Beneficial Ownership Transparency

Andres Knobel

December 2024



Agenda

Concept and importance

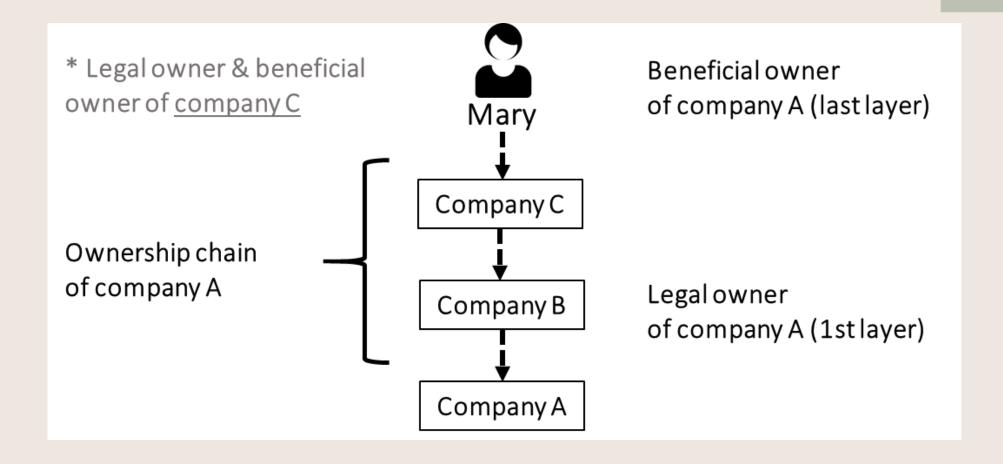
Beneficial ownership registration

Challenges

Sources and investigations



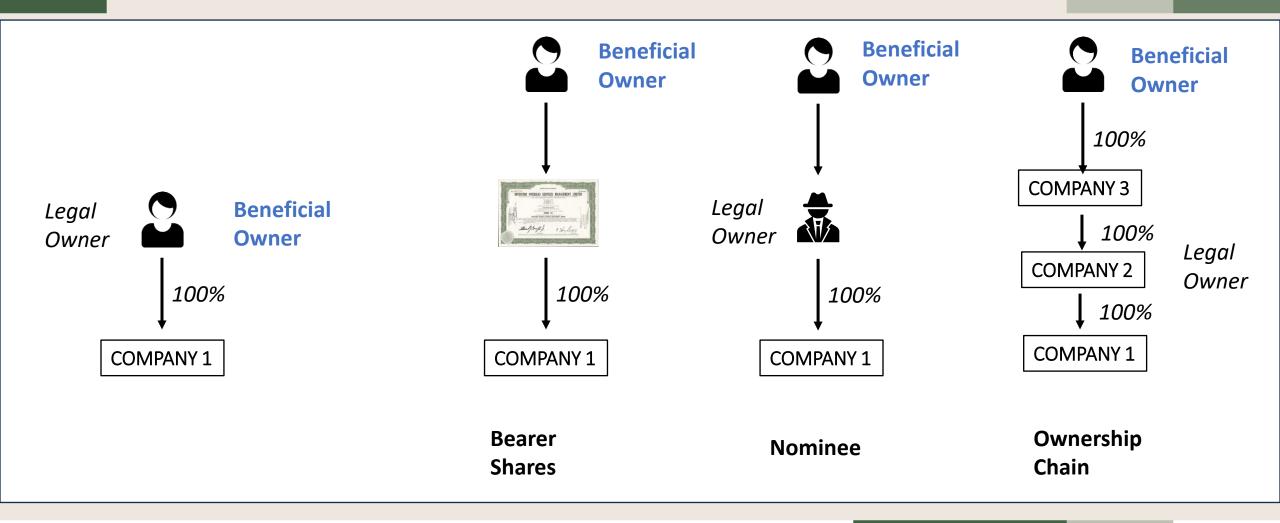
Concept



Anti-Money Laundering (AML) ≠ Double Tax Treaties ≠ Securities



Concept



Definition-FATF 2023

In the context of **legal persons**, beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person.

Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person.

In the context of **legal arrangements**, beneficial owner includes: (i) the settlor(s); (ii) the trustee(s); (iii) the protector(s) (if any); (iv) each beneficiary, or where applicable, the class of beneficiaries and objects of a power; and (v) any other natural person(s) exercising ultimate effective control over the arrangement.

In the case of a legal arrangement similar to an express trust, beneficial owner refers to the natural person(s) holding an equivalent position to those referred above. When the trustee and any other party to the legal arrangement is a legal person, the beneficial owner of that legal person should be identified.



