AN ANALYSIS OF MONEY LAUNDERING, SHELL ENTITIES, AND NO OWNERSHIP TRANSPARENCY THAT WASHES OFF AND ON MANY SHORES: A BUILDING TIDAL WAVE OF POLICY RESPONSES

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I. INTRODUCTION

While waiting to board a flight to Colombia from New York, Martha Marino and co-defendant Margarita Ortiz falsely stated on a currency declaration form that they were not transporting more than $10,000 in cash.[1] However, after an inspection of Marino's luggage, it was discovered that $285,000 in currency was hidden in plastic toys and an additional $3,357 in her carry-on luggage.[2] An inspection of Ortiz's luggage revealed $235,000 in concealed currency and $665 in her wallet.[3] Defendant Marino argued her conduct in attempting to transport money without submitting required currency documentation was minor compared to the conduct of those who requested her to take the money out of the country.[4] She contended the other individuals were engaged in money laundering and probably in a narcotics distribution scheme.[5] Ultimately, the defendants pleaded guilty to conspiring to fail to file a currency

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[1] United States v. Marino, 29 F.3d 76, 77 (2d Cir. 1994).

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

report for transportation of funds in excess of $10,000.[6] This story is one example of how drug traffickers, terrorists, corrupt politicians, fraudsters, and other white-collar criminals commit money laundering and engage in illicit activities by availing themselves of the secrecy provided by domestic and offshore business structures known as "shell entities."

Money laundering is the process of taking money obtained from illicit activities and making it appear as "clean money." The money laundering process supports the legitimization of wealth by providing a shroud of apparent legal cleanliness.[7] Regardless of the crime, money laundering involves a three-step process: (1) placement—funds are introduced into a legitimate enterprise; (2) layering—the funds are layered or pyramided through various legal entities and transactions to obscure the original source; and (3) integration—the "clean funds" are introduced into the legitimate sector of the economy.[8]

Shell entities are common conduits used in the money laundering process. Privately owned shell entities tend to be more susceptible to money laundering because limited ownership restricts public exposure and facilitates the cloaking of beneficial ownership.[9] For this reason, privately owned shell entities have become the deception vehicle of choice for money launderers.[10] Shell entities typically include asset protection trusts, domestic and offshore limited liability companies (LLCs), limited liability partnerships (LLPs), trusts created by the Virgin Islands Special Trust Act (VISTA), Samoa International Special Trust Arrangement (SISTA) trusts, international business companies (IBCs), Anstalts, private interest foundations (PIFs), foundation company (FCs), and shelf corporations.[11] In 2011, a World Bank Study found seventy percent of the 213 large-scale corruption cases relied on the secrecy of shell entities to hide the identity of beneficial owners.[12]

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[6] *Id.*

[7] Nicholas Gilmour & Nick Ridley, *Everyday Vulnerabilities–Money Laundering Through Cash Intensive Businesses*, 18 J. MONEY LAUND. CONTROL 293, 293 (2015).

[8] Pancho Nagel & Christopher Wieman, *Money Laundering*, 52 AM. CRIM. L. REV. 1357, 1358 (2015); Friedrich Schneider & Ursula Windischbauer, *Money Laundering: Some Facts*, 26 EUR. J.L. & ECON. 387, 387 (2008).

[9] FINANCIAL CRIMES ENFORCEMENT NETWORK, U.S. DEP'T. TREASURY, THE ROLE OF DOMESTIC SHELL COMPANIES IN FINANCIAL CRIME AND MONEY LAUNDERING: LIMITED LIABILITY COMPANIES 4 (2006).

[10] 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/5F5U-FWFP].

[11] EMILE VAN DER DOES DE WILLEBOIS, EMILY M. HALTER, ROBERT A. HARRISON, JI WON PARK & J.C. SHARMAN, THE PUPPET MASTER: HOW THE CORRUPT USE LEGAL STRUCTURES TO HIDE STOLEN ASSETS AND WHAT TO DO ABOUT IT 34–35, 265–66 (2011); *see* discussion *infra* Sections IV; Ray Davern & Alex Way, *Notes from a Small Island: Some Observations on the New Cayman Islands Foundation Company*, 23 TRUSTS & TRUSTEES 916, 916–18 (2017).

[12] *Poverty, Corruption, and Anonymous Companies: How Hidden Company Ownership Fuels Corruption and Hinders the Fight Against Poverty*, GLOB. WITNESS (Mar. 2014), http://www.globalwitness.org/library/anonymous-companies-global-witness-briefing [https://perma.cc/ES97-T6JE].

Beneficial ownership of shell entities and their role in perpetrating money laundering is a serious global issue.[13] 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."[14] This definition includes "those persons who exercise ultimate effective control over a legal person or arrangement."[15] A beneficial owner is always a natural person; a legal person cannot be a beneficial owner.[16] Through the secrecy devices available in money laundering, the beneficial owner of the money laundering activity (i.e., drug trafficking, is the one who ultimately reaps its financial benefits).[17]

With the advent of electronic money transfer and alternative payment systems (i.e., non-financial system), proceeds from white-collar crime, drug trafficking, and other activities can be moved around the world.[18] Accountants, lawyers, and other professionals, including Trust Company Service Providers (TCSPs) called "gatekeepers," possess the expertise to create and manipulate the complex financial transactions that make them almost impossible to trace the origins (beneficial owners) of illicit funds.[19] Money laundering activities require constant entries and exits in the global financial system managed by specialists able to find fronts or shells to permit them to "circumvent national regulations and technical norms."[20]

While there is significant literature in the fields of law, accounting, and economics that focuses on mechanisms and organizations targeted at preventing money laundering,[21] greater analysis on the method by which shell entities facilitate money laundering is crucial. The extensive abuse of shell entities to commit money laundering make such legal structures an important aspect of the work of law enforcement, bankers, regulators, financial managers, and

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[13] Priya Ray & Peter Hardy, *Shell Company Update: Congress and FATF Target Beneficial Ownership*, MONEY LAUND. WATCH (Nov. 4, 2019), https://www.moneylaunderingnews.com/2019/11/shell-company-update-congress-and-fatf-target-beneficial-ownership [https://perma.cc?F8GY-NTD3].

[14] FIN. ACTION TASK FORCE, TRANSPARENCY AND BENEFICIAL OWNERSHIP 8 (Oct. 2014), http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf [https://perma.cc/3WMR-F5UE].

[15] *Id.*

[16] *Id.*

[17] Nicholas Clark, *The Impact of Recent Money Laundering Legislation on Financial Intermediaries*, 14 DICK. J. INT'L L. 467, 496 (1996).

[18] A. Mitchell, P. Sikka & H. Willmott, *Sweeping it Under the Carpet: The Role of Accountancy Firms in Money Laundering*, 23 ACCT., ORGS. & SOC'Y 589, 590 (1998).

[19] *Id.*; DE WILLEBOIS ET AL., *supra* note 11, at 265–66.

[20] Frédéric Compin, *The Role of Accounting in Money Laundering and Money Dirtying*, 19 CRITICAL PERSP. ON ACCT. 591, 593 (2008).

[21] *See Beneficial Ownership: Hearing on Fighting Illicit International Financial Networks through Transparency Before the S. Jud. Comm.*, 115th Cong. (2018) (statement of Sen. Chuck Grassley of Iowa, Chairman of the S. Jud. Comm.); Fabian Maximilian & Johannes Teichmann, *Real Estate Money Laundering in Austria, Germany, Liechtenstein, and Switzerland*, 21 J. MONEY LAUND. CONTROL 370, 371 (2018).

accountants. One purpose of this article is to examine the use and application of shell entities and lack of ownership transparency as they facilitate money laundering, obstruct investigations, and contribute to wealth inequality. Another purpose is to discuss the international public policy responses to the use of shell entities for illicit purposes and the lack of ownership transparency involving shell entities.

Part II of this article offers an overview of money laundering methods with examples. Part III highlights the significance of secrecy or concealment to money laundering activities and examines how shell entities are abused to achieve high levels of secrecy. Part IV analyzes the various types of legal structures that have been used as shell entities. Part V offers reasons why various privately held structures may be easily manipulated to operate as shell entities. Lack of transparency is covered throughout the article. Part VI outlines the policy responses that have been taken or attempted by various countries to curb the abuse of shell entities.

II. OVERVIEW OF MONEY LAUNDERING

Some estimates indicate money laundering is the world's third largest industry, surpassed only by oil and agriculture.[22] According to the International Monetary Fund (IMF), US$600 billion to $1.8 trillion is laundered annually, amounting to two to five percent of global gross domestic product.[23] The United Nations Office on Drugs and Crime (ONODC) offers two reasons why criminals rely on money laundering: "the money trail is evidence of their crime and the money itself is vulnerable to seizure and has to be protected."[24]

Often a fine line exists between legal money-spending transactions and illegal transactions undertaken to conceal illegal criminal activity. U.S. federal money laundering laws[25] do not criminalize spending money generated by illegal criminal activity.[26] Spending money through buying a good or service may not be a crime even though the purchaser knows the funds came from illegal activities.[27] To violate federal money laundering laws, direct or circumstantial evidence must exist indicating a transaction using illegal funds was intended "to conceal or disguise the nature, the location, the source, the ownership, or the

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[22] Nicholas Gilmour, *Blindingly Obvious and Frequently Exploitable*, 20 J. MONEY LAUND. CONTROL 105, 106 (2015).

[23] Jeffrey R. Boles, *Financial Sector Executives as Targets for Money Laundering Liability*, 52 AM. BUS. L.J. 365, 365–66 (2015).

[24] U.N. OFF. ON DRUGS AND CRIME, THE MONEY LAUNDERING CYCLE (2019), https://www.unodc.org/unodc/en/money-laundering/laundrycycle.html [https://perma.cc/PDX9-PM66] ("Seizure" refers to seizure by law enforcement and/or regulatory authorities).

[25] *See* 18 U.S.C.A. §§ 1956, 1957 (West, Westlaw through P.L. 116-158) ("Money Laundering Control Act").

[26] United States v. Dvorak, 617 F.3d 1017, 1022 (8th Cir. 2010); United States v. Law, 528 F.3d 888, 895–96 (D.C. Cir. 2008).

[27] Matthew R. Auten, Note and Comment, *Money Spending or Money Laundering: The Fine Line Between Legal and Illegal Financial Transactions*, 33 PACE L. REV. 1231, 1232 (2013).

control of the proceeds of specified unlawful activity"[28] or to "avoid a transaction reporting requirement."[29]

No definitive list of acts exists that are probative of an intent to conceal or disguise the nature of a transaction,[30] but courts focus or look for various red flags. Where there are "numerous transfers, multiple accounts, fictitious accounts, or the use of third-parties," courts often characterize the transaction or transactions as money laundering.[31] Moreover, one court noted that "all schemes to defraud people of money . . . include an element of money laundering."[32]

Various methods are noted in the literature to implement the three stages of money laundering: placement, layering, and integration.[33] Placement is often the riskiest and most difficult stage for money launderers to accomplish, since this is the point when they are most susceptible to detection by law enforcement.[34] Layering, the second stage, involves shifting funds across the financial system, typically through complex transactions, including wiring money to shell companies, to create confusion and make the funds untraceable.[35] The last stage, integration, involves reinsertion of "clean" funds into the legitimate sector of the economy, making the funds available to beneficial owner(s).[36]

Common techniques or methods used by money launderers include cash couriering, safe deposit boxes, cash intensive or front businesses, trade misinvoicing, shell entities, precious gems, gold, artwork, aircraft, watercraft,

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[28] 18 U.S.C.A. § 1956(a)(1)(B)(i).
[29] *Id.* § 1956(a)(1)(B)(ii).
[30] *See id.* § 1956(a)(1)(B)(i).
[31] United States v. Johnson, 440 F.3d 1286, 1293 (11th Cir. 2006).
[32] United States v. Shoff, 151 F.3d 889, 891 (8th Cir. 1998).
[33] United States v. Warshak, 631 F.3d 266, 317–19 (6th Cir. 2010); Stooksbury v. Ross, No. 3:09-CV-498, 2011 U.S. Dist. LEXIS 48552, at *34 (E.D. Tenn. Apr. 29, 2011); Schneider & Windischbauer, *supra* note 8, at 387. United States courts recognize two types of money laundering: 1) promotional money laundering—which is undertaken to promote illicit activity, and 2) concealment money laundering—which is done to conceal the origin of illicit funds. *Warshak*, 631 F.3d at 317–19. In this article, promotional and concealment money laundering is one and the same.
[34] George A. Lyden, *The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001: Congress Wears a Blindfold While Giving Money Laundering Legislation a Facelift*, 8 FORDHAM J. CORP. & FIN. L. 201, 207 (2003).
[35] Shima Baradaran, Michael Findley, Daniel Nielson & Jason Sharman, *Funding Terror*, 162 U. PA. L. REV. 477, 488 (2014); Lan Cao, *The Transnational and Sub-National in Global Crimes*, 22 BERKELEY J. INT'L L. 59, 68 (2004).
[36] FED. FIN. INSTS. EXAMINATION COUNCIL, BANK SECRECY ACT/ANTI-MONEY LAUNDERING EXAMINATION INFOBASE (Feb. 27, 2015), https://bsaaml.ffiec.gov/docs/manual/01_Introduction/01.pdf [https://perma.cc/AU5F-GNQN].

collectibles,[37] alternative payment techniques, and real estate transactions.[38] These common techniques and methods are discussed in greater detail in the following discussion.

