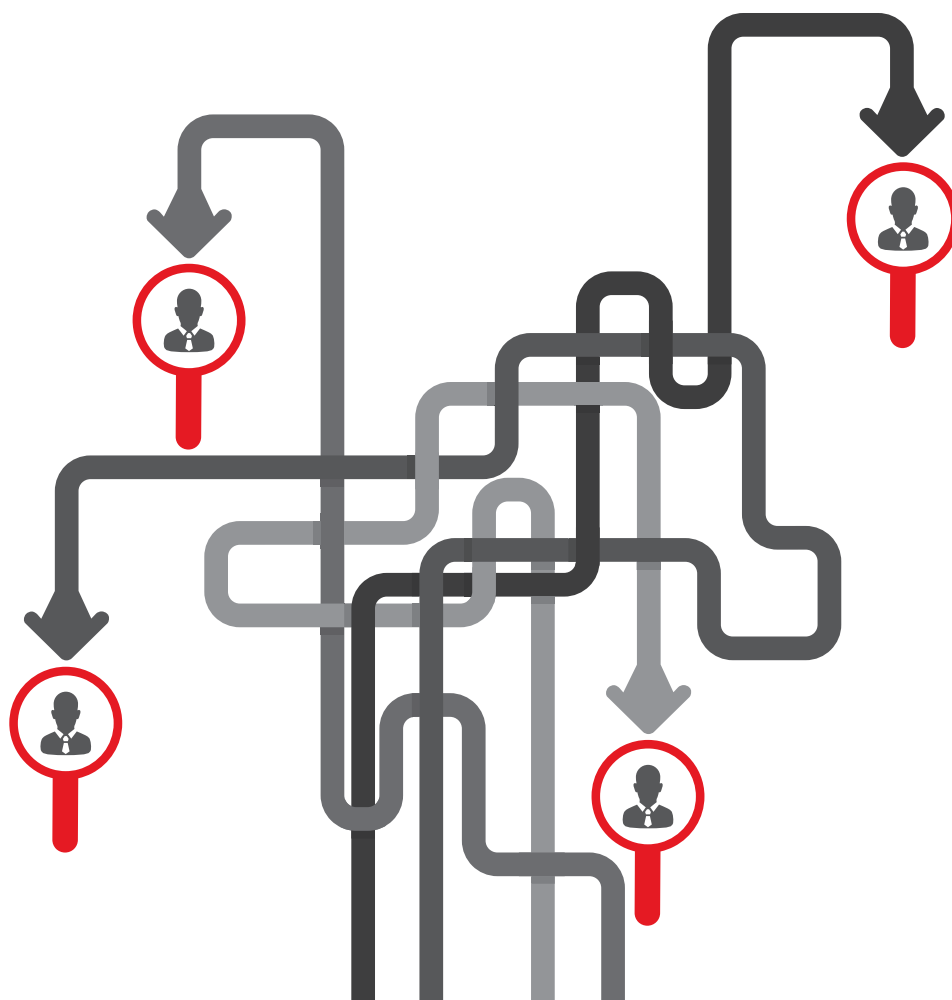


Solving the Beneficial Ownership Conundrum: Central Registries and Licenced Intermediaries



A report by **Jason Sharman**,
Griffith University, Australia, for Jersey Finance

Solving the Beneficial Ownership Conundrum:

Central Registries and Licenced Intermediaries

Foreword

For almost 30 years Jersey's regulated corporate service providers, and our Companies Registry, have collected information on the ultimate owners of every company registered in the Island. We have always believed that our system meets, and even exceeds, international standards in combatting financial crime.

Professor Jason Sharman was one of a group of academics who, in 2011/2012, strength tested the regulatory systems of 180 countries by impersonating money launderers, corrupt officials and terrorist financiers. The subsequent report, *Global Shell Games*, published in 2014, showed that Jersey's system was highly resilient, with not a single breach being recorded.

