Part 4. Finding the Beneficial Owner

"You may seek it with thimbles—and seek it with care; You may hunt it with forks and hope; You may threaten its life with a railway-share; You may charm it with smiles and soap—"

—Lewis Carroll ("The Hunting of the Snark")

4.1 Introduction

In this part, we describe the relevant actors and institutions that can (a) help to identify the corrupt persons behind a corruption scheme once it has been discovered or (b) establish a link between a known target and certain assets. We deal in turn with company registries (and other repositories of information), trust and corporate service providers, and financial institutions.

4.2 Company Registries

4.2.1 The Role of Company Registries and the Services They Provide

When corporate vehicles that have a separate legal personality (that is, excluding trusts) are formed and registered, they are granted the legal individuality that allows them to be controlled, owned, financed, and otherwise used for either legal or illegal purposes—in the latter case, often by unacknowledged beneficial owners. It is the task of central company registries to collect and store information on the structural makeup and particulars of such registered entities.

A company registry's main functions are four-fold:

- To record the "birth" of a new legal entity
- To compile the information required by the registry or by law (see section 4.2.2)
- To keep the registry up to date
- To make certain information available to the public.

The information on companies held by the registry serves multiple purposes:

- To identify tax contributors
- To provide statistical information for the government and the public

- To protect consumers and investors against fraudulent entities[55] and
- To allow potential business counterparts to verify the powers and competences of the person they are contracting with.

Several international associations of registries (also called registers) exchange information and ideas concerning the role of corporate registries at both national and global level:

- International Association of Commercial Administrators (IACA) (http://www.iaca.org/)
- Corporate Registers Forum (CRF) (http://www.corporateregistersforum.org/)
- European Business Register (EBR) (http://www.ebr.org/section/4/index.html)
- European Commerce Registers' Forum (http://www.ecrforum.org/)
- Canadian Association of Corporate Law Administrators (CACLA)
- Association of Registrars of Latin America and the Caribbean (ASORLAC) (http://www.asorlac.org/ingles/portal/default.aspx).

Unlike most other potential sources of information on beneficial ownership, corporate registries typically have no specified functions under AML legislation. Their actual function in this regard—as a source for due diligence or investigation—is purely a by-product of their well-established place in the corporate and financial sectors. Nonetheless, both the investigators and the compliance officers interviewed for this study indicated that registries are generally the most valuable and accessible sources of information for investigations, for due diligence, and for identifying trends or recurring patterns (such as cases in which one individual, who is not a service provider, is listed as director for a large number of companies).

The importance of company registries was mentioned frequently during the consultations undertaken for this study. Many financial institutions, for example, reported that they keep track of which registries they trust as a source of certain types of information, and the extent to which they are accurate.

The value of company registries has its limitations. For example, most registries are government depositories and inherently archival in nature. Indeed, all the registry representatives with whom we spoke were involved in almost exclusively receiving and logging information, rather than undertaking any quality controls or verifying the information received from incorporators. Registries have limited scope. With very few exceptions, they do not cover non-incorporated corporate vehicles (that is, legal arrangements such as trusts). Such arrangements are not registered in company registries, and they do not have another equivalent register. Finally, the information available at registries may well be incomplete and out of date.

55. Liliana de Sa, *Business Registration Start-Up: A Concept Note* (Washington, DC: International Finance Corporation and World Bank, 2005), p. 3, available at http://rru.worldbank.org/Documents/PapersLinks/BizRegistrationStart-Up_ConceptNote.pdf.

4.2.2 What Information Can Company Registries Usefully Gather to Fulfill Their Duties?

Adequate Information

The type and amount of information on a legal entity captured in a central registry varies from jurisdiction to jurisdiction, but generally it is a combination of the following:

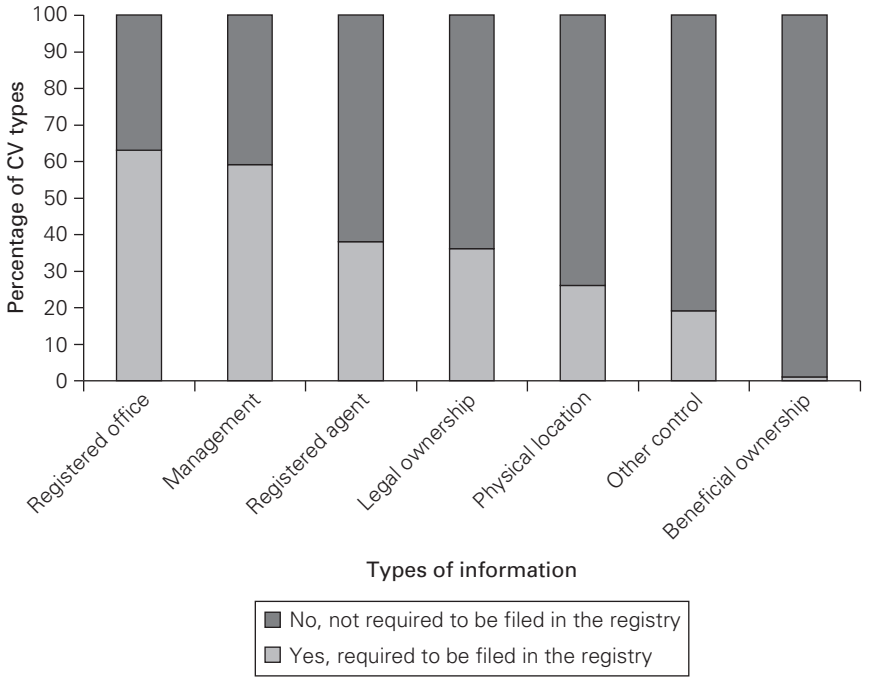
- ***Almost always:*** The legal status and existence—name, legal entity type (corporation), registration date and (where applicable) date of dissolution or date when the company was struck from the registry, and formation documents, such as the memorandum or articles of incorporation, and related bylaws
- ***Almost always:*** The addresses of a registered office (which could be a trust or company service provider) or the physical location or principal place of business of the legal entity itself
- ***Almost always:*** The names and addresses of a registered agent, person authorized to accept service of process, or a resident secretary
- ***In the majority of cases:*** The names and addresses of persons in positions of legal control within the legal entity (directors and officers);
- ***Sometimes:*** The names and addresses of persons in positions of legal ownership (shareholders or members);
- ***Very Rarely:*** The name of the beneficial owner.

As part of this study, legislation establishing company registry requirements was reviewed in 40 jurisdictions. From these 40 jurisdictions, a total of 325 different forms of legal entities (hereinafter "LE types") were aggregated for analysis to determine the information that was required upon registration and that subsequently would be available to banks and authorities (see figure 4.1).

About one-quarter (26 percent) of all LE types file information on the physical location of the place of business, more than half (63 percent) file the address of a registered office, and more than one-third (38 percent) file the address of a registered agent. A little more than half (59 percent) file particulars of a formal position of control (management), and just over one-third (36 percent) file particulars of formal positions of ownership (legal ownership). In cases in which the register of shareholders is not kept at the central registry, it is often found with the legal entity or with the registered office, agent, or representative service provider, whose locations are always required to be recorded in the registry and regularly updated. This can give authorities a quick way to pinpoint who to approach and where to find them.

Of the 40 jurisdictions reviewed, only one—Jersey—requires the beneficial owner to be identified and recorded by a government body, the Companies Registry within the Financial Services Commission, which is responsible for the regulation and

FIGURE 4.1 Types of Information on Corporate Vechicles Collected by Registries



Source: Authors' illustration.

supervision of the financial services industry. Generally registries do not maintain beneficial ownership information, but they do record relevant particulars of legal entities, such as the registered office, the name of the agent, and the management, all of which enhance the potential usefulness of the registry in providing leads to the beneficial owner.

A significant obstacle, however, to the usefulness of the registry is the existence of nominee arrangements, whereby individuals assume a management or ownership position on behalf of an unnamed principal. The majority of registries maintain information about the use or existence of nominee arrangements in the case of but a few LE types: Only a small minority of LE types examined were required to disclose the existence or use of nominee shareholdings, and only a subsection of those were required to disclose the existence of nominee directors.

Accurate and Timely Information

Besides the question of whether information about legal entities is recorded and documented, it is also important to consider the quality and accuracy of that information. Registries rarely verify information or ensure that it is kept up to date. The responsibility for verifying information, notifying changes in particulars, and submitting all the appropriate forms always lies with the legal entity.

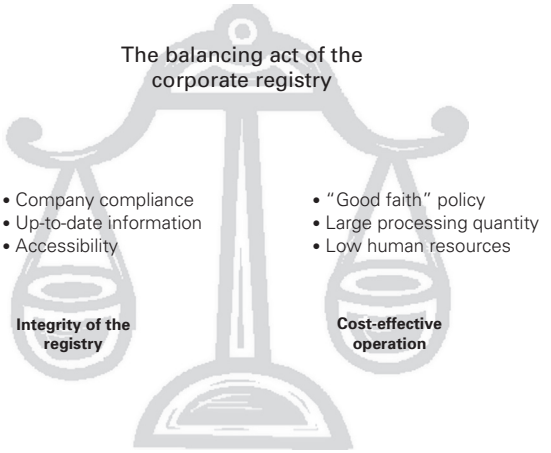
Registries generally take information on good faith, with most documents and filings being accepted "as is" unless an omission of information is blatant. On-site visits and data verification fall well outside the typical duties of registries. The information is usually in the form of self-declarations by applicants and subscribers. Quality assurance and updating are the responsibility of the legal entity, and this obligation is reinforced by the threat of sanctions. Providing misleading information is an offense under the relevant regulations in almost all jurisdictions; and in an instance of misuse, this may constitute corroborative evidence in building a criminal case. Nonetheless, registries consulted for this study reported that some companies still fail to comply, simply because they have not understood their requirements and responsibilities. In such cases, they are either asked to amend their information or are referred for enforcement to the respective authorities.

Most registries require changes in information to be updated within 14 days. Requirements vary significantly, however, and the requirements are often formulated vaguely (for example, from "immediately effective upon filing" and "promptly" to "at least every three years" and "from time to time"). Although most registries do take some type of administrative action in the event a company is found to be non-compliant with updating requirements (for example, by revoking registration), they generally cannot actively enforce such compliance.

Because the responsibility to update information lies with the legal entity and compliance tends to be poor, information in the registry may be out of date. Typically, most registered legal entities submit annual returns that allow the registry to note the changes in information or the entity's activities. Almost all registries reported frequent delays in processing and updating information in their databases, however, because of the sheer quantity of companies being registered each year, the high volume of changes filed daily, and the lack of staff to process them.

One of the registries surveyed, for instance, is accountable for a growing register of more than 800,000 existing companies, in addition to 100,000 companies newly registered each year. Although companies remain primarily responsible for complying with their statutory obligations, the registry is continuing its efforts to promote compliance and ensure that up-to-date information is recorded for public search. Similarly, another registry processes and stores such a high volume of paper documents that (as it pointed out) providing access to such information is ineffective and costly for customers and for the registry. Another registry also mentioned that competition with the private sector makes it difficult to recruit and retain qualified, competent, and skilled personnel. For many registries, this combination of large processing quantities and low human resources is preventing them from providing a prompt turnaround of information. Most registries said they have to strike a balance between maintaining the integrity of the register and running a cost-effective operation (see figure 4.2). When seeking information from registries, both financial institutions and investigators should carefully bear these trade-offs in mind. As one investigator put it, "One must take registry information with all its limitations."

FIGURE 4.2 The Balancing Act of the Corporate Registry



Source: Authors' illustration.