A. Cash Couriers

With regard to cash couriers, money has been found in cars,[39] houses,[40] private charter flights,[41] plastic toys,[42] and toilets.[43] For instance, in *United States v. Leung*, the defendants, who participated in heroin transactions at a Taoist temple in Manhattan, leased six safe deposit boxes at the Hang Seng Bank.[44] The safe deposit boxes contained jewelry worth millions of dollars as well as records showing the existence of bank accounts.[45] In *Kiley v. United States*, three masked men held up a Berkshire Armored Car and stole $1.2 million in cash.[46] In *Kiley*, Bernard Kiley Sr. laundered $55,000 in twelve different bank accounts at five different banks in two states in the eight months after the heist.[47] Kiley's brother opened a safe deposit box within weeks after the robbery and $60,000 passed through the safe deposit box into accounts kept by Kiley's brother.[48] A portion of these funds were used to buy shares in a mutual fund, also in the brother's name.[49]

B. Cash Front Businesses

Cash intensive front businesses offer many opportunities for money

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[37] *See* Peter Alldridge, *Money Laundering and Globalization*, 35 J. L. & SOC. 437, 442 (2008); Fabian M.J. Teichmann, *Twelve Methods of Money Laundering*, 20 J. MONEY LAUND. CONTROL 130, 132–36 (2017); Thor Olavsrud, *How Big Data Analytics Can Help Track Money Laundering*, CIO (Sept. 23, 2020, 6:33 AM), https://www.cio.com/article/2871684/how-big-data-analytics-can-help-track-money-laundering.html [https://perma.cc/3DQS-P8QW]; Nicholas Gilmour, *Blindingly Obvious and Frequently Exploitable*, 20 J. MONEY LAUND. CONTROL 105, 108–12 (2017).

[38] Teichmann, *supra* note 37, at 132–36; Jeff Andrews, *Why Financial Criminals Use Real Estate to Launder Money*, CURBED (Sept. 23, 2020, 3:36 PM), https://www.curbed.com/2018/8/10/17674584/money-laundering-real-estate-paul-manafort-trial [https://perma.cc/52C6-235N].

[39] United States v. $99,990, 69 F. App'x 757, 761 (6th Cir. 2003) (during a drug search, law enforcement discovered $99,990 in the trunk of a car).

[40] United States v. Cano, 289 F.3d 1354, 1358 (11th Cir. 2002) (Defendant maintained two houses near New York City: a "money house" where all cash was stored, and a "stash" house where cocaine was kept).

[41] United States v. Wolny, 133 F.3d 758, 761 (10th Cir. 1998) (Defendant flew from New York to Salt Lake City to obtain $1 million in cash to be laundered through an Anguillan trust with the monies kept at Kingston Securities in NYC).

[42] United States v. Marino, 29 F.3d 76, 77 (2d Cir. 1994).

[43] United States v. $122,000, 198 F. Supp. 2d 106, 107 (D.P.R. 2002) (FBI agents found $20,000 in drug proceeds hidden in the defendant's girlfriend's toilet tank in the bathroom).

[44] United States v. Leung, 40 F.3d 577, 580 (2d Cir. 1994).

[45] *Id.* at 580–81.

[46] Kiley v. United States, 260 F. Supp. 2d 248, 251 (D. Mass. 2003).

[47] *Id.* at 271–72.

[48] *Id.* at 272.

[49] *Id.* (Donald served as a nominee for his brother Bernard).

laundering. Some front businesses have a dearth of legitimate business activity, existing merely to provide cover for money laundering.[50] Based on cases brought in United States federal courts, examples of entities where money laundering has allegedly occurred include nightclubs,[51] office supply businesses,[52] churches,[53] trucking companies,[54] taxicab firms,[55] restaurants,[56] jewelry stores,[57] medical clinics,[58] and nail salons.[59]

C. Trade Misinvoicing

Trade misinvoicing is a popular form of money laundering. Trade misinvoicing is "a form of trade fraud where someone misrepresents the value or amount of a good they're importing or exporting. This allows them to evade taxes and gain subsidies, as well as take 'dirty money' made in illicit ways and reintegrate it into the formal finance world."[60] Developing nations lose about $1 trillion per year in illicit financial flows (IFFs) and some countries have an IFFs/GDP ratio above 10 percent.[61] Banks often provide the bridge between buyers and sellers in these transactions requiring misrepresentation of trade documentation since the buyer will not pay initially for all goods until inspected at the destination point.[62] Shell companies contribute to this loss because they

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[50] Gilmour & Ridley, *supra* note 7, at 295.

[51] United States v. Tokars, 839 F. Supp. 1578, 1580 (N.D. Ga. 1993) (Attorney Frederic Tokars was a lawyer for a criminal organization that sold cocaine and laundered the money from drug sales through night clubs and other businesses).

[52] United States v. Swank Corp., 797 F. Supp. 497, 498–99 (E.D. Va. 1992) (Defendant Donald Swank formed an office supplies business (Swank Corporation) whose corporate accounts were allegedly used to launder almost $5 million).

[53] United States v. Bucey, 876 F.2d 1297, 1299–1300 (7th Cir. 1989) (Bucey established a tax-exempt organization named the "Hugenot National Church" through which funds derived from narcotics trafficking and other illegal activities were funneled).

[54] United States v. Lucena-Rivera, 758 F.3d 435, 436 (1st Cir. 2014) (Lucena-Rivera was engaged in a sophisticated money laundering scheme including the use of a trucking firm as a cover).

[55] United States v. Cambara, 902 F.2d 144, 145–47 (1st Cir. 1990) (Matty Cab, Inc. was a taxicab firm owned by two brothers which was used to launder money from narcotics sales).

[56] United States v. Pizano, 421 F.3d 707, 715–18 (8th Cir. 2005) (Jessica and Fernando Cruz, using the name Pizano, opened the Caliente Restaurant in Iowa through which money was laundered).

[57] United States v. Gray, 292 F. Supp. 2d 71, 81 (D.D.C. 2003) (Defendants Gran and Nunn laundered drug money through a Bethesda, Maryland jewelry store).

[58] United States v. Mendez, 420 F. App'x 933, 934–35 (11th Cir. 2011) (Efren Mendez and his company, Research Center of Florida, Inc., received almost $11 million for fraudulent Medicare claims and their Research Center made kickback payments to shell entities).

[59] United States v. Lampkin, No. 3:15-cr-00005-SLG-KFM, 2016 U.S. Dist. LEXIS 141722, at *3 (D. Alaska Oct. 5, 2016) (Toa Dahn Ly, owner of a nail salon, used the business to launder funds from illegal drug sales).

[60] Drake Baer, *Shell Companies Hide About $1 Trillion Taken from Poor Countries Every Year*, BUS. INSIDER (Apr. 4, 2016, 1:40 PM), http://www.businessinsider.com/shell-companies-hide-developing-world-moneyl-2016-4 [https://perma.cc/3ECA-NLDA].

[61] Tom Cardamone, *Illicit in the Poorest of Places*, GLOB. FIN. INTEGRITY (2015), http://gfintegrity.org/illicit-flows-in-the-poorest-of-places [https://perma.cc/GNG9-RGZ3].

[62] Mohammed Ahmad Naheem, *Risk of Money Laundering in the US: HSBC Case Study*, 19 J. MONEY LAUND. CONTROL 225, 226 (2016).

are "often used to hide money that is illicitly taken out of developing countries."[63]

D. Shell Entities

Money launderers use shell entities and wire transfers to accomplish their illicit transactions. In *FBME Bank v. Lew*, a Tanzanian-chartered bank, operated mostly in Cyprus, filed a lawsuit against the United States Treasury Department because the Financial Crimes Enforcement Network (FinCEN) issued a special rule imposing a measure against the bank that prohibited American financial institutions from keeping correspondent accounts with FBME due to money laundering concerns.[64] FinCEN made a finding that reasonable grounds existed to believe FBME had facilitated a high volume of money laundering over the years.[65] In *FMBE Bank*, the court quoted a FinCEN investigation that found:

> - "The head of an international narcotics trafficking and money laundering network has used shell companies' accounts at FBME to engage in financial activity."
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> . . .
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> - "An FBME account holder operating as a shell company was the intended beneficiary of over $600,000 in wire transfers generated from a fraud scheme, the majority of which came from a victim in California."
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> . . .
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> - "FBME conducted at least $387 million in wire transfers through the U.S. financial system that exhibited indicators of high-risk money laundering typologies, including widespread shell company activity, short-term 'surge' wire activity, structuring, and high-risk business customers."
> - "FBME was involved in at least 4,500 suspicious wire transfers through U.S. correspondent accounts that totaled at least $875 million between November 2006 and March 2013."[66]

In 2012, the United States Senate Permanent Subcommittee on Investigation declared that global bank HSBC and its United States affiliate, HSBC Bank USA, exposed the national financial system to financial risk due to its poor money laundering controls by removing identifying information from wire transfer documentation and its relationship with over 2,000 high risk shell entities.[67]

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[63] Baer, *supra* note 60.
[64] FBME Bank v. Lew, 125 F. Supp. 3d 109, 113 (D.D.C. 2015).
[65] *Id.* at 115.
[66] *Id.* at 115–16 (quoting a FinCEN investigation, see 79 Fed. Reg. 42639 (July 22, 2014).
[67] *HSBC Exposed U.S. Financial System to Money Laundering, Drug, Terrorist Financing Risks*,

E. Precious Items

Funds may be laundered through the acquisition or sale of precious metals and gems, artwork, antiques, and collectibles. In *United States v. Cristea*, the federal government alleged Christopher Cristea and David Tolle conspired to commit money laundering by using Charis Minerals, Inc., to buy and resell gold and other precious metals mined in Western Africa.[68] The two defendants also defrauded investors who invested money with them.[69] In *United States v. Podlucky*, Karla and Greg Podlucky with their son, Jesse, implemented a scheme to falsely inflate the reported revenues of their company, LeNature, Inc. (LNI); thus, bilking LNI's investors and creditors of more than $628 million.[70] From 2000 to 2006, Greg and Karla spent lavishly, flying by private jet, building a 25,000 square foot mansion, and spending more than $33 million on jewelry.[71] After LNI was forced into bankruptcy, the custodian or trustee found a secret room at LNI's headquarters which contained safes holding jewelry purchased with LNI funds.[72] In early 2007, the Podluckys attempted to rid themselves of more than 23 pounds of jewelry by sending it to a cash-for-jewelry firm.[73] Proceeds from the sale of jewelry were also placed in various trusts.[74] Karla and Jesse were sentenced to 51 and 108 months in prison, respectively.[75]

F. Artwork

Money laundering has become more widespread in the art world over the last forty years. Artwork's portability, high value, and unregulated pricing make it an attractive means to launder money,[76] which is due, in large part, to the art market's opaqueness or lack of transparency.[77] Also, the lack of financial recordkeeping practices opens the door to falsification of provenance of art work and financial data.[78] Money laundering in the art market is accomplished using

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AMLABC (July 17, 2012), http://amlabc.com/aml-category/aml-news/hsbc-exposed-u-s-financial-system-to-money-laundering-drug-terrorist-financing-risks/ [https://perma.cc/3ZK9-9HT2]; *HSBC Exposed U.S. Financial System to Money Laundering, Drug, Terrorist Financing Risk*, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, HOMELAND SEC. & GOVERNMENTAL AFF. (July 16, 2020), https://www.hsgac.senate.gov/subcommittees/investigations/media/hsbc-exposed-us-finacial-system-to-money-laundering-drug-terrorist-financing-risks [https://perma.cc/8DE3-AEK8].

