions yield a greater cost. If non-compliance yields a lower cost than

---

[91] Baldwin, Robert, and Martin Cave, and Lodge, Martin. *The Oxford Handbook of Regulation.* Oxford: Oxford University Press, 2010, 12-13.
[92] Lodge and Wegrich, 33-36. Dudley and Brito, 18.
[93] Ibid, 16.
[94] Competing regimes
[95] Dunne, 143-145.
[96] Lodge and Wegrich, 76-80.

compliance firms will opt for noncompliance.[97] If the costs of compliance is lower but still burdensome, firms may undertake creative compliance.[98] They will seek to game the regulator by side-stepping the rules in a manner negating the regulation, but not actually breaking its terms. If both compliance and sanctions costs are too high, firms will likely attempt to capture the regulation process by lobbying the institutions and individuals central to regulatory development and implementation.[99] They will exchange influence and resources for the re-structuring of regulation in their favor. If both compliance and sanctions costs are too high, and the regulatory process cannot be captured, firms may resort to moving their activities to less regulated areas with less transparency, creating a competing unregulated black market.[100]

Where over-regulation persists, innovation is hurt as regulation inhibits efficient competition, limits investment & innovation, and restricts the use and implementation of new technology & pursuit of new research.[101] Regulation may minimize or eliminate market based incentives to innovate, ultimately resulting in stagnation and poorer product quality. The absence of both efficient competition and innovation incentives, teamed with significant compliance or sanctions costs, stands to drive firms out of business and ultimately collapse the entire industry due to heavy regulatory burden.[102] Faced with non-competitive or collapsing industry, governing entities must rollback the regulatory regime in favor of either deregulation, regulatory reform, or reregulation.[103] Deregulation

---

[97] Ibid.
[98] Baldwin and Cave, and Martin, 70-71, 232.
[99] Dubley and Brito, 15.
[100] Baldwin and Cave, and Martin, 70.
[101] Dudley and Brito, 69-71.
[102] Ibid,67-71.
[103] Dunne, 143-145.

removes significant government intervention into the market while reform or reregulation emphasizes less command and control tools in favor of smart, meta, legal, and market based approaches.[104]

The UKOT financial services reform case represents a regulatory scenario characterized by overregulation.[105] The post-crisis reform pressures for early, non-universal, and targeting adoptions undermining their ability to effectively compete in the financial services industry are all elements present in the policies prescribed for UKOT adoption.[106] The pre-financial crisis procedural standard of implementation established for international economic and financial regulatory standards was universal adoption within a fixed time frame.[107] The introduction and adoption of international regulatory standards was typically coordinated on a multilateral basis by the FATF, G20, IMF, and OECD in order to maintain a level playing field in the regulatory order. Simultaneous implementation and universal adoption were used to maintain a level playing field and fair competition among competitors as none are relatively disadvantaged based on the chronology of implementation.

By contrast, non-universal and early targeted policy adoptions, prescribed with the threat of both immediate and long term sanction for noncompliance, create an uneven

---

[104] Ibid.

[105] The conclusion is drawn from Baldwin's definition and the international case made against their excessive regulation of Small Offshore Financial Centers by the Step group in the Level Playing Field Initiative publication. Stikeman Elliott Group, "Towards a Level Playing Field: Regulating Corporate Vehicles in Cross-Border Transactions," INTERNATIONAL TRADE AND INVESTMENT ORGANISATION AND THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS (2002): 10-16, accessed July 1, 2017, https://www.step.org/sites/default/files/Comms/Towards_A_Level_Playing_Field2ndEdition.pdf.

[106] There requirements are present in US FATCA, UK Public Central Registers of Beneficial Ownership, OECD CRS & AEOI, and EU AMLD4. See Appendix 1.

[107] Stikeman Elliott Group, "Towards a Level Playing Field: Regulating Corporate Vehicles in Cross-Border Transactions," 10-16.

playing field with uneven competition by imposing greater regulatory requirements on some competitors as opposed to others within the same industry.[108] Specific jurisdictions are targeted, imposing higher regulatory costs and operational restrictions on their industries, undermining their ability to compete with competitors not targeted by the regulations. The Level Playing Field Initiative was central in establishing a standard emphasizing common regulatory standards for all jurisdictions both large and small. [109] The initiative was introduced at the behest of small OFCs to ensure that their ability to compete was not impeded by larger states in multilateral institutions. However, the implementation of the post-crisis financial and economic regulatory regimes have been characterized by these forms of overregulation with which small OFCs have had to contend.

3.3 Theory of Competitive Advantage

The theory of competitive advantage is used in the study to explain the basis for the UKOTs choice of response to existing reform pressures. Porter's theory of competitive advantage describes competitive advantage as the pursuit of strategies allowing a company or state to produce goods and services at a lower price in a more desirable fashion than their competitors.[110] Maximizing conditions that enhance competitive advantage allow a country or firm to generate more sales or superior margins than its competition.[111] Competitive advantage factor attributes include cost structure,

---

[108] Ibid.
[109] Ibid.
[110] Joe G. Thomas and Bruce Walters, "GENERIC COMPETITIVE STRATEGIES," Reference for Business, accessed July 1, 2017, Read more: http://www.referenceforbusiness.com/management/Ex-Gov/Generic-Competitive-Strategies.html#ixzz4pGnpGCsXGENERIC COMPETITIVE STRATEGIES
[111] Ibid.

brand, quality of product offering, distribution network, intellectual property and customer support.[112] The successful pursuit of a strategy that most effectively balances between price and quality within a given market, will usually lead to a successful product or service, ultimately increasing relative competitive advantage. Porter suggested that to maximize competitive advantage entities needed to organize and pursue the factor endowments through generic strategies centered on comparative advantage (cost), differential advantage (differentiation), and focus advantages (Niche Markets/Specialization).[113]

Comparative Advantage describes an entities ability to produce a product or service at a lower cost than its competitors.[114] Through cost advantages entities can increase market share by having the lowest price to value ratio, appealing to cost-conscious or price-sensitive consumers.[115] Cost advantages can be derived from economies of scale, more efficient internal systems, and location in geographies with low labor or low property expenses. Porter suggests that to maintain cost advantages entities must find either a low-cost base of labor, materials, facilities, or a combination of these.[116] The more sustainable an entity is able to make its competitive advantages, the greater the difficulty for its competitors to narrow those advantages.

Differential advantage describes those advantages gained by a firm or state providing products or services different to those of its competitors.[117] Differential

---

[112] Ibid.
[113] Ibid.
[114] James Manktelow, ed. "Porter's Generic Strategies: Choosing Your Route to Success," Mindtools, accessed July 1, 2017, https://www.mindtools.com/pages/article/newSTR_82.htm.
[115] Ibid.
[116] Ibid.
[117] Thomas and Walters, "GENERIC COMPETITIVE STRATEGIES."

advantages are created when those differing goods and services stand out from those offered by competitors and are seen as superior in quality or functionality. Differentiation may be achieved through improvements to goods and services resulting in the delivery of higher quality or specialized products for which consumers are willing to pay a premium price.[118] Differential advantages are driven by advanced technology, patent-protected products & processes, unique technical expertise, superior personnel, innovation, customer service, faster delivery, marketing, and strong brand identity.[119] Porter suggests that differentiation strategies are most appropriate where the target market or demographic is not price-sensitive, the market is competitive or saturated, specific needs in the market are possibly under-served, and where the entity has unique resources and capabilities to be able to satisfy those needs in a manner difficult to copy by competitors.[120] A successful differentiation strategy not only inspires brand loyalty for specific product or services, but also allows for the charging of a premium price for goods and services.

Focus Advantages are achieved through a strategy in which business or states target only select target markets, segmenting their focus both geographically and demographically to find a niche.[121] Focus market strategies targets distinct groups with specialized needs within a given market or industry.[122] Porter suggests that a focus strategy should target market segments that are less vulnerable to substitutes or where

---

[118] Ibid.
[119] Ibid.
[120] Ibid.
[121] Manktelow, ed. "Porter's Generic Strategies: Choosing Your Route to Success."
[122] Thomas and Walters, "GENERIC COMPETITIVE STRATEGIES."

competition is weakest to earn above-average return on investment.[123] Once the focus is decided, necessary adjustments can be made to secure comparative and differential advantages within the target market. Small businesses or states are able to establish themselves in a niche market using a focus strategy where they would be unable to compete in more general markets.

[123] Ibid.

CHAPTER 4

RESEARCH DESIGN

4.1 Research Design

Research Type: Case Study (Within Case)

Research Method: Mixed Method - Explaining Outcome Process Tracing & crs-Qualitative Comparative Analysis (Single Outcome Study/ nongeneralizable)

Causality Type: Generative

Causal Mechanism: Type - Eclectic Theorization (Combine of two Systematic Causal Mechanisms) – Overregulation & Competitive Advantage

Theory: Overregulation theory is based on core principles identified within other aspects of positivist regulatory theory including public interest and market failure, capture and private interests, regulatory design & regulatory failure, and unintended consequences. Competitive Advantage within this study will mainly reference Michael Porter's strategic application of the theory.

Design Objective: The objective of the research design is to craft a minimally sufficient explanation for the UKOT reform outcome, accounting for all important aspects of the reform without redundant factors present. The explanation should account for the adoption of reform policies between 2014 and 2016 by the territories from among polices prescribed by regulatory authorities.[124]

---

[124] The research design is based on the Explaining Outcome model as described by Bearch and Pedersen. Beach, D. and Pedersen, R., "What is Process Tracing Actually Tracing? The Three Variants of Process Tracing Methods and their Uses and Limitations," University of Aarhus, (January 2011), 22-28, accessed July 1, 2017, http://https//www.researchgate.net/publication/228162928_What_is_Process-Tracing_Actually_Tracing_The_Three_Variants_of_Process_Tracing_Methods_and_Their_Uses_and_Limitations.

Design:

The essential task in tracing the reform outcome lies is identifying how each policy populating the reform was chosen in meeting the territories' interests. The literature and evidence surrounding the case present two possible causal mechanisms within the process explaining the choice of policy adoptions: overregulation and competitive advantage. Elements of overregulation present in the prescribed policies stood to do significant harm to UKOTs financial services by reducing the competitive advantages the territories built over time. Therefore it may be theorized that the basis for the reform package is likely either the product of efforts to mitigate the effects of overregulation, efforts to maintain competitive advantage, or the product of efforts to protect competitive advantage from the effects of overregulation. The likely answer is to be found in a deductive exploration of the reform process, tracing its evolution and eliminating those theories unable to provide a minimally sufficient explanation for the choice of policy adoptions.

However, pursuit of the research question by conventional process tracing methods poses numerous challenges based on the nature of the case and question. The reform question is one of causality seeking to identify the relationship between variables driving the process towards the reform outcome. Whereas, the likely causal mechanisms at the center of the process are conditional in nature, designed to assess whether actions within the process parallel select characteristics within each theory.[125]

---

[125] The conclusion is drawn in regard to overregulation theory and competitive advantage based on the explanations of Fischer & Maggetti. Manuel Fischer & Martino Maggetti Qualitative Comparative Analysis and the Study of Policy Processes, Journal of Comparative Policy Analysis: Research and

Process tracing provides for the overall structure of the study, particularly in regard to identifying the complex causal relationships driving the reform process. It is an efficient means by which to pursue a reform question who's hypothesis' is founded on two systemic level theories.[126] Process tracing however is not an efficient means for assessing overregulation responses and competitive advantage impact which are conditional in nature. A simple reproduction of events would only provide a record of adoptions and rejections without an explanation of the accompanying process. A mere rebuilding of a chronology of events based on evidence would not sufficiently inform as to how the reform was package was chosen. Given this limitation, an additional method must be paired with process tracing to assess conditionality, from whose results the tracing of the populating stage of the reform may be completed.

The research question therefore warrants an unconventional mixed method approach. Qualitative Comparative Analysis is the most efficient means available among qualitative methods to assess causality via conditionality based on necessity and sufficiency.[127] It provides the necessary complement to process tracing necessary to successfully pursue the research question. However, the combination of process tracing and QCA is uncommon and there are no clear guidelines for the process.[128] This form of

---

Practice, (2016): 1-17,
DOI: 10.1080/13876988.2016.1149281, http://dx.doi.org/10.1080/13876988.2016.1149281.

[126] Beach and Pedersen, "What is Process Tracing Actually Tracing? The Three Variants of Process Tracing Methods and their Uses and Limitations," 4-6.

[127] Fischer & Maggetti, "Qualitative Comparative Analysis and the Study of Policy Processes," 1-3.

[128] Carsten Q. Schneider and Ingo Rohlfing, "Combining QCA and Process Tracing in Set-Theoretic Multi-Method Research," Sociological Methods & Research 42, no. 4 (March 22, 2013): 559-597, accessed July 22, 2017, www.sagepub.com/journalsPermissions.nav DOI: 10.1177/0049124113481341 smr.sagepub.com.

Ibid, 560. "Although it is becoming more common in empirical research, there are only very limited guidelines on how to systematically integrate QCA and process tracing in a single analysis. Ragin

mixed method research can be particularly complex given the variations in both the types of process tracing and QCA. With a minimum of three types of process tracing and 2 types of QCA in each method, the possible combinations exceed 10. This study seeks to combine Explaining Outcome Process Tracing and Crisp Set QCA, with Process Tracing providing the overarching method and QCA used as an analytical tool within it.

Through an explorative deductive process, Explaining Outcome Process Tracing seeks only to provide a minimally sufficient explanation for the reform outcome rather than build or test theory.[129] A minimally sufficient explanation accounts for all they key elements of the reform without gaps in logic or chronology, and is not generalizable beyond the case.[130] In the UKOT financial services reform case, a minimally sufficient explanation for the reform outcome includes:

i. An explanation of the variety of responses to the policies prescribed by regulatory authorities.
ii. An explanation of the basis for the choice of response to each policy.
iii. An explanation for the adoption of a prescribed policy in a form other than its original presentation by regulatory authorities.

These requirements are drawn from the literature and accompanying evidence

---

emphasizes the general importance of case studies—mainly because QCA, much as regression analysis, infers causation from a cross-case association. There is, however, no elaboration of how exactly process tracing and QCA should be linked…Case studies benefit from QCA by disciplining the analysis of set relational patterns that are difficult, if not impossible to identify in small-n research. At the same time, process tracing is an invaluable complement for QCA in order to discern the causal mechanisms behind a set relational pattern and further improve the theory and QCA model. Depending on the parameters of the study (necessity vs. sufficiency, etc.), we have shown how to use QCA results for systematic case selection, how to derive clues about the potential reasons of deviance from the results, and how process tracing insights feed back into the pre-QCA stage and the actual QCA."

[129] Beach and Pedersen, "What is Process Tracing Actually Tracing? The Three Variants of Process Tracing Methods and their Uses and Limitations," 22-28.

[130] Ibid.

surrounding the case.[131] A comparison of prescribed and adopted policy indicates that at least two policies were adopted by the UKOTs in a form other than their original presentation by the regulatory authority (FATCA, Public Central Registers of Beneficial Ownership).[132] This immediately demonstrates a series of rejection and noncompliance responses (rejection of the original policy) in the reform process adjacent to the adoption and compliance responses that populated the reform. For a minimally sufficient explanation, all variations of response leading to the reform outcome must be accounted for by the theory including rejections. The mechanism must distinguish between these individual responses and the motivations behind them in regard to each prescribed policy.

QCA is applied within this overarching Explaining Outcome Process Tracing Model as an analytical tool rather than research method. The QCA's purpose is limited to identifying which mechanism is operating at the decision making stage, but not extending into the other steps in the reform process. A full-fledged QCA design with a comparative analysis, as done in the using QCA as a research method, is not necessary to trace the decision making stage. In this limited QCA application, evidence surrounding the case is sufficient to inform whether the responses to each policy met the conditions for overregulation responses, and whether each prescribed policy meets the conditions for increasing or decreasing competitive advantage. The adjoining steps in the process are

---

[131] Explaining outcome PT relies heavily on the researcher's knowledge to determine the basis and configuration of a minimally sufficient explanation.

[132] "Foreign Account Tax Compliance Act (FATCA)," US Department of the Treasury, Accessed July 1, 2017, https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx. Patrick Wintour, "Overseas territories spared from UK law on company registers," The Guardian, April 12, 2016, accessed July 1, 2017, https://www.theguardian.com/business/2016/apr/12/overseas-territories-spared-from-uk-law-on-company-registers.

traced through standard process tracing methods.

However, the integration of limited application QCA in the process tracing requires a unique nonconventional application of QCA to be functionally compatible and meet the needs of the case. First, the unit of analysis assessed by the QCA is the Y variable in the operational form of policies rather than the typical case units used in QCA. The reform question fundamentally revolves around the adoption of policy from a set of prescribed policies within a single case. As a result the unit of analysis is policy. Second, the QCA will be based on deduction rather than the inductive form typical of QCA. A deductive rather than inductive application was preferable because the necessary & sufficient conditions for both overregulation responses and competitive advantage were present in the literature, official documents, and industry reports. There was little utility in using QCA to assess which conditions are necessary or present for overregulation responses or competitive advantage decreases & increases. The unknown in the process was whether the polices prescribed to the territories prompted responses mimicking the characteristic conditions of overregulation, or whether the policies met the conditions necessary to initiate prospective decreases or increases in competitive advantage. A deductive approach matching each policy's effects to known conditions provides the answer. Traditional applications of QCA would take the opposite via induction and from the analysis inform what conditions are present and necessary or sufficient for the responses or impact.[133]

Despite these peculiarities, the analytical process and structure of the QCA remain

[133] Fischer & Maggetti, "Qualitative Comparative Analysis and the Study of Policy Processes," 4-7.

conventional founded on a typical eight step process.[134]

1. Refine the QCA Evaluation Question
2. Select the Unit of Analysis and Outcomes to be Studied
3. Select "General Conditions"
4. Identify "Necessary & Sufficient Conditions"
5. Collect and Compile Data into a "Raw Data Table"
6. Calibrate the Data
7. Group Sets of Practices Together in a "Truth Table"
8. Summarize Findings

From the QCA result a comparison between policy impact on competitive advantage and reform policy adoptions & rejections can be made. The comparison will inform as to whether policies with null or positive impact on competitive advantage were adopted, as well as whether those with a negative impact were rejected. The QCA result further provides for a comparison between responses to each policy and the dominant overregulation responses identified in the theory. A positive match would confirm the variation of responses in the reform process beyond compliance & adoption, and noncompliance & rejection.

Explaining Outcome Process Tracing was specifically chosen because its singular pursuit of a minimally sufficient explanation may be pursued through the combination of

[134] Kelly J. Devers, PhD, Nicole Cafarella Lallemand, MPP, Rachel A. Burton, MPP, Leila Kahwati, MD, MPH, Nancy McCall, ScD, & Stephen Zuckerman, PhD, "Using Qualitative Comparative Analysis (QCA) to Study Patient-Centered Medical Homes: An Introductory Guide," Urban Institute/RTI International, (September 2013): 1-42, accessed August 2, 2017, https://innovation.cms.gov/Files/reports/QCA-Report.pdf.

multiple causal mechanisms.[135] The literature and evidence surrounding UKOT financial services reform case points to overregulation & competitive advantage as the likely active mechanisms present in the reform process. If neither mechanism is able to sufficiently explain the outcome, this process tracing method allows them to be combined for a broader base of explanation.

Design Structure:

The study's design begins with the division of the reform into five (5) steps contextualizing the emergence of reform pressures (X variable) and ending with the reform outcome (Y variable). The steps are based on a chronology informed by the review of academic literature. From this division the reform process is traced across five steps critical to the reform outcome. Figure 4.1 illustrates the process tracing method through 5 steps. [136]

Step 1: Global Financial Crisis Erodes the Previous Regulatory Paradigm

Step 2: The Post Crisis Regulatory Architecture: Information Reporting Regimes

Step 3: Reform Pressures: Prescribed Policies by Multiple Regulatory Authorities

Step 4: Overregulation: Prescribed Polices contain elements of Overregulation threatening the UKOT's Competitive Advantage in Financial Services

Step 5: Response to Reform Pressure and Choice of Policy Adoptions

Steps 1-4 provide the background and critical events that set the context for the emergence of reform pressures characterized by overregulation. Step five is the critical step in the reform, the point at which the choice of policy adoptions versus rejections is

[135] Beach and Pedersen, "What is Process Tracing Actually Tracing? The Three Variants of Process Tracing Methods and their Uses and Limitations," 22-28.

[136] See page

made that characterize the entire process. The element of choice is critical as it is the point in the process where the activity of primary interest occurs and the causal mechanism is most active. The fifth step is therefore structured as a three stage deductive process of tracing, integrating QCA, to determine which mechanism dominated the decision making process.[137] In stage one and two of the deductive process overregulation and competitive advantage are traced and analyzed individually for their capacity to provide a minimally sufficient explanation. The active mechanism is deduced by the logic of elimination dismissing mechanisms with insufficient explanation. If neither mechanism is successful, then their combination is examined as an option by which to explain the reform outcome.

Specific to stage 1, QCA is used to confirm the overregulation responses of the territories to the policies prescribed by regulatory authorities. The result will inform whether the territories met the necessary and sufficient conditions for each overregulation response. The confirmation will be matched against the causal mechanism to illustrate whether the chronology of evidence parallels the causal mechanism accounting sufficiently for each step in the process of the reform outcome. In the second stage, QCA will be used to confirm each policy's negative or positive impact on competitive advantage. The result will inform whether each policy met the conditions for a significant decrease or increase in competitive advantage. The confirmation will be matched against the causal mechanism to illustrate whether the chronology of evidence parallels the causal mechanism accounting sufficiently for each step in the process in the reform outcome. In the third stage, the results of the first two stages will be combined to

[137] The three stage deductive method is used as described by Beach and Pedersen.

determine whether the hypothesized composite mechanism parallels the chronology of evidence in the process leading to the reform outcome closely enough to grant a minimally sufficient explanation.

Each of the three stages is further subdivided divided into three levels including: theoretical level, empirical level, and testing.[138] At the theoretical level, all relevant variables in the observed association are defined (X-Multilevel Reform Pressures/Independent, Y-Reform Outcome /Dependent Variable). The causal mechanism or explanatory variable (overregulation/competitive advantage) will be justified from the academic literature. It will explain why each segment of the mechanism is necessary, the manner in which each works individually and what it explains sufficiently (vs insufficiently). Specific to the third stage, the theoretical focus will be on the workings of the composite mechanism of overregulation and competitive advantage in tandem. In the theoretical stage the necessary and sufficient conditions regarding overregulation responses and increases or decreases in competitive advantage are identified, justified, and calibrated according to the general methods of QCA.

At the Empirical level all variables and mechanisms are operationalized and evidence is gathered on all variables and causal mechanisms. Multilevel regulatory reforms pressures (X) are operationalized as prescribed policy, reforms as adopted policy, overregulation as responses (compliance, creative compliance, noncompliance, capture, black market/low transparency) and competitive advantage as cost, differentiation, and segmentation (niche markets). Figure 4.2 lists the operationalization of the major

[138] Beach and Pedersen, "What is Process Tracing Actually Tracing? The Three Variants of Process Tracing Methods and their Uses and Limitations," 7-11.

variables and mechanisms. [139]

At the testing level, the evidence in the data set is evaluated against set necessary and sufficient conditions to determine if it parallels the causal mechanism under consideration.

Figure 4.2: Operationalized Variables and Mechanisms

Variables	Operationalization
Reforms pressures (X)-	Prescribed Policy by regulatory authorities: OECD CRS&AEOI. US FATCA, UK CDOT, ETC
Reforms (Y)	Adopted Financial Services Policy 2014-2016: OECD CRS&AEOI. US FATCA, UK CDOT, ETC
Overregulation (CM1)	Regulatory policy with nonuniversal requirements, requirements for early adoption, and specific jurisdictional targeting
Overregulation Responses (CM1)	Overregulation responses: compliance, creative compliance, noncompliance, capture, and black market/low transparency activities.
Competitive Advantage (CM2)	Comparative Advantage, differentiation, and segmentation factors. Their sub-factors include due diligence costs, labor costs, technology-facilities-specialist costs, tax rate, common law, regulatory efficiency, niche markets

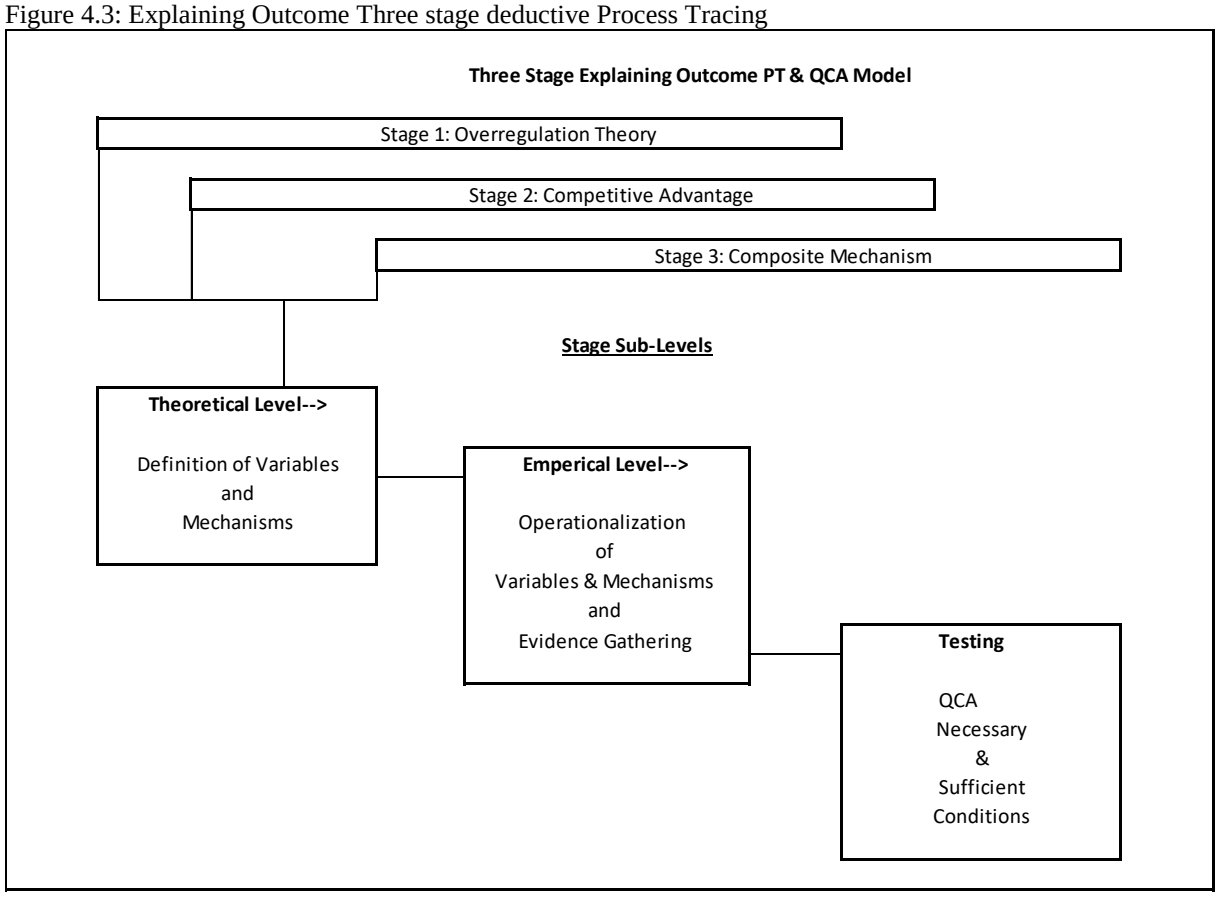
Specific to testing in the third stage, the evidence (prescribed policy, adopted policy, rejected policy, adoption-evaluation-reporting-infractions-etc, collective costs, differential factors/niche markets) is matched against the composite competitive advantage-overregulation causal mechanism (Increase/Decrease in Competitive Advantage vs Overregulation Responses) to identify if the combination provides a minimally sufficient explanation of the reform outcome. Practically, the negative or positive impact of each prescribed policy (X) on competitive advantage factors is weighted against the chosen overregulation response to identify whether the causal mechanism logically mimics or parallels the pattern of adoptions constituting the reforms. Figure 4.3 illustrates the three stage deductive process used for tracing step 5 using QCA.

[139] See page

4.2 Data sources: Process Tracing & QCA

This study utilizes multiple data sources for process tracing and QCA. The academic literature provides the context and chronological reference for tracing the process. Prescribed policy provides the practical details of the independent variable, while adopted policy provides the practical details of the dependent variable.

Figure 4.3: Explaining Outcome Three stage deductive Process Tracing



Compliance and cost evaluations provide evidence of the activity of the overregulation and competitive advantage causal mechanism within the process. Lobbying and membership reports provide further evidence of the activity of the overregulation causal mechanism within the reform process. Figure 4.4 lists the study's data sources and variable/mechanism operationalization, inclusive of each grouping of evidence.

Academic Literature-Scholar articles and academic writing on the topic of financial & economic regulation of small Offshore Financial Centers both generally and with specific reference to the UKOTs. This literature provides the context and evolution of the economic and financial regulatory architecture, describing the periodic change in regimes and their impact on small OFCs.

Figure 4.4: Data Sources & Variable Operationalization

Data Sources & Variable Operationalization			
Data Sources	**Variables & Mechanisms**	**Operational Indicators**	**Evidence**
Academic Literature	*Environmental & Chronological Context*	International Financial Regulatory Architecture/Regime	Pre & Post Financial Crisis Regulatory Regime Changes: Reporting Regimes
Official Policy Documents by the Regulatory Authorities	*X - Multilevel Reform Pressures*	Presecribed Policy by regulatory authorities	*Fomral Requirements:* UK-CDOT, UK-PubCenRegBenOwn, US-FATCA, OECD-CRS & AEOI, FAFT TransBenOwn G20 BenOwnTrans, G20-MCMAATM, EU-AMLD4
Formal Policy Adoptions	*Y - Outcome Variable*	Adopted Financial Services Policy 2014-2016	*Terms of Agreement:* UK-CDOT, UK-CenRegBenOwn, US-UKOT FATCA IGA, OECD-CRS & AEOI, FAFT TransBenOwn G20 BenOwnTrans, G20-MCMAATM, EU-AMLD4
Evaluations by the regulatory authorities Regulatory Authority Memberships Lobbying reports	*C.Mechanism-Overregulation: X "------" Y*	Overregulation Responses: Compliance, Creative Compliance, NonCompliance, Capture, Black Market/LwTrsp	Level of Compliance: Adoption, Evaluated, Reported, Current Infractions Membership Groups Lobbying Activity: Legislation Change, Removal of Policy/Legislation
Policy Implementation & Cost Evaluations	*C.Mechanism-Competitive Ad: X "------" Y*	Competitive Advantage: Comparative Advantage (Cost), Differenatiation, and Segmentation factors. Segmentation (Niche Markets)	Due Dillegence Cost, Operational Cost, Product Cost Tax, Privacy, Common Law, Stable, Regulated Niche Market
Secondary Media Sources	All	All Provides a compliment or substitute where other sources are absent or lacking.	All Online Magazines, News Papers, Blogs, Journals

Official Policy Documents by the Regulatory Authorities-The policies prescribed to the territories by the various regulatory authorities. They represent the independent variable "reform pressures" in its operationalized form as prescribed polices, describing the detailed requirements each policy imposes on the UKOTs. They are necessary to identify the reform pressures exerted on the territories. They are sourced electronically from the online data bases of the UK Treasury/Foreign & Common Wealth Office, US Treasury, EU Commission, FATF, G20, & OECD. Evidence of the operational form in the policy documents are found in the descriptions of the exact requirements expected by the regulatory authorities.