4.2.3 Capacity and Resources—Registering Beneficial Ownership

Several parties[56] have suggested that company registries should expand the information they maintain on corporate vehicles to include beneficial ownership. Clearly, that information would be a potentially useful tool for investigators and service providers alike. To be useful in practice, however, some guarantee is needed that the information is accurate. We therefore believe it will be possible to expand registry information to include information on beneficial ownership only if steps are taken ensure that accuracy.

A Hands-On, Well-Funded Registry

In current practice, registries are archival and passive in nature. Information supplied by applicants is logged, not verified. To ensure that any information on beneficial ownership that it receives is correct, the registry should verify that information (either for every application or on a risk-sensitive basis). For most registries, this would require a significant change in approach and funding. In the course of this study, the 40 registries were asked what effect such an expansion of registered information would have on their operations—assuming equal allocation of resources. Overall, they considered inadequate resources to be a major impediment.

Financial constraints are a pervasive concern, of course, but challenges to resource allocation vary among jurisdictions, depending on the size of the economy, the level of development of the jurisdiction, and the regulatory functions particular to each regis-

56. Among many others, the London-based nongovernmental organization Global Witness, the Tax Justice Network, and, in an open letter to the G20, several high-profile public prosecutors. Letter available at http://www.globalwitness.org/library/open-letter-heads-state-and-finance-ministers-g20-renews-call-effective-anti-money (last accessed August 16, 2011).

try. For most registries, verifying registry information would require significant extra human and capital resources. Given resource allocation as it currently stands, we do not believe that most registries are in a position to be able to verify information supplied by a malevolent legal entity or someone acting on its behalf.

In a few exceptions, however, sufficient resources are in principle available for improving operations and meeting additional mandates. This category might include agencies that have a broader range of functions than just business registration (for example, a securities regulator). In addition, some registries generate significant revenues from incorporation fees. A 2007 Delaware report, for instance, indicated that the state's registry had raised US$700.8 million from incorporation activities at an operating expense of US$12 million, providing a significant portion of that state's annual revenue.[57] If the cost of acquiring accurate beneficial ownership information was viewed in the context of helping investigators to better fight financial crime, then high-profit registries might be inclined to devote more resources to enforcement priorities.

Apart from such exceptions, if registries are required to obtain beneficial ownership information, then they will need more government funding to be able to verify the information supplied to them. To effect such an increase in funding, countries could consider adding AML (or more generally crime prevention) to the statutory objectives of a registry.

Credible Enforcement Policy

The ability of a registry to verify the information supplied to it is useful only to the extent that it has the legal power to impose sanctions in cases in which it is provided with inaccurate or incomplete information. And because such a power is credible only to the extent that it is actually used, the imposition of sanctions on those who have supplied inaccurate information needs to be routine. Moreover, the sanctions must be applicable to the person supplying the information, which means that the registry must have jurisdiction over that person.

Sufficient Expertise

Finally, discovering the identity of the beneficial owner in a complicated corporate structure is by no means a routine administrative procedure. It can be demanding, and it requires a good understanding and knowledge of corporate law. Not all registries have this expertise available, and therefore they would not be able to verify beneficial ownership information in every situation. As an alternative, such registries could consider applying a simplified or formalized definition of beneficial ownership.

We believe that it makes sense to have a registry collect beneficial ownership information on incorporated entities only if it is sufficiently expert, well-resourced, and proactive, coupled with a credible enforcement policy (see box 4.1 for an example from Jersey).

57. Delaware Department of State Division of Corporations, *2007 Annual Report*, available at http://corp.delaware.gov/2007DivCorpAR.pdf.

BOX 4.1 The Jersey Model

Conditions under which the company registry can be considered a viable option for providing beneficial ownership information

Condition 1. The registry is active and alert, that is, it verifies the information supplied to it, or checks it for accuracy (can be based on risk).

- *Beneficial ownership information provided at the time of application is checked against an external database (see World-Check, http://www.world-check.com/) and an internal regulatory database. Applicants often need to be (and in practice frequently are) asked to provide additional information.*
- *Jersey publishes a list of activities that they consider to be "sensitive." They make it clear that, in cases in which a company intends to be conducting any of these activities, more information must be provided at the time of application for incorporation. This policy is currently being reviewed, and its scope is likely to be extended to take account of the countries in which the company will conduct its activities and the parties with whom the company will be engaging in those activities.*

Condition 2. The registry enforces compliance with legal registration requirements and with updating requirements when information changes.

Trust companies that fail to provide adequate information and that otherwise fail to comply with obligations set forth in the Companies Law are brought to light in the extensive dialogue that takes place between the Registry and the Trust Company Business division. Only trust companies regulated by the Jersey Financial Services Commission and Jersey-resident individuals are able to file applications to incorporate a Jersey company.

Condition 3. The registry (particularly the staff responsible for reviewing and approving information for acceptance into the registry) is sufficiently expert and knowledgeable on the concept of beneficial ownership and knows how to identify, in a complex corporate structure, the natural person who is the beneficial owner. If the registry is unable to internalize such specialized experience, a simplified definition of beneficial owner (focusing on percentage shareholding or possibly the natural person with the largest share or controlling stake) might be preferable.

- *Applications for registration can be approved only at the director level, where there is sufficient experience to understand beneficial ownership. Jersey recently created a new deputy director post in the Registry to strengthen experience within the division.*

Sources: Authors' interview with Jersey Financial Services Commission. See also Companies (Jersey) Law 1991, available at http://www.jerseyfsc.org/registry/legislation/index.asp.

4.2.4 Online Accessibility

Various parties consulted for this study expressed a particular preference for online registry databases. The registry databases currently online vary in sophistication and in the amount of information they make available. The simplest allow you to search within a given jurisdiction by entity name, and they show whether the entity is registered in that jurisdiction or not. By contrast, the most developed online databases have extensive search-engine capabilities, with the ability to search by numerous categories. Such advanced registries also store PDFs and document scans relating to the company, which are available for viewing either free of charge or for a fee.

Although many registries can be searched only by a few categories of information (for example, entity name and entity registration number), others make it possible to apply search criteria for all types of information collected by the registry. See, for example, the numerous search facilities made available to the public by the Company Register of Dubai International Financial Centre (DIFC) (figure 4.3) and the ICRIS Cyber Search Centre in Hong Kong SAR, China (figure 4.4).

4.2.5 Information Recorded in Registries

In the registries we studied, the information most commonly recorded per jurisdiction was company name, date of incorporation, entity type (for example, partnership) and status (for example, active) (see figure 4.5). Almost half the registries also made management information publicly accessible, although few made information on legal ownership available. Many registries maintained historical data on inactive, dissolved, or struck-off companies, either in the form of archived documents, name history, or dates of changes in addresses, managers, or officers (see examples in boxes 4.2, 4.3, and 4.4). The amount of information available without requiring a fee or user login also was found to vary.

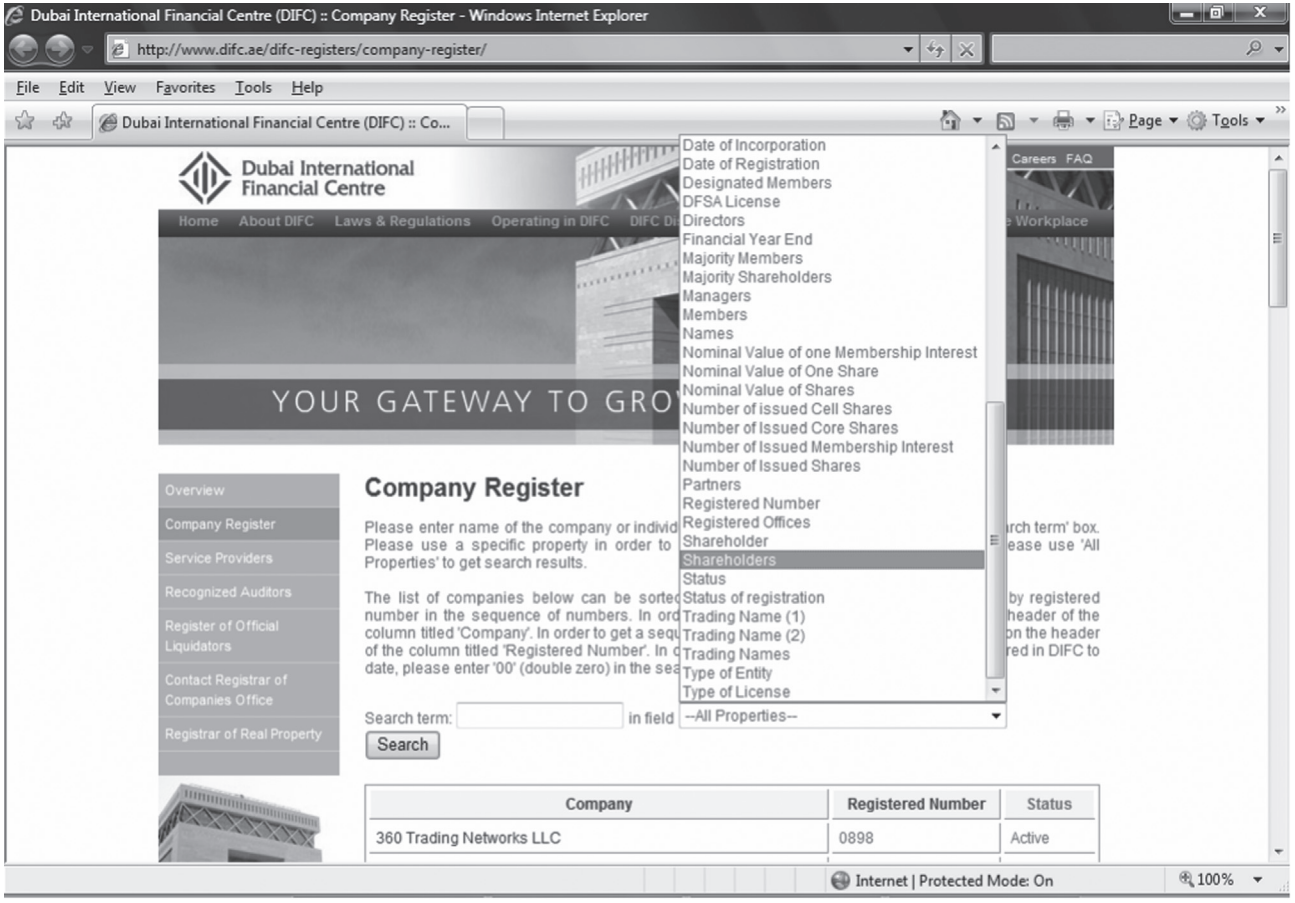
4.2.6 Access to Information

When capacity and resources allow, access can and is being improved. Many registries, for instance, have begun to upgrade their systems to take advantage of recent developments in digitalization and electronic processing. This is expected to improve efficiency in a number of important respects: accelerating the process of receiving and retrieving information, facilitating timely disclosure, enabling instantaneous incorporation, and generally improving access to corporate registries. These are all important in making the registry an even more useful tool in combating money laundering, as rapid, efficient access to information can save valuable time in a criminal investigation.