[68] United States v. Cristea, No. S1 4:14 CR 311 CEJ / DDN, 2015 WL 10713688, at *1 (E.D. Mo. Dec. 14, 2015).

[69] *Id.*

[70] United States v. Podlucky, No. 12-2469, 12-2535, 567 F. App'x 139, 140–41 (3d Cir. May 27, 2014).

[71] *Id.* at 141.

[72] *Id.*

[73] *Id.* at 141–42.

[74] *Id.* at 142.

[75] *Id.* at 144.

[76] Allyson Shea, *Shooting Fish in a Bliss Bucket: Targeting Money Launderers in the Art Market*, 41 COLUM. J.L. & ARTS 665, 667 (2018).

[77] *Id.* at 671.

[78] *Id.* at 671–72.

a variety of techniques.

One straightforward method of using art to launder money is all-cash payments.[79] Individuals who launder money through art can make purchases in cash offshore, import the art into their home country, and then sell it through accepted channels.[80] A second method to launder money through art is to create a series of consecutive sales and purchases of the same piece of art.[81] A third money laundering method involving art is the falsification of sales and loan records.[82] In *Absolute Activist Value Master Fund Ltd. v. Devine*, Florian Homm, as chief investment officer for several Cayman Island hedge funds, used artwork as a money laundering vehicle to perpetrate a massive penny stock market manipulation scheme.[83] Homm's scheme moved proceeds through a network of global bank accounts—shell entities formed in various countries—to purchase hard-to-trace gold, fine art, and other assets.[84] Between May 18 and 23, 2006, Homm's spouse, Susan Devine, created an inventory of art and furniture with a value in excess of €2.2 million.[85] The inventory list was emailed to a co-conspirator who sent back a fraudulent loan agreement, backdated by two years, and executed on behalf of New York Art Trading, a shell entity.[86] In September 2007, Devine moved the art and furniture from Spain to Switzerland for safekeeping.[87] In 2008, the art and furniture were returned to Spain.[88]

Finally, a fourth method involving stolen art is black market transactions.[89] Money launders may obtain stolen art using illicit funds and then can sell the art through legitimate art dealers.[90] In the United Kingdom, Alan Yeomans was

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[79] Shea, *supra* note 76, at 674.
[80] *Id.*
[81] *Id.*
[82] *Id.* at 675.
[83] Absolute Activist Value Master Fund Ltd. v. Devine, No. 2:15-cv-328-FtM-29DNF, 2015 U.S. Dist. LEXIS 192006, at *3–4 (M.D. Fla. July 1, 2015).
[84] *Id.*
[85] *Id.* at *31. At today's exchange rate, this amounts to 2.4–2.5 million dollars.
[86] *Id.*
[87] *Id.* at *31–32. Switzerland is the leading global location for the storage of art, furniture, collectibles, cars and other valuable objects. The storage facilities are known as "freeports." Freeports are bubbles within a given country or jurisdiction designed to decrease trade barriers by reducing the number of transactions at which a customs duty or tax may be payable. Nicholas O'Donnell, *Domestic Freeports Come to the U.S.*, PRIVATE ART INVESTOR (Oct. 29, 2015), https://privateartinvestor.com/owning-art/domestic-freeports-come-to-the-us/ [https://perma.cc/NQT4-38K9]; David Segal, *Swiss Freeports Are Home for a Growing Treasury of Art*, N.Y. TIMES (July 21, 2012), https://www.nytimes.com/2012/07/22/business/swiss-freeports-are-home-for-a-growing-treasury-of-art.html [https://perma.cc/37TW-NCPQ]. Freeports not only defer customs duties and taxes until goods leave the warehouse but owners pay no value-added taxes on goods sold within warehouses. The tax advantages of freeports have turned them into long-term holding zones. Katie L. Steiner, Note, *Dealing with Laundering in the Swiss Art Market: New Legislation And Its Threat to Honest Traders*, 49 CASE W. RES. J. INT'L L. 351, 356 (2017).
[88] *Devine*, 2015 U.S. Dist. LEXIS 192006, at *32.
[89] Shea, *supra* note 76, at 675.
[90] *Id.*

sentenced to over six years in prison for money laundering and other offenses.[91] In 2002, Yeomans built a barn hidden in his mother's garden in which he stored valuable art and antiques and produced marijuana.[92] Yeomans ran three companies as a front to launder £2.2 million from drug dealing.[93]

G. Alternative Payment Techniques

Money may also be laundered through alternative payment systems. Such remittance techniques operate outside of, or parallel to, traditional banking or financial systems. Two examples of alternative payment systems used for money laundering are hawala(s) and cryptocurrencies.

1. Hawalas

Hawalas involve a centuries-old system of moving funds internationally without crossing borders.[94] The system originally developed in Chinese and southeast Asian civilizations.[95] Persons wishing to send funds to another country, for example, would deposit money with a hawaladar or an agent.[96] For a fee, the hawaladar will arrange for funds to be available in a given nation through a hawaladar in that country.[97] The recipient receives a code from the transmitter to obtain the funds.[98] The code originates with the transmitting hawaladar and is also provided to the receiving hawaladar.[99] The two hawaladars settle accounts through normal trading practices or by couriering diamonds, precious gems, or gold across borders.[100] The hawala system is an alternative payment system based on trust,[101] but is vulnerable to money laundering and terrorist financing because the system does not create or leave an international money trail.[102]

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[91] Cristina Criddle, *Bankrupt Built £1.2M Hideaway for Art Works and Making Drugs*, DAILY TELEGRAM, July 23, 2016, at 11.
[92] *Id.*
[93] *Id.* At today's exchange rates, this is equivalent to 2.4–2.5 million dollars.
[94] Angela S.M. Irwin & George Milad, *The Use of Crypto-Currencies in Funding Violent Jihad*, 19 J.

MONEY LAUND. CONTROL 407, 408 (2016).
[95] Rachana Pathak, Note, *The Obstacles to Regulating the Hawala A Cultural Norm or a Terrorist Hotbed?*, 27 FORDHAM INT'L L.J. 2007, 2009–10 (2004).
[96] Samuel M. Maimbo, *The Money Exchange Dealers of Kabul:A Study of the Hawala System in Afghanistan* 2 (World Bank, Working Paper No. 13, 2003).
[97] Craig S. Smith, *For Afghans, the Bank Is Often a Bag of Cash*, N.Y. TIMES (Mar. 10, 2002), https://www.nytimes.com/2002/03/10/business/the-business-world-for-afghans-the-bank-is-often-a-bag-of-cash.html [https://perma.cc/XB43-T7ZX].
[98] Maimbo, *supra* note 96, at 8.
[99] *Id.* at 7.
[100] John F. Wilson, IMF, *Hawala and Other Informal Payments Systems: An Economic Perspective*, Seminar on Current Developments in Monetary and Financial Law 8 (May 16, 2002).
[101] Pathak, *supra* note 95, at 2017.
[102] Irwin & Milad, *supra* note 94, at 408.

2. Cryptocurrency

Cryptocurrencies are a more modern alternative payment system.[103] A cryptocurrency is a means of exchange which uses the principles of cryptography to secure transactions and control the creation of new ones.[104] It is based on an algorithm which features a decentralized peer-to-peer transaction system. Each cryptocurrency address has a unique fingerprint and a "signature" consisting of a unique public key that enables users to transfer funds anonymously, without any identifying information being published.[105] Users have signing authority over accounts instead of personalized accounts, by holding public keys instead of units of currency.[106] Users are required to possess the signature of their account, which is held within virtual wallets.[107] Once signatures are used in a transaction, public keys are published in a public ledger, often referred to as a "blockchain," to create a custody record that precludes double-spending and fraud.[108]

Beneficial owners often need to convert cryptocurrencies to a fiat currency in order to spend their funds.[109] This creates a trail for law enforcement officers and forensic accountants. Various parties, however, are developing tools to enhance the privacy offered by cryptocurrencies.[110] Altcoins are one variety of cryptocurrencies with enhanced privacy and are substitutes for Bitcoin. Some altcoins, such as Zcash, Dash, and Monero, have privacy features that make it more difficult to track payment.[111]

Despite the anonymity provided by cryptocurrencies, prior studies indicate that they are susceptible to privacy attacks as the public availability of geographic network data and transaction histories allow for social ties to be

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[103] The number of cryptocurrencies continues to grow, and each has its own market value. Currently, there are more than 5,100 cryptocurrencies worth more than 250 billion dollars by 2020, with Bitcoin being the leading currency with the highest market value. Aytaj Novruzlu, *Why Cryptocurrencies Scare Banks and Governments?*, 2–4 ECON. & SOC. DEV.: BOOK OF PROCEEDINGS 102, 102–06 (2020).

[104] A cryptocurrency transaction includes about five entities: 1) a party who initiates a transaction on a network (often with dirty funds); 2) a receiver, often a professional money launderer, who cloaks the source of the monies; 3) cryptocurrency participants who act as transaction verifiers and processors; 4) those who keep the cryptocurrency codebase current; and 5) cryptocurrency exchanges, which convert cryptocurrencies to fiat currencies. Danton Bryans, Note, *Bitcoin and Money Laundering: Mining for an Effective Solution*, 89 IND. L.J. 441, 447 (2014).

[105] Shayan Eskandari, David Barrera, Elizabeth Stobert & Jeremy Clark, *A First Look at the Usability of Bitcoin Key Management*, WORKSHOP ON USABLE SEC. 2 (2015).

[106] *Id.*

[107] Perri Reynolds & Angela S.M. Irwin, *Tracking Digital Footprints: Anonymity Within the Bitcoin System*, 20 J. MONEY LAUND. CONTROL 172, 175 (2017).

[108] *Id.*

[109] Daniel Nyairo, *How to Cash Out Cryptocurrencies to Fiat*, CHAINBITS (Apr. 7, 2018), https://www.chainbits.com/cryptocurrencies/how-to-cash-out-cryptocurrencies-to-fiat/ [https://perma.cc/LZ6Y-WEMG].

[110] *Id.*

[111] *Id.*

inferred between users.[112] The Onion Router (TOR) browser use makes it difficult but not impossible for law enforcement to track money laundering transactions.[113] One important step for those tracking and identifying money launderers using cryptocurrencies is the advent of a global regulation that complies with anti-money laundering (AML) rules.[114] In June 2019, the FATF presented AML Recommendations 15 and 16 that require countries to identify and manage money laundering risks in the context of virtual currencies (VC) and VC service providers.[115]

H. Real Estate

Another frequent technique used to launder funds is through the purchase of real estate. The real estate market is susceptible to money laundering because raw land, residential, and income property purchases involve large sums of money and are lightly regulated.[116] One method used in real estate acquisitions is to conceal the beneficial owner so that direct money transfers cannot be traced to the money launderers.[117]

Money launderers' real estate acquisitions have caught the attention of regulatory authorities. For example, in late 2017, FinCEN announced the utilization of a geographic targeting order (GTO) directed at scrutinizing purchases of expensive real estate for money laundering purposes. The geographic areas included Los Angeles, San Francisco, Miami, New York City, San Diego, San Antonio, and Honolulu.[118] Because the United States is not the only nation where real estate is a money laundering vehicle, other nations have taken measures to prevent laundering money through real estate.[119] For example, the United Kingdom's government in 2015 promised to create a public register

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[112] David Crandall, Lars Backstrom, Dan Cosley, Siddharth Suri, Daniel Huttenlocher & Jon Kleinberg, *Inferring Social Ties from Geographic Inferences*, 107 PROCEEDINGS NAT'L ACAD. OF SCIS. 52, 22439 (2010).

[113] Nikita Malik, *How Criminals and Terrorists Use Cryptocurrency: And How to Stop It*, FORBES (Aug. 31, 2018), https://www.forbes.com/sites/nikitamalik/2018/08/31/how-criminals-and-terrorists-use-cryptocurrency-and-how-to-stop-it/#284a4e723990 [https://perma.cc/TJ7LR6C7] (explaining how Bitcoin users use The Onion Router (TOR) browser "for increased security and anonymity").

[114] Reynolds & Irwin, *supra* note 107, at 187.

