

SÃO PAULO: DOES CORRUPTION LIVE NEXT DOOR?

**Shell companies and the real estate sector in
the largest city in the Southern Hemisphere**

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free from corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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DISCLAIMER Annexe 1 can be downloaded [here](#), and Annexe 2 [here](#). The annexes only include publicly available datasets. These include the Register of the Urban Territorial Land Tax of the City Government of São Paulo and the Register of Company Information of the State Government of São Paulo. Under Brazilian law it is neither illegal to own a shell company nor to have this company registered in a tax haven provided all is adequately declared to the authorities.

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EXECUTIVE SUMMARY

Money-laundering is the name given to all dubious operations aimed at giving a legal appearance to illegally obtained assets. People in the centre of corruption scandals often use webs of secret companies, trusts and other legal arrangements in one or more jurisdictions to transfer and hide assets. In 70 per cent of 200 grand corruption cases analysed by the World Bank this was the case¹. At the heart of this deception is the use of shell companies that hide who is the real owner of the assets being bought. One of the most popular aims for money launderers using shell companies is to buy property.

The former Petrobras director Nestor Cerveró laundered money via property deals in Rio de Janeiro using secret companies (See Box “How to launder money in Rio”).

This report raises red flags about the lack of transparency in property ownership in São Paulo and identifies how real estate worth billions of dollars is owned through companies registered in offshore tax havens. In Brazil, as in many countries around the world, it is possible to hide the beneficial owner of companies that are buying property. The research shows that more than 3,450 real estate titles are owned through 236 companies that are registered in secrecy jurisdictions and tax havens, including in the British Virgin Islands, the US state of Delaware and Uruguay.

Transparency International has adapted research methodology carried out by Transparency International United Kingdom in London to analyse the real estate market in São Paulo. Data was collected from the São Paulo State Trade Board on companies registered in São Paulo state – including data on company formation – and cross referenced with data on property ownership in the city of São Paulo.

The research is indicative. The databases that collect information on property in São Paulo are incomplete and difficult to use. Nevertheless, we have identified a significant number of properties worth more than US\$2.7 billion where it is either impossible to find the real beneficial owners or where the history of ownership leads back to a secrecy jurisdiction or tax haven.

*Companies registered in secrecy jurisdictions are allowed to operate in Brazil and are not necessarily illegal. This is also the case for shell companies. Transparency International defines shell companies as a limited liability entity that has no physical presence in a jurisdiction, no employees and no commercial activity. It is usually formed in a **tax haven** or **secrecy jurisdiction** and its main or sole purpose is to insulate the real **beneficial owner** from taxes, **disclosure** or both. Shell companies may be used for different reasons, such as to facilitate international businesses. They can also be used to protect assets from unstable political and economic regimes and to reduce taxation. Their main advantage is the secrecy that protects the beneficial owner from public scrutiny: it is not necessary to register the name of the real person behind the company. This is a key reason why such companies can end up being used to hide financial gains from illicit acts.*

The fact that a company is listed in this research does not mean it is necessarily involved in illicit acts. It means that the company has or has had shell companies or a company based in a tax haven or secrecy jurisdiction among its shareholders and these companies control real estate property in the city of São Paulo.

¹ Stolen Asset Recovery Initiative, *Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do about It* (Washington, DC: World Bank, 2011), <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf> (accessed 10 August 2016)

THE MAIN FINDINGS ARE AS FOLLOWS.

3,452 properties were found to be registered in the name of 236 companies controlled by or linked to others registered in tax havens and secrecy jurisdictions.

Altogether, these properties are valued at over US\$2.7 billion² or 8.6 billion Brazilian reais.

In the corridor that joins Chucri Zaidan Avenue and Engenheiro Luiz Carlos Berrini Avenue the research found 820 real estate properties own by Brazilian legal persons controlled by shell companies. Altogether, they are valued at over US\$370 million (R\$1.1 billion).

On Paulista Avenue, where many of the most powerful companies are based, the study found 195 properties, worth some US\$38.4 million (almost R\$120 million).

On Brigadeiro Faria Lima Avenue, another main artery, there are 67 buildings, worth about US\$42 million (R\$131 million).

The average value of the 3,452 property titles found is about US\$800,000 (R\$ 2.5 million).

The top five territories in which shell companies owning properties in São Paulo are registered, accounting for around 87 per cent of all 236 companies detected, are the British Virgin Islands, Uruguay, the United States, Panama and Switzerland.

² 1 Brazilian Real equalled 0,3209758 US dollar on 10 February 2017, according to a currency conversion tool at the Brazilian Central Bank website: <http://www4.bcb.gov.br/pec/conversao/conversao.asp?id=convmoeda> All conversions in this report obey to this operation (accessed 13 February 2017).

Transparency International and partner organisations advocate for the establishment of public registers containing information on the beneficial owners (the real living person or persons who have ultimate control or ownership) of domestically incorporated companies. Transparency International also advocates for beneficial ownership information of any company owning or purchasing property to be made public as well – so as to ensure foreign incorporated companies adhere to strong transparency standards. This kind of transparency would help stop money laundering and make it harder for the corrupt to hide their illicit wealth.

In November 2014 the Group of 20 (G20) leaders adopted the High-Level Principles on Beneficial Ownership Transparency (the “G20 Beneficial”), putting financial transparency as a high priority. The G20 principles build upon the recommendations of the intergovernmental Financial Action Task Force on Money Laundering (FATF), which were first adopted in 1990 and strengthened in 2012. Some countries are yet to craft their frameworks accordingly.

In July 2015 Transparency International published a technical guide for governments to ensure that their legal framework is in line with the “G20 Beneficial”.³ In November 2015 Transparency International published a report reviewing G20 promises on beneficial ownership and assessing the extent to which G20 members were, at the time, fulfilling their commitments.⁴ Brazil’s score was ‘weak’, the second worst of five categories.⁵ The country was found to lack an adequate legal definition of beneficial ownership and mechanisms to ensure the identification of beneficial owners of domestic and foreign legal entities operating within its borders.