4.2.7 Other Repositories of Information

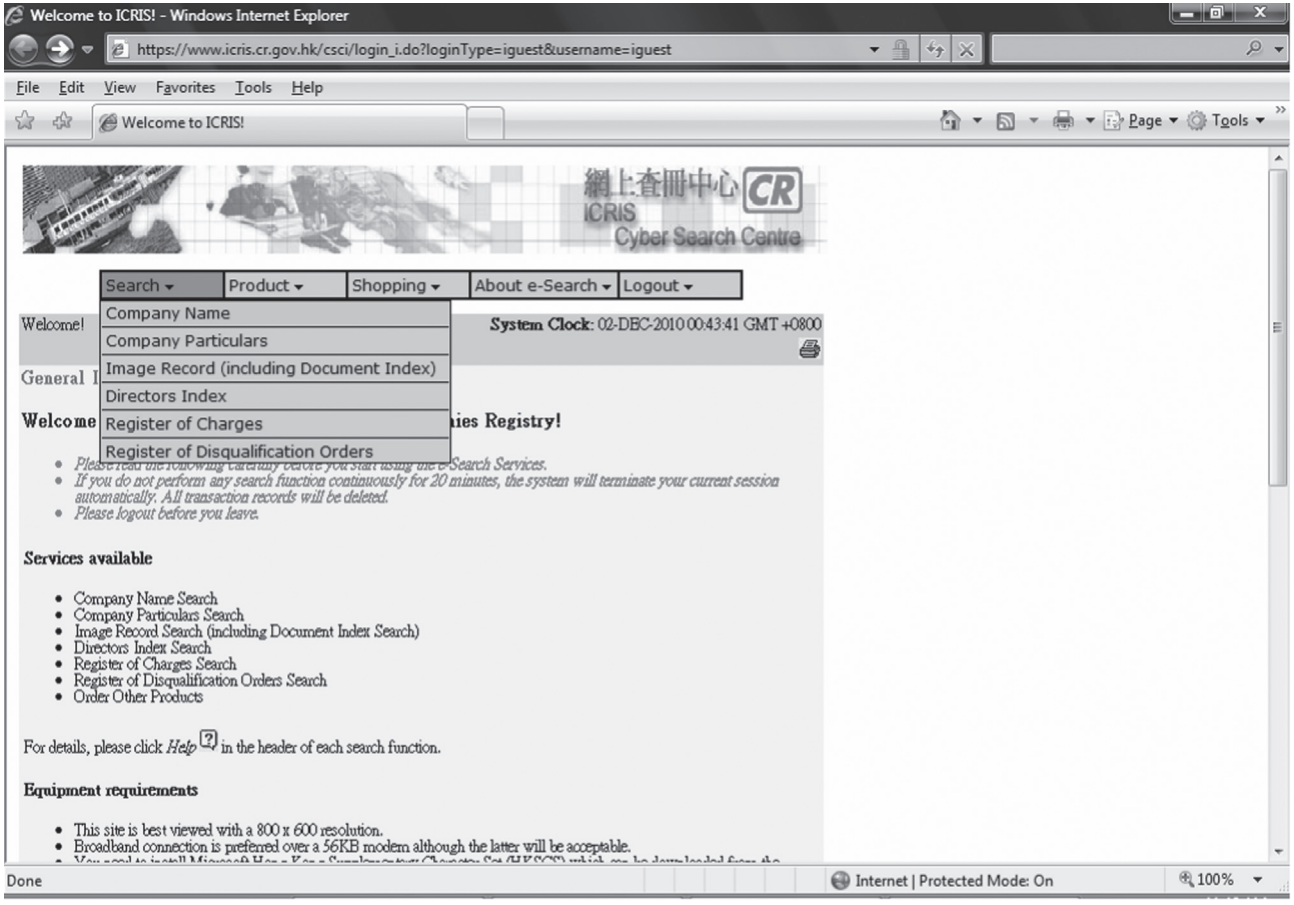
Other repositories of corporate vehicle information that may be useful for investigators and compliance officers include commercial databases, tax databases, and land and property registries.

FIGURE 4.3 Extensive Online Search Facilities Publicly Available at the Company Register of Dubai International Financial Centre



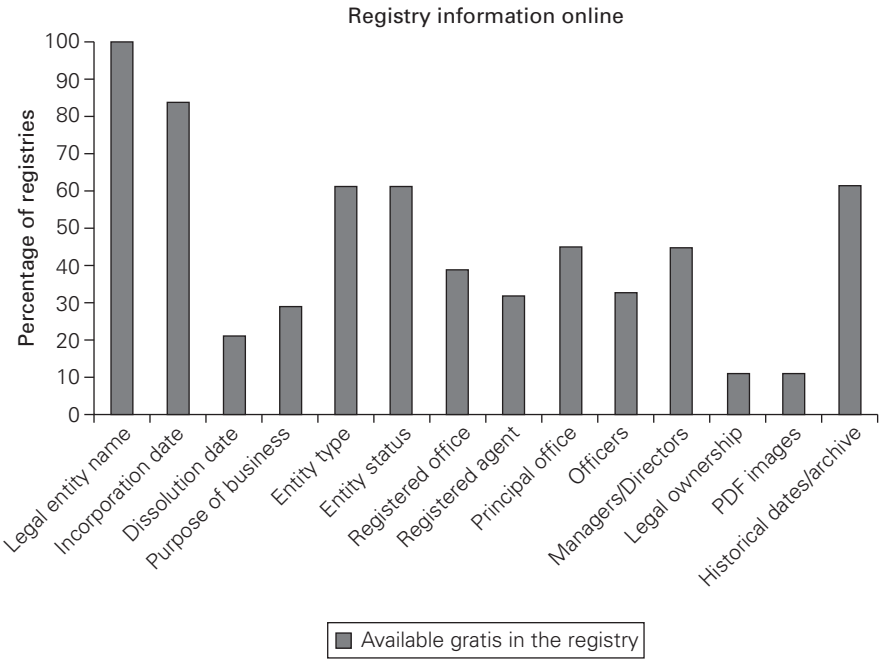
Source: Available at www.difc.ae/difc-registers/company-register/.

FIGURE 4.4 Extensive Online Search Facilities Publicly Available at the ICRIS Cyber Search Centre in Hong Kong SAR, China



Source: Available at www.icris.cr.gov.hk/csci/.

FIGURE 4.5 Types of Information Made Available Online by Registries



Source: Authors' illustration.

BOX 4.2 Tracking Down Disqualified Directors: United Kingdom

Company directors may be disqualified in the United Kingdom if, for example, they continue to trade after going bankrupt (to the detriment of their creditors), or if they have not kept proper accounts or submitted tax returns. The disqualification means they can no longer be a director of a company, set up a company, or participate in a company. Some disqualified directors ignore the disqualification, however, and continue in business—and therefore form a threat to the public. Companies House, the U.K. company registry, offers a handy search feature whereby one can search by name or by town of residence to track down someone who has been disqualified as a director.

Source: www.companieshouse.gov.uk; "Disqualified Directors Register," available at http://wck2.companieshouse.gov.uk/98864a4843Oc353f0286633918c43a0c/dirsec.

In contrast to the depository nature of the central (that is, government) registry, commercial databases, such as Dun and Bradstreet (www.dnb.com), Bureau van Dijk (www.bvdinfo.com), and others, are designed specifically for business solutions, risk management, and client prospecting, and they actively gather their data from a variety of sources. Investigators in several jurisdictions also mentioned the existence of company registries that were wholly maintained by business federations, such as the local chamber of commerce.

BOX 4.3 The Directors Index: Hong Kong SAR, China

Information about all companies registered in Hong Kong SAR, China, is available online for public search, 24/7. Moreover, information regarding directors of limited companies can be obtained by conducting a search in the Directors Index, through the Registry's Cyber Search Centre (www.icris.cr.gov.hk) or at the Public Search Centre of the Registry (13th floor, Queensway Government Offices, 66 Queensway, Hong Kong SAR, China). Hence, anyone wishing to know which companies a given person currently directs, for instance, can simply conduct a search in the Directors Index.

Source: www.icris.cr.gov.hk/csci/DS_SearchType.jsp

BOX 4.4 Information Sharing and Financial Reporting Systems: Singapore

Information Sharing—The BizFile Service

Singapore's Accounting and Corporate Regulatory Authority (ACRA) has streamlined and standardized the data file formats it uses to register information about business entities (companies, businesses, limited liability partnerships [LLPs], limited partnerships [LPs], and so on) and developed a highly effective and efficient system to facilitate information sharing with both private and public agencies. Previously, users had to purchase the complete documentation relating to a company to see the item of information they needed. In the new system, individual items of data (such as registered office address, business activities, or directors' particulars) are extracted from the database and are prepackaged into a variety of information products. One-time purchases can be obtained from iShop@ACRA, while government agencies can obtain secure information in bulk through the BizFile subscription system. Interested parties can see what information is available and immediately access only what they need, thus eliminating unnecessary cost. This transformation has made it much easier, both for government agencies and the private sector, to obtain information that meets their business and operational needs.

Financial Information—Using XBRL Data

As of November 2007, companies in Singapore have had to file their annual accounts with ACRA in XBRL (eXtensible Business Reporting Language) format, rather than PDF. XBRL allows data to be read by machines and extracted for analysis. In this way, the business community has an extra source of information at its disposal. These data have a number of important advantages over data in traditional formats. They can be analyzed dynamically to assist in decision making; they are available for analysis as soon as the accounts are filed; and the system conducts validation checks, ensuring the accuracy of the data. Several interactive

BOX 4.4 *(continued)*

web-based tools are available for use with ACRA's XBRL data, including Open Analytics and Singapore Financials Direct. In addition to making a useful service available to businesses and banks, the use of XBRL makes it easier for authorities and investigators to scrutinize companies' financial information for regulatory and surveillance purposes.

Sources: Authors' compilation. See also www.acra.gov.sg, BizFile at https://www.psi.gov.sg/NASApp/tmf/TMFServlet?app=RCB-BIZFILE-LOGIN-1B, and XBRL available at https://www.fsm.acra.gov.sg.

Tax databases can prove useful for investigative purposes. The nature of tax information available about a given corporate vehicle will depend on the type of tax regime operating within the jurisdiction. For instance, the tax information available in a tax haven jurisdiction may consist of no more than a certification of continued exemption status. Even in that case, however, a filing will have been made claiming the exemption, and that in itself can provide useful information. The degree to which tax authorities will have developed sophisticated knowledge of and intimate familiarity with corporate vehicles will probably depend on their tax regime. In jurisdictions that offer blanket exemptions from taxation to entice foreign customers to incorporate in their country, the tax authorities may possess little practical knowledge of corporate vehicles. In other jurisdictions, which pursue a more aggressive stance toward enforcement of their taxation laws, much more extensive information may be present.

In addition, if a bilateral tax information exchange agreement is in place, investigators may obtain tax information held by authorities in another jurisdiction.[58] A briefing paper by the Organisation for Economic Co-operation and Development (OECD) of August 2010 describes the significant progress that has been made in this area, noting that some 600 bilateral tax conventions have been entered into by both OECD and non-OECD member countries.[59] The standards for the exchange of information in such conventions include, among other points, "Exchange of information on request, where it is 'foreseeably relevant' to the administration and enforcement of the domestic laws of the treaty partner" and "No restrictions on exchange caused by bank secrecy or domestic tax interest requirements."[60] As the briefing paper explains,

> The scope of the information that may be requested, however, is extremely broad. Where the information requested is 'foreseeably relevant', then this will cover any and all information that relates to the enforcement and administration of the requesting jurisdiction's tax laws, including information relating to interest, dividends or capital gains, bank information, fiduciary information relating to trusts, or ownership information of companies.[61]

58. In addition to Tax Information Exchange Agreements, Double Tax Conventions typically achieve the same goal.
59. OECD, " The Global Forum on Transparency and Exchange of Information for Tax Purposes: Information Brief " (OECD, August 10, 2010), at 3, available at http://www.oecd.org/dataoecd/32/45/43757434.pdf.
60. Ibid.
61. Ibid.