-Example: *Global Common Reporting Standard (CRS) for Automatic Exchange of*

Financial Account Information (the AEOI Standard) - (UKOT7 - 2016).[140]

"Each country is required to annually automatically exchange with the other participating countries information on selected cases in their jurisdiction with regard to reportable accounts in the requesting concerned jurisdictions. CRS required reportable account information includes: name, address, Taxpayer Identification Number and date and place of birth of each Reportable Person, account number(s), the name and identifying number of the Reporting Financial Institution, the account balance or value as of the end of the relevant calendar, account closure details if the account was closed during such year or period."[141]

Formal Policy Adoptions-The policies formally adopted into the reform, officially outlining the commitment of the UKOTs to adhere to the requirements of each the given policy. They are the operationalized form of the dependent variable, necessary to distinguish between the policies adopted into the reform versus those rejected from those policies prescribed by the regulatory authorities. They are sourced both from the UK Treasury/Foreign & Common Wealth Office, US Treasury, EU Commission, FATF, G20, & OECD. Evidence for the operational form of the dependent and independent variables are the formal terms of agreement and requirements outlined in the document.

-Example: The *Technical protocol for the Sharing of Beneficial Ownership Information (in force April 8, 2016).*[142]

---

[140] "CRS by Jurisdiction," OECD Global Forum, Last modified 3 August 2017, accessed August 3, 2017, http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489.

[141] "Standard for Automatic Exchange of Financial Account Information in Tax Matters OECD (2014)," OECD Publishing, accessed June 4, 2017, http://dx.doi.org/10.1787/9789264216525-en.

[142] GOV.UK, "Beneficial ownership: UK Overseas Territories and Crown Dependencies Foreign & Commonwealth Office."

"The adoption of the protocol fulfills the 'territories' obligations to meet the multilateral and regional requirements of the EU–Fourth Money Laundering Directive of the European Union Non-cooperative third countries (EU 2015/849, AMLD4), FATF-Recommendations and Guidance on Transparency and Beneficial Ownership, G20-High Level Principles on Beneficial Ownership Transparency, G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters."[143]

"Requires the establishing and maintaining a central register, or equivalent system, containing accurate and current information on beneficial ownership for corporate and legal entities incorporated in their jurisdictions. Requires each jurisdiction to ensure effective and unrestricted access to this information to the other jurisdiction's law enforcement and tax authorities (law enforcement has automatic right to the information)."[144]

Evaluations by the regulatory authorities-They are necessary to provide an assessment of the UKOT's response to each policy and the regulatory authority's assessment of each territory relative to their compliance. They are evidence for the conditions of the overregulation causal mechanism at work, operationalized as select responses. The evaluations are sourced from the online databases of the UK Treasury/Foreign & Common Wealth Office, US Treasury, EU Commission, FATF, G20, & OECD.

-Example: The OECD maintains records in the form of tables of the compliance level of each country's level of compliance or noncompliance with the Global Common Reporting Standard(CRS) for Automatic Exchange of Financial Account Information(the

[143] Ibid.
[144] Ibid.

AEOI Standard) - (UKOT7 - 2016).[145]

Regulatory Authority Memberships-The positions the UKOTs hold on steering or other committees in multilateral regulatory authorities. They are necessary to assess the UKOT's formal influence on the development or regulation and standards to which they are subject. They are sourced electronically from the online data bases of the FATF, G20, & OECD.

-Example: The OECD forum and FATF keeps a detailed record of steering groups and regional memberships.[146]

Lobbying reports-Records of both the formal and informal efforts of the territories to influence the regulatory authority and the development or implementation of regulation to which they are subject.[147] They are necessary to provide an assessment of the UKOT's influence on the development of regulation and standards to which they are subject. They are sourced both from informal undocumented reports provided by the respective UKOT offices and from localized UK media sources tracking lobbying activity.[148] The reports

---

[145] OECD Global Forum, "CRS by Jurisdiction."

[146] "About the Global Forum," Global Forum on Transparency and Exchange of Information for Tax Purposes, accessed July 1, 2017, http://www.oecd.org/tax/transparency/about-the-global-forum/.

[147] See Appendix 3

[148] The formal and informal lobbying efforts of the UKOTs meets the definition of attempted capture. Secondary sources in UK media criticize the degree of influence the UKOTs have been able to secure with regards to the UK governments. Melanie Newman, "Lobbying's Hidden Influence: Tax havens boost their lobbying efforts," The Bureau of Investigative Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-19/tax-havens-boost-their-lobbying-efforts. Melanie Newman, "Conservative peer hired as tax haven lobbyist," The Bureau of Investigative Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-17/conservative-peer-hired-as-tax-haven-lobbyist. The British Virgin Islands as well as other UKOTs have formally organized and recruited groups of influential individuals to lobby the UK government in areas of strategic interests such as Financial services. "Friends of the BVI," Government of the British Virgin Islands London Office, accessed July 1, 2-17, https://www.bvi.org.uk/londonoffice/friends.

merely state the dates and purpose of various meetings intended to influence regulation and regulatory authorities.

Policy Implementation & Cost Evaluations-Assessments of the implementation and immediate & long term costs of policy adoption. They are the operationalized form of the competitive advantage causal mechanism at work. They are necessary to evaluate the cost compliance with each policy imposes on regulatees. The cost evaluations are evidence for policy impact on competitive advantage, operationalized as increases in comparative, differential, and focus costs. They are sourced from private sector financial services groups and contractors in the industry such as KPMG, Deliotte, and Accenture, as well as select journals and websites dedicated to the financial services industry for industry professionals.

-Example: ACCENTURE CRS/FATCA Impact Evaluation- "The demands of FATCA and CRS have impacted the entire financial services industry, being slated for universal global adoptions. The challenges posed by reporting regimes are summarized to include *Expanded Due Diligence* as all jurisdictions and entities within them now face expanded due diligence and additional costs due to additional jurisdictional information required in reporting as well as increased information collection (all types of investment income, account balances, sales proceeds from financial assets). Larger amounts of data now come from multiple systems spread across dozens of regions around the world. The differences between FATCA and CRS create difficulties in using the same reporting procedures for both standards. The most accurate reporting is achieved by having a single centralized information retrieval and reporting platform. Complete Automatic Exchange

of Information solutions are more costly, increasing operational costs while lowering compliance costs." [149]

Secondary Media Sources-Secondary sources from media outlets provide data where official sources are lacking and provide sources for the other data sources. News reports, investigative journalism, blogs, and other sources provide information where there is a gap in other academic and official sources. They are sources from online magazines, journals, newspapers, and blogs.

Example: "Britain's Overseas Territories and Crown Dependencies have been boosting their lobbying strength in the UK and Brussels in recent years amidst growing criticism of tax havens."[150]

4.5 QCA Data Configuration

Overregulation QCA (Deduction Model)

Unit of Analysis- Financial Services Policy (both prescribed and adopted): Rather than evaluating data for conditions across multiple cases, the evaluation is of data across multiple policies within a single case.

Data Set-The data sets used in the analysis are generated from both prescribed and adopted financial services policy, evidence surrounding prescribed and adopted reform policies and the UKOTs responses.

Data Set Calibration: Crisp- The QCA analysis will use "crisp" set calibration for the

---

[149] "Automatic Exchange of Information Regime: An emerging compliance challenge," Accenture (2014): 4-10, accessed July 1, 2017, https://www.accenture.com/t20150626T121157__w__/us-en/_acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Dualpub_7/Accenture-Automatic-Exchange-Information-Regime.pdf.

[150] Melanie Newman, "Lobbying's Hidden Influence: Tax havens boost their lobbying efforts," The Bureau of Investigative Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-19/tax-havens-boost-their-lobbying-efforts.

coding of the qualitative data. The use of crisp sets is preferable due to the conditions for competitive advantage increases/decreases and overregulation responses being binary or dichotomous in nature.[151] The conditions do not vary in degrees, as the data does not provide the means to establish numerous cutoff points or variation. Individual policy either displays the characteristics fully to meet the condition or does not. There is no means nor necessity to differentiate between different levels of belonging inbetween the binary values of 1 and 0. As the conditions do not have varying degrees of membership in a set, a fuzzy data calibration is not fitting nor necessary in the QCA analysis.[152]

Membership Scores (1/0)-The data set is generated based on crisp set coding, with an assigned value of 1 for the presence of a contextual factor and 0 for the absence of a contextual factor. The conditions are binary or dichotomous, either present and fully in the set, or absent out of the set.

Outcome Sets- compliance, creative compliance, noncompliance, capture, and black market/low transparency

Decision Rules-For a given response to be confirmed, all of the necessary conditions must be present. The absence of any necessary condition disqualifies the response from the membership group.

QCA Competitive Advantage (Deductive Model)

Unit of Analysis-Financial Services Policy (Both prescribed and adopted): Rather than evaluating data for conditions across multiple cases, the evaluation is of data across

---

[151] "Using qualitative comparative analysis to understand and quantify translation and implementation," Transl Behav Med, 4:2, 201–208 (Jane, 2014): doi: 10.1007/s13142-014-0251-6, Accessed July 22, 2017, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4041929/.

[152] Ibid.

multiple policies within a single case.

Data Set-The data sets used in the analysis are generated from the UKOTs competitive advantage factors, both prescribed and adopted financial services policy, the evidence surrounding prescribed and adopted reform policies, and the UKOTs responses to those policies.

Data Set Calibration: Crisp- The QCA analysis will use "crisp" set calibration for the coding of the qualitative data. The use of crisp sets is preferable due to the conditions for competitive advantage increases/decreases and overregulation responses being binary or dichotomous in nature.[153] The conditions do not vary in degrees, as the data does not provide the means to establish numerous cutoff points or variation. Individual policy either displays the characteristics fully to meet the condition or does not. There is no means nor necessity to differentiate between different levels of belonging inbetween the binary values of 1 and 0. As the conditions do not have varying degrees of membership in a set, a fuzzy data calibration is not fitting nor necessary in the QCA analysis.[154]

Membership Scores (1/0)-The data set is generated based on crisp set coding, with an assigned value of 1 for the presence of a contextual factor and 0 for the absence of a contextual factor. The conditions are binary or dichotomous, either present and fully in the set, or absent out of the set. Specific to the stage 2 analysis, the binary value of 1 has one representative figure. The binary value of 0 has two representative figures including a neutral (nill) figure with no impact.

---

[153] "Using qualitative comparative analysis to understand and quantify translation and implementation," Transl Behav Med, 4:2, 201–208 (Jane, 2014): doi: 10.1007/s13142-014-0251-6, Accessed July 22, 2017, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4041929/.

[154] Ibid.

Outcome Sets-Outcome sets are based on the combined impact of the 8 competitive advantage sub-factors and early & non-universal adoption.

Decision Rules-For a given response to be confirmed, all of the necessary conditions must be present. The absence of any necessary condition disqualifies the response from the membership group.

4.6 Assumptions

This study carries a series of assumptions in seeking to answer the stated research question. First this study groups 7 of the 14 United Kingdom Overseas Territories with significant financial services industries as a unit. This group generally negotiates as a unit with the UK in regards to financial services issues. Second, this study considers the financial services legislation adopted by the territories between 2014 and 2016 as a long term reform package due to the scope of changes initiated that differentiates the pre and post reform regulatory regimes. Third, overregulation theory predicts six likely responses to over regulation, but only five are used in the research. In the sixth response, deregulation, reregulation, or regulatory reform by the regulator is intentionally left out. Anticipation of regulatory failure would lead the regulated party to opt for either compliance or noncompliance due to low short term costs. As a result the sixth response is instead considered as a sub-response under both compliance and non-compliance.

4.7 Limitations of the Study

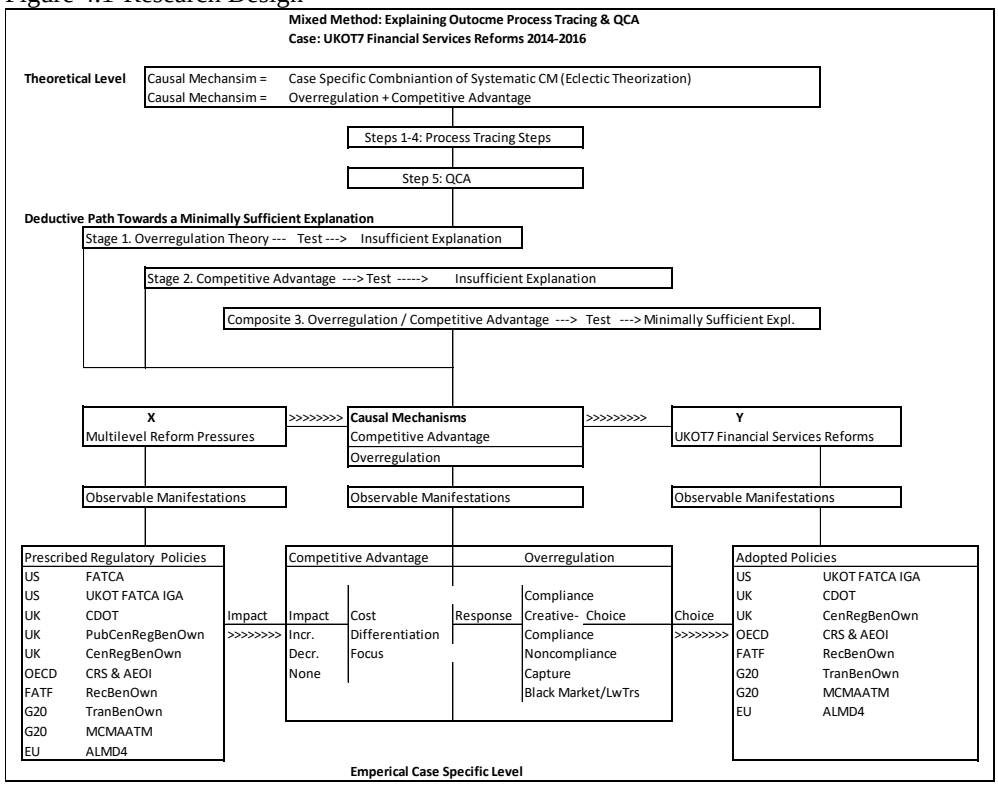
The study will be limited to the UK Overseas Territories Block of Seven housing substantial financial service industries. The reforms will be limited to the major financial services legislation adopted by all seven of the territories in the reform period between

2014 and 2016. The pre-reform period under consideration is the post 2007-08 Global Financial Crisis period to 2014. The study's findings are non-generalizable, limited only to the case of the seven UKOTs.

4.3 Deficiencies of the Study

The most significant deficiency of this study is its time line. Several of the policy and legislative adoptions come into force in 2017 making the period of their evaluation relatively short. A second deficiency is the lack of official primary data on the UKOT7's lobbying activities. The specific details of the UKOTs lobbying activity has not been published for public review. As a result, the information on lobbying is based on unofficial data requests to the UKOT governments and secondary sources from various media outlets.

Figure 4.1-Research Design



CHAPTER 5

PROCESS TRACING & QCA

5.1 The Process

The tracing of the process by which the UKOT7's 2014-16 financial services reforms (Y) were adopted begins with reform pressures (X) exerted on the territories as a set of prescribed policy adoptions by multiple regulatory authorities following the 2007-08 global financial crisis. The prescribed policies contained elements of overregulation including both non-universal and early adoption requirements targeting select jurisdictions. The policies were prescribed to the territories at the threat of both immediate and long term sanction for noncompliance. The elements of overregulation stood to harm (decrease) the competitive advantages built by the UKOTs in financial services over time by decreasing or restricting competitive advantage factor endowments relative to their competitors. In response, over a two year period the territories adopted a series of policies meeting both their national interests and satisfying the demands of regulatory authorities.

This reform process may be traced across five chronological steps highlighting the most important elements in the evolution of the reform outcome. The proceeding sections will provide a detailed explanation of each step in the process from the origins of the reform pressure to the choice of adoptions populating the reform package. The steps are tabled displaying the chronology of events, dates, and data sources in the process. Figure 5.1 lists the five stages of the financial services reform process.

Figure 5.1: Five Stage UKOT Financial Services Reform Process

Process Tracing: UKOT 2014-2016 Financial Services Case						
			The Process			
Reform Pressures (X)	**Step 1:**	**Step 2:**	**Step 3:**	**Step 4:**	**Step 5:**	**Reform Outcome (Y)**
Year	2007-08	2009-10	2010-15	2010-15	2013-16	2016-17
US-FATCA (2010) G20 - MCMAATM (2010) OECD - "CRS & AEOI" (2014) FATF - Trans Benf Own (2014) G20 - Ben Own Trans (2014) EU - AMLD4 (2015) UKPubCen Reg Ben Own (2015)	Global Financial Crisis Erodes the Previous Regulatory Paradigm	The Post Crisis Regulatory Architecture Established Based on Information Reporting Regimes	Multiple Regulatory Authorities Issue New Prescribed Policies Internationally Imposing Reform Pressures across the global financial system.	Overregulation: Prescribed Polices contain elements of Overregulation threatening the UKOT's Competitive Advantage in Financial Services (As well as other small OFCs)	The UKOTs Respond to the reform pressures both rejecting and adopting policies from among those presecribed by regulatory authorities	US-UKOT7 FATCA IGA UK-CDOT **UK-Cen Reg Ben Own** OECD - "CRS & AEOI" FATF - Trans Benf Own G20 - Ben Own Trans G20 - MCMAATM EU - AMLD4
			Detail			
	Industry Self Regulation Paradigm Fails and Faith Eroded in Smart & Meta Regulation	Retrenchment to Pseudo Command and Control Mechanism in th Form of Unilateral Policies imposing extrateritoriality	USA, UK, EU Issue Unilateral Reporting Rporting (FATCA, CDOT, AMLD4). The OECD Gobal forum creates an international reporting standard (CRS&AEOI)	Early Non-Universal targeting adoption requirments targeting specific jurisdictions present in FATCA, CRS & AEOI, and UK Publ Cen Registers of Ben Own	The UKOTs devise a frameowork by which to the respond to each policy.They seek to protect their Competitive Advantage from the effects of overrregulation	The reform is populated by policies without a contractionary effect on Competitive Advantage. Harmful policies are rejected as part of the reform
			Data Source			
Official Policy Documents	Academic Literature	Academic Literature	Academic Literature Official Policy Documents	Academic Literature Official Policy Documents	**Qualitative Comp Anal** Compliance Evaluations Memberships in regulatory authority bodies Lobbying Reports Cost Evaluations	Fomral Policy Adoptions
Secondary Media Sources Serve as a compliment or substitute where other sources are absent or lacking.						

5.2 Step 1: The Global Financial Crisis Erodes the Previous Regulatory Paradigm

The reform pressures facing the territories originate with the occurrence of the 2007-08 global financial crisis. Originating in the US, the crisis began as a full-blown international banking crisis caused by excessive risk-taking by large banks globally.[155] The global banking system was close to collapse as numerous multinational banks were on the verge of failure. Massive state led bail-outs of financial institutions and drastic monetary and fiscal measures ultimately prevented a collapse of the world financial system.[156] The crisis was followed by a global economic downturn negatively affecting most economies, thereafter continuing into Europe as a debt crisis in the banking system

[155] Peter Temin, "The Great Recession & the Great Depression," Daedalus, Vol. 139:4, (2010): 115-124, DOI: 10.3386/w15645, accessed July 1, 2017, http://www.nber.org/papers/w15645.pdf.
[156] Ibid.

of the Euro-zone.[157] The Eurozone countries at the center of the crisis were Portugal, Spain, Italy, Greece, and Ireland.[158] The crisis largely eroded governments' faith in the industry self-regulation paradigm given the numerous scandals at the heart of the economic collapse.[159] The financial crisis highlighted the weakness of lackluster financial regulation in managing the mismatch between globalization and traditional regimes in international law for governing the movement of capital and individuals.[160] There was a general consensus within the post-crisis regulatory paradigm that government needed to play a greater role in economic and financial regulatory matters beyond monitoring, sanctioning, or combatting terrorism & rogue regime financing.[161] The smart and meta-regulation of the late 1990s and early 2000s at the multilateral level was deemed insufficient to assist in the recovery and repair of the economic damage caused to states by the crisis.[162]

The post crisis changes in the international political economy of the global order would in turn lead to changes in the international legal order.[163] The post crisis regulatory regime would be characterized by a reversion to unilateral approaches to financial and economic regulation that parallel the command and control approaches of the pre-

---

[157] Mark, Koba "A Cheat Sheet on the Europe Crisis," CNBC, (June 13, 2012), accessed July 1, 2017, https://web.archive.org/web/20120615224217/http://finance.yahoo.com/news/europes-economic-crisis-know-145955853.html.
[158] Ibid.
[159] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 11-15.
[160] Lesage and Vermeiren, "Neo-liberalism at a Time of Crisis: the Case of Taxation," 43-46.
[161] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 3.
[162] Gregory Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty," Law & Policy January (2007): 51-66.
[163] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 11-15.

2000s.[164] In response to the crisis, the new architecture of financial and economic regulation assumed a disciplinary character in order to govern the movement of capital within globalization.[165] The result was unilaterally imposed reporting regimes coexisting alongside multilateral information reporting regimes characterizing the international financial regulatory landscape.[166]

5.3 Step 2: The Post-Crisis Regulatory Architecture Centers on Reporting Regimes

In response to the insufficiency of the pre-crisis financial regulatory regime, concerned states implemented unilateral policies granting extraterritorial application of their national economic and financial regulations and laws in regard to their citizens and businesses operating within foreign jurisdictions.[167] The US, UK, and EU each sought to impose their regulatory authority beyond their territorial jurisdictions (extraterritoriality) via Automatic Information Reporting Regimes (inclusive of the US's Foreign Account Tax Compliance Act, the UK's Finance 2016 Bill, and the EU's Administration Cooperation Directive).[168] The OECD Global Forum took a multilateral initiative to create a global reporting standard in the form of the CRS & AEOI, a standard built by multilateral consensus.[169] As a result information reporting regimes characterize the post crisis international financial regulatory landscape. [170]

---

[164] Ibid.
[165] Lesage and Vermeiren, "Neo-liberalism at a Time of Crisis: the Case of Taxation," 43-46.
[166] Mahmood Bagheri and Mohammad Jafar Ghanbari Jahromi, "Globalization and extraterritorial application of economic regulation: crisis in international law and balancing interests," European Journal of Law and Economics, No. 41 (2016): 292-329.
[167] Ibid.
[168] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," 11, 16-19.
[169] "Standard for Automatic Exchange of Financial Account Information in Tax Matters OECD (2014)," OECD Publishing, accessed June 4, 2017, http://dx.doi.org/10.1787/9789264216525-en.
[170] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and

Reporting regimes revolve largely around taxable income.[171] Taxation is one of the key areas in which the mismatch between globalization's free movement of capital and the limitations of international law has created a regulatory gap exploited by aggressive tax planners to avoid paying taxes to the state.[172] Information reporting regimes require jurisdictions to electronically share reportable account information with other jurisdictions in order to maximize transparency.[173]

Post- crisis information reporting regimes have universally increased compliance costs in the areas of regulatory due diligence, facilities, technology, and specialists globally in the financial services industry.[174] They have further created legal challenges for the privacy laws of numerous jurisdictions worldwide.[175] The general increase in costs are the same across jurisdictions and firms, and each firm must find the most effective means available to them to address increase costs and legal challenges.[176] The demands of policies such as FATCA and CRS have impacted the entire financial services industry, being slated for universal global adoption.

The challenges posed by reporting regimes are summarized to include:

Financial Centers in the International Legal Order,"16-20.

[171] Ibid.

[172] Lesage and Vermeiren, "Neo-liberalism at a Time of Crisis: the Case of Taxation," 48-51.

[173] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order,"16-20.

[174] "Automatic Exchange of Information Regime: An emerging compliance challenge," Accenture (2014): 4-10, accessed July 1, 2017, https://www.accenture.com/t20150626T121157__w__/us-en/_acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Dualpub_7/Accenture-Automatic-Exchange-Information-Regime.pdf.

[175] Andrea Thomas, "Top 5 Compliance Concerns for Corporate Counsel and the Effect on In-House Planning," CT: Wulters Kluwer, 568/0716 (July 25, 2016): 1-3, https://ct.wolterskluwer.com/sites/default/files/Top_5_Compliance_Concerns_for_Corporate_Counsel.pdf.

[176] Accenture, "Automatic Exchange of Information Regime: An emerging compliance challenge," 4-10.

i. *Expanded Due Diligence*-All jurisdictions and entities within them now face expanded due diligence and additional costs due to additional jurisdictional information required in reporting as well as increased information collection (all types of investment income, account balances, sales proceeds from financial assets).[177] Larger amounts of data now come from multiple systems spread across dozens of regions around the world.

ii. *Facilities/Technology/Specialist*- The new regimes require expensive technology and facilities upgrades as well as specialists to integrate and upgrade the new systems.[178] Assessments of the cross compatibility of processes and technology solutions for the requirements of CRS, UK CDOT, and US FATCA must be made to development logistically efficient ways to organize and consolidate the necessary capabilities in order to minimize operational costs.[179] The differences between FATCA and CRS create difficulties in using the same reporting procedures for both standards.[180] Complete Automatic Exchange of Information solutions are more costly, increasing operational costs while lowering compliance costs. Further staffing the new procedures and systems increases pressure on costs and learning curves.[181]

iii. *Lack of legal certainty* – The reporting regimes often have compatibility issues with data privacy rules in several jurisdictions (information collection, storage

[177] Ibid.
[178] Ibid.
[179] Ibid.
[180] Ibid.
[181] Andrea Thomas, "Top 5 Compliance Concerns for Corporate Counsel and the Effect on In-House Planning," 1-3.

and reporting). [182] To implement the policies requires government's authorizing reporting activities via legislation or court system. Much of the information required by both FATCA and CRS was not required for existing clients domiciled in jurisdictions with stringent privacy protection laws, for many clients the driving element in their choice of jurisdiction. [183] Legal process is required to change the contractual relationship with those clients to allow the reporting regimes to function.[184]

iv. Penalty-In addition to the legal and due diligence challenges, the reporting regimes add to already excessive compliance costs by penalizing inaccurate filings or noncompliance with fines.[185] These excessive compliance cost reduce firm profit margins in the interim period of instituting the reporting regimes.

Information and Data Registers: Another form of the reporting regimes is formulated as Information and Data Registers.[186] Information and data registers, in this case on beneficial owners of companies and trust, electronically store the details of the natural persons who ultimately own or control a financial entity. The jurisdiction housing the register is responsible for providing the technological base for such a register and for

---

[182] "Financial institutions face AEOI implementation challenges from common reporting standard to fight income tax evasion," KPMG, accessed July 1, 2017, https://home.kpmg.com/xx/en/home/insights/2015/11/financial-institutions-face-aeoi-fs.html 7 December 2015.

[183] "OECD Common Reporting Standard A global FATCA-like regime," EY:International Tax Alert, (February 18, 2014): 2-11, accessed July 1, 2017, http://www.ey.com/Publication/vwLUAssets/EY_-_OECD_Common_Reporting_Standard:_A_global_FATCA-like_regime/$FILE/EY-Client-alert-OECD-Common-Reporting-Standard.pdf.

[184] Ibid.

[185] Accenture, "Automatic Exchange of Information Regime: An emerging compliance challenge."

[186] Ibid.

maintaining adequate access, privacy, and storage consistent with state laws and international regulatory standards.[187] The jurisdiction is also responsible for the population of the register by firms within its jurisdictions.[188] The challenged posed by central registers is the technological costs of implementing such a system, maintenance costs, security, and due diligence costs of populating and access for the relevant authorities.[189] Noncompliance, in the case of the UK OTs could prompt direct action by the UK for the implementation of the registers or shutting down of the industry by unknown measures.

Recommended Standards of Implementation:

Multilateral bodies not formally issuing reporting regimes or requirements, express support for universal principles that should be followed generally to meet the needs of the global economy.[190] These recommended standards of implementation suggest or recommend principals by which to abide or guide regulatory development and policy adoption on given issues.[191] In the absence of legally binding concrete policy punishable by sanctions, the concerned international bodies give recommendations in

---

[187] "Beneficial ownership: UK Overseas Territories and Crown Dependencies," Gov.UK, Last modified April 21, 2016, accessed June 2, 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518300/Exchange_of_information_between_UK_government_and_the_government_of_the_British_Virgin_Islands.pdf.

[188] Ibid.

[189] Ibid.

[190] "FATF guidance TRANSPARENCY AND BENEFICIAL OWNERSHIP," FATF, Last Modified October 2014, accessed June 23, 2017, http://www.fatf-gafi.org/documents/news/transparency-and-beneficial-ownership.html. "G20 High-Level Principles on Beneficial Ownership Transparency (2014)," accessed May 23, 2017, http://www.g20australia.org/official_resources/g20_high_level_principles_beneficial_ownership_transparency.html. "Convention on Mutual Administrative Assistance in Tax Matters," OECD Last updated - May 2017 Accessed May 23, 2017, http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. "The OECD and Council of Europe (2011), The Multilateral Convention on Mutual Administrative assistance in Tax Matters: Amended by the 2010 Protocol," OECD Publishing. http://dx.doi.org/10.1787/9789264115606-en.

[191] Ibid.

support of established international standards and evolving standards. The G20 and FATF in particular provide such recommendations on international financial regulation.[192] States accept or agree to these standards as guides steering their national policies in line with the position or direction of international institutions and international standards. Few challenges are posed by the recommended standards to states, instead providing helpful guidance on issues of concern internationally.

5.4 Step 3: Reform Pressures: Prescribed Policies by Regulatory Authorities

Consistent with the new post crisis regulatory paradigm, regulatory authorities at the unilateral, bilateral, regional, and multilateral levels began implementing the new regulatory architecture (structures) globally. The system of reporting regimes was entrenched between 2010 and 2016.[193] The first of the unilateral reporting regimes was issue by the US in 2010, the Foreign Account Tax Compliance Act (FATCA).[194] The international standard for reporting established by the OECD was finalized in 2014 to come into force in 2017.[195] The EU issued its first regional requirement for registers of beneficial ownership in 2015.[196] The implementation created reform pressures within the financial services industry to implement the necessary changes as formal policy adoptions across jurisdictions.

As global level leading financial centers, the UKOTs were at the center of reform

---

[192] Ibid.

[193] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order,"16-20.