[115] FIN. ACTION TASK FORCE, GUIDANCE FOR A RISK-BASED APPROACH TO VIRTUAL ASSETS AND VIRTUAL ASSET SERVICE PROVIDERS 28–29 (2019).

[116] Jeff Andrews, *Why Financial Criminals Use Real Estate to Launder Money*, CURBED (Aug. 10, 2018), https://www.curbed.com/2018/8/10/17674584/money-laundering-real-estate-paul-manafort-trial [https://perma.cc/8DLK-QP6D].

[117] *See* AUSTRALIAN TRANSACTION AND ANALYSIS CENTRE, TYPOLOGIES AND CASE STUDIES REPORT 66 (2014).

[118] Press Release, Global Witness, U.S. Treasury Extends Order to Tackle Abuse of High-End Real Estate by Money Launderers in Seven Hotspot Markets (Aug. 23, 2017).

[119] Sam Leon & Naomi Hirst, *Two Years On, We're Still in the Dark About the UK's 86,000 Anonymously Owned Homes*, GLOB. WITNESS (Dec. 7, 2017), https://www.globalwitness.org/en/blog/two-years-still-dark-about-86000-anonymously-owned-UK-homes [https://perma.cc/NGK8-QWHN].

naming the beneficial owners of all overseas United Kingdom real estate owners in a bid to prevent laundered money from coming into the country through shell entities.[120] In late 2017, the total number of real estate properties owned by offshore shell entities was approximately 86,000—virtually unchanged from 2015—and involved high-end real estate.[121]

III. SIGNIFICANCE OF SECRECY

Tracing illicit assets to a shell entity is not worthwhile if the beneficial owners cannot be identified.[122] Obscuring beneficial ownership using shell entities hinders law enforcement officials and forensic accountants from tracing laundered funds.[123] Money launderers are drawn to jurisdictions with restrictive financial secrecy laws and practices. The Tax Justice Network (TJN) compiles a Financial Secrecy Index (FSI) that reflects how the legal, judicial, and regulatory schemes of various jurisdictions contribute to an environment of secrecy and anonymity. The FSI is a global ranking system, which assesses nations on their financial secrecy.[124]

The FSI reveals the traditional stereotypes of financial secrecy are inaccurate. The world's most significant purveyors of financial secrecy are Cayman Islands, the United States, Switzerland, Hong Kong, Singapore, Luxembourg, Japan, Netherlands, and the British Virgin Islands.[125] These jurisdictions, for the most part, are not small, palm-fringed islands. Not only does the United States system of shell entities and varying state business incorporation laws promote money laundering and other crimes, it also attracts some of the world's most dangerous criminals to establish shell entities on U.S. soil.[126]

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[120] *Id.*

[121] *Id.*

[122] *See* Anonymous, *Tax Haven Or . . . Tax Hell?*, INT'L TAX REV. (2016).

[123] 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, 1053 (2009). A huge leak of documents from the Panamanian law firm Mossak Fonseca, known as the "Panama Papers," illuminated the extent of the vast world of shell entities, yielding an unusual view of how money launderers move and conceal their funds. When drug traffickers, money launderers, or fraudsters control companies, they undermine national security, and the trail of dark money flowing through them strips national treasuries everywhere of tax revenues. Kevin G. Hall & Marisa Taylor, *Massive Leak Exposes How the Wealthy and Powerful Hide Their Money*, MCCLATCHY DC (Apr. 3, 2016), https://www.mcclatchydc.com/news/nation-world/national/article69994502.html (last visited Sept. 1, 2020).

[124] *Financial Secrecy Index - 2020 Results*, TAX JUST. NETWORK (2020), https://fsi.taxjustice.net/en/introduction/fsi-results [https://perma.cc/6XXX-WYY8].

[125] *Id.*; Lynnley Browning, Laura Davison, Kaustuv Basu & Robert Lee, *Hill Briefs: U.S. Second Largest Tax Haven*, BNA DAILY TAX REP. (2018).

[126] Adam Szubin, *A Dangerous Shell Game*, THE HILL (July 11, 2016), https://thehill.com/opinion/op-ed/287291-a-dangerous-shell-game [https://perma.cc/E6QS-DYBX].

IV. LEGAL BUSINESS STRUCTURES EMPLOYED TO ACHIEVE SECRECY

Because secrecy is essential to moving funds around the globe without detection, creating autonomous entities legitimately used for business, tax, or estate planning purposes is invaluable for money launderers. Depending on the circumstances, a money launderer is likely to choose one of those entities to make it difficult, if not impossible, for forensic accountants, auditors, and law enforcement to unravel his or her illegal scheme. In this section of the article, various types of domestic and offshore entities are analyzed.

A. High Profile Corporate Subsidiaries

High profile, otherwise reputable multi-national corporations, are not immune from the temptation of money laundering and bribery in pursuit of huge irresistible economic gain. One example of an unsuccessful scheme in 2014 involved a foreign subsidiary of Hewlett-Packard attempting to secure a lucrative technology contract with the Office of the Prosecutor General of the Russian Federation.[127] In violation of the Foreign Corrupt Practices Act (FCPA),[128] ZAO Hewlett-Packard A.O. (HP Russia) laundered money through an intricate web of shell companies and bank accounts to create a multimillion-dollar secret slush fund it used to bribe Russian government officials.[129] Two sets of books and anonymous email accounts were used to track bribery recipients, and prepaid mobile phones were used to arrange the delivery of bags of cash as bribery payments.[130] Despite these deceptive tactics, the scheme was thwarted by the U.S. Department of Justice, resulting in a plea agreement that included an assessment of more than $76 million in criminal penalties and forfeiture.[131]

B. Basic Trusts

In general, trusts can be used as means of transferring and moving around funds for money laundering and other illegal activities with relative obscurity. Ownership of property transferred to a trust by a settlor—sometimes referred to as a creator or grantor—is divided into legal title, which is held by the trustee, and beneficial title, which is held by the beneficiaries.[132] Depending on the terms

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[127] Press Release, U.S. Dep't of Justice, Hewlett Packard Russia Agrees to Plead Guilty to Foreign Bribery (Apr. 9, 2014) [hereinafter *DOJ Press Release*]; United States v. ZAO Hewlett-Packard A.O., Court Docket No. CR-14-201 (N.D. Cal. Apr. 9, 2014).

[128] *DOJ Press Release*, *supra* note 127. According to the DOJ, ZAO Hewlett-Packard violated the FCPA, a federal statute that makes it unlawful for certain classes of entities (such as ZAO Hewlett-Packard) to make payments to foreign officials to assist in obtaining or retaining business. Specifically, ZAO Hewlett-Packard was charged with conspiracy and substantive violations of the anti-bribery, books and records and internal control provision of FCPA.

[129] *DOJ Press Release*, *supra* note 127.

[130] *Id.*

[131] *Id.*

[132] Bodley v. Jones, 32 A.2d 436, 438 (Del. Ch. 1943).

of the trust, the trustee may hold unfettered authority to manage and manipulate the trust corpus. Unlike wills, trust documents and identification of parties are not public record (i.e., no formal registration or central registries require the listing of the names of the trustee, settlor, and beneficiaries).[133] Even if the identity of beneficiaries is somehow disclosed, however, a trust beneficiary can be an LP, LLC, or another trust with their own layers of concealment so that the names of the true beneficial owners of the trust assets remain unknown.

C. Spendthrift Trusts

The establishment of a trust creates a beneficial property interest for each beneficiary. As is true for most property interests, they are attachable by a beneficiary's creditor. A spendthrift trust, however, attaches a non-transferability or attachment clause to a beneficiary's interest that legally protects it from his or her creditors.[134] Traditionally, courts enforce spendthrift trust provisions because the beneficiary's interest in trust assets originates from a donor's gift rather than the beneficiary's own assets. Thus, a donor with no relationship to a beneficiary's creditors (present or future) is entitled to shield a gifted trust interest to a third-party beneficiary from his or her creditors.[135]

If a money launderer were the beneficiary of a self-settled spendthrift trust, they would essentially retain total ownership and control of the trust assets with anonymity on both sides of trust transactions. This "too good to be true" scenario is likely unachievable, however, because traditionally courts do not enforce spendthrift provisions of a self-settled trust to protect trust assets from attachment by the settlor/beneficiary's creditors.[136] If they were legally recognized, legitimate creditor debt could be expunged by simply creating self-settled spendthrift trusts. On the other hand, certain foreign trust havens recognize the "legitimacy" of self-settled spendthrift trusts allowing a settlor to transfer assets "beyond the jurisdictional reach of the settlor's unpaid creditors."[137] Consequently, self-settled spendthrift trusts created in a trust haven, such as the Cook Islands, are ideal for money laundering and other illegal activities.[138]

D. Offshore Asset Protection Trusts

An offshore asset protection trust (OAPT) is a hybrid self-settled spendthrift trust created in a foreign country with trust laws that protect OAPT

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[133] 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, 527 (2017).
[134] RESTATEMENT (THIRD) OF TRUSTS § 58 (2003).
[135] *In re* Morgan's Estate, 72 A. 498, 499 (Pa. 1909).
[136] RESTATEMENT (THIRD) OF TRUSTS § 60, cmt. f (2003).
[137] Reid K. Weisbord, *A Catharsis for U.S. Trust Law: American Reflections on the Panama Papers*, 116 COLUM. L. REV. ONLINE 93, 99 (2016).
[138] *Id.*

assets from future creditors by a United States citizen acting as a settlor.[139] Because the trust is irrevocable and the settlor is not the trustee or a named beneficiary of an OAPT, the settlor can arguably claim they have no legal or beneficial ownership interest in the underlying trust assets. In reality, however, the lack of legal and beneficial ownership is transitory as the term of the OAPT can be relatively short (e.g., ten years) and the settlor retains a reversionary interest in the trust.[140] Consequently, upon the termination of the OAPT term, the trust assets revert back to the settlor.[141] The settlor can retain a level of control over the trustee, who is typically a foreign trust company or financial institution, by serving on a committee of advisors or as a trust protector with the authority to replace the trustee.[142] Thus, depending on the settlor's powers, they could be in de facto control of the trust.

OAPTs have several features that allow the grantor to exert de facto control. Such characteristics include a trust protector clause, an anti-duress clause, and a flee or flight clause.[143] A trust protector clause establishes a "trust protector," who is appointed by the settlor to function as an advisor and who ensures the trustee puts the grantor's wishes into action.[144] An anti-duress clause prevents the trustee from following through with any order directed at the trustee or settlor.[145] A flee or flight clause authorizes the trustee to move the trust to another jurisdiction upon the occurrence of certain events, such as some type of judicial order issued by a United States court.[146] The de facto control offered to the grantor by these features contribute to OAPTs being utilized to hide beneficial ownership and launder money.

