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## How Shell Entities and Lack of Ownership Transparency Facilitate Tax Evasion and Modern Policy Responses to These Problems

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# HOW SHELL ENTITIES AND LACK OF OWNERSHIP TRANSPARENCY FACILITATE TAX EVASION AND MODERN POLICY RESPONSES TO THESE PROBLEMS

CARL PACINI\* & NATE WADLINGER\*\*

*The purpose of this article is to review the use and application of shell entities, as they facilitate tax evasion, impede investigations, and harm society. This article details the types and characteristics of shell entities, reviews actual cases to exhibit how shells are abused, outlines reasons shells disguise beneficial ownership, and analyzes steps taken by countries and organizations to thwart the abuse of shell entities. Many types of shell entities are used by tax evaders and are often layered in an intricate network which conceals the identity of beneficial owners. Nominees and bearer shares are used in tandem with shell entities to optimize concealment. Accountants, lawyers, and trust and company service providers facilitate and promote the use and abuse of shell entities by tax fraudsters. The analysis makes clear the reasons for and means by which tax evaders conceal trillions of dollars of income and wealth that remain untaxed and may be used for nefarious purposes. The findings demonstrate that shell entities used to conceal income and wealth prevent untold trillions in taxes from being collected by governments worldwide. This lack of revenue facilitates income inequality and skews national economic and fiscal policies. The G-8, Financial Action Task Force, and G-20 have begun steps to improve ownership transparency, but the effort is moving at a modest pace. There is a need for more concerted action by national governments, organizations, the United Nations, and law enforcement to improve ownership transparency and information exchange regarding shell entities.*

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So many wealthy Americans and persons from other countries evade taxes using offshore and onshore accounts that law enforcement cannot control the growing misconduct.<sup>1</sup> The IRS estimates that tax evasion costs the federal government on average \$458 billion per year in lost revenues.<sup>2</sup> Tax cheats evade taxes and hide illegally obtained assets and illicit activities by availing themselves of the secrecy provided by legal domestic and offshore business structures commonly referred to as “shell entities.” In 2011, a World Bank Study found that 70% of 213 large-scale corruption cases relied on the secrecy of shell entities to hide the identity of the beneficial owners.<sup>3</sup> The legal structures of such entities typically include domestic and offshore limited liability companies (LLCs), limited liability partnerships (LLPs), international

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1. David Cay Johnston, *Tax Cheats Called Out of Control*, N.Y. TIMES, Aug. 1, 2006, at C1.

2. Chris Matthews, *Here's How Much Tax Cheats Cost the U.S. Government a Year*, FORTUNE (Apr. 29, 2016), <http://fortune.com/2016/04/29/tax-evasion-cost/> [https://perma.cc/XXX4-TCYX].

3. GLOBAL WITNESS, POVERTY, CORRUPTION AND ANONYMOUS COMPANIES: HOW HIDDEN COMPANY OWNERSHIP FUELS CORRUPTION AND HINDERS THE FIGHT AGAINST POVERTY 2 (Mar. 2014), <http://www.globalwitness.org/library/anonymous-companies-global-witness-briefing> [https://perma.cc/2B5V-J6AR].

business companies (IBCs), private foundations, company foundations, and asset protection trusts. Regardless of the entity type, the identities of the beneficial owners are hidden behind the secrecy of “financial shells.”<sup>4</sup>

The Financial Action Task Force (FATF) defines a beneficial owner as “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted.”<sup>5</sup> This definition is very broad and also incorporates “those persons who exercise ultimate effective control over a legal person or arrangement.”<sup>6</sup> A beneficial owner is always a natural person; a legal person cannot be a beneficial owner.<sup>7</sup> Ultimate control is by a natural person to allow that individual to benefit from the asset involved.<sup>8</sup>

Obscured beneficial ownership via shell entities impedes law enforcement and forensic accountants in tracking the movements of money and investigating and recovering stolen assets and untaxed income.<sup>9</sup> This is true for a wide range of investigations that relate to domestic and foreign tax evaders.<sup>10</sup>

A “shell company” refers to an LLC or other business entity with no significant assets or ongoing business activities, and which is capable of moving assets and large sums of money globally.<sup>11</sup> Shell companies typically have no presence other than a mailing address, have no employees, and produce little or no independent economic value.<sup>12</sup> It is not uncommon to find hundreds, if not thousands, of shell entities registered to the same address

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4. Shima Baradaran, Michael Findley, Daniel Nielson & Jason Sharman, *Funding Terror*, 162 U. PA. L. REV. 477, 492 (2014).

5. FINANCIAL ACTION TASK FORCE (FATF), TRANSPARENCY AND BENEFICIAL OWNERSHIP 8 (Oct. 2014), <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> [<https://perma.cc/6PSH-M2D4>].

6. *Id.*

7. *Id.*

8. EMILE VAN DER DOES DE WILLEBOIS, EMILY M. HALTER, ROBERT A. HARRISON, JI WON PARK & J.C. SHARMAN, *THE PUPPET MASTERS: HOW THE CORRUPT USE LEGAL STRUCTURES TO HIDE STOLEN ASSETS AND WHAT TO DO ABOUT IT* 19 (2011).

9. Dean Kalant, *Who's in Charge Here? Requiring More Transparency in Corporate America: Advancements in Beneficial Ownership for Privately Held Companies*, 42 J. MARSHALL L. REV. 1049, 1052–54 (2009).

10. Adam Szubin, *A Dangerous Shell Game*, THE HILL (July 11, 2016, 5:48 PM), <http://thehill.com/opinion/op-ed/287291-a-dangerous-shell-game> [<https://perma.cc/AU7G-QV8U>].

11. FIN. CRIMES ENF'T NETWORK (FINCEN), U.S. DEPT. OF THE TREASURY, *THE ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES* 4 (2006).

12. *Id.*

because most shells have no operations.<sup>13</sup> They are sometimes formed with a generic stated purpose such as “to conduct legitimate transactions, such as domestic and cross-border currency and asset transfers, or to facilitate corporate mergers and reorganizations.”<sup>14</sup>

Shell entities are not always formed for illegal purposes, and they are even a valuable source of tax revenues in some countries. For example, shell entities in the Netherlands are involved in about \$1 trillion in transactions each year with the taxes paid on these transactions serving as an important government revenue source.<sup>15</sup> Shell entities can be publicly traded or privately owned.

Privately owned shell entities tend to be more susceptible to tax evasion because limited ownership limits public exposure and eases the cloaking of beneficial ownership.<sup>16</sup> For this reason, privately owned shell entities have become the financial and deception vehicles of choice for tax evaders.<sup>17</sup>

A recent leak of documents known as the “Paradise Papers,” similar to the “Panama Papers,” partly illuminated the extent of the vast, murky world of shell entities.<sup>18</sup> The Paradise Papers contained 13.4 million leaked documents mostly

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13. One building in the Grand Caymans known as Uglan House is officially the registered home of 18,000 companies. *The Missing \$20 Trillion*, THE ECONOMIST, Feb. 16, 2013, at 13. Another address of interest is P.O. Box 3444, Road Town, Tortola, British Virgin Islands. A Google search of this address yields more than 600,000 hits. Ryan C. Hubbs, *Shell Games: Investigating Shell Companies and Understanding Their Roles in International Fraud*, FRAUD MAG., July/Aug., 2014, <http://www.fraud-magazine.com/article.aspx?id=4294983054> [<https://perma.cc/2XVS-ZBCZ>]. In Delaware, 285,000 companies are registered in just one building. Oxfam & Richard Teather, *Tax Haven or Tax Hell?*, INT’L. TAX REV. June 2016, at 23.

14. FINCEN, *supra* note 11, at 4.

15. Gregory Crouch, *Shaken Trust: The Netherlands Rethinks an Offshore Industry*, N.Y. TIMES, Feb. 19, 2004, at C1, C15.

16. FINCEN, *supra* note 11, at 4.

17. Hubbs, *supra* note 13.

18. Mike Murphy, *Paradise Papers: 6 Things to Know About Report Exposing Tax Havens of the Mega-Rich*, MARKETWATCH (Nov. 6, 2017, 2:42 AM), <https://www.marketwatch.com/story/paradise-papers-6-things-to-know-about-report-exposing-tax-havens-of-the-mega-rich-2017-11-05> [<https://perma.cc/6XHF-ABW6>]. As a result of the Panama Papers leak, the Canada Revenue Agency (CRA) executed three search warrants on February 14, 2018, during an offshore tax evasion criminal investigation. Canada Revenue Agency, *Canada Revenue Agency Conducts Panama Papers Related Searches in Multiple Locations*, GOV’T OF CANADA (Feb. 14, 2018), <https://www.canada.ca/en/revenue-agency/news/newsroom/criminal-investigations-actions-charges-convictions/20180214-canada-revenue-agency-conducts-panama-papers-related-searches-multiple-locations.html> [<https://perma.cc/34A5-2NGF>]. The CRA’s investigation identified a series of transactions involving foreign perpetrators and several transfers through offshore bank accounts allegedly used to evade taxes. *Id.* “This investigation is one of 42 international/offshore tax evasion cases that CRA is presently investigating which involve complex structures and potentially multi-million dollars in taxes evaded.” *Id.*

from the Bermuda-based law firm Appleby and Singapore-based Asiatic Trust.<sup>19</sup> The Papers detail the ways politicians, celebrities, and the ultra-rich “protect their cash from taxes, hide ownership of major assets and conduct business in secret.”<sup>20</sup> Most of the exposed practices are legal, but some may be unethical.<sup>21</sup> For example, “Stephen Bronfman, a top aide and key fundraiser of Canadian Prime Minister Justin Trudeau, was found to have avoided millions in taxes through offshore accounts.”<sup>22</sup> Although the conduct was not illegal, it was very embarrassing for Trudeau, who had pledged to crackdown on tax havens.<sup>23</sup>

While there is a significant literature in law, accounting, and economics that examines tax evasion,<sup>24</sup> there is scant information on how shell entities actually facilitate tax evasion. The extensive abuse and illegitimate use of domestic and offshore entities to evade taxes make such entities an important aspect of the work of forensic accountants, law enforcement, auditors, and regulators. Hence, the purpose of this article is to analyze the use and application of shell entities and lack of ownership transparency as they facilitate tax evasion, impede investigations, and harm societies.

The first section below discusses the importance of secrecy or concealment and then analyzes the use and abuse of shell entities to achieve such secrecy (often for illegal purposes). The second section analyzes different types of legal or business structures that are and have been used as shell entities. The first two sections are intended to provide the reader historical context about shell entities. The third section discusses the suggested reasons for the vulnerability of various business structures that, when privately owned, are easily manipulated to operate as shell entities. Lack of ownership transparency is covered to varying degrees in the first three sections. The fourth section highlights policy reactions and responses, including legislation, dealing with beneficial ownership problems, the use and abuse of various shell entities, and the ability of forensic accountants and law enforcement to combat and reduce tax evasion. The final section concludes the paper.

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19. Murphy, *supra* note 18.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. See, e.g., PERMANENT SUBCOMM. ON INVESTIGATIONS, COMM. ON HOMELAND SEC. AND GOV'TAL AFFAIRS, 109TH CONG., REP. ON TAX HAVEN ABUSES: THE ENABLERS, THE TOOLS AND SECRECY (2006); Jeffrey Simser, *Tax Evasion and Avoidance Typologies*, 11 J. MONEY LAUNDERING CONTROL 123 (2008).

## I. EVADERS ENJOY CONCEALMENT AND SECRECY

A correlation exists between corruption and anonymous shell entities. Tracing illicit funds or assets and tax evasion to a shell entity is not that useful if the individuals who control it (i.e., beneficial owners) cannot be identified.<sup>25</sup> International standards on beneficial owners have been tightened in recent years but remain quite loose.<sup>26</sup> Practice varies substantially, with some offshore financial centers having had ownership registries for years; while in the United States, corporate formation agents and trust and company service providers (TCSPs) are not licensed and beneficial ownership information is not collected and verified.<sup>27</sup>

By necessity, tax evaders are attracted to jurisdictions with liberal financial secrecy laws and practices. Such jurisdictions facilitate secrecy and thereby provide relatively weak barriers to the abuse of domestic and offshore shell entities, trusts, foundations, shelf corporations, IBCs, LLCs, and other business structures.<sup>28</sup> In 2009, the Tax Justice Network (TJN) launched an online database that shows how the legal, judicial, and regulatory details of different jurisdictions contribute to the environment of financial secrecy.<sup>29</sup> A global ranking of financial secrecy, called the Financial Secrecy Index (FSI), draws attention to the various aspects of financial secrecy.<sup>30</sup> According to the TJN, an estimated \$21 trillion to \$32 trillion of private financial wealth is located in secrecy jurisdictions around the world.<sup>31</sup> Secrecy jurisdictions use concealment and anti-disclosure laws to attract illicit and illegitimate financial flows.<sup>32</sup> Illicit cross-border financial flows have been estimated at \$1–\$1.6 trillion per year.<sup>33</sup> Offshore companies in the British Virgin Islands (BVI) alone had assets in excess of \$1.5 trillion in early 2017.<sup>34</sup>

The FSI indicates that traditional stereotypes of tax havens and secrecy are inaccurate. The world's most significant providers of financial secrecy, the

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25. See Szubin, *supra* note 10.

26. *Id.*

27. John Christensen, *The Hidden Trillions: Secrecy, Corruption, and the Offshore Interface*, 57 CRIME, L. & SOC. CHANGE 325, 335 (2012).

28. *Id.* at 326.

29. *Id.* at 329.

30. *Id.*

31. *Financial Secrecy Index*, TAX JUST. NETWORK (Jan. 30, 2018), <http://www.financialsecrecyindex.com> [<https://perma.cc/5LT3-BYLN>].