In May 2016 Brazil’s tax agency (Receita Federal do Brasil – RFB) made it mandatory for entities operating in the country from 2017 onwards to provide information on beneficial owners when registering. Companies already registered have to provide the information on beneficial ownership by December 2018. But tax information is hard to access and will make it hard to monitor the real beneficial owner of all property.

³ Transparency International, *Technical Guide: Implementing the G20 Beneficial Ownership Principles* (Berlin: Transparency International, 2015), www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles.

⁴ Transparency International, *Just for Show? Reviewing G20 Promises on Beneficial Ownership* (Berlin: Transparency International, 2015), www.transparency.org/whatwedo/publication/just_for_show_g20_promises (accessed 31 August 2016).

⁵ Brazil, Australia, Canada, China, South Korea and the United States are the worst scorers, in the ‘weak’ category (no country was found to be ‘very weak’). Transparency International, 2015 (*Just for Show?*).

TRANSPARENCY INTERNATIONAL MAKES THE FOLLOWING RECOMMENDATIONS FOR URGENT ACTION:

COLLECT AND PUBLISH BENEFICIAL OWNERSHIP INFORMATION FOR DOMESTIC-INCORPORATED COMPANIES

The Senate should pass bill no. 27/2013 (Projeto de Lei da Câmara no. 27/2013) that provides a legal definition of beneficial ownership. This bill was already approved in the Lower House,^[1]

The federal government should make the national company registry publicly available online, in open data format. The national registry must include data on beneficial ownership and be regularly updated to ensure the information is adequate, accurate and current.

The federal government should change the procurement law to include an obligation for bidders to provide data on company formation and beneficial ownership.

PUBLISH BENEFICIAL OWNERSHIP INFORMATION OF ALL COMPANIES OWNING OR PURCHASING REAL ESTATE, WHETHER INCORPORATED DOMESTICALLY OR OVERSEAS

City governments should publish data concerning real estate property within their borders which includes beneficial ownership information of all companies, whether incorporated domestically or overseas, owning property. This requirement should be applied retroactively, and the data should be made available in open data format.

ENSURE STRONG DATA STANDARDS TO MAKE COLLECTION AND PUBLICATION MORE EFFICIENT AND EFFECTIVE

The federal government should agree on a data standard that all subnational level trade boards must use to eliminate gaps and errors. The state-level registries must include data on beneficial ownership.

State governments should review the way they collect data from companies to ensure there are no gaps and errors in the electronic system.

State governments should publish the collected data online, including data on beneficial owner, in open data format.

[1] See <http://www25.senado.leg.br/web/atividade/materias/-/materia/112810> (accessed 3 November 2016).

INTRODUCTION

The purpose of this research was to investigate the extent to which secret offshore companies that hide the identity of the real beneficial owner of their assets are being used to buy real estate in São Paulo. In a 2015 report Transparency International UK showed that **75 per cent of properties** belonging to owners **under investigation for corruption** were bought with secret offshore companies that hide the owners' identities.⁶ The research found that **36,342 London properties**, covering a total of 2.25 square miles, are held by companies registered in offshore havens. How widespread is the use of secret, offshore companies in São Paulo?

Tracking down this data in São Paulo is not easy. In 2014, on 9 December, International Anti-Corruption Day, Transparency International and the then mayor of São Paulo, Fernando Haddad, signed a Cooperation Agreement and on the same day the following year the city government of São Paulo announced it had agreed to open its property register. This was the first step to trying to identify the owners of property in the city and seeing how many are linked to offshore jurisdictions.

Transparency International believes that citizens have the right to know detailed information about the real owners of companies and that making this information public helps fight corruption. Transparency International advocates for an open and publicly available company register in every country that lists the beneficial owner of companies. This would help stop the misuse of secret companies by the corrupt.

Transparency International knows that current legislation in Brazil allows the use of offshore companies. **There is therefore no intention to state that companies included in this study and in the annexes have broken the law or otherwise acted improperly.** For this research, Transparency International first identified the Brazilian legal persons who own real estate titles in São Paulo's most valuable areas. Then Transparency

International identified offshore companies behind such Brazilian legal persons, using data from the São Paulo State Trade Board. The data in the registries is incomplete but it gives an indication of the scale of offshore ownership. The results are staggering. More than US\$2.7 billion worth of property in São Paulo's richest areas is owned through⁷ offshore entities.

SÃO PAULO: A MEGACITY AND A FINANCIAL CENTRE

With some **12 million inhabitants**, São Paulo is the most populous city in the Southern Hemisphere. Its gross domestic product (GDP) is comparable to Ukraine's. It hosts almost a half of the Latin American headquarters of major companies. The value of real estate in this sprawling mega city is in the billions of dollars and rising. Not surprisingly it has become a mecca for real estate investment.

More than
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⁶ Transparency International UK, *Corruption on Your Doorstep: How Corrupt Capital Is Used to Buy Property in the UK* (London: Transparency International UK, 2015), www.transparency.org.uk/publications/corruption-on-your-doorstep (accessed 22 September 2016).

⁷ As foreign companies operating in Brazil do not need to register with the subnational or regional Trade Boards, it is not possible to verify if a company directly owning real estate titles in the city of São Paulo is a shell company if we only have access to the State Board of Sao Paulo. That is because companies can be incorporated in another country or in another Brazilian state and we have not had access to all the different regional Trade Board databases. (see section "data sources and data challenge" and the methodology – especially the section "limitations" – for further details). Future research, using adequate technology, may determine whether there are shell companies as direct owners of real estate in São Paulo.