The settlor of an OAPT can use its corpus in the commission of money laundering and other financial crimes in four ways: 1) integrating illicitly obtained funds into an economy as "clean assets" (i.e., money laundering);[147] 2) moving legitimately obtained funds into an economy to be used for illegal

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[139] Elena Marty-Nelson, *Offshore Asset Protection Trusts: Having Your Cake and Eating It Too*, 47 RUTGERS L. REV. 11, 12 (1994). Countries permitting OAPTs include Anguilla, the Bahamas, Barbados, Belize, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Gibraltar, the Isle of Man, St. Kitts and Nevis and the Caicos Islands. In total, there is an estimated amount of between $1 and $5 trillion of assets located in OAPTs. Trent Maxwell, Comment, *Domestic Asset Protection Trusts: A Threat to Child Support?*, 2014 BYU L. REV. 477, 482 (2014).
[140] 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, 153–54 (2007); Amy Lynn Wagenfeld, Note, *Law for Sale: Alaska and Delaware Compete for the Asset Protection Trust Market and the Wealth that Follows*, 32 VAND. J. TRANSNAT'L L. 831, 848 (1999).
[141] Ausness, *supra* note 140, at 153.
[142] Marty-Nelson, *supra* note 139, at 13.
[143] James T. Lorenzetti, *The Offshore Trust: A Contemporary Asset Protection Scheme*, 102 COM. L. J. 138, 146–49 (1997).
[144] *Id.* at 149.
[145] *Id.* at 146; Harvey M. Silets & Michael C. Drew, *Offshore Asset Protection Trusts: Tax Planning or Tax Fraud?*, 5 J. MONEY LAUND. CONTROL 9, 12 (2001).
[146] Ausness, *supra* note 140, at 156.
[147] Silets & Drew, *supra* note 145, at 12.

purposes (i.e., reverse money laundering);[148] 3) hiding legitimate assets from creditors with bona fide claims or from spouses;[149] and 4) hiding legitimate assets for purposes of tax evasion.[150]

United States v. Brennan is an example of an OAPT created by a settlor in bankruptcy attempting to hide and shield assets from his creditors. In *Brennan*, before creating an OAPT, the defendant was found guilty of securities fraud and ordered to pay $75 million to the victims.[151] Subsequently, the defendant filed for bankruptcy, but before the securities fraud judgment was entered against him, the defendant created a Gibraltar-based OAPT (called the Cardinal Trust) funded with $4 million in bearer bonds.[152] In his bankruptcy petition, the defendant did not initially list his interest in the Cardinal Trust as a personal asset.[153] When law enforcement authorities discovered the trust, however, defendant amended his petition to list his interest in the Cardinal Trust as zero dollars.[154] Making a substance over form argument, the U.S. Securities and Exchange Commission (SEC) asserted the defendant was the true owner of the Cardinal Trust with which the defendant supported his lavish lifestyle.[155] The Cardinal Trust was relocated twice pursuant to a flee clause: once from Gibraltar to Mauritius, and then from Mauritius to Nevis.[156]

As with other types of shell entities, the goal is to transfer funds or assets through layers of various entities, including OAPTs, so that law enforcement, a banker, or a forensic accountant will not discover the source of laundered funds or beneficial owners of those funds.[157] The privacy and anonymity of OAPTs make them highly susceptible to illegal abuse, and thus, an excellent way to launder funds.[158] The *Brennan* case, however, demonstrates the limitations of the effectiveness of OAPTs as a tool for engaging in money laundering activities.

E. VISTA Trusts

Authorized by the Virgin Island Special Trust Act of 2003 (VISTA), a VISTA trust is a specialized type of statutory trust comprised entirely of the shares of stock of a wholly owned British Virgin Island (BVI) company created by a settlor.[159] To set up a VISTA trust, instead of transferring assets to a trust,

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[148] 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, 471 (2009).
[149] Silets and Drew, *supra* note 145, at 13.
[150] *Id.* at 9.
[151] United States v. Brennan, 395 F.3d 59, 62 (2d Cir. 2005); SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1456 (2d Cir. 1996).
[152] United States v. Brennan, 326 F.3d 176, 180–81 (3d Cir. 2003).
[153] *Id.* at 181.
[154] SEC v. Brennan, 230 F.3d 65, 68 (2d Cir. 2000).
[155] *Id.*
[156] *Id.*
[157] Silets and Drew, *supra* note 145, at 12.
[158] Arce, *supra* note 148.
[159] Beatrice Tabangcora, VISTA, SISTA & Traditional Trusts: 'O Le Fogava'a E Tasi 7 (2018)

a settlor creates a BVI company funded with those same assets.[160] Next, the settlor creates the VISTA trust by transferring the BVI company shares to a BVI registered trustee.[161] In operation, the trust is the equivalent of a holding company of BVI company stock. All business operations are conducted within the BVI company, not the trust. Additionally, the settlor friendly parameters of VISTA provide the settlor a high level of control.[162] The primary purpose of VISTA is to allow the directors of the BVI company to manage it without interference from the trustee.[163]

A VISTA trust provides the anonymity and privacy essential to money laundering and the commission of other illegal activities. First, since the underlying assets transferred to the BVI company are managed by directors, they, not the trustee, dictate and control their use.[164] Significantly, the settlor is allowed to be a director, and, if they are the sole director of the BVI company, the settlor is in control of all BVI company operations.[165] Second, the trustee of the VISTA trust is prohibited from selling the BVI company shares without the approval of the directors.[166] To shield the trustee from any liability, VISTA specifically relieves the VISTA trustee from any duty to preserve or enhance the value of the trust[167] (i.e., the "prudent man rule").[168] Third, because trusts are not required to be registered in the British Virgin Islands, there is no way to discover the identities of the beneficiaries, the settlor, or the trustee.[169] Thus, the combination of secrecy and control of assets provides "another layer of protection for those wishing to exploit the structures for nefarious purposes such as tax evasion, money laundering and funding terrorist activities."[170]

F. SISTA Trusts

Similar to VISTA trusts, in 2014, Samoa introduced the Samoa International Special Trust Arrangement (SISTA) trusts.[171] Trust grantors now have a choice of which jurisdiction to create a VISTA-style trust. The SISTA is

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(Research Paper, Victoria University of Wellington) (on file with the Research Archive, Victoria University of Wellington).

[160] *Id.* at 14–15.

[161] *Id.*

[162] *Id.* at 16.

[163] *Id.* at 15.

[164] *Id.* at 9.

[165] *Id.* at 16.

[166] *Id.* at 8.

[167] *Id.*

[168] The prudent man rule requires a trustee to manage another's affairs and investments with the skill and care of a person or ordinary prudence and intelligence. Therefore, relieving a trustee of a VISTA trust of this obligation is significant. *Prudent Man Rule*, MERRIAM-WEBSTER DICTIONARY ONLINE, http://www.merriam-webster.com/legal/prudentmanrule [https://perma.cc/ 6CML-Z2KP].

[169] Tabangcora, *supra* note 159, at 17.

[170] *Id.*

[171] *Id.* at 14.

very similar to the VISTA trust in all respects. Because both types of trusts do not require the trustee to exercise the duty of prudence, these legal structures can hold high-risk assets such as airplanes, ships, and investments, providing the secrecy for illegal activities such as money laundering.[172]

G. International Business Companies (IBCs)

An international business company (IBC), sometimes referred to as international business corporations, is an offshore corporation closely resembling a traditional corporation with articles of incorporation or association and company directors. It can be created by a single shareholder and have a single director.[173] Although an IBC's primary purpose is to shift profits to a low or no tax country,[174] it is also a viable vehicle for money laundering. IBCs created in the British Virgin Islands—as set forth in the 1984 International Business Companies Act and later replaced in 2004 by the BVI Business Companies Act—are afforded attributes attractive to tax evaders and money launderers.[175] For example, since there is no requirement for an IBC to maintain capital and distributable reserves to declare a dividend, easily earned shareholder distributions are perfect for money laundering and moving funds to various jurisdictions.[176] Consequently, the money trail for bankers, auditors, forensic accountants, and law enforcement can be difficult, if not impossible to follow.[177] Additionally, an IBC can be created in a variety of forms: a company limited by shares, an unlimited liability company, a company limited by guarantee that can issue shares, a company limited by guarantee that cannot issue shares, a restricted purpose company, and a segregated portfolio company.[178]

From a privacy perspective, IBCs are advantageous because the names of offshore shareholders and directors, a company's minutes of meetings, and resolution documents are not publicly disclosed.[179] Also, information about beneficial owners is not made public, making this an ideal jurisdiction for money launderers.[180] Moreover, shareholders and directors can be nominees, and a director can be another BVI company.[181]

The BVI often permits the migration—oftentimes called a continuance—of companies in and out of the BVI. For example, a fully operational BVI

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[172] *Id.* at 15.
[173] INT'L BUS. COMPANIES, https://www.internationalbusiness companies.org [https://perma.cc/EF3T-THDZ].
[174] Armando Jose Garcia Pires, *The Business Model of The British Virgin Islands and Panama* 2 (SNF Inst. for Rsch. in Econ. and Bus. Admin., Working Paper No. 31/13, 2013).
[175] *Id.* at 3.
[176] *Id.* at 4.
[177] Ken Silverstein, *Trillion-Dollar Hideaway*, MOTHER JONES (Nov./Dec. 2000), https://www.motherjones.com/politics/2000/11/trillion-dollar-hideaway-offshore-caymans/ [https://perma.cc/D6XB-64SB].
[178] Pires, *supra* note 174, at 4.
[179] *Id.* at 7.
[180] *Id.*
[181] *Id.*

company with BVI directors can become a fully-fledged and operational Jersey- or Guernsey-registered company with Jersey or Guernsey directors without any break in its legal existence.[182]

Hong Kong and Panama are the second and third largest sites of IBCs, respectively, in the world after the BVI.[183] Panama does not require the names of shareholders be registered publicly and the country allows registration with nominee directors and shareholders so that the names of beneficial owners do not appear in the registers.[184]

H. Limited Partnerships (LPs) and Family Limited Partnerships (FLPs)

LPs and FLPs are ideal entities in which to hide assets.[185] In a typical LP scheme, the fraudster—a general partner—provides trusted associates, friends or family members with funds or assets to invest in an LP as limited partners. A limited partner is not personally responsible for partnership debt even if the limited partner participates in the management and control of the partnership business.[186] However, if the partnership agreement precludes limited partners with management and control authority, the general partner would have full control of partnership assets that he or she can use to perpetuate illegal activities.[187]

In another type of scheme, the fraudster transfers assets into a U.S.-based LP in which the fraudster is a 1% general partner and an offshore trust (in which the fraudster is a beneficiary) is a 99% limited partner.[188] As the general partner, the fraudster has total control over the partnership assets including the authority to make distributions to the limited partner or trust.[189] Thus, when the general partner makes a distribution to the limited partner or trust, the trustee can in turn make a distribution to the general partner as the beneficiary of the trust.[190]

The following estate planning technique involving a married couple's FLP can be easily adapted by a money launderer. To reduce their potential taxable estate, a married couple can transfer all their assets to an FLP in exchange for which each spouse receives a 1% general partnership interest and a 49% limited

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[182] *Id.* at 6.
[183] *Id.* at 8.
[184] *Id.* at 10.
[185] *See* Asher Rubenstein, *Efficacy of Family Limited Partnerships: A Case Study*, GALLET DREYER & BERKEY, LLP (2013), https://www.gdblaw.com/efficacy-of-family-limited-partnership [https://perma.cc/3BT7-G8J8]; David Cay Johnston, *Ex-IRS Agent Says Tax Evasion by Real Estate Partners is Huge*, N.Y. TIMES (2007), https://www.nytimes.com/2007/12/07/business/07taxes.html [https://perma.cc/J83S-TZNZ].
[186] UNIF. LTD. P'SHIP ACT §§ 302, 303 (2013).
[187] *Id.* § 301(a).
[188] Howard Rosen & Patricia Donlevy-Rosen, *Offshore Trust/Offshore LLC Combination: Significant Improvement Over Partnership/Trust Structure*, ASSET PROTECTION NEWS (Apr. 20, 2001), https:/protectyou.com/2001/04/offshore-trust-llc-combination-significant-improvement-over-partnership-trust-structure/ [https:/perma.cc/WG6A-J2K8].
[189] *Id.*; *see* UNIF. LTD. P'SHIP ACT § 406(a) (2013).
[190] Rosen & Rosen, *supra* note 188.

partnership interest.[191] Thereafter, the spouses controlling the partnership as general partners gifts their limited partnership interests to their children. Their goal is to reduce their taxable estate by virtue of these periodic gifts.[192]

From the perspective of a money launderer or other wrongdoer, the transfer of assets to the partnership and the gift of their combined 98% limited partnership interests means their creditors can only reach the spouses' 2% general partnership interest.[193] Moreover, to reach the underlying interests in the partnership assets, creditors would have to obtain a charging order from a court.[194] This means the creditor can only collect when the partnership makes a distribution that would be payable to the spouses. Even with a charging order, a creditor cannot compel a partnership to make a distribution to a partner.[195] In any event, the spouses could use the lion's share of partnership assets in illicit activities beyond the reach of their creditors. Depending on the circumstances of the creation of the FLP, however, a court could void the arrangement as a fraudulent transfer, thereby subjecting the transferred assets to the spouses' creditors' claims.[196]

I. Anstalts

An Anstalt ["Establishment"] is a flexible business structure particular to Liechtenstein.[197] It is closely related to a trust enterprise because of its secrecy and anonymity which makes it a viable vehicle to be used in money laundering activities.[198] Furthermore, Anstalts can be a commercial or non-commercial arrangement established between one of Liechtenstein's 300-plus trustee lawyers and corporate service providers for the purposes of trading, and has a structure like a LLC.[199] Despite an Anstalt's limited liability structure, the owners are characterized as beneficiaries.[200] The founder of an Anstalt can be an individual, a firm, or corporation with a residence inside or outside the country,