32. *Id.*

33. *Id.*

34. Vanessa Houlder, *Offshore Assets Held in British Virgin Islands Double Over 7 Years to \$1.5tn*, FIN. TIMES (London), June 21, 2017, at 1.

places that harbor the most concealed assets, are mostly not small palm-fringed islands but rather Switzerland, the United States, Singapore, Luxembourg, and Germany.<sup>35</sup> In 2017, the United States ranked second in terms of providing financial secrecy.<sup>36</sup>

## II. ENTITIES USED TO FACILITATE EVASION

Tax evaders and others can use shell entities to commit tax evasion and often, the related offense of money laundering.<sup>37</sup> The cleverest schemes insulate the tax evader through many layers of shell entities, such as a trust, LLC, and others. Such schemes also incorporate misdirection by creating the appearance that the wrongdoer has no control of the shell entity, and that those in control of the entity are in an offshore jurisdiction.<sup>38</sup>

One example of how a tax evader layered offshore asset protection trusts (OAPTs)<sup>39</sup> is *United States v. Scott*.<sup>40</sup> An organization named International Business Associates (IBA) devised a scheme involving transfers to and among four successive trusts.<sup>41</sup> Trust I was a domestic trust established “as a shell with an apparently fictitious contribution of \$100 by some entity other than” the client.<sup>42</sup> Trust I was required to distribute all taxable income to Trust II (a

35. *Financial Secrecy Index*, *supra* note 31.

36. Lynnley Browning, *Report Says U.S. is World's Second-Biggest Tax Haven*, BLOOMBERG (Jan. 30, 2018, 11:00 AM) <https://www.bloomberg.com/news/articles/2018-01-30/u-s-seen-as-world-s-second-biggest-tax-haven-after-switzerland> [<https://perma.cc/73GL-SW9P>].

37. Although tax evasion and money laundering are separate and distinct offenses, there is a distinct similarity between the methods used for money laundering and tax evasion. Bryan S. Arce, *Taken to the Cleaners: Panama's Financial Secrecy Laws Facilitate the Laundering of Evaded U.S. Taxes*, 34 BROOK. J. INT'L. L. 465, 465–66, 471 (2009). Both require deception (or an act of fraud) and concealment, and when assets from illegal activity are shielded from tax officials, a direct overlap occurs between the two. *Id.* at 471. Once money evades taxes, it must be laundered before it can be used again. *Id.*

38. *Id.* at 471–72.

39. An offshore asset protection trust (OAPT) is a type of spendthrift trust that is established in a nation or jurisdiction outside the U.S. Richard C. Ausness, *The Offshore Asset Protection Trust: A Prudent Financial Planning Device or the Last Refuge of a Scoundrel?*, 45 DUQ. L. REV. 147, 149, 152 (2007). Unlike most U.S. jurisdictions, numerous offshore jurisdictions “recognize ‘self-settled’ spendthrift trusts, that is, trusts . . . designed to protect the settlor” from domestic creditors’ claims. *Id.* Various jurisdictions that permit OAPTs are Anguilla, the Bahamas, Barbados, Belize, the BVI, the Cayman Islands, the Cook Islands, Cyprus, Gibraltar, the Isle of Man, Saint Kitts-Nevis, and the Turks and Caicos Islands. *Id.* at 152; Trent Maxwell, Comment, *Domestic Asset Protection Trusts: A Threat to Child Support?*, 2014 BYU L. REV. 477, 482.

40. 37 F.3d 1564 (10th Cir. 1994).

41. *Id.* at 1570.

42. *Id.*



Belizean trust).<sup>43</sup> Trust II's trustee was a resident of Belize and required to file a U.S. tax return.<sup>44</sup> Trust II was a conduit trust that passed its income to Trust III, an alleged foreign trust that could distribute and accumulate income.<sup>45</sup> Trust IV was a passive foreign trust until the purchaser of the trust needed funds.<sup>46</sup> Like most OAPT tax evasion schemes, power rested with the purchaser-client while the true beneficial owner remained unnamed in all documentation.<sup>47</sup>

Such abuses are compounded by states, provinces, and countries that permit shell entities to own and manage other shell entities.<sup>48</sup> The result can be multiple layers of cloaked ownership that make it virtually impossible for forensic accountants and tax officials to determine the identity of beneficial owners.

#### A. LLCs as Shells

Because LLCs may be owned and managed anonymously, they can be subject to abuse. Ownership transparency requirements vary from state-to-state and country-to-country.<sup>49</sup> LLCs provide members (rather than shareholders) the same limited liability afforded to corporate shareholders while at the same time providing the "pass through" taxation benefits to members.<sup>50</sup> When used as shell entities, LLCs exist only to hold or own other entities or bank accounts, or as simply as a transfer point for moving funds from one account or business to another.

An LLC shell entity's ownership "can be structured in a variety of forms, including having shares 'issued to a natural or legal person or in registered or bearer form.'"<sup>51</sup> Bearer shares (not permitted in the United States) confer rights of ownership to a company upon the physical holder or possessor of the shares.<sup>52</sup> They are commonly and legitimately used in a number of countries.<sup>53</sup>

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43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 1571.

48. *See* FINCEN, *supra* note 11, at 10.

49. *See* U.S. GOVT. ACCOUNTABILITY OFFICE (GAO), GAO-06-376, COMPANY FORMATIONS: MINIMAL OWNERSHIP INFORMATION IS COLLECTED AND AVAILABLE 41-42 (2006), <http://www.gao.gov/new.items/d06376.pdf> [<https://perma.cc/8ZC2-J6CR>].

50. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 160.

51. Max Biedermann, *G8 Principles: Identifying the Anonymous*, 11 BYU INT'L L. & MGT. REV. 72, 75-76 (2015) (quoting FINANCIAL ACTION TASK FORCE (FATF), THE MISUSE OF CORPORATE VEHICLES, INCLUDING TRUST AND COMPANY SERVICE PROVIDERS 1 (2006)).

52. *Id.* at 76.

53. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 41, 43-44.

However, given that bearer shares are not registered as to ownership, they enable the commission of tax evasion and can be controlled by beneficial owners who may be unidentifiable.<sup>54</sup>

LLCs are easy to form (in as little as two hours for about \$100–\$200 in some states)<sup>55</sup> and can be linked or layered across different jurisdictions, creating a confusing path for forensic accountants, auditors, and tax investigators.<sup>56</sup> If they are established in a jurisdiction that has no regard for ownership transparency (e.g., Wyoming, Nevada, Delaware, Cayman Islands), then identifying the beneficial owners may become virtually impossible.<sup>57</sup> The United States is one of the world’s foremost jurisdictions for those seeking to avoid ownership transparency. In fact, U.S. LLC shells are used more often in laundering the proceeds of grand corruption, which often escape taxation, than the LLC shells of any other country.<sup>58</sup>

A fine example of the abuse of LLC shells for tax evasion occurred in *United States v. Stegman*.<sup>59</sup> In September 1997, Kathleen Stegman formed a Kansas corporation called Midwest Medical Aesthetics Center, Inc.<sup>60</sup> In January 1998, a certificate of amendment was filed to show an entity name change to Midwest Medical Aesthetics Center, P.A. (Midwest).<sup>61</sup> Stegman established several LLCs, including Samson, LLC. Stegman used the LLCs to launder Midwest client payments.<sup>62</sup> She used the LLCs to buy money orders that she, in turn, used to purchase items for personal use.<sup>63</sup> From 2007 to 2009, Stegman purchased \$272,748 in money orders yet she reported zero cash income on her federal income tax returns.<sup>64</sup> In October 2010, an IRS criminal investigation report “noted that Midwest took in large amounts of cash, yet made no deposits in 2007 or 2008,” and “noted Stegman’s ‘lavish’ lifestyle, which included frequent travel” and large asset purchases of about \$2,000,000

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54. *Id.* at 41, 44.

55. Biedermann, *supra* note 51, at 76.

56. Idelys Martinez, Comment, *The Shell Game: An Easy Hide-and-Go-Seek Game for Criminals Around the World*, 29 ST. THOMAS L. REV. 185, 196–97 (2017).

57. See generally JAY D. ADKISSON & CHRISTOPHER M. RISER, ASSET PROTECTION: CONCEPTS AND STRATEGIES FOR PROTECTING YOUR WEALTH (2004).

58. Jason Sharman, *Shell Companies and Asset Recovery: Piercing the Corporate Veil*, in EMERGING TRENDS IN ASSET RECOVERY 67, 68 (Gretta Fenner Zinkernagel, Charles Monteith & Pedro Gomes Pereira eds., 2013).

59. 873 F.3d 1215 (10th Cir. 2017).

60. *Id.* at 1219.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

(mostly real estate).<sup>65</sup> Stegman also engaged in obstructive conduct as she altered Midwest's general ledgers and directed employees to destroy business records.<sup>66</sup> Stegman was convicted of tax evasion and other charges and sentenced to fifty-one months in prison.<sup>67</sup> Other cases also demonstrate how LLCs are abused to commit tax evasion.<sup>68</sup>

### B. Shelf Corporations

Existing but unused shell companies may be converted to current, possibly illegal, use. Such companies are known as shelf or aged corporations.<sup>69</sup> The established age of these companies adds to their credibility.<sup>70</sup> Their attractiveness includes instant availability, immediate ownership due to any legal filing requirements having already been satisfied, and no shares having yet been offered.<sup>71</sup> In general, domestic and offshore shelf corporations possess all the necessary prerequisites in the appropriate jurisdiction (e.g., Wyoming,

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65. *Id.* at 1220.

66. *Id.*

67. *Id.* at 1221.

68. In *Nevada Partners Fund, L.L.C. v. United States*, James Kelley Williams, a successful Mississippi businessman, expected to realize an \$18 million capital gain in tax year 2001 from the cancellation of a loan he had guaranteed. 720 F.3d 594, 599 (5th Cir. 2013). Williams entered into a long-term investment program offered by Bricolage Capital, LLC. *Id.* at 599–600. Bricolage enlisted Credit Suisse-Boston as the bank integral to Williams' program, and used LLCs as partnerships to execute foreign exchange and other transactions that generate tax losses. *Id.*

Bricolage's plan entailed a three-tier investment strategy. *Id.* at 600. The first tier involved establishing an LLC with a transitory partner/manager to act as a holding company for other funds. *Id.* "The first-tier LLC would own 99% of a second LLC, which would own 99% of a third LLC." *Id.* "The two lower-tiered LLCs would engage in transactions that would [yield] the desired tax loss." *Id.* "The third tier LLC would enter into sets of currency forward contracts . . . that would [yield] offsetting gains and losses." *Id.* At a certain point, the investor-client would buy the transitory partner/manager's interest in the LLCs. "The second-tier LLC would then obtain a Credit Suisse loan guaranteed by the investor" (Williams). *Id.* "The investor's guarantee of the loan would give [Williams] enough basis in the LLCs to take advantage of the embedded loss[es] . . . generated." *Id.*

The three domestic LLCs were Nevada Partners, Carson Partners, and Reno Partners. *Id.* at 601. Williams made his required investments in the LLCs using the JKW 1991 Revocable Trust, which held most of his wealth. *Id.* at 602. Numerous purchases of LLCs and other interests occurred to transfer the necessary tax losses to Williams, which he claimed on his 2001 tax return. *Id.*

The Fifth Circuit affirmed the federal district court's decision that 1) the "transactions lacked economic substance and must be disregarded for tax purposes" and 2) the negligence penalty applied and the three domestic LLCs were not entitled to the reasonable cause defense. *Id.* at 619.

69. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 37.

70. Biedermann, *supra* note 51, at 77.

71. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 37–38.

Nevada, St. Kitts-Nevis) for legal operation and quick transfer of ownership.<sup>72</sup> Shelf corporations may be purchased on the internet for a few thousand dollars from TCSPs such as <https://www.offshorecompany.com> and <https://www.companiesinc.com>.<sup>73</sup> In some cases, shelf entities can even be bought with ready-made, established bank accounts.<sup>74</sup>

Once a shelf company is bought, the buyer may acquire the shelf corporation's established credit and tax history, which further enhances its credibility.<sup>75</sup> The lack of accurate and recorded information about shelf entities can create almost insurmountable obstacles for auditors, forensic accountants, IRS investigators, and regulators in any attempt to identify the beneficial owner(s).<sup>76</sup>

### C. Using Nominees or Nominee Directors in Shell Entities

Another legal device or approach to optimize concealment is for the shell entity's beneficial owner or owners to elect to hire a nominee as a company director. A nominee is one who holds bare legal title for another, or is designated to act in place of another in a limited way, "or who receives and distributes funds for the benefit of others."<sup>77</sup> A nominee can be a relative, friend, trusted associate, or a person who has no link to the true beneficial owner(s).<sup>78</sup> Nominee incorporation services (<http://www.offshoresimple.com/nominee/htm>) provide local (related to the jurisdiction of the shell entity) or third-party nominees who will be the director or manager of the shell firm.<sup>79</sup> The nominee typically signs a general power of attorney which gives the beneficial owner(s) full power to manage the shell

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72. Debra Cassens Weiss, *Wyoming Home is a 'Little Cayman Island' for Shell Companies*, ABA J. (June 28, 2011, 4:09 PM), [http://www.abajournal.com/news/article/wyoming\\_home\\_is\\_a\\_little\\_cayman\\_island\\_for\\_shell\\_companies](http://www.abajournal.com/news/article/wyoming_home_is_a_little_cayman_island_for_shell_companies) [<https://perma.cc/DXY2-ZMZ3>].

73. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 38; FINCEN, *supra* note 11, at 5–6.

74. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 38; FINCEN, *supra* note 11, at 6.

75. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 37–38.

76. *Id.* at 38–39.

77. Martinez, *supra* note 56, at 197 n.57; *see also* LiButti v. United States, 107 F.3d 110, 119 (2d Cir. 1997).

78. *See* LiButti, 107 F.3d at 119; *Anonymous Companies*, GLOB. FIN. INTEGRITY, <https://www.gfintegrity.org/issue/anonymous-companies> [<https://perma.cc/BVK4-FGFD>] (last visited Aug. 18, 2018).

