



Peacocks on Parade

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This month's issue of *Offshore Investment* includes coverage of the regulation of financial services and the question is asked: who needs it? In relation to international financial services, Delaware in the United States of America does, for a start, according to a study released this year by Michael Findley, Daniel Nielson and Jason Sharman with the unwieldy, but telling, title: "Global Shell Games: Testing Money Launderers' and Terrorist Financiers' Access to Shell Companies". It would be a good stocking filler this Christmas for offshore financial services practitioners, and for those in Panama there is the added bonus of the brief written in September by Jason Sharman for the Faculty of Law & Political Science at the University of Panama, which examines both Panama's corporate system (ironically, inherited from Delaware) and the use of bearer shares in relation to transparency. It reveals that 20 of the 34 Organisation for Economic Co-operation and Development countries allow either bearer shares or bearer share warrants and that the review of the proposed US Incorporation Transparency and Law Enforcement Assistance Act "supports the conclusion that untraceable shell companies are more common in the US than Panama". A surprise, perhaps, if you are not aware of Delaware where its beaches are not the only source of shells.

The relevance this has in Latin America is the fact that the US, although not alone, has been especially consistent in its criticism of the use of anonymous companies, shells, through which illicit transactions can pass; two Central American countries, Belize and Panama have been in the spotlight.

Offshore Investment's February, 2009, cover asked the question: "Is the party over in Delaware?" in response to that month's column (Man, Angels and Brazil – Issue 193), covering Brazil's classification of Delaware as a tax haven. The Global Shell Games study confirms, however, that the party continues. In fact, the US, overall, fares badly in the transparency stakes according to the 2012 World Bank report entitled "The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It", which investigated some 150 cases it classified as "grand corruption" involving around USD50 billion in illicit assets. It found that in almost every case a company whose ownership was unknown was involved and of all the jurisdictions in which bank accounts (Panamanian bankers, please note) for such companies were opened, the US was the worst offender; at best it was an enabler, although the Global Shell Games study also shows that only ten out of 1,722 service providers approached in the US, less than 1%, required notarised documents in accordance with due diligence standards set out by the Financial Action Task Force, an inter-governmental body.

In the US, what Detroit once was to motor vehicles, Delaware is to corporate vehicles. It has approximately a quarter of the population of Panama yet it is estimated to have more than treble the number of active companies. It is the state that is the corporate address for American Airlines, Apple, Bank of America, JP Morgan Chase and Coca-Cola. All companies, be they in Panama, the Cayman Islands or Iceland, need a legal address to accept service of process and those companies all have the same one: 1209 North Orange Street, Wilmington, one which they share with another 285,000 or so businesses; that total is similar to the estimated number of active companies in Panama.

US Federal authorities, not just Senator Carl Levin, America's Witch Finder General of offshore venality, stand on the sidelines while the honest and dishonest avail themselves of Delaware's all-welcome message which seems to pay little heed to the Senator's: "In an age of international terrorism, drug violence in our streets and on our borders, and organised crime, stopping illicit money flows that support those atrocities is a national security imperative". The assistant attorney general for the criminal division of the US Justice Department has identified shell companies as the number one vehicle for laundering illicit money and criminal proceeds.

Delaware may be proud of being the first state to ratify the US Constitution back in 1787 but it seems to be the last one prepared to put its full weight behind Senator Levin's efforts in defending it. The US vice president, Joe Biden, was a senator for the state for 36 years, which seems to be a bizarre twist. What, however, does corporate revenue mean to Delaware? Somewhere in the region of USD860 million in taxes and fees was collected in 2011 from its corporate non-residents, such as Google, which represented a quarter of the state's total budget. In fairness to Delaware, the Financial Crimes Enforcement Network, a division of the US treasury department, says that the states of Nevada, Wyoming and Oregon are also good locations for incorporating shell companies, although Delaware is seen as the least transparent and the one providing the most secrecy.

Not just Brazil, but other US states, have branded Delaware a tax haven. A 2011 study entitled "Exploring the Role Delaware Plays as a Domestic Tax Haven" showed how it serves as a tax haven in much the same as the Cayman Islands does, with a similar level of domestic, as opposed to offshore, tax avoidance, according to the authors of that study, namely, Scott Dyreng, of Duke University, Bradley P. Lindsey of North Carolina State University and Jacob R. Thornock of the University of Washington. Unlike those US companies in the Cayman Islands, however, that eventually have to pay federal taxes when foreign profits are repatriated, the tax benefits allowed under Delaware law are not temporary. WorldCom, the telecommunications company once at the centre of an accounting scandal which led to bankruptcy, had been able to save around USD20 billion from its state taxes by diverting the revenue through a Delaware subsidiary between 1998 and 2001. What must surely be a euphemism, the company attributed the strategy used as "management foresight". During the last decade such foresight has apparently helped other US corporations to reduce the taxes paid to other states by an estimated USD9.5 billion – without any help from perceived swashbuckling offshore centres, many of them islands.

Richard Geisenberger, Delaware's chief deputy secretary of state, has openly dismissed Senator Levin's call for beneficial ownership of

companies to be automatically transparent (he is supported by the National Association of Secretaries of State and both the US Chamber of Commerce and the American Bar Association). A frustrated Levin (since 2000 he has tried three times to introduce legislation which has never got beyond the Senate committee stage) has said that more information is needed to obtain a driver's licence than to establish a corporation; by this reckoning, Panama's controls are positively pristine. It is no coincidence that Delaware is the only state that has hired a lobbyist to fight its corner; and a Delaware Democrat could be the next chairman of the Senate Homeland Security and Government Affairs Committee which decides the Levin proposal in Washington, just 100 miles from Wilmington.

It is hard to fathom the logic behind the protests coming out of Delaware over simply requiring information to be kept on a beneficial owner, especially when the demand for it to be public in every offshore financial services centre has been made. The information, however, need not be public and Delaware should legislate that corporate agents must have it on file like their offshore counterparts. I'm not asking for a notarised copy passport, utility bill and at least two professional references from those agents, as I and all responsible offshore practitioners worldwide do; heaven forbid.

Tax Justice Network's Richard Murphy claims that Delaware is the biggest single source of anonymous corporations in the world. But Mr. Geisenberger has avowed, as he puts it, not to do anything that "changes the friendliness of American business". He, along with the National Association of Secretaries of State, are not reluctant to display their colours as a peacock does its feathers. Moving from place to palate, however, whereas what's sauce for the goose is usually sauce for the gander, it is not when one of them is laying golden eggs.

Don't expect Washington to have any success in shifting Delaware towards a sensible policy on this fundamental international issue because it seems to me (apologies to the English poet Thomas Gray) that where belligerence, as opposed to ignorance, is bliss, 'tis folly to be wise.

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