In 2015 Jersey Finance commissioned Professor Sharman to take his work a step further and analyse the effectiveness of central registries and licenced intermediaries in combatting financial crime. We hoped that his independent analysis could be used to demonstrate Jersey's position as an international finance centre of excellence.

The revelations in the Panama Papers on Sunday 3 April 2016, and the subsequent furore, have made his findings, both in *Global Shell Games* and in this publication, even more pertinent.

We hope that this paper will contribute to the debate that has been underway since the Panama Papers were published. In particular, we hope that it will demonstrate that two popular misperceptions are incorrect: all IFCs are not the same, and public registries do not necessarily combat financial crime effectively.

I hope this independent report is seen as a significant addition to an important debate, and will help ensure that measures implemented in order to combat crime are as effective as possible.

Geoff Cook
CEO, Jersey Finance
19 April 2016

A note on financial transparency:

The original research underlying this paper was funded by Australian Research Council grants FT120100485 and DP0771521, Norwegian Research Council grant 212210/H30, and the Stolen Assets Recovery (StAR) Initiative, a joint project of the World Bank and the United Nations Office on Drugs and Crime.

A note on data transparency:

The full results of the *Global Shell Games* project are published in Michael G. Findley, Daniel L. Nielson and J.C. Sharman, *Global Shell Games: Experiments in Transnational Relations, Crime and Terrorism* (Cambridge: Cambridge University Press, 2014). The full text of the World Bank/United Nations Office on Drugs and Crime report *The Puppet Masters: How the Corrupt Use Legal Structures to Hide their Stolen Assets and What to do About It* (Washington D.C. 2011), co-authored by Emile van der Does de Willebois, Emily Halter, Robert A. Harrison, Ji Won Park and J.C. Sharman is available for free at: <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>.

Introduction

Shell companies that are used to hide the identity of the real people in control are one of the most important mechanisms for enabling a wide range of serious financial crimes: large-scale corruption, tax evasion, sanctions-busting, and money laundering. Accordingly and appropriately, the need to 'look through' shell companies to determine the real owners, also known as the beneficial owners, has become a global policy priority. A range of multilateral groupings like the G7, G20, World Bank, International Monetary Fund (IMF) and the Financial Action Task Force (FATF), as well as individual nations and the European Union, have made ambitious commitments to further the availability of beneficial ownership information. Rather than enhancing access to beneficial ownership information being a goal in and of itself, it is hoped that by improving performance in this area it will be possible to reduce the associated crimes.

Strongly encouraged by a coalition of crusading transparency non-governmental organisations (NGOs), in the last few years the British government, and more recently the EU, have adopted the position that ensuring the availability of beneficial ownership information requires a centralised company registry with this information on file. This policy stance is based on the proposition that centralised registries are the only way to adequately ensure that companies can be linked with their beneficial owners, or at the very least that centralised registries are demonstrably superior to other means of accessing beneficial ownership information.

This discussion paper takes issue with this stance, arguing that centralised registries are not the only way of finding companies' beneficial ownership. Furthermore, on available evidence they may not even be the best means of doing so. This judgement applies in the legal sense that the global rules on beneficial ownership clearly allow

countries to take different routes to achieve the desired outcome. More importantly, this judgement also applies in relation to actual effectiveness, where there is comparatively little evidence of how centralised registries would work in practice, thanks to their current novelty and rarity. On the basis of available evidence, it is simply not possible to say that centralised registries work better than the leading alternative (discussed below), and it is demonstrably wrong to say that they are the only way of achieving corporate transparency.

The paper first briefly explains why untraceable companies are a problem (trusts and other corporate forms pose many of the same challenges, but they are largely excluded from this discussion). The next step is to summarise the global standard for beneficial ownership as set down by the FATF, and then sketch out the two leading alternatives for satisfying this requirement: centralised registries, and regulated Corporate Service Providers.

The Nature of the Problem

As noted, companies that cannot be traced back to their real owners have been identified as one of the major enabling mechanisms for serious transnational financial crime, although it is important to note that a large majority of shell companies are used for entirely legal and legitimate purposes. This problem is particularly acute with shell companies, a loosely defined term meaning those companies that are not engaged in the production of substantive goods and services, but which instead are used mainly for the attribute of separate legal personality. Tracing the flow of criminal funds to a particular bank account held in the name of a company is not especially useful if it is then impossible to identify the real individuals in control of the company, i.e. the beneficial owners.