THE REAL ESTATE SECTOR IN SÃO PAULO

Property is a relatively low-risk investment, which is one reason why it attracts those dealing with illegal funds.⁸ And because real estate is expensive, a lot of money can be laundered in a single operation. That is why the Financial Action Task Force, which promotes best practice to prevent money laundering, considers real estate to be a key sector through which tax evasion and money-laundering is carried out.

It is possible in Brazil for shell companies to buy property without declaring the beneficial owner. Property deals are also often carried out using third parties, sometimes unknowingly, as property owners.⁹ Rising real estate prices and a lack of transparency in property transaction have made São Paulo attractive.^{10 11}

This study analysed the real estate sector in São Paulo, and particularly the richest regions of the city using data from two official databases to identify shell companies. We used a three-step process.

First we collected the names of companies that own property in São Paulo using the city's register on real estate ownership, which became available in the first quarter of 2016.¹² Second, we compared this with this list of companies on the database of the state government agency responsible for company operations in São Paulo state, the Junta Comercial de Estado de São Paulo (JUCESP).¹³ This has the names of legal persons that own real estate in São Paulo city. The third step was to identify the shell companies behind these Brazilian legal persons by using key words.

HOW TO LAUNDER MONEY IN RIO

Nestor Cuñat Cerveró, a top Petrobras executive for over six years, was jailed in May 2015 for his part in the Operation Car Wash bribery scandal. His crime: money laundering. Judge Sergio Moro sentenced Cerveró to five years in prison for buying a **US\$2.4 million** luxury apartment in Rio de Janeiro with funds from bribes; he had used a shell company to hide that he was the real owner.

⁸ Transparency International UK, 2015.

⁹ Organisation for Economic Co-operation and Development [OECD], *Report on Tax Fraud and Money Laundering Vulnerabilities Involving the Real Estate Sector* (Paris: OECD, 2007), www.oecd.org/tax/exchange-of-tax-information/42223621.pdf (accessed 22 September 2016).

¹⁰ Kenneth Rapoza, 'Brazil's High Flying Real Estate Prices Outpace All Countries', *Forbes*, 30 March 2013., www.forbes.com/sites/kenrapoza/2013/03/30/brazil-high-flying-real-estate-prices-outpace-all-countries/#7c2af5516438 (accessed 11 October 2016).

¹¹ Paulo Trevisani and Craig Karmin, 'Brookfield Brazil Unit Is Questioned BISA Fields São Paulo Prosecutor Inquiry of Alleged Extortion by City Officials', *Wall Street Journal*, 19 November 2013, www.wsj.com/articles/SB10001424052702303755504579208200572829672 (accessed 11 October 2016).

¹² São Paulo follows the lead of some US cities, such as Boston, whose real estate data is published in detail. See <https://data.cityofboston.gov/Permitting/Property-Assessment-2015/v8c-t43q> (accessed 10 October 2016).

¹³ São Paulo city is the capital of São Paulo state, which incorporates 645 municipalities. The database on real estate property covers the capital alone, but the data on company formation extends to companies registered in any of the 645 cities of São Paulo state. See www.saopaulo.sp.gov.br/conhecasp/principal_conheca (accessed 12 October 2016).

MAIN FINDINGS



Transparency International found **3,452 real estate units** in São Paulo city owned through **236 companies** connected to tax havens and offshore jurisdictions. Altogether, these property titles were worth **US\$2.7 billion** or **8.6 billion Brazilian reais**.¹⁴ These properties totalled **53 million square metres** in area, which is equal to around **7,400 football fields**.¹⁵

Shareholders of these 236 companies are offshore companies registered in tax haven jurisdictions such as the British Virgin Islands, Uruguay and American states such as Delaware. The beneficial ownership of companies in the tax havens remains secret such that even though São Paulo opened up its real estate property register it is still not possible to find the real people connected to the 3,452 properties owned through such companies.

The vast majority of the properties identified in the study are commercial ones. These commercial units are worth about **US\$2.2 billion**; the residential ones are worth about **US\$370 million**. The average value of the list of properties is around **US\$800,000**.

¹⁴ To be precise: €2,355,466,253.70, converted from R\$8,593,681,606.00, according to the Brazilian central bank's currency converter (www4.bcb.gov.br/pec/conversao/conversao.asp), dated 30 September 2016.

¹⁵ FIFA recommended to the Olympic Games in Rio a pitch of the following dimensions: length 105m, width 68m, which means 7,140m². Thus, 53 million m² equals around 7,400 football pitches. See http://resources.fifa.com/mm/document/tournament/competition/02/54/40/46/oftsregulationsrio2016-e_neutral.pdf (accessed 27 October 2016).

COMPLICATED OWNERSHIP STRUCTURES

The complex world of company registration makes it hard to trace the real owners of properties. This means that criminals can often stay one step ahead of the authorities.

One of the 236 companies highlighted in the present study was found to own 729 real estate units in São Paulo city.

When it was formed in 2007, the Brazilian enterprise declared capital of US\$6,100 (19,000 reais)¹⁶ in current values. It informed the São Paulo State Trade Board that it was 99.9 per cent owned by a company based in Delaware, one of the US states considered a tax haven. Since then this Brazilian enterprise has reported 17 modifications of its corporate structure. In 2010 the Delaware-based company left the partnership. New figures show that the company is now valued at US\$ 59.4 million (185 million reais);¹⁷ in other words, the company has multiplied its capital by 9,700 times in nine years.

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¹⁶ Updated amount (the actual amount is 10,000 reais).

¹⁷ Updated amount (the amount registered is 176.3 million reais).

LUXURY AREAS

Around 65 per cent of all the foreign companies established in Brazil are based in São Paulo. BM&F Bovespa, the largest stock market in Latin America in market value, is also based in the city¹⁸. This attracts corporate headquarters and some areas in São Paulo are full of businesses, luxury corporate buildings and luxury residential buildings.

