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By Beth Kampschror

Solutions to shells

Anonymous shell companies are behind so many crimes and misdemeanors that eliminating them should probably be “a no-brainer,” as a US district attorney recently put it.

Examples: suspected arms dealer Viktor Bout used at least a dozen American-registered anonymous shell companies to finance his operations. As much as $36 billion has been laundered through US-registered shell companies from the former Soviet Union, according to an American government report.

Corrupt dictators have used shells in the US and elsewhere to launder or hide money they’ve received from oil companies or stolen from their own countries.

According to the Tax Justice Network, around $1 trillion in illegal funds flow illegally from developing to developed countries and offshore havens. Some of this has been repatriated by corrupt leaders who use shell companies to hide their identities when buying up assets in their home countries.

Experts told the Organized Crime and Corruption Reporting Project (OCCRP) that it would take more countries passing and enforcing tougher laws on the formation of companies to stop the damage.

Needed are better laws addressing:

- Transparency of company ownership. Jurisdictions must have a way to find out who the really owns companies and a method to close loopholes that make shells operate, such as use of proxies or bearer shares.

- Regulation of agents who set up companies. The US and the UK have no rules on lawyers and others who incorporate companies.
- Imposition of restrictions on non-residents who want to set up companies in the US and the UK.
- International standards and cooperation. A mishmash of organizations that are involved in money laundering and economic transparency – from the Financial Action Task Force (FATF), the group of 20 major world economies known as the G20, and the wealthy countries' club known as the OECD – need to get as tough on their own members as they are on traditional secrecy jurisdictions in the Caribbean.

Transparency of ownership.

International law enforcement, justice officials, academics and activists agree that knowing who really is reaping the benefits of offshore shell firms is crucial.. If, for example, a police officer needs to find a company registered in Seychelles, that request goes up through his justice ministry, and then over to the Seychelles justice ministry. It then trickles down to the police, registries and regulators in Seychelles. And this other happens if the two countries have a treaty, and if the Seychelles ministry responds at all.

"We're operating in this 19th Century manner, yet the money is moving in seconds. It's long gone," said Anthea Lawson, who leads the Kleptocracy Team at Global Witness in London.

A major selling point of offshore registry companies, in fact, it that police can't identify owners. Authorities basically have to ask information from the very people hiding it.

"Offshore is the place where all the traces and connections disappear. The only authority that can get through to an offshore company with requests is Interpol, but you will be the one who will be responding to their request," Viktoria Boyko of Tax Consulting UK/Aurora Consulting told an Ukrainian audience at a recent seminar on setting up offshores.

Lawson recommended that each jurisdiction have a public registry of real owners. The good news is that the 2008 financial crisis prompted finance ministers and central bankers from the world's 20 largest economies to commit to ending banking secrecy and to prod tax havens to share information. They also established a short-lived "black list" of countries that would not

commit to earlier openness rules handed down by the wealthy countries in the Organization for Economic Cooperation and Development (OECD).

But activists bemoan the fact that what needs to be done to shut down a worldwide shadow financial system is far from happening. The G20, which just met in South Korea, has yet to commit to making public company registries a global standard. Nor has the Financial Action Task Force – the world's main international anti-money laundering organization – recommended that countries make public actual ownership of all companies, trusts, foundations and charities.

The United States failed even to vote on a bill that would have insured transparency about company ownership and it is home to one of the world's most significant secrecy jurisdictions , the state of Delaware.

That US bill, which had originally envisioned that US states would collect all information about actual owners, was called "a no-brainer" by New York district attorney Robert Morgenthau and was backed by American law enforcement. "The biggest problem in the world is the US when it comes to shell companies," said Dennis Lormel, a former head of the FBI's financial crimes unit. "The only way to get the problem resolved is for Congress to enact legislation. It would have a deterrent effect."

Observers had high hopes for the bill, because it had been co-sponsored in 2008 by then-Sen. Barack Obama. They blame the bill's death on money. "Obviously shell companies are a revenue source for states. They're not shot in the butt about seeing any legislation enacted," Lormel said.

The powerful Chamber of Commerce and the American Bar Association (ABA) also opposed the bill, said Lucy Komisar, a journalist who's writing about the lack of transparency in the American Interest in December. The Chamber – which spent $92 million on lobbying in 2008 , – said the law would expose a company's business strategies if that company was trying to buy undervalued assets. "Actually, what they're afraid of is that they won't be able to use shell companies to avoid taxes," Komisar said. The ABA, meanwhile, opposed the bill because it would have subjected lawyers to anti-money laundering directives which it felt would endanger the principle of attorney-client confidentialty. Komisar scoffed at this "Sorry, but helping your client launder money is not client privilege," she said, adding that
the EU adopted similar rules in 2005
without the death of attorney-client privilege.

Regulating company formation agents.

Griffith University Professor Jason Sharman, who last year used Google and $20,000 to find and pay agents to set up anonymous shell companies in 17 jurisdictions, suggested regulating those agents. Sharman recommended that the US and Britain stipulate that agents not be allowed to set up companies unless they themselves know the actual owner and they keep records of that information.

Imposing restrictions on non-residents.

Sharman also suggested that the UK and US restrict non-residents from forming shell companies in their countries. Bout, he said, is a prime example of a foreign national who shouldn't have been allowed to set up fronts in the US. "The most acute problem is non-residents setting up ostensibly respectable companies in these jurisdictions and doing crime around the world," he said. "The great thing about US and British companies is that they look more respectable, and they're more secret, so you get the best of both worlds. It might raise eyebrows to have a company from any small obscure island, but New York is respectable."

Tougher international standards.

Sharman found that jurisdictions such as Bermuda and the Cayman Islands require far more certified ID from anyone wanting to establish a company or bank account there than do the US states of Nevada and Wyoming, which at the time require no certified ID documents at all. Sharman and other observers recommended that member countries of the Organization for Economic Co-Operation and Development (OECD), an international organization that has tried to push for laws to reduce the worst abuses of offshores, get their own houses in order before pointing fingers at other countries.

The OECD's "white list" is problematic, said John Christensen, who mans the International Secretariat of the Tax Justice Network, an international nongovernmental organization that lobbies for fair and open tax and finance systems. "The very fact that they have a white list

implies that these jurisdictions are legitimate and undertake legitimate activity with the explicit support of the OECD," he said. He added that beyond the fact that "white list" jurisdictions are often themselves secrecy jurisdictions and tax havens, all a country need do to get on that "white list" is sign an agreement with another country pledging to share information. The OECD doesn't care whether the sharing actually takes place. Christensen pointed to a long-standing agreement between Jersey and the US. In fact information has only been exchanged six times "British understatement doesn't capture the sheer paucity of this process," Christensen said. "The kindest thing we could say (about the OECD) is that they do deserve a junior achievement badge, but nothing beyond that."

Anthea Lawson, of Global Witness, pointed out that agreements between countries are mostly just symbolic. "You're not allowed to go on a fishing expedition," she said. "If the UK government calls up the BVI (British Virgin Islands) and says, 'Can you please tell me, does Mr. So-and-So have any money there?' – well, you're not allowed to do that. They have to know what they're asking for. It's absolute nonsense."

Lawson said the global anti-money laundering organization, the Financial Action Task Force (FATF), needs to ramp up too. "We think the FATF should have the ability to measure enforcement and to name and shame countries that aren't enforcing their laws. And to be prepared to speak out against their core members that aren't doing it," she said.

The following journalists contributed to this project.