Land and real estate registries also may be valuable sources of information. These registries can be perused for records of title transfers when trying to connect assets possibly hidden in property to a certain party of interest.

4.2.8 Asset Disclosures

An additional source of information that can be consulted in the event of an investigation is a jurisdiction's asset disclosures, in which public officials (for example, members of parliament, heads of state, cabinet members, or senior civil servants) declare their financial and business interests.[62] Although asset disclosure systems are not a recent governance development, the adoption of disclosure provisions has gained rapid momentum in the past two decades. These systems have been found to be widespread across countries and regions, and their prevalence is growing as the importance of transparency also increases. Currently, more than 120 countries around the world implement disclosure regulations. Although their content varies, asset disclosure forms often require registration of shares and securities. Frequently, the company name and the value of all types of stocks, whether held domestically or abroad, have to be disclosed. In other cases, only shares in local companies will need to be disclosed. In certain instances, only the value of the stock or only the name of the company will be required.

As with corporate registries, access to asset disclosures may vary. In many cases, asset declarations are published in an official gazette, or in the media. They also may be made available through nongovernmental organizations (NGOs), and in some cases, they may be available online through the official websites of anticorruption agencies, parliaments, or the like. Frequently, the public is permitted only partial access to the contents of the disclosure statement, while investigators and financial institutions may request full access from the agencies responsible for collecting or verifying them. Asset disclosure systems can be an important supplementary tool to help investigators make appropriate links and discern trends or patterns in an investigation: They are available and not all are confidential.[63]

4.2.9 Unique Identifiers

Another useful tool that can facilitate the gathering of information across different government agencies and institutions and help to eliminate false positives generated by corporate vehicles having similar names, is the assignment of unique identifiers. This is particularly useful in the case of entities that are operational, because typically they will interact with a wider range of government agencies than would mere shell entities.

62. Asset disclosures may be collected, verified, and held by a variety of agencies (for example, anticorruption commissions, commissions that focus exclusively on asset disclosures, tax authorities, parliamentary commissions, supreme courts, ombudsmen, and so on).

63. See Djankov, Simeon, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "Disclosure by Politicians," *American Economic Journal: Applied Economics* 2, no. 2 (2010): 179–209, available at http://www.aeaweb.org/articles.php?doi=10.1257/app.2.2.179.

4.3 Trust and Company Service Providers

TCSPs are businesses that create and provide administrative services for corporate vehicles.[64] In some jurisdictions, TCSPs are the only means for those looking to establish certain kinds of vehicles, such as international business corporations (IBCs), although in certain countries, customers can choose to form a legal entity through a TCSP or directly through the registry (via an application for incorporation). In certain civil law countries, corporate entities (such as companies and foundations) require a notarial deed for their establishment, meaning that the founders need to enlist the services of a notary. In most of the cases examined in this study, an outside service provider was used to establish or manage (administer) the corporate vehicle.

TCSPs are crucial actors in both the legitimate and the illicit use of corporate vehicles, and, as such, it is essential that investigators and regulators know how they work. These service providers perform a variety of administrative procedures necessary for establishing a company or other corporate vehicle. These procedures include checking for the availability of the desired name, lodging the required documents, and paying fees. Assuming the vehicle is to be maintained for more than a year (about a quarter to one-third are not), TCSPs will handle renewal fees accordingly and fulfill any required annual reporting obligations on behalf of the company. They may also provide services such as mail-forwarding or virtual office facilities. As part of their typical package, many TCSPs routinely act as registered agents or resident secretaries for foreign and domestic companies, as well as provide nominee services (such as nominee directors or shareholders, trustees, or foundation council members). In addition, TCSPs will commonly act as the intermediaries or introducers between their clients and the respective financial institution or bank where the customer wishes to establish the corporate account. A simple transaction—setting up a single company—might cost US$1,000–$2,000, depending on the options, of which US$100–$300 would be the government fee for registering the company.

Although some TCSPs may only offer corporate vehicles domiciled in their local jurisdiction, it is not uncommon for TCSPs to be able to furnish customers with vehicles from a wide menu of foreign jurisdictions. At the moment, for instance, large TCSPs can act as registered agents for companies incorporated under the laws of the British Virgin Islands (BVI). This means that they form BVI companies (typically IBCs) for clients, but keep clients' due diligence information on file elsewhere. This makes it more difficult for BVI regulators to access that information. The BVI regulator does conduct random assessments, however, asking TCSPs for beneficial ownership information on

64. According to the FATF definition, TCSPs provide any or all of the following services: acting as a formation agent of legal persons; acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; providing a registered office, business address or accommodation, correspondence, or administrative address for a company, a partnership, or any other legal person or arrangement; acting as (or arranging for another person to act as) a trustee of an express trust; acting as (or arranging for another person to act as) a nominee shareholder for another person.

IBCs, besides making specific requests. If a TCSP were unable to produce this information, the BVI government would revoke its registered agent status.[65]

4.3.1 Diversity in Size and Nature

As institutions, banks are relatively uniform; it is generally clear what a bank is and what it does. The term "TCSPs," however, covers a wide variety of service providers both in size and in nature. For example, they may differ in terms of the profession of the provider, the services they offer, the number and type of clients they engage with, and the relationship they maintain with those clients. Generic references to a "typical" TCSP therefore are highly misleading. At one end of the spectrum, they may be a single individual operating through a website, or a small law or accounting firm for whom forming companies is only a minor sideline, their core business being something else. At the other end of the spectrum, some of the most well-established TCSPs employ hundreds of people, administering tens of thousands of companies at any one time and holding up to 10 percent of the total market in companies formed in offshore jurisdictions. In some cases, these large TCSPs have written the company legislation for the smaller jurisdictions that are more recent entrants to the market for offshore companies.

Moreover, TCSPs may cater to individual customers, institutional customers, or both; and transactions may involve just one TCSP or multiple TCSPs. As in most other sectors of the financial services industry, they also have a substantial degree of specialization. This specialization may create challenges for regulators and investigators. Even in the case of a simple transaction, such as a private client wishing to form a single company, it is common for more than one TCSP to be involved. TCSPs can be roughly divided into "wholesale" TCSPs and "retail" TCSPs. A large TCSP may form and sell thousands of companies to dozens of other, smaller TCSPs, which then sell them to their private clients. For example, one TCSP in our study reported that it deals with several thousand intermediary TCSPs—law firms and accountancy firms—which sell companies to individual clients. The "wholesalers" often supply the "retailers" with companies on a one-by-one basis; and the companies may be either ready-made shelf companies or companies tailor made specifically for the client (see box 4.5).

4.3.2 Regulation

Over the past decade, TCSPs in most offshore jurisdictions have increasingly become subject to formal licensing and regulation. They now often need to meet consumer

65. The BVI is an important "supplier of corporate vehicles" for certain jurisdictions. The most popular corporate vehicle in Hong Kong SAR, China, for instance, is a BVI IBC. The success of the BVI is in large part a product of timing. Launched in 1984, the BVI IBCs came on to the market at the time just after the British government had agreed to hand Hong Kong SAR, China, back to mainland China, which created a massive demand for asset protection among people who spoke English and were familiar with the British legal system. The previous leader in the field of shell companies, Panama, was suffering from the mismanagement of the Noriega regime and increasingly strict U.S. sanctions. Simple, flexible, and cheap, BVI IBCs became, from this initial advantage, the default choice in Hong Kong SAR, China, and with increased liberalization, for mainland China as well.

BOX 4.5 Establishing a Legal Entity Involving More Than One TCSP[a]

Gruppo 20 Enterprises was established as a Seychelles International Business Company with a nominee director, authorized share capital of US$1 million, and bearer shares. It was supplied by a Singaporean service provider (the retailer), but it had been formed for this Singaporean service provider by another service provider (the wholesaler). Before forming the company, the retailing TCSP required a notarized copy of a passport. The accompanying bank account for Gruppo 20 was in Cyprus, picked on the advice of the first service provider because of this bank's willingness to accept bearer share companies. The bank insisted on taking physical possession of the sole bearer share issued. Establishing the company and opening the account cost €1,754.

Note: a. Undertaken in the context of the TCSP Project.

protection requirements, be audited by the authorities, and meet AML reporting requirements, and their directors need to pass a "fit-and-proper-person" test. By contrast, TCSPs in onshore jurisdictions are frequently not regulated. As a result, the number of TCSPs operating in such jurisdictions is unclear, and there is no clear dividing line between them and other financial services or legal firms.

In cases in which TCSPs *are* regulated, however, they are commonly responsible for obtaining and updating beneficial ownership information of the corporate vehicles they administer. This makes TCSPs important parties when it comes to preventing the misuse of corporate vehicles. In fact, in some cases, they can be more important than either registries or banks. As noted, corporate registries usually contain (at best) only legal ownership and management information; and although banks collect beneficial ownership information on corporate entities holding accounts, not all vehicles have a bank account but rather hold real estate assets instead. Compared with these, then, TCSPs provide a significant point of leverage for increasing the availability of beneficial ownership information.

4.3.3 Due Diligence Information Gathered by TCSPs

TCSPs vary considerably in the types of services they provide and the persons to whom they provide them. If a potential client approaches a TCSP for services with an established corporate vehicle, the TCSP will need to identify the natural person behind the corporate vehicle before delivering any services. (In a few jurisdictions, identification of the beneficial owner may take place later, provided it occurs shortly after the initiation of services.) As described by one of the TCSPs in our study, in the case of a complex structure (such as a BVI company owned by a Jersey trust), the procedure would be to perform personal due diligence on the following:

- The directors and shareholders (including the ultimate controllers, if the directors and shareholders are nominees)

- The trustees and (if they are corporate trustees) the beneficial ownership of the company
- The settlor (unless deceased)
- The beneficiaries (although they may be unborn)
- The protector (if applicable).

The beneficiaries would be, first, the principal beneficiaries and then anyone to whom a distribution is made. The performance of due diligence on the protector would depend on the protector's power. If this power was considerable, including, for instance, the power to move funds, then due diligence certainly would be performed. All this information (on all parties) has to be kept up to date. In unusually complex cases, the fee for conducting due diligence is payable by the client; otherwise it forms part of the service.

Not infrequently, a TCSP may ask another TCSP to conduct the due diligence on its behalf. This might occur, for instance, because the TCSP is not in a position to conduct the due diligence himself because the client is located in a different country. One of the TCSPs in our study considered such delegation of CDD to third-party TCSPs in other jurisdictions quite common. It is effected in the relevant jurisdiction through Introducer Certificates (ICs), usually with trust companies, law firms, and banks. (This arrangement is only available if the introducer is a licensed entity in a well-regulated jurisdiction—that is, "well-regulated" in the sense that the regulator in the original TCSP's jurisdiction has judged it to have proper AML procedures in place.) Ideally, each transaction requires a separate IC; but sometimes a general IC is issued, covering all business done with a particular intermediary. The certificates show the name of the intermediary and details of its license, as well as the same details of the client. They commit the intermediary to hold and update as necessary beneficial ownership information on the underlying client and provide it promptly upon request.

4.3.4 The Information Gathered by TCSPs

To find out to what extent due diligence information is gathered in practice, Case Western Reserve School of Law, as part of background work for this study,[66] contacted TCSPs, requesting advice on possible corporate vehicles for holding funds. The results of the first and second audit studies are presented in the following paragraphs. Although the enquiries with TCSPs were carried out a year apart and used slightly different approach letters, both rely on the same logic and the results are comparable.