[194] "OECD Common Reporting Standard A global FATCA-like regime," EY:International Tax Alert, (February 18, 2014): 2-11, accessed July 1, 2017, http://www.ey.com/Publication/vwLUAssets/EY_-_OECD_Common_Reporting_Standard:_A_global_FATCA-like_regime/$FILE/EY-Client-alert-OECD-Common-Reporting-Standard.pdf.

[195] Ibid.

[196] "Directive (EU) 2015/849 of The European Parliament and of the European Commission May 20 2015," Official Journal of the European Union, (5.6.2015): L 141/73.

efforts despite their relatively small size, power, and influence. As industry and world leaders in reinsurance, captive insurance, hedge funds, and international business company registrations, four of the UKOTs (Bermuda, BVI, Cayman, Gibraltar) were under pressure from multilateral institutions to be early adopters (CRS & AEOI). As EU OCTs, the territories are under regional pressure to conform to EU directives (AMLD4) even though not EU members subject to EU law. Bilateral pressure is exerted on the territories as elements of the UK legislative process hold the expectation that the UK's specific transparency and corruption based reform measures be directly applicable to its Overseas Territories and Crown Dependencies (Public Central Registers of Beneficial Ownership). Unilateral pressure is exerted on the territories by the US and UK in their demands for reporting on the financial activities of their citizens in the territories (FATCA, CDOT).

These reform pressures in the form of prescribed policies (Figure 4.1) include: *UK-CDOT (2014), US-UKOT FATCA IGA (2014), UK-Central Registers of Beneficial Ownership (2016), Global Common Reporting Standard(CRS) for Automatic Exchange of Financial Account Information(2016), FATF-Recommendations and Guidance on Transparency and Beneficial Ownership (2016), G20-High Level Principles on Beneficial Ownership Transparency (2016), G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters (2016), EU –Fourth Money Laundering Directive of the European Union (2016).*[197]

Of the prescribed policies, four are information reporting regimes, three require

[197] See Appendix 1 for a complete cited list of each prescribed policy. The listing describes the requirements of each policy.

establishing central data registers, and three seek the acceptance of recommended standards. In addition three of the policies demand universal adoption, three made early adoption demands, and five impose punishable sanctions for noncompliance and non-adoption. Figure 5.2 lists the policies prescribed to the territories by regulatory authorities.

Figure 5.2: Reform Pressures as Prescribed Policy

Multilevel Reform Pressures		**Prescribed Policy (Policy Demands)**					
Policy	*Type*	*Requires*	*Application*	*Sanctions*	*Year Intro*	*Adopted*	EarAdopOpt
US-FATCA	Infor. Reporting Regime	Reporting on US Citizens	Universal	Yes	2010	No	Yes
****US-UKOT7 IGA**(FATCA)**	Infor.Reporting Regime	Reporting on US Citizens	UKOT7	Yes	2014	Yes	No
UK-CDOT	Infor. Reporting Regime	Reporting on UK Citizens	UK OTs,CDs	Yes	2014	Yes	No
UK Pub Cen Reg Ben Own	Information. Data Register	Collecting of BenOwn Data	UK OTs,CDs	Yes	2015	No	Yes
****UK-Cen Reg Ben Own****	Information. Data Register	Collecting of BenOwn Data	Ots, CDs	Yes	2016	Yes	No
OECD - "CRS & AEOI"	Infor. Reporting Regime	Autom. Exchange of Tax Data	Universal	No**	2014	yes	Yes
FATF - Trans Benf Own	Recommended Standard	Collecting of BenOwn Data	Universal	No	2012	Yes	No
G20 - Ben Own Trans	Recommended Standard	Collecting of BenOwn Data	G20	No	2014	Yes	No
G20 - MCMAATM	Recommended Standard	Cooperation on Tax Evasion	G20	No	2010	Yes	No
EU - AMLD4	Infor.DataRegist/RecomStd	Col BenOwn Data, EnhDueDil	EU	No	2015	No	No

5.5 Step 4: Overregulation as a threat to UKOT Competitive Advantage

The introduction of the new regulatory regime contained significant elements of overregulation in the implementation phase of the policies. UKOTs were under pressure to adopt policies with early, non-universal, and targeting requirements, each constituting elements of overregulation both in the financial services industry and generally. They were under pressure to adopt policies imposing a high cost on adoption while punishing noncompliance and rejection also with high costs. Four of the policies prescribed for the UKOTs' adoption contained these elements of overregulation standing to possibly cripple the UKOTs financial services industries. They include the OECD CRS & AEOI, UK Public Central Registers of Beneficial Ownership, US FATCA, and the EU AMLD4.

While the OECD's CRS & AEOI officially has voluntary early adoption and is universal, the UKOTs with large financial services sectors were obligated by their OT

status to make early entry along with the UK in adhering to international standards.[198] However, for small states the costs to do so are significant relative to both their monetary and logistical means.[199] They do not have the resources, size, nor wealth of other early adopters such as the UK who given their size have implementation challenges. The territories must bear the brunt of the early expense rather than being able to wait for larger jurisdictions to incur the expense of perfecting the process and later import the finished product. The expense can only be justified in terms of the regulatory efficiency that will be derived from being ahead of the market in implementation. As early adopters, small OFCs will able to sell the regulatory efficiency gained in the process for a premium price within the industry for a period that their competitors cannot.

The UK government sought to initially force its territories' to adopt Public Central Registers of Beneficial Ownership along with the UK.[200] The UK implemented public access as part of the government's moral and ethical efforts to tackle both tax evasion and corruption following their chairmanship of the 2014 G8 summit.[201] The UK government's initial proposals sought to align the overseas territories beneficial ownership register policy with its own. However, it was a requirement beyond both regional and international standards imposed on the territories whose circumstances in the global economy are significantly different from the UK as a large onshore financial center. No regional or multilateral regulatory authority required the public access

---

[198] Peter Clegg & Peter Gold, "The UK Overseas Territories: a decade of progress and prosperity?" 115-120.

[199] The costs are general, but in absolute terms greater for small OFCs than larger onshore financial centers. "FATCA and CRS update," Capita Asset Services, May 28, 2015, accessed July 1, 2017, http://www.capitaassetservices.com/articles/fatca-and-crs-update.

[200] James Brockhurst, "Old colonies; New Disputes," New Law Journal Issue: 7656 (12 June 2015), accessed July 1, 2017, https://www.newlawjournal.co.uk/content/old-colonies-new-disputes.

[201] Ibid.

element. Including the UK, only two countries have committed to public registers public register of beneficial ownership presently and in the future.[202] For the territories who have no moral or ethical incentive beyond adhering to international standards, the public registers undermine the privacy element as a selling point of their financial services industry.[203] The territories' high degree of economic vulnerability due to reliance on two economic pillars does not allow for policy considerations beyond international standards based on the UK's moral and ethical considerations. As the world's leading financial center within a diversified economy, the UK can absorb the loss in competitivity due to reduced privacy that the UKOTs cannot.

US-FATCA imposed intrusive reporting requirements on the territories and the world, with the US knowingly unable to fulfill the reciprocation reporting component with any other state.[204] The US requires all other jurisdictions to report to it, but is unable and unwilling to reciprocate as was promised in the initial legislation. Through FATCA, the US effectively granted itself distinct privacy advantages over competing jurisdictions worldwide.[205] No jurisdictions large or small have been able to challenge the policy, having only noncompliance as an option that is punishable by steep penalties.

From 2014 the EU has been conducting negotiations for the development of criteria for a listing of non-cooperative third country jurisdictions of which no or low

---

[202]Sophie Haggerty, "Norway Latest Country to Adopt Public Registry of Beneficial Ownership," Global Financial Integrity, June 15, 2015, accessed July 1, 20017, http://www.gfintegrity.org/norway-latest-country-to-adopt-public-registry-of-beneficial-ownership/.

[203] Brockhurst, "Old colonies; New Disputes."

[204] Laurie Hatten Boyd, "Are Problems Looming for FATCA and the "Reciprocal" IGA?," The Tax Adviser, June 1, 2016, accessed July 1, 2017, http://www.thetaxadviser.com/issues/2016/jun/problems-looming-for-fatca-and-reciprocal-iga.html.

[205] "How the U.S.A. became a Secrecy Jurisdiction," Tax Justice Network, November 27, 2015, https://www.taxjustice.net/2015/11/27/how-the-u-s-a-became-a-secrecy-jurisdiction-2/.

taxation have been discussed as recently as 2017.[206] Punitive action towards low taxation policies could possibly be initiated by the EU under the AMLD4 in the future by linking blacklist criteria to money laundering.[207] The policy at present calls not only for registers of beneficial ownership, but also for enhanced due diligence checks.[208] The penalizing of low or no taxation as part of future measures could target the UKOTs whose differential advantage in financial services is housed largely on both low taxation and high degrees of privacy.

The overregulation elements present in the reform pressures posed a distinct threat to the competitive advantages the UKOT's had built in financial services over time to become industry leaders. Regulations that decrease privacy, penalize low or no taxation, and complicates or decreases regulatory inefficiency harm the differential advantages of the UKOTs.[209] Regulation that significantly increases due diligence, labor, facilities, technology, and specialist cost also harm their comparative advantage.[210] Increased costs decrease the profitability of the premium price charged by firms within the industry for high quality financial services. The combination of the decrease in comparative and differential advantages in turn undermines the ability of the UKOTs to effectively service niche markets or pursue specialization within their focus strategy. The resulting absence of the ability to efficiently compete or innovate, combined with significant compliance or

---

[206] Jean Comte, "EU moving toward common Blacklist of Tax Havens," EU Observer, February 2, 2017, accessed July 1, 2017, https://euobserver.com/justice/136769.
[207] Lara McNamee, "4th Anti-Money Laundering Directive: How does it affect you?" Acuity, March 21, 2016, accessed July 1, 2017, https://accuity.com/accuity-insights-blog/4th-money-laundering-directive-how-does-it-affect-you/.
[208] Ibid.
[209] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order,"16-20.
[210] Ibid.

sanctions costs, stands to drive firms out of business and possibly collapse the entire industry. [211] Without being able to offer significant jurisdictional advantages, clients will simply choose a different financial center with whom to do business.

5.6 Step 5: Response to Reform Pressure and Choice of Policy Adoptions

In the fifth step, the UKOTs responded to the reform pressures with which they were faced. They ultimately adopted eight policies from among those prescribed by regulatory authorities as a reform package. The reform includes: *UK-CDOT (2014), US-UKOT FATCA IGA (2014), UK-Central Registers of Beneficial Ownership (2016), Global Common Reporting Standard(CRS) for Automatic Exchange of Financial Account Information(2016), FATF-Recommendations and Guidance on Transparency and Beneficial Ownership (2016), G20-High Level Principles on Beneficial Ownership Transparency (2016), G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters (2016), EU –Fourth Money Laundering Directive of the European Union (2016).*[212]

The fifth step is critical as the choice of adoptions versus rejections is the defining characteristic of entire process where the causal mechanism is most visibly active. However, tracing the process by which the choice of adoptions versus rejections were made is elusive and not readily discernable from a mere chronological and contextual reproduction of events from the historical record. The UKOTs ultimate goal was to figure out how to satisfy multiple regulatory requirements while mitigating any possible

[211] Dudley and Brito, 67-71.
[212] See Appendix 1 for a complete cited list of each adopted policy. The listing describes the requirements and terms of adoption.

harmful effects to their competitive advantage in financial services. Failure to do so could have ultimately resulted in the collapse of their financial services industries which are the economic lifeline of the UKOT economies. The essential task in tracing the decision making step of the process lies is identifying how each policy populating the reform was chosen in meeting the territories' interests. An alternative tool of analysis beyond process tracing must be employed decipher the basis for choice at this stage of the process. Qualitative Comparative Analysis will provide the compliment to process tracing in tracing the fight step.

The review of academic literature presented two possible causal mechanisms explaining the choice of policy adoptions: overregulation and competitive advantage. The context in which they are presented suggest that elements of overregulation present in the prescribed policies would do significant harm to the UKOTs financial services industries, reducing the competitive advantages they built to become industry leaders over time. From the context, three possible scenarios maybe be derived from the literature. The element of choice was likely either the product of efforts to mitigate the effects of overregulation, efforts to maintain competitive advantage, or the product of efforts to protect competitive advantage from the effects of overregulation. The answer is to be found in a deductive exploration, assessing each theory's ability to sufficiently explain the choice, eliminating those options unable to provide a minimally sufficient explanation.

5.7 Stage 1 QCA: Overregulation

The previous step in the process (4), identified that the reform pressures were

characterized by overregulation. Overregulation theory describes six responses to overregulation or attempted overregulation: compliance, creative compliance, noncompliance, capture, and black market/low transparency.[213] QCA is used to confirm these responses in the UKOTs' response to each prescribed policy in the reform process.[214] In the UKOT case the unknown is whether the elements of overregulation present in each policy determined the UKOTs response to that policy in terms of adoption or rejection. The analysis matches case evidence against outlined conditions for each overregulation response to identify which are present in response to each policy. Once the responses are confirmed, they can be compared/matched with the choice of adoptions and rejections. The paralleling of overregulation responses and adoptions versus rejections will be used to explain the process of populating of the reform package.

Conditions for Overregulation Responses:

Among the six regulatory authorities prescribing policies for the territories there is no common set of conditions for compliance, creative compliance, noncompliance, and black market/low transparency activities. However, the most common basic elements among the authorities provide a base of conditions by which to evaluate them. They are based on policy adoption and evaluation questions.[215] The conditions for capture are derived from applying theory to the case based on lobbying, policy structure, and

---

[213] Baldwin, and Cave, and Martin, 72-77.

[214] See chapter 4 for the full structure, design, and parameters of the QCA analysis.

[215] As is common within the QCA method, assessment of conditions for the group of responses is subjective within the context of the case, requiring much discretion on the part of the researcher. From the evaluation pages of each regulatory authority, the commonalities was greatest on adoption and evaluation questions. Manner of assessment and standards of compliance differed, but they all evaluated and gave ratings of at least compliance, partial compliance, and listed sanctionable offences. The conditions were therefore built around these commonalities within confines of the theory's definitions description of each response.

regulation impact questions. The conditions for compliance, creative compliance, noncompliance, capture, and black market/low transparency responses are tabled in Figure 5.3.

Figure 5.3: Overregulation Responses General Conditions

Overregulation Theory			**Conditions**				
Response:							
Com,CrCom,NonCom,BlkMkt/LwTr	Adoption	Evaluated	Reported Compliant	Reported Partial Compl	Reported NonCompliant	No Current Infractions	Current Infractions
Capture	*Active Lobbying*	*Membership Group*	*Legislation Change*	*Removal of Harmful Policy or Legislation*	*Granted Specific Advantages*		

1. *Policy Adoption*-For each policy there must be an existing option for policy adoption versus non adoption. Without a suggested policy requirement there would be no reform pressures.
2. *Conducted Evaluation*-For each policy there must be an existing active evaluation process, with an active reporting mechanism measuring compliance versus noncompliance by the relevant regulatory authorities. Without an active evaluation process there is no means for judging compliance versus noncompliance, and no basis for sanctions for infractions.
3. *Reported level of compliance* (inclusive of compliant, partial compliance, and noncompliance)-The evaluation process must clearly outline the requirements of compliance, define noncompliance within the reporting mechanism.
4. *Reported or Current Infractions*-Reporting on the level of compliance must include definitions or description of infractions and the sanctions associated those infractions. Without a definition of reportable punishable infractions there is in reality no distinction between compliance and noncompliance.

The response conditions for capture include:

1. Verifiable *lobbying activity* in the development of regulation or regulatory standards to which the regulatee is subjected. Regulatory capture requires regulatees to actively seek influence over the development of regulation to which they are subjected.[216] Without their pursuit of influence there is no attempted capture.
2. *Membership/Participation* in regulatory Steering or Committee Groups- Regulatory capture requires regulatees to actively seek influence over regulatory development either from within or outside of the regulatory authority. In addition to lobbying from outside the regulatory authority, regulatees may seek to influence the regulation process through formal memberships in institutions or organizations that develop regulation or regulatory standards to which they are subject.[217]
3. Significant *changes in the structure of proposed legislation,* as capture may be assessed in comparative terms in which the structure of the regulation changed from its initial introduction in a manner either favorable or less harmful to the regulatee actively seeking influence over its development. The comparative change is an indicator of regulatory capture.[218]
4. *Removal of policy or policy elements harmful* to the regulate seeking to capture the regulatory process. Capture may be assessed in terms of the elimination of the regulation or aspects of it harmful to the regulatee. The elimination is an indicator of regulatory capture.

---

[216] Dudley and Brito, 15.
[217] Ibid.
[218] Ibid. The capture theory is predicated on a change in the regulation in some form or fashion.

5. *Changes in the initial structure of the regulatory policy granting significant advantages to the regulatee over their competitors*. The granting of specific advantages to one regulate over others are an indicator of regulatory capture.[219]

Necessary & Sufficient Conditions:

While the conditions are general, each response differs in terms of the necessity or sufficiency within the context of the case. Each set of necessary and sufficient conditions is fixed, as all necessary conditions must be met for confirmation of the response.[220] The evidence surrounding each policy must meet the specific set of necessary and sufficient conditions to confirm the response. The necessary and sufficient conditions for each response are tabled for analysis in the QCA.[221] From each regulatory authority's evaluation page, the data set is scored and populated into five tables of set membership scores for each response according to its necessary and sufficient conditions.[222] The scores are then compiled into a single table (Figure 5.4) by policy for score comparisons to identify which policy met a specific response.

---

[219] Ibid.

[220] The QCA used here is an inductive model with the necessary & sufficient conditions known. The purpose of the analysis is to identify if the responses to each policy meet the conditions to be categorized as one of the overregulation categories.

[221] See Appendix 2 for the full listing of necessary and sufficient conditions and response definitions.

[222] See Appendix 2 for the full QCA analysis including all tables of set membership scores and summary explanations by policy are placed in Appendix 2. The details of the QCA design are listed in the Chapter 4 Research Design section.

Figure 5.4: Overregulation: Necessary & Sufficient Conditions

Overregulation Theory			Necessary & Sufficient Conditions				
			Conditions				
Response:	Adoption	Evaluated	Reported Compliant	Reported Partial Compl	Reported NonCompliant	No Current Infractions	Current Infractions
Compliance	Necessary	Necessary	Necessary	NA	NA	Necessary	NA
Creative Compliance	Sufficient	Necessary	Sufficient	Necessary	NA	Sufficient	NA
NonCompliance	Sufficient	Necessary	NA	NA	Necessary	NA	Sufficient
Black Market/LwTr	Sufficient	Necessary	NA	NA	Necessary	NA	Necessary
			Conditions				
Capture	Active Lobbying	Membership Group	Legislation Change	Removal of Harmful Policy or Legislation	Granted Specific Advantages		
Nec & Suff Conditions Capture	Necessary	Sufficient	Necessary	Sufficient	Sufficient		

5.8 Stage 1 QCA Result

The QCA results are derived deductively, starting with fixed necessary and sufficient conditions for the five overregulation responses, then moving backwards to identify which policy responses parallel those of overregulation. Consistency thresholds and coverage scores are therefore not set ahead of the analysis. Likewise, the process of condition minimization and consolidation for the elimination of redundancies and contradictions are not the first steps of the analytical process. With established conditions, the process begins with an examination of the patterns and trends in the truth table.

The relationships between combinations of conditions and the outcome of interest (overregulation response) are summarized in a truth table (Figure 5.5). The truth table is built from the collection of tables of set memberships for each overregulation response.[223] The table summarizes crisp conditions, grouping together the combinations of set membership scores leading to the particular overregulation responses in response to the 10 prescribed policies. All values in the table are binary listed as 1 for the presence of the condition or factor, or 0 for the absence of a given condition or factor. The table identifies

[223] See Appendix 2 for the tables of set memberships.

which policies prompted a combinations of activities and characteristics identified specifically with each of the five overregulation responses. The truth table displays where variation in response occurred leading to a common outcome. The response outcome is listed in the third end column displaying whether the response met the necessary and sufficient conditions required for that particular overregulation response. The final column lists the reform outcome indicating if the policy associated with the response was adopted as part of the reform or rejected. The consolidated truth table is displayed in Figure 5.5.

Figure 5.5: Overregulation Truth Table

	QCA: Overregulation			Truth Table							
Policy No.	Policy:	Conditions							Response	Ratio/Prop	OutCome
		Adoption	Evaluated	Reported Compliant	Reported Partial Compl	Reported NonCompliant	No Current Infractions	Current Infractions	Result		
	Nec & Suff Conditions Compl	Necessary	Necessary	Necessary	NA	NA	Necessary	NA			
P1	US-US/UKOT FATCA IGA	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl	2.3|1 / 7|10	Adopt (1)
P2	UK-CDOT	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P3	UK-CenRegBenOwn	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P4	OECD - "CRS & AEOI"	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P5	FATF - Trans Benf Own	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P6	G20 - Ben Own Trans	Yes (1)	FATF/OECD	FATF/OECD	NA	NA	FATF/OECD	NA	Compl		Adopt (1)
P7	G20 - MCMAATM	Yes (1)	FATF/OECD	FATF/OECD	NA	NA	FATF/OECD	NA	Compl		Adopt (1)
	Nec & Suff Conditions Creat Compl	Sufficient	Necessary	Sufficient	Necessary	NA	Sufficient	NA			
P8	EU - AMLD4	No (0)	Yes (1)	No	Yes (+)	NA	Yes (1)	NA	CreatCompl	1|9 / 1|10	Adopt (1)
	Nec & Suff Conditions NonCompl	Sufficient	Necessary	NA	NA	Necessary	NA	Sufficient			
P9	US-FATCA	Yes (1)	Yes (1)	NA	NA	Yes (1)	NA	No (0)	NonCompl	1|9 / 1|10	Reject (0)
	Nec & Suff Conditions BlkMk/LwTr	Sufficient	Necessary	NA	NA	Necessary	NA	Necessary			
	-	-	-	-	-	-	-	-	BlackMarket/LwTr	-	-
		Conditions									
		Active Lobbying	Membership Group	Legislation Change	Removal of Harmful Policy or Legislation	Granted Specific Advantages					
	Nec & Suff Conditions Capture	Necessary	Sufficient	Necessary	Sufficient	Sufficient					
P10	UK-Public Central Reg Beneficial Own	Yes (1)	No (0)	Yes (1)	Yes (1)	No (0)			Capture	1|9 / 1|10	Reject (0)

An examination of the consolidated truth table reveals the trends present in the data set, in particular the relationship between conditions and their characteristics. The details of the set relations are summarized and tabled in figure 5.6. Compliance, having four necessary and no sufficient conditions, consequently displayed only a single configuration among 7 out of 10 policies (P1, P2, P3, P4, P5, P6, P7) with a marked consistency score of 0.70. The raw and unique coverage of the compliance response paralleled this 0.70 score of the 10 policies. The fitness scores indicate that the necessary conditions for compliance are the mutually dependent and the most prevalent action

prompted by the reform policies.[224]

Figure 5.6: QCA Overregulation-Result Summary

QCA Result: Overregulation Responses							
Result Summary							
Responses	*Necessary Conditions*	*Sufficient Conditions*	*Possible Configurations*	*Displayed Configuration*	*Consistency of Configuration*	*Raw/Unique Coverage*	*Total Policies: 10*
Compliance	4	0	32	1	.7 (70%)	0.70 (70%)	P1, P2, P3, P4, P5, P6, P7(7 total)
Creative Compliance	2	2	32	1	0.10 (10%)	0.10 (10)%	P8 (1)
Noncompliance	2	2	32	1	0.10 (10%)	0.10 (10 %)	(1) P9
Capture	2	3	64	1	0.10 (10%)	0.10 (10 %)	(1) P10
Black Market Low Transparency Activities	3	1	32	1	0	0	0

The creative compliance response, subject to 2 necessary and 3 sufficient conditions, displayed only 1 configuration out of a possible 64 in relation to policy 8 (P8). The configuration was only present only in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. Likewise the noncompliance response subject to 2 necessary and 2 sufficient conditions, displayed only 1 configuration out of a possible 32 in relation to policy 9 (P9). The configuration was only present in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. The capture response, subject to 2 necessary and 3 sufficient conditions, displayed only 1 configuration out of a possible 64 in relation to policy 10 (P10). The configuration was only present only in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. Last, the black market/low transparency response, subject to 3 necessary and 1 sufficient condition, was markedly absent in response to any of the 10 policies and

[224] Fit scoring and numbering was calculated according to the standard calucations used in crsQCA. All scores were calculated manually without the use of software. Leila KahwatiEmail author, Sara Jacobs, Heather Kane, Megan Lewis, Meera Viswanathan and Carol E. Golin, "Using qualitative comparative analysis in a systematic review of a complex intervention," BioMedCentral: Systematic Reviews20165:82, May, 42016, accessed July 1, 2017, https://doi.org/10.1186/s13643-016-0256-y.

:

as a result has no accompanying fit scores.

In practical terms, the QCA results indicate the UKOTs response met the necessary and sufficient conditions for *compliance* with: US/UKOT FATCA IGA, UK-CDOT, UK-Central Registers of Beneficial Ownership, OECD – CRS & AEOI, FATF-Recommendations and Guidance on Transparency and Beneficial Ownership, G20-High Level Principles on Beneficial Ownership Transparency, G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The regulatory authorities responsible for the different policies have cited the territories as compliant.[225] The UKOTs response met the necessary and sufficient conditions for *creative compliance* only with the EU-AMLD4. Their response met the necessary and sufficient conditions for *noncompliance* with regard to US-FATCA. They met the necessary and sufficient conditions for *capture* with regard to the Central Register of Beneficial Ownership. The results indicate the UKOTs did not meet the necessary and sufficient conditions for *black market and low transparency* activities in any regard. [226]

Under the assumption of overregulation as the active causal mechanism in the process, its chronology proceeds from conditions of overregulation in the regulatory environment brought about multiple prescribed policy adoptions by regulatory authorities. These conditions prompt an overregulation response to each policy. Compliance and creative compliance responses lead to adoption of policy as part of the reform, while noncompliance and black market/low transparency activity responses lead to a rejection of policy. Capture and strategic noncompliance towards reregulation or

[225] The evaluations are sourced from the pages of the accompanying regulatory authorities.
[226] See Appendix 2 for a full explanation of the Stage 1 QCA result by policy.

regulatory reform lead to a reevaluation of policy for consideration as part of the reform. These responses are consistent with the policy adoptions included in the reform and rejections that were not. The parallel is sufficient to explain the range of possible responses, and the regulatory context in which those options emerge. The QCA result displays evidence of the presence of each response with the exception of black market and low transparency activities. The opaque nature of black markets or low transparency activities make the difficult to detect in which case they may be present but not visible. Figure 5.7 illustrates the entire process and fifth step with overregulation as the active causal mechanism.[227]

5.9 Overregulation Theory: Sufficient vs Insufficient Explanation

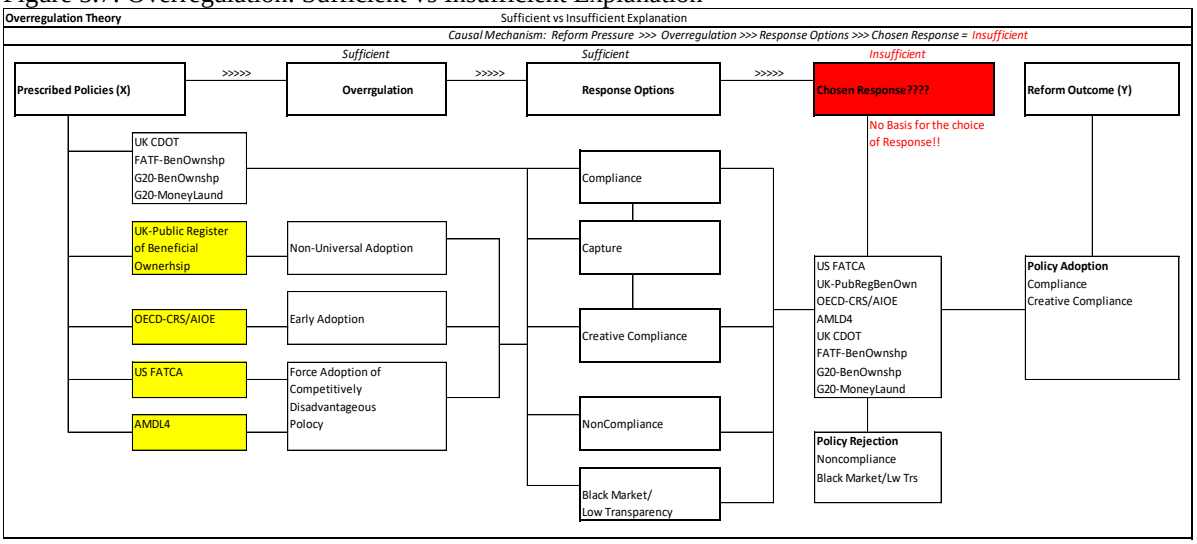
However, overregulation theory as a causal mechanism accounts only for the variety of responses to the prescribed policies. Overregulation provides no further insights as to why or how a specific policy was chosen or rejected. The theory only indicates the chosen response to a given policy leaving the basis for each choice to the realm of assumption. A logical gap is left between choice of possible responses, and the actual response chosen in regard to the reform. As a result overregulation provides no logical basis for adoptions or rejections, and by extension no comprehensive explanation for the choice of response to each policy.

Overregulation further fails to provide a sufficient explanation for the changes in a policy from its original form after being rejected to later being adopted after having changed form. It sufficiently accounts for the responses involved in the changes, but not

[227] See page 91.

for the process by which the changes took place. The territories did not comply with FATCA or the UK Public Central Registers of Beneficial Ownership until a second FATCA option in the form of the IGA was made available, and the "public" component of Registers of Beneficial Ownership was eliminated. The processes by which those policies were amended involved regulatory capture as well as strategic noncompliance towards initiating reregulation or regulatory reform. Yet overregulation does not place these actions within the context of a process that explains the adoption of some policies, rejection of others, and attempted change of a few. Overreguation theory is unable to satisfy all three aspects of a minimally sufficient explanation, by itself unable to explain the adoption process populating the final reform.

Figure 5.7: Overregulation: Sufficient vs Insufficient Explanation



5.10 Stage 2: QCA Comparative Advantage

The theory of comparative advantage explains the sources of the relative advantages firms or states have over their competitors within a given market. The reform pressures imposed on the UKOTs were characterized by elements of overregulation

threatening to diminish the competitive advantages built by the territories in financial services over time. The UKOT case marked by two unknowns regarding competitive advantage. The first is whether the competitive advantage impact of each policy determined the UKOTs response to that policy in terms of adoption or rejection. The second is whether each policy assessed within the case impose conditions mimicking the characteristic conditions known to increase or decrease competitive advantage and can be categorized as such.

To resolve these unknowns, QCA will be used to match the evidence surrounding each prescribed policy against outlined conditions for increases or decreases in competitive advantage factors. The impact result is then compared to the UKOTs choice of response towards adopting or rejecting policy as part of the reform package. The analysis will dually inform as to whether a policy's positive impact on competitive advantage parallels its adoption as part of the reform, or whether its negative impact parallels the policy's rejection.