79. Martinez, *supra* note 56, at 197 n.58.

entity.<sup>80</sup> The nominee also provides a signed and undated letter of resignation to further protect the anonymity of the beneficial owner(s).<sup>81</sup>

A mere twenty-eight nominee directors have established or are in control of more than 21,000 companies.<sup>82</sup> And many of these individuals have been identified as being involved with criminal organizations and individuals.<sup>83</sup> They market their services by selling their names and addresses in obscure global locations.<sup>84</sup> The shell entities themselves are “often registered anonymously . . . in the British Virgin Islands, but also in Ireland, New Zealand, Belize and the UK itself.”<sup>85</sup> In early 2014, the International Consortium of Investigative Journalists (ICIJ) (over 190 journalists from 65 countries) published a database of the incorporation records of shell companies, directors (some nominees), and addresses that was leaked to them.<sup>86</sup> The database shows the extent of shell company networks and how many companies and nominee directors are linked together.<sup>87</sup>

#### D. Trusts

Trusts are another vehicle subject to abuse by tax evaders, fraudsters, and other criminals. The salient characteristic of a trust is that it provides for a separation of legal and beneficial ownership.<sup>88</sup> Legal control is granted to a trustee by a settlor (a.k.a., a creator or grantor), who manages the trust asset(s) according to the terms of a trust agreement for the benefit of beneficiaries.<sup>89</sup> A settlor, creator, or grantor, who establishes the trust, can minimize the transfer,

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80. ADKISSON & RISER, *supra* note 57, at 201; *Nominee Service—Officers, Directors and Managers*, COS. INC., <https://companiesinc.com/grow-your-business-/nominee-service> [<https://perma.cc/K25K-YYAL>] (last visited Mar. 23, 2018); *Nominee Services*, GWS GRP., <https://gws-offshore.com/nominee-services> [<https://perma.cc/PC2Y-HY7A>] (last visited Mar. 23, 2018).

81. ADKISSON & RISER, *supra* note 57; *Nominee Service—Officers, Directors and Managers*, *supra* note 80; *Nominee Services*, *supra* note 80.

82. James Ball, *Offshore Secrets: How Many Companies Do ‘Sham Directors’ Control?*, THE GUARDIAN, <http://www.theguardian.com/uk/datablog/2012/nov/26/offshore-secrets-companies-sham-directors> [<https://perma.cc/DF5K-86JN>] (last visited Aug. 31, 2018).

83. *Id.*

84. *Id.*

85. *Id.*

86. See Int’l Consortium of Investigative Journalists, *About*, OFFSHORE LEAKS DATABASE, <https://offshoreleaks.icij.org/pages/about> [<https://perma.cc/763U-E2K9>] (last visited Aug. 14, 2018).

87. *Id.*

88. Robert T. Danforth, *Rethinking the Law of Creditors’ Rights in Trusts*, 53 HASTINGS L.J. 287, 290 (2002).

89. *Id.*

alienation, or attachment of a beneficiary's trust interest by creating a spendthrift trust (also called an asset protection trust) or including a spendthrift provision in the trust.<sup>90</sup> One bright line rule employed by courts in some jurisdictions, especially in the majority of U.S. states, is that any self-settled trust (one in which the creator or grantor is also a beneficiary), regardless of whether it includes a so-called spendthrift provision, cannot be a spendthrift trust.<sup>91</sup> Although virtually all states recognize spendthrift provisions, most do not permit a settlor who is also a beneficiary to protect his or her assets from creditors' claims (especially those involving child support, alimony, and certain other claims).<sup>92</sup> This is because spendthrift trusts are necessarily "created with a view of providing a fund for the maintenance of another," not for the settlor's own benefit.<sup>93</sup>

In many jurisdictions (onshore and offshore), a spendthrift trust may be implemented by including a spendthrift clause or provision in the trust instrument.<sup>94</sup> Self-settled spendthrift trusts, which have been given the misnomer of "asset protection trusts," are a "booming business for banks, trust companies, and estate planners, both [in the United States] and abroad. They [are] a multi-billion-dollar-a-year business."<sup>95</sup> Many U.S. and offshore promoters attract U.S., Canadian, and other citizens with promises of tax avoidance (which in some cases is evasion) and asset protection through the use of trusts.<sup>96</sup> In this way, they are quite similar to the use of LLC shell companies.<sup>97</sup> In fact, an asset protection trust is a type of shell entity.

The popularity of asset protection trusts is based, in large part, on the fact that trusts provide beneficiaries with more privacy and autonomy than do traditional business entities. "Trusts have no registration requirements or central registries where trustee, settlor, and beneficiary names must be listed."<sup>98</sup> Even where beneficiaries' identities must be disclosed, the beneficiary can be

90. See *Miller v. Kresser*, 34 So. 3d 172, 175 (Fla. Dist. Ct. App. 2010) (quoting *Croom v. Ocala Plumbing & Elec. Co.*, 57 So. 243, 244 (Fla. 1911)).

91. *In re Brown*, 303 F.3d 1261, 1266 (11th Cir. 2002).

92. Ausness, *supra* note 39, at 150–51.

93. *Brown*, 303 F.3d at 1266 (emphasis omitted).

94. Nicole F. Stowell, Erik Johanson & Carl Pacini, *The Use of Wills and Asset Protection Trusts in Fraud and Other Financial Crimes*, 65 *DRAKE L. REV.* 509, 525 (2017).

95. Jeffrey A. Morse, *Nevada Self-Settled Spendthrift Trusts or Offshore Trusts?*, *NEV. LAW.*, Mar. 2008, at 16, 16.

96. *Id.*

97. Stowell, Johanson & Pacini, *supra* note 94, at 526; VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 168–70.

98. Stowell, Johanson & Pacini, *supra* note 94, at 527.

a limited partnership, LLC, or another trust, and this “add[s] layers of opacity to the trust’s ownership structure.”<sup>99</sup> If the trust is drafted by an attorney, the attorney–client privilege erects an additional barrier to transparency. Due to these secrecy features, trusts are very much subject to abuse.<sup>100</sup>

Offshore asset protection trusts (OAPTs) possess a number of features that permit the settlor to exercise protective control over trust assets. Protective features of an OAPT may include a trust protector clause, an anti-duress clause, a flee or flight clause, and a non-binding letter of intent or wishes.<sup>101</sup> A trust protector clause provides for a “trust protector” being appointed by the grantor to act as an advisor and who is responsible for making sure the trustee implements the settlor’s wishes.<sup>102</sup> An anti-duress clause prohibits the trustee from complying with any order imposed upon the settlor or trustee.<sup>103</sup> A flee or flight clause authorizes the trustee to transfer the trust to another jurisdiction upon the occurrence of certain events, such as an inquiry from a foreign government or Interpol.<sup>104</sup> A letter of intent or wishes is written by the settlor and states his or her wishes as to the dissipation of trust assets.<sup>105</sup> The control offered the settlor by these features contribute to the abuse of OAPTs as a shell entity to evade taxes.

OAPTs can be utilized in two ways by those bent on committing tax evasion: 1) hiding legitimate interest-earning assets for the purpose of evading taxes<sup>106</sup> and 2) integrating illicitly obtained funds into an economy as “clean assets” (money laundering).<sup>107</sup> The linchpins to illegitimate uses or abuses of OAPTs are layering and misdirection.<sup>108</sup>

Just as with other types of shell entities, the goal is to transfer income-earning assets through enough layers of OAPTs and other shell entities so that a banker, lawyer, forensic accountant, auditor, or IRS agent will not suspect or

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99. *Id.* at 527–28.

100. *See id.* at 528; Ausness, *supra* note 39, at 154–55.

101. James T. Lorenzetti, *The Offshore Trust: A Contemporary Asset Protection Scheme*, 102 COM. L.J. 138, 146–49 (1997).

102. *Id.* at 149.

103. *Id.* at 146; Harvey M. Silets & Michael C. Drew, *Offshore Asset Protection Trusts: Tax Planning or Tax Fraud?*, 5 J. MONEY LAUNDERING CONTROL 9, 10–11 (2001).

104. Ausness, *supra* note 39, at 156.

105. *Id.*; Lorenzetti, *supra* note 101, at 149.

106. Silets & Drew, *supra* note 103, at 9.

107. *Id.*; Bruce Zagaris, *A Brave New World: Recent Developments in Anti-Money Laundering and Related Litigation Traps for the Unwary in International Trust Matters*, 32 VAND. J. TRANSNAT’L L. 1023, 1027 (1999).

108. Silets & Drew, *supra* note 103, at 9.



discover the sources or beneficial owners of assets.<sup>109</sup> By accomplishing this goal, individuals and entities can control their income-earning assets and tax liabilities without being named as a beneficiary or trustee.<sup>110</sup> The privacy and anonymity of OAPTs make them a superb means of evading taxes and laundering assets and vulnerable to various forms of illegal and unethical abuse.

E. *Limited Partnerships (LPs) and Family Limited Partnerships (FLPs)*

LPs and FLPs are excellent places to hide income-earning assets and evade taxes.<sup>111</sup> In a typical scheme involving an LP, the tax evader (general partner) provides trusted associates, friends, or family members income-earning assets to invest in an LP.<sup>112</sup> These “investors” become limited partners who have no personal legal liability for the debts of the business, including tax liabilities, and cannot take an active role in operating the business.<sup>113</sup> Another scheme involving an LP occurs when the tax evader conveys income-earning assets to an LP of which the tax fraudster is the sole limited partner and then transfers the partnership interest to a trust of which the tax evader is the sole trustee and beneficiary (usually done on an offshore basis).<sup>114</sup>

In an attempt to hide interest-earning assets or obscure the beneficial owner, an FLP might be arranged in which a married couple contributes all of their assets to the FLP. In this structure, each spouse retains a 1% general partnership interest and a 49% limited partnership interest.<sup>115</sup> General partners in an FLP have unlimited personal liability for the FLP’s tax debts and other

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109. *Id.*

110. *Id.*

111. Asher Rubinstein, *Efficacy of Family Limited Partnerships: A Case Study*, GALLET DREYER & BERKEY, LLP (Feb. 23, 2013), <https://www.gdblaw.com/efficacy-of-family-limited-partnership> [<https://perma.cc/3BT7-G8J8>]; David Cay Johnston, *Ex-I.R.S. Agent Says Tax Evasion by Real Estate Partners is Huge*, N.Y. TIMES (Dec. 7, 2007), <https://www.nytimes.com/2007/12/07/business/07taxes.html> [<https://perma.cc/J83S-TZNZ>].

112. Rubinstein, *supra* note 111; Johnston, *supra* note 111.

113. VAN DER DOES DE WILLEBOIS ET AL, *supra* note 8, at 161.

114. Howard Rosen & Patricia Donlevy-Rosen, *Offshore Trust/Offshore LLC Combination: Significant Improvement Over Partnership/Trust Structure*, ASSET PROTECTION NEWS (Donlevy-Rosen & Rosen, P.A., Coral Gables, FL.), Apr./May 2001, <https://protectyou.com/2001/04/offshore-trust-offshore-llc-combination-significant-improvement-over-partnership-trust-structure/> [<https://perma.cc/WG6A-J2K8>].

115. See generally Rebecca B. Hawblitzel, Case Note, *A Change in Planning: Estate of Strangi v. Commissioner’s Effect on the Use of Family Limited Partnerships in Estate Planning*, 57 ARK. L. REV. 595 (2004).



obligations.<sup>116</sup> Using this arrangement subjects only 2% of the couple's assets to unlimited liability. In the United States, there have been some cases in which a court has ruled that a partner's interest in a FLP can be foreclosed upon by a creditor.<sup>117</sup>

#### F. *International Business Companies (IBCs)*

An IBC is an offshore corporation closely related to the traditional corporation since it employs articles of incorporation or association and requires company directors.<sup>118</sup> An IBC is an entity targeted at non-residents of the jurisdiction in which the IBC is sited.<sup>119</sup> It also may not engage in economic activities within its situs jurisdiction.<sup>120</sup> In most jurisdictions, an IBC is governed by strict confidentiality regulations as the names of its shareholders and directors need not be published in any public register.<sup>121</sup> Also, although shareholders of many IBCs are required to elect directors, once elected the board may run the IBC with little recourse to shareholders.<sup>122</sup> In some IBC jurisdictions, the abolition of share capital allows the IBC to ignore capital retention in making distributions to shareholders.<sup>123</sup> The freedom in making or not making distributions to shareholders makes the IBC a convenient vehicle for tax evasion, money laundering, and moving money around to many different locations to obscure the money trail for auditors, forensic accountants, and tax investigators.

An IBC is a subcategory of LLCs that is used as a tool by corporations and individuals throughout the world to direct profits away from high-tax countries into offshore jurisdictions that have low or zero tax rates and tax treaties with other nations (double tax treaties). For example, more than 140 listed businesses in London, New York, and Hong Kong have a unit in the BVI which is useful as a tax neutral hub.<sup>124</sup>

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116. Kiara Ashanti, *What is a Family Limited Partnership (FLP): Pros and Cons*, MONEY CRASHERS, <https://www.moneycrashers.com/family-limited-partnership-flp> [<https://perma.cc/5KMZ-7M24>] (last visited Sept. 24, 2018).

117. *See, e.g.*, *Firmani v. Firmani*, 752 A.2d 854, 855–56 (N.J. Super. Ct. App. Div. 2000) (illustrating an unsuccessful scheme to hide assets using an FLP).

118. ORG. FOR ECON. COOPERATION AND DEV. (OECD), *BEHIND THE CORPORATE VEIL: USING CORPORATE ENTITIES FOR ILLICIT PURPOSES* 24 (2001).

119. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 266.

120. *Id.*

121. OECD, *supra* note 118, at 24.

122. *Id.*

123. *Offshore: British Virgin Islands*, THE LAWYER, June 13, 2005, at 26, 29.

124. Houlder, *supra* note 34, at 1.

G. *Private Interest Foundations (PIFs) and Company Foundations (CFs)*

The PIF is a vehicle provided by civil law countries (now being adopted by some common law countries) for tax management, estate planning purposes, asset protection, and as an alternative to trusts.<sup>125</sup> The PIF was first introduced in Monaco in 1922 but has attracted followers such as Liechtenstein, Panama, the Bahamas, Costa Rica, St. Kitts-Nevis, Anguilla, and Antigua.<sup>126</sup> Although there is no single definition of a foundation, a number of common features can be identified in jurisdictions that offer PIFs.

Panama is a good example since it has permitted PIFs since 1995,<sup>127</sup> has more than 400,000 registered offshore corporations and PIFs, does not require foundations to keep financial records or submit tax returns, and offers much secrecy.<sup>128</sup> A PIF has four main parts:

1. Founder- the person or entity that forms the foundation in the public registry. Usually a nominee founder is provided by a TCSP along with a pre-signed, undated letter of resignation.<sup>129</sup> At that point, the nominee founder holds no control. A founder is analogous to a trustee;

2. Foundation Council- serves the same function for a PIF as a board of directors does for a corporation.<sup>130</sup> The councils' members' names and passport numbers are noted in the public registry when the foundation is established.<sup>131</sup> Often a nominee council is provided along with pre-signed, undated letters of resignation from the nominee council;<sup>132</sup>

3. Protector- the ultimate controller of the foundation. Immediately upon establishment, the council appoints a protector through a notarized private protectorate document.<sup>133</sup> Since the document is a private, non-publicly

125. Dayra Berbey de Rojas, *Panama: The Role of the Protector in the Private Interest Foundation*, 14 TRUSTS & TRUSTEES 350, 350 (2008).