The first and second round of inquiries yielded valid responses from a total of 102 TCSPs. Of these, 60 said that, before they could supply corporate services, they needed to see a photo ID, while one required a personal visit by the client. The ID documentation consisted of (at least) a photocopy of the face page of a passport, usually notarized, apostilled, or otherwise certified as a true copy of the original. In addition, proof of

66. For the general logic of audit studies in economics, see David Neumark, "Detecting Discrimination in Audit and Correspondence Studies" (National Bureau of Economic Research Working Paper No. 16448, NBER, Cambridge, MA, October 2010). See Appendix B, TCSP Project.

residence (in the form of a recent, original utility statement or a recent bank statement) was often requested. Some TCSPs also required a business plan for the company to be established and a short *curriculum vitae* of the client (who, not acting on anyone else's behalf, is also the beneficial owner). These 61 respondents (60 requiring photo ID and one a personal visit) can be considered to have conducted sufficient due diligence to establish the beneficial owner when establishing a corporate vehicle: They had taken reasonable steps to establish the owner's identity, and these documents were held on file and presumably accessible to investigative authorities.[67]

The remaining 41 TCSPs cannot be considered to have undertaken sufficient due diligence, because they had no ID documentation on the beneficial owner. In most cases, the applicant simply had to complete an online form (no more complex than that used to buy a plane ticket). The TCSPs apparently trusted applicants to enter their true names and addresses. It is difficult to see how TCSPs (or by extension, the authorities) could determine the beneficial ownership of the companies established in this way with any degree of certainty.

The 60 percent of TCSPs in the survey that apparently performed adequate due diligence may suggest an artificially positive picture, given the possibilities of linking together chains of corporate vehicles, the possibilities of a more thorough-going and high-budget search for anonymous vehicles, and the ability to practice regulatory arbitrage to exploit those jurisdictions performing the least due diligence. In most cases in which a trust was to be formed, and almost always when a bank account was to be opened, some evidence as to the source of wealth was requested. This might take the form of a simple declaration that the wealth was not the product of illicit activities. More often, however, providers asked for a letter from a lawyer (for inheritance), proof of sale (if the funds were derived from property or other asset sales), or copies of recent pay slips (if the wealth was from salary).

Only a few of the application forms asked about politically exposed persons (PEP) issues (for example, about whether the customer or any of the customer's relatives held elected office). According to interviews with service providers, most run potential customers' names through software like World-Check or, at least, Google.

This level of due diligence notwithstanding, many of the respondents emphasized in their correspondence and on their websites that one of the main reasons for forming a company or trust was the anonymity and secrecy it offers. Five providers explicitly recommended a structure combining a trust and company to increase both secrecy and asset protection. As one of the TCSPs advocating such a combined trust-company structure notes on its website,

> [The trust can] serve as beneficial owner when opening financial accounts: Today, due to the global scare of terrorism, etc., most offshore tax-haven jurisdictions have implemented laws

67. It was beyond the scope of this project to look into the safeguards that may be applied to protect against the use of false documentation (for example, independent checks against government databases to which the service provider may have access, or databases of lost and stolen travel documents).

> that require their banks to obtain "declarations of beneficial ownership" when establishing corporate bank accounts . . . [I]f you do not wish to sign the declaration as the beneficial owner when establishing your corporate accounts, the Trust can serve as the beneficial owner for these declaration purposes, and the nominee Trust council can sign the declarations on behalf of the Trust.

Many of the respondents (including the one quoted) explicitly noted their duty to collect, and if necessary hand over, beneficial ownership information in the event of money laundering activity.

Forty-one TCSPs communicated their willingness to create corporate vehicles without the need for any supporting identity documentation from the beneficial owner. The process of forming a company consisted of typing the preferred name and other details of the company (for example, options for nominee shareholders and directors, mail and phone forwarding, corporate stationery, and so on) into a simple online form. For this reason, the authorities would never be able to compel these TCSPs to provide any information on the underlying owners, no matter how strong their investigative powers might be, because the TCSPs never collected such information in the first place. Indeed, a couple of respondents explicitly mentioned this point among the advantages of their service. If the customers had paid the TCSP for its services using a credit card, tracing this might provide some leads, but it would not be difficult for a customer to use an anonymous prepaid debit card—after all, the incorporation fees are quite modest. Alternatively, after forming one anonymous company using a personal credit card, it would be possible to go to a different TCSP and get them to create a second anonymous company, using a corporate credit card issued in the name of the first company.

4.3.5 Examples

This situation reinforces the conclusion that criminals and anyone else intent on lowering the "corporate veil" would only need to carry out a relatively casual search to quickly and easily gain access to anonymous shell companies. Before looking at the overall pattern of results from the first and second sets of inquiries, it may be useful to explore some examples in detail.

First, let us look at a provider in Dominica and another in the United Kingdom. Both the text and design of their websites suggest that it is highly likely that these providers are prepared to incorporate companies without requiring any supporting due diligence material. Both have a purely web-based order form. The customer enters the preferred name of the company, desired optional extras, and credit card details. Although the Dominica provider offers only Dominican companies, the U.K. provider is a much larger operation, offering customer support in eight languages. It sells companies from the Seychelles and British Virgin Islands, as well as from England and Wales. Finally, this provider offers a new, proposed European Private Company, which would be able to be redomiciled to any EU member state. Nowhere, throughout the ordering process on these two providers' websites, is there any mention of the need to supply supporting documentation—and from the whole context of the sites, it is quite clear that indeed

none was required. These providers were among the cheapest in the sample, offering anonymous shell companies (that is, no beneficial ownership information held on file, nominee shareholders and directors) for US$1,200–$1,500.

The next example is the most clear-cut in terms of offering anonymous companies (and trusts). This example is unusual in that it is featured in other inquiries, enabling us to place its business model in a wider context. The following e-mail exchange with this provider, which is based in the United States with a secondary office in the Bahamas, is clear enough:

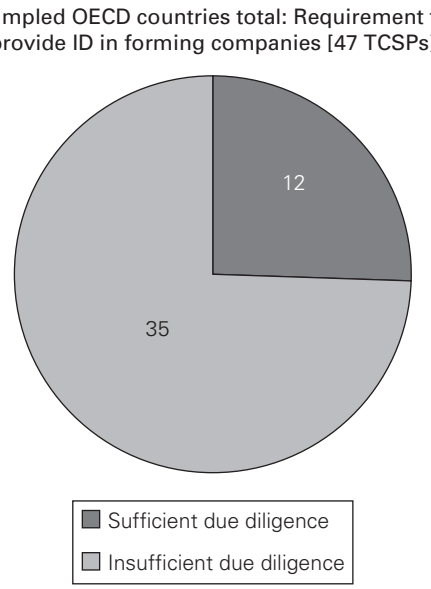
> Customer: *Could you please provide guidance as to what documentation is needed to set up the company or trust and to open the bank account in Nevis or any other appropriate jurisdiction?*
>
> TCSP: *There is no documentation needed to form an offshore company or trust. To open an offshore bank account, you'll need a copy of an ID (like a license or passport) and a copy of a recent bill or statement (like a cable bill, electric bill, bank statement, etc.) that shows your name and address on it.*

The provider's website explicitly confirms that in forming companies (and trusts), no identity documentation is required. It also states, however, that to open a bank account, the standard suite of documentation will be required. In this way, customers can form companies domiciled in Belize ($1,500), the British Virgin Islands ($1,950), Nevis ($1,850), Panama ($1,950), and the Seychelles ($1,650), as well as set up a Bahamian trust ($1,000). The provider cannot know for whom the companies are being established, and no requests from law enforcement would be able to yield information on the underlying beneficial owner, because no such information was collected.

We can place this provider in a broader context. He—it is largely a one-man operation—testified before U.S. Senate Permanent Subcommittee on Investigations, and this testimony was later included in the 2006 report, "Tax Haven Abuses: The Enablers, the Tools and Secrecy." According to that report, over the preceding six-year period, this provider had set up offshore structures for more than 900 individual clients, largely from the United States, all via e-mail and the website. These structures were mainly used for asset protection purposes, although the report gives strong hints that some clients used them to evade tax obligations. According to the report, the business "grossed several hundred thousand dollars in this way in 2003 and 2004." Confirming the evidence that emerged during interviews on the importance of networks to TCSPs, this provider depended on other parties in various offshore jurisdictions to perform the roles of trustee, trust protector, and company director.

Significantly, this provider confirmed in an e-mail exchange in 2010 that its due diligence procedures for company formation (or the lack thereof) had not changed since 2005. Although identity documentation, a bank reference, and proof of address were required for all offshore banks, no documentation was required for companies or trusts. The provider offered his services to anyone—except those who volunteered the information that they were in the pornography business or came from the Islamic Republic of Iran or Cuba.

FIGURE 4.6 Requirement to Provide ID in Forming Companies (Sampled OECD Countries)



Source: Authors' illustration.

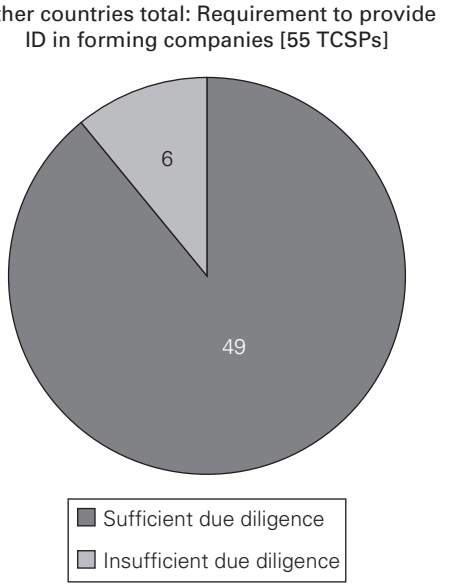
4.3.6 Common Patterns

The pattern that stands out most clearly in our data is that TCSPs from sampled OECD countries (figure 4.6) do not conduct CDD to the same extent as those in other countries (figure 4.7). Whereas 47 out of 53 providers in this latter group conducted proper due diligence, only 12 out of 47 did so in the sampled OECD countries. Some specific examples were discussed above in relation to André Pascal Enterprises (see box 3.6) and BCP Consolidated Enterprises (see box 3.14).

Positive findings on identification were particularly high among those TCSPs from jurisdictions identified as tax havens by the OECD in 2000 as part of its Harmful Tax Competition initiative (see figure 4.7). These jurisdictions have been portrayed as offering corporate secrecy and generally being underregulated. The results of the two studies show exactly the reverse, that is, that TCSPs from those tax havens have higher standards in corporate transparency, at least at the company-formation stage, than those in other countries. Although the sample is too small to allow for any firm conclusions, the findings do not support the (reasonable) assumption there is a relationship between the wealth of a country and the rigour of its KYC practices and that compliance is largely a matter of capacity and resources rather than will.[68]

68. It is recognized that the size of the sample—both in terms of numbers of TCSPs and countries sampled—does not allow for any conclusions about compliance within the OECD as a whole. A forthcoming study by academics from Brigham Young University and Griffith University of over 3,500 company

FIGURE 4.7 Requirement to Provide ID in Forming Companies (Other Countries)



Source: Authors' illustration.