Competitive Advantage Impact Conditions

Impact on competitive advantage is measured by general increases or decreases in the three central components of competitive advantage: comparative advantage (cost), differential advantage, focus advantages.[228] Comparative advantage is further subdivided into due diligence costs, labor costs, and facilities/technology/and specialist costs.[229] An increase in any of these sub-factors decreases comparative advantage. Differential advantages are subdivided into discounted tax rates, privacy, common law, and

[228] Thomas and Walters, "GENERIC COMPETITIVE STRATEGIES."
[229] Accenture, "Automatic Exchange of Information Regime: An emerging compliance challenge."

regulatory efficiency.[230] A decrease in any of these in turn decreases differentiation capacity. Focus advantages are achieved in specialization or niche markets.[231] An imposed decrease in market share or reduced ability to service the niche market decreases focus advantages. In total there are 8 combined competitive advantage factor endowments that condition its increase or decrease. Each policy is weighted against the possible increases or decreases that it imposes on competitive advantage factors and sub-factors.[232]

The necessary and sufficient conditions for decreases and increases of competitive advantage are weighted on the configuration of the combined degree of impact (positive, negative, nil) of the eight factors plus the presence or absence of non-universal or early adoption (overregulation factors). Each set of necessary and sufficient conditions is fixed, as all necessary conditions must be met for confirmation of decrease or increase. Negative impact decreases are the most significant to the study as positive increases or no impact are likely to result in compliance responses and adoption. Negative impact will prompt a series of other responses which are not all opaque, transparent, and easily traceable. Negative impact is recorded when the proportion of negatively impacted sub-

[230] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order,"16-20.

[231] Thomas and Walters, "GENERIC COMPETITIVE STRATEGIES."

[232] Unlike overregulation, competitive advantage literature is very transparent on the conditions imposing increases or decreases in competitive advantage. The literature surrounding the case as well as financial services industry reports on reporting regimes is very clear about the factors and sub-factors of importance in financial services regarding competitive advantage. Michael Porter's classical work on competitive advantage lays out the three main factors of cost, differentiation, and focus. Chiu addresses differentiation and cost advantages within the context of financial services. Industry professional such as Accenture and EY outline the costs associated with the new reporting regimes and their impact on competitiveness. Policy based Increases and decreases in competitive advantage were simply weighted on the combined negative, positive, or null impact of the eight competitive impact sub-factors plus their relative impact across all competitors. Universal adoption and application mooted the effect on competitive advantage, but non-universal, early, or targeting adoptions disadvantaged some competitors relative to others.

factors (1s) is greater than positively impacted sub-factors (0s). Likewise positive impact is recorded when the proportion of sub-factors positively impacted (0s) is higher than the sub-factors negatively impacted (1s).[233]

The necessary and sufficient conditions required for policies to impose a decrease on competitive advantage include:

i. Very High Negative Impact Decrease – Sufficient,
ii. High Negative Impact Decrease-Necessary + either Non-Universal Adoption - Sufficient *or* Early Adoption-Sufficient or both,
iii. Moderate Negative Impact-Sufficient + Non-Universal Adoption-Necessary + Early Adoption-Necessary

The necessary and sufficient conditions required for policies to impose an increase decrease on competitive advantage include:

i. Positive Impact-Sufficient

The necessary and sufficient conditions required for policies to have a null impact on competitive advantage include:

1. Moderate Negative Impact-Sufficient
2. Low Negative Impact-Sufficient

From the official requirements of each policy and the inherent costs associated

[233] As is common within the QCA method, assessment of the necessary and conditions for competitive advantage increases and decreases is subjective within the context of the case, requiring much discretion on the part of the researcher. A proportional measurement of increases versus decreases plus relative impact provided the simplest measure but is still subject to challenges. This form of assessment equally weights all sub-factors where in reality they could carry different weights of impact on competitive advantage. However, the weighting of the sub-factors is still itself conditional depending on the environment and international context. Increasing costs in 1 context may carry impose a different degree of impact in a second context. As a result within the study they are all weighted equally as there is no means to impose a universal context on all the factors or policies.

with each reporting regime and recommended standards according to industry professionals, the data set is scored across the eight sub-factors for increase (1), decreases (o), or null effect (0). The scores are populated into a single table of set membership scores for each policy. The scores are then compiled into a single table by impact to identify the parallels impact and adoption.[234]

5.11 Stage 2 Result

The stage 2 QCA results are also derived deductively, starting with fixed necessary and sufficient conditions for competitive advantage increases and decreases, then moving backwards to identify whether policies meet the conditions imposing a likely increase or decrease on competitive advantage. Consistency thresholds and coverage scores are therefore not set ahead or as a prerequisite to the analysis. Likewise, the process of condition minimization and consolidation for the elimination of redundancies and contradictions are not the first steps of the deductive analytical process. With established conditions, the process begins with an examination of the patterns and trends in the truth table.

The relationships between combinations of conditions and the outcome of interest (competitive advantage impact) are summarized in a truth table (Figure 5.8). The truth table is built from the collection of tables of set memberships for competitive advantage impact on sub-factors.[235] The table summarizes crisp conditions, grouping together the combinations of set membership scores leading to the particular outcomes (competitive

[234] Appendix 2. The full QCA analysis including all tables of set membership scores, conversion thresholds, and summary explanations by policy are placed in Appendix 2. The details of the QCA design are listed in the Chapter 4 Research Design section.

[235] See Appendix 2 for the competitive advantage table of set memberships.

advantage increases/decreases) imposed by the 10 policies. All values in the table are binary listed as 1 for the presence of the condition or factor, or 0 for the absence of a given condition or factor.[236] Each policy is listed by its degree of impact followed by its adoption requirements and impact decrease or increase. The impact outcome is listed in the second end column displaying whether each policy met the necessary and sufficient conditions required for increase or decrease. The final column lists the reform outcome indicating if the policy associated with the increase or decrease was adopted as part of the reform or rejected. The table displays where variation exists leading to a common increase or decrease outcome by different policies. The truth table identifies which policies would create the conditions characteristically identified with competitive advantage increases and decreases. Figure 5.8 presents the truth table of consolidated stage 2 QCA results.

Figure 5.8: Competitive Advantage Truth Table

	QCA Comparative Advantage:	Truth Table					
Policy	Policy	Competitive Adv Impact		Adoption			Reform Outcome
No.		*Proportion*	*Degree*	*NonUniversal*	*Early*	*Impact*	
P1	**US-UKOT7 IGA (FATCA)**	1=3, 0=1, n=4	Moderate (Neg)	Yes (1)	No (0)	Nill (0)	Adopt (1)
P2	UK-CDOT	1=3, 0=1, n=4	Moderate (Neg)	Yes (1)	No (0)	Nill (0)	Adopt (1)
P3	**UK-Cen Reg Ben Own**	1=2, 0=1, n=5	Low (Neg)	Yes (1)	No (0)	Nill (0)	Adopt (1)
P4	OECD - "CRS & AEOI"	1=3, 0=1, n=4	Moderate (Neg)	No (0)	Yes (1)	Nill (0)	Adopt (1)
P5	FATF - Trans Benf Own	1=0, 0=1, n=7	*Increase (Positive)/Nill*	No (0)	No (0)	Incr (0)	Adopt (1)
P6	G20 - Ben Own Trans	1=0, 0=1, n=7	*Increase (Positive)/Nill*	Yes (1)	No (0)	Incr (0)	Adopt (1)
P7	G20 - MCMAATM	1=0, 0=1, n=7	*Increase (Positive)/Nill*	Yes (1)	No (0)	Incr (0)	Adopt (1)
P8	EU - AMLD4	1=4, 0=1, n=3	High (Neg)	Yes (1)	No (0)	Decr (1)	**Adopt** (1)
P9	US-FATCA	1=5, 0=3, n=0	Very High (Neg)	No (0)	No (0)	Decr (1)	Reject (0)
P10	UK Pub Cen Reg Ben Own	1=5, 0=3, n=0	Very High (Neg)	Yes (1)	No (0)	Decr (1)	Reject (0)
	Ratio			2.33|1	1|9	1|2.33	1|4
	Proportion			7|10	1|9	3|10	8|10

An examination of the consolidated truth table reveals the trends present in the data set, in particular the relationship between conditions and their characteristics. The details of the set relations are summarized and tabled in figure 5.9. Very high impact decreases are subject to a single sufficient condition and no necessary conditions,

[236] Conversion thresholds for the combined sub-factors into scores of 1 & 0s are tabled in Appendix 2).

displaying only a single configuration among 2 of the 10 policies in relation to policies 9 and 10 (P9, P10). Very high impact decreases have a calculated consistency score of 0.20 (20%), a raw coverage score of 0.30%, and unique coverage score of 0.20 (20%). The fitness scores indicate that a single condition can impose a decrease in competitive advantage independent of other conditions.[237]

Figure 5.9: QCA Competitive Advantage-Result Summary

QCA Result: Competitive Advantage Impact								
Result Summary								
Impact	*Necessary Conditions*	*Sufficient Conditions*	*Possible Cofigurations*	*Displayed Configurations*	*Consistency of Configuration*	*Raw Coverage*	*Unique Coverage*	*Total Policies: 10*
Decrease Very High	0	1	2	1	0.2 (20%)	0.3 (30%)	0.2 (20%)	P9, P10, (2 total))
Decrease High	1	2	8	1	0.1 (10%)	0.3 (30%)	0.10 (10)%	P8 (1)
Null	0	2	4	2	0.4 (40%)	0.4 (40)	0.40 (%)	P1, P2, P3, P4 (4 total)
Increase	0	1	1	1	0.3 (30%)	0.30 (30%)	0.30 (30%)	P5, P6, P7 (3)

High impact decreases are subject to 1 necessary and 2 sufficient conditions, displaying only a single configuration among the 10 policies in relation to policy 8 (P8). The high impact decrease has a calculated consistency score of 0.120 (10%), a raw coverage score of 0.30 (30%), and unique coverage score of 0.20 (20%). Null impact is subject to 2 sufficient conditions and no necessary conditions, displaying two configurations among the 10 policies in relation to policies 1, through 4 (P1, P2, P3, P4). Null impact has a calculated consistency score of 0.120 (10%), a raw coverage score of 0.40 (40%), and paralleling unique coverage scores of 0.40 (40%). Competitive advantage increases are subject to 1 sufficient condition and no necessary conditions,

[237] Fit scoring and numbering was calculated according to the standard calculations used in crsQCA. All scores were calculated manually without the use of software. Leila Kahwati, Sara Jacobs, Heather Kane, Megan Lewis, Meera Viswanathan and Carol E. Golin, "Using qualitative comparative analysis in a systematic review of a complex intervention," Bio Med Central: Systematic Reviews20165:82, May, 42016, accessed July 1, 2017, https://doi.org/10.1186/s13643-016-0256-y.

:

displaying one configuration among the 10 policies in relation to policies 5 through 7 (P5, P6, P7). High impact has a calculated consistency score of 0.120 (10%), a raw coverage score of 0.30 (30%), and paralleling unique coverage scores of 0.30 (30%).

In practical terms, the second stage QCA result indicates that full compliance and adoption of US-FATCA, the UK Public Central Registers of Beneficial Ownership, and the EU-AMLD4 would each significantly decrease the UKOTs comparative advantage in financial services. The impact of OECD-CRS & AEOI, US-UKOT FATCA IGA, and UK-CDOT on competitive advantage factors are moderate with non-universal adoption and no early adoption. As a result they have a null effect on competitive advantage. The UK-Central Registers of Beneficial Ownership has low impact on competitive advantage factors and an overall null effect on competitive advantage. The three recommended standards, the FATF-Transparency in Beneficial Ownership, G20-Benenficial Ownership Transparency, and G20-MCMAATM have positive impact with the effect of increasing competitive advantage.

Under the assumption of competitive advantage as the active causal mechanism in the process, its chronology proceeds from conditions of overregulation in the regulatory environment brought about by multiple prescribed policy adoptions by regulatory authorities. These conditions prompt the UKOTs to evaluate each prescribed policy against its negative or positive impact (increase/decrease) on their competitive advantage in financial services. Based on this assessment they choose to adopt or reject the policy as part of the reform package. If the policy stands to significantly decrease competitive advantage, it is rejected and met with a noncompliance response. However, if the policy

has relatively no impact on competitive advantage (or increases competitive advantage) it is met with a compliance response and adopted as part of the reform package. Figure 5.7 illustrates the sufficiency of competitive advantage as the active causal mechanism in the reform process.

The stage 2 QCA result illustrates parallels between compliance and adoption responses of policies that did not negatively impact (decrease) comparative advantage; and rejection responses to policies negatively impacting (decreasing) comparative advantage.[238] UK CDOT, FATF Transparency in Beneficial Ownership Recommendations, G20 Beneficial Ownership Transparency, and G20 MCMAATM, having the least negative impact on competitive advantage, were adopted directly by the territories. Where decreases impacted a third or less of the competitive advantage factors (decreases in 3 or less of the comparative advantage factors), compliance and adoption were the response. By contrast, the UKOTs rejected those policies that stood to significantly decrease competitive advantage. US-FATCA and UK-Public Central registers displayed the greatest negative effect of all prescribed policies and consequently were rejected and not met with compliance responses. Where decreases impacted greater than a third of the comparative advantage factors (decreases in 4 or more of the comparative advantage factors) rejection and noncompliance or capture were the responses. The QCA sufficiently models the relationship between impact on competitive advantage and compliance towards adoptions of the policies that constitute the reforms. The reform package is only populated by policies that pose little or no threat to the UKOTs competitive advantage in financial services. In this regard the theory of

[238] See Appendix 2 for a full explanation of the Stage 2 QCA result by policy.

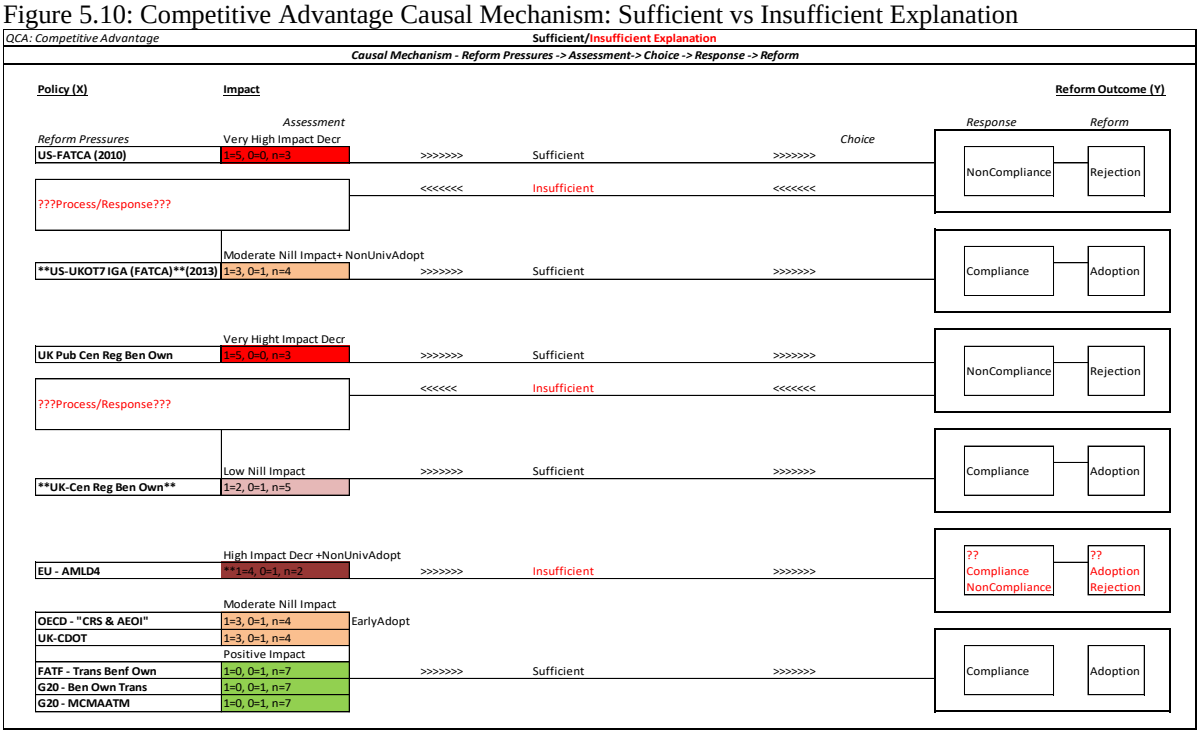
competitive advantage sufficiently explains obvious compliance & adoption, and noncompliance & rejection responses to regulatory pressures. The mechanism provides a sufficient explanation for the basis of the choice of response to each policy.

5.12 Competitive Advantage: Sufficient vs Insufficient Explanation

However, the competitive advantage mechanism does not sufficiently explain or account for the variety of responses to the prescribed policies beyond merely compliance and noncompliance (Figure 5.10), as the evidence surrounding the case indicates alternate responses.[239] The UK Public Central Registers of Beneficial Ownership was rejected but not met with a noncompliance response. It was instead met with an effort to change aspects of the regulation that would allow the territories to comply (capture). The EU AMLD4 was not met with a compliance response and adoption, but rather with partial compliance (creative compliance) and adoption where the territories complied only with those components of the policy that do not significantly harm competitive advantage (Central Registers of Beneficial Ownership). The UKOTs rejected all non-sanctionable aspects that hold the possibility of harm even if not immediate. Each of these responses must be accounted for by the causal mechanism to provide a minimally sufficient explanation.

[239] The variety of responses are taken from the stage 1 QCA result.

Figure 5.10: Competitive Advantage Causal Mechanism: Sufficient vs Insufficient Explanation



In addition, competitive advantage makes no distinctions between the motivations for both compliance and noncompliance beyond maintaining competitive advantage. Both compliance and noncompliance have multiple motivations of which reregulation, deregulation, and regulatory reform by the regulating authority are included.[240] Competitive advantage does not account for these varied responses beyond basic compliance and adoption or noncompliance and rejection.

Further, the competitive advantage mechanism provides no sufficient explanation for the changes in a policy from its original form after initial rejection, to a later form adopted as part of the reform. The territories did not comply with FATCA or the UK Public Central Registers of Beneficial Ownership until a second FATCA option in the

[240] Dunne, 143-145.

form of the IGA was made available, and the "public" component of Registers of Beneficial Ownership was eliminated. Competitive advantage does not account for the role of the regulatee in this process of change beyond noncompliance and rejection. The processes by which those policies were amended involved other responses such as regulatory capture, as well as strategic noncompliance to initiate reregulation or regulatory reform.

Capture was the means utilized by the UKOTs to eliminate the public component from the registers of beneficial owners as they had significant localized influence they could bring to bear on UK parliamentary process.[241] The UKOTs opted for a noncompliance response to US-FATCA awaiting reregulation or regulatory reform. Based on the universal nature of its challenges and the scope of the problems it posed worldwide, reregulation or regulatory reform by the US would be necessary in the short term. The territories successfully waited until other regulatory options were made available by the US administration then adopted the FATCA version that did not threaten their competitive advantage. The territories were active in both processes of change to decrease or negate the degree of loss in competitive advantage imposed by the original policy.

The theory of competitive advantage as a causal mechanism does not meet all of the requirements for a minimally sufficient explanation of the reform outcome. Unable to account for the complexity and variation in responses, nor the changes in prescribed policy, competitive advantage as a causal mechanism provides an incomplete explanation for the populating of the reform.

[241] Conclusion derived from the stage 1 QCA result.

5.13 Stage 3 QCA: Composite Mechanism

With both overregulation and competitive advantage unable to provide a minimally sufficient explanation for the adoption stage of the process, the combining of both mechanisms is the next option in the deductive elimination process in seeking to explain the choice of adoptions versus rejections. Individually, they were each unable to provide for all the aspects of a minimally sufficient explanation for the reform outcome. Overregulation is sufficient to explain the variety of responses to each policy, but insufficient to explain the basis for the choice of response. Competitive advantage is sufficient to explain the basis for the choice of reform in terms of positive or negative impact on competitive advantage factors, but insufficient to explain responses beyond compliance & adoption and noncompliance & rejection. As a composite mechanism however, the theories are expected to provide a minimally sufficient explanation covering all necessary facets of the decision making stage of the reform process. The stage 3 QCA references the stage 1 and stage 2 QCA results as a basis for explaining the composite mechanism.

In the stage 1 QCA, overregulation theory as a causal mechanism provided a sufficient explanation for the variety of responses to the prescribed policies. The mechanism is sufficient to explain the range of possible responses and the regulatory context in which those options emerge. Yet by itself was insufficient to explain the basis for the choice of response to a particular policy. The QCA result demonstrated evidence for the presence of each overregulation response with the exception of black market and low transparency activities. The responses parallel overregulation theory's suggested responses.

In the stage 2 QCA, competitive advantage as a causal mechanism provided a sufficient explanation for the basis of the choice of response to each policy. The theory adequately defines the basis for the choice of response to reform pressures as impact on competitive advantage. The stage 2 QCA results illustrate parallels between compliance and adoption responses to policies that did not negatively impact (decrease) comparative advantage, and a rejection response to those standing to decrease comparative advantage. The reform package is only populated by policies that pose little or no threat to the UKOTs competitive advantage in financial services. Even so, the mechanism was insufficient to explain responses beyond compliance & adoption, and noncompliance & rejection.

In the stage 3 QCA, with both theories combined, the composite mechanism dually dictates that the impact of each policy on competitive advantage determined the choice of response to that policy, and that the variety of available responses were ramed by the elements of overregulation present in the policy. The central elements of the composite causal mechanism include a *competitive advantage impact assessment and overregulation framed choices of response*.

Under the assumption of the combined theories as the active causal mechanism in the process, the chronology of the reform proceeds from conditions of overregulation in the regulatory environment brought about by multiple prescribed policy adoptions by regulatory authorities. These conditions prompt the UKOTs to first conduct a competitive advantage impact assessment to determine whether each policy stands to decrease or increase their competitive advantages in financial services. If the policy did not stand to

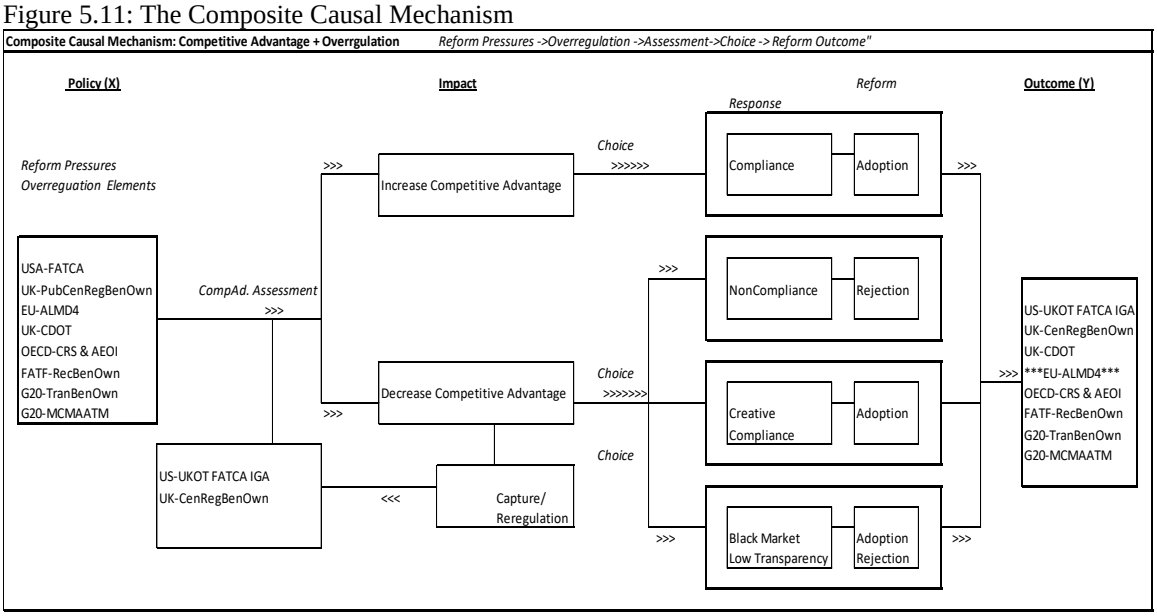
decrease competitive advantage or enhanced it, the policy was met with a compliance response and adopted as part of the reform. If the policy stood to decrease competitive advantage, compliance was forgone and it was rejected then met with either noncompliance or one of the other three overregulation responses. Those responses included capture, black market/low transparency, or noncompliance while awaiting reregulation-deregulation-regulatory reform.

If changes occurred in the policy via capture or reregulation, it was reassessed, and if found to no longer decrease competitive advantage, was then met with a compliance and adoption response. If the policy had both sanctionable and non-sanctionable elements, of which some parts negatively impacted competitive advantage while others does not, a creative compliance response was followed by adoption as part of the reform.

The end result was the reform outcome comprised of eight policy adoptions of which seven are compliance responses, and one a creative compliance response. Two of the policies were rejected (FATCA, Public Central Registers of Beneficial Ownership), one with a noncompliance response, the other with a capture response. The two rejected policies were later adopted in a different form from their initial introduction by regulatory authorities (UKOTs FATCA IGA, Central Registers of Beneficial Ownership).[242] Figure 5.11 illustrates the entire process and step five as a product of the composite overregulation-comparative advantage mechanism.

[242] See Appendix 2 for a full explanation of the Stage 3 QCA result by policy.

Figure 5.11: The Composite Causal Mechanism



5.14 Composite Mechanism: Sufficient vs Insufficient Explanation

The stage 1 result indicated that overregulation is sufficient to explain the variety of responses to each policy, but insufficient to explain the basis for the choice of response. The combine with competitive advantage eliminated this short coming. The stage 2 result indicated that competitive advantage is sufficient to explain the basis for the choice of reform in terms of positive or negative impact on competitive advantage factors, but insufficient to explain responses beyond compliance & adoption and noncompliance & rejection. The combine with overregulation eliminated this short coming in regard to the requirements for a minimally sufficient explanation.

However, neither mechanism was able to sufficiently explain the adoption of a prescribed policy in a form other than its original presentation by regulatory authorities. Overregulation described only the responses by which the change occurs, while the competitive advantage describes only the basis for accepting the changes. Neither was

able to provide a complete explanatory process for the change and as a result were unable to fulfil the requirements for a minimally sufficient explanation. Even so, the combine of both mechanisms is also capable of eliminating this shortcomings. The composite mechanism can provide an explanatory element capable of explaining the entire process in the structural change of a policy for later adoption after having been initially rejected.

The process of change begins with the territories' assessment of the impact of each policy on its competitive advantage in financial services. It the policy stands to decrease competitive advantage it is rejected with either a noncompliance or capture response. Capture is pursued with the intent of using both formal and informal influence to bringing about changes in the structure of the policy mitigating its negative impact on competitive advantage. Strategic noncompliance is pursued in order to initiate, or awaiting reregulation or regulatory reform based on inherently structural problems within the policy. Once the policy is reintroduced by the regulatory authority in a secondary format, it is reassessed for its impact on competitive advantage. If the impact is null or positive, then the policy is met with a compliance response and adopted into the reform package.

The UKOTs initially rejected both US FATCA and the UK Public Central Registers of Beneficial Ownership due to their negative impact on competitive advantage. Four years after FATCA's introduction the UKOTs adopted the UKOTs FATCA IGA, and over a year after its initial introduction adopted a nonpublic version of the UK-Public Central Registers. US-FATCA was rejected due to the universal nature of challenges posed by FATCA to jurisdictions worldwide. The territories entered into negotiations

with the US (after initial permission by the UK) citing their inability to comply with FATCA in its initial form and sought a solution that would allow for their compliance with US reporting requirements.[243] After these types requests mass mounted against FATCA by numerous states worldwide, the US restructured the policy to accommodate the individual needs of select jurisdictions in the form of Intergovernmental Agreements (IGAs).[244] The *US-US/UKOT7 FATCA IGA* was agreed between the territories and US in 2014.[245] The IGA had only a null effect on the territories competitive advantage in financial services and was fully complied with and adopted as part of the reforms.[246] Within the financial services industry the reregulation process regarding FATCA was well documented, detailing the numerous challenges it posed throughout the global financial services sector.

The UK Central Registers of Beneficial Ownership was initially rejected based on its legal incompatibility with the privacy laws of the territories.[247] Rather than opt for noncompliance rejecting the registers altogether, the territories pursued a capture strategy employing localized diplomatic resources in the UK to influence the structure of the policy in their favor by removal of "public" requirement.[248] The attempt was successful

---

[243] Philip Graham, "BVI & Cayman Funds Round-Up: From FATCA to Fund Directors," Harneys Publication, October 30, 2012, accessed, July 1, 2017, http://www.harneys.com/publications/legal-updates/bvi-and-cayman-funds-round-up-from-fatca-to-fund-directors

[244] Laurie Hatten Boyd, "Are Problems Looming for FATCA and the "Reciprocal" IGA?."

[245] "Foreign Account Tax Compliance Act (FATCA)," US Department of the Treasury, Accessed July 1, 2017, https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

[246] The null effect conclusion is taken from the stage 2 QCA result.

[247] James Brockhurst, "Old colonies; New Disputes."

[248] The formal and informal lobbying efforts of the UKOTs meets the definition of attempted capture. Secondary sources in UK media criticize the degree of influence the UKOTs have been able to secure with regards to the UK governments. Melanie Newman, "Lobbying's Hidden Influence: Tax havens boost their lobbying efforts," The Bureau of Investigative Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-19/tax-havens-boost-their-lobbying-efforts. Melanie Newman, "Conservative peer hired as tax haven lobbyist," The Bureau of Investigative

as the "public" element was withdrawn and the policy presented as the *UK Central Registers of Beneficial Ownership* in 2016.[249] The revision had a null effect on competitive advantage allowing the territories to comply and adopt the policy as part of the reforms.[250] The evidence surrounding the case in terms of lobby reports lends credence to the capture claim.