Beneficial owner - ‘The natural person(s) who ultimately owns or controls the legal person or legal arrangement’

The term ‘beneficial owner’ does not have a fixed legal definition, though intuitively the sense of the real individual or individuals controlling the company is easy to grasp (operationalising this concept in law and regulations, however, is much harder). The G20 defines this term to mean ‘the natural person(s) who ultimately owns or controls the legal person or legal arrangement’ (G20 High Level Principles on Beneficial Ownership 2014). Beneficial ownership is distinct from legal ownership, where (for example) the official shareholder of record may be another company, or a lawyer acting as a nominee for the beneficial owner. In this sense the term ‘ultimate beneficial owner’ is a confusing tautology, in the same way as asking for the ‘real, real owner’. If a person is not the ultimate owner and controller, they are by definition not the beneficial owner.

Rather than beneficial owners directly setting up their own shell company, it is more common for them to employ the services of an intermediary, a Corporate Service Provider (CSP), who lodges the necessary paperwork and performs the administration necessary to create the company. While all companies must have some record of their existence on an official government registry, up until the present there has almost never been a requirement to identify the beneficial owner in this manner.

What do International Beneficial Ownership Rules Require?

The international standard governing beneficial ownership can be simply stated. In 2003 the FATF adopted Recommendation 33, mandating that:

Countries should take measures to prevent the unlawful use of legal persons by money launderers. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.

This standard continued that countries ‘could consider’ the steps recommended in Recommendation 5, which charged banks and other similar financial institutions with the responsibility of finding the real owners of their corporate customers.

The FATF standards were updated in 2012, Recommendation 33 became Recommendation 24, yet the section quoted above stayed the same (bar the addition of terrorist financing). In a new section, it went on to say that ‘Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs [Designated Non-financial Businesses and Professions, e.g. law firms and CSPs]’. In both cases, then, the presumption is that private intermediaries, be they banks, CSPs, or some other party, will collect and retain beneficial ownership information. In the Interpretive Note to this Recommendation the FATF is explicit that ‘Countries may choose the mechanisms they rely on to achieve this objective, although they should comply with the minimum requirements’ (FATF 2012: 83).

The fact that the FATF 40 Recommendations are technically ‘soft law’ has not stopped them becoming the unchallenged global standards in anti-money laundering regulation in general, and with regards to beneficial ownership regulation in particular. FATF standards have thus been endorsed in a variety of hard law United Nations conventions and UN Security Council resolutions, as well as by the IMF and World Bank, with over 180 countries committing to meet these standards. The G20 and G8 have also endorsed the FATF standards. In its 2014 ‘High Level Principles on Beneficial Ownership Transparency’, the G20 restated the gist of Recommendation 24, and then noted that ‘Countries could implement this, for example, through central registries of beneficial ownership or other mechanisms.’ The G8 communiqué from the year before contains very similar language (‘This could be achieved through central registries of company beneficial ownership’). Shortly thereafter in both the G8 and G20 documents it is specified that CSPs should identify and verify beneficial ownership. The statements also make the sensible point that to have credibility and legitimacy in this area, G8 and G20 members must ‘lead by example’.

In sum, then, while the FATF is explicitly open to countries adopting different means of

establishing a record of beneficial ownership, the G8 and G20 have moved to mandating the regulation of CSPs in terms of collecting beneficial ownership, and suggesting that another possible way of achieving the same outcome is establishing centralised registries. What is obvious from even the briefest consideration of these authoritative international standards is that there is certainly nothing close to any general international expectation, rule or requirement that countries create a beneficial ownership registry. Instead, this course of action is merely suggested as one possible option. As such, there is no basis to maintain that centralised registries are an international legal duty, or even some kind of looser informal international standard or norm. This impression is strengthened by the fact that at the time these declarations were made, no G8 or G20 member had set up any such register. More stress is put on ensuring that CSPs collect and verify beneficial ownership information for their clients. In this sense, outside the EU member states, beneficial ownership registries are certainly not essential, nor are they even the preferred approach in global standards. Those choosing to assess jurisdictions on the presence or absence of registries they should be aware that this is an essentially idiosyncratic criterion.