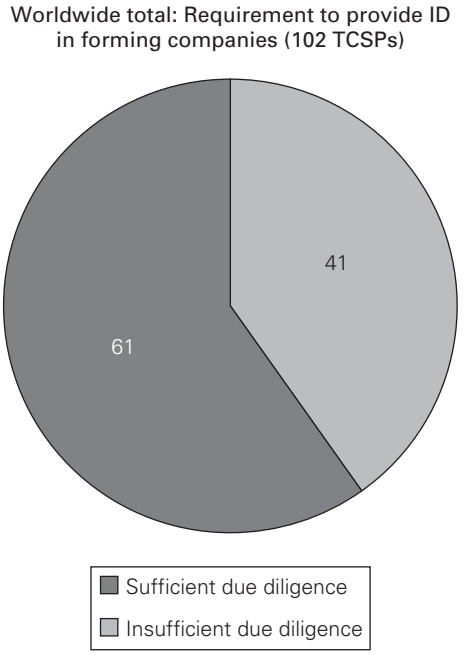
By far the worst performer of the countries reviewed is the United States. Out of 27 service providers under U.S. jurisdiction returning a valid response, only 3 said they asked for any form of identity documentation, whereas the others (24) were prepared to form companies without conducting any due diligence whatsoever. Although a majority of providers noted that nonresidents would have to obtain an employer identification number (EIN), the associated forms again did not ask for any proof of identification. Furthermore, some providers in Wyoming and Nevada actually offered to use their employees' Social Security numbers to spare clients the need to obtain an EIN. This verdict is strongly confirmed by a number of U.S. government reports,[69] and recent statements from the U.S. Senate Permanent Subcommittee on Investigations. In particular, Subcommittee Chairman Senator Carl Levin noted in November 2009 that "our 50 states are forming nearly 2 million companies each year and, in virtually all cases, doing so without obtaining the names of the people who will control or benefit from those companies."[70]

service providers confirms this conclusion. Reference is made to appendix B for further discussion of the method followed.

69. "Company Formations: Minimal Ownership Information is Collected and Available" (Government Accountability Office, Washington, DC, 2006); "The Role of Domestic Shell Companies in Financial Crime and Money Laundering" (Financial Crimes Enforcement Network, Washington, DC, 2006); see also "Money Laundering Threat Assessment" (Money Laundering Threat Assessment Group, Washington, DC, 2005).

70. "Statement of Sen. Carl Levin, D-Mich., on Business Formation and Financial Crime: Finding a Legislative Solution," November 5, 2009, available at http://levin.senate.gov/newsroom/speeches/speech/statement-of-sen-carl-levin-d-mich-on-business-formation-and-financial-crime-finding-a-legislative-solution/?section=alltypes (last access date July 27, 2011).

FIGURE 4.8 Requirement to Provide ID in Forming Companies (Worldwide)



Source: Authors' illustration.

The poor showing is especially troubling given the huge number of legal entities formed in the United States each year—around 10 times more than in all 41 tax haven jurisdictions combined. Because so little information is collected on U.S. companies, it is impossible to tell how many are shell companies and not operational companies, but U.S. law enforcement consistently has indicated that the number is high enough to cause grave concerns.[71] To judge from our interviews with TCSPs and from advertising, U.S. shell companies are a popular choice among non-U.S. residents.

It is possible that the positive picture of countries in which TCSPs did request further information on the client may be skewed because of what some have called "the compliance dance"—a tendency for firms to pay lip-service to every new regulation that comes along, while not really accepting the underlying rationale. If we had engaged those seemingly compliant TCSPs further, perhaps the window dressing would have quickly become apparent as such and we would have discovered, for example, ways to set up a corporate vehicle anonymously. We do not know because such checks were beyond the scope of this project. What we can be certain of, however, is that the converse does not hold. Because TCSPs have no reason to pretend to be noncompliant while being secretly

71. See especially "The Role of Domestic Shell Companies in Financial Crime and Money Laundering" (Financial Crimes Enforcement Network, Washington, DC, 2006). See also "Money Laundering Threat Assessment" (Money Laundering Threat Assessment Group, Washington, DC, 2005).

compliant, the low level of compliance we see on the part of TCSPs in some countries surely reflects the situation accurately.

4.3.7 Obstacles to the Provision of Information by TCSPs

All investigators interviewed for this study agreed that a TCSP that establishes a corporate vehicle for a client (or manages or otherwise fulfills a role in it) is in a very good position to obtain the relevant information on the ownership and control structure (at least at the time the vehicle is established). As a result, there can be little excuse for inaccurate information. Law enforcement often views the TCSP sector with a degree of suspicion, however. In many criminal cases, investigators tend to see TCSPs not as neutral service providers, but at least negligent in the conduct of their CDD and at worst complicit in criminal behavior. At the same time, it is clear that investigators do not always have sufficient understanding of the rationale behind many of the constructions involving corporate vehicles in multiple jurisdictions that serve legitimate purposes.

Attorney-Client Privilege

Invariably, almost all of the investigators interviewed for this study mentioned that one of the obstacles to obtaining information from TCSPs was attorney-client privilege (legal professional privilege). The special nature of the relationship between a lawyer (such as a solicitor, an attorney, or an *avocat*) imposes a duty of confidentiality on the part of the lawyer with respect to his client. This is to encourage the complete disclosure of information, without fear of further disclosure to outside parties. The concept of attorney-client privilege is rooted in a fundamental right to counsel and the right to a fair trial, whereby a defendant has the right to legal representation by a lawyer. Although the exact scope of this privilege varies from country to country (in some countries it also applies to the relationship between an *expert comptable* or a notary and his client), there is general agreement among authorities in most countries that the privilege should not apply when the lawyer is performing only purely fiduciary services for the client.

To overcome attorney-client privilege, judicial proceedings often need to be instituted. For instance, in Canada, a privilege hearing is required for the judge to review each piece of paper before it is handed over to the police; in the United States, a *prima facie* case is needed if a lawyer is suspected of misusing the privilege. For that reason, investigators stated, they have to carefully weigh the benefits of information that the lawyer may have against the risk that they would tip off their client.

Other investigators reported that, in cases in which the privilege is invoked to frustrate law enforcement, the investigative trail often stops. In Brazil, even if the investigator manages to find the TCSP that formed the corporate vehicle, that TCSP will often have sold the company to a law firm, which then invokes privilege to avoid disclosing the name of the person who purchased the company. In Germany, in a case in which a lawyer acting for a special purpose vehicle claimed privilege on documents relating to an entity, the investigator instituted insolvency proceedings against the entity and was able to retrieve the released documents from the liquidator. In Hong Kong SAR, China, when

suspicion arises that a lawyer formed a trust and may have the trust deed or information in his offices, the investigator needs to obtain a search warrant, but often the solicitor will invoke privilege, compelling law enforcement to go to court. Again, investigators must determine whether it is worth devoting resources to fighting the claim of privilege, especially in cases in which they are not quite sure what they are looking for.

Lawyers working in various capacities and engaged in certain transactional activities on behalf of their clients are in a good position to obtain the relevant information on the ownership and control structure of a corporate vehicle.[72] For that reason, the FATF has subjected lawyers and other legal professionals to due diligence obligations when performing certain services (Recommendation 12) and when they encounter anything suspicious in the course of their service provision (clearly circumscribed) to report any dubious transactions to the Financial Intelligence Unit. Information obtained under circumstances subject to attorney-client privilege, however, is not subject to the same reporting obligations.

Countries have implemented this obligation to various degrees, but on the whole (see appendix A), compliance is low. The most widely discussed reporting obligation is probably the one laid down in the Third EU Money Laundering Directive, which requires independent legal professionals to report suspicious transactions when executing transactions for their client. These transactions include, among others, creating, operating, or managing trusts, companies, or similar structures.

The directive exempts those categories of professions from reporting with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Because several bar associations deemed the reporting obligation an infringement of the right to a fair trial and the exemption not sufficiently wide, they initiated legal action against the European Council before the European Court of Justice (ECJ). In an important ruling,[73] the ECJ ruled against them, noting that:

> Given that the requirements implied by the right to a fair trial presuppose, by definition, a link with judicial proceedings, and in view of the fact that the [exemption cited above] exempts lawyers, where their activities are characterised by such a link, from the obligations of information and cooperation [the STR obligation and the obligation to provide information upon request by the authorities], those requirements are respected.

72. Notaries and independent legal professionals; see Third EU Directive (Directive 2005/60/EC of the European Parliament and of the Council of October 26, 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing), and FATF, "RBA Guidance for Legal Professionals" (October 23, 2008), available at: http://www.fatf-gafi.org/dataoecd/5/58/41584211.pdf.

73. See European Court of Justice, Case C-305/05, *Ordre des barreaux francophones et germanophones and Others v Conseil des ministres*, judgment of 26 June 2007, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0305:EN:HTML.

Inclusion of Lawyers in the AML Framework

One of the arguments against the inclusion of lawyers or other TCSPs in the AML framework is that when lawyers or other TCSPs are facilitating criminal conduct, they rarely do so unwittingly. In those circumstances, what is the point of imposing an obligation to report suspicious transactions? They are unlikely to report anything. From the review of cases in this study, it was difficult to ascertain whether TCSPs were knowingly involved in money laundering activities. In some cases, they were investigated and prosecuted; in many cases, they were not. Investigators considered TCSPs more likely than not to be complicit but indicated that this did not necessarily mean that they would investigate or prosecute them. The burden of proof was often too high, and investigators would rather spend their efforts targeting the principal perpetrators, not the facilitators. In a few cases, the TCSPs involved were considered innocent. Based on investigators' opinions, and having regard to the degree of involvement of TCSPs with their client, it is arguable that a TCSP is often either knowingly involved in or at least willfully blind to the criminal conduct he is facilitating. Unlike a bank, where transactions are automatically processed without human intervention (unless picked up by the bank's system for identifying suspicious transactions), TCSPs provide services that *do* usually require such human intervention, even if remote or minimal.

Being involved (to a greater or lesser degree or merely willfully blind), however, does not mean that inclusion in the AML framework is pointless. First, a minority of the TCSPs will be innocently involved and would file a report if they deemed a transaction to be suspicious. That could be a valuable source of information, and lawyers or other TCSPs who are later found to have been complicit may be penalized for non-reporting. More importantly, however, inclusion in the AML framework implies more than just the reporting obligation. First and foremost, it is about conducting proper due diligence of a client before entering into a business relationship. That means that lawyers or other TCSPs found to have been involved in a money laundering or corruption scheme will no longer be able to claim with impunity that they did not know what was going on. Willful blindness is no longer an option for the lawyer or TCSP willing to look the other way.

Cases in which service providers have been penalized for failing to follow through on their due diligence obligations have certainly been infrequent, but they are effective in encouraging compliance. In one case,[74] a Jersey Court of Appeal ruled in favor of the attorney general that a single provable instance in which a TCSP fails to adhere to due diligence standards[75] meets the criteria for prosecution under the AML laws of the jurisdiction.[76]

74. Bell v Att. Gen., 27 Jan 2006, 2006 JLR 61.

75. Failing to comply with Art. 2(1) of the Money Laundering (Jersey) Order 1999, contrary to Art. 37(4) of the Proceeds of Crime (Jersey) Law 1999.

76. "Financial Services—maintenance of anti-money laundering procedures—breach—single breach by financial services provider of requirement in Money Laundering (Jersey) Order 1999, art. 2(1)(a) to maintain procedures may constitute offence under Proceeds of Crime (Jersey) Law 1999—failure need not be systemic—'maintain' requires procedures to be established and also kept in proper working order, to prevent and forestall money laundering whenever business relationship formed or one-off transaction carried out." (http://www.jerseylaw.je/Judgments/JerseyLawReports/Display.aspx?Cases/JLR2006/JLR060061.htm).