As this study concentrated on these high-end sections of São Paulo, it is not surprising that two-thirds of the properties (2,158 titles) linked to shell companies are commercial ones. In monetary terms, the commercial properties are worth **US\$2.2 billion**. The commercial properties comprise stores, offices, office buildings, flats, hotels and other types.

There were 998 residential property titles (29 per cent), representing **US\$370 million**. The remaining properties – industrial sheds, land, temples, petrol stations, etc. – comprise only 9 per cent of the 3,542 properties.

The top five overseas territories in which shell companies that own properties in São Paulo are registered are the British Virgin Islands, Uruguay, the United States, Panama and Switzerland. These offshore jurisdictions account for 87 per cent of all 236 companies identified.

WHERE THE PROPERTIES ARE

1 **Chucri Zaidan and Engenheiro Luiz Carlos Berrini Avenues** are home to most of the luxury corporate buildings in São Paulo. The research found 820 properties in this area owned by Brazilian companies that, in turn, are (or have been) owned by shell companies. Total value: US\$370million.

2 **Paulista Avenue** is São Paulo's most iconic avenue, where many corporations, banks, consulates and museums are headquartered. The research found 195 properties worth in total US\$38.4million linked to shell companies.

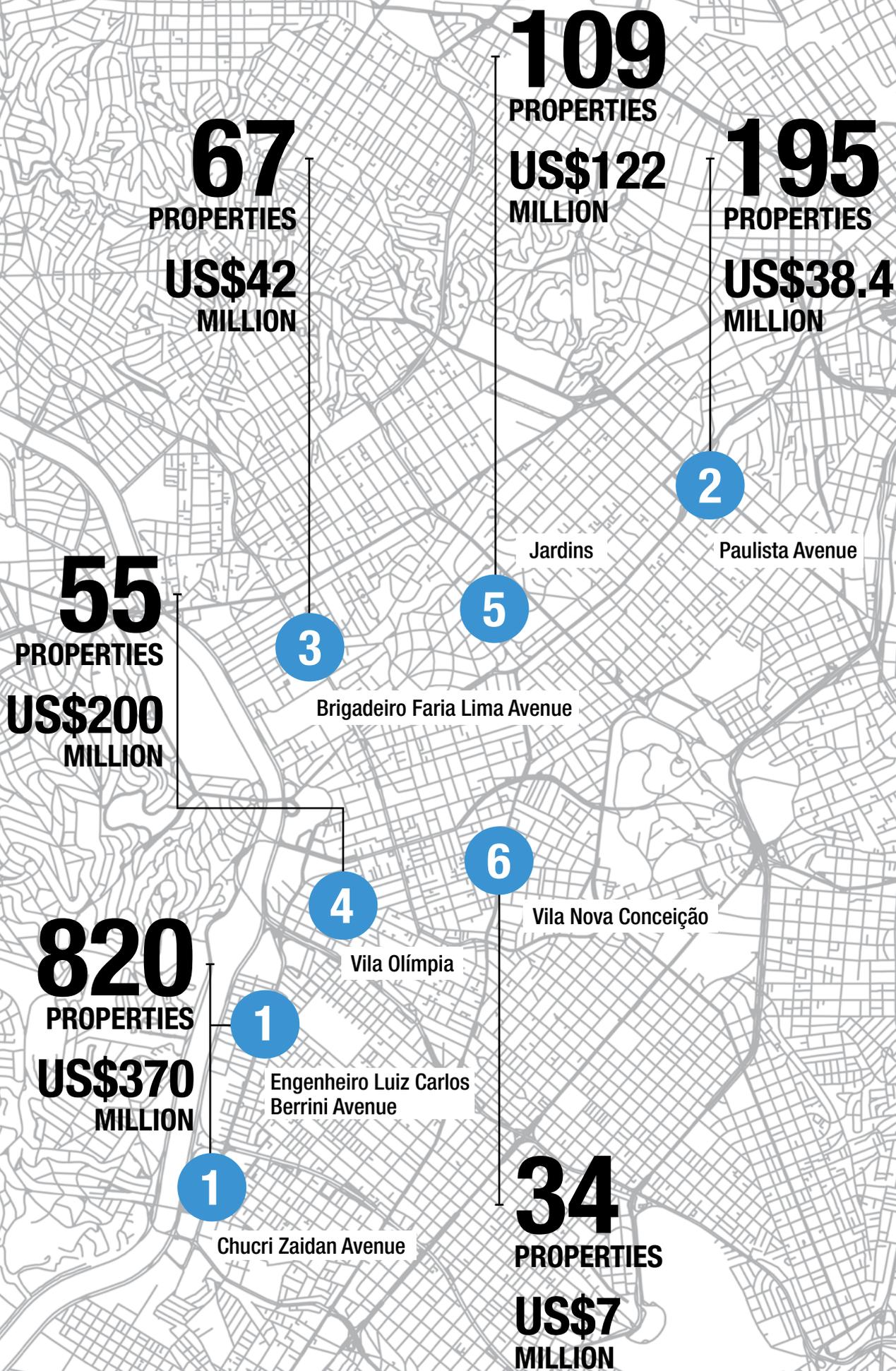
3 **Brigadeiro Faria Lima Avenue** has 67 properties owned by Brazilian companies that are in turn owned by shell companies. Total value: US\$42million.

4 **Vila Olímpia** is an upper-class mixed corporate and residential neighbourhood which is also well known for its nightlife. The study found 55 property titles here worth in total US\$200million (one building, a shopping mall, is worth US\$180 million alone) are owned by shell companies.

5 **Jardins** is the name of a region that includes Jardim America, Jardim Europa and Jardim Paulista. There are 109 properties of Brazilian enterprises owned by shell companies there. Total value: US\$122 million.

6 **Vila Nova Conceição** has 34 properties owned by shell companies worth US\$7 million.