What Works? Assessing Effectiveness

For all the discussion of what global rules on beneficial ownership do or don’t require, the more important question is what methods will actually be most effective in tackling the policy problem, i.e. opaque companies and the crimes they facilitate. While it is not true to say that the laws and regulations don’t matter, it would be fair to say that for too long technical or legal compliance has received too much attention, and questions of whether and to what extent policies are actually effective have too often been neglected. It is commonsensical that rules on the books may have little or no effect on actual behaviour; no one thinks that just passing a law against corruption is going to stop people offering or taking bribes, for example. To their credit, bodies like the OECD and the FATF have recently shifted their assessments to focus on effectiveness.

Although no one now questions the importance of assessing policy effectiveness, measuring the impact of rules designed to reduce corporate

opacity, and hence money laundering, tax evasion and the like, is difficult for a range of reasons. Obviously, an inherent lack of information is the crux of the problem when it comes to untraceable shell companies. Because we have no credible historic or current estimates of the scale of money laundering or tax evasion (see Peter Reuter’s introductory chapter in *Draining Development? Controlling the Flows of Illicit Funds from Developing Countries*, World Bank, 2012), we cannot compare the ‘before’ and ‘after’ pictures to determine what difference, if any, new laws have made. We cannot assess the counterfactual condition, that is, how would this problem be different if we had introduced different policies, or none at all? If measuring effectiveness is too important to give up on, we should nevertheless be modest about the certainty of our conclusions.

Restating the same questions in terms of effectiveness, rather than legal compliance as above, are centralised registries of beneficial ownership the only, or the best, way to ensure that ‘there is adequate, accurate and timely information on the beneficial ownership and control of legal persons’? It is impossible to give a definitive answer either way, in that such registries are vanishingly rare. One of the earliest pioneers was the Crown Dependency of Jersey, whose experience is briefly reviewed below. Only now are they being constructed in the UK and other countries of Europe in line with the 4th EU Anti-Money Laundering Directive. Logically, then, it is far too early to make any strong claims on the extent to which this approach will solve the current problem of missing beneficial ownership information, either in an absolute sense, or relative to existing alternatives. There is not enough evidence to say how well or badly beneficial ownership registries will work in practice, and so there is no basis for saying that they are the only or the best solution.

Yet of course every new policy solution has to start somewhere. It would be unreasonable to put advocates in the Catch-22 position of having to demonstrate a track record of practical effectiveness for a proposed policy as a pre-condition for its introduction. As such, it is important to analyse the relevant evidence that we do have so far. Here it is important to provide further information on the specifics of how registries are supposed to work, as well as the leading alternative, which relies on CSPs collecting beneficial ownership information.

Corporate Service Providers come in a huge variety of forms, from dedicated wholesale firms that form and sell thousands of shell companies each year, to law and accountancy firms that provide shell companies as an incidental sideline, to sole traders relying on a website to draw in a few dozen customers. The potential point of regulatory intervention is created because CSPs form a crucial link between customers (i.e. the beneficial owners), and the authorities. All CSPs must know something about their clients, even if it is just to make sure that the clients pay CSPs' fees. Similarly, all CSPs must provide some information to the authorities, even if it is just giving the company registry the name of the shell company. Given this position, many jurisdictions, particularly International Financial Centres, have imposed a duty on CSPs to collect and verify documents establishing the true identity of beneficial owners, in line with the principles articulated in the FATF, G20 and G8 statements referenced earlier.

In practice this means that CSPs make business conditional upon customers providing a notarised or certified copy of the picture page of their passport, usually supported with utility bills or other proof of residence. CSPs have a continuing duty to make sure that any changes of beneficial ownership are reflected in their records. Law enforcement and regulators can then access this information as needed, including in line with requests from their foreign counterparts.