On May 8, 2006, a nonpublic judgment (*Tribunal correctionnel de Luxembourg*, no. 1507/2006) was handed down by the *Tribunal d'arrondissement de Luxembourg, 16e Chambre* [District Court of Luxembourg] in which a lawyer received monetary penalties for failing to perform due diligence obligations to identify the beneficial owner of corporate entity clients.[77] The ruling sent a powerful message, because the attorney's clients were not even found to have engaged in money laundering—the breach of CDD obligations on its own was enough to convict.

4.4 Financial Institutions

Many corporate vehicles that are used to launder money are established solely for the purpose of providing anonymous access to financial institutions. The provision by financial institutions of services that may be used for receiving, holding, or conveying the illicit proceeds of corruption is a critical part of the laundering process. Almost all of the cases reviewed involved bank-held assets: The laundering of the proceeds of corruption is virtually impossible without making use of the services provided by banks. Although money launderers can establish legal entities and arrangements to suggest a fake reality, the flows of funds do not lie. In the words of an investigating magistrate, "Transfers of funds through the banking system always leave a footprint that cannot be manipulated. These transfers constitute the backbone of any investigation into economic crime." Financial institutions are in a particularly good position to know what is really going on.

4.4.1 Information Gathered

In many industrial economies, financial institutions have been subject to AML compliance obligations for some time. This includes CDD and suspicious transactions reporting requirements. Investigators interviewed for this study noted that, over the past decade, the quality of information obtainable from banks in the context of a criminal investigation has improved.

The corporate vehicle information recorded by financial institutions usually includes some combination of the following:

- ***Almost always:*** Visual inspection of true or certified or notarized copies of identity documentation, which may be copied, or checked on a checklist as having been confirmed, and then filed in the customer's file.

77. "The District Court of Luxembourg (Tribunal d'arrondissement de Luxembourg, 16e Chambre) has found, in the criminal case against the lawyer, who provided domiciliation services to corporate entities, that the sanction of an infringement of the obligations laid down by the Law of 12 November 2004, does not require the proof that a domiciled corporate entity was actually involved in a money laundering operation": IBA Anti-Money Laundering Forum, Luxembourg, http://www.anti-moneylaundering.org/europe/luxembourg.aspx (last accessed August 16, 2011).

- ***Almost always:*** A physical address for the customer's account, used for mailing out notices, variably confirmed through, for example, mailings or onsite inspections.
- ***Almost always:*** Visual inspection of a true or certified or notarized copy documentation that gives the individual before them the capacity to represent the corporate vehicle that is the client (for example, contract, power of attorney, organizational document naming the party as a member, director, or executive agent of a company, trust instrument naming the person as a trustee, and so on).
- ***Often:*** The natural person holding more than a certain percentage of equitable interest (that is, the formal beneficial owner).
- ***Sometimes:*** Particulars of the persons making up other various parties with a significant relation to the corporate vehicle in terms of ownership and control (for example, names, IDs, and addresses of shareholders and board members in a company).
- ***Sometimes:*** Records of a meeting, required in the course of account opening, or normal account business (including attendees).
- ***Sometimes:*** A highly documented compliance log, evidencing knowledge about the customer, in accordance with a robust and uniformly applied standard, which typically involves name checking, transaction monitoring, and trend analysis.
- ***Sometimes:*** Information obtained from independent sources to verify customer-provided information. Such sources may include relevant jurisdictional registrar data, organizational websites, credit ratings, web-search collation services (which crawl the Internet looking for the names of the organization and its related persons).
- ***Rarely:*** The identity of the beneficial owner in substantive terms (although in many legitimate situations, anyone who holds more than a certain percentage of equity will be the beneficial owner in substantive terms).

4.4.2 Strengths and Weaknesses of the Information Gathered

Although the participants in our study were generally in favor of the identification of a formal beneficial owner (that is, based on a percentage shareholding), compliance officers suggested that it would make sense to do this on a risk-sensitive basis. Much of their time and effort performing due diligence is spent on customer accounts that are clearly beyond all possible risk of money laundering yet require due diligence so that "the paperwork is in order." In the converse situation, when there is a clear and significant risk of money laundering activity, stopping at the minimal threshold is not a defensible option. Whenever 25 percent corporate shareholdings trigger beneficial ownership reporting, those who wish to avoid disclosure will list five shareholders, each having 20 percent holdings. And in cases in which the threshold is 20 percent, they will employ six shareholders with 16.7 percent holdings each. Indirect ownership always is going to be employed to ensure that any quantified beneficial ownership system can be beaten by the highest-risk parties of all, that is, those with a mind to hide their ownership and control.

In one jurisdiction where banks are not required by law or guidance to identify the beneficial owner of a customer, they typically do not volunteer to do so, even if their institution does so in other nations where such an obligation is imposed.[78]

In the matter of establishing beneficial ownership, one factor was frequently cited by participants as not receiving enough attention—that is, control of the corporate vehicle. A lack of screening and vetting of directors, officers, and signatories (the day-to-day controllers of a corporate vehicle or its accounts) is likely to create significant blind spots in CDD measures, especially when some of those parties are corporate vehicles rather than natural persons. Learning from experience, banks now require CDD screening of all signatories to the account (or require that the signatory must be part of the disclosed ownership and control structure that the bank has already screened).

Possibly related to the lack of attention to control, the vast majority of participants indicated that the only time they checked whether the natural person seeking to enter into a business relationship with them was acting on behalf of some other person was in those instances in which they had suspicion to believe that such was the case.[79] It was not part and parcel of the initial question posed to a prospective client. Compliance officers indicated that particularly egregious "letter but not the spirit" of the law violations that weaken AML efforts arise when banks are allowed by law to consider an individual to be (for all intents and purposes) the beneficial owner, even when he or she is known to be merely a nominee.

Noticeable deficiencies were identified in identification and verification processes, when an overreliance on data held by the company registry being cross-referenced against self-certified client-provided data. This situation has the unfortunate effect of checking the client's word as provided to the financial institution against the client's word as provided to the company registry. This discrepancy led one compliance officer from an international institution, in discussing the frequent problem of inadequate CDD information, to remark: "It's all built out of a house of cards, ready to tumble over at any minute."

This is not a hypothetical case—the dangers of overreliance on company registry information were illustrated vividly in a case in South Africa. There, several banks relied on compromised CIPRO (the South African company registrar) information, to verify the bona fides of members of an international criminal syndicate. According to the CIPRO, those front men were the authorized representatives of major economic entities and thus able to open bank accounts in the names identical or similar to those companies as

78. Because this was only the case in one jurisdiction, it is too small a sample to draw any inferences from this. It may suggest, however, that the impetus for conducting due diligence on the beneficial owner is merely to be compliant, not because of a concern about being involved in possible money laundering.
79. For some, the willingness of nominees to misrepresent themselves as true beneficial owners has led them to conclude that it would be fruitless to implement an across-the-board, yet "toothless," requirement for corporate vehicle customers' representatives to disclose the existence of a nominee relationship.

part of a multimillion-dollar tax refund fraud. The diverted funds were then laundered through pseudo-business activities and consulting contracts into further corporate vehicle accounts.[80]

Some of the best practices described by interviewees to remedy this reliance on self-certification involved gathering information on the client from the widest possible range of resources, for cross-referencing purposes. Financial institutions detailed a variety of checks that they routinely perform in concert. When dealing with an operational entity, for instance, their compliance checks involve looking at credit ratings, public websites, commercial business websites, and online information about the entities' business activities, among other sources.

Requests for certain unusual, country-specific corporate vehicles may lead financial institutions in other countries to decline the business—because of the unfamiliarity of the legal form. If a particular type of vehicle does not exist in their jurisdiction, relationship managers and compliance officers are unlikely to have the experience needed to determine the opacity of such entities.[81] This is particularly a problem for domestic banks with a strong presence in only one country. Many of the larger banks have built up significant know-how on the various corporate vehicles available around the world by leveraging their global reach and ensuring that their well-resourced legal departments develop dossiers on the corporate vehicles with which they commonly deal.

The internal compliance arms of the larger multinational banks (especially when consolidated under a central command) appear quite effective at detecting possible suspicious behavior. These banks have, in effect, developed "in-house financial intelligence units," which process and analyze the significant amount of voluntarily disclosed information from their customer base and allow them to build intelligence hubs. This process allows banks to determine patterns of behavior of certain corporate vehicle customer profiles to enable quick identification of outlier cases that merit compliance investigation.

4.4.3 Building a Compliance Culture

Because relationship managers engage in the first meaningful interaction with a prospective client, it falls to them (if the client is a corporate vehicle) to understand the ownership and control structure of that client. All the financial institutions participating in this study said it was standard practice within their organization to require relationship managers to complete AML compliance training on a regular basis. In particular, those who deal with corporate-vehicle clients undergo specialized training

80. See "Hijacking of CIPRO Scares Banks," *Sunday Times*, July 4, 2010, available at http://www.timeslive.co.za/sundaytimes/article532123.ece/.

81. For example, one Indian bank refuses to do business with a Liechtenstein *Anstalt*, regardless of the circumstances, because they do not understand "what it is, why someone would use it, or what business it has in India." For many financial institutions from civil law countries, trust accounts are immediately elevated to high risk, as they are often viewed as inherently alien and thus suspect. Although in such cases the risk of those specific corporate vehicles being misused for money laundering at these particular banks is low, it can hardly be said that this outcome is based on any sort of fact-based risk assessment.

about handling their accounts appropriately, understanding what institutional resources are available to manage their broader CDD requirements, and meeting their responsibilities for completing due diligence. To help foster accountability, institutions create a complete client profile that shows what research efforts have been undertaken and what monitoring has taken place (including compliance incidents). From time to time, relationship managers are confronted with clients who perceive beneficial ownership due diligence as being overly intrusive. This perception is considered an issue of decreasing concern, however, because of the global awareness of money laundering and terrorist financing issues.

Another issue in obtaining client information is that, in some instances, relationship managers undercut their financial institution's compliance efforts, whether because they view compliance as an obstacle to be overcome or, more seriously, because they are actively circumventing their compliance obligations. Financial institutions and compliance departments may deal with this problem by ensuring that employee performance evaluations have a strong compliance-oriented component (and thus affect salary) or by undertaking a review of a relationship manager's entire portfolio upon discovery or suspicion of a lapse. Such measures may be complementary.

The risk always exists that compliance activity devolves into a box-ticking exercise, in which one only verifies the bona fides of (necessarily declared) major shareholders. Compliance departments try to encourage a focus on detecting indicators that seem out of alignment with the typical profile of an account to which the corporate vehicle account most naturally corresponds. (This lack of alignment, when something seems out of place, is often known colloquially as the "smelliness" of an account.) Taken item by item, these characteristics may seem innocuous, but as a whole, they may be suggestive of undisclosed or concealed control or suspect activity.

To enable better detection of "outliers," many banks recruit heavily from seasoned investigators with a practice-honed instinct for those money laundering typologies of concern to the financial institution. Compliance processes should be steered away from the front-end mentality associated with passive corporate registries (in which case assumptions are based on what the client declares to be the case) and toward the back-end mentality that is shared by investigators seeking to understand the general circumstances of the corporate vehicles' usage. Instilling this element of judgment into compliance personnel is critical to assessing the true risk of a corporate vehicle.