¹⁸ Extracted from the website of the city government agency SP Negócios, which is the agency responsible for the promotion of investment in the city.



DEFINITIONS: MONEY-LAUNDERING, TAX HAVENS AND SHELL COMPANIES

Money-laundering is the term used to give gains from bribes, kickbacks, illicit political contributions, fake loans, embezzled funds and the proceeds of fraud, tax evasion and trafficking the sheen of legitimacy. Developing countries have a huge financial incentive to fight money-laundering on account of the correlation between poverty and corruption. Corruption prevents good governance and undermines the state's role in public policies.

The Financial Action Task Force identifies three stages of money laundering: placement, layering and integration. **Placement** represents the initial entry of illegally obtained funds into the financial system. One of the most common practices in this stage is 'smurfing'— or breaking up a transaction involving a large amount of money into a series of smaller transactions that are below the reporting threshold under law. These smaller packets of funds are then transferred into separate accounts.

Layering involves the transferring of funds to distance them from their source. The most common ways to hide the source of funds are the purchase and sale of investment instruments and the deposit of funds into bank accounts around the world, mainly those based abroad. The owners of these accounts are often shell, or secret or anonymous companies.

Integration, the final stage of money-laundering, is characterised by the re-entry of the funds into the legitimate economy. Most corruption schemes use a complex web of anonymous companies and other entities, usually located in foreign jurisdictions, in order to transfer assets and hide them. Evidence collected by the Stolen Assets

Recovery (STAR) initiative shows that in more than two thirds of 213 cases of grand corruption the ownership of stolen funds is disguised through the misuse of corporate entities, half of which are anonymously owned shell companies. Buying property is a favourite route to re-enter funds into the legitimate economy.

Tax havens are jurisdictions, including cities, states and countries that grant favourable tax treatment even to non-residents. They host many financial service providers and often are also known as secrecy jurisdictions. At least one of the FATF money-laundering stages is usually carried out in tax havens.

A shell company or corporation is a limited liability entity that has no physical presence in the jurisdiction, no employees and no commercial activity. It is usually formed in a tax haven or secrecy jurisdiction, and its main or sole purpose is to insulate the real beneficial owner from taxes, disclosure or both. Shell companies are also referred to as international business companies, personal investment companies, front companies or 'mailbox'/'letterbox' companies. They can set up bank accounts which makes them useful for transferring money.

According to the Tax Justice Network, at least US\$21 trillion in undeclared funds was put into bank accounts in tax havens in 2010 –an amount equivalent to the combined GDPs of the United States and Japan. Some of these funds are in onshore legal entities called limited liability corporations (LLCs) and asset protection trusts (APTs). These corporate structures can also benefit from secrecy and a lax tax system.

Shell companies are not necessarily illegal. They are used for many different reasons that include facilitating international deals involving companies and investors with different nationalities and the protecting of assets from seizure by unstable regimes for political or economic reasons. They can also be used to reduce taxes but their main advantage is secrecy. They protect the name of the beneficial owner from public scrutiny.

Companies registered in secrecy jurisdictions are allowed to operate in Brazil and are not necessarily illegal. This is also the case for shell companies. Transparency International defines shell companies as a limited liability entity that has no physical presence in a jurisdiction, no employees and no commercial activity. It is usually formed in a [tax haven](#) or [secrecy jurisdiction](#) and its main or sole purpose is to insulate the real [beneficial owner](#) from taxes, [disclosure](#) or both. Shell companies may be used for different reasons, such as to facilitate international businesses. They can also be used to protect assets from unstable political and economic regimes and to reduce taxation. Their main advantage is the secrecy that protects the beneficial owner from public scrutiny: it is not necessary to register the name of the real person behind the company. This is a key reason why such companies can end up being used to hide financial gains from illicit acts.

The fact that a company is listed in this research does not mean it is necessarily involved in illicit acts. It means that the company has or has had shell companies or a company based in a tax haven or secrecy jurisdiction among its shareholders and these companies control real estate property in the city of São Paulo.

Several countries have national legislation to prevent and punish money laundering. In Brazil, the Law no. 9.613 (1988), later amended by the Law no. 12.683 (2012), provides a legal framework for dealing with crimes of money-laundering and the concealment of assets, rights and values and has created an entity for controlling financial activities.

In 2014, the G20 countries adopted the High-Level Principles on Beneficial Ownership Transparency, declaring that 'financial transparency, in particular the transparency of beneficial ownership of legal persons and arrangements', was a high priority. The G20 decision followed calls by the Business 20 group for beneficial ownership transparency. Transparency International's investigations following the adoption of the G20 principles found Brazil to have a 'weak' beneficial ownership legal framework.

BRAZIL'S REGULATION ON TAX HAVENS:

In 2010 the Brazilian Federal Revenue Service made a list of jurisdictions that Brazil considers to be tax havens.¹⁹ More than 60 jurisdictions were identified that offer privileged tax regimes (with tax rates lower than 20 per cent) or a regulation system that ensures secrecy.²⁰ In this study, 236 companies were found to be linked to 20 tax havens.

¹⁹ See <http://idg.receita.fazenda.gov.br/aceso-rapido/legislacao/legislacao-por-assunto/paises%20tributacao%20favorecida> (accessed 21 August 2016).

²⁰ On 14 September 2016, following the collection of the data for the current study, the Brazilian Federal Revenue Service amended Normative Instruction no. 1037/2010 in order to add Normative Instruction no. 1658/2016, which amends the jurisdictions on the Brazilian tax haven list: Curaçao, Saint Maarten and Ireland were added as tax haven countries. See <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=77307> (accessed 3 November 2016). In December 2016, another norm added Austria. See <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=79465#1687089> (accessed 2 February 2016)

BENEFICIAL OWNERSHIP TRANSPARENCY IN BRAZIL

A beneficial owner is the individual who, directly or indirectly, owns, controls or significantly influences an entity, or the individual on whose behalf a transaction is conducted, according to the official Brazilian definition as issued via an administrative norm in May 2016. “Significant influence” is defined as holding over 25 per cent of the total capital of the entity or holding or exercising the preponderance in corporate resolutions and having the power to elect a majority of the entity’s management board, even without controlling it.