For this system to work several preconditions apply.

- First, CSPs must be licenced, something that is not currently the case in countries like the United States and Australia.
- Second, authorities must be vigilant in auditing CSPs to make sure that they are in fact collecting proof of identity, with sanctions applied to any that are failing to do so.
- Third, chains of intermediaries (for example when multiple CSPs are processing transactions for the same client) must ensure that each has access to information on the identity of the beneficial owner.
- Finally, the transfer of information from CSPs to the authorities must be relatively swift, giving CSPs legal assurance that they will not be sued by clients for breach of confidentiality or similar grounds.

There is a division of opinion within those favouring central registries of beneficial ownership regarding whom should have access to this information

In contrast, how would central registries work? As with CSP regulation, there are variations. From 2008 to 2014 a series of proposals introduced to the US Congress aimed to simply add a line to both initial company registration documents and annual renewals requiring the name and address of the beneficial owner(s), defined as a person owning 25 per cent or more of the shares. According to this draft law (which was never passed), providing false or incomplete information would be a criminal offence. The resulting information would only be accessible by law enforcement. Since US corporate registries are state, rather than federal, technically this would not be a central registry, but the principle is the same.

The EU standard instituted in mid-2015 works in an equivalent manner, again requiring information on the identity of all those holding a direct or indirect ownership share of 25 per cent or more. There is a residual clause specifying that if some individual exercises effective control over the company without meeting the 25 per cent threshold, they should also be classified as a beneficial owner. The information is available to law enforcement, tax authorities and regulators, as well as those that can demonstrate a 'legitimate interest', with this criterion to be fleshed out by national governments.

Evidencing the close co-ordination of policy in this area, the UK Small Business, Enterprise and Employment Act 2015 is once again broadly similar. It uses the same 25 per cent threshold to define beneficial ownership (termed Persons with Significant Control), with equivalent residual clauses to catch those who don't reach this threshold but nevertheless exercise effective control. The specific information required from each individual is name, service address, nationality, date of birth and usual residential address. Most of this information will be held on a publicly searchable database with Companies House. Those not complying can lose ownership of their shares, or be subject to criminal penalties.

There is a division of opinion within those favouring central registries of beneficial ownership regarding whom should have access to this information. One view is that beneficial ownership registries should remain closed to all but law enforcement and regulators. In contrast, NGOs favour this information being openly available to all members of the public, online and free of charge. The relevant EU law has tended towards closed registries, with the exception that those with a compelling legitimate reason may have access, while the UK has favoured a more open registry.

Harking back to the key questions posed above, what is the evidence that this system is the answer to untraceable shell companies, and that it will work better than imposing Know Your Customer duties on CSPs (though strictly speaking these measures may not be mutually exclusive)? Recalling the caveat above, it is early days for centralised beneficial ownership registries and so one can make a huge range of predictions about how they will work.

The first source of evidence is the World Bank/United Nations Office on Drugs and Crime report *The Puppet Masters: How the Corrupt Use Legal Structures to Hide their Stolen Assets and What to do About It*. The report is largely concerned with beneficial ownership, it draws on a wide range of evidence, including an original dataset of 150 cases of grand corruption (which involve 593 shell companies, p.122), a series of interviews with regulators and law enforcement officials, and an audit study (colloquially known as 'mystery shopping') of soliciting offers for anonymous shell companies to test CSPs' Know Your Customer policies.

The unambiguous conclusion of *Puppet Masters* was that a beneficial ownership regime based on licenced CSPs was a better solution than one based on a company registries of beneficial ownership. The most positive verdict on such registries was that they are better than nothing. One major reason behind the tepid support for registries was the judgment of those who worked in registries themselves that the proposed system would not work. Company registries have a largely passive, archival function revolving around receiving and filing documents. They do not have and (at least in the opinion of those interviewed) do not want a responsibility to verify the documents they receive. This is significant in that all of the registry models summarised above

receive declarations as to the identity and personal details of the beneficial owners, but there is no verification process to ensure that this information is accurate. The expectation (or hope) is that the threats of loss of company ownership and criminal penalties will be sufficient to induce people to provide accurate information. The registry itself has no incentive to discern the veracity of the beneficial ownership records it holds.