126. Harry Wiggin, *Anguilla: Foundations and Trusts—A Comparison*, 14 TRUSTS & TRUSTEES 287, 287 (2008).

127. *Id.*

128. Adam Thomson, *The Cost of Privacy: Tax and Trading in Panama*, FIN. TIMES (Sept. 30, 2010), <https://www.ft.com/search?sort=relevance&q=the+cost+of+privacy+53A+tax+and+trading+in+panama+and+thomson> [<https://perma.cc/QP5C-XB9M>].

129. *Elements of a Panama Private Interest Foundation*, PAN. OFFSHORE SERVS., [http://www.panama-offshore-services.com/foundation\\_elements.htm](http://www.panama-offshore-services.com/foundation_elements.htm) [<https://perma.cc/WLF3-VTL9>] (last visited Aug. 2, 2018).

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

registered document, the protector remains anonymous.<sup>134</sup> At that point, the protector has full control over the foundation (which holds legal title to any assets) and its assets,<sup>135</sup> and

4. Beneficiaries- a PIF does not have owners, but rather beneficiaries.<sup>136</sup> The latter are appointed by the protector either through a private letter of wishes or through a formal set of by-laws.<sup>137</sup> The contents of both remain confidential. Privately appointed beneficiaries remain anonymous.<sup>138</sup>

In sum, no legal requirement exists to disclose the name of the founder, beneficiaries, or protector. There is no filing of an annual tax return or financial statement.<sup>139</sup> A foundation may “engage in any business or civil transaction in any part of the world and in any currency.”<sup>140</sup> Moreover, the foundation charter may be signed by an attorney without disclosing the founder.<sup>141</sup>

In some foundation jurisdictions (e.g., Anguilla), any assets available for distribution to a beneficiary “are not capable of being alienated or passed by bankruptcy, insolvency, or liquidation, or liable to be seized, sold, attached, or otherwise taken in execution, by process of law.”<sup>142</sup> The secrecy or lack of transparency and flexibility of PIFs have led to their spread throughout the offshore world.<sup>143</sup> Such foundations represent another vehicle that can be used by tax evaders.

In the last quarter of 2017, the Cayman Islands implemented a new legal structure known as a Company Foundation (CF) that could be used as a shell entity.<sup>144</sup> A CF shares some features with a trust but may be established so beneficiaries are given no rights to make a claim against the CF.<sup>145</sup> The CF law

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*; Francesca Di Gregori Boschini, *Private Foundations and Reserved Powers Trusts*, TR. & EST., Apr. 2006, at 46, 48.

138. Boschini, *supra* note 137, at 48–49; ASPEN GRP. LTD., A GUIDE TO PANAMANIAN PRIVATE INTEREST FOUNDATIONS 3 (2012), [http://www.aspenoffshore.com/files/docs/2012/11/a\\_guide\\_to\\_panamanian\\_private\\_interest\\_foundation\\_new\\_2.pdf](http://www.aspenoffshore.com/files/docs/2012/11/a_guide_to_panamanian_private_interest_foundation_new_2.pdf) [<https://perma.cc/DB2V-QN66>]; *Elements of a Panama Private Interest Foundation*, *supra* note 129.

139. Boschini, *supra* note 137, at 48.

140. ASPEN GRP. LTD., *supra* note 138, at 4.

141. *Id.*

142. Wiggin, *supra* note 126, at 289.

143. *Id.* at 287, 290.

144. Ray Davern & Alex Way, *Notes from a Small Island: Some Observations on the New Cayman Islands Foundation Company*, 23 TRUSTS & TRUSTEES 916, 916 (2017).

145. *Id.* at 918.

itself describes possible objects of a CF such as acting as a holding company or an investment company.<sup>146</sup> Another feature of a CF that trusts do not possess is that any kind of power can be given to any person, whether as a personal power, as a benefit for the CF, or for any other lawful purpose.<sup>147</sup> These objects and powers make the CF vulnerable to abuse by tax evaders. Only the passage of time will indicate whether the CF will be added to the list of legal structures that serve as shell entities for tax evasion.

### III. THREE MAIN REASONS SHELL ENTITIES PROVIDE SECRECY AND DISGUISE BENEFICIAL OWNERSHIP TO FACILITATE TAX EVASION

Three main reasons explain the continued ability of tax evaders to use shell entities to conceal the identity of their actual beneficial owners and to operate in the shadows. One reason is the lack of transparency in most jurisdictions (including U.S. states) with regard to actual or beneficial owners, directors, corporate officers, members, partners, trustees, beneficiaries, and others. The second reason is that tax evaders require the services of professionals such as accountants, lawyers, financial advisors, and TCSPs or “gatekeepers,” to create shell entities, layer or pyramid entities together into complicated webs of anonymous entities, hide assets, evade taxes, and launder funds. The third reason is that the layering or pyramiding of different shell entities (often different legal structures) in various jurisdictions around the globe makes an impenetrable trail for tax investigators and forensic accountants to follow.

#### A. *Lack of Beneficial Ownership Transparency*

Ownership transparency refers to disclosing majority and minority shareholders, members, beneficiaries, protectors, trustees, founders, and directors, depending upon the type of legal entity, or any other natural person who is in a position to control and benefit from an asset.<sup>148</sup> Transparency also includes knowledge of the controlling structure of other legal entities. “Knowledge of beneficial owners and the control structures of [entities] must then be accompanied by effective investigation and enforcement mechanisms regarding disclosed information.”<sup>149</sup>

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146. *A New Vehicle for the Cayman Trusts Industry: The Foundation Company*, MAPLES (Feb. 15, 2017), <https://www.maplesandcalder.com/news/article/a-new-vehicle-for-the-cayman-trusts-industry-the-foundation-company-1434/> [<https://perma.cc/37VC-28P3>].

147. Davern & Way, *supra* note 144, at 919.

148. Avnita Lakhani, *Imposing Company Ownership Transparency Requirements: Opportunities for Effective Governance of Equity Capital Markets or Constraints on Corporate Performance*, 16 CHI.-KENT J. INT’L. & COMP. L. 122, 128–29 (2016).

149. *Id.* at 129.

The issue of transparency is captured by FATF Recommendation 24, which states that “countries should ensure that there is adequate, accurate, and timely information available on the beneficial ownership” of all legal persons.<sup>150</sup> The identity of the natural persons who ultimately have a controlling ownership interest in a legal person (e.g., corporation of some type) and the identity of the natural persons exercising control of the legal person through other means is the target of transparency requirements.<sup>151</sup>

In practical terms, ownership transparency can be achieved by the use of a central registry that collects, stores, and verifies the detailed information necessary to determine actual beneficial ownership of any and all types of entities, including trusts and foundations.<sup>152</sup> Relevant information captured in a central registry would include such data as name, legal entity type, formation documents, related bylaws, address of a registered office or principal place of business or address of the entity itself, name and address of a registered agent, names and addresses of persons in position of legal control within the entity (e.g., directors, officers, and council members), and the name(s) of the beneficial owner(s).<sup>153</sup>

One huge obstacle to achievement of practical or actual transparency is that transparency of ownership requirements is vastly different from jurisdiction to jurisdiction.<sup>154</sup> In the U.S. alone, where entity formation legal requirements are controlled by the states, vast differences make for more favorable entity formation and maintenance in some states than they do in others. For example, in 2006, the General Accountability Office (GAO) conducted a study and found that no state collected beneficial ownership information on corporations, only a few collected it on LLCs and other corporate-like entities, and only four states collected minimal information on LLCs.<sup>155</sup> Less than half of states collected information about management, directors, and officers of corporations.<sup>156</sup> Although most states collected information on corporate officers and LLC managers in periodic reports, the information in these reports was not verified, including that pertaining to beneficial ownership.<sup>157</sup> This is still the situation

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150. FATF, *supra* note 5, at 12.

151. *Id.*

152. Kalant, *supra* note 9, at 1054–55.

153. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 71; Kalant, *supra* note 9, at 1055–56.

154. Anonymous, *Corporate Ownership and Corruption: How to Crack a Shell*, THE ECONOMIST, May 7, 2016, at 56.

155. Martinez, *supra* note 56, at 194–95; GAO, *supra* note 49, at 4.

156. GAO, *supra* note 49, at 16.

157. *Id.* at 4.

today.<sup>158</sup> Finally, the states do not screen information against criminal watch lists. The FBI has open investigations that have not been resolved because beneficial owners are virtually untraceable.<sup>159</sup>

### B. TCSPs and Gatekeepers

The services of gatekeepers are often essential for tax evasion and other illegal schemes to succeed. Gatekeepers sometimes facilitate the commission of a predicate offense, such as disguising a person's involvement in a commercial transaction, commingling property and proceeds, or disguising property ownership/control by the ultimate beneficial owners.<sup>160</sup> Gatekeepers' services help sever the connection between the illegal tax evasion schemer and the safe enjoyment of his or her interest-earning assets.<sup>161</sup> They can also provide tax evaders "a veneer of respectability."<sup>162</sup>

Gatekeepers or TCSPs are lawyers, accountants, or businesses that create and provide administrative services for various types of entities, such as corporations, IBCs, LLCs, foundations, and trusts. "In some jurisdictions, [gatekeepers] are the only means for those who wish to establish certain kinds of legal vehicles, such as [an IBC]."<sup>163</sup> In code or civil law countries, certain entities, such as foundations and IBCs, require a notarial deed for creation, meaning that notaries must be employed (i.e., hire a TCSP).<sup>164</sup>

Indispensable administrative procedures performed by TCSPs include checking for the availability of an entity name, filing appropriate documents with the authorities, opening bank accounts, providing nominees (when necessary), acting as registered agents, paying fees, handling annual reporting obligations and mail forwarding, and providing virtual office facilities.<sup>165</sup> Many gatekeepers furnish clients with entities from a wide range of different jurisdictions.<sup>166</sup> Large TCSPs may form an entity for a client in one jurisdiction

158. Martinez, *supra* note 56, at 194–95.

159. *Id.* at 195.

160. Stephen Baker & Ed Shorrock, *Gatekeepers, Corporate Structures and their Role in Money Laundering*, in INT'L CTR. FOR ASSET RECOVERY, BASEL INST. ON GOVERNANCE, TRACING STOLEN ASSETS: A PRACTITIONER'S HANDBOOK 81, 82 (2009).

161. *Id.*

162. *Id.*

163. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 84; *see also* Baker & Shorrock, *supra* note 160, at 82–83.

164. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 84.

165. *Id.*; Baker & Shorrock, *supra* note 160, at 82–83.

166. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 84; Baker & Shorrock, *supra* note 160, at 82–83.

(e.g., Belize) but retain client data on file in a different jurisdiction. This makes it more difficult for regulators and forensic accountants to access the information.<sup>167</sup>

TCSPs in many offshore jurisdictions have become subject to formal licensing and regulation, including being audited, meeting anti-money laundering standards, and applying suitability tests to directors.<sup>168</sup> TCSPs in onshore jurisdictions, particularly states in the U.S., are more loosely regulated.<sup>169</sup> This factor contributes to the large number of foreign persons creating LLCs and other entities in the U.S. One of the most widely used U.S. incorporators is Wyoming Corporate Services, a shell/shelf incorporator in Cheyenne, Wyoming.<sup>170</sup>

In those cases where an attorney is the TCSP or works for the TCSP, the attorney–client privilege may erect another barrier to gleaning information by forensic accountants and investigators.<sup>171</sup> The extent to which this barrier exists varies depending on the laws of the respective jurisdiction.

### C. Layering and Chaining of Shell Entities

Tax perpetrators often use a layer or chain of entities established in different jurisdictions to maximize anonymity and make it almost impossible for forensic accountants and tax investigators to determine beneficial ownership. In a layered or tiered legal structure, layers of legal entities are inserted between the individual beneficial owner(s) and the assets or funds of the shell entity that moves or holds legal title to those assets or funds.<sup>172</sup> The layering or chaining of various legal entities across numerous jurisdictions (e.g., Jersey, Gibraltar, the U.S., and the BVI) facilitates access to the international financial or banking system in the names of different entities.<sup>173</sup> Investigators and forensic accountants may, for example, obtain ownership information on an entity in Country A and discover that the legal owners of that entity are corporations or trusts registered in Countries B and C. Offshore countries and entities by no means possess a monopoly on this type of arrangement. Legal entities in such

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167. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 84; Baker & Shorrock, *supra* note 160, at 82–83.

168. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 85–86.

169. *Id.* at 86.

170. Kelly Carr & Brian Grow, *Special Report: A Little House of Secrets on the Great Plains*, REUTERS (June 28, 2011, 6:40 AM), <http://www.reuters.com/article/us-usa-shell-companies-idUSTRE75R20Z20110628> [<https://perma.cc/N6DX-MPPZ>].

171. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 6.

172. *Id.* at 52.

173. *Id.*



places as the U.S. and U.K. are also used frequently in layering arrangements.<sup>174</sup> The ability to layer or pyramid within and across jurisdictions faces few, if any, restrictions.<sup>175</sup>

An example of the use of layered or chained entities for tax purposes occurred in *United States v. Veksler*.<sup>176</sup> During 1991 and 1992, Richard McNaughton and Igor Veksler “were involved in a scheme to evade federal and states taxes on sales of number two oil, a product that can be used as either home heating oil or diesel fuel.”<sup>177</sup> “During this period, no taxes were imposed by the federal government . . . [,] New Jersey or Pennsylvania on the sale of number two oil for use as home heating oil.”<sup>178</sup> “[T]he United States, New Jersey and Pennsylvania did tax the sale of number two oil when it was . . . used as diesel fuel . . . .”<sup>179</sup> The tax was imposed “on the producer or importer who first sold the oil to a purchaser who did not hold a Registration for Tax-Free Transactions (IRS Form 637).”<sup>180</sup>

The tax evasion scheme involved the use of a “daisy chain” of shell entities.<sup>181</sup> “A ‘daisy chain’ is a string of [shell entities] controlled by a single person or group of persons.”<sup>182</sup> In *Veksler*, “No. 2 oil was transferred on paper from [firm to firm] through the daisy chain, first as home heating oil, but then as diesel fuel . . . to make it difficult to determine which entity was responsible for the payment of the taxes.”<sup>183</sup> The first several shells in the chain would have an IRS Form 637 and would sell the oil as tax-exempt home heating oil.<sup>184</sup> At some point, the oil would be sold as diesel fuel, but the taxes were never remitted to the federal and state governments to which they were owed.<sup>185</sup>

“[T]he same company always made the first taxable sale.”<sup>186</sup> This company was known as the “burn” or “butterfly” company, as it was a sham operation designed to “burn up” or “fly away” when the government(s) sought the taxes

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174. *Id.*

175. *Id.* at 53.