Unfortunately, most corporate data in Brazil is not publicly available and there are no regulations that force publication of beneficial ownership data. The most important registry of the ownership of companies in Brazil, the central company registry or Cadastro Nacional de Empresas (CNE) is not public. Even authorities and oversight institutions can only access it after a formal cooperation agreement has been signed with the federal Secretariat of Small Businesses, the agency responsible for coordinating the activities of the state-level trade boards. Transparency International did not establish any public commitment from the Secretariat about developing a more open company registry.

From 1 July 2017, however, companies that register in Brazil will have to inform the tax agency who their beneficial owners are²¹. Companies already registered have until 2018 to comply. This edict was issued on 6 May 2016²² a few days before the Anti-Corruption Summit in London²³

where beneficial ownership transparency was widely debated. However, it is difficult for civil society to obtain tax information.

Another possible way to access beneficial ownership information could be via open data policy²⁴ within Brazil’s executive branch. Each federal agency must now develop its own open data plan. Within this policy, the Ministry of Finance announced that data on company structure would be made public from November 2016²⁵. However, this dataset was not available when the report was finalised (February 2017).

²¹ That is, companies which issue a registration as of 1 July 2017. Companies which already have a tax registration do not have to target this date – these are allowed to provide information on beneficial ownership until 31 December 2018.

²² The Normative Instruction no. 1634/2016 was issued by the Brazilian Federal Revenue Service – the Tax Agency that is part of the Ministry of Finance. See <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?dAto=73658> (accessed 3 November 2016). Although this is a positive move, some limitations related to implementation and enforcement remain. Considering that information on beneficial ownership is sometimes not collected in the country where the foreign company was incorporated it will be a challenge to ensure the information disclosed by these companies in Brazil is accurate and reliable.

²³ Held on 12 May 2016, the summit avowedly aimed ‘to step up global action to expose, punish and drive out corruption in all walks of life’. See www.gov.uk/government/topical-events/anti-corruption-summit-london-2016/about (accessed 3 November 2016).

²⁴ Federal Decree no. 8777, 11 May 2016. See www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Decreto/D8777.htm (accessed 3 November 2016).

²⁵ See <http://www.fazenda.gov.br/noticias/2016/julho/fazenda-disponibiliza-plano-de-dados-abertos-pda-1> (accessed 2 February 2016)

THE TAX HAVENS

Transparency International identified and listed (Annex 1) one company registered in a tax haven for each of the 236 companies registered in São Paulo state that owns real estate in São Paulo city.²⁶ Five territories –the British Virgin Islands, Uruguay, the United States, Panama and Switzerland – made up 87 per cent of the total (205 out of 236).

TABLE 1 NUMBER OF SHELL COMPANIES BEHIND BRAZILIAN COMPANIES THAT OWN REAL ESTATE IN SÃO PAULO CITY, PER JURISDICTION

JURISDICTION	NUMBER OF COMPANIES
BRITISH VIRGIN ISLANDS	75
URUGUAY	70
UNITED STATES	27
PANAMA	20
SWITZERLAND	13
BAHAMAS	6
CAYMAN ISLANDS	5
LIECHTENSTEIN	3
ARUBA, COSTA RICA, NETHERLANDS, NIUE ISLAND, PORTUGAL (MADEIRA)	2
BRUNEI DARUSSALAM, CYPRUS, SINGAPORE, HONG KONG, JERSEY, MAURITIUS, SEYCHELLES	1

NOTE The figure for the United States is based on ten US states/districts: California, Connecticut, District of Columbia, Delaware, Florida, Georgia, Nevada, New Hampshire, New York and Wyoming.

SOURCE Elaborated by the authors.

²⁶ While analysing the data on company formation, Transparency International identified sometimes two or even three shell companies behind an enterprise registered in Brazil (in some cases, two shell companies had the exact same address). The criteria to select only one was the share of the capital controlled. On the few occasions in which two shell companies had the same share, the first to appear in the register was chosen.

DATA SOURCES AND DATA CHALLENGES

The current research used two governmental databases, the Trade Board of the State of São Paulo and tax registry of the Finance Department of the city of São Paulo.

1. THE TRADE BOARD OF THE STATE OF SÃO PAULO

Legal entities in Brazil have to register at the trade board (junta commercial) of the state in which they are incorporated. The boards collect information on shareholders, directors, articles of incorporation and legal form and status. The information on shareholders may refer to other legal entities – which can also be checked. The public can usually consult company registration information in person at the trade boards' regional offices. In the case of the state of São Paulo, the information is available online.²⁷

Although the data is online in São Paulo, it is difficult to search. Users need the unique tax number issued by the federal government's Secretariat of Revenue, the exact company name or a specific ID number created by the state government to access information.

The CNPJ numbers, however, are not indexed and company names are often misspelled. If a PDF file is located, the data is poorly structured and hard to read. It is not unusual to find obvious errors in the files such as the word 'incorrect' after the unique tax number issued by the federal government to natural persons. In Transparency International's list of 236 companies, the unique tax number issued by the federal government to people (the Cadastro de Pessoa Física - CPF) was noted as incorrect 27 times. In addition, there were no addresses for 67 of the 236 companies.

Additionally, the fact that the information is not verified leads to mistyping, which confuses any automatic data collection or searches. There were many different spellings for Montevideo, the capital of Uruguay, for example.

Nevertheless, Transparency International was able to collect a significant amount of verifiable corporate data.