Note that this is a significant difference with the CSP model, according to which these private intermediaries do not just ask for the name and details of the beneficial owner, but are also responsible for verifying these details against passport copies and other documents. CSPs have an incentive to ensure these records are accurate, in that false records may lead to a revocation of their licence. Beneficial owners intent on concealing their control of a company have to go to greater trouble, and incur greater criminal liability, under the licenced CSP system than in the central registry system. Of course it might be said that CSP can be bribed to false verify beneficial ownership information, but presumably those working in registries could be corrupted in a similar fashion.

Most relevant is the finding that the best performing jurisdictions were those that have a licencing regime for their CSPs

What evidence is there that a licenced CSP system can deliver on the goal of accessible beneficial ownership information? Here the most systematic evidence is from the *Global Shell Games* project, coauthored by Michael Findley, Daniel Nielson and myself, as well as earlier, less rigorous audit studies I performed for the *Puppet Masters* report and other academic work. Extensively discussed elsewhere, this document gives only a brief summary of the approach and main conclusions. Most relevant is the finding that the best performing jurisdictions were those that have a licencing regime for their CSPs, rather than relying on a centralised registry.

Global Shell Games is based on a Randomised Controlled Trial, in the sense that it randomly assigned different customer risk profiles to 3773

CSPs across the globe via email solicitations from a variety of fictitious consultants seeking untraceable shell companies. The aim of the study was to find out whether varying the information contained in solicitation emails and changing customer risk profiles made any difference to, firstly, CSPs' propensity to respond to solicitations, and, secondly, CSPs' propensity to comply with international standards by verifying their customers' identities. The study, conducted 2011-2012, also provided the best information yet available on country-by-country compliance with beneficial ownership regulations.

International Financial Centres on average performed notably better than OECD countries. Some IFCs like Jersey and the Cayman Islands had a perfect record of compliance, i.e. not one of the CSPs contacted was willing to provide a shell company to our fictitious consultants without first seeing a suite of official identity documents proving the customer's true identity. This strong record of compliance occurred even when some of the email approaches explicitly offered to pay a premium if Providers were willing to waive the rules on customer identification. In contrast, it was much more common for Providers from OECD countries to offer shell companies without any requirement that the customer prove their real identity. In practice, this means that these OECD-based intermediaries were willing to sell exactly the sort of untraceable shell companies so useful for criminals, and that are explicitly prohibited by the FATF 40 Recommendations and other associated international standards.

The less rigorous audit studies performed 2009-2010, where there was only a single, uniform solicitation to Providers rather than the random allocation of different profiles, show a similar picture (for full details see J.C. Sharman The Money Laundry: Regulating Criminal Finance in the Global Economy Ithaca: Cornell University Press, 2011). IFCs with a licenced CSP regime once again have a notably higher level of compliance than OECD countries without such a regime. The fact that IFCs had legislated and enforced CSP licencing regime can in many cases probably be ascribed to external regulatory pressure, especially that associated with the FATF's Non-Co-operative Countries and Territories blacklisting exercise from June 2000. In contrast, a large majority of OECD members has never faced any equivalent pressure to improve their own performance with regards to beneficial ownership.

The relatively poor performance of the UK in both the *Global Shell Games* study and the earlier audit studies, with significantly lower levels of compliance than most IFCs, is notable in light of the 3rd EU Money Laundering Directive of 2005 which explicitly regulated CSPs and imposed Know Your Customer requirements upon them (Article 3(7)). What has gone wrong with the British system? Provisionally, it seems that there were, and at least in some cases still are, problems of law and enforcement.