Client Acceptance Committee

When a relationship manager and a compliance officer cannot agree on, or are confused about, the true risk level of a client and whether its business is acceptable, most banks pass the decision up to a higher level of responsibility, such as a client acceptance committee (CAC). Thus, banks seek to ensure that compliance is given its appropriate place through a variety of accountability measures. Several participants mentioned the friction between the bank's business and compliance agendas at this level, and one stated that "bad things happen when business holds the final say,

and when business strong-arms the compliance department." Most participants had overwhelming confidence that such issues could be overcome with a robust AML policy. Following are some good CAC practices:

- Requiring the unanimous consent of all participating business and compliance CAC members for the client to be accepted;
- Giving the highest-ranking compliance CAC member powers of absolute veto to overrule acceptance of a client;
- Selecting CAC members to represent the business side of the bank who come from other account or product lines, thereby ensuring that they gain no direct benefit from the acceptance and represent a more disinterested, impartial perspective; and
- Fostering accountability by requiring face-to-face committee meetings, instead of allowing back-and-forth e-mail exchanges among CAC members.

4.5 Conclusion and Recommendations

Corporate registries constitute a primary source of information for law enforcement and other authorities in their search for information on the persons connected to a particular legal entity. As repositories of certain basic information, they can directly provide an investigator with useful leads. The value of these registries could be significantly enhanced in at least three ways:

- Online accessibility and online search facilities can save an investigator both time and effort.
- A shift away from the predominantly archival and passive nature of current registries toward a more proactive attitude, one geared toward enforcing registration obligations, would increase the accuracy of registry information (although in most countries this would mean governments would need to make extra resources available to their registry).
- If certain conditions are met, registries could consider including the identity of the beneficial owner.

In addition to corporate registries, other government-held sources of information could provide useful details about corporate vehicles, including, most notably, the tax authorities and asset disclosures.

Evidence from our database of grand corruption cases shows that TCSPs are often involved in establishing and managing the corporate vehicles encountered in grand corruption investigations. The more complex arrangements are rarely established without an international element. For example, the TCSP may be administering a corporate vehicle incorporated or formed under the law of a jurisdiction other than his or her own, or on behalf of a client resident in another jurisdiction. Although their level of engagement during the life span of a corporate vehicle may vary, TCSPs are generally in a position to obtain good information on the natural persons ultimately

controlling the corporate vehicle. Currently, level of compliance by TCSPs is low—although this varies among countries.

The services provided by financial institutions are crucial to the money laundering process—without them, it would be impossible to launder funds on a significant scale. An overview of the flow of funds provides a good indication of the person(s) who are really in control of the funds. Thus, financial institutions are important sources of information for investigators seeking to discover evidence of the beneficial owner of certain funds. The policies established to improve the information available at banks have had an effect. It is important to ensure that the fact-gathering process by banks does not degenerate into a box-ticking exercise. In low-risk situations, threshold-based rules on beneficial ownership might ensure a good minimum level of information, but in higher-risk situations, principal actors always can beat those thresholds. Possibly because of the term (beneficial *ownership*), too much attention is paid to ownership and equity, at the expense of concentrating on control.

Recommendation 1. Certain basic information on legal entities should be maintained in corporate registries.

Such basic information must be easily verifiable and unequivocal. At a minimum, the following information should be maintained:

- Entity name (including governmentally unique identifier and alternative names)
- Date of incorporation, formation, or registration
- Entity type (for example, LLC, *sociedad anónima*)
- Entity status (for example, active, inactive, dissolved—if inactive or dissolved, date of dissolution and historical records of the company)
- Address of the principal office or place of business
- Address of the registered office (if different from principal office) or the name and address of the registered agent
- Particulars of formal positions of control, that is, directors or managers and officers (for example, president, secretary)
  - If a natural person—their full name, any former name, residential address, nationality, and birth date
  - If a corporation—the entity name, address of the principal office, address of the registered office, and (if applicable) for foreign corporations, the registered office in its country of origin
- History of filings (for example, formation documents, annual returns, financial filings, change of registered office, change of registered agent, and so on)
- Required annual returns that verify the correctness of each particular required to be filed in the system, even if it has not changed since the last filing date
- To the extent feasible and appropriate, electronic copies of filings and documents associated with the legal entity (for example, formation documents, annual returns, financial filings, change of registered office, change of registered agent, and so on).

Recommendation 2. Where feasible, the transition of company registry systems from passive recipients of data to more active components in jurisdictions' AML regimes is encouraged.

Countries are encouraged to direct more resources to their company registries to ensure that basic information supplied is compliant with the requirements. Registries would benefit from implementing a robust *ongoing* fact-checking component (even if based solely on statistically significant random sampling); those that demonstrate an effective capacity to enforce financial penalties or other punitive measures against noncompliant registered legal entities will contribute to improving the accuracy of data. As a result, investigators would have immediate access to high-quality data rather than the outdated information that they are frequently confronted with. Capacity investment in registries theoretically could transform a registry office (to the extent that the jurisdiction does not already see it as such) into an AML authority in its own right, somewhat akin to how, in some jurisdictions, securities commissions pursue investigations against public companies.

Recommendation 3. Jurisdictions should make technological investments in their corporate registry systems.

If a registry is to become an efficient AML tool, this development, including the upgrading of resources specifically for this purpose, needs to be planned carefully. For the least developed jurisdictions, a computerized registry is preferable to a paper-based one; and an online registry is preferable to a closed-network one. Such investments not only are desirable from an AML perspective, but also make the registry more business friendly.

Recommendation 4. For AML purposes, it is important to be able to conduct Boolean searches in company registries for specific types of information.

Whether a jurisdiction allows its registry to be searchable by supervisory authorities, AML investigators, economic service providers, or the general public, certain search criteria represent the primary starting points by which a lead is pursued. Incorporating a Boolean search feature is a cost-effective measure that allows for the input of multiple pieces of data and can contribute to efficient cross-indexing of known information. Registry systems in general therefore should allow for queries by the following:

- Natural persons, by first name or last name (which will retrieve their related addresses, files, company positions (for example, director), and details of the companies in question)
- Company secretary, registered office, or agent
- Shareholders
- Addresses
- Business activity
- Country of registration
- Date of registration
- Date of incorporation.

Recommendation 5. Countries should assign unique identifiers to legal entities incorporated within their jurisdiction.

This enables investigators to collect evidence from different domestic agencies within the jurisdiction (for example, tax, licensing, or municipal authorities) most efficiently. This is especially pertinent to operational entities, and if the process of receiving a unique identifier is sufficiently streamlined, it may be further applicable to all legal entities in the jurisdiction (including foreign legal entities, which may have only an operational connection or only be administered from that jurisdiction).

Recommendation 6. Trust and company service providers should be held subject to an effectively enforced AML compliance regime.

Regulation, through licensing and a supervisory authority, currently provides the strongest assurance that TCSPs comply with AML standards. TCSPs, at least, should be given clear and explicit AML-oriented obligations, above and beyond generic standards of professional conduct, to both identify *and* store beneficial ownership information of client corporate vehicles. Such an approach will probably require more vigorous and severe enforcement in instances of malfeasance to serve as a real deterrent to noncompliance.

Recommendation 7. Jurisdictions should ensure that all service providers to corporate vehicles—whether in establishing them, administering them, or providing financial services to them—collect beneficial ownership information when establishing business relationships.

Given the difficulty in establishing upfront who the beneficial owner is, service providers should be aware of all persons who appear relevant in relation to a certain corporate vehicle and who may have any bearing on the control or ownership of the corporate vehicle. Obligations should indicate the necessity of continually monitoring relationships and updating information on such "relevant persons."

Recommendation 8. Documented particulars of a legal entity's organization, including those details that indicate beneficial ownership and control,[82] should be held physically or electronically within the jurisdiction under whose laws it has been created.

The root of the problem of the misuse of legal entities is that individuals can form them in foreign jurisdictions. This compels authorities to engage in the complicated and often difficult process of a cross-border (rather than domestic)

82. Investigators recommended that, in addition to beneficial ownership information, copies of all banking documents, as well as all powers granted to non-officers, should be kept at the registered domestic address of the legal entities, allowing for law enforcement authorities to find all necessary information in one location.

investigation.[83] Mandating that such information be held within reach of law enforcement's compulsory powers would make it easier for governments to immediately access it for all domestic legal entities. Jurisdictions that require corporate vehicles to be incorporated or administered through TCSPs may impose such identification and record-keeping obligations on their TCSP sector. Alternatively, in jurisdictions in which anyone (or any citizen) may incorporate, the holding of such documents may be mandated for the resident directors or agents (who may be actual members of the corporate vehicle or, if functioning as a nominee, TCSPs).

Recommendation 9. Nonresidents forming or subsequently taking beneficial ownership of a legal entity should be required to go through a service provider operating under the AML compliance regime of the domestic jurisdiction.

That service provider should be required to collect and hold the standard set of documents including a certified copy of an ID and proof of address.

Recommendation 10. Jurisdictions should clarify what is and what is not covered by attorney-client privilege.[84]

Jurisdictions must settle the question of whether attorney-client privilege extends to all services rendered by an attorney (solicitor, advocate), or whether it covers only information obtained in the context of services rendered in relation to any adversarial processes or litigation, and whether it covers all such information including the identity of the client. At the least, privilege should cover no more than the services provided as an advocate and not extend to financial services or fiduciary advice. Clear penalties should be imposed on those service providers that are willfully blind to the purpose of the services requested.

Recommendation 11. Jurisdictions should ensure that financial institutions gather beneficial ownership information and develop and maintain complete beneficial ownership compliance files.

An investigator seeking information from a financial institution (to build a case linking an account, a corporate vehicle, a person of interest, or any combination thereof) will want to know when payments are made, where funds are routed to, who controls the account, and who (if anyone) is controlling that person. Banks can provide answers to all or some of these queries, if they have implemented a robust compliance regime—one capable of ensuring information on

83. Even when working through chains of TCSPs in different jurisdictions is an effective option, for each additional link in the chain, costs are inevitable in terms of the time and effort required for authorities to obtain the ownership information. Additionally, there is a danger that TCSPs removed from the originating jurisdiction may renege on earlier commitments to hand over beneficial ownership information.

84. According to investigators, one of the most frequent obstacles to accessing corporate vehicle information (as opposed to its unavailability) is the use of attorney-client privilege to refuse to divulge information relevant to the ownership and control of a certain corporate vehicle. In some cases, the privilege is advertised by TCSPs explicitly to attract clients. Lawyers indicate that the line between what is and what is not privileged is not always clear, and that in cases of doubt, they err on the side of the client.

control is effectively and consistently identified and maintained in records. The record-keeping requirement is central. Data such as e-mail correspondence and minutes of business meetings can help compliance officers and law enforcement determine persons of interest in corporate vehicle activity.

Recommendation 12. Jurisdictions should encourage their banks to develop broad, principle-based compliance policies, as opposed to prescriptive checklist-based policies.

Although bank staff will require a degree of certainty in knowing what rules to follow, compliance departments should continue to emphasize that due diligence rules are guidelines, and they are not a mere question of paperwork to be filed away and forgotten. These rules and guidelines are intended to help staff develop a deeper understanding of the customer.

Recommendation 13. The objective of financial institutions conducting CDD should be to ascertain the natural person who has ultimate control over the corporate vehicle's accounts.

Financial institutions therefore should always check whether customers are acting on their own behalf or on behalf of others and be sure to screen all signatories or others who hold a power of attorney over the account. Unexplained beneficiaries of significant amounts may be indicative of outsider control and cause for further investigation.

Recommendation 14. Jurisdictions should ensure that their domestic financial institutions have sufficiently independent client acceptance practices.

In their organizational structure, banks should ensure that compliance departments can make their voice heard at the highest managerial level. Once compliance has voiced a concern, relationship managers should not have the final say in deciding whether to accept a client.