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[191] *See* Rebecca B. Hawblitzel, Note, *A Change in Planning: In re* Estate of Stangi v. Commissioner's *Effect on the Use of Family Limited Partnerships in Estate Planning*, 57 ARK. L. REV. 595, 603–05 (2004).
[192] *Id.*
[193] *Id.*
[194] UNIF. LTD. P'SHIP ACT § 703 (2013).
[195] Thomas M. Brinker, Jr. & W. Richard Sherman, *Using Tax Conduits in Financial Estate Planning: An Integrative Asset Protection Approach with Family Limited Partnerships and Offshore Trusts*, 9 J. PRAC. EST. PLAN. 51, 52 (2007).
[196] *See, e.g.*, Firmani v. Firmani, 752 A.2d 854, 856 (N.J. Super. Ct. App. Div. 2000).
[197] George E. Glos, *The Analysis of a Tax Haven: The Liechtenstein Anstalt*, 18 INT'L 929, 930 (1984).
[198] U.S. Dep't of State, *Money Laundering and Financial Crimes*, *in* INT'L NARCOTICS CONTROL STRATEGY REP. (2000), https://2009-2017.state.gov/j/inl/rls/nrcrpt/1999/928.htm [https://perma.cc/L8RB-KGRD].
[199] Burton W. Kanter, *To Elect or Not to Elect Subchapter S—That Is a Question*, 60 TAXES 882, n.142 (1982).
[200] DE WILLEBOIS ET AL., *supra* note 11, at 166; Jules Stewart, *So Far, But No Further*, 327 EUROMONEY 150 (1996).

and can act directly, or be represented by another individual or entity.[201] Formation requires articles of association stating: 1) the name of the Anstalt; 2) the nature of the Anstalt's business; 3) the capital of the Anstalt; 4) the powers within its structure; 5) its administration; 6) the principles applied in constructing the balance sheet and the disposition with a surplus; and 7) the form of announcements made by the Anstalt.[202] The following paragraph captures the essence of an Anstalt:

> The Anstalt is widely considered the ultimate in banking secrecy. Unlike in Switzerland, where bankers are legally obliged to be aware of account holders' identities, this is not required in Liechtenstein except where there may be legitimate suspicion of criminal activity. A lawyer signs a due-diligence agreement with the Liechtenstein authorities, and when both are satisfied that the money involved is clean, the customer is referred to one of the local banks.[203]

Thus, an expert money launderer with good deception skills can take advantage of the secrecy Anstalts afford.

J. Limited Liability Companies

LLCs are another entity ripe for abuse by money launders because they can be owned and managed anonymously. They are creatures of statute and transparency of ownership requirements vary from state to state and country to country.[204] To this point, creating an LLC in Delaware would afford the money launderer or other wrongdoer a high level of anonymity.[205] For example, the only public disclosure requirement is the name of a registered agent to accept service of process of a complaint against the LLC.[206] Public disclosure of a member or manager is optional.[207] A Delaware LLC is required to provide its Delaware registered agent with "the name, business address, and business telephone number of a natural person . . . who is then authorized to receive communications from the registered agent."[208] Prior to the 2019 amendments to the Delaware Limited Liability Act, the registered agent was not required to

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[201] DE WILLEBOIS ET AL., *supra* note 11, at 166.
[202] Glos, *supra* note 197, at 932.
[203] RONEN PALAN, THE OFFSHORE WORLD: SOVEREIGN MARKETS, VIRTUAL PLACES, AND NOMAD MILLIONAIRES 114 (2003).
[204] DE WILLEBOIS ET AL., *supra* note 11, at 164.
[205] Suzanne Barlyn, *Special Report: How Delaware kept America safe for corporate secrecy*, REUTERS (Aug. 24, 2016), https://www.reuters.com/article/us-usa-delaware-bullock-specialreport-idUSKCN10Z1OH [https://perma.cc/7KG7-X38Z].
[206] Del. Code Ann. tit. 6 § 18-104(a)(2) (2019) (amended 2020) (West, Westlaw through ch. 281 of 150th General Assembly).
[207] *Id.* § 18-102(2).
[208] *Id.* § 18-104(g).

share the contact information with the state. After those amendments, disclosure of that information to the state is required if a registered agent resigns but does not appoint a successor registered agent.[209] According to the statute, the contact information provided to the state is not available to the public.[210] Lack of ownership transparency is amplified when shell entities are layered or chained.[211]

LLCs linked together or layered in multiple jurisdictions—such as, Delaware, Wyoming, Nevada, or Cayman Islands—without meeting ownership disclosure requirements make it difficult for forensic accountants, auditors and tax investigators to uncover money laundering or other criminal activity.[212] United States-based LLCs are employed more often for money laundering than foreign based LLCs.[213]

A prime example of using LLCs in multiple jurisdictions to commit money laundering and other crimes is *United States v. Rosbottom*. In that case, Rosbottom, a self-made millionaire, with over a hundred businesses,[214] began withdrawing money from a business account several months before filing for bankruptcy.[215] Five days prior to filing, Rosbottom held seventeen cashier's checks totaling over $1.8 million payable to him personally—none of which were disclosed on his bankruptcy balance sheet.[216]

Following the bankruptcy filing, Rosbottom made separate deposits in several shell LLCs his attorney created in various states.[217] The funds were used to purchase various items of property, which included an interest in an airplane and a boat.[218] Ultimately, Rosbottom and his girlfriend were convicted of conspiracy to commit money laundering by proof they "[i]ntended to and did make it more difficult for the government to trace and demonstrate the nature of the funds."[219]

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[209] *Id.* § 18-104(d).
[210] *Id.*
[211] *See infra* text accompanying notes 280–89.
[212] *See* 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, n.51 (2017); *see also* 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).
[213] *See On the House: How Anonymous Companies Are Used to Launder Money in US Real Estate*, GLOB. WITNESS (Sept., 2020), https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-companies-used-to-launder-money-in-us-real-estate/ [https://perma.cc/6N7B-56PY]; Jason Sharman, *Shell Companies and Asset Recovery: Piercing the Corporate Veil*, *in* EMERGING TRENDS IN ASSET RECOVERY 67, 68 (Gretta Fenner Zinkernagel, Charles Monteity & Pedro Gomes Pereira, eds., 2013).
[214] United States v. Rosbottom, 763 F.3d 408, 411 (5th Cir. 2014).
[215] *Id.* at 411–12.
[216] *Id.* at 412.
[217] *Id.* at 412–15.
[218] *Id.*
[219] *Id*. at 418.

K. Shelf Corporations

Shelf corporations are legally incorporated but left dormant until they are sold to a purchaser seeking to do business in an existing entity.[220] Shelf companies are attractive as ready to go corporations as any legal filing requirements of formation have already been satisfied, no shares have yet been offered, and ownership to the purchaser is immediately available.[221] When the shelf corporation is purchased, the directors resign to be replaced by directors chosen by the purchaser. Shelf corporations may be purchased on the Internet for a few thousand dollars from trust company service providers (TCSPs).[222]

These features make shelf corporations ideal fronts for money laundering activity. Money laundering is accomplished by failing to properly record a change of ownership in the company registries.[223] Consequently, the concealment of a change of ownership coupled with a clean corporate history would create the illusion of legitimacy for the fraudulent activities perpetuated by the new owner of the shelf corporation.[224] For example, fraudsters plot to receive renewable energy tax credits from the IRS for renewable fuels never produced.[225] The tax savings are laundered to acquire other property.[226] To do so, they purchase United States-based shelf corporations to serve as purported purchasers of renewable fuel and other shelf corporations to serve as purported sellers of feedstock.[227] Because shelf corporations have the semblance of legitimacy, it may be difficult, if not impossible for law enforcement to unravel a fraudulent scheme.[228]

L. Private Interest Foundations

A private interest foundation (PIF) is a vehicle provided by civil law countries for asset protection, tax planning, and estate planning.[229] Since the situs of a PIF is offshore and given its flexibility and secrecy, a PIF is an ideal legal vehicle for money launderers.[230] Venues that offer PIFs include Panama,

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[220] DE WILLEBOIS ET AL., *supra* note 11, at 37.

[221] *See id*. at 37–38; Debra C. Weiss, *Wyoming Home Is A 'Little Cayman Island' for Shell Companies*, A.B.A. J. (June 28, 2011, 4:09 PM), http://www.abajournal.com/news/article/wyoming_home_is_a_little_cayman_island_for_shell_companies [https://perma.cc/ZR7Q-CFKN].

[222] For examples of websites that sell shelf corporations see COMPANIES INCORPORATED, www.companiesinc.com [https://perma.cc/GBL8-D86D]; *see* OFFSHORE COMPANY, www.offshorecompany.com [https://perma.cc/T2UX-9B82].

[223] EGMONT GRP. OF FIN. INTELLIGENCE UNITS & THE FIN. ACTION TASK FORCE, CONCEALMENT OF BENEFICIAL OWNERSHIP 29–30 (2018), https://www.egmontgroup.org/en/content/concealment-beneficial-ownership [https://perma.cc/2LUS-W9FS].

[224] *Id.* at 60.

[225] *Id.*

[226] *Id.*

[227] *Id.* at 60–61.

[228] *Id.*

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

[230] Harry Wiggin, *Anguilla: Foundations and Trusts—A Comparison*, 14 TRUSTS & TRUSTEES 287,

Bonaire, Curacao, the Bahamas, Costa Rica, the Seychelles Islands, St.Kitts-Nevis, Anguilla, and the Cook Islands.[231] Although a PIF does not have shareholders or members, similar to a trust, it does have beneficiaries.[232] Although there is no single definition of a PIF, a number of common features exist in most jurisdictions that offer PIFs:

- *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.[233]
- *Protector*—this is the ultimate controller of the foundation. The protector remains anonymous because the charter is a notarized, private document not publicly registered.[234]
- *Foundation Council*—this serves the same function for a PIF as a board of directors does for a corporation.[235]
- *Letter of Wishes*—this is a simple letter which sets forth how foundation assets should be distributed upon the occurrence of a triggering event, such as the death of the protector.[236] A letter of wishes may be used in lieu of bylaws.[237]

Notwithstanding the disclosure of the names and members of the foundation counsel in the foundation charter, a PIF has a high level of confidentiality.[238] Although the foundation charter must be signed, the de facto founder (the creator) does not have to sign the charter.[239] The signatory could be a third party or a fiduciary.[240] More importantly, the names of the beneficiaries and protector are not required to be disclosed.[241]

289 (2008).
[231] *Id.* at 287, 293.
[232] Randall S. Webster, *Advantages of the Panamanian Private Interest Foundation for the Offshore Investor*, 12 TRUSTS & TRUSTEES 50, 50 (2006).
[233] Berbey de Rojas, *supra* note 229, at 351–52; *Panama Foundations*, ASPEN GLOB. INCORPS. LTD. (2020), http://www.aspenoffshore.com/foundations/ [https://perma. cc/B6QW-EBYV]; *see* Francesca Di Gregori Boschini, *Private Foundations and Reserved Powers Trusts*, 145 TRUSTS & ESTATES 46 (2006); *Elements of a Private Interest Foundation*, PANAMA OFFSHORE LEGAL SERVS., http://www.panama-offshore-services.com/foundation_elements.htm [https://perma.cc/5F8Y-QMCJ]; *Panama Foundations*, ASPEN GLOB. INCORPS. LTD. (2020), http://www.aspenoffshore.com/foundations/ [https://perma. cc/B6QW-EBYV].
[234] PANAMA OFFSHORE LEGAL SERVS., *supra* note 233; Berbey de Rojas, *supra* note 229, at 350.
[235] PANAMA OFFSHORE LEGAL SERVS., *supra* note 233.
[236] *Id.*
[237] *See id.*
[238] Webster, *supra* note 232, at 51.
[239] *Id.* at 50.
[240] *Id.*
[241] *Id.* at 51.

M. Foundation Companies

Whether foundation companies will become a vehicle of choice for money launderers remains to be seen. A foundation company (FC), a relatively new legal structure, was introduced in the Cayman Islands in March 2017.[242] Although similar to a trust in a number of ways, it is incorporated as an FC with articles of association.[243] For example, an FC can have beneficiaries to whom distributions can be made.[244] In lieu of a trustee, however, an FC is managed by a board of directors.[245]

The FC law itself describes possible objectives of an FC as acting as a holding company or an investment company.[246] Another feature of an FC, which 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 FC, or for any other lawful purpose.[247] Moreover, unless specifically included in the articles of association, beneficiaries have no powers or rights with respect to an FC's management and assets.[248] Additionally, in the articles of association, the founder can reserve the power to appoint and remove directors, prohibit the board of directors from amending the articles of association, and designate beneficiaries.[249]

Finally, from a money launderer's perspective, the coveted privacy aspects are in place as there is no disclosure in the public registry of the founder, council members, protector/guardian, or beneficiaries.[250] On the other hand, the FC must maintain registries and information at the Registrar of Companies including records relevant to potential money laundering.[251] Only time will indicate whether the FC will commonly serve as a type of shell entity abused by money launderers and other white-collar criminals.