176. 62 F.3d 544 (3d Cir. 1995).

177. *Id.* at 547.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *United States v. Veksler*, 862 F.Supp. 1337, 1340 (E.D. Pa. 1994).

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*



owed.<sup>187</sup> In this daisy chain operation, all of the transactions would occur on the same day.<sup>188</sup> In many transactions, the oil never moved since “the company that originally sold the oil as home heating oil also bought it back as diesel fuel at the end of the chain, then distributed it to retailers.”<sup>189</sup> Other than the entities at the beginning and end, those in the daisy chain had no function other than the transfer of oil on paper to other entities in the scheme.<sup>190</sup> “These sham companies typically were run out of one-room offices which contained only a telephone, fax machine, and a desk.”<sup>191</sup> These features match the classic characteristics of a shell entity, regardless of type of legal structure.

Tax evaders trying to cloak their identity using shell entities create complex layered networks, which result in a labyrinth for forensic accountants and tax investigators. TCSPs involved in providing these professional services are often of little help in investigations as they do not deal with beneficial owners personally.<sup>192</sup> The TCSPs and other gatekeepers are often left untouched by authorities, even when a fraudster is caught and prosecuted in a shell entity scheme.<sup>193</sup> The TCSPs and other gatekeepers will continue to capitalize on the needs of tax evaders for chained or layered entities, thereby making the vicious cycle of layered shell entities a never-ending game.

#### IV. POLICY REACTIONS AND RESPONSES TO THE TAX EVASION AND BENEFICIAL OWNERSHIP ISSUES

##### A. U.S. Domestic

Forensic accountants and tax enforcement officials have a very difficult time untangling the intricate shell entity networks created by tax evaders. Not unaware of this issue, the U.S. government has attempted policy initiatives to improve ownership transparency of shell entities.

In 2008, Senators Levin, Coleman, and Obama introduced legislation entitled the “Incorporation Transparency and Law Enforcement Assistance Act

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187. *Id.*

188. *Id.* at 1341.

189. *Id.*

190. *Id.*

191. *Id.*

192. Martinez, *supra* note 56, at 202; Lucy Komisar, *Shells, Shams and Corporate Scams*, THE AM. INTEREST (Jan. 1, 2011), <http://www.the-american-interest.com/2011/01/01/shells-shams-and-corporate-scams> [https://perma.cc/2YFR-5GN3].

193. Melanie Hicken & Blake Ellis, *These U.S. Companies Hide Drug Dealers, Mobsters and Terrorists*, CNN MONEY (Dec. 9, 2015, 4:36 AM), <http://money.cnn.com/2015/12/09/news/shell-companies-crime> [https://perma.cc/3UJC-EDES].

[(ITLEA)].<sup>194</sup> The legislation has been reintroduced several times since 2008 without being enacted into law.<sup>195</sup> The purpose of ITLEA is to “ensure that owners and formation agents who form non-publicly held companies in the United States disclose the beneficial owners of those companies.”<sup>196</sup> First, ITLEA would place a significant burden on states and formation agents to collect and maintain a current list of all beneficial owners.<sup>197</sup> Second, the legislation requires the state to maintain a copy of driver’s licenses of all such beneficial owners.<sup>198</sup> Third, for foreign-held entities in the United States, the bill requires that a formation agent certify the foreign application for incorporation in a U.S. state.<sup>199</sup> Beneficial owners of foreign-held entities would have to provide a photocopy of the page of the passport on which the photo appears.<sup>200</sup>

The United States is slowly moving forward on the beneficial ownership issue. “In June 2016, FinCEN finalized its long-outstanding beneficial ownership rule, which extends customer due diligence [(CDD)] requirements . . . to the natural persons behind a legal entity.”<sup>201</sup> In June 2017, a bipartisan group of legislators introduced the Corporate Transparency Act, which would require FinCEN to collect information on the beneficial owner(s) of entities created in the United States if it has not been collected at the state level.<sup>202</sup>

A piece of legislation that became law in 2010 and does assist in the fight against U.S. tax evaders is the Foreign Account Tax Compliance Act (FATCA).<sup>203</sup> “FATCA looks at all types of entities to identify U.S. taxpayers’

194. Incorporation Transparency and Law Enforcement Assistance Act, S. 2956, 110th Cong. § 1 (2008).

195. Tracey Samuelson, *Cracking Down on Shell Companies: A Years-Long Debate*, MARKETPLACE (Apr. 7, 2016, 3:56 PM), <https://www.marketplace.org/2016/04/07/world/shell-comps> [<https://perma.cc/LK6L-EKLX>].

196. Kalant, *supra* note 9, at 1054.

197. *Id.* at 1055.

198. J. W. Verret, *Terrorism Finance, Business Associations, and the “Incorporation Transparency Act”*, 70 LA. L. REV. 857, 859 (2010).

199. Kalant, *supra* note 9, at 1056–57.

200. *Id.* at 1057.

201. Sylwia Wolos, *The Ultimate Beneficial Ownership Identification Requirement: Why It Matters to All of Us*, ACAMS TODAY (Sept. 19, 2017), <http://acamstoday.org/the-ultimate-beneficial-ownership-requirement-why-it-matters-to-all-of-us> [<https://perma.cc/44K8-8ZKN>].

202. *Id.*

203. 26 U.S.C. §§ 1471–1474, 6038D (2017) (created); 26 U.S.C. §§ 163, 643, 679, 871, 1291, 1298, 4701, 6011, 6501, 6662, and 6677 (2017) (amended).

‘financial assets’ held in ‘financial accounts’ outside the United States.’<sup>204</sup> The terms “financial asset” and “financial account” “do not refer simply to bankable assets or accounts with regulated financial institutions . . . .”<sup>205</sup> They are defined broadly to include such things as equity interests in partnerships and corporations and beneficial interests in trusts.<sup>206</sup> FATCA requires all non-U.S. financial institutions to search their records for customers with indicia of “US-person status, such as a US place of birth, and to report the assets and identities of such persons to the US Treasury Department.”<sup>207</sup> FATCA intends to weed out U.S. persons who may be hiding as anonymous beneficiaries of corporate vehicles.<sup>208</sup> FATCA also mandates that such persons self-report their non-U.S. financial assets (over \$50,000) annually to the IRS on Form 8938.<sup>209</sup> When launched, FATCA threatened to impose a 30% withholding tax on certain U.S. source payments for non-participating persons.<sup>210</sup> The 30% tax was a necessary stick to gain the attention of other governments.<sup>211</sup> When over one hundred countries entered into intergovernmental (bilateral) agreements with the United States and pledged to incorporate FATCA into their domestic laws, the banks and other regulated financial institutions became the de facto police implementing FATCA.<sup>212</sup> The law has been implicated in record-breaking numbers of U.S. citizenship renunciations during the years 2012–2016.<sup>213</sup> Legislation to repeal FATCA has been introduced in the U.S. Senate and House of Representatives, the legislation’s sponsors citing FATCA’s unconstitutionality, especially its alleged breach of the 4th Amendment.<sup>214</sup> A legal challenge against the constitutionality of FATCA was filed in federal

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204. Robert Levine, Aaron Schumacher & Shudan Zhou, *FATCA and the Common Reporting Standard*, J. INT’L. TAX’N, Mar. 2016, at 43, 44.

205. *Id.*

206. 26 U.S.C. § 1471(d)(2).

207. *See id.*

208. Biedermann, *supra* note 51, at 82.

209. *Id.*

210. Levine, Schumacher & Zhou, *supra* note 204, at 45.

211. *Id.*

212. *Id.* at 46.

213. Adam Taylor, *A Potentially Historic Number of People Are Giving Up Their U.S. Citizenship*, WASH. POST (Feb. 10, 2017), <https://www.washingtonpost.com/news/worldviews/wp2017/02/10/a-potentially-historic-number-of-people-are-giving-up-their-u-s-citizenship>.

214. Elizabeth Thompson, *Deal That Sends Canadian Bank Records to IRS is ‘Illegal,’ Lawyer Tells U.S. Committee*, CBC NEWS (Apr. 27, 2017, 5:00 AM), <http://www.cbc.ca/news/politics/fatca-canada-u-s-taxation-1.4087644> [<https://perma.cc/PC77-YG84>].

district court in Ohio, but the lawsuit was ultimately dismissed on standing grounds by the Sixth Circuit Court of Appeals.<sup>215</sup>

#### V. OTHER NATIONS

In 2013, the risks of hidden entity beneficial ownership and tax evasion reached the attention of high-level leaders at the G8 summit in Lough Erne, Northern Ireland. The G8 countries announced the “G8 Principles, a set of eight principles, or a ‘beneficial ownership action plan,’” to combat the abuse of entities via legal arrangements.<sup>216</sup> One important outcome from this summit was that it supports the G20’s and Organization for Economic Cooperation and Development’s (OECD) call for the adoption of a multilateral exchange of information on beneficial owners.<sup>217</sup>

The G8 and FATF recommendations both endeavor to facilitate the disclosure of data about the identities of beneficial owners. The FATF recommendations focus on financial institutions while the G8 principles place the responsibility on the entities themselves.<sup>218</sup> The G8 principles do not specify the type of data that needs to be presented to countries reporting information on entity beneficial ownership.<sup>219</sup> One limitation of the G8 principles is that only eight nations are obligated to follow them.

Inspired by FATCA, in early 2016 the G20 countries committed to move towards implementing an automatic exchange of information targeting tax

215. Crawford v. U.S. Dep’t of Treasury, 868 F.3d 438, 458, 461 (6th Cir. 2017).

216. Lakhani, *supra* note 148, at 125; Biedermann, *supra* note 51, at 74. The first G8 principle requires companies to know who owns and controls them and their beneficial ownership. 2013 LOUGH ERNE G8 LEADERS’ COMMUNIQUÉ 23, (June 18, 2013), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207771/Lough\\_Erne\\_2013\\_G8\\_Leaders\\_Communique.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf) [<https://perma.cc/BF5S-9EDW>]. The second principle addresses the availability of ownership information to relevant authorities. *Id.* This principle recommends that nations make entity data available in central registries. *Id.* The third principle requires trustees to have and make available information on beneficiaries and settlors of trusts to law enforcement and other authorities. *Id.* The fourth principle centers on educating authorities on the weaknesses within their anti-money laundering prevention methods. *Id.* The fifth principle specifically states that the abuse of mechanisms, such as bearer shares and nominee shareholders and directors, should be prevented. *Id.* The sixth principle suggests that states should adopt customer identification and verification obligations to make sure that beneficiaries are properly vetted. *Id.* at 24. The seventh principle addresses enforcement mechanisms that states should use against firms and financial institutions that do not comply with their obligations. *Id.* The eighth principle focuses on the need for international cooperation for information exchange between nations regarding the abuse of corporate vehicles. *Id.*

217. 2013 LOUGH ERNE G8 LEADERS’ COMMUNIQUÉ, *supra* note 216, at 6–7.

218. Levine, Schumacher & Zhou, *supra* note 204, at 46; Lakhani, *supra* note 148, at 134.

219. See 2013 LOUGH ERNE G8 LEADERS’ COMMUNIQUÉ, *supra* note 216, at 23–24.

evasion.<sup>220</sup> “The G20 embraced the OECD’s proposal of a global model of automatic financial data exchange known as the Common Reporting Standard (CRS).”<sup>221</sup> The CRS is FATCA with a global reach that seeks to obtain information about individuals and entities resident in CRS-signing jurisdictions, which is held outside their own countries of residence.<sup>222</sup>

As of June 2018, 102 countries have committed to the adoption of CRS.<sup>223</sup> As of July 5, 2018, over 3200 bilateral exchange relationships have been activated with respect to ninety jurisdictions.<sup>224</sup> The CRS consists of the following four salient parts:

1. A model Competent Authority Agreement (CAA), providing the international legal framework for the automatic exchange of CRS information;<sup>225</sup>
2. The Common Reporting Standard;<sup>226</sup>
3. The Commentaries on the CAA and the CRS;<sup>227</sup> and

220. Guilherme B. Reis, *Common Reporting Standard Explained*, TR. & EST., May 2016, at 37, 37.

221. *Id.*

222. *Id.*

223. *Activated Exchange Relationships for CRS Information*, OECD, <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/> [<https://perma.cc/9ZNY-QMVJ>] (last visited Aug. 18, 2018).

224. *Id.*

225. OECD, STANDARD FOR AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT INFORMATION IN TAX MATTERS 3 (2d ed. 2017), [https://read.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition\\_9789264267992-en#page5](https://read.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition_9789264267992-en#page5) [<https://perma.cc/VX7W-VTPF>]; *What is the Multilateral Competent Authority Agreement*, OECD, <http://www.oecd.org/tax/transparency/technical-assistance/aeoi/whatisthemultilateralcompetentauthorityagreement.htm> [<https://perma.cc/P4P6-8W9B>] (last visited Aug. 18, 2018).

226. The OECD has released a manual entitled *Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures* (approved on March 8, 2018 by the OECD Committee on Fiscal Affairs) to assist nations who have committed to the adoption of the CRS. OECD, MODEL MANDATORY DISCLOSURE RULES FOR CRS AVOIDANCE ARRANGEMENTS AND OPAQUE OFFSHORE STRUCTURES (2018), <http://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.htm> [<https://perma.cc/R9XA-M6SZ>]. The purpose of the model mandatory disclosure rules is to provide tax administrators with information on CRS Avoidance Arrangements and Opaque Offshore Arrangements and Opaque Offshore Structures. *Id.* at 3. The mandatory disclosure rules do not affect the substantive provisions of a jurisdiction’s CRS legislation or impact on any reporting outcomes under the CRS. *Id.* The rules are information-gathering tools that seek to bolster the integrity of the CRS by deterring advisors and other intermediaries from promoting certain schemes. *Id.*; OECD, *supra* note 225, at 3.