2. THE CITY GOVERNMENT OF SÃO PAULO

The database organised by the city's Finance Department for taxation purposes is available in an open format.²⁸ It has many variables about real estate titles, such as total area, constructed area, type of construction, type of use, etc. The database provides information as to the names of taxpayers and companies that are connected to the property, as well as the unique tax number issued by the federal government.

The total database has about 50,000 entries with no taxpayer ID numbers, which makes any identification of an individual difficult. There are other gaps in the information, including the name of the district where properties are located.²⁹

Given these challenges, Transparency International has only used data that it could verify and the number of companies identified with links to tax havens may, therefore, be underestimated.

²⁷ See the frequently asked questions section of the Junta Comercial do Estado de São Paulo website: www.jucesponline.sp.gov.br/Faq.aspx (accessed 11 October 2016).

²⁸ As of October 2016, the month the current section of the report was written. See 'São Paulo City Government Publishes Real Estate Database in Open Format' (in Portuguese), <http://gestaourbana.prefeitura.sp.gov.br/noticias/prefeitura-disponibiliza-base-do-iptu-em-formato-aberto-no-geosampa> (accessed 11 October 2016).

²⁹ The fact that the district is not correctly marked may have had an impact on the number of properties found to be owned through shell companies in the residential areas of Jardins and Vila Nova Conceição, once the search was carried out by district name.

CONCLUSIONS AND RECOMMENDATIONS

The lack of transparency in the São Paulo real estate market and the large number of shell companies connected to tax havens used to buy property must be seen as red flags. A FATF report³⁰ pointed out back in 2007 that the real estate sector is attractive to money-launderers. The FATF report also highlighted that emerging markets seemed to be particularly vulnerable to misuse of the real estate sector.

The present report has analysed the ownership of real estate sector in the city of São Paulo and corroborates FATF concerns. Based on publicly available data, [Transparency International](#) detected 3,452 real estate properties of 236 Brazilian legal persons that, in turn, are or have been owned by companies based in a tax haven jurisdiction. Such properties are worth some US\$2.7 billion. In area, it totals 53 million square metres, the size of about 7,400 football pitches.

The lack of transparency and the poor quality of the data indicates that not all the shell companies were identified so the potential for money laundering is even higher.

3,452

real estate units



236

companies



US\$2.7 billion

property titles



53 million

square metres



7,400

football fields

TRANSPARENCY INTERNATIONAL MAKES THE FOLLOWING RECOMMENDATIONS FOR URGENT ACTION:

COLLECT AND PUBLISH BENEFICIAL OWNERSHIP INFORMATION FOR DOMESTIC-INCORPORATED COMPANIES

THE SENATE

should pass bill no. 27/2013 (Projeto de Lei da Câmara no. 27/2013) that provides a legal definition of beneficial ownership. This bill was already approved in the Lower House,^[1]

THE FEDERAL GOVERNMENT

should make the national company registry publicly available online, in open data format. The national registry must include data on beneficial ownership and be regularly updated to ensure the information is adequate, accurate and current.

THE FEDERAL GOVERNMENT

should change the procurement law to include an obligation for bidders to provide data on company formation and beneficial ownership.

PUBLISH BENEFICIAL OWNERSHIP INFORMATION OF ALL COMPANIES OWNING OR PURCHASING REAL ESTATE, WHETHER INCORPORATED DOMESTICALLY OR OVERSEAS

CITY GOVERNMENTS

should publish data concerning real estate property within their borders which includes beneficial ownership information of all companies, whether incorporated domestically or overseas, owning property. This requirement should be applied retroactively, and the data should be made available in open data format.

ENSURE STRONG DATA STANDARDS TO MAKE COLLECTION AND PUBLICATION MORE EFFICIENT AND EFFECTIVE

THE FEDERAL GOVERNMENT

should agree on a data standard that all subnational level trade boards must use to eliminate gaps and errors. The state-level registries must include data on beneficial ownership.

STATE GOVERNMENTS

should review the way they collect data from companies to ensure there are no gaps and errors in the electronic system.

STATE GOVERNMENTS

should publish the collected data online, including data on beneficial owner, in open data format.

METHODOLOGY

Two primary sources of data have been used in the present study: information about real estate property, from the city government of São Paulo; and information about company formation, from the state government of São Paulo.

At the beginning of 2016 São Paulo started publishing data on real estate titles in the city. At first the registry could not be downloaded at once, in a single file; one had to access the data on each real estate property one at a time. By May 2016, however, the database, containing over 3 million registers, could already be downloaded, in an open format, with a single click³¹— and the file brings a lot of information on each real estate property, including the full name of the owners and the CNPJ (Brazilian Corporate Taxpayers' Register), in the case of legal persons, and the CPF (Brazilian Natural Persons' Register), for natural persons.

The CNPJ was crucial to Transparency International's research because it provided the basis – and not the name of the company –for verifying whether companies that owned real estate in São Paulo were linked to shell companies. The use of the CNPJ as an identifier avoids homonyms. For the study, only the real estate properties located in the so-called 'expanded city centre'³² of São Paulo was used. This is an area that comprises the city centre and some neighbouring districts and has concentrated in it most of the public equipment, services, jobs and buildings of the city, as well as most of the luxury districts.

The other database, on company formation, was much harder to access. Although the information is available online it requires a register and does not allow large-scale download: one has to access each file of the company sought, and the result is a PDF file. The files were downloaded in May 2016.

After having downloaded thousands of files and transformed them into text formats, Transparency International created a filter to identify companies linked to tax havens, by using the Brazilian list of tax haven jurisdictions³³. The name of the country of the jurisdiction was not used in isolation, however; given the poor quality of the data, the names of the capital cities of the countries were also used, as were different orthographies for both countries and cities.

After filtering the companies related to tax haven jurisdictions present in our files downloaded from the state government's trade board, Transparency International matched the CNPJ of such companies with the first database, the one from the city government, on real estate ownership.