N. Nominee or Nominee Directors

Another legal approach to optimize concealment involves the shell entity's beneficial owner or owners selecting a nominee as a director. A nominee is one who holds bare legal title for another, who is designated to act in place of another in a limited way, or who receives and distributes funds for the benefit of others.[252] A nominee can be a relative, friend, trusted associate, or a person who has no link to the beneficial owner.[253] For example, in *United States v. Ladum*,

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[242] Bernadette Carey & Robert Lindley, *Foundations of the Future—A Cayman Islands Approach*, 23 TRUSTS & TRUSTEES 785, 785 (2017).
[243] DAVERN & WAY, *supra* note 11, at 916.
[244] *Id.* at 917.
[245] CAREY & LINDLEY, *supra* note 242, at 788–89.
[246] *Id.* at 787.
[247] DAVERN & WAY, *supra* note 11, at 919.
[248] *Id.* at 917.
[249] CAREY & LINDLEY, *supra* note 242, at 788.
[250] *Id.* at 786–88.
[251] *Id.* at 789.
[252] Martinez, *supra* note 212, at 197; LiButti v. United States, 107 F.3d 110, 113 (2d Cir. 1997).
[253] *What is a nominee shareholder and a nominee director?*, I.R.B. LAW LLP, https://irblaw.com.

defendant Robert Ladum operated seven second-hand stores in Portland, Oregon.[254] Ladum disguised his ownership interests through the use of nominees to avoid paying income taxes.[255] Ladum told the nominees not to keep any records of income, not to report his cut of the income on their tax returns, and only report enough income to cover living expenses.[256] In the late 1980s, Ladum declared bankruptcy, excluding from his petitions his ownership interest in the second-hand stores, the real estate where they stood, and a lodge he owned.[257] Ladum received a discharge in bankruptcy and was later convicted of money laundering and other crimes.[258]

Nominees are also often provided as a service in offshore situations. There are a number of third-party nominee services for individuals and others seeking to create offshore entities.[259] These services provide nominees-for-hire including directors, shareholders, company secretaries, and other officer positions.[260] Third-party nominee services are often used as a means to protect the confidentiality of a beneficial owner whose name can be kept off company registration documents and public registries.[261]

According to a study conducted by *The Guardian*, more than 21,500 companies use 28 nominee directors who play a key role in concealing hundreds of thousands of commercial transactions.[262] They sell their names with addresses located all over the world for use on official company documents to appear as directors of those companies.[263] Due to the need for secrecy and deceit in money laundering, it is likely that many of these companies are engaged in some sort of criminal activity.[264]

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sg/learning-centre/nominee-director-shareholder/ (last visited Oct. 2, 2020).

[254] United States v. Ladum, 141 F.3d 1328, 1333 (9th Cir. 1998).

[255] *Id.*

[256] *Id.*

[257] *Id.* at 1334.

[258] *Id.* at 1333, 1340. *See also* United States v. Monaco, 194 F.3d 381 (2d Cir. 1999). In that case, Jimmy Monaco, a Florida-based drug dealer and pirate, had various family members serve as nominees while he was in prison. *Id.* at 383. James and Mary Monaco (his parents) buried some of Jimmy's money in their backyard. *Id.* at 384. Other family members acted as nominee owners of various real properties that were controlled by Jimmy Monaco, including a mansion in Deerfield Beach, Florida, a warehouse in Pompano Beach, Florida, and a home in Miramar, Florida. *Id.* at 384–85.

[259] *See* OFFSHORE CO. CORP., http://www.offshorecompanycorp.com/company-formation/nominee [https://perma.cc/EL8D-FPLJ]. For example, OffShore Company Corp offers third-party nominee services. *Id.* Of course, the user pays set up fees and often pays annual maintenance or registration fees to the jurisdiction where the shell entity is sited. *Id.*

[260] *See* OFFSHORE PROTECTION, http://www.offshore-protection.com/third-party-nominee-services [https://perma.cc/8YYV-QDNU].

[261] *Id.*

[262] James Ball, *Offshore Secrets: How Many Companies Do 'Sham Directors' Control?*, THE GUARDIAN (2012), https://www.theguardian.com/uk/datablog/2012/nov/26/offshore-secrets-companies-sham-directors [https://perma.cc/376U-N5KT].

[263] *Id.*

[264] Other criminal activity includes drug cartels and illegal arms dealers. Gerald Ryle, Stephan

V. REASONS WHY SHELL ENTITIES CONCEAL BENEFICIAL OWNERSHIP

A. Lack of Transparency in Identifying Beneficial Owners

The issue of ownership transparency is captured by FATF Recommendations 24 and 25, which are directed at making sure there is adequate, accurate, and timely information available about the beneficial ownership of all legal entities and structures in all member countries.[265] The goal of transparency is to illuminate the identity of the natural persons who ultimately have a controlling ownership interest in a legal person, or the identity of the natural persons exercising control of the legal person through other means.[266]

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.[267] Relevant information captured in a central registry would include an entity's name, the type of legal entity, its formation documents, its related bylaws, the address of a registered office or principal place of business or address of the entity itself, the name and address of a registered agent, the names and addresses of persons in positions of legal control within the entity, and the names of the beneficial owners.[268]

One huge impediment to the achievement of actual transparency is that transparency of ownership requirements differ vastly from jurisdiction to jurisdiction, especially on an international basis.[269] In the United States where entity formation legal requirements are controlled by the states, huge differences make for more favorable entity formation and maintenance in some states more than others—especially for beneficial owners who wish to remain anonymous. In 2006, a U.S. General Accountability Office (GAO) study found no state collected beneficial ownership information on corporations, only a few collected it on LLCs and other entities, and four states collected minimal information on LLCs.[270] This failure to collect information remains the situation today.[271]

Candea & Hamish Boland-Rudder, *Faux Corporate Directors Stand in for Fraudsters, Despots and Spies*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 17, 2013), https://www.icij.org/investigations/offshore/faux-corporate-directors-stand-fraudsters-despots-and-spies/ [https://perma.cc/C2ED-NNLL].

[265] FIN. ACTION TASK FORCE, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* 20 (2019).

[266] *Id.* at 86–88.

[267] DE WILLEBOIS ET AL., *supra* note 11, at 69–70.

[268] *Id.* at 71.

[269] Anonymous, *Corporate Ownership and Corruption: How to Crack a Shell*, 419 THE ECONOMIST 56 (May 7, 2016).

[270] U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-376, *Company Formations: Minimal Ownership Information is Collected and Available* (2006), https://www.gao.gov/products/gao-06-376 [https://perma.cc/6QW2-WE83].

[271] Martinez, *supra* note 212, at 194.

B. Gatekeepers and Trust Company Service Providers (TCSPs)

The services of TCSPs, lawyers, accountants, and other professionals that create and provide administrative services for all types of entities are often essential for money laundering and other illegal schemes to succeed.[272] Their services help sever the connection between an illegal scheme and the safe enjoyment of assets.[273]

Gatekeepers perform certain indispensable administrative procedures, such as checking for the availability of an entity name, filing appropriate documents with authorities, opening bank accounts, providing nominees, acting as registered agent, paying fees, handling annual reporting obligations, mail forwarding, and providing virtual office facilities.[274] Many gatekeepers can furnish their clients with entities from a wide range of jurisdictions but retain client data on file in a different jurisdiction other than where an entity is located.[275] This makes it more difficult for regulators, law enforcement officers, and forensic accountants to access the information.[276]

Money laundering experts at the FATF concluded gatekeepers should be regulated because they can form a vital link in the chain of performing due diligence (i.e., finding out the identity of a beneficial owner).[277] TCSPs typically possess varying degrees of awareness of, or involvement in, the illicit purposes underlying their clients' activities.[278] Existing TCSPs tend to be archival; they do not verify incoming data because of the cost.[279]

C. Layering and Pyramiding of Shell Entities

Money launderers often use a layer or chain of entities established in different jurisdictions to maximize anonymity and minimize transparency. This makes it almost impossible for law enforcement officers, forensic accountants, bankers, compliance officers, and auditors to determine beneficial ownership.[280] In a pyramided structure, various legal business entities are inserted between a beneficial owner and the assets or funds of the shell entity that holds legal title to them. The various legal entities are often located in different jurisdictions.[281] The layering or chaining of various legal entities across numerous jurisdictions

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[272] Stephen Baker & Ed Shorrock, *Gatekeepers, Corporate Structures and Their Role in Money Laundering*, *in* TRACING STOLEN ASSETS: A PRACTITIONER'S HANDBOOK 81, 82 (2009).
[273] *Id.*
[274] DE WILLEBOIS ET AL., *supra* note 11, at 84.
[275] *Id.*
[276] *Id.*
[277] FIN. ACTION TASK FORCE, *supra* note 265, at 12; Mark Hays, *What Role Did US Lawyers Play in Malaysia's 1MDB Scandal?*, GLOB. WITNESS (2018), http://www.globalwitness.org/en/blog/what-role-did-us-lawyers-play-malaysias-1mdb-scandal [https://perma.cc/Q42B-CTGP].
[278] FIN. ACTION TASK FORCE, *supra* note 265, at 18, 83.
[279] DE WILLEBOIS ET AL., *supra* note 11, at 5.
[280] *Id.* at 52.
[281] *Id.*

facilitates access to the international financial system.[282] Offshore countries by no means possess a monopoly on pyramiding since legal entities in the United States and United Kingdom are also used often in layering arrangements.[283] The ability to layer or pyramid within and across jurisdictions faces few, if any, restrictions.[284]

One example of pyramiding entities occurred in *United States v. Karamanos*.[285] In this case, Demetrios Karamanos was convicted of conspiracy to commit money laundering and other federal crimes for using a "daisy chain" scheme to avoid paying federal and state excise taxes on petroleum products.[286] Karamanos was involved in the creation, operation, and maintenance of an elaborate system of sham companies, offshore accounts, phony invoices, and other devices.[287] Money was wired through various shell entities or "links" in the chain of companies established for the scheme.[288] Various shell entities or "links in the chain were set up to avoid detection by authorities."[289]

VI. POLICY RESPONSES TO THE ABUSE OF SHELL ENTITIES FOR MONEY LAUNDERING

A. United States Policy Responses to Money Laundering

The use of shell entities in perpetuating money laundering is a concern for both law enforcement officials and the financial industry. Consistent with this concern, the U.S. federal government set forth policy initiatives to improve the ownership transparency of shell entities. In recent years, the U.S. federal government took steps on the beneficial ownership issue. In 2008, Senators Carl Levin (D–MI), Norman Coleman (R–MN), and then-Senator Barack Obama (D–IL) introduced legislation entitled the Incorporation Transparency and Law Enforcement Assistance Act (ITLEA).[290] The intent 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."[291] For all domestic beneficial owners, the legislation would require identification of the beneficial owner.[292] If the beneficial owner is foreign, ITLEA requires each state to have a copy of the beneficial owner's passport photo.[293] ITLEA would place a significant burden on states and formation agents to collect and maintain a list

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[282] *Id.*
[283] *Id.*
[284] *Id.* at 53.
[285] *See* United States v. Karamanos, 38 F. App'x 727 (3d Cir. 2002).
[286] *Id.* at 728.
[287] *Id.* at 730.
[288] *Id.*
[289] *Id.* at 731.
[290] Incorporation Transparency and Law Enforcement Assistance Act, S. 2956, 110th Cong. § 1 (2008).
[291] Kalant, *supra* note 123, at 1054.
[292] S. 2956.
[293] *Id.*

of all current beneficial owners. Although the legislation has been reintroduced several times since 2008, it has not yet been enacted into law.[294]

Several other attempts by the U.S. Congress have been made. For example, Congress's Holding Individuals Accountable and Deterring Money Laundering Act punishes partners, directors, officers, and employees of a financial institution for their lapses in oversight and management if their institutions failed to comply with AML responsibilities.[295] The aim of this legislation was commendable, but it did not address money laundering that occurs outside financial institutions. Like ITLEA, this bill was not enacted.[296]

In June 2016, FinCEN issued its long-awaited requirements on the beneficial ownership rule, which extended customer due diligence (CDD) requirements to natural persons behind a legal entity.[297] In June 2017, a bipartisan group of United States legislators introduced the Corporate Transparency Act, which would require FinCEN to collect information on the beneficial owners of corporations and LLCs created in the U.S. if the information was not collected at the state level.[298] A letter sent by twenty-two institutional investors representing more than $505 billion in assets may have sparked this legislation. The letter called for bipartisan legislation to require all U.S. companies to disclose beneficial owners and keep that information updated.[299]

In June 2019, the True Incorporation Transparency for Law Enforcement Act (TITLE)[300] was introduced by Senator Sheldon Whitehouse. Under TITLE, states receiving funds under the Omnibus Crime Control and Safe Streets Act of 1968 would be required to adopt transparent incorporation systems within three years of the bill's enactment.[301] Specifically, TITLE would require that newly formed corporations and LLCs report certain identifying information about their beneficial owners to their states of incorporation and any changes to beneficial ownership being reported within 60 days.[302] During the formation process, new

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

[295] *See generally* Holding Individuals Accountable and Deterring Money Laundering Act, H.R. 4242, 114th Cong. (2015).