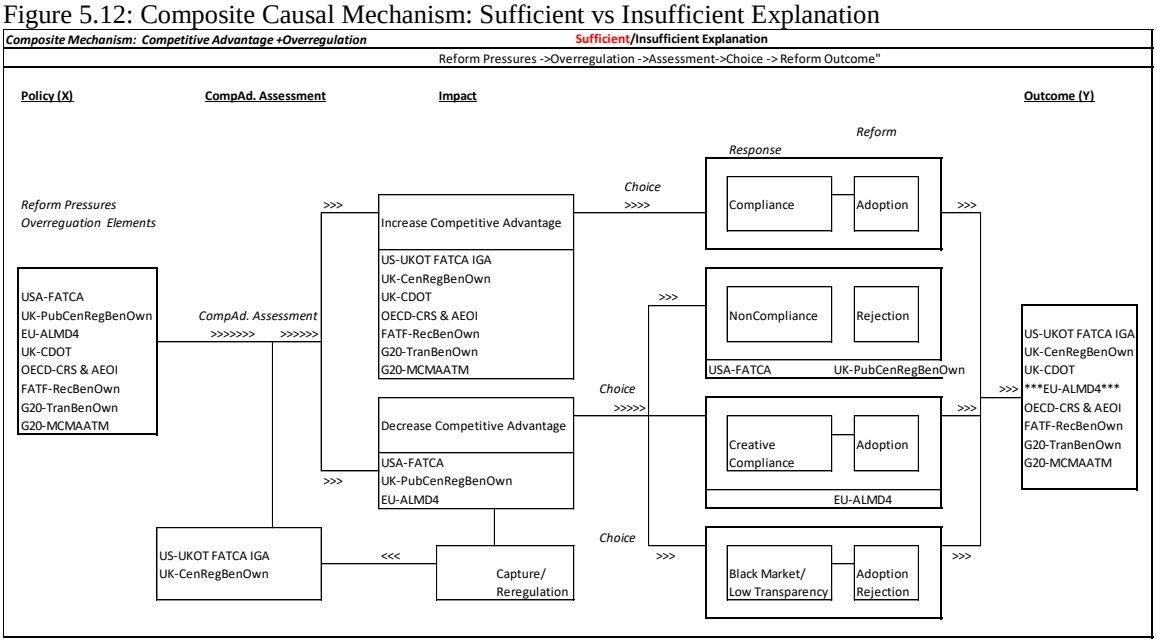
The explanation of change described by the composite mechanism parallels the chronology of evidence and events surrounding both FACTCA and the Registers of Beneficial Ownership. The parallel is consistent enough to provide a sufficient explanation for the adoption of a prescribed policy in a different form than that originally proposed by the regulatory authority. The provision of this explanation, together with explanations of the choice of response and response options provide a complete explanation of the populating of the reform. It addresses all facets of the adoption or rejection of the reform policies prescribed by the varying regulatory authorities. The composite mechanism therefore provides a minimally sufficient explanation for the final step of the reform process without outstanding gaps of logic, events, or time in the process. Figure 5.12 illustrates the sufficiency of the composite mechanism in explaining the reform outcome.

Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-17/conservative-peer-hired-as-tax-haven-lobbyist. The British Virgin Islands as well as other UKOTs have formally organized and recruited groups of influential individuals to lobby the UK government in areas of strategic interests such as Financial services. "Friends of the BVI," Government of the British Virgin Islands London Office, accessed July 1, 2-17, https://www.bvi.org.uk/londonoffice/friends.

[249] Patrick Wintour, "Overseas territories spared from UK law on company registers," The Guardian, April 12, 2016, accessed July 1, 2017, https://www.theguardian.com/business/2016/apr/12/overseas-territories-spared-from-uk-law-on-company-registers.

[250] The conclusion of null effect is taken from the stage 2 QCA result.

Figure 5.12: Composite Causal Mechanism: Sufficient vs Insufficient Explanation



CHAPTER 6

Conclusion & Discussion

6.1 Summary of Research Findings

The hypothesis proposed at the outset of the research suggested that the reform pressures facing the UKOTs were characterized by elements of overregulation, and the adoption or rejection of each prescribed reform policy was based on its negative or positive impact on the territories' international competitive advantage in financial services. If a policy did not impose a likely decrease on competitive advantage, it was met with a compliance response and adopted as part of the reform. If a policy was likely to impose a decrease on competitive advantage, it was rejected, forgoing compliance and followed by an alternative response to overregulation.

The minimally sufficient explanation provided by the composite overregulation-competitive advantage mechanism parallels this hypothesis. The composite mechanism explains the varying facets of the reform including the structure of reform pressures (overregulation), the variety of possible responses (overregulation), the basis for policy adoption and rejection (competitive advantage), and the process by which rejected policies are morphed into policies eventually adopted (composite mechanism) by the UKOTs.

The evidence appears to support the hypothesis and composite mechanism, granting increased confidence that the explanation is sufficient to explain the reform outcome. The QCA results provided evidence for the presence of four out of the five overregulation responses within the decision making stage with the exception of black

market/low transparency activities. The absence of evidence for a black market or movement to low transparency activities by the UKOTs does not invalidate the findings in any regard. The opaque nature of low transparency financial services makes their presence difficult to detect or prove, requiring extensive resources and efforts by regulatory authorities such as the FATF. While not likely given the quality based competitive advantage strategy of the UKOTs, it is possible that black market or other low transparency activities exist but have not yet been uncovered by the relevant authorities. The presence of the parallel between UKOT responses and overregulation responses lends confidence to the claims that overregulation characterizes the reform pressures and sets the range of available responses to each prescribed policy.

The QCA results further provided evidence that those policies with a calculated positive or null impact were adopted directly, while those with a largely negative impact were either rejected outright, or as part of a capture or reregulation/regulatory reform/deregulation strategy. The parallel lends confidence to the claims of the central role of competitive advantage in the decision making stage of the reform process.

The deductive process of extracting the active causal mechanism by elimination demonstrated the shortcomings of explanations based solely on overregulation or competitive advantage. Overregulation provided the regulatory context and variety of responses, but no basis for choice of response. Competitive advantage provided the basis for choice of response, but not the regulatory context or variety of responses. Combined, the theories provided greater explanatory power than individually in regard to the reform outcome.

6.2 Validity of the Findings

The validity of the collective findings are assessed by standard process tracing testing.[251] The dual hypothesis presented at the study's beginning will be tested in its composite parts for certainty and uniqueness relative to the initially stated theoretical positions of competing explanations in geopolitics, international political economy, international law, tax law, and shared sovereignty as examined in the review of literature. The hypothesis will be tested in its component parts for practicality as it ultimately reflects two different causal mechanisms at work which necessity and sufficiency tests cannot assess at the same time.

The first conditional claim of the hypothesis suggests that if a policy did not impose a likely decrease on competitive advantage, it was met with a compliance response and adopted as part of the reform. The competitive advantage founded claim of the hypothesis is not unique however, as the political economy and tax law approaches also confirm the same claim that the major consideration of small OFCs in international financial regulation is the ability to effectively compete.[252] The approaches highlight tax, transparency, and regulatory competition in particular, all major aspects of the UKOTs differentiation strategy.[253] Therefore compliance and adoption responses to policies that enhance or do not impact these areas of competition is the likely outcome in those approaches. As a result the hypothesis and findings are low in uniqueness.

---

[251] Melanie Punton and Katharina Welle, "Straws-in-the-wind, Hoops and Smoking Guns: What can Process Tracing Offer to Impact Evaluation?" CDI PRACTICE PAPER Centre for Development Impact (April 10, 2015): 1-8, accessed July 1, 2015,

[252] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order,"16-20. Gregory Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty55-65.

[253] Ibidl.

However, the certainty of the evidence for the hypothesis is high based not only on the other two disciplines confirmation of the result, but also the numerous reports of financial services industry professionals on the great negative impact of the new regulatory regimes on the ability of jurisdictions and firms to compete successfully.[254] The industry professionals cite the increased due diligence cost and labor burden negatively impacting competition within the industry. Countries and firms have avoided compliance for as long as possible requesting extensions and numerous exceptions to minimize or defer any possible negative impact. The result has been the pushing back of multiple implementation dates.[255] The first claim of the hypothesis therefore categorically passes a Hoops test with *High Certainty* and *Low Uniqueness*, being insufficient for inferring causation relative to the reform.[256] The competitive advantage neutral/increase policy adoption claim of the hypothesis is therefore not validated, but is neither invalidated by competing explanations.

The second claim of the hypothesis suggests that if a policy was likely to impose a decrease on competitive advantage, it was rejected, forgoing compliance and followed by an alternative response to overregulation. In contrast to the first claim, the second claim is unique. By the same reasoning applied to the first claim, competing explanations in political economy, international law, and tax law would again confirm the competition based claim of rejection of policies impeding the relative ability of small OFCs to compete. Yet they provide no similar assessment of a range of responses beyond rejection

---

[254] Reports on cost from the financial services industry were used as a key data source for this study. Accenture, "Automatic Exchange of Information Regime: An emerging compliance challenge."
[255] Hatten Boyd. "Are Problems Looming for FATCA and the "Reciprocal" IGA?"
[256] Melanie Punton and Katharina Welle, "Straws-in-the-wind, Hoops and Smoking Guns: What can Process Tracing Offer to Impact Evaluation?" 1-8.

and noncompliance other than adoption and compliance. Overregulation is unique among the explanations in its framing of capture, creative compliance, and black market activities. Those responses are founded within the realm of regulatory theory.

However, while the responses linked to the claim are unique, the certainty of finding and confirming them is relatively low. Capture and black market/low transparency activities are opaque by nature without great transparency. Proving capture is a significant challenge when seeking proofs beyond the realm of examining formal and transparent lobbying. The greater degree of events and activities linked to capture are veiled in secrecy.[257] Similarly, black markets take significant efforts for detection and may be present for considerable periods without financial authorities' knowledge. Low transparency activities are intentionally conducted in a manner bypassing detection.[258] Likewise, creative compliance is an activity intentionally shrouded in opaqueness for the purpose of the bending of the rules without punishment.[259] Detection of the three responses is significantly challenging for law enforcement as well as regulatory authorities. Therefore the second claim of the hypothesis is characteristic of a Smoking Gun, being unique, but highly uncertain.[260] The second claim is only sufficient for a confirmation of causal inference lending credence to existence of alternative rejection response claims that are not likely to be verified due to their opaque nature.[261]

The collective result of a combination of a hoops test and smoking gun test on the

---

[257] Dubley and Brito, 15.
[258] Baldwin and Cave, and Martin, 70.
[259] Baldwin and Cave, and Martin, 70-71, 232.
[260] Melanie Punton and Katharina Welle, "Straws-in-the-wind, Hoops and Smoking Guns: What can Process Tracing Offer to Impact Evaluation?" 1-8.
[261] Ibid.

hypothesis suggests that there is likely evidence for competitive advantage impact being the basis for policy adoptions or rejections, but the evidence will possibly confirm other competing hypothesis or alternative explanations. The tests further suggest that rejection response alternatives to non-compliance including creative compliance, capture, or black market/low transparency activities are very likely, but unlikely to be found due to detection and transparency problems. By this measure confidence in the findings would not be increased or nor high.

However, subjecting the study's findings to a comparative evaluation based on its internal requirements for a minimally sufficient explanation yield a different result. Based on the study's internal requirements, competing explanations in geopolitics, international political economy, international law, tax law, or shared sovereignty could not be validated due to their inadequacy in addressing each component required of the minimally sufficient explanation set for this study.

Regarding the first requirement of explaining the variety of responses to each prescribed policy, they each fail to provide an explanation for responses beyond adoption & compliance and rejection and non-compliance. Each of the conventional approaches distinguishes only between compliance & adoption, and rejection & noncompliance. The field of regulatory theory specifically addresses the issue of policy and compliance responses. The AMLD4 and Public Central Registers each prompted responses from the territories other than adoption & compliance or rejection & noncompliance. These responses would have to be accounted for in a minimally sufficient explanation of the reform outcome.

Regarding the basis for the choice of response to each prescribed policy, the political economy and tax law approaches do point to competition factors as the basis for the choice of response to each policy.[262] The geopolitical and shared sovereignty approaches however, attribute the basis for choices of adoption or rejection of policy as being dictated by the UK.[263] Evidence contradicts this view based on the territories' rejections of the initial forms of FATCA and the Public Central Registers of Beneficial Ownership. The US's greater power position would mean the territories would have to accept FATCA in its initial form and not be able to negotiate on behalf of themselves given the power imbalance. Yet they rejected the initial version and negotiated with the US successfully. The territories' acted in their own interests. Regarding the central public registers there was no geopolitical competition between the UK and any other power for its implementation. Rather, the UK merely sought an alignment of policy between itself and its OTs, not the balance or appeasement of a competing power. The UKOTs rejected this alignment with UK policy as it was outside the scope of their shared sovereignty arrangement for the OTs to be forced into financial and economic regulatory commitments beyond international or EU standards.[264]

The geopolitics and shared sovereignty approaches are in agreement that the UK exercises its sovereign responsibility to protect the economic viability of its OTs and at

---

[262] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order,"16-20. Gregory Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty55-65.

[263] Vincent Piolet, "The city of London: Geopolitical Issues Surrounding the World's Leading Financial Center," 102-110. Peter Clegg & Peter Gold, "The UK Overseas Territories: a decade of progress and prosperity?," 115-120.

[264] Peter Clegg & Peter Gold, "The UK Overseas Territories: a decade of progress and prosperity?" 127-129.

the same time ensure that they adhere to international regulatory standards.[265] However, in contrast to the UK centered explanations for the reform, the territories actually had a more immediate incentive to implement financial services reforms. To remain internationally competitive regulatory efficiency is necessary and the territories pursue reforms as part of their competitive advantage strategy moreso than meeting any UK based legal obligations.[266] Up to date regulatory compliance is necessary for the marketing of the jurisdiction and sale of its products globally. The shared sovereignty approach does not take into consideration this ulterior motive for reform and distinguish it from the territories' constitutional legal obligations to the UK's in the reform process. It is therefore unclear whether the territories adopted reform policies based on the UK government or for reasons informed by their own economic self-interests.

Last, in regard to providing a minimally sufficient explanation, the conventional approaches provide no sufficient explanation for the adoption of a prescribed policy in a form other than its original presentation by the regulatory authority. Geopolitical and international political economy approaches suggest that the changes are due to changing power dynamics in the international system and economic competition.[267] However, the changes in the Public Central Registers involved no other major powers but the UK whose power vastly outweighed those of its OTs. The policy did not make the UK more competitive nor sought to do so. There was no regional or multilateral requirement for a public register. There was no transparency competition between the OTs and the UK who

---

[265] Ibid.

[266] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order,"16-20. Gregory Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty55-65.

[267] Ibid.

support and defend the viability of the OT's financial services economy's as a pillar of their development. The UK merely sought to align the territories' policies with its own regulatory standards.[268] The change in the structure of the policy therefore must be attributed to something other than geopolitics, economic competition, or international law. The shared sovereignty approach is steeped in contradiction on the question as the UK sought to impose a non-international standard on their OTs that would harm their short and long term economic development.

Likewise, accommodations for changes in FATCA were made by the US to both large and small competing jurisdictions of varying power and influence. International and tax law do give sufficient explanation for the provision of the FATCA IGA in the form of legal incompatibility problems.[269] The geopolitics and shared sovereignty approaches highlight the role of the UK in attaining IGAs for both themselves and their OTs. The political economy approach however provides no answer on the changes in FATCA policy.

None of the conventional approaches provide a comprehensive explanation of post-rejection policy change that covers all of the policies prescribed to the territories. An explanation covering each policy is a requirement of a minimally sufficient explanation. The composite mechanism gives a comprehensive explanation of the changes while competing approaches do not.

Therefore, while not scoring higher in necessity and sufficiency testing, the

---

[268] Houlder, "UK reaches tax agreement with overseas territories." Rogers, British Overseas Territories in the Caribbean agree to central registries of beneficial ownership information – the first step on the slippery slope to full disclosure has been taken."

[269] Hatten Boyd, "Are Problems Looming for FATCA and the "Reciprocal" IGA?"

hypothesis and accompanying composite overregulation-competitive advantage causal mechanism can be held with increased confidence relative to competing methods based on the study's internal requirements for a minimally sufficient explanation. Competing explanations at the level of theory would not meet these requirements to be considered valid explanations.

6.3 Limitations of the Analysis

The parameters of the analysis were relatively strict, seeking to explain the reform outcome based on a minimally sufficient rather than general or systemic explanation. Therefore the research design and method impose structural limitations on the case analysis. The study's results are not generalizable beyond the case, a condition intrinsic to single case (within case) research designs and explaining outcome process tracing in particular. Systematic mechanisms (theory) are used in the analysis, but their use is expressly limited to the case. While possibly informative for a retroactive analysis of previous reforms, the analysis is incapable of predicting the UKOT response to future reform pressures.

A major challenge of the research findings is the great degree of subjectivity required in conducting the QCA portion of study. As is common within the QCA method, assessment of conditions for the group of overregulation responses is highly subjective within the context of the case, requiring extensive knowledge much discretion on the part of the researcher. While evaluation, adoption, and compliance questions were the preferred basis of assessing overregulation responses, an alternative formulation is also possible using another grouping of characteristics that could deliver a different result. At

the testing stage, the alternate findings could have the same outcome which would possibly invalidate both sets of findings.

Another challenge paralleling the subjectivity question in QCA was a measurement problem in the assessment of competitive advantage increases and decreases. The choice of a proportional measurement of increases versus decreases plus relative impact based on simply adding the amount of increased factors versus decrease factors provided the simplest measure, but is not necessary the most accurate. The proportional assessment equally weights all competitive advantage sub-factors where in reality they could carry different weights of impact. Increased taxation rates by themselves could substantially decrease competitive advantage whereas increased due diligence could be manageable. However in higher tax areas due diligence could be the crippling increase and taxation not. Yet there was no solvent means to address the problem. An alternate weighting of the sub-factors would still be subjective and conditional depending on the environment and context. Increasing costs in 1 context may impose a different degree of impact in a second context. As a result within the study the decision was made to weight changes in all the factors equally as there is no means to impose a universal context on all the competitive advantage factors or policies. While the method had consistency, in terms the calculated decrease imposed by each policy, it is possible that the conversion thresholds provided in the study have a degree of inaccuracy where less ranked impact polices may actually have a higher threshold for harm.

Further, in regards to increases in the costs of labor imposed by each policy, all the values were chosen as neutral. This was due to an inability to track labor costs across

the industry in terms of increased personnel, increased work hours, or sub-contracting costs. Accommodating the increased work load has been achieved in different ways. As a result labor costs are posted as neutral, where in reality some policies may affect labor costs more greatly in specific jurisdictions than others.

Last, the findings are limited by select aspects of the data sources. Policy impact cost evaluations were used in the study taken from entities that service the industry and know the costs, but have an interest inflating them to receive greater business and higher profits. As a result the cost assessments of the impact of the new reporting regimes may actually be stated higher than they actually are in reality. Therefore assessments based on that data have questionable accuracy and may not reflect actual costs. Even so, there was no nonacademic industry alternative that would provide the same level of access to cost structure and scrutiny of the reporting regimes.

The capture aspect of the findings had significant challenges in that none of the UKOTs was willing to give an open admission of actively seeking to capture the process, nor formal documents on their lobbying activities. They were willing to undertake informal verbal conversations, but no formally recognized written statements. The capture claim had to be pursued through investigative reporting media sights and general media whose claims cannot be substantiated. Compounding the information shortfall is the generally opaque nature of capture which by definition is secretive. Therefore this study's capture claims are subject to low levels of validation

6.4 Contribution to the Research Topic

The findings contribute to the study of the UKOTs financial services reforms

between 2014 and 2016 by examining the reforms as a package rather than each policy individually. There has been research on the impact of FATCA and the CRS & AEOI on financial services globally both individually and combined. Research has also been conducted on the imposing of registers of Beneficial Ownership on EU members and its impact on the EU itself. Numerous discussions on CDOT have taken place regarding its impact of the UKOTs & Crown Dependencies. This study creates a framework within which to collectively assess post-crisis UKOT financial service policy reform. The literature lacked a framework for collective assessment, nor established a general paradigm for policy adoption or reform.

The integration of overregulation theory is a significant contribution to the topic, changing the context of the academic discussion from international regulators seeking to safeguard against the harmful practices of small offshore financial centers; to consideration of the possibly harmful effects of regulatory efforts on small OFCs operating within the legal parameters of international financial and economic regulation. The approach is distinct in its granting of agency to the territories where the conventional approaches maintain an agency deficit. Small OFCs do not set the regulatory agenda, but their designation solely as principals is not reflective of their activity in the regulatory process. The territories are actively involved in the regulatory process seeking to defend their own national interests. The study demonstrates that the territories were able to undertake a variety of responses to regulation and regulatory authorities not dictated by the UK or larger financial centers.

While being non-generalizable, the case does have some capacity for illustrating

the efficiency of explanation by comparative advantage and overregulation theory. The composite causal mechanism is based on two systematic mechanisms (general theories). Therefore indirectly the findings give some indication as to whether the case meets the predictions of overregulation theory and the theory of comparative advantage. Overregulation theory's proofs lie in identifying overregulation and confirming it based on the responses of regulatees. The UKOTs case identifies both the overregulation elements in the prescribed policies and the accompanying overregulation responses to those elements with the exception of black market/low transparency responses. Previous scholarship adequately explained the tenets of the competitive advantage strategy by which both small OFCs such as the UKOTs have become successful and world leaders in financial services. Those claims are substantiated in the findings, demonstrated by the UKOTs efforts to protect those advantages gained in financial services over time. Moreso, the case contributes to the literature by specifically explaining how the UKOTs protect their competitive advantages from regulatory threats. The study outlines a specific strategy by which a group of small OFCs met the regulatory obligations of harmful policies while maintaining their competitive advantage.

This study also contributes to studies of microstate international relations. It is illustrative of how microstates successfully navigate the demands of the international system and its larger actors in meeting their national interests. The power deficit in the global economy suggests that microstates do not wield a significant enough degree of economic or political power to resist the demands of larger actors. Yet in the UKOT reform case the territories successfully met their national interests relative to larger actors

in the center of the international financial infrastructure or the global economy.

6.5 Future Research Prospects

From this study, the next stage of research would be a comparative study of the UKOT response to the overregulation of their financial services industry, and the responses of other individual or groups of small OFCs. Such a study could reveal whether the UKOT's responses and decision making process are general and not just unique to this specific case. The cases would provide confirmation of overregulation theory, fitting into the greater population of cases within overregulation theory. Similarly, in the case of competitive advantage a comparative study of frameworks for combating regulatory threats to competitive advantage by small OCFs could determine whether the responses are general or unique to each OFC. The framework developed in this study can be used to retroactively assess previous reforms in the UKOTs to determine if the process contains the same elements as part of a longer term behavioral trend.

Another possible area of research within which the study could possibly be integrated is an examination of the collapse of small OFCs based on changing regulatory regimes. It is not a highly developed area of research with only a few cases in the Pacific Ocean having been studied.[270] A failure to navigate the reform pressures of a financial system in flux is possibly a greater threat to the viability of the UKOTs than the financial crisis itself. Regulatory burden may be the source of collapsing a financial center. Among the UKOTs the smaller financial centers (Turks & Caicos Is., Anguilla, Montserrat) have greater vulnerability than their large larger counterparts (Bermuda, British Virgin Is.,

[270] Gregory Rawlings, "Taxes and Transnational Treaties: Responsive Regulation and the Reassertion of Offshore Sovereignty55-65.

Cayman Is., Gibraltar). A comparative study of other OFCs that have collapsed under the weight of regulatory changes globally with the success the UKOTs could give great insight about managing periods of turbulent change in the international financial system for the smaller UKOT financial centers. Measures of success and failure could be pitted against each other to derive a complete base of operating principles in such circumstances.

APPENDIX 1

POLICY SUMMARY

A1.1 Reform Pressures: Policy Summary

The formal policy demands, or prescribed policies include: US-FACTA, UK-CDOT, UK-Public Central Register of Beneficial Ownership, OECD-CRS & AEOI, FATF-Transparency in Beneficial Ownership, G20-Beneficial Ownership Transparency, G20 Multilateral Convention on Mutual Administrative Assistance in Tax Matters, and the EU-Fourth Anti-Money Laundering Directive. Of the prescribed policies, four are information reporting regimes, three require establishing central data registers, and three seek the acceptance of recommended standards. In addition three of the policies demand universal adoption, three made early adoption demands, and five impose punishable sanctions for noncompliance and non-adoption. Figure A1.1 lists the policies prescribed to the territories by regulatory authorities.

Figure A1.1: Reform Pressures as Prescribed Policy

Multilevel Reform Pressures		**Prescribed Policy (Policy Demands)**					
Policy	*Type*	*Requires*	*Application*	*Sanctions*	*Year Intro*	*Adopted*	EarAdopOpt
US-FATCA	Infor. Reporting Regime	Reporting on US Citizens	Universal	Yes	2010	No	Yes
****US-UKOT7 IGA**(FATCA)**	Infor.Reporting Regime	Reporting on US Citizens	UKOT7	Yes	2014	Yes	No
UK-CDOT	Infor. Reporting Regime	Reporting on UK Citizens	UK OTs,CDs	Yes	2014	Yes	No
UK Pub Cen Reg Ben Own	Information. Data Register	Collecting of BenOwn Data	UK OTs,CDs	Yes	2015	No	Yes
****UK-Cen Reg Ben Own****	Information. Data Register	Collecting of BenOwn Data	Ots, CDs	Yes	2016	Yes	No
OECD - "CRS & AEOI"	Infor. Reporting Regime	Autom. Exchange of Tax Data	Universal	No**	2014	yes	Yes
FATF - Trans Benf Own	Recommended Standard	Collecting of BenOwn Data	Universal	No	2012	Yes	No
G20 - Ben Own Trans	Recommended Standard	Collecting of BenOwn Data	G20	No	2014	Yes	No
G20 - MCMAATM	Recommended Standard	Cooperation on Tax Evasion	G20	No	2010	Yes	No
EU - AMLD4	Infor.DataRegist/RecomStd	Col BenOwn Data, EnhDueDil	EU	No	2015	No	No

Unilateral:–

i. *US-FATCA (US-2010)* - Requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest.

FFIs are encouraged to either directly register with the IRS to comply with the FATCA regulations (and FFI agreement, if applicable) or comply with the FATCA Intergovernmental Agreements (IGA) treated as in effect in their jurisdictions. Failure to adopt the legislation and comply is subject to sanctions by the US government. [271]

ii. *US-US/UKOT7 IGA (FATCA)(US-2013)* - Requires the governments of the UKOTs (rather than FFIs) to report to the IRS information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest. The local governments are responsible for collecting the information by their own means according to their local laws and legislation. Failure to report the information to the local authorities is subject to sanction by the local government, who thereafter can report the entity to US authorities for a further round of sanctions. Failure to adopt the IGA legislation and comply is subject to sanctions by the US government. [272]

iii. *UK-CDOT (UK-2014)* - Requires Financial Institutions in the UKOTs to identify and report information regarding accountholders who are UK Specified Persons (UK tax residents) or offshore entities that are controlled by UK Specified Persons. The UK enters into Inter-Governmental Agreements (IGA) establishing reciprocal tax information sharing agreements with the UK

---

[271] "Foreign Account Tax Compliance Act (FATCA)," US Department of the Treasury, Modified March 29, 2017, accessed June 4, 2017, https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

[272] Ibid. "FATCA IGA Global Summary," Deloitte, June 8, 2016, accessed June 17, 2017, https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-fatca-iga-global-summary-060816.pdf.

Crown Dependencies & Gibraltar, and non-reciprocal agreements with the UKOTs. UK Financial Institutions must identify and report information regarding accountholders who are Crown Dependencies or Gibraltar Specified Persons or certain entities which have Controlling Persons who are Crown Dependency or Gibraltar Specified Persons. Failure to adopt the legislation and comply is subject to sanctions by the UK government. [273]

Bilateral:

i. *UK – Public Central Register of Beneficial Ownership Information (June 2016).* - Established a central publicly accessible register of beneficial ownership for the UK (People with Significant Control Register-PSC register). Requires all companies incorporated in the UK to give information about their people with significant control to Companies House with their annual confirmation statement. The information on the register is publicly available with necessary exceptions to protect information about individuals at risk. Failure to adopt the legislation and comply is subject to sanctions by the UK government. [274]

---

[273] "Statutory guidance-Automatic Exchange of Information Agreements: other UK agreements," HM Revenue Customs: Gov. UK, September 8, 2014, accessed July 1, 2017, https://www.gov.uk/government/publications/automatic-exchange-of-information-agreements-other-uk-agreements/automatic-exchange-of-information-agreements-other-uk-agreements. Out-Law.Com, "UK FATCA-the disclosure to HMRC of information about reportable accounts held by UK taxpayers in the Crown Dependencies and Overseas Territories." "UK FATCA-The disclosure to HMRC of information about reportable accounts held by UK taxpayers in the Crown Dependencies and Overseas Territories," Out-Law.Com, Last Modified April 2016, accessed June 4, 2017, Out-Law.com https://www.out-law.com/topics/tax/tax-for-entrepreneurs/uk-fatca---the-disclosure-to-hmrc-of-information-about-reportable-accounts-held-by-uk-taxpayers-in-the-crown-dependencies-and-overseas-territories-/.

[274] "A register of Beneficial Owners of Overseas Companies and Other Legal Entities: Call for evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement" Department for Business, Energy & Industrial Strategy (April 2017): 9-10, accessed June 4, 2017, www.gov.uk/government/consultations/property-ownership-and-public-contracting-byoverseas-companies-and-legal-entities-beneficial-ownership-register.

Multilateral:

i. *OECD - Global Common Reporting Standard (CRS) for Automatic Exchange of Financial Account Information (the AEOI Standard) - (OECD-2014).*[275]

a. Requires each country to annually automatically exchange with the other participating countries information on selected cases in their jurisdiction with regard to reportable accounts in the requesting concerned jurisdictions.

b. Requires utilizing the Common Reporting Standard for reportable accounts to include: the name, address, Taxpayer Identification Number and date and place of birth of each Reportable Person, account number(s), the name and identifying number of the Reporting Financial Institution, the account balance or value as of the end of the relevant calendar, account closure details if the account was closed during such year or period. In the period of universal adoption beyond 2018 failure to adopt the legislation and comply is subject to sanctions by the OECD Global Forum.

ii. *FATF-Recommendations and Guidance on Transparency and Beneficial Ownership (FATF-2012).*[276]

a. Strongly advises countries take measures to prevent the misuse of legal persons or legal arrangements for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely

[275] "Standard for Automatic Exchange of Financial Account Information in Tax Matters OECD (2014)," OECD Publishing, accessed June 4, 2017, http://dx.doi.org/10.1787/9789264216525-en.

[276] "FATF guidance TRANSPARENCY AND BENEFICIAL OWNERSHIP," FATF, Last Modified October 2014, accessed June 23, 2017, http://www.fatf-gafi.org/documents/news/transparency-and-beneficial-ownership.html.

information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs.

iii. *G20-High Level Principles on Beneficial Ownership Transparency (G20-2014).*[277]

a. Strongly advises countries to ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.

iv. *G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters (G20-2010).*[278]

---

[277] "G20 High-Level Principles on Beneficial Ownership Transparency (2014)," accessed May 23, 2017, http://www.g20australia.org/official_resources/g20_high_level_principles_beneficial_ownership_transparency.html.

[278] "Convention on Mutual Administrative Assistance in Tax Matters," OECD Last updated - May 2017 Accessed May 23, 2017, http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. The OECD and Council of Europe (2011), The Multilateral Convention on Mutual Administrative assistance in Tax Matters: Amended by the 2010

a. The Convention is a freestanding multilateral agreement designed to promote international cooperation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention was developed by the OECD and the Council of Europe but is now open to all countries. It provides a solid legal framework to facilitate international cooperation through inter-country exchanges of tax information and assistance. Its objective is to enable each Party to the Convention to combat international tax evasion and better enforce its national tax laws, while at the same time respecting the rights of taxpayers.