First the UK has long lagged almost all IFCs in allowing the unrestricted use of bearer shares, only moving to abolish these in 2015, despite the fact that the FATF had for almost 20 years previously identified bearer shares as highly inimical to corporate transparency. A loophole in the coverage of the law applying the 3rd Directive was created when those intermediaries engaging in one-off or ad hoc transactions with customers were exempt from the due diligence requirement. Several large British CSPs argued that because the provision of shell companies was just such a one-off transaction, they were not covered by the obligation to know their customers. Given that the provision of shell companies usually involves not just the creation of a company, but also on-going services like supplying nominee directors and sometimes other continuing auxiliary services, this logic seems rather strained. More important, however, seems to be a lack of enforcement by the UK authorities.

The default regulator responsible for enforcing these rules is Her Majesty's Revenue and Customs (HMRC). Almost all UK government agencies have been subject to extensive cut-backs as part of the austerity agenda, and inspecting CSPs is in any case some distance from HMRC's core function of raising revenue. The up-shot seems to be a lack of enforcement of the requirement that British CSPs establish the true identity of their clients. According to enquiries made by the NGO Global Witness, there may never have been a single audit or inspection carried out to enforce this rule. The unsurprising conclusion is that rules are unlikely to be effective unless they are enforced, accentuating the importance of the FATF's shift from just assessing technical compliance to seeing whether and how laws and regulations are implemented in practice. The strong performance of the IFCs in the *Global Shell Games* test of beneficial ownership regulations shows that a system based on licencing CSPs can work well, but that the regulations themselves

are a necessary rather than sufficient condition of effective performance.

What is the significance of this commonsensical insight about enforcement for centralised registries of beneficial ownership? The difficulty here, that policies may look good on paper while being almost completely ineffectual in practice, returns us to the problem of the lack of practical experience with beneficial ownership registries that makes the adoption of this system something of a leap of faith. The Achilles heel here, practically but also in some sense legally, may be the lack of verification of beneficial ownership declarations submitted to registries. As noted, corporate registries have a passive, archival role in receiving and filing documents, rather than an investigative or enforcement function. To the extent that international rules require beneficial ownership information to be verified, centralised registries fail to meet this standard. A de facto verification function may result from the public scrutiny of beneficial ownership records in open registries by journalists, NGOs and other parties. Yet this is likely to be a very ad hoc approach. Furthermore, the tendency so far outside the UK is to keep registries closed, attenuating even this uncertain verification mechanism.

A further cause for concern is that company registries may be failing to perform their existing record-keeping duties, which does not inspire confidence about their ability to solve problems of beneficial ownership availability. A cautionary tale is the experience of Norwegian journalists from Dagens Næringsliv seeking information in the Cypriot registry.

In 2011 Norwegian journalists visited the Cypriot registry seeking information on companies connected with one of Norway's wealthiest individuals. EU and Cypriot law specifies that companies must file annual, audited accounts, as well as maintaining accurate records of legal (but at this time not beneficial) ownership, and further mandates that these records should be open to the public for inspection. In practice, however, the journalists found that law has little to do with reality. The initial exchange with the first registry official is as follows:

“Are you the police?”

“No.”

“Are you a detective?”

“No.”

“But who are you?”
“I’m a journalist.”

“These documents are secret.”

So much for the law specifying public access. Yet after having gained access to the registry, the journalists found that they faced a much greater obstacle to accessing the information on beneficial ownership that they needed.

The registry office itself was swamped with teetering stacks of unopened correspondence. In searching the files of the 30 companies of interest, the journalists found no information at all from the preceding 11 years. Rather than being exceptional lapses, the head of the registry admitted that there was a general 10-year backlog in opening correspondence. He also exhibited a notable degree of indifference to the idea that necessary information was not being submitted to the registry:

“When a company comes to deliver its accounts it is followed by a form. But the Treasurer who receives the document does not care about what actually is on the form. So when the time comes, two, three, five, or a hundred years later, when we go through this, we may see that something is missing.”

With this example in mind, and in an environment of pervasive government cut-backs, many registries may well struggle to stay on top of their existing duties, let alone taking on substantial new responsibilities.