[296] *Holding Individuals Accountable and Deterring Money Laundering Act*, CONGRESS.GOV, https://www.congress.gov/bill/114th-congress/house-bill/4242 [https://perma.cc/57VL-KQR2] (introducing the bill to the U.S. House of Representatives).

[297] Sylwia Wolos, *The Ultimate Beneficial Ownership Requirement: Why it Matters to All of Us*, ACAMSTODAY (Sept. 19, 2017), https://www.acamstoday.org/the-ultimate-beneficial-ownership -identification-requirement-why-it-matters-to-all-of-us/ [https://perma.cc/N5TW-YFNB].

[298] *Id.*

[299] Andy Stepanian, *22 Investors Managing Over $505 Billion in Assets Sign Letter Calling on Congress to End Shell Company Secrecy*, GLOB. WITNESS (May 19, 2016), https://www.globalwitness.org/en/press-releases-/22-investors-managing-over-505-billion-assets-sign-letter-calling-congress-end-shell-company-secrecy [https://perma.cc/PHU2-9HUN].

[300] True Incorporation Transparency for Law Enforcement Act, S. 1889, 116th Cong. (2019).

[301] *Id.* § 3.

[302] *Id.*

corporations and LLCs must include each beneficial owner's name, address, and state driver's license number or U.S. passport number.[303] Under TITLE, these requirements would apply to existing corporations and LLCs two years after a state's adoption of a formation system.[304] States would be permitted to exempt various regulated entities that are companies with more than twenty full-time employees, files income tax returns showing more than $5 million in gross receipts, has a physical office in the United States, and has more than one hundred shareholders.[305]

In October 2019, the House of Representatives passed H.R. 2513, the Corporate Transparency Act (CTA),[306] which would require newly formed corporations and LLCs to report certain identifying information regarding their beneficial owners to FinCEN and annually update this information.[307] In addition, existing corporations and LLCs would be required to report these requirements two years after FinCEN adopts final regulations to implement the CTA.[308] Companies exempt from coverage of the CTA are those with over twenty employees and over $5 million in annual gross receipts or sales and which have a physical presence in the U.S., federally regulated banks, credit unions, investment advisors, broker-dealers, state-regulated insurance companies, churches, and charitable organizations.[309] While the financial industry would almost certainly welcome the passage of the CTA, the small business community has concerns about the financial effects of these burdensome reporting requirements.

B. Foreign Policy Responses to Money Laundering

In 2013, the risks of hidden entity beneficial ownership and money laundering 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[310] to combat the abuse of entities via legal arrangements.[311]

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[303] *Id.*
[304] *Id.*
[305] *Id.*
[306] Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. (2019).
[307] *Id.* § 3 (requiring identifying information such as full legal name, date of birth, current residential or business street address, and a unique identifying number from a non-expired passport issued by the United States, a non-expired personal identification card, or a non-expired driver's license issued by a state).
[308] *Id.*
[309] *Id.*
[310] Avnita Lakhani, *Imposing Company Ownership Transparency Requirement: Opportunities for Effective Governance of Equity Capital Markets on Corporate Performance*, 16 CHI.-KENT J. INT'L & COMP. L. 122, 125 (2016). *See also* Max Biedermann, *G8 Principles: Identifying the Anonymous*, 11 BYU INT'L L. & MGMT. REV. 72, 74 (2015); 2013 LOUGH ERNE G8 LEADERS' COMMUNIQUE (2013) (UK), http://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communique [https://perma.cc/BF5S-9EDW].
[311] 2013 LOUGH ERNE G8 LEADERS' COMMUNIQUE 23–24 (2013) (UK), http://www.gov.uk/government/publications/2013-lough-erne-g8-leaders-communique [https://perma.cc/BF5S-9EDW]. The first of the G8 principles requires companies to know who owns and controls them and

One significant outcome from this summit was it led the G20 and the Organization for Economic Cooperation and Development (OECD) to call for the adoption of a multilateral exchange of information on beneficiaries.[312]

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.[313] The G8 principles do not specify the type of data that needs to be presented to countries reporting information on entity beneficial ownership.[314] One inherent limitation of the G8 principles is only the eight participating nations are obligated to follow them.

In November 2016, the G20 nations published a set of principles for governments to facilitate identification of the beneficial owners of shell entities;[315] however, "[t]he principles stopped short of recommending public access to registries of beneficial ownership."[316] In the European Union, the Fourth AML Directive (AMLD 4) requires member states to introduce registries of company beneficial owners.[317] The U.K. beneficial ownership registry opened in April 2016 but excluded trusts.[318] The U.K. set a precedent by creating the world's first fully open registry of beneficial ownership, albeit one that only discloses those beneficial owners that meet the twenty-five percent ownership threshold.[319] However, "[w]here registrars did become available in Europe, the quality of data (often collected but not verified) was widely criticized by industry

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their beneficial ownership. *Id.* The second principle addresses the availability of ownership to relevant authorities and 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 states should adopt customer identification and verification obligations to make sure that beneficiaries are properly vetted. *Id.* 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 regarding information exchange between nations regarding the abuse of corporate vehicles. *Id.*

[312] Lakhani, *supra* note 310, at 146, 154; Biedermann, *supra* note 310, at 88.

[313] Robert Levine, Aaron Schumacher & Shudan Zhou, *FATCA and the Common Reporting Standard*, 27 J. INT'L TAX'N 43, 46 (2016). *See also* Lakhani, *supra* note 310, at 125.

[314] *See* 2013 LOUGH ERNE G8 LEADERS' COMMUNIQUE, *supra* note 311.

[315] Jamie Smyth & George Parker, *G20 Leaders Back Drive to Unmask Shell Companies*, FIN. TIMES (Nov. 16, 2014), https://www.ft.com/search?q=g20+leaders+back+drive+to+unmask+shell+companies [https://perma.cc/4HNW-GA5Y].

[316] *Id.*

[317] Denis O'Connor, *EU Fifth Money Laundering Directive: Can Banks Handle It.?*, CYC360 (Nov. 21, 2017), https://www.riskscreen.com/kyc360/article/eu-fifth-anti-money-laundering-directive-key-points-banks/ [https://perma.cc/NG3A-5LMY]; Council Directive 2015/849, art. 30, 2015 O.J. (L 141) 1.

[318] Wolos, *supra* note 297, at 96; Jenik Radon & Mahima Achuthan, *Beneficial Ownership Disclosure: The Cure for the Panama Papers Ills*, 70 J. INT'L AFF. 87, 87 (2017).

[319] Radon & Achuthan, *supra* note 318, at 96.

experts."[320] Beneficial ownership registries in the BVI and Cayman Islands opened in June 2017 to comply with an agreement reached with the U.K. government.[321] In July 2017, a beneficial ownership registry commenced operation in Guernsey. Access is restricted to the economic crime division of law enforcement and certain other persons in the Guernsey government.[322]

In December 2017, an agreement was reached between the European Parliament and the EU Council on the latest amendment to the AML Directive (AMLD 5).[323] AMLD 5's aim is to prevent the use of the financial system from funding white-collar crime such as money laundering. As a result, the following measures will be introduced in EU member states:

- "Registers of beneficial owners of companies operating within the EU will be made publicly accessible and national registers will be subsequently better interconnected";[324]
- "Registers of beneficial owners of trusts and similar legal arrangements will only be publicly accessible where there is legitimate need";[325]
- "Information on national bank accounts and safe deposit boxes will be registered as well as information on real estate ownership, although the latter will only be accessible to public authorities";[326] and
- EU bank customers who send funds internationally must provide personal data so it can be transmitted to all banks in the payment chain.[327]

The potential implementation of the AMLD 5 requirements remains to be seen, since few member states even took up AMLD 4's option of implementing publicly accessible central registries of beneficial owners.[328]

Beneficial ownership disclosure by itself is not the complete answer to solving money-laundering issues. Such disclosure is most effective when accompanied by well-drafted criminal laws, sustained enforcement, modern technology, cooperation between governments, and sustained political will.[329]

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[320] Wolos, *supra* note 297.
[321] *British/Cayman Islands Economy: Quick View-Beneficial Ownership Registries Go Live*, THE ECONOMIST INTELLIGENCE UNIT (July 10, 2017).
[322] Alan Bourgourd, Presentation at the ICSA: Beneficial Ownership Register (Apr. 17, 2017), http://www.guernseyregistry.com/CHttpHandler.ashx?id=107438&p=0 [https://perma.cc/3FEP-6S6R].
[323] 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-amld5-and-ubo-agreement.html [https://perma.cc/LR23-KCY8].
[324] *Id.*
[325] *Id.*
[326] *Id.*
[327] O'Connor, *supra* note 317.
[328] *Id.*
[329] *See* Radon & Achuthan, *supra* note 318, at 88.

VII. CONCLUSION

The extensive abuse of shell entities to hide and transfer assets in the commission of money laundering and other offenses are of great concern to forensic accountants, law enforcement, regulators, auditors, and others who seek to discover and prevent it. Shell entities are legal structures providing anonymity and cover to their beneficial owners as they perpetuate their illegal schemes. Moreover, shell entities provide even greater cover to their beneficial owners when they are privately rather than publicly owned.

The expansive list of legal entities available to money launderers, other white-collar criminals, and drug dealers include LLCs, Anstalts, VISTA and SISTA trusts, IBCs, offshore asset protection trusts, LPs, FLPs, PIFs, shelf corporations, and FCs. Each entity type has its own unique structure and legal characteristics. The use of nominees, nominee directors, and bearer shares facilitates a legal smoke screen that optimizes concealment of beneficial ownership.

Three principal reasons explain the ability of money launderers to conceal their identities. First, money launders create legal entities that do not require public disclosure of the identity of the entity's beneficial owners. Second, money launderers remain concealed in the background by engaging the services of specialized facilitators who are instrumental in the formation and maintenance of a shell entity in the entity's home country. Third, the layering or pyramiding of numerous shell entities in different jurisdictions creates a nearly impenetrable maze for law enforcement and forensic accountants to follow in their effort to discover the identity of the true beneficial owners.

Various national governments and global organizations, such as the FATF, G20, OECD, and G8 have begun to cooperate in dealing with the issue of hidden beneficial ownership and exchange of relevant data on money launderers.[330] Clearly, the United States can do more in assuming a more aggressive stance against money laundering by "establishing robust global anti-money laundering rules, and effective implementation, a priority of their presidencies."[331]

The creation of ownership registries is one initiative under serious global consideration. Their implementation, however, is subject to push back from those concerned about privacy, excessive burdens on financial institutions, undermining national sovereignty, bank secrecy, and violating contractual relationships. Due to these concerns, global efforts to expand information exchange and entity ownership transparency that would likely result in a significant reduction of money laundering are progressing, albeit, at a modest pace.

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[330] Nigel Gould-Davies, *Drive Global Action on Money-Laundering*, CHATHAM HOUSE (June 12, 2019), https://www.chathamhouse.org/expert/comment/drive-global-action-money-laundering [https://perma.cc/9S6D-2ZJM].
[331] *Id.*