Regional:

i. *EU – (EU 2015/849) (AMLD4) Fourth Money Laundering Directive of the European Union Non-cooperative third countries (EU-2015).*[279]

a. Requires member states to establish a central register of beneficial owners and enshrine their use into law no later than 26 June 2017.

b. Requires Enhanced Customer Due Diligence (EDD) to be carried out when dealing with natural persons or legal entities established in third countries identified by the Commission as high-risk third countries and other cases of higher risk identified by member states or obliged entities. The identification of high-risk third countries is based on a clear and objective assessment which focuses on a jurisdiction's compliance with

---

Protocol, OECD Publishing. http://dx.doi.org/10.1787/9789264115606-en.

[279] "Directive (EU) 2015/849 of The European Parliament and of the European Commission May 20 2015," Official Journal of the European Union, (5.6.2015): L 141/73.

Directive (EU) 2015/84 regarding its legal and institutional anti-money laundering and countering the financing of terrorism (AML/CFT) framework, the powers and procedures of its competent authorities for the purposes of combating money laundering and terrorist financing and the effectiveness of the anti-money laundering and countering the financing of terrorism based on the (AML/CFT) system in addressing money laundering or terrorist financing risks of third countries.

A1.2 UKOT7 Reform Legislation and Policy Adoption

Between 2014 and 2016 the territories adopted three key pieces of financial services legislation on Beneficial Ownership, Common Reporting Standards, and Automatic Exchange of Information.

The legislative adoptions include:

1. *Technical protocol for the Sharing of Beneficial Ownership Information (in force April 8, 2016).*[280]

i. Requires the establishing and maintaining a central register, or equivalent system, containing accurate and current information on beneficial ownership for corporate and legal entities incorporated in their jurisdictions.

ii. Requires each jurisdiction to ensure effective and unrestricted access to this information to the other jurisdiction's law enforcement and tax authorities. (law enforcement has automatic right to the information)

[280] "Beneficial ownership: UK Overseas Territories and Crown Dependencies Foreign & Commonwealth Office." Cabinet Office and Foreign & Commonwealth Office: UK.Gov, April 21, 2016Accessed July 1, 2017, https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies.

iii. Note: The exchange of notes between the UKOTs and the UK on the adoption of the Technical protocol for the Sharing of Beneficial Ownership Information states that the adoption of the protocol is intended to fulfill the territories' obligations to meet the multilateral and regional requirements of the FATF-Recommendations and Guidance on Transparency and Beneficial Ownership, G20-High Level Principles on Beneficial Ownership Transparency, G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters, EU –Fourth Money Laundering Directive of the European Union Non-cooperative third countries (EU 2015/849, AMLD4).[281]

2. Global Common Reporting Standard(CRS) for Automatic Exchange of Financial Account Information(the AEOI Standard) - (UKOT7 - 2016) [282]
3. *US-US/UKOT7 IGA (FATCA)(US-2013)*[283]
4. *UK-CDOT (2014)*[284]

[281] Ibid.

[282] "CRS by Jurisdiction." OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, accessed July 1, 2017, https://www.oecd.org/tax/transparency/AEOI-commitments.pdf.

[283] "FATCA IGA Global Summary," Deloitte, June 8, 2016, accessed June 17, 2017, https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-fatca-iga-global-summary-060816.pdf.

[284] "Statutory guidance-Automatic Exchange of Information Agreements: other UK agreements," HM Revenue Customs: Gov. UK, September 8, 2014, accessed July 1, 2017, https://www.gov.uk/government/publications/automatic-exchange-of-information-agreements-other-uk-agreements/automatic-exchange-of-information-agreements-other-uk-agreements. Out-Law.Com, "UK FATCA-the disclosure to HMRC of information about reportable accounts held by UK taxpayers in the Crown Dependencies and Overseas Territories."

APPENDIX 2
QCA SUMMARY

A2.1 Stage 1 QCA: Overregulation

Conditions for Overregulation Responses:

Among the six regulatory authorities prescribing policies for the territories there is no common set of conditions for compliance, creative compliance, noncompliance, and black market/low transparency activities. However, the most common basic elements among the authorities provide a base of conditions by which to evaluate them. They are based on policy adoption and evaluation questions.[285] The conditions for capture are derived from applying theory to the case based on lobbying, policy structure, and regulation impact questions. The conditions for compliance, creative compliance, noncompliance, capture, and black market/low transparency responses are tabled in Figure A2.1

Figure A2.1: Overregulation Responses General Conditions

Overregulation Theory	Conditions						
Response:							
Com,CrCom,NonCom,BlkMkt/LwT	Adoption	Evaluated	Reported Compliant	Reported Partial Compl	Reported NonCompliant	No Current Infractions	Current Infractions
Capture	*Active Lobbying*	*Membership Group*	*Legislation Change*	*Removal of Harmful Policy or Legislation*	*Granted Specific Advantages*		

Necessary & Sufficient Conditions:

While the conditions are general, each response differs in terms of the necessity or

[285] As is common within the QCA method, assessment of conditions for the group of responses is subjective within the context of the case, requiring much discretion on the part of the researcher. From the evaluation pages of each regulatory authority, the commonalities was greatest on adoption and evaluation questions. Manner of assessment and standards of compliance differed, but they all evaluated and gave ratings of at least compliance, partial compliance, and listed sanctionable offences. The conditions were therefore built around these commonalities within confines of the theory's definitions description of each response.

sufficiency within the context of the case. Each set of necessary and sufficient conditions is fixed, as all necessary conditions must be met for confirmation of the response. The evidence surrounding each policy must meet the specific set of necessary and sufficient conditions to confirm the response. The necessary and sufficient conditions for each response are listed within a table for application in the QCA. From each regulatory authority's evaluation page, the data set is scored and populated into five tables of set membership scores for each response according to its necessary and sufficient conditions. The scores are then compiled into a single table (A2.2) by policy for score comparisons to identify which policy met a specific response.

Figure A2.2: Overregulation: Necessary & Sufficient Conditions

Overregulation Theory			Necessary & Sufficient Conditions				
			Conditions				
Response:	Adoption	Evaluated	Reported Compliant	Reported Partial Compl	Reported NonCompliant	No Current Infractions	Current Infractions
Compliance	Necessary	Necessary	Necessary	NA	NA	Necessary	NA
Creative Compliance	Sufficient	Necessary	Sufficient	Necessary	NA	Sufficient	NA
NonCompliance	Sufficient	Necessary	NA	NA	Necessary	NA	Sufficient
Black Market/LwTr	Sufficient	Necessary	NA	NA	Necessary	NA	Necessary
			Conditions				
Capture	Active Lobbying	Membership Group	Legislation Change	Removal of Harmful Policy or Legislation	Granted Specific Advantages		
Nec & Suff Conditions Capture	Necessary	Sufficient	Necessary	Sufficient	Sufficient		

Compliance: Within the context of this study Compliance constitutes adhering to both the practice and principle of a given regulation without deviation.[286] The necessary and sufficient conditions for compliance include:

i. Policy or Legislative Adoption - Necessary

ii. Conducted Evaluation - Necessary

iii. Reported as Compliant by the relevant evaluating bodies-Necessary

iv. No reported or Current Infractions-Necessary

The table of set membership scores (Figure A2.3) displays the binary values for the

[286] Lodge and Wegrich, 76-80.

necessary and sufficient conditions for Compliance.

Figure A2.3: Compliance Table of Set Membership Scores

QCA: Overregulation	Compliance Response							
Compliance	Conditions							
	Adoption	Evaluated	Reported Compliant	Reported Partial Compl	Reported NonCompliant	No Current Infractions	Current Infractions	Outcome
	Necessary	Necessary	Necessary	NA	NA	Necessary	NA	Compl
	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No
US-FATCA	No (0)	Yes (1)	No (0)	NA	NA	yes (1)	NA	No (0)
US-US/UKOT FATCA IGA	Yes (1)	Yes (1)	Yes (1)	NA	NA	yes (1)	NA	Yes (1)
UK-CDOT	Yes (1)	Yes (1)	Yes (1)	NA	NA	yes (1)	NA	Yes (1)
UK Pub CenRegBenOwn	No (0)	Yes (1)	No (0)	NA	NA	yes (1)	NA	No (0)
UK-CenRegBenOwn	Yes (1)	Yes (1)	Yes (1)	NA	NA	yes (1)	NA	Yes (1)
OECD - "CRS & AEOI"	Yes (1)	Yes (1)	Yes (1)	NA	NA	yes (1)	NA	Yes (1)
FATF - Trans Benf Own	Yes (1)	Yes (1)	Yes (1)	NA	NA	yes (1)	NA	Yes (1)
G20 - Ben Own Trans	Yes (1)	FATF/OECD	FATF/OECD	NA	NA	FATF/OECD	NA	Yes (1)
G20 - MCMAATM	Yes (1)	FATF/OECD	FATF/OECD	NA	NA	FATF/OECD	NA	Yes (1)
EU - AMLD4	No (0)	Yes (1)	No (0)	NA	NA	yes (1)	NA	No (0)
Ratio	2.3|1	4|1	1|1	NA	NA	4|1	NA	2.3|1
Proportion	7|10	8|10	5|10	NA	NA	8|10	NA	7|10

Creative Compliance: Within the context of this study Creative Compliance constitutes a side-stepping the regulatory rules in a manner negating the regulation, but not actually breaking its terms.[287] The necessary and sufficient conditions for creative compliance include:

1. Policy or Legislative Adoption - Sufficient
2. Conducted Evaluation - Necessary
3. Reported as Compliant by the relevant evaluating bodies-Sufficient
4. Reported as Partially Compliant by the relevant evaluating bodies-Necessary
5. No reported or Current Infractions-Sufficient

The table of set membership scores (Figure A2.4) displays the binary values for the necessary and sufficient conditions for Creative Compliance.

[287] [287] Baldwin and Cave, and Martin, 70-71, 232.

Figure A2.4: Creative Compliance Table of Set Membership Scores

QCA: Overregulation				*Table of set membership scores: Creative Compliance Response*				
Creative Compliance		*Conditions*						
	Adoption	*Evaluated*	*Reported Compliant*	*Reported Partial Compl*	*Reported NonCompliant*	*No Current Infractions*	*Current Infractions*	***Result***
	Sufficient	*Necessary*	*Sufficient*	*Necessary*	*NA*	*Sufficient*	*NA*	***CrCompl***
	Yes/No	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*
US-FATCA	No (0)	Yes (1)	No (0)	No (0)	NA	yes (1)	NA	***No (0)***
US-US/UKOT FATCA IGA	Yes (1)	Yes (1)	Yes (1)	No (0)	NA	yes (1)	NA	***No (0)***
UK-CDOT	Yes (1)	Yes (1)	Yes (1)	No (0)	NA	yes (1)	NA	***No (0)***
UK Pub CenRegBenOwn	No (0)	Yes (1)	No (0)	No (0)	NA	yes (1)	NA	***No (0)***
UK-CenRegBenOwn	Yes (1)	Yes (1)	Yes (1)	No (0)	NA	yes (1)	NA	***No (0)***
OECD - "CRS & AEOI"	Yes (1)	Yes (1)	Yes (1)	No (0)	NA	yes (1)	NA	***No (0)***
FATF - Trans Benf Own	Yes (1)	Yes (1)	Yes (1)	No (0)	NA	yes (1)	NA	***No (0)***
G20 - Ben Own Trans	Yes (1)	FATF/OECD	FATF/OECD	FATF/OECD	NA	FATF/OECD	NA	***FATF/OECD***
G20 - MCMAATM	Yes (1)	FATF/OECD	FATF/OECD	FATF/OECD	NA	FATF/OECD	NA	***FATF/OECD***
EU - AMLD4	No (0)	Yes (1)	No (0)	Yes (1)	NA	yes (1)	NA	***Yes (1)***
Ratio	**2.3|1**	**4|1**	**1|1**	**1|9**	**NA**	**4|1**	**NA**	**1|9**
Proporation	**7|10**	**8|10**	**5|10**	**1|10**	**NA**	**8|10**	**NA**	**1|10**

Non-Compliance: Within the context of this study Non-Compliance constitutes not adhering to the requirements of the regulation in any regard, and may also be inclusive of not formally adopting the regulatory policy.[288] The necessary and sufficient conditions for non-compliance include:

1. No Policy or Legislative Adoption - Sufficient
2. Conducted Evaluation - Necessary
3. Reported as Non-Compliant by the relevant evaluating bodies-Necessary
4. Reported or Current Infractions-Sufficient

The table of set membership scores (Figure A2.5) displays the binary values for the necessary and sufficient conditions for Non-Compliance.

[288] Lodge and Wegrich, 76-80.

Figure A2.5: Non-Compliance Table of Set Membership Scores

QCA: Overregulation				*Table of set membership scores: NonCompliance Response*				
NonCompliance		*Conditions*						
	Non-Adopt	*Evaluated*	*Reported Compliant*	*Reported Partial Compl*	*Reported NonCompliant*	*No Current Infractions*	*Current Infractions*	***Result***
	Sufficient	*Necessary*	*NA*	*NA*	*Necessary*	*NA*	*Sufficient*	***NonCompl***
	Yes/No	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*
US-FATCA	Yes (1)	Yes (1)	NA	NA	Yes (1)	NA	No (0)	***Yes (1)***
US-US/UKOT FATCA IGA	No (0)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
UK-CDOT	No (0)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
UK Pub CenRegBenOwn	No (0)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No** (0)***
UK-CenRegBenOwn	No (0)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
OECD - "CRS & AEOI"	No (0)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
FATF - Trans Benf Own	No (0)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
G20 - Ben Own Trans	No (0)	FATF/OECD	NA	NA	FATF/OECD	NA	FATF/OECD	***FATF/OECD***
G20 - MCMAATM	No (0)	FATF/OECD	NA	NA	FATF/OECD	NA	FATF/OECD	***FATF/OECD***
EU - AMLD4	Yes (1)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
Ratio	**1|4**	**4|1**	**NA**	**NA**	**1|9**	**NA**	**0|10**	**1|9**
Proportion	**1|10**	**8|10**	**NA**	**NA**	**1|10**	**NA**	**0|10**	**1|10**

Black Market/Low Transparency: Within the context of this study Black Market/Low Transparency Activities constitute the establishing of a competing unregulated financial services market providing low transparency services outside of the international financial regulatory framework.[289] Black market and low transparency activities include money laundering, terrorist financing and other related threats (narcotics & small arms trafficking) to the integrity of the international financial system.[290]

The necessary and sufficient conditions for Black Market/Low Transparency activities include:

1. Policy or Legislative Adoption – Sufficient
2. Conducted Evaluation – Necessary
3. Reported as Non-Compliant by the relevant evaluating bodies-Necessary
4. No reported or Current Infractions-Necessary

The table of set membership scores (Figure A2.6) displays the binary values for the

[289] Baldwin and Cave, and Martin, 70.
[290] Ibid.

necessary and sufficient conditions for Black Market/Low Transparency Activities.

Figure A2.6: Non-Black Market/Low Transparency Activities Table of Set Membership Scores

QCA: Overregulation				*Table of set membership scores: Black Market/Low Trans*				
Black Market/Low Trans		*Conditions*						
	Adoption	*Evaluated*	*Reported Compliant*	*Reported Partial Compl*	*Reported NonCompliant*	*No Current Infractions*	*Current Infractions*	***Result***
	Sufficient	*Necessary*	*NA*	NA	*Necessary*	*NA*	*Necessary*	***BlkMkLwTr***
	Yes/No	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*
US-FATCA	No (0)	Yes (1)	NA	NA	Yes (1)	NA	No (0)	***No (0)***
US-US/UKOT FATCA IGA	Yes (1)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
UK-CDOT	Yes (1)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
UK Pub CenRegBenOwn	No (0)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
UK-CenRegBenOwn	Yes (1)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
OECD - "CRS & AEOI"	Yes (1)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
FATF - Trans Benf Own	Yes (1)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
G20 - Ben Own Trans	Yes (1)	FATF/OECD	NA	NA	FATF/OECD	NA	FATF/OECD	***FATF/OECD***
G20 - MCMAATM	Yes (1)	FATF/OECD	NA	NA	FATF/OECD	NA	FATF/OECD	***FATF/OECD***
EU - AMLD4	No (0)	Yes (1)	NA	NA	No (0)	NA	No (0)	***No (0)***
Ratio	**2.3|1**	**4|1**	**NA**	**NA**	**1|9**	**NA**	**0|10**	**0|10**
Proportion	**7|10**	**8|10**	**NA**	**NA**	**1|10**	**NA**	**0|10**	**0|10**

Capture: Within the context of this study Regulatory Capture constitutes a regulatee successfully lobbying the institutions and individuals central to the development of the concerned regulation to structure the regulation in a manner granting them advantages or protections.[291] The necessary and sufficient conditions for Regulatory Capture:

1. Lobbying of institutions and individuals-Necessary
2. Membership/Participation in regulatory Steering or Committee Groups-Sufficient
3. Significant changes in the structure of proposed legislation-Necessary
4. Removal of Policy or Legislation harmful to the regulatee-Sufficient
5. Policy or Legislation granting the regulatee significant advantages over their competitors-Sufficient

The table of set membership scores (Figure A2.7) displays the binary values for the necessary and sufficient conditions for Capture.

[291] Dudley and Brito, 15.

Figure A2.7: Capture Table of Set Membership Scores

QCA: Overregulation			*Table of set membership scores: Capture*			
Capture		*Conditions*				
	Active Lobbying	Membership Group	Legislation Change	Removal of Harmful Policy or Legislation	Granted Specific Advantages	***Result***
	Necessary	*Sufficient*	*Necessary*	*Sufficient*	*Sufficient*	***Capture***
	Yes/No	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*	*Yes/No*
US-FATCA	No (0)	No (0)	No (0)	No (0)	No (0)	***No (0)***
US-US/UKOT FATCA IGA	No (0)	No (0)	Yes (1)	Yes (1)	No (0)	***No (0)***
UK-CDOT	No (0)	No (0)	No (0)	No (0)	No (0)	***No (0)***
UK Pub CenRegBenOwn	No (0)	No (0)	No (0)	No (0)	No (0)	***No (0)***
UK-CenRegBenOwn	Yes (1)	No (0)	Yes (1)	Yes (1)	No (0)	***Yes (1)***
OECD - "CRS & AEOI"	No (0)	Yes (1)	No (0)	No (0)	No (0)	***No (0)***
FATF - Trans Benf Own	No (0)	Yes (1)	No (0)	No (0)	No (0)	***No (0)***
G20 - Ben Own Trans	No (0)	No (0)	No (0)	No (0)	No (0)	***No (0)***
G20 - MCMAATM	No (0)	No (0)	No (0)	No (0)	No (0)	***No (0)***
EU - AMLD4	Yes (1)	Yes (1)	No (0)	Yes (1)	No (0)	***No (0)***
Ratio	**1|4**	**1|2.3**	**1|4**	**1|3.3**	**0|10**	**1|10**
Proportion	**2|10**	**3|10**	**2|10**	**3|10**	**0|10**	**1|10**

A2.2 Stage 1 QCA Result

The QCA results are derived deductively, starting with fixed necessary and sufficient conditions for the five overregulation responses, then moving backwards to identify which policy responses parallel those of overregulation. Consistency thresholds and coverage scores are therefore not set ahead of the analysis. Likewise, the process of condition minimization and consolidation for the elimination of redundancies and contradictions are not the first steps of the analytical process. With established conditions, the process begins with an examination of the patterns and trends in the truth table.

The relationships between combinations of conditions and the outcome of interest (overregulation response) are summarized in a truth table (Figure 5.5). The truth table is built from the collection of tables of set memberships for each overregulation response.[292]

[292] See Appendix 2 for the tables of set memberships.

The table summarizes crisp conditions, grouping together the combinations of set membership scores leading to the particular overregulation responses in response to the 10 prescribed policies. All values in the table are binary listed as 1 for the presence of the condition or factor, or 0 for the absence of a given condition or factor. The table identifies which policies prompted a combinations of activities and characteristics identified specifically with each of the five overregulation responses. The truth table displays where variation in response occurred leading to a common outcome. The response outcome is listed in the third end column displaying whether the response met the necessary and sufficient conditions required for that particular overregulation response. The final column lists the reform outcome indicating if the policy associated with the response was adopted as part of the reform or rejected. The consolidated truth table is displayed in Figure A2.8.

Figure A2.8: Overregulation Truth Table

	QCA: Overregulation			Truth Table							
Policy No.	Policy:	Conditions							Response	Ratio/Prop	OutCome
		Adoption	Evaluated	Reported Compliant	Reported Partial Compl	Reported NonCompliant	No Current Infractions	Current Infractions	Result		
	Nec & Suff Conditions Compl	Necessary	Necessary	Necessary	NA	NA	Necessary	NA			
P1	US-US/UKOT FATCA IGA	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P2	UK-CDOT	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P3	UK-CenRegBenOwn	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl	2.3|1 / 7|10	Adopt (1)
P4	OECD - "CRS & AEOI"	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P5	FATF - Trans Benf Own	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P6	G20 - Ben Own Trans	Yes (1)	FATF/OECD	FATF/OECD	NA	NA	FATF/OECD	NA	Compl		Adopt (1)
P7	G20 - MCMAATM	Yes (1)	FATF/OECD	FATF/OECD	NA	NA	FATF/OECD	NA	Compl		Adopt (1)
	Nec & Suff Conditions Creat Compl	Sufficient	Necessary	Sufficient	Necessary	NA	Sufficient	NA			
P8	EU - AMLD4	No (0)	Yes (1)	No	Yes (+)	NA	Yes (1)	NA	CreatCompl	1|9 / 1|10	Adopt (1)
	Nec & Suff Conditions NonCompl	Sufficient	Necessary	NA	NA	Necessary	NA	Sufficient			
P9	US-FATCA	Yes (1)	Yes (1)	NA	NA	Yes (1)	NA	No (0)	NonCompl	1|9 / 1|10	Reject (0)
	Nec & Suff Conditions BlkMk/LwTr	Sufficient	Necessary	NA	NA	Necessary	NA	Necessary			
	-	-	-	-	-	-	-	-	BlackMarket/LwTr	-	-
		Conditions									
		Active Lobbying	Membership Group	Legislation Change	Removal of Harmful Policy or Legislation	Granted Specific Advantages					
	Nec & Suff Conditions Capture	Necessary	Sufficient	Necessary	Sufficient	Sufficient					
P10	UK-Public Central Reg Beneficial Own	Yes (1)	No (0)	Yes (1)	Yes (1)	No (0)			Capture	1|9 / 1|10	Reject (0)

An examination of the consolidated truth table reveals the trends present in the data set, in particular the relationship between conditions and their characteristics. The details of the set relations are summarized and tabled in figure 5.6. Compliance, having four necessary and no sufficient conditions, consequently displayed only a single

configuration among 7 out of 10 policies (P1, P2, P3, P4, P5, P6, P7) with a marked consistency score of 0.70. The raw and unique coverage of the compliance response paralleled this 0.70 score of the 10 policies. The fitness scores indicate that the necessary conditions for compliance are the mutually dependent and the most prevalent action prompted by the reform policies.

Figure A2.9: Overregulation Result Summary

QCA Result: Overregulation Responses							
Result Summary							
Responses	*Necessary Conditions*	*Sufficient Conditions*	*Possible Configurations*	*Displayed Configuration*	*Consistency of Configuration*	*Raw/Unique Coverage*	*Total Policies: 10*
Compliance	4	0	32	1	.7 (70%)	0.70 (70%)	P1, P2, P3, P4, P5, P6, P7(7 total)
Creative Compliance	2	2	32	1	0.10 (10%)	0.10 (10)%	P8 (1)
Noncompliance	2	2	32	1	0.10 (10%)	0.10 (10 %)	(1) P9
Capture	2	3	64	1	0.10 (10%)	0.10 (10 %)	(1) P10
Black Market Low Transparency Activities	3	1	32	1	0	0	0

The creative compliance response, subject to 2 necessary and 3 sufficient conditions, displayed only 1 configuration out of a possible 64 in relation to policy 8 (P8). The configuration was only present only in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. Likewise the noncompliance response subject to 2 necessary and 2 sufficient conditions, displayed only 1 configuration out of a possible 32 in relation to policy 9 (P9). The configuration was only present in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. The capture response, subject to 2 necessary and 3 sufficient conditions, displayed only 1 configuration out of a possible 64 in relation to policy 10 (P10). The configuration was only present only in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. Last, the black market/low transparency response, subject to 3 necessary

and 1 sufficient condition, was markedly absent in response to any of the 10 policies and as a result has no accompanying fit scores.

In practical terms, the QCA results indicate the UKOTs met the necessary and sufficient conditions for *compliance* with: US/UKOT FATCA IGA, UK-CDOT, UK-Central Registers of Beneficial Ownership, OECD – CRS & AEOI, FATF-Recommendations and Guidance on Transparency and Beneficial Ownership, G20-High Level Principles on Beneficial Ownership Transparency, G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The regulatory authorities responsible for the different policies have cited the territories as compliant.[293]

The US and UK cite the territories as compliant with all FATCA, CDOT, and Beneficial Ownership Register requirements.[294] Regarding the adoption and implementation of the Global Common Reporting Standard (CRS) for Automatic Exchange of Financial Account Information (the AEOI Standard), the OECD has reported the territories as largely compliant.[295] The FATF, in regards to their Recommendations and Guidance on Transparency and Beneficial Ownership has ranked all seven of the territories as compliant.[296] With the exception of Gibraltar, each of the

---

[293] The evaluations are sourced from the pages of the accompanying regulatory authorities.

[294] "Statutory guidance-Automatic Exchange of Information Agreements: other UK agreements," HM Revenue Customs: Gov. UK, September 8, 2014, accessed July 1, 2017, https://www.gov.uk/government/publications/automatic-exchange-of-information-agreements-other-uk-agreements/automatic-exchange-of-information-agreements-other-uk-agreements. "Foreign Account Tax Compliance Act (FATCA)," US Department of the Treasury, Modified March 29, 2017, accessed June 4, 2017, https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

[295] "CRS by Jurisdiction." OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, accessed July 1, 2017, https://www.oecd.org/tax/transparency/AEOI-commitments.pdf.

[295] "FATCA IGA Global Summary," Deloitte, June 8, 2016, accessed June 17, 2017, https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-fatca-iga-global-summary-060816.pdf.

[296] "Members," Caribbean Financial Action Task Force, accessed July 1, 2017, https://www.cfatf-gafic.org/index.php/member-countries.

territories is a member of the Caribbean Financial Action Task Force (CFATF). The organization is comprised of states and territories in the Caribbean basin who have agreed to implement common counter-measures against money laundering.[297] The G20, in regards to the High Level Principles on Beneficial Ownership Transparency & G20-Multilateral Convention on Mutual Administrative Assistance in Tax Matters, defers to the OECD and FATF in the compliance reporting, relying on their evaluation processes.[298]

The results further indicate the UKOTs met the necessary and sufficient conditions for *creative compliance* only with the EU-AMLD4. With the exception of Gibraltar, the UKOTs as nonmember states are not required to implement EU laws.[299] However, via shared post-colonial sovereignty with the UK, the territories are obligated to implement standards consistent with the UK's legal obligations to the EU.[300] Within the EU the UK government has the responsibility to certify that its territories are compliant. The UK has certified the compliance of its territories on the requirements of the to establish Central Registers of Beneficial Ownership inclusive of its territories.[301]

Regarding the other requirements of the AMLD4, at present the territories are not

---

[297] Ibid.

[298] "G20 High-Level Principles on Beneficial Ownership Transparency (2014)," accessed May 23, 2017, http://www.g20australia.org/official_resources/g20_high_level_principles_beneficial_ownership_transparency.html. "Convention on Mutual Administrative Assistance in Tax Matters," OECD Last updated - May 2017 Accessed May 23, 2017, http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. The OECD and Council of Europe (2011), The Multilateral Convention on Mutual Administrative assistance in Tax Matters: Amended by the 2010 Protocol, OECD Publishing. http://dx.doi.org/10.1787/9789264115606-en

[299] Peter Clegg & Peter Gold, "The UK Overseas Territories: a decade of progress and prosperity," 116-117, 127-129.

[300] Ibid.

[301] "Beneficial ownership: UK Overseas Territories and Crown Dependencies Foreign & Commonwealth Office." Cabinet Office and Foreign & Commonwealth Office: UK.Gov, April 21, 2016Accessed July 1, 2017, https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies.

obligated to meet its requirements at the threat of formal sanctions, even though expected to comply.[302] The ALMD4's proposed listing for high-risk third countries (countries) has been proposed for but not clearly established or finalized. The list is intended to target jurisdictions with strategic deficiencies in their Anti-Money Laundering and Countering Terrorist Financing.[303] Increased measures proposed for the AMLD4 would require banks to apply enhanced due diligence regarding transactions with listed countries. There is a possibility that the UKOT's could be targeted by this EU listing as was previously done in the 2015 EU listing of non-cooperative financial jurisdictions.[304] After having retracted the 2015 list by 2016, the EU has been trying to finalize criteria for a new list of non-cooperative third country financial services jurisdictions.[305] However the effort has had little success. Based on the past behavior of the EU, the EU proposal of a second list of high risk countries under the AMLD4 poses a high potential threat to the UKOTs.

The first stage results indicate the UKOTs met the necessary and sufficient conditions for *noncompliance* with regard to US-FATCA. The UKOTs notified the US government in 2014 that they could not fulfill the requirements of FATCA because of its incompatibility with localized privacy laws and the structure accountability in the reporting mechanism.[306] The absence of US reciprocation also presented significant

---

[302] "European Commission - Fact Sheet Questions and Answers: Anti-money Laundering," Directive MEMO/16/2381, EU Commission, July 5, 2016, accessed July 1, 2017, http://europa.eu/rapid/press-release_MEMO-16-2381_en.htm.

[303] Ibid.

[304] "EU releases world tax havens blacklist," EU Business, June 18, 2015, accessed July 1, 2017, http://www.eubusiness.com/news-eu/economy-politics.120n.

[305] "Taxation: Council agrees criteria for the screening of third country jurisdictions," PRESS RELEASE 640/16, Council of the EU, 08/11/2016, accessed July 1, 2017, http://www.consilium.europa.eu/en/press/press-releases/2016/11/08-taxation-criteria-third-country-jurisdictions/.