227. OECD, *supra* note 225, at 3.

4. The CRS XML Schema User Guide.<sup>228</sup>

Despite the implementation and cooperation of participating CRS countries, information from academic studies, media leaks, and tax compliance authorities show that professional advisors and other intermediaries continue to design, market, or assist in the implementation of offshore structures and arrangements that can be used by non-compliant taxpayers to circumvent the correct reporting of relevant tax information.<sup>229</sup>

CRS is a mix of bilateral and multilateral regimes and hundreds of intergovernmental agreements among CRS signatories are already in place.<sup>230</sup> FATCA is basically a bilateral regime whereby the United States enters into one of two types of IGAs with each of its partner countries and they exchange information bilaterally.<sup>231</sup> Under CRS, the exchange of information is always bilateral among the signatories. Each pair of signatories must notify each other before exchange of information begins.<sup>232</sup> “Each CRS signatory is free to modify the CAA and . . . implement CRS obligations under its own laws.”<sup>233</sup> CRS does not involve a withholding tax like FATCA, since all signatories agree to incorporate CRS provisions into their domestic laws.<sup>234</sup>

Similar to FATCA, CRS obligations depend on an entity’s classification and country of residence. Entities include corporations, partnerships, trusts, and foundations that are classified as reporting or non-reporting financial institutions, passive non-financial entities (NFEs), or active NFEs.<sup>235</sup> Financial institutions include banks, brokers, custodians, and investment funds.<sup>236</sup> “Reporting financial institutions are subject to a comprehensive set of duties or obligations.”<sup>237</sup> TCSPs are generally financial institutions for CRS purposes.<sup>238</sup>

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228. *Id.* The OECD and cooperating countries have developed a schema in extensible mark-up language (XML) that allows the reporting of information under the CRS in an IT-based and standardized manner. *Common Reporting Standard (CRS) User Guide and Schema*, OECD (2018), <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/schema-and-user-guide/#d.en345315> [<https://perma.cc/6UXK-P47H>]. A schema is a data structure for holding and transmitting information electronically and in bulk. *Id.*

229. OECD, *supra* note 226, at 3.

230. Levine, Schumacher & Zhou, *supra* note 204, at 44.

231. *Id.*

232. For a detailed explanation concerning the exchange of information under CRS, see OECD, *supra* note 225, at 230–71.

233. Levine, Schumacher & Zhou, *supra* note 204, at 45.

234. *Id.* at 46.

235. Reis, *supra* note 220, at 38.

236. *Id.*

237. *Id.*

238. *Id.*

The way that CRS rules function demonstrates a clear policy focus on control, apart from ownership.<sup>239</sup> CRS regulations blur the lines between controlling persons and beneficial owners.<sup>240</sup> On the other hand, “FATCA consistently seeks to identify U.S. taxpayers’ beneficial ownership in non-U.S. passive assets, the idea being that the tax liabilities are attached to income derived from ownership.”<sup>241</sup> Despite this difference, FATCA and CRS share one stated policy goal: to fight tax evasion.

In November 2016, the G20 nations published a set of principles for governments to facilitate identification of the beneficial owners of shell entities.<sup>242</sup> The principles stopped short of recommending public access to registries of beneficial ownership. In the European Union, the Fourth AML Directive requires member states to introduce registries of company beneficial owners.<sup>243</sup> The U.K. beneficial ownership registry opened in April 2016, but excluded trusts.<sup>244</sup> The U.K. has set precedent “by creating ‘the world’s first fully open register of beneficial ownership,’ albeit only disclosing those beneficial owners that meet the 25% threshold.”<sup>245</sup> “Where [registries] did become available in other European countries, the quality of data (often collected but not verified) was criticized by industry experts.”<sup>246</sup> Beneficial ownership registries in the BVI and Cayman Islands went on stream in June 2017 to comply with an agreement reached with the U.K. government.<sup>247</sup> The Cayman Islands also just amended its penal code in December 2017 so that foreign tax evasion and equivalent tax crimes are reportable in the Cayman Islands.<sup>248</sup> On July 1, 2017, a beneficial ownership registry commenced

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239. Levine, Schumacher & Zhou, *supra* note 204, at 48.

240. *Id.*

241. *Id.*; 26 U.S.C. §§1471–1474, 6038D (2017) (created); 26 U.S.C. §§163, 643, 679, 871, 1291, 1298, 4701, 6011, 6501, 6662, and 6677 (2017) (amended).

242. Jamie Smyth & George Parker, *G20 Leaders Back Drive to Unmask Shell Companies*, FIN. TIMES (Nov. 16, 2014), <https://www.ft.com/content/25ae632e-6d60-11e4-8f96-00144feabdc0> [<https://perma.cc/4HNW-GA5Y>].

243. Wolos, *supra* note 201.

244. *Id.*

245. Jenik Radon & Mahima Achuthan, *Beneficial Ownership Disclosure: The Cure for the Panama Paper Ills*, 70 J. INT’L. AFF. 87, 87 (2017), <https://jia.sipa.columbia.edu/beneficial-ownership-disclosure-%C2%A0cure%C2%A0panama-papers-ills%C2%A0> [<https://perma.cc/MQ2R-G9NM>].

246. Wolos, *supra* note 201.

247. *Virgin Islands (British)/Cayman Islands Economy: Quick View-Beneficial Ownership Registries Go Live*, VIEWSWIRE (July 10, 2017), <http://search.eiu.com/Default.aspx?sText=virgin+islands+528british%29%2F+cayman+islands+economy>.

248. Martin Livingston, Tim Dawson, Adam Huckle, Anthony Webster & Tom Katsaros, *Further Important Changes to the Cayman Islands AML Regime*, MAPLES (Feb. 5, 2018),



operation in Guernsey.<sup>249</sup> Access is restricted to the economic crime division of law enforcement and certain other persons in Guernsey government.<sup>250</sup>

In December 2017, an agreement was reached between the European Parliament and the EU Council on the latest amendments to the Anti-Money Laundering Directive (AMLD 5).<sup>251</sup> The amendments attempt to prevent the use of the financial system for funding white-collar crime such as tax evasion.<sup>252</sup>

The following measures will be introduced in EU member states:

- Registers of beneficial owners of firms will be made publicly accessible and national registries will be better interconnected;<sup>253</sup>
- Registers of beneficial owners of trusts and similar legal arrangements will only be publicly accessible where there is legitimate need;<sup>254</sup>
- Information on national banks and safe deposit boxes will be registered as well as data on real estate ownership (only to public authorities);<sup>255</sup>
- The 5th AMLD introduces a requirement for member states to verify beneficial ownership information submitted to their registries;<sup>256</sup> and
- EU bank customers who send funds internationally must provide personal data so it can be transmitted to all banks in the payment chain.<sup>257</sup>

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<http://maplesandcalder.com/news/article/further-important-changes-to-the-cayman-islands-aml-regime-1647> [<https://perma.cc/SA84-AD58>].

249. Alan Bougourd, Presentation at the ICSA: Beneficial Ownership Register (Apr. 16, 2017) (presentation slides available at <http://www.guernseyregistry.com/CHttpHandler.ashx?id=107438&p=0>) [<https://perma.cc/F8YZ-VZF9>].

250. *Id.*

251. Robert van der Jagt, *Euro Tax Flash from KPMG's EU Tax Centre*, KPMG (Dec. 22, 2017), <https://home.kpmg.com/xx/en/home/insights/2017/12/etf-351-aml5-and-ubo-agreement.html> [<https://perma.cc/D9S4-3B8S>].

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. Aleksandar Ivanovski, Mary Dineen, Filipa Correia & Piergiorgio Valente, *CFE's Tax Top 5: Key Tax News of the Week*, CFE (Dec. 18, 2017), <https://www.iec-iab.be/fr/membres/publication/actualite/Institut/Documents/2017/CFE-Tax-Top-5-18-December-2017.pdf> [<https://perma.cc/KHY6-Z4FY>].

257. Denis O'Connor, *EU Fifth Anti-Money Laundering Directive: Can Banks Handle It?*, KYC360 (Nov. 21, 2017), <https://kyc360.com/article/eu-fifth-anti-money-laundering-directive-key-points-banks> [<https://perma.cc/L245-2WKU>].



The potential implementation of the 5th AMDL requirements remains to be seen since few member states took up the 4th AMDL option of implementing publicly accessible central registries of corporate beneficial owners.<sup>258</sup>

Beneficial ownership disclosure by itself is not the complete answer to tax evasion and lost revenues issues. Such disclosure is most effective when accompanied by well-drafted criminal tax laws, sustained enforcement, modern technology, and sustained political will.<sup>259</sup>

## VI. CONCLUSION

Tax evaders and others form and use various types of domestic and offshore legal shell entities to conceal their identities as beneficial owners of assets, funds, and the earnings therefrom. A beneficial owner is a natural person who controls and enjoys an asset, its benefits, or both. Shell entities often have no significant assets or ongoing business activity. The vulnerability of shell entities to tax evaders is amplified when they are privately rather than publicly owned. The extensive abuse of domestic and offshore shell entities to conceal and transfer assets and commit tax fraud make them an important aspect of the work of forensic accountants and tax law enforcement.

Trillions of dollars are located in secrecy jurisdictions around the globe.<sup>260</sup> The traditional stereotypes of financial secrecy and tax havens are mostly inaccurate. The locations that provide the most secrecy are Switzerland, the United States, Cayman Islands, Singapore, the United Kingdom, Germany, Hong Kong, and certain other nations—not small, tropical islands.<sup>261</sup>

White-collar criminals use various shell entities to commit tax evasion on a grand scale. Such criminals may choose from a list of different types of legal structures. These various structures include LLCs, shelf corporations, LLPs, FLPs, IBCs, asset protection trusts, private interest foundations, and company foundations. Each entity type has its own unique structure and legal characteristics. Nominees, nominee directors, and bearer shares are legal devices used in combination with shell entities to optimize evasion and concealment.

Three principal reasons explain the ability of tax evaders and others to continue to hide their identities as beneficial owners and operators. One reason is a legal framework in many jurisdictions that promotes lack of ownership transparency. Another reason is that those who abuse shell entities need the services of gatekeepers such as accountants, lawyers, and TCSPs. A third

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258. *Id.*

259. Radon & Achuthan, *supra* note 245.

260. *Financial Secrecy Index*, *supra* note 31.

261. *Id.*

reason is the layering or chaining of numerous shell entities in different jurisdictions that make it virtually impossible for forensic accountants and tax authorities to discern the real identity of beneficial owners.

Various global organizations, such as the FATF, OECD, and groups of countries, such as the G8 and G20, have started to cooperate in dealing with the issue of hidden entity beneficial ownership and exchange of tax-related information.<sup>262</sup> Improved information exchange is one of the means being used to combat concealed beneficial ownership and tax evasion.<sup>263</sup> The creation of ownership registries is another goal of G8, G20, the FATF, and the OECD that is starting to receive attention and some government action.<sup>264</sup> The use of ownership registries is complicated by numerous issues such as privacy infringement, placing excessive burdens on financial institutions, infringing on national sovereignty, bank secrecy, violation of contractual relationships, and others. Global efforts on improving tax-related information exchange and entity ownership transparency are moving ahead at a modest pace.

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262. See FATF, *supra* note 5, at 12; Reis, *supra* note 220, at 37; 2013 LOUGH ERNE G8 LEADERS' COMMUNIQUÉ, *supra* note 216, at 6–8.

263. VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 77.

264. Smyth & Parker, *supra* note 242; FATF, *supra* note 5, at 13; OECD, *supra* note 225, at 136–38.

## APPENDIX A

An Overview of Entity Vehicles in Selected Jurisdictions: Companies*								
Country	Information provided when registered (✓ = provided)	Is there a residency requirement?	Bearer shares permitted?	Corporate directors permitted?	Nominee directors permitted?	Foreign companies registered?	References	
Anguilla	Physical Address	No	No	Yes	Yes	Yes	Companies Act 2000, §§1, 5(1), 7, 28(5), 99, 188	
	Registered office							✓
	Registered agent							✓
	Managers/directors							✓
	Legal owners							
	Officers							
Antigua and Barbuda	Physical Address	Yes	No	No	Yes	Yes	Companies Act 1995, §§4, 29(2), 62(2), 69, 99, 176, 340	
	Registered office							✓
	Registered agent							
	Managers/directors							✓
	Legal owners							
	Officers							
The Bahamas	Physical Address	No	No (Warrants permitted)	Yes	Yes	Yes	Companies Act 1992, §§3, 6, 48, 118; Business Licenses Act 1980; International Business Companies Act 2000, §§181, 184, 185	
	Registered office							✓
	Registered agent							
	Managers/directors							
	Legal owners							
	Officers							
Belize	Physical Address	No	Immobilized (Warrants permitted)	Yes	Yes	Yes	Regulations of June 2001; Companies Act, §§5, 38, 251	
	Registered office							✓
	Registered agent							
	Managers/directors							✓
	Legal owners							
	Officers							

\* VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 220–31.