The study considered as shell companies all legal persons (present in the current or past formulation of the Brazilian enterprises) registered in jurisdictions listed by the Brazilian Revenue Federal Service as tax havens. It is important to note that, although the Brazilian list specifies types of legal arrangements, Transparency International did not consider these topics. That is, although the Brazilian tax authorities point to just one specific legal arrangement from Switzerland, for instance, Transparency International considered all legal persons from Switzerland. The reason for this choice is that tax evasion may not be the only reason for a Brazilian citizen to choose a legal person from Switzerland as the one controlling his or her company based in Brazil.

The only jurisdiction in which there was a criterion for a specific legal arrangement was the United States. In the case of this country, the decision was taken to include all legal persons registered in the states of Delaware, Nevada and Wyoming, on account of the fact that such US federal states are usually pointed to as the most

31 As of 3 November 2016 the complete database could be freely downloaded from Geosampa, an official platform. The database presents dozens of variables, with detailed information about the real estate title and some information about the taxpayer.

32 See https://pt.wikipedia.org/wiki/Centro_expandido_de_S%C3%A3o_Paulo.

33 The list of jurisdictions prior to the modification issued in September 2016 comprised the following: Andorra; Anguilla; Antigua and Barbuda; the Netherlands Antilles; Aruba; Ascension Island; the Bahamas; Bahrain; Barbados; Belize; Bermuda; Brunei Darussalam; Campione d'Italia; the Channel Islands (Alderney, Guernsey, Jersey and Sark); the Cayman Islands; Cyprus; Singapore; the Cook Islands; Costa Rica; Djibouti; Dominica; the United Arab Emirates; Spain; Gibraltar; Grenada; Hong Kong; Ireland; Kiribati; Labuan; Lebanon; Liberia; Liechtenstein; Macao; Malta; Madeira (Portugal); the Maldives; the Isle of Man; the Marshall Islands; Mauritius; Monaco; Montserrat; Nauru; Niue; Norfolk Island; Panama; Pitcairn Island; French Polynesia; Qeshm Island; American Samoa; Western Samoa; San Marino; Saint Helena; Saint Lucia; the Federation of Saint Kitts and Nevis; Saint Pierre et Miquelon; Saint Vincent and the Grenadines; the Seychelles; the Solomon Islands; Swaziland; Switzerland; the Sultanate of Oman; Tonga; Tristan da Cunha; the Turks and Caicos Islands; Vanuatu; the US Virgin Islands; the British Virgin Islands; and the Netherlands.

34 See the Tax Justice Network's 'Financial Secrecy Index: Narrative Report on USA' (www.financialsecrecyindex.com/PDF/USA.pdf), page 6: 'A few states such as Delaware, Wyoming and Nevada took an early lead in offshore secret incorporations, and remain leaders today.'

LIMITATIONS

notable tax havens inside the United States.³⁴ For all other American states only the LLC companies were considered, as mentioned in the normative instruction issued by the Brazilian Revenue Federal Service.

Due to the poor quality of the data, after identifying the companies connected to tax havens owning real estate in São Paulo, Transparency International manually verified again the company details to make sure that only the ones that fitted both criteria were considered. This exercise was crucial in order to avoid any unwanted and unpredictable matching. For instance, one company that had 'LLC' in its name was, in fact, being wrongly considered; after the manual review, it was removed.

It is also imperative to note that some of the companies identified had more than one shell company in their (present or past) formation. For the avoidance of ambiguity, it is worth stressing that the decision was taken to pick just one shell company in building the lists (see also Annex 1). The criterion for selecting this one shell company was the share of the total capital of the Brazilian company: the one with the larger or largest share was the one that appears in the lists. In the few cases in which there was a tie (shares of the same amount), the first to appear was the one selected to compose the list.

The shell companies identified are the ones used in the statistics of this report.

Another important point to note is that, in many cases, the shell companies found in the current research controlled 99 per cent of the Brazilian legal persons when the Brazilian company was formed, but then later left the partnership.

The first limitation of the study is the fact that it does not determine the actual number of shell companies directly owning real estate properties in São Paulo. Due to data availability issues, this report only identifies companies registered with the Trade Board of São Paulo owned fully or partly by legal entities from a list of countries with little ownership transparency.

Thousands of companies that own real estate in the city of São Paulo but are not listed in this study might actually be shell companies but they cannot be identified as such because they may be registered with another sub-national trade board or not registered with any because they are registered outside Brazil. The Brazilian legal framework allows foreign companies to acquire properties without registering with the trade board. This study did not find a single shell company directly owing real estate registered in the Trade Board of Sao Paulo; this may be because the São Paulo Trade Board is more transparent than the other 26 state Trade Boards in Brazil. Future research, using comprehensive data mining techniques, may be able to verify if any of the legal persons owning real estate in São Paulo are shell companies or not.

Another limitation may be derived from the quality of the data. Key words were used to filter companies from tax havens, and, as and when errors were noticed, the key words were expanded. For instance, in order to capture all companies registered in Uruguay, not only was 'Uruguay' used but also 'Uruguai', and its capital's name and variations: Montevideo, Montivideu, Montevideu. In that sense, if there were another orthography for 'Uruguay' or its capital city, it could not be captured. Moreover, if the Uruguayan city were not its capital, that data could not be captured.

The jurisdiction where the shell company is based is another limitation of the present study, because of the fact that the Brazilian list of tax havens was modified in September 2016, when Transparency International had already finalised the filtering of the data. The new normative instruction includes Ireland and Austria, for example, but, Ireland and Austria are not mentioned in the present study.

ANNEX 1

LIST OF LEGAL PERSONS
LINKED TO OFFSHORE
COMPANIES THAT OWN
REAL ESTATE IN SÃO PAULO

ANNEX 2

LIST OF REAL ESTATE
PROPERTIES IN SÃO
PAULO OWNED THROUGH
OFFSHORE COMPANIES

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