[306] Philip Graham, "BVI & Cayman Funds Round-Up: From FATCA to Fund Directors," Harneys

political problems in passing domestic legislation to bring it into force. As such the territories did not comply with the first version of the policy.[307]

The UK-Public Central Register of Beneficial Ownership Information closely mimic the necessary and sufficient conditions of noncompliance with the exception that the UK government did not report the UKOTs as noncompliant.[308] The two parties continued ongoing negotiations until an amenable settlement was achieved.[309] Ultimately the UKOTs were exempted by the UK government from the publicly accessible component in their requirement to establish Central Registers of Beneficial Ownership.[310] In the initial phase the territories did not adopt or comply, but were not held accountable by UK authorities who pursued different means of having the OTs achieve compliance. By agreement between the territories and the UK government, the Registers of Beneficial Ownership Information in the territories would only be accessible by law enforcement authorities for the purpose of criminal or legal enquiries.[311] Thereafter, the UK government has deemed the territories compliant in meeting the infrastructural, security, accessibility, and cooperative requirements for the central registers which became

---

Publication, October 30, 2012, accessed, July 1, 2017, http://www.harneys.com/publications/legal-updates/bvi-and-cayman-funds-round-up-from-fatca-to-fund-directors.

[307] Ibid.

[308] Carlyle K Rogers, "British Overseas Territories in the Caribbean agree to central registries of beneficial ownership information – the first step on the slippery slope to full disclosure has been taken," Cayman Financial Review, January 28, 2016, http://www.caymanfinancialreview.com/2016/01/28/british-overseas-territories-in-the-caribbean-agree-to-central-registries-of-beneficial-ownership-information-the-first-step-on-the-slippery-slope-to-full-disclosure-has-been-taken/.

[309] Patrick Wintour, "Overseas territories spared from UK law on company registers," The Guardian, April 12, 2016, accessed July 1, 2017, https://www.theguardian.com/business/2016/apr/12/overseas-territories-spared-from-uk-law-on-company-registers.

[310] Ibid.

[311] "Beneficial ownership: UK Overseas Territories and Crown Dependencies Foreign & Commonwealth Office." Cabinet Office and Foreign & Commonwealth Office: UK.Gov, April 21, 2016Accessed July 1, 2017, https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies.

accessible in 2017.[312]

The results indicate the UKOTs did not meet the necessary and sufficient conditions for *black market and low transparency* activities in any regard. The Financial Action Task Force is the multilateral institution exclusively tasked with tracking low transparency and black market activities within their mandate of combating money laundering, terrorist financing and other related threats (narcotics & small arms trafficking) to the integrity of the international financial system.[313] The FATF identifies jurisdictions with weak measures to combat money laundering and terrorist financing relative to its recommendations, the standard for international anti-money laundering and combating the financing of terrorism and proliferation (AML/CFT).[314]

With the exception of Gibraltar all the UKOTs are members of the Caribbean Financial Action Task Force (CFATF) and have not been found out of compliance with FATF standards in (AML/CFT).[315] The UKOTs are not found to be involved in low transparency financial services or a financial services black markets. The countries out of compliance with FATF requirements in 2017 include Afghanistan, Bosnia and Herzegovina, Democratic People's Republic of Korea (DPRK), Ethiopia, Iran, Iraq, Laos, Syria, Uganda, Vanuatu, Yemen.[316] The territories have limited or no financial services contacts with these states.

Last, the first stage results indicate the UKOTs met the necessary and sufficient

---

[312] Ibid.
[313] "Who we are," FATF, Accessed July 1, 2017, http://www.fatf-gafi.org/about/whoweare/.
[314] Ibid.
[315] "Member Countries," Caribbean Financial Action Task Force, Accessed July 1, 2017, https://www.cfatf-gafic.org/index.php/member-countries.
[316] "High-risk and non-cooperative jurisdictions FATF," Accessed July 1, 2017, http://www.fatf-gafi.org/countries/#high-risk.

conditions for *capture* with regard to the Central Register of Beneficial Ownership.[317] In opposition to the "Public" component of the Central Register of Beneficial Ownership Information's application to the territories, the UKOTs lobbied intensely to be exempted from the public access requirement of the UK plan.[318] In 2013 the UK agreed to set up central registers of Beneficial Ownership, set out in the UK's G8 Action Plan.[319] In October 2013 the UK government publicized that the central registry would be publicly accessible.[320] In negotiations with the UK government, at the Dec. 1-2, 2015 Joint Ministerial Council (JMC) in London the UKOTs agreed to also create central registers of beneficial ownership information.[321] The territories agreed to set up registries given that they were not public, only automatically open to law enforcement agencies (primarily the National Crime Agency and the Serious Fraud Office) who had to request the information in regard to investigations.[322] Existing Lobby groups of ministers of parliament and other influential individuals, formed by the territories to support their agendas in the UK, were instrumental in gaining parliamentary support against the public

---

[317] The formal and informal lobbying efforts of the UKOTs meets the definition of attempted capture. Secondary sources in UK media criticize the degree of influence the UKOTs have been able to secure with regards to the UK government.

[318] See Appendix 3 for the British Virgin Islands London Office Lobby Report. The office states that the UKOTs successfully made intense lobbying efforts to remove the public component.

[319] "Policy Paper-G8 action plan principles to prevent the misuse of companies and legal arrangements," Prime Minister's Office: UK.GOV, June 18, 2013, accessed July 1, 2017, https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements.

[320] "Public Register to Boost Company Transparency (Press Release)," Prime Minister's Office: UK.GOV, October 31, 2013, accessed July 1, 2017, https://www.gov.uk/government/news/public-register-to-boost-company-transparency.

[321] "Beneficial ownership: UK Overseas Territories and Crown Dependencies Foreign & Commonwealth Office." Cabinet Office and Foreign & Commonwealth Office: UK.Gov, April 21, 2016Accessed July 1, 2017, https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies.

[322] Ibid.

provision.[323] These included the Friends of the British Virgin Islands, Bermuda, and Cayman Islands groups comprised of UK MPS and legislators.[324] A second unsuccessful attempt to require the territories to make their registers public was made in proposed amendments to the 2017 Criminal Finance Bill.[325] The territories again repeated their intense lobbying efforts to remain exempt from the opening of their registers to the public.[326]

The UKOTs made no visible effort to capture the regulatory processes of any other policy. The territories did not establish specific lobby groups against US FATCA nor UK CDOT. In the case of FATCA the UKOTs with the permission of the UK government formally notified the US government that they could not comply with all of the requirements of the policy and were looking for a solution.[327] In OECD Global Forum, though having a representative on the Steering Group (British Virgin Islands)

---

[323] See Appendix 3 for the British Virgin Islands London Office Lobby Report. The office states that the UKOTs successfully made intense lobbying efforts to remove the public component.
Secondary sources in UK media criticize the degree of influence the UKOTs have been able to secure with regards to the UK governments. Melanie Newman, "Lobbying's Hidden Influence: Tax havens boost their lobbying efforts," The Bureau of Investigative Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-19/tax-havens-boost-their-lobbying-efforts. Melanie Newman, "Conservative peer hired as tax haven lobbyist," The Bureau of Investigative Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-17/conservative-peer-hired-as-tax-haven-lobbyist.

[324] The British Virgin Islands as well as other UKOTs have formally organized and recruited groups of influential individuals to lobby the UK government in areas of strategic interests such as Financial services. "Friends of the BVI," Government of the British Virgin Islands London Office, accessed July 1, 2-17, https://www.bvi.org.uk/londonoffice/friends.

[325] "Criminal Finances Bill" (CFB 06), Public Bill Committee: Session 2016-17, Parliament.UK, May 11, July 2016, accessed July 1, 2017, https://publications.parliament.uk/pa/cm201617/cmpublic/CriminalFinances/memo/CFB06.htm.

[326] See Appendix 3 for the British Virgin Islands London Office Lobby Report. The office states that the UKOTs successfully made intense lobbying efforts to maintain the absence of the public component. Philip Graham, "BVI & Cayman Funds Round-Up: From FATCA to Fund Directors," Harneys Publication, October 30, 2012, accessed, July 1, 2017, http://www.harneys.com/publications/legal-updates/bvi-and-cayman-funds-round-up-from-fatca-to-fund-directors.

which prepares and guides the future work of the forum, the territories made no visible efforts to seek changes in the CRS policy.[328] While Gibraltar is a full EU member, the territories had no membership or representation in the negotiations of extending ALMD4 measures.

A2.3 Stage 2 QCA: Competitive Advantage

Competitive Advantage Impact Conditions:

Impact on competitive advantage is measured by general increases or decreases in the three central components of competitive advantage: comparative advantage (cost), differential advantage, focus advantages.[329] Comparative advantage is further subdivided into due diligence costs, labor costs, and facilities/technology/and specialist costs.[330] An increase in any of these sub-factors decreases comparative advantage. Differential advantages are subdivided into discounted tax rates, privacy, common law, and regulatory efficiency.[331] A decrease in any of these in turn decreases differentiation capacity. Focus advantages are achieved in specialization or niche markets.[332] An imposed decrease in market share or reduced ability to service the niche market decreases focus advantages. In total there are 8 combined competitive advantage factor endowments that condition its increase or decrease. Each policy is weighted against the possible increases or decreases that it imposes on competitive advantage factors and sub-

---

[328] "Steering Group," OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, last updated: January 2017, accessed July 1, 2017, http://www.oecd.org/tax/transparency/about-the-global-forum/steeringgroup.htm.
[329] Thomas and Walters, "GENERIC COMPETITIVE STRATEGIES."
[330] Accenture, "Automatic Exchange of Information Regime: An emerging compliance challenge."
[331] Chiu, "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order,"16-20.
[332] Thomas and Walters, "GENERIC COMPETITIVE STRATEGIES."

factors.[333]

The necessary and sufficient conditions for decreases and increases of competitive advantage are weighted on the configuration of the combined degree of impact (positive, negative, nil) of the eight factors plus the presence or absence of non-universal or early adoption (overregulation factors). Each set of necessary and sufficient conditions is fixed, as all necessary conditions must be met for confirmation of decrease or increase. Negative impact decreases are the most significant to the study as positive increases or no impact are likely to result in compliance responses and adoption. Negative impact will prompt a series of other responses which are not all opaque, transparent, and easily traceable. Negative impact is recorded when the proportion of negatively impacted sub-factors (1s) is greater than positively impacted sub-factors (0s). Likewise positive impact is recorded when the proportion of sub-factors positively impacted (0s) is higher than the sub-factors negatively impacted (1s).[334]

---

[333] Unlike overregulation, competitive advantage literature is very transparent on the conditions imposing increases or decreases in competitive advantage. The literature surrounding the case as well as financial services industry reports on reporting regimes is very clear about the factors and sub-factors of importance in financial services regarding competitive advantage. Michael Porter's classical work on competitive advantage lays out the three main factors of cost, differentiation, and focus. Chiu addresses differentiation and cost advantages within the context of financial services. Industry professional such as Accenture and EY outline the costs associated with the new reporting regimes and their impact on competitiveness. Policy based Increases and decreases in competitive advantage were simply weighted on the combined negative, positive, or null impact of the eight competitive impact sub-factors plus their relative impact across all competitors. Universal adoption and application mooted the effect on competitive advantage, but non-universal, early, or targeting adoptions disadvantaged some competitors relative to others.

[334] As is common within the QCA method, assessment of the necessary and conditions for competitive advantage increases and decreases is subjective within the context of the case, requiring much discretion on the part of the researcher. A proportional measurement of increases versus decreases plus relative impact provided the simplest measure but is still subject to challenges. This form of assessment equally weights all sub-factors where in reality they could carry different weights of impact on competitive advantage. However, the weighting of the sub-factors is still itself conditional depending on the environment and international context. Increasing costs in 1 context may carry impose a different degree of impact in a second context. As a result within the study they are all weighted equally as there is no means to impose a universal context on all the factors or policies.

The necessary and sufficient conditions required for policies to impose a decrease on competitive advantage are tabled in Figure A2.10 including:

i. Very High Negative Impact Decrease – Sufficient,

ii. High Negative Impact Decrease-Necessary + either Non-Universal Adoption - Sufficient *or* Early Adoption-Sufficient, or both,

iii. Moderate Negative Impact-Sufficient + Non-Universal Adoption-Necessary + Early Adoption-Necessary

The necessary and sufficient conditions required for policies to impose an increase decrease on competitive advantage include:

ii. Positive Impact-Sufficient

The necessary and sufficient conditions required for policies to have a null impact on competitive advantage include:

3. Moderate Negative Impact-Sufficient

4. Low Negative Impact-Sufficient

Figure A2.10: Competitive Advantage: Necessary & Necessary & Sufficient Conditions

Competitive Advantage: Necessary & Sufficient Conditions		
N&S Conditions		**Impact**
Very High Impact-Sufficient		Decrease
High Impact-Necessary +NonUniversal Adoption-Sufficient and/or +Early Adoption-Sufficient		Decrease
Moderate Impact-Sufficient +NonUniversal Adoption-Necessary +Early Adoption-Necessary		Decrease
Manageable Decrease based on the configuration of factors		Null
	Increase (Positive)/Nill	
Increase/Nill		Increase

From the official requirements of each policy and the inherent costs associated

with each reporting regime and recommended standards according to industry professionals, the data set is created according to binary scores across the eight competitive advantage sub-factors. The scores are populated into a single table of set membership scores (Figure A2.11) for each policy with a value of (1) for an imposed increase, (o) for an imposed decrease, or (0) for a null effect. Scoring increases versus decreases varies however between the 3 sub-factors of competitive advantage. Comparative advantage scoring is based on individual factor increases imposing a decrease on competitive advantage. Therefore sub-factor increases are scored as (1) for their overall decreasing effect. Differential and focus advantage scoring is based on individual factor decreases imposing a decrease on competitive advantage. Therefore sub-factor decreases are scored as 1 for their overall decreasing effect. Neutral or null impact is scored as 0 along with any positive value due to it not imposing an overall decrease.

Figure A2.11: Competitive Advantage-Table of Set Membership Scores

	QCA Comparative Advantage:	Competitive Advantage Factors										
		Comparative Advantage			*Differential Advantages*				*Focus Advantages*	*Competitive Advantage*		**Reform Outcome**
Policy No.	**Policy**	**Regulatory Due Dillegence Costs**	**Labor Costs**	**Facilities/Technology/ Specialist Costs**	**Tax Rate Discount**	**Privacy**	**Common Law**	**Regulatory Efficiency**	**Niche Markets**	**Impact**		
		Incr(1)/Decr(0)/Nill(0)	Incr(1)/Decr(0)/Nill(0)	Incr(1)/Decr(0)/Nill(0)	Incr(0)/Decr(1)/Nill(0)	Incr(0)/Decr(1)/Nill(0)	Incr(0)/Decr(1)/Nill(0)	Incr(0)/Decr(1)/Nill(0)	Incr(0)/Decr(1)/Nill(0)	*Proportions*	*Impact*	
1	**US-UKOT7 IGA (FATCA)**	Incr (1)	Nill (0)	Incr (1)	Nill (0)	Decr (1)	Nill (0)	Incr (0)	Nill (0)	1=3, 0=1, n=4	Incr/Nill (0)	Adopt (1)
2	UK-CDOT	Incr (1)	Nill (0)	Incr (1)	Nill (0)	Decr (1)	Nill (0)	Incr (0)	Nill (0)	1=3, 0=1, n=4	Incr/Nill (0)	Adopt (1)
3	**UK-Cen Reg Ben Own**	Incr (1)	Nill (0)	Incr (1)	Nill (0)	Nill (o)	Nill (0)	Incr (0)	Nill (0)	1=2, 0=1, n=5	Incr/Nill (0)	Adopt (1)
4	OECD - "CRS & AEOI"	Incr (1)	Nill (0)	Incr (1)	Nill (0)	Decr** (1)	Nill (0)	Drc/Incr(1,0)*	Nill (0)	1=3, 0=1, n=4	Incr/Nill (0)	Adopt (1)
5	FATF - Trans Benf Own	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Incr (0)	Nill (0)	1=0, 0=1, n=7	Incr/Nill (0)	Adopt (1)
6	G20 - Ben Own Trans	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Incr (0)	Nill (0)	1=0, 0=1, n=7	Incr/Nill (0)	Adopt (1)
7	G20 - MCMAATM	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Nill (0)	Incr (0)	Nill (0)	1=0, 0=1, n=7	Incr/Nill (0)	Adopt (1)
8	EU - AMLD4	Incr**(1)	Nill (0)	Incr (1)	*?Decr?*(1)	Decr (1)	Nill (0)	Incr (0)	Nill (0)	**1=4, 1=1, n=3	Incr/Nill (0)	**Adopt** (1)
9	US-FATCA	Incr (1)	Nill (0)	Incr (1)	Nill (0)	Decr (1)	Nill (0)	Decr (1)	Decr (1)	1=5, 0=0, n=3	Decr (1)	Reject (0)
10	UK Pub Cen Reg Ben Own	Incr (1)	Nill (0)	Incr (1)	Nill (0)	Decr (1)	Nill (0)	Decr (1)	Decr (1)	1=5, 0=0, n=3	Decr (1)	Reject (0)
	Ratio	2.3|1	0|10	2.3|1	1|10	3|2	0|10	1|2.3	1|5		2.3|1	4|1
	Proporation	7|10	0|10	7|10	1|10	6|10	0|10	3|10	2|10		7|10	8|10

The final column of figure A2.11 listing the competitive advantage impact increase or decrease imposed by each policy is calculated proportionally. Impact is the product of the proportional weighting of total decreases (1s), increases (0s), neutral (0) in

addition to the adoption requirements of early & non-universal adoption). Adoption requirements could not be scored with the competitive advantage factors in the same table due to their absence of a null value which distorts the degree of policy impact because of imbalanced proportions. They are scored separately and placed in the truth table along with the degree and impact result. The proportional totals plus adoption requirements are converted into binary values for decreases (1) and increases (0) on competitive advantage imposed by each policy.[335] The conversion thresholds are tabled in Figure A2.12.

Figure A2.12: Competitive Advantage-Conversion Thresholds

Competitive Advantage: Conversion Thresholds			
N&S Conditions	**Degree**	**Impact**	**Value**
	Very High (Negative)		
Very High Impact-Sufficient	All combos above 1=5 +	Decrease	
	1=5, 0=3, n=0		
	1=5, 0=2, n=1		
	1=5, 0=1, n=2		
	1=5, 0=0, n=3		
	High (Negative)		
High Impact-Necessary +NonUniversal Adoption-Sufficient and/or +Early Adoption-Sufficient	1=4, 0=4, n=0	Decrease	
	1=4, 0=3, n=1		1
	1=4, 0=2, n=3		
	1=4, 0=1, n=3		
	1=4, 0=0, n= 4		
	Moderate (Negative)		
Moderate Impact-Sufficient +NonUniversal Adoption-Necessary +Early Adoption-Necessary	1=3, 0=3, n=2	Decrease	
	1=3, 0=2, n=3		
	1=3, 0=1, n=4		
	1=3, 0=0, n=5		
	Low (Negative)		
Manageable Decrease based on the configuration of factors	1=2, 0=4, n=2	Null	
	1=2, 0=3, n=3		
	1=2, 0=2, n=4		0
	1=2, 0=1, n=5		
	All combinations 1=1		
	Increase (Positive)/Nill		
Increase/Nill	All combos 0=1 +	Increase	

A2.4 Stage 1 QCA Result

The QCA results are derived deductively, starting with fixed necessary and sufficient conditions for the five overregulation responses, then moving backwards to identify which policy responses parallel those of overregulation. Consistency thresholds and coverage scores are therefore not set ahead of the analysis. Likewise, the process of

[335] In calculating the conversion thresholds, neutral impact is totaled independently as "n" separately from total decreases (1s) and increases (0s) based on a proportional calculation of impact.

condition minimization and consolidation for the elimination of redundancies and contradictions are not the first steps of the analytical process. With established conditions, the process begins with an examination of the patterns and trends in the truth table.

The relationships between combinations of conditions and the outcome of interest (overregulation response) are summarized in a truth table (Figure A.13). The truth table is built from the collection of tables of set memberships for each overregulation response. The table summarizes crisp conditions, grouping together the combinations of set membership scores leading to the particular overregulation responses in response to the 10 prescribed policies. All values in the table are binary listed as 1 for the presence of the condition or factor, or 0 for the absence of a given condition or factor. The table identifies which policies prompted a combinations of activities and characteristics identified specifically with each of the five overregulation responses. The truth table displays where variation in response occurred leading to a common outcome. The response outcome is listed in the third end column displaying whether the response met the necessary and sufficient conditions required for that particular overregulation response. The final column lists the reform outcome indicating if the policy associated with the response was adopted as part of the reform or rejected. The consolidated truth table is displayed in Figure A2.13.

Figure A2.13: Overregulation Truth Table

	QCA: Overregulation				Truth Table						
Policy No.	Policy:				Conditions				Response	Ratio/Prop	OutCome
		Adoption	Evaluated	Reported Compliant	Reported Partial Compl	Reported NonCompliant	No Current Infractions	Current Infractions	Result		
	Nec & Suff Conditions Compl	Necessary	Necessary	Necessary	NA	NA	Necessary	NA			
P1	US-US/UKOT FATCA IGA	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P2	UK-CDOT	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P3	UK-CenRegBenOwn	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl	2.3|1 / 7|10	Adopt (1)
P4	OECD - "CRS & AEOI"	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P5	FATF - Trans Benf Own	Yes (1)	Yes (1)	Yes (1)	Yes (1)	NA	Yes (1)	NA	Compl		Adopt (1)
P6	G20 - Ben Own Trans	Yes (1)	FATF/OECD	FATF/OECD	NA	NA	FATF/OECD	NA	Compl		Adopt (1)
P7	G20 - MCMAATM	Yes (1)	FATF/OECD	FATF/OECD	NA	NA	FATF/OECD	NA	Compl		Adopt (1)
	Nec & Suff Conditions Creat Compl	Sufficient	Necessary	Sufficient	Necessary	NA	Sufficient	NA			
P8	EU - AMLD4	No (0)	Yes (1)	No	Yes (+)	NA	Yes (1)	NA	CreatCompl	1|9 / 1|10	Adopt (1)
	Nec & Suff Conditions NonCompl	Sufficient	Necessary	NA	NA	Necessary	NA	Sufficient			
P9	US-FATCA	Yes (1)	Yes (1)	NA	NA	Yes (1)	NA	No (0)	NonCompl	1|9 / 1|10	Reject (0)
	Nec & Suff Conditions BlkMk/LwTr	Sufficient	Necessary	NA	NA	Necessary	NA	Necessary			
	-	-	-	-	-	-	-	-	BlackMarket/LwTr	-	-
					Conditions						
		Active Lobbying	Membership Group	Legislation Change	Removal of Harmful Policy or Legislation	Granted Specific Advantages					
	Nec & Suff Conditions Capture	Necessary	Sufficient	Necessary	Sufficient	Sufficient					
P10	UK-Public Central Reg Beneficial Own	Yes (1)	No (0)	Yes (1)	Yes (1)	No (0)			Capture	1|9 / 1|10	Reject (0)

An examination of the consolidated truth table reveals the trends present in the data set, in particular the relationship between conditions and their characteristics. The details of the set relations are summarized and tabled in figure A2.14. Compliance, having four necessary and no sufficient conditions, consequently displayed only a single configuration among 7 out of 10 policies (P1, P2, P3, P4, P5, P6, P7) with a marked consistency score of 0.70. The raw and unique coverage of the compliance response paralleled this 0.70 score of the 10 policies. The fitness scores indicate that the necessary conditions for compliance are the mutually dependent and the most prevalent action prompted by the reform policies.

Figure A2.14: Overregulation Truth Table

QCA Result: Overregulation Responses							
				Result Summary			
Responses	Necessary Conditions	Sufficient Conditions	Possible Configurations	Displayed Configuration	Consistency of Configuration	Raw/Unique Coverage	Total Policies: 10
Compliance	4	0	32	1	.7 (70%)	0.70 (70%)	P1, P2, P3, P4, P5, P6, P7(7 total)
Creative Compliance	2	2	32	1	0.10 (10%)	0.10 (10)%	P8 (1)
Noncompliance	2	2	32	1	0.10 (10%)	0.10 (10 %)	(1) P9
Capture	2	3	64	1	0.10 (10%)	0.10 (10 %)	(1) P10
Black Market Low Transparency Activities	3	1	32	1	0	0	0

The creative compliance response, subject to 2 necessary and 3 sufficient

conditions, displayed only 1 configuration out of a possible 64 in relation to policy 8 (P8). The configuration was only present only in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. Likewise the noncompliance response subject to 2 necessary and 2 sufficient conditions, displayed only 1 configuration out of a possible 32 in relation to policy 9 (P9). The configuration was only present in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. The capture response, subject to 2 necessary and 3 sufficient conditions, displayed only 1 configuration out of a possible 64 in relation to policy 10 (P10). The configuration was only present only in 1 out of 10 policies with a consistency score of 0.10 (10%) with identical paralleling raw and unique coverage scores. Last, the black market/low transparency response, subject to 3 necessary and 1 sufficient condition, was markedly absent in response to any of the 10 policies and as a result has no accompanying fit scores.

In practical terms, the second stage QCA results indicate that full compliance and adoption of US-FATCA, the UK Public Central Registers of Beneficial Ownership, and the EU-AMLD4 would each significantly decrease the UKOTs comparative advantage in financial services. The impact of the reporting based polices OECD-CRS & AEOI, US-UKOT FATCA IGA, and UK-CDOT on competitive advantage factors are moderate with non-universal adoption and no early adoption. As a result they have a null effect on competitive advantage. The UK-Central Registers of Beneficial Ownership has low impact on competitive advantage factors and an overall null effect on competitive advantage. The three recommended standards, the FATF-Transparency in Beneficial

Ownership, G20-Benenficial Ownership Transparency, and G20-MCMAATM have positive impact with the effect of increasing competitive advantage. Each policy's QCA result on its competitive advantage result is briefly explained individually.

-US FATCA: 1=5, 0=0, n=3 / Negative High Impact / Decrease:

Has one of the two the greatest impacts on the International Competitive Advantage of the UKOTs in the financial services industry of all the prescribed reforms. Of the eight (8) factor endowments from which the territories derive competitive advantages relative to their competitors, full compliance would negatively impact five (5), resulting in an increase in operational costs, contraction in differentiation characteristics, and reduced ability to compete in niche markets. US FATCA decreases comparative advantage generally (universal application) among all jurisdictions globally, increasing costs in two of the four competitive advantage factors: regulatory due diligence and facilities/technology/specialist. The legislation imposes these costs across the entire financial services industry among all competing jurisdictions save the US. FATCA decreases advantages in two of the four differentiation factors by generally decreasing privacy across the entire financial services industry as well as causing regulatory inefficiency universally due to its legal incompatibility with localized privacy laws in most jurisdictions. FATCA decreases focus advantages in the territory's niche markets by making the US a larger competitor in all markets as they are not subject to FATCA costs and requirements (no reciprocation requirements). FATCA defacto makes companies in the territories answerable to US financial regulatory authorities rather than

local authorities.[336] Noncompliance is punished by an immediate large fine or tax.[337]

FATCA's negative impacts on Competitive Advantage factors are general to the jurisdictional competitors along with the UKOT7 with the exception of the US, to whom the territories would lose their competitive advantage in preferred niche markets. Threats to privacy and regulatory inefficiency would degrade the quality of the product offering of the territories driving business to jurisdictions not subject to FATCA imposed problems, but willing to absorb its fines. Therefore full compliance would decrease both the absolute and relative international competitive advantages of the UKOTs in financial services.

-UK Pub. Cen. Reg. of Ben. Own.1=5, 0=0, n=3 / Very High Negative Impact/Decrease:

Has one of the two the greatest impacts on the International Competitive Advantage of the UKOTs in the financial services industry of all the prescribed reforms. Of the eight (8) factor endowments from which the territories derive competitive advantages relative to their competitors, full compliance would negatively impact five (5), resulting in an increase in operational costs, contraction in differentiation characteristics, and reduced ability to compete in niche markets.

The Public Beneficial Ownership Register decreases comparative advantage in two of the four competitive advantage factors: regulatory due diligence and facilities/technology/specialist. The policy increases due diligence costs by adding the

---

[336] Laurie Hatten Boyd, "Are Problems Looming for FATCA and the Reciprocal IGA?" The Tax Adviser, June 1, 2016, accessed July 1, 2016, http://www.thetaxadviser.com/issues/2016/jun/problems-looming-for-fatca-and-reciprocal-iga.html.

[337] "Foreign Account Tax Compliance Act (FATCA)," US Department of the Treasury, Modified March 29, 2017, accessed June 4, 2017, https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

responsibility of maintaining a register, populating it, guaranteeing specialized access, while maintaining privacy and security. It increases technology and facilities costs in the expense to purchase and maintain the digital data storage system. The Public Beneficial Ownership Register decreases differential advantage in two of the four differentiation factors: privacy and regulatory efficiency. It eliminates privacy by making beneficial ownership information held by the territories publicly accessible. The elimination of privacy in turn decreases regulatory efficiency due to the "public" component's legal incompatibility with localized privacy laws in the territories and the existing contractual arrangements with clients based on those laws. The policy eliminates any focus advantages in any niche markets by eliminating privacy which is a staple of the financial services industry. The UK Public Central Registers of Beneficial Ownership policy significantly decreases the international competitive advantage of the territories in financial services negatively impacting multiple comparative and differentiation factors and eliminating any focus advantage in niche markets by eliminating privacy in financial services.

-EU AMLD4 <u>1=4, 0=1, n=2</u> / Negative High Impact / Non-Universal / Decrease:

Has the second largest impact on the International Competitive Advantage of the UKOTs in the financial services industry of all the prescribed reforms. Of the eight (8) factor endowments from which the territories derive competitive advantages relative to their competitors, full compliance would negatively impact four (4). The policy holds the potential for a possibly negative impact on tax rates in the future but is presently under discussion. Even so, the negative impacts on differentiation capacity are offset by its

positive impact on regulatory efficiency.

At the behest of the UK, the UKOTs have undertaken only partial compliance (Registers of Beneficial Ownership) of the AMLD4. Full adoption of the EU AMLD4 is not required by the UKOT7 as they are not EU member states (except Gibraltar). As EU Overseas Territories they are however expected to comply sufficiently with its requirements or risk being placed on a listing of non-cooperative third country jurisdictions in the future. Through UK demands on the territories, they have together with the UK met the AMLD4's requirements for registers of beneficial ownership. The territories have not taken steps to comply with any other aspects of the AMLD4 other than that imposed by the UK. Compliance with the register requirement decreases comparative advantage in two of the four comparative advantage factors: regulatory due diligence and facilities/technology/specialist. It increases due diligence costs by adding the responsibility of maintaining a register, populating it, guaranteeing specialized access, and maintaining privacy and security. It increases technology and facilities costs in the expense to purchase and maintain the digital data system. Establishing central registers has no impact on three of the four differential advantage factors, but enhances differentiation capacity by increasing regulatory efficiency through compliance with EU regional standards.

However, any further compliance with AMLD4 requirements hold the unknown possibility of decreasing comparative advantage by further increasing due diligence costs via its requirements for Expanded Due Diligence (EDD) regarding suspicious individuals in relation to money laundering, financial crime, and tax evasion. Further compliance

also holds the possibility of reducing differentiation capacity due to the possibility of the EU penalizing a future list of ”High Risk Countries” identified under the AMLD4 in the future.