Bermuda	Physical Address						
	Registered office	✓					
	Registered agent						
	Managers/directors		60% local ownership, unless declared an Exempt Company	No	No	Yes	Yes
	Legal owners						
	Officers						
						Companies Act (CA) 1981, §§6, 53, 62(1-2), 91,(1-2), 98, 133; CA Amendment 2009, 3rd Schedule, Part I (§114)	
British Virgin Islands (BVI)	Physical Address						
	Registered office	✓					
	Registered agent	✓					
	Managers/directors		No	Immobilized	Yes	Yes	Yes
	Legal owners						
	Officers						
						Business Companies Act (BCA) 2004, §§5, 9; BCA Amendment 2005, §§2, 55, 67-77,132; International BCA 2000, §§185, 186	
Cayman Islands	Physical Address						
	Registered office	✓					
	Registered agent						
	Managers/directors		No	Immobilized	Yes	Yes	Yes
	Legal owners						
	Officers						
						Companies Law (CL) (2009 Revision), §§26, 163, 179, 229(1), 230	
Cook Islands	Physical Address						
	Registered office						
	Registered agent						
	Managers/directors	✓	No	Immobilized (Warrants permitted)	Yes	No	Yes
	Legal owners						
	Officers	✓					
						International Companies Act (ICA) 1981-82, §§13, 35(1), 36, 83, 91, 201, 226A; ICA Amendment 2003, No. 5, §35A	
Cyprus	Physical Address						
	Registered office	✓					
	Registered agent		To be resident, company must be managed in Cyprus (not just incorporated)	No (Warrants permitted)	Yes	Yes	Yes; however, requires permit of the Central Bank of Cyprus
	Managers/directors	✓					
	Legal owners						
	Officers	✓					
						Companies Law, Ch. 113, §§14, 75, 81, 102, 192, 197, 347; Cyprus Income Tax Law, No. N118 (I), 2002	

Czech Republic	Physical Address							
	Registered office							
	Registered agent							
	Managers/directors	✓						
	Legal owners	✓		Dematerialized (Warrants Permitted)	No	Yes	Yes	Commercial Code (Act No. 513/1991 Coll.), §§24, 28, 62, 156, 175, 184(5), 194(5,7), 217a
	Officers	✓	No		No	Yes	Yes	
Delaware, United States	Physical Address							
	Registered office	✓						
	Registered agent	✓						
	Managers/directors							
	Legal owners							
	Officers		No	No	No	Yes	Yes	Delaware Code, Title 8, Ch. 1, §§ 101, 132, 141(a), 145, 158, 371
Dubai, United Arab Emirates	Physical Address							
	Registered office	✓						
	Registered agent							
	Managers/directors	✓						
	Legal owners							
	Officers		No	No	No	Yes	Yes	Companies Law 2009, DIFC Law No. 2 of 2009, Art. 11, 38, 51, 115
Florida, United States	Physical Address	✓						
	Registered office	✓						
	Registered agent	✓						
	Managers/directors	✓						
	Legal owners							
	Officers	✓	No	No	No	Yes	Yes	Florida Business Corp. Act. §607 (203, 723, 802, 850, 1401, 1501, 1503); OECD Tax Co-operation 2009, "Towards a Level Playing Field," p.122
Gibraltar	Physical Address							
	Registered office	✓						
	Registered agent							
	Managers/directors	✓						
	Legal owners							
	Officers		No	No	Yes	Yes	Yes	Companies Ordinance, §§14, 15, 63, 136, 289

Guernsey	Physical Address						Companies (Guernsey) Law 2008 §§14, 15, 17, 75, 77(e), 132, 143; Bailiwick of Guernsey Law 2000	
	Registered office	✓						
	Registered agent	✓						
	Managers/directors	✓						
	Legal owners							
	Officers		No	No	Yes	Yes		Yes
Hong Kong SAR, China	Physical Address						Hong Kong Companies Ordinance, §§14, 73, 153(B), 154, 333	
	Registered office	✓						
	Registered agent							
	Managers/directors	✓						
	Legal owners	✓	Company secretary must be resident	No (Warrants permitted)	Yes	Yes		Yes
	Officers	✓						
Isle of Man (1)	Physical Address						Companies Act 1931, §§5, 12, 64, 312	
	Registered office	✓						
	Registered agent	✓						
	Managers/directors							
	Legal owners							
	Officers		No	No	Yes	Yes		Yes
Isle of Man (2) <i>New Manx Vehicle (NMV)</i>	Physical Address						Companies Act 2006, §§5, 2, 30, 74, 91, 112, 162	
	Registered office	✓						
	Registered agent	✓						
	Managers/directors							
	Legal owners				Yes (must be licensed)	Yes		Yes
	Officers		No	No				
Jersey	Physical Address						Companies (Jersey) Law 1991, Art. 3, 7, 42, 73, 77	
	Registered office	✓						
	Registered agent							
	Managers/directors							
	Legal owners				No (note that there are some limitations)			Information Unavailable
	Officers		No	No		Yes		

Liechtenstein	Physical Address		1 board member must be a citizen of an EEA state and have a permanent office in Liechtenstein	Yes (note that there are some limitations)	Yes	Yes	Information Unavailable	Personen- und Gesellschaftsrecht, Art. 180, 279, 291, 263; Ordinance of 11 Jan 2005 on Due Diligence Act, Art. 3; OECD Tax Co-operation 2009, "Towards a Level Playing Field," p. 214
	Registered office							
	Registered agent							
	Managers/directors	✓						
	Legal owners							
	Officers							
Luxembourg	Physical Address		No	Yes (AML rules require ID of beneficial owner)	Yes	Yes	Yes	Loi concernant les Sociétés Commerciales 27, (10 August 1915), Art. 11, 27, 51; OECD Tax Co-operation 2009, "Towards a Level Playing Field," p.221, fn.3
	Registered office	✓						
	Registered agent							
	Managers/directors	✓						
	Legal owners							
	Officers							
Mauritius	Physical Address		No	No	No	Yes	Yes	Companies Act 2001, §§23, 49, 88, 131, 133, 161, 276
	Registered office	✓						
	Registered agent							
	Managers/directors	✓						
	Legal owners	✓						
	Officers							
Netherlands Antilles	Physical Address	✓	One resident managing director	Yes (note that there are some limitations)	Yes	Yes	Information Unavailable	Netherlands Antilles Commercial Code, Art. 33-155; Civil Code, Art. 19; National Decree of Dec. 22, 2009, implementation of Art. 20 of the Trade Register Ordinance (2009 Trade Register Decree), Art. 15
	Registered office	✓						
	Registered agent	✓						
	Managers/directors	✓						
	Legal owners							
	Officers	✓						
Nevada, United States	Physical Address		No	No	No	Yes	Information Unavailable	Nevada Revised Statutes, §§78.030, 78.035, 78.235(1), 78.115, 77.310
	Registered office	✓						
	Registered agent	✓						
	Managers/directors	✓						
	Legal owners							
	Officers							

Nevis	Physical Address							
	Registered office	✓						
	Registered agent	✓						
	Managers/directors							
	Legal owners							
	Officers		No	Immobilized	Yes (Corporate directors must have individuals as directors)	Yes	Yes	Nevis Business Corporations Ordinance 1999, §25; Companies Act 1996 (No. 22 of 1996), §§4, 51, 72, 73, 195
Ontario, Canada	Physical Address							
	Registered office	✓						
	Registered agent							
	Managers/directors	✓						
	Legal owners							
	Officers		No	Dematerialized	No	Yes	Information Unavailable	Business Corporations Act, §§5, 14, 100, 118, 119, 136; Securities Transfer Act 2006
Panama	Physical Address							
	Registered office							
	Registered agent	✓						
	Managers/directors	✓						
	Legal owners							
	Officers		No	Yes (note that there are some limitations)	No	Yes	Yes	Commercial Code Decree-Law No. 32 of 1927, Decree-Law No. 5 of 1997, Articles 1, 2, 6, 28, 49, 90
Seychelles	Physical Address							
	Registered office	✓						
	Registered agent							
	Managers/directors							
	Legal owners							
	Officers		No	No	No	Yes	Yes	Companies Ordinance 1972, §§3, 10, 21, 100, 164, 310
Singapore	Physical Address	✓						
	Registered office	✓						
	Registered agent							
	Managers/directors	✓						
	Legal owners		At least one director must be ordinarily resident					
	Officers	✓		No	No	Yes	Yes	Companies Act, Ch. 50, §§19, 66, 126, 145, 171, 172, 367; Business Registration Act, Ch. 32 §6



South Africa (1) <i>Company</i>	Physical Address						
	Registered office	✓					
	Registered agent						
	Managers/directors	✓					
	Legal owners				Yes (note that there are some limitations)		
	Officers		No	No		Yes	Yes
St. Kitts	Physical Address						
	Registered office	✓					
	Registered agent						
	Managers/directors	✓					
	Legal owners				Yes (must have individuals as directors)		
	Officers	✓	No	Immobilized		Yes	Yes
St. Vincent and the Grenadines	Physical Address						
	Registered office	✓					
	Registered agent						
	Managers/directors	✓					
	Legal owners						
	Officers		No	No	Yes	Yes	Yes
Switzerland	Physical Address	✓	Directors may be foreigners residing abroad. Someone who can sign for the company (not necessarily a director) must be resident				
	Registered office						
	Registered agent	✓					
	Managers/directors						
	Legal owners						
	Officers						
Turks and Caicos	Physical Address	✓					
	Registered office	✓					
	Registered agent						
	Managers/directors						
	Legal owners						
	Officers		No	Immobilized	Yes	Yes	Yes

Companies Act 2008, §§14, 19, 23, 50, 51, 56, 66, 69, 78

Companies Act 1996 (No. 22 of 1996), §§4, 8, 51, 72, 73, 195

The Companies Act, No. 8 of 1994, §§4, 9, 29, 62, 69, 176, 340

Code of Obligations, Ordinanza sul registro di commercio del 17 ottobre 2007 (Stato 1° gennaio 2008), Art. 66-68; OECD Tax Co-operation 2009, "Towards a Level Playing Field," (2009), p. 221, fn. 3

Turks and Caicos, Companies Ordinance (CO) 1998, Ch. 122, §§4, 32, 208; CO (Amendment), 2001; Business Names Ordinance, (5); CO 1981 (as amended), (6)

United Kingdom	Physical Address							Companies Act 2006, Parts 2, 9, 12, 21 (783, 779), Part 10 (155, 232); OECD Tax Co-operation 2009, "Towards a Level Playing Field," (2009), p. 221, fn. 3
	Registered office	✓						
	Registered agent	✓						
	Managers/directors	✓			Yes (at least one director must be an individual)			
	Legal owners							
	Officers	✓	No	Yes		Yes	Information Unavailable	
Uruguay	Physical Address	✓						Ley N° 16.060 Sociedades Comerciales, art. 13; Ley N° 17.904, art. 13, 16; OECD Tax Co-operation 2009, "Towards a Level Playing Field," (2009), p. 221
	Registered office	✓						
	Registered agent							
	Managers/directors	✓						
	Legal owners				Information Unavailable	Information Unavailable	Information Unavailable	
	Officers	✓	No	Dematerialized	Unavailable	Unavailable	Unavailable	
Wyoming, United States	Physical Address							Wyoming Business Corporation Act, §17-16-201, -202, -625, -723, -802, -803, -851, -1801; §17-17-102
	Registered office	✓						
	Registered agent	✓						
	Managers/directors							
	Legal owners							
	Officers		No	No	No	Yes	Yes	

APPENDIX B

An Overview of Entity Vehicles in Selected Jurisdictions: Exempt International Business Companies*								
Country	Information provided when registered (✓ = provided)	Is there a residency requirement?	Local business permitted?	Bearer shares permitted?	Bearer share warrants permitted?	Corporate directors permitted?	Nominee directors permitted?	References
Anguilla	Physical Address							Custody of Bearer Shares Regulations, Revised Regulations of Anguilla: I20-3, §§2-3; International Business Companies Act 2000, §§7, 16(1)(a & g), 39, 56
	Registered office	✓						
	Registered agent	✓						
	Managers/directors							
	Legal owners							
	Officers		No	No	Immobilized	Yes	Yes	

\* VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 232–38.

Antigua and Barbuda	Physical Address	✓							International Business Corporations Act, §§5, 61, 97, 111(5), 130(2); Companies Act, §344; Corporate Management and Service Providers Act
	Registered office	✓							
	Registered agent	✓							
	Managers/directors	✓							
	Legal owners								
Officers		No	No	Dematerialized	Yes	Yes	Yes		
The Bahamas	Physical Address								International Business Companies Act 2000, §§4, 10, 13, 40, 58, 187; Business Licenses Act 1980
	Registered office	✓							
	Registered agent	✓							
	Managers/directors								
	Legal owners								
Officers		No	Must be licensed	No	Information Unavailable	Information Unavailable	Yes		
Belize	Physical Address								International Business Companies Act 1990, as amended in 2000, §§3, 9, 12, 47, 63; Regulations of June 2001
	Registered office	✓							
	Registered agent	✓							
	Managers/directors				Yes (must be kept with local trust and company service provider)				
	Legal owners								
Officers		No	Information Unavailable		Yes	Yes	Yes		
Bermuda	Physical Address								Companies Act 1981, §§129, 130
	Registered office	✓							
	Registered agent								
	Managers/directors		At least 2 directors, or secretary and director, or a secretary and a resident representative						
	Legal owners								
Officers			Must be licensed	Information Unavailable	Information Unavailable	Information Unavailable	Information Unavailable		
Cayman Islands	Physical Address								Companies Law (2009 Revision), §§26, 163, 179, 229(1), 230; Companies Law (2009 Revision)
	Registered office	✓							
	Registered agent								
	Managers/directors								
	Legal owners								
Officers		No	No	No	No	Yes	Yes		

Mauritius (2) Global business company category 1 (GBC1)	Physical Address							Financial Services Act 2007, as described in Circular Letter (CL201207) of 21 December 2007 entitled "New Conceptual Approach to Global Business"; Companies Act, §23	
	Registered office	✓							
	Registered agent								
	Managers/directors	✓							
	Legal owners	✓	At least two directors must be a resident individual; Shareholders must be nonresident	May conduct specified activities within Mauritius	Information Unavailable	Information Unavailable	Information Unavailable		Information Unavailable
	Officers								
Mauritius (3) Global business company category 2 (GBC2)	Physical Address							Financial Services Act 2007, as described in Circular Letter (CL201207) of 21 December 2007 entitled "New Conceptual Approach to Global Business"; Companies Act, §23	
	Registered office	✓							
	Registered agent	✓							
	Managers/directors	✓							
	Legal owners	✓	At least one director must be a resident; Shareholders must be nonresident	No	Information Unavailable	Information Unavailable	Information Unavailable		Information Unavailable
	Officers								
Nevis	Physical Address							Nevis Business Corporations Ordinance 1984, §§21, 31, 56, 123	
	Registered office								
	Registered agent	✓							
	Managers/directors								
	Legal owners								
	Officers		No	No	Immobilized	Yes	Yes		Yes
Seychelles	Physical Address							International Business Companies Act 1994, §§5, 12, 41, 56, 82	
	Registered office	✓							
	Registered agent	✓							
	Managers/directors								
	Legal owners								
	Officers		No	No	No	No	Yes		Yes