As of June 2015 the Ukrainian government has brought into force a beneficial ownership law very similar to the British and EU model described earlier ('On Amending Certain Laws of Ukraine Relating to the Identification of Ultimate Beneficiaries of Legal Entities and Public Figures'). The law is once again based on a 25 per cent shareholder threshold backed up by a catch-all clause relating to those exercising control in other ways. Yet according to my interviews with international regulators, during a visit to the local ministry responsible for administering this measure, officials had not even heard of the law, let alone begun implementing it.

Of course, defenders of centralised registries could rightly point out examples of rogue CSPs that fail to maintain up-to-date customer records, or, even worse, actively conspire with criminals in money laundering schemes. Among the vast amount of information in the

offshore dataleaks released by the International Consortium on Investigative Journalists from the CSPs Commonwealth Trust Services and Portcullis Trustnet there were some instances of lapses in collecting beneficial ownership information. However, there were many more instances in which clients were required to provide proof of identity. This information is particularly significant because, as with the *Global Shell Games* and audit studies, the CSPs had no idea they were being monitored or that their behaviour would become public, and thus we can be more confident that they were applying standard procedures. In contrast, regulatory inspections are more likely to see businesses playing to the script of what they should be doing, which may or may not correspond with what they actually do in private when real money is at stake.

The Jersey Model

Given the problems discussed above, what principles are likely to maximise the effectiveness of central registries? The Puppet Masters report referred to earlier specifies three conditions as part of what is referred to as the 'Jersey model' (see p.76).

1. Firstly, unlike conventional registries, Jersey's actively verifies beneficial owners' identities at the time of first registration, and runs their names through due diligence software.
2. Secondly, the registry coordinates closely with the islands' (licenced and regulated) CSPs to ensure that beneficial ownership information is kept up to date in subsequent years.
3. Finally, company registration is only approved if trained staff at the registry are confident that they have accurately identified the beneficial owner. While no system is perfect, this model of registry seems to provide significantly greater confidence than the passive, archival central registry alternative in British, EU and US blueprints.

The United States

When it comes to beneficial ownership regulation, at present by far the biggest problem is the United States, which has neither licenced CSPs nor registries of beneficial ownership information (and has opted out of the worldwide Common Reporting Standard on tax information exchange as well). Furthermore, there is very little prospect of either solution being introduced with the death of the Incorporation Transparency and Law Enforcement Assistance Act. As has been convincingly demonstrated by a variety of US government reports, from the Senate Permanent Subcommittee on Investigations, to the Treasury Department, to the Government Accountability Office, not to mention a variety of media and NGO exposés, untraceable US shell companies are routinely used in facilitating serious crime. While the US does attract some criticism for its poor performance in this area, it is peculiar that IFCs are subject to much more international pressure and negative publicity, even though objectively their performance is much better. This disparity seems to be an indicator of the degree to which the policy debate over beneficial ownership is dominated by politics and public relations concerns, rather than a genuine desire to fix the problem of untraceable shell companies.

About the Author

Jason Sharman is a professor at Griffith University in Brisbane, Australia, with the Centre for Governance and Public Policy, where he focuses on the regulation of global finance, particularly in relation to money laundering, corruption, tax and international financial centres.

Sharman has earlier worked as a consultant with the World Bank, Financial Action Task Force, Asia-Pacific Group on Money Laundering and several private sector groups.

 j.sharman@griffith.edu.au

About Jersey Finance

Jersey Finance has been run as a not-for-profit organisation since it was formed in 2001. It represents and promotes Jersey as an international financial centre of excellence.

It is funded by members of the Island's finance industry and the States of Jersey government, and has offices in Dubai, Hong Kong, Mumbai and New Delhi along with representation in London and a CBBC Launchpad in Shanghai.

While Jersey Finance commissioned this work, it remains the independent work of Professor Jason Sharman.

 www.jerseyfinance.je

 www.youtube.com/jerseyfinance

 www.twitter.com/jerseyfinance

 www.linkedin.com/company/jersey-finance