Therefore complying with Central Registers of Beneficial Ownership component of the AMLD4 moderately impacts the international competitive advantage of the territories in financial services. It increases costs in multiple comparative advantage factors, while at the same time enhancing differentiation via enhanced regulatory efficiency which positively adds to product safety, quality, and reputation.

-OECD CRS & AEOI *1=3, 0=1, n=4 / Nil:*

Of the eight (8) factor endowments from which the territories derive competitive advantages relative to their competitors, full compliance would negatively impact three (3), resulting in an increase in operational costs, contraction in differentiation characteristics, and no impact on specialization or niche markets. Even so, the negative impacts on differentiation capacity are offset by its positive impact on regulatory efficiency. However, the negative impact is universal given that it is the international standard.

The CRS & AEOI decrease comparative advantage generally (universal application) among all jurisdictions globally, increasing costs in two of the four competitive advantage factors: regulatory due diligence and facilities/technology/specialist. The legislation imposes these costs across the entire financial services industry among all competing jurisdictions save the US who has opted not to participate based on conflicts national privacy laws. The policy decreases

advantages in two of the four differentiation factors by generally decreasing privacy across the entire financial services industry as well as causing regulatory inefficiency universally due to its legal incompatibility with localized privacy laws in most jurisdictions. However, all jurisdictions are subject to the compatibility problems which early adopters seek to correct before noncompliance becomes punishable by sanctions in the period of general adoption. There is no impact on focus advantages in the territory's niche markets are areas of specialization. Given the global adoption of the CRS & AEOI as the global standard in financial services, subjecting all jurisdictions to the same costs for full compliance, the territories face no relative loss in international competitive advantage within the financial services industry.

-US/UKOT7 FATCA IGA *1=3, 0=1, n=4 / Nil:*

The IGA, signed four years after the introduction of FATCA, corrects the decrease in regulatory efficiency of the initial FATCA legislation caused by incompatibility with local privacy laws. The correction is achieved by requiring the governments of the UKOTs (rather than FFIs) to report to the US information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest. The local governments are responsible for collecting the information by their own means according to their local laws and legislation. Failure of local companies to report or comply is subject to sanctions by the local government who can then in turn further a report of noncompliance to the US, thereby keeping the companies under the authority of the local governments. Regulatory efficiency is increased by minimizing the losses imposed by FATCA and achieving full

compliance which positively adds to product safety, quality, and reputation. As a result, with the exception of the US, there is no relative loss of competitive advantage as the territories can now comply with FATCA as all of their competition are required to so.

-UK CDOT: CDOT: 1=3, 0=1, n=4 / Nil:

Of the eight (8) factor endowments from which the territories derive competitive advantages relative to their competitors, full compliance with either policy would negatively impact three (3), resulting in an increase in operational costs, contraction in differentiation characteristics, and no impact on specialization or niche markets. Even so, the negative impacts on differentiation capacity are offset by their positive impact on regulatory efficiency.

CDOT decreases Comparative Advantage by increasing costs in two of the four competitive advantage factors: regulatory due diligence and facilities/technology/specialist. The territories must enforce reporting and adoption of technological solutions by which to do so. CDOT decreases advantages in one of the four differentiation factors by decreasing privacy relative to the UK market. However, it simultaneously enhances a single factor in regulatory efficiency through compliance with UK regulatory requirements. The policy has no impact on the focus advantages in the territory's niche markets as the scope of CDOT is extremely limited. The policy is directed only at UK individuals and entities, who represent only a fraction of the global markets of the territories. Therefore, while posing no threat to losses in the territories' international competitive advantage in financial services, CDOT's impact is relatively small whether negative or positive.

-The UK Central Registers of Beneficial Ownership *1=2, 0=1, n=5 / Nil:*

Of the eight (8) factor endowments from which the territories derive competitive advantages relative to their competitors, full compliance would negatively impact two (2), resulting in an increase in operational costs, and no contraction in differential or focus advantages. Rather, implementation of the registers positively impacts differentiation capacity by increasing regulatory efficiency. The null effects of the policy (no impact on 5 of the 8 factors) outnumber the total negative and positive impacts on competitive advantage. It has the second smallest degree of impact of the prescribed policies.

The UK Central Registers of Beneficial Ownership eliminates the privacy decrease caused by the "public" component demanded in the initial legislation. This in turn eliminates the regulatory inefficiency caused by the "public" component due to legal incompatibility with localized privacy laws in the territories and existing contractual arrangements with clients based on those laws. It still decreases comparative advantage in two of the four comparative advantage factors: regulatory due diligence and facilities/technology/specialist. It increases due diligence costs by adding the responsibility of maintaining a register, populating it, guaranteeing specialized access, and maintaining privacy and security. It increases technology and facilities costs in the expense to purchase and maintain the digital data system. It however has no impact on three of the four differential advantage factors, but positively impacts regulatory efficiency, increasing it through fulfilling Beneficial Ownership recommendations and requirements of the EU AMLD4, FATF & G20.

There is no impact on focus advantages relative to niche markets. The UK Central Registers of Beneficial Ownership moderately impacts the international competitive advantage of the territories in financial services. It increases costs in multiple comparative advantage factors, while at the same time enhancing differentiation via enhanced regulatory efficiency which positively adds to product safety, quality, and reputation.

-*The FATF Transparency in Beneficial Ownership* *1=0, 0=1, n=7 / Nil:*

-*G20 Beneficial Ownership Transparency* *1=0, 0=1, n=7 / Nil:*

-*G20 MCMAATM* *1=0, 0=1, n=7 / Nil:*

Full compliance with the policies have no negative impact on the territories' competitive advantage in financial services. They each have mostly null effects on competitive advantage factors (7 of 8), with the exception of positively impacting differential advantages by increasing regulatory efficiency.

A2.5 Stage 3QCA: Composite Mechanism

In the stage 3 QCA, with both theories combined, the composite mechanism dually dictates that the impact of each policy on competitive advantage determined the choice of response to that policy, and that the variety of available responses were framed by the elements of overregulation present in the policy. The central elements of the composite causal mechanism include a *competitive advantage impact assessment and overregulation framed choices of response*.

Under the assumption of the combined theories as the active causal mechanism in the process, the chronology of the reform proceeds from conditions of overregulation in

the regulatory environment brought about by multiple prescribed policy adoptions by regulatory authorities. These conditions prompt the UKOTs to first conduct a competitive advantage impact assessment to determine whether each policy stands to decrease or increase their competitive advantages in financial services. If the policy did not stand to decrease competitive advantage or enhanced it, the policy was met with a compliance response and adopted as part of the reform. If the policy stood to decrease competitive advantage, compliance was forgone and it was rejected then met with either noncompliance or one of the other three overregulation responses. Those responses included capture, black market/low transparency, or noncompliance while awaiting reregulation-deregulation-regulatory reform.

If changes occurred in the policy via capture or reregulation, it was reassessed, and if found to no longer decrease competitive advantage, was then met with a compliance and adoption response. If the policy had both sanctionable and non-sanctionable elements, of which some parts negatively impacted competitive advantage while others does not, a creative compliance response was followed by adoption as part of the reform. The end result was the reform outcome comprised of eight policy adoptions of which seven are compliance responses, and one a creative compliance response. Two of the policies were rejected (FATCA, Public Central Registers of Beneficial Ownership), one with a noncompliance response, the other with a capture response. The two rejected policies were later adopted in a different form from their initial introduction by regulatory authorities (UKOTs FATCA IGA, Central Registers of Beneficial Ownership).

Composite Mechanism Explanation by Policy:

-*US FATCA(2010):* The policy was initially rejected with a noncompliance response due to its very high negative impact (decrease) on competitive advantage factors, awaiting *reregulation*, *deregulation*, or *regulatory reform* due to the universal nature of challenges posed by FATCA to jurisdictions worldwide. The territories entered into negotiations with the US (after initial preparations by the UK) citing their inability to comply with FATCA in its initial form and sought a solution that would allow for their compliance with US reporting requirements. After these types requests mass mounted against FATCA by numerous states worldwide, the US restructured the policy to accommodate the individual needs of select jurisdictions in the form of Intergovernmental Agreements (IGAs).

The *US-US/UKOT7 FATCA IGA (2014)* was agreed between the territories and US requiring the governments of the UKOTs (rather than FFIs) to report to the IRS information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest. The local governments would be responsible for collecting the information by their own means according to their local laws and legislation. Failure to report the information to the local authorities is subject to sanction by the local government, who thereafter can report the entity to US authorities for a further round of sanctions. The IGA had a null effect on competitive advantage. It actually increased regulatory efficiency by minimizing the legally problems imposed by FATCA, resulting in relatively no loss of competitive advantage (with the exception of the US), allowing the territories to comply and adopt the FACTA IGA.

-*UK Public Central Registers of Ben. Ownership*: The policy was initially rejected due to its very high negative impact (decrease) on competitive advantage factors, as the territories pursued a capture strategy (capture response) employing localized diplomatic resources in the UK to influence the structure of the policy in their by removal of its "public" requirement. The attempt was successful as the "public" element was withdrawn and the policy presented as the *UK Central Registers of Beneficial Ownership (2016).* The revision had a null effect on competitive advantage. The elimination of the decrease in privacy by the removal of the "public" component in turn also eliminated the regulatory inefficiency caused by its legal incompatibility with localized privacy laws in the territories. The policy allowed for an increase in regulatory efficiency by allowing the territories to fulfilling Beneficial Ownership recommendations and requirements of the EU AMLD4, FATF & G20. With an overall null impact on the territories' competitive advantage in financial services, they able to comply and adopt the central registers as part of the reforms.

-*EU AMLD4:* Full adoption of the EU AMLD4 is not required by the UKOT7 as they are not EU member states (except Gibraltar). As EU Overseas Territories they are however expected to comply sufficiently with its requirements or risk being placed on a listing of non-cooperative third country jurisdictions in the future. At the behest of the UK, the UKOTs (along with the UK) have undertaken partial compliance with the AMLD4 meeting only the requirements for registers of beneficial ownership which have only a null effect on competitive advantage. The total policy has a high negative impact (decrease) on competitive advantage and as a result the territories have taken no steps

towards further compliance. They had a noncompliance response to all non-sanctionable components of the AMLD4.

Any further compliance with AMLD4 requirements hold the unknown possibility of decreasing comparative advantage by further increasing due diligence costs via its requirements for Expanded Due Diligence (EDD) regarding suspicious individuals in relation to money laundering, financial crime, and tax evasion. Further compliance also holds the possibility of reducing differentiation capacity due to the possibility of the EU penalizing a future list of ”High Risk Countries” identified under the AMLD4 in the future.

Therefore in addition to the modest negative impact on competitive advantage imposed by costs of establishing and maintaining the register, the UKOTs had to calculate the potential high negative impact the Enhanced Due Diligence component and risk of being listed as “High Risk Country on their competitive advantages. As a result the AMLD4 was met with a creative compliance response and adoption as part of the reform; complying with the sanctionable requirements, but not complying with non-sanctionable requirements.

-*UK CDOT:* CDOT / *OECD CRS & AEOI:*

The two reporting regimes having a null effect on the territories’ competitive advantage in financial services. The universal scope of adoption of the CRS & AOEI as the global reporting standard mitigates its relative negative impact on competitive advantage given that it imposes the same costs on all competitors. Likewise the limited scope of CDOT to the UK market greatly limits its impact on competitive advantage

because the niche markets of the territories are global in scale. Therefore they were both met with a compliance response and adopted as part of the reform.

-*The FATF Transparency in Beneficial Ownership / G20 Beneficial Ownership Transparency* / *G20 MCMAATM*:

The policies have no negative impact on the territories' competitive advantage in financial services and were met with a compliance response and adoption. They each have mostly null effects on competitive advantage but serve to increase regulatory efficiency.

APPENIX 3

LOBBY REPORT

Organization: The Government of the British Virgin Islands London Office

Date: May 1, 2017

Duration: 1 Hour

Location: London, UK

The London Offices of the BVI refused to provide any formal paperwork for consent or any acknowledgement of discussion of their lobbying practices for research purpose. The office would not consent to an interview written or verbal. The office stated that it was in protecting their interests and image not to formally endorse any lobby claims other than official diplomatic meetings.

The London Office was only willing to provide an informal basic lined responses in regard to their lobbying activities on Financial Services Matters.

1. The UKOTs lobby vigorously UK legislators and financial institutions to influence policy in their favor, particularly in regard to financial services.

2. These activities involve numerous formal and informal individual meetings annually by each territory to both friendly and unfriendly legislators.

3. These relationships are cultivated through social groups with formal and informal memberships linked directly to the UKOTs' diplomatic offices.

4. Previous legislators and former UK Representatives in the territories are used as consultants in the lobbying process.

5. The UKOTs Lobby was instrumental in deflating initial and later efforts to impose Public Central Registers of Beneficial Ownership on the territories.

BIBLIOGRAPHY

Accenture, "Automatic Exchange of Information Regime: An emerging compliance challenge," (2014): 4-10, accessed July 1, 2017, https://www.accenture.com/t20150626T121157__w__/us-en/_acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Dualpub_7/Accenture-Automatic-Exchange-Information-Regime.pdf.

Bagheri, Mahmood and Jahromi, Mohammad J. G. "Globalization and extraterritorial application of economic regulation: crisis in international law and balancing interests," European Journal of Law and Economics, No. 41 (2016): 292-329.

Baldwin, Robert, and Martin Cave, and Lodge, Martin. *The Oxford Handbook of Regulation.* Oxford: Oxford University Press, 2010, 12-13.

Baldwin, Robert, and Martin Cave, and Lodge, Martin. *Understanding Regulation: Theory, Strategy, and Practice 2nd Ed.* Oxford: Oxford University Press, 2012, 70.

Beach, D. and Pedersen, R., "What is Process Tracing Actually Tracing? The Three Variants of Process Tracing Methods and their Uses and Limitations," University of Aarhus, (January 2011), 22-28, accessed July 1, 2017, http://https//www.researchgate.net/publication/228162928_What_is_Process-Tracing_Actually_Tracing_The_Three_Variants_of_Process_Tracing_Methods_and_Their_Uses_and_Limitations.

Boyd, Laurie Hatten. "Are Problems Looming for FATCA and the Reciprocal IGA?" The Tax Adviser, June 1, 2016, Accessed July 1, 2016, http://www.thetaxadviser.com/issues/2016/jun/problems-looming-for-fatca-and-reciprocal-iga.html.

Brockhurst, James. "Old colonies; New Disputes," New Law Journal Issue: 7656 (12 June 2015), accessed July 1, 2017, https://www.newlawjournal.co.uk/content/old-colonies-new-disputes.

Bruno, Paul. "Overregulation Theory isn't enough to explain negative voucher effects," *Brown Center Chalkboard: The Brookings Institute*, Monday, February 29, 2016, accessed April 17, 2017, https://www.brookings.edu/blog/brown-center-chalkboard/2016/02/29/overregulation-theory-isnt-enough-to-explain-negative-voucher-effects/.

Capita Asset Services, "FATCA and CRS update," May 28, 2015, accessed July 1, 2017,

http://www.capitaassetservices.com/articles/fatca-and-crs-update.

Caribbean Financial Action Task Force, "Member Countries," Accessed July 1, 2017, https://www.cfatf-gafic.org/index.php/member-countries.

Chiu, Iris H-Y. "From Multilateral to Unilateral Lines of Attack: The Sustainability of Offshore Tax Havens and Financial Centers in the International Legal Order," Connecticut Journal of Int'l Law, Vol. 31:123 (2015): 3-24.

Clegg, Peter & Gold, Peter. "The UK Overseas Territories: a decade of progress and prosperity?," Commonwealth & Comparative Politics, 49:1 (2013): 115-135. DOI: 10.1080/14662043.2011.541117.

Clegg, Peter "Brexit and the Overseas Territories: Repercussions for the Periphery," The Round Table, (2016): 1-13, DOI: 10.1080/00358533.2016.1229420.
Clegg, Peter. "The United Kingdom and its Caribbean Overseas Territories: Present Relations and Future Prospects," Caribbean Journal of International Relations & Diplomacy Vol. 1, No. 2 (2013): 53-64.

Comte, Jean "EU moving toward common Blacklist of Tax Havens," EU Observer, February 2, 2017, accessed July 1, 2017, https://euobserver.com/justice/136769.

Deloitte, "FATCA IGA Global Summary," June 8, 2016, accessed June 17, 2017, https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-fatca-iga-global-summary-060816.pdf.

Devers, Kelly J. PhD, Nicole Cafarella Lallemand, MPP, Rachel A. Burton, MPP, Leila Kahwati, MD, MPH, Nancy McCall, ScD, & Stephen Zuckerman, PhD, "Using Qualitative Comparative Analysis (QCA) to Study Patient-Centered Medical Homes: An Introductory Guide," Urban Institute/RTI International, (September 2013): 1-42, accessed August 2, 2017, https://innovation.cms.gov/Files/reports/QCA-Report.pdf.
DOI: 10.1080/13876988.2016.1149281,
http://dx.doi.org/10.1080/13876988.2016.1149281.

Dudley, Susan E., and Brito, Jerry. *Regulation: A Primer 2nd ed*. Arlington, Va: Mercatus Center at George Mason University, 2012, 15.

Dunne, Niamh. *Competition Law and Economic Regulation: Making and Managing Markets*. Cambridge: Cambridge University Press, 2015, 148-150.

EU Business, "EU releases world tax havens blacklist," June 18, 2015, accessed July 1, 2017, http://www.eubusiness.com/news-eu/economy-politics.120n.

EU Commission, “European Commission - Fact Sheet Questions and Answers: Anti-money Laundering,” Directive MEMO/16/2381, July 5, 2016, accessed July 1, 2017, http://europa.eu/rapid/press-release_MEMO-16-2381_en.htm.

European Commission, “Directive (EU) 2015/849 of The European Parliament and of the European Commission,” Official Journal of the European Union, (5.6.2015): L 141/73.

European Council, “2001/822/EC: Council Decision of 27 November 2001 on the association of the overseas countries and territories with the European Community ("Overseas Association Decision") Official Journal L 314 , 30/11/2001 P. 0001 – 0077.

European Council, “Taxation: Council agrees criteria for the screening of third country jurisdictions,” PRESS RELEASE 640/16, Council of the EU, 08/11/2016, accessed July 1, 2017, http://www.consilium.europa.eu/en/press/press-releases/2016/11/08-taxation-criteria-third-country-jurisdictions/.

EY “OECD Common Reporting Standard A global FATCA-like regime,” EY: International Tax Alert, (February 18, 2014): 2-11, accessed July 1, 2017, http://www.ey.com/Publication/vwLUAssets/EY_-_OECD_Common_Reporting_Standard:_A_global_FATCA-like_regime/$FILE/EY-Client-alert-OECD-Common-Reporting-Standard.pdf.

FATF, “FATF guidance TRANSPARENCY AND BENEFICIAL OWNERSHIP,” Last Modified October 2014, accessed June 23, 2017, http://www.fatf-gafi.org/documents/news/transparency-and-beneficial-ownership.html.

FATF, “High-risk and non-cooperative jurisdictions” accessed July 1, 2017, http://www.fatf-gafi.org/countries/#high-risk.

FATF, “Information on updates made to the FATF Recommendations,” accessed July 1, 2017, http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html

FATF, “Who we are,” accessed July 1, 2017, http://www.fatf-gafi.org/about/whoweare/.

Fischer, Manuel & Maggetti, Martino. “Qualitative Comparative Analysis and the Study of Policy Processes,” Journal of Comparative Policy Analysis: Research and Practice, (2016): 1-17.

G20Australia, “G20 High-Level Principles on Beneficial Ownership Transparency (2014),” accessed May 23, 2017, http://www.g20australia.org/official_resources/g20_high_level_principles_beneficial_ownership_transparency.html.

Gov. UK, “Statutory guidance-Automatic Exchange of Information Agreements: other

UK agreements," HM Revenue Customs, September 8, 2014, accessed July 1, 2017, https://www.gov.uk/government/publications/automatic-exchange-of-information-agreements-other-uk-agreements/automatic-exchange-of-information-agreements-other-uk-agreements.

GOV.UK, "2010 to 2015 government policy: UK Overseas Territories - Policy paper," last modified May 8, 2017, accessed January 10, 2017, https://www.gov.uk/government/publications/2010-to-2015-government-policy-uk-overseas-territories/2010-to-2015-government-policy-uk-overseas-territories.

GOV.UK, "A register of Beneficial Owners of Overseas Companies and Other Legal Entities: Call for evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement" Department for Business, Energy & Industrial Strategy (April 2017): 9-10, accessed June 4, 2017, www.gov.uk/government/consultations/property-ownership-and-public-contracting-byoverseas-companies-and-legal-entities-beneficial-ownership-register.

GOV.UK., "Beneficial ownership: UK Overseas Territories and Crown Dependencies," Last modified April 21, 2016, accessed June 2, 2017, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518300/Exchange_of_information_between_UK_government_and_the_government_of_the_British_Virgin_Islands.pdf.

Government of the British Virgin Islands London Office, "Friends of the BVI," accessed July 1, 2-17, https://www.bvi.org.uk/londonoffice/friends.

Graham, Philip "BVI & Cayman Funds Round-Up: From FATCA to Fund Directors," Harneys Publication, October 30, 2012, accessed, July 1, 2017, http://www.harneys.com/publications/legal-updates/bvi-and-cayman-funds-round-up-from-fatca-to-fund-directors.

Haggerty, Sophie "Norway Latest Country to Adopt Public Registry of Beneficial Ownership," Global Financial Integrity, June 15, 2015, accessed July 1, 20017, http://www.gfintegrity.org/norway-latest-country-to-adopt-public-registry-of-beneficial-ownership/.

Hatten Boyd, Laurie. "Are Problems Looming for FATCA and the "Reciprocal" IGA?" The Tax Adviser, June 1, 2016, accessed July 1, 2017, http://www.thetaxadviser.com/issues/2016/jun/problems-looming-for-fatca-and-reciprocal-iga.html.

Hintjens, Helen & Hodge, Dorothea. "The UK Caribbean Overseas Territories: governing unruliness amidst the extra-territorial EU," Commonwealth & Comparative Politics, 50:2 (2012): 190-225. DOI: 10.1080/14662043.2012.671604.

Houlder, Vanessa. “UK reaches tax agreement with overseas territories,” Financial Times, December 3, 2015, accessed June 2, 2017, https://www.ft.com/content/749e219e-99e3-11e5-9228-87e603d47bdc.

Joe G. Thomas and Bruce Walters, “GENERIC COMPETITIVE STRATEGIES,” Reference for Business, accessed July 1, 2017, Read more: http://www.referenceforbusiness.com/management/Ex-Gov/Generic-Competitive-Strategies.html#ixzz4pGnpGCsXGENERIC COMPETITIVE STRATEGIES

Koba, Mark. "A Cheat Sheet on the Europe Crisis,” CNBC, (June 13, 2012), accessed July 1, 2017, https://web.archive.org/web/20120615224217/http://finance.yahoo.com/news/europes-economic-crisis-know-145955853.html.

KPMG, “Financial institutions face AEOI implementation challenges from common reporting standard to fight income tax evasion,” accessed July 1, 2017, https://home.kpmg.com/xx/en/home/insights/2015/11/financial-institutions-face-aeoi-fs.html

Lodge, M. K. & Wegrich, D. A., *Managing Regulation: Regulatory Analysis, Politics and Policy: The Public Management and Leadership*. New York: Palgrave, 2012, 36-39. Baldwin, and Cave, and Martin, 75-76.

Manktelow, James ed. “Porter's Generic Strategies: Choosing Your Route to Success,” Mindtools, accessed July 1, 2017, https://www.mindtools.com/pages/article/newSTR_82.htm.

McConville, James. “An Island of Captives: The BVI and its not so little Secrets,” Original Law Review, Vol 6, No2 (2010): 40-56.

McNamee, Lara “4th Anti-Money Laundering Directive: How does it affect you?” Acuity, March 21, 2016, accessed July 1, 2017, https://accuity.com/accuity-insights-blog/4th-money-laundering-directive-how-does-it-affect-you/.

Moberg, Lotta and Morriss, Andrew P. “Cartelizing Taxes: Understanding the OECD’s Campaign against Harmful Tax Competition,” Columbia Journal of Tax Law, Vol. 4:1 (2012): 1-64.

Newman, Melanie. “Conservative peer hired as tax haven lobbyist,” The Bureau of Investigative Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-17/conservative-peer-hired-as-tax-haven-lobbyist.

Newman, Melanie. "Lobbying's Hidden Influence: Tax havens boost their lobbying efforts," The Bureau of Investigative Journalism, April 19 2012, accessed July 1, 2017, https://www.thebureauinvestigates.com/stories/2012-04-19/tax-havens-boost-their-lobbying-efforts.

OECD "The OECD and Council of Europe (2011), The Multilateral Convention on Mutual Administrative assistance in Tax Matters: Amended by the 2010 Protocol," accessed July 1, 2017, http://dx.doi.org/10.1787/9789264115606-en.

OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, "About the Global Forum," accessed July 1, 2017, http://www.oecd.org/tax/transparency/about-the-global-forum/.

OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, "CRS by Jurisdiction," Last modified 3 August 2017, accessed August 3, 2017, http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489.

OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, "Standard for Automatic Exchange of Financial Account Information in Tax Matters OECD (2014)," accessed June 4, 2017, http://dx.doi.org/10.1787/9789264216525-en.

OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, "Steering Group," last updated: January 2017, accessed July 1, 2017, http://www.oecd.org/tax/transparency/about-the-global-forum/steeringgroup.htm.

OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, "Tax Co-operation: Towards a Level Playing Field 2007 ASSESSMENT BY THE GLOBAL FORUM ON TAXATION," OECD PUBLICATIONS, No. 44430286 2006, 6-8.

OECD, "Convention on Mutual Administrative Assistance in Tax Matters," Last updated - May 2017 Accessed May 23, 2017, http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm.

OECD, "The OECD and Council of Europe (2011), The Multilateral Convention on Mutual Administrative assistance in Tax Matters: Amended by the 2010 Protocol," accessed July 1, 2017, http://dx.doi.org/10.1787/9789264115606-en.

OECD: Global Forum on Transparency and Exchange of Information for Tax Purposes, "Exchange of Information on Request Ratings," accessed April 15, 2017, http://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/#d.en.342263.

Out-Law.Com, “UK FATCA-The disclosure to HMRC of information about reportable accounts held by UK taxpayers in the Crown Dependencies and Overseas Territories,” Last Modified April 2016, accessed June 4, 2017, Out-Law.com https://www.out-law.com/topics/tax/tax-for-entrepreneurs/uk-fatca---the-disclosure-to-hmrc-of-information-about-reportable-accounts-held-by-uk-taxpayers-in-the-crown-dependencies-and-overseas-territories-/.

Parliament.UK, “Criminal Finances Bill” (CFB 06), Public Bill Committee: Session 2016-17, May 11, July 2016, accessed July 1, 2017, https://publications.parliament.uk/pa/cm201617/cmpublic/CriminalFinances/memo/CFB06.htm.

Piolet, Vincent. “The city of London: Geopolitical Issues Surrounding the World’s Leading Financial Center,” Hérodote No 151 (2013/4): 102-119. DOI 10.3917/her.151.0102.

Rogers, Carlyle K. “British Overseas Territories in the Caribbean agree to central registries of beneficial ownership information – the first step on the slippery slope to full disclosure has been taken,” Cayman Financial Review, January 28, 2016, http://www.caymanfinancialreview.com/2016/01/28/british-overseas-territories-in-the-caribbean-agree-to-central-registries-of-beneficial-ownership-information-the-first-step-on-the-slippery-slope-to-full-disclosure-has-been-taken/.

Schneider, Carsten Q. and Rohlfing, Ingo. “Combining QCA and Process Tracing in Set-Theoretic Multi-Method Research,” Sociological Methods & Research 42, no. 4 (March 22, 2013): 559-597, accessed July 22, 2017, www.sagepub.com/journalsPermissions.nav DOI: 10.1177/0049124113481341 smr.sagepub.com.

Stikeman Elliott Group, “Towards a Level Playing Field: Regulating Corporate Vehicles in Cross-Border Transactions,” INTERNATIONAL TRADE AND INVESTMENT ORGANISATION AND THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS (2002): 10-16, accessed July 1, 2017, https://www.step.org/sites/default/files/Comms/Towards_A_Level_Playing_Field2ndEdition.pdf.

Tax Justice Network, “How the U.S.A. became a Secrecy Jurisdiction,” November 27, 2015, https://www.taxjustice.net/2015/11/27/how-the-u-s-a-became-a-secrecy-jurisdiction-2/.

Temin, Peter. "The Great Recession & the Great Depression," Daedalus, Vol. 139:4, (2010): 115-124, DOI: 10.3386/w15645, accessed July 1, 2017, http://www.nber.org/papers/w15645.pdf.

The Guardian, “Overseas territories spared from UK law on company registers,” April

12, 2016, accessed July 1, 2017, https://www.theguardian.com/business/2016/apr/12/overseas-territories-spared-from-uk-law-on-company-registers.

Thomas, Andrea. "Top 5 Compliance Concerns for Corporate Counsel and the Effect on In-House Planning," CT: Wulters Kluwer, 568/0716 (July 25, 2016): 1-3, https://ct.wolterskluwer.com/sites/default/files/Top_5_Compliance_Concerns_for_Corporate_Counsel.pdf.
Transl Behav Med, "Using qualitative comparative analysis to understand and quantify translation and implementation," 4:2, 201–208 (Jane, 2014): doi: 10.1007/s13142-014-0251-6, Accessed July 22, 2017, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4041929/.

UK.GOV "The Overseas Territories: Security, Success and Sustainability," Foreign & Commonwealth Office, Cm 8374, (November 22, 2013): 11-15, Accessed May 5, 2017. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14929/ot-wp-0612.pdf.

UK.GOV, "Beneficial ownership: UK Overseas Territories and Crown Dependencies Foreign & Commonwealth Office." Cabinet Office and Foreign & Commonwealth Office, April 21, 2016Accessed July 1, 2017, https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies.

UK.GOV, "Policy Paper-G8 action plan principles to prevent the misuse of companies and legal arrangements," Prime Minister's Office, June 18, 2013, accessed July 1, 2017, https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements.

UK.GOV, "Public Register to Boost Company Transparency (Press Release)," Prime Minister's Office: October 31, 2013, accessed July 1, 2017, https://www.gov.uk/government/news/public-register-to-boost-company-transparency.

US Department of the Treasury, "Foreign Account Tax Compliance Act (FATCA)," Modified March 29, 2017, accessed June 4, 2017, https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx

US Department of the Treasury, "Foreign Account Tax Compliance Act (FATCA)," accessed July 1, 2017, https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.

Wintour, Patrick. "Overseas territories spared from UK law on company registers," The Guardian, April 12, 2016, accessed July 1, 2017,

https://www.theguardian.com/business/2016/apr/12/overseas-territories-spared-from-uk-law-on-company-registers.

Woollard, Suzanne. “The British Overseas Territories: Does Mother Know Best? A Cayman Islands Perspective,” Commonwealth Law Bulletin Volume 26, No. 2 (2000): 1300-1312.