St. Kitts	Physical Address								
	Registered office	✓							
	Registered agent	✓							
	Managers/directors	✓							
	Legal owners								Companies Act 1996 (No. 22 of 1996), §§195, 206
Officers	✓	No	Information Unavailable	Information Unavailable	Information Unavailable	Information Unavailable	Information Unavailable		
St. Lucia	Physical Address								
	Registered office	✓							
	Registered agent	✓							
	Managers/directors								
	Legal owners								International Business Companies Act 1999, §§4, 7, 28, 42, 57
Officers		No	No	No	No	Yes	Yes		
St. Vincent and the Grenadines	Physical Address								
	Registered office	✓							
	Registered agent	✓							
	Managers/directors								
	Legal owners								International Business Companies (Amendment and Consolidation) Act 2007, §§4-7, 11, 14, 29, 30, 84
Officers		No	No	Immobilized	Yes	Yes	Yes		
Turks and Caicos	Physical Address	✓							
	Registered office	✓							
	Registered agent	✓							
	Managers/directors								
	Legal owners								Companies Ordinance (CO) 1998, Ch. 122. §§4, 32, 180, 192, 208; CO (Amendment) 2001; Business Names (Registration) Ordinance, §5
Officers		No	No	Immobilized	Information Unavailable	Information Unavailable	Information Unavailable		

## APPENDIX C

<b>An Overview of Entity Vehicles in Selected Jurisdictions: Limited Liability Companies*</b>						
Country	Information provided when registered (✓ = provided)	Is there a residency requirement?	Corporate members permitted?	Nominee members permitted?	References	
Anguilla	Physical Address	No	Yes	Information Unavailable	Limited Liability Company Act, §§11, 28	
	Registered office					✓
	Registered agent					✓
	Managers/directors					
	Legal owners					
	Officers					
Antigua and Barbuda	Physical Address	No	Yes	Yes	Antigua and Barbuda International Limited Liability Companies Act 2007, §§12, 17	
	Registered office					
	Registered agent					✓
	Managers/directors					
	Legal owners					
	Officers					
Cook Islands	Physical Address	No	No	Yes	Limited Liability Companies Act 2008, §§11, 12, 26	
	Registered office					✓
	Registered agent					✓
	Managers/directors					
	Legal owners					
	Officers					
Czech Republic	Physical Address	No	No	No, but one individual may not be a member of more than 3 LLCs	Commercial Code (Act. No. 513/1991 Coll.), §§24, 28, 62, 105	
	Registered office					
	Registered agent					
	Managers/directors					✓
	Legal owners					✓
	Officers					✓

\* VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 239–44.

Delaware, United States	Physical Address					Delaware Code, Title 6, Ch. 18, §§ 18-301, 18-902.; Certificate of formation must be filed with Secretary of State; foreign LLC must be registered; LLC Act, Ch.II, s. 18-201(a)(2)
	Registered office	✓				
	Registered agent	✓				
	Managers/directors					
	Legal owners					
	Officers		No	No	Yes	
Dubai, United Arab Emirates	Physical Address					Companies Law 2009, DIFC Law No. 2 of 2009, Art. 11
	Registered office	✓				
	Registered agent					
	Managers/directors	✓				
	Legal owners					
	Officers		No	No	Yes	
Florida, United States	Physical Address	✓				Florida Limited Liability Company Act, §§608.407(1), 608.409, 608.501
	Registered office	✓				
	Registered agent	✓				
	Managers/directors					
	Legal owners					
	Officers		No	Yes	Yes	
Isle of Man	Physical Address					Limited Liability Companies Act 1996, §§4-7
	Registered office	✓				
	Registered agent	✓				
	Managers/directors	✓				
	Legal owners	✓				
	Officers		No	Yes	Yes	
Luxembourg	Physical Address					Loi concernant les Sociétés Commerciales 27, (10 August 1915), §§11bis
	Registered office	✓				
	Registered agent					
	Managers/directors	✓				
	Legal owners					
	Officers		No	Information Unavailable	Information Unavailable	

Nevada, United States	Physical Address					
	Registered office	✓				
	Registered agent	✓				
	Managers/directors	✓				
	Legal owners					
	Officers		No	Yes	Yes	Nevada Revised Statutes, §§77, 86
Nevis	Physical Address					
	Registered office	✓				
	Registered agent	✓				
	Managers/directors					
	Legal owners					
	Officers		No	Yes	Yes	Nevis Limited Liability Company Ordinance 1995, §§21, 26, 37, 47, 83
Panama	Physical Address					
	Registered office					
	Registered agent	✓				
	Managers/directors	✓				
	Legal owners	✓				
	Officers	✓	No	Yes	Yes	Law No. 4 of 2009 (Replaced Law No. 24 of 1966), Art. 5, 38
St. Vincent and the Grenadines	Physical Address					
	Registered office	✓				
	Registered agent					
	Managers/directors	✓				
	Legal owners					
	Officers		No	Yes	Yes	Limited Liability Companies Act 2008, §§12, 34, 76
Switzerland	Physical Address	✓				
	Registered office	✓				
	Registered agent	✓				
	Managers/directors	✓				
	Legal owners	✓				
	Officers		Yes (note that there are some limitations)	Information Unavailable	Information Unavailable	Art. 814 Code of Obligations; Ordinanza sul registro di commercio del 17 ottobre 2007 (Stato 1° gennaio 2008), Art. 73



Turks and Caicos	Physical Address		No	Yes	Yes	Turks and Caicos, Companies Ordinance 1998
	Registered office	✓				
	Registered agent					
	Managers/directors					
	Legal owners					
	Officers					
Wyoming, United States	Physical Address		No	Yes	Yes	Wyoming Limited Liability Company Act, §§17-15-106; 17-15- 107
	Registered office					
	Registered agent	✓				
	Managers/directors	✓				
	Legal owners					
	Officers					

## APPENDIX D

An Overview of Entity Vehicles in Selected Jurisdictions: Trusts*					
Country	Entity registered?	Is there a residency requirement?	Flee clauses prohibited?	Settlor can be other parties in the trust?	References
Anguilla	Optional	Where beneficiary is resident, and no trustee is resident, beneficiary may apply for resident trustee to be appointed	No	Settlor may be the trustee, beneficiary, or protector	Trusts Act 2000, §§8, 66
The Bahamas	No	No	No	Settlor may be beneficiary, cotrustee, or protector	Trustee Act 1998, §§3, 94; Registration of Records Act, Ch. 187

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\* VAN DER DOES DE WILLEBOIS ET AL., *supra* note 8, at 252–59.

Belize	Optional	No	No	Settlor may be the trustee, beneficiary, or protector	Trusts Act 2000, §§ 4 (3-6), 9, 13, 20, 63
Bermuda	No	No	No	Settlor may retain certain rights and powers, trustee may be beneficiary	Trusts (Special Provisions) Act 1989, §§2, 12
British Virgin Islands (BVI) (2)	No	At least one trustee must be a BVI Trust and Company Service Provider	Not allowed following court order, criminal proceedings, or investigations	Settlor may be beneficiary, cotrustee, or protector	Trustee (Amendment) Act 2003, §11; BVI Trustee Act 1961, §§2, 81, 86
BVI (2) - Virgin Islands Special Trust (VISTA)	No	Trust deed must provide appointment of enforcer and at least one trustee must be a "designated person" (essentially a BVI licensed trustee)	No	No restrictions on settlor's role	Virgin Islands Special Trusts Act 2003
Cayman Islands	No	No	No	Settlor may be beneficiary, cotrustee, or protector	Trusts Law (2009 Revision), §§13, 14, 89; <i>Tasarruf Meduati Fonu v. Merrill Lynch Bank and Trust Company (Cayman) Ltd</i> of 9 Sept 2009, provided confirmation that "reserved powers" legislation is upheld in its home jurisdictions

Cyprus	No	Either the settlor or any of the beneficiaries is a Cypriot	Information Unavailable	Information Unavailable	Companies Law, Ch. 113, §112; Cyprus Trustees Law, Ch. 193
Delaware, United States (1) Common Law Trust	No	No	Information Unavailable	Settlor can create an irrevocable trust, where the settlor is a beneficiary, while retaining various interests in, and powers over, the trust	Delaware Code, Title 12, Ch. 35, §3556; Qualified Dispositions in Trust Act, 12 Del. C. §3570 et seq. (1997)
Delaware, United States (2) Statutory Trust	Certificate of Trust must be filed with Secretary of State	One trustee must be a resident of Delaware	No	Settlor may be beneficiary; any person may be manager of trust	Delaware Code, Title 12, Ch. 38, §§3801, 3802, 3806-7, 3807, 3852
Dubai, United Arab Emirates	No	No	No	No restrictions on settlor's role	DICF Trust Law of 2005, Articles 23, 24, 29, 68
Florida, United States	No	No	No	No restrictions on settlor's role	Florida Trust Code §§736.0401, 736.0409

Gibraltar	No, unless settlor wants to use special asset protection under bankruptcy ordinance	No	No	No restrictions on settlor's role	Registered Trust Act, §§3, 8; Trustee Act of Gibraltar; the Registered Trust Ordinance 1999
Guernsey	No	No	No	Settlor may revoke or amend the terms of a trust; give trustees directions in relation to investments or remove a trustee, beneficiary, or enforcer; settlor or trustee of a trust may also be a beneficiary	The Trusts (Guernsey) Law 2007, §§8, 15(1), 38
Hong Kong SAR, China	No, but any interest in land, which is in writing, must be registered with the Land Registry	No	No	No restrictions on settlor's role	Hong Kong Trustee Ordinance, Ch. 29; Recognition of Trusts Ordinance, Ch. 76
Isle of Man (1)	No	No	No	No restrictions on settlor's role	Recognition of Trusts Act 1988; In Re Heginbotham's Petition 1999
Isle of Man (2) <i>Purpose Trust</i>	No	Must use at least one Isle of Man trustee	No	Information Unavailable	Purpose Trusts Act 1996

Jersey	No	No	No	Settlors may maintain control and a beneficial interest in the trust	Trusts (Jersey) Law 1984, Articles 7, 9, 12
Liechtenstein (1) - Private Trust	Yes; if created for longer than 12 months must be registered in the Public Register	At least one trustee must be an European Economic Area (EEA) Member State Trust and Company Service Provider	No	Beneficiary may be trustee, but not if sole beneficiary; settlor may be beneficiary, but not if sole beneficiary	Law on Persons and Companies (PGR), LGBl 4/1/1926, Art. 897-932, 900, 902; Law on Trust Enterprises, LGBl 6/1928, PGR Art. 932a
Liechtenstein (2) - Trust Enterprise	Yes	One of the trustees must be a Liechtenstein Trust and Company Service Provider	No	Settlor may reserve rights in the trust instrument	Law on Persons and Companies (PGR), Art. 932a, §§1, 7, 49
Mauritius	No	Must have local Trust and Company Service Provider serving as a trustee; nonresident settlors and beneficiaries may apply for GBC1 and GBC2 license	No	Settlor may also be a trustee, a beneficiary, a protector, or an enforcer, but shall not be the sole beneficiary of a trust of which he/she is a settlor	Trusts Act 2001, §§4, 8, 19, 23, 27; Registration Duty Act, 1982 and the Transcription and Registration Act 1982
Nevada, United States	Business trusts must be filed with Secretary of State	No	No	Settlor may maintain power to amend trust	Nevada Revised Statutes, Ch. 88 (Business Trusts); Nevada Revised Statutes, §63.160

Nevis	All International Trusts and qualified foreign Trusts must be registered with the Registrar of International Trusts	No	No	Settlor may be the trustee, beneficiary, or protector	International Exempt Trust Ordinance 1994, §§9, 37, 47
Ontario, Canada	No	No	No	No restrictions on settlor's role	Trustee Act
Panama	No, only trusts holding property in Panama must be registered	Agent must be Panamanian lawyer	No	Settlor can be a beneficiary of the trust but cannot administer any of its assets; settlor cannot be the trustee	Law No. 1 of 1984
Seychelles	Must file a brief declaration by the licensed resident trustee with the Government Registry	Settlor may not be a Seychelles resident (under international trust)	No	Settlor may be the enforcer; can also be a beneficiary under the international trust (but not a sole beneficiary)	International Trust Act 1994, §§4, 13, 14, 17, 75, 76
Singapore (foreign trust)	No	Every settlor and beneficiary must be either (a) individuals who are neither citizens nor residents of Singapore or (b) foreign companies, including unit trusts beneficially owned wholly by such individuals or foreign companies	No	Trustee may delegate power to settlor (not to beneficiaries)	The Trustees (Amendment) Act 2004 and The Trust Companies Act 2005

South Africa	Yes	No	No	Information Unavailable	Trust Property Control Act 57 of 1988, §4
St. Kitts	Yes	One trustee must be resident	No	Settlor may retain control; settlor or beneficiary may be protector	Trusts Act 1996, §§4, 19, 25, 95
St. Lucia (International Trust)	No, but if registered must be by a local Trust and Company Service Provider	No	No	Settlor may retain control and be a beneficiary	International Trusts Act 1999, §§3, 7, 9, 19, 22
St. Vincent and the Grenadines (International Trust)	Optional	Neither the settlor nor any beneficiary may be resident	No	Settlor is permitted to retain substantive control or have "reserve powers" over the trust; settlor may be beneficiary or the sole beneficiary; settlor may not be trustee; settlor may be protector	The Companies Act, No. 8 of 1994, §186; The International Trust Act 1996, §§9, 12, 36, 52
Switzerland	Information Unavailable	Information Unavailable	Information Unavailable	Information Unavailable	Ratified the Hague Convention the international recognition of trusts; as financial intermediaries, trustees have the obligation to obtain an authorization from the Federal Money Laundering Control Authority or to be affiliated to a SRO (self-regulatory organization)



Turks and Caicos	No	No	No	No	The Trusts Ordinance 1998, Ch. 124, Paras. 3, 7, 9, 12
United Kingdom	Not registered unless charity	No	No	No	Trusts of Land and Appointment of Trustees Act 1996; Trustee Act 2000
Uruguay	If holding land, must be registered	No	No	Settlor can also be the beneficiary of the trust	Uruguayan Trust Law, §17.703
Wyoming, United States	No (only statutory trust must be registered)	Trustee may not be settlor and must be resident of Wyoming	No	Settlor retains power to add or remove trustees and to amend trust	Wyoming Uniform Trust Code, §§4-10-401, -403, - 103, -510, -602