Determination

Legal Person (Int. Note to R 10 on CDD):

Legal Arrangement:

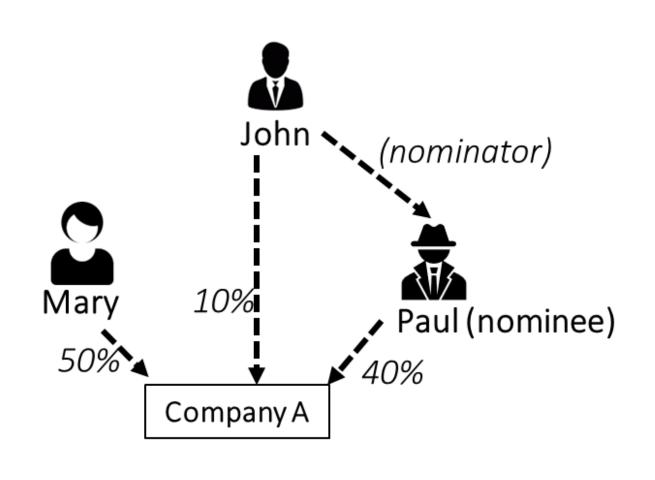
a) Controlling ownership (eg. 25%)

All parties

b) If no one, doubts -> Control via other means

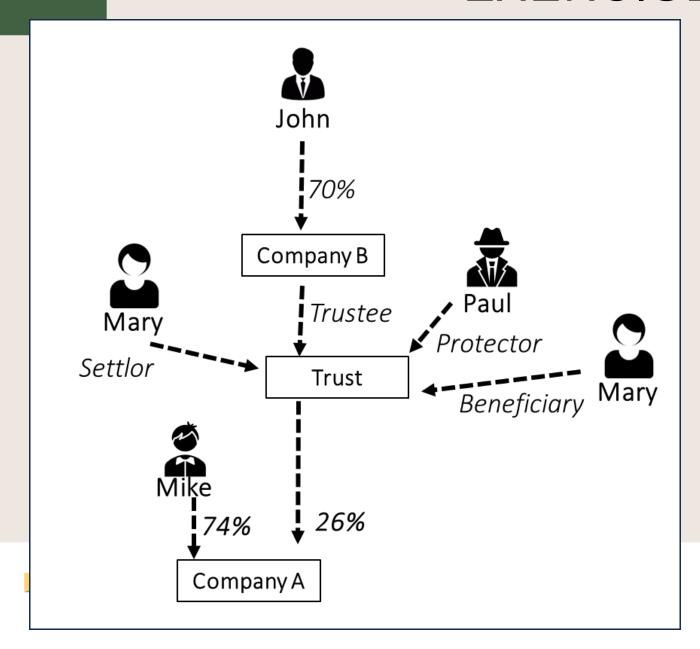
c) Senior manager





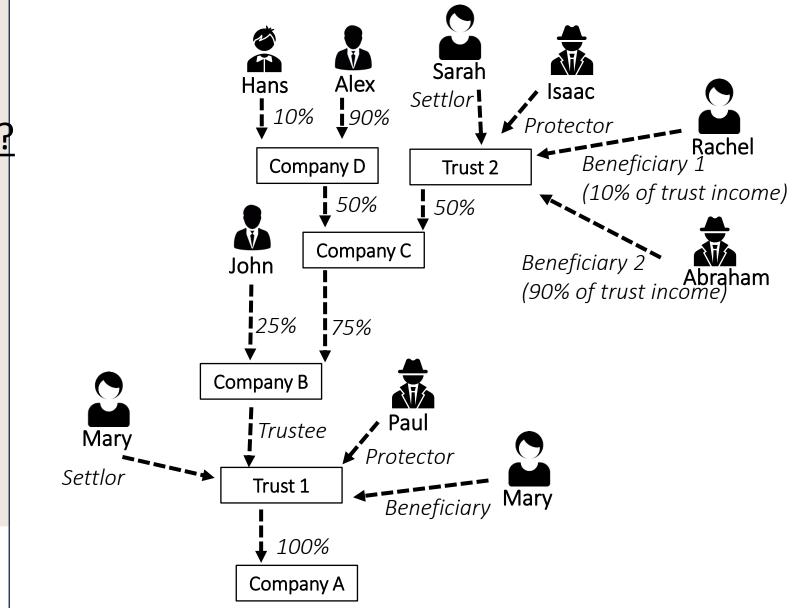
Who are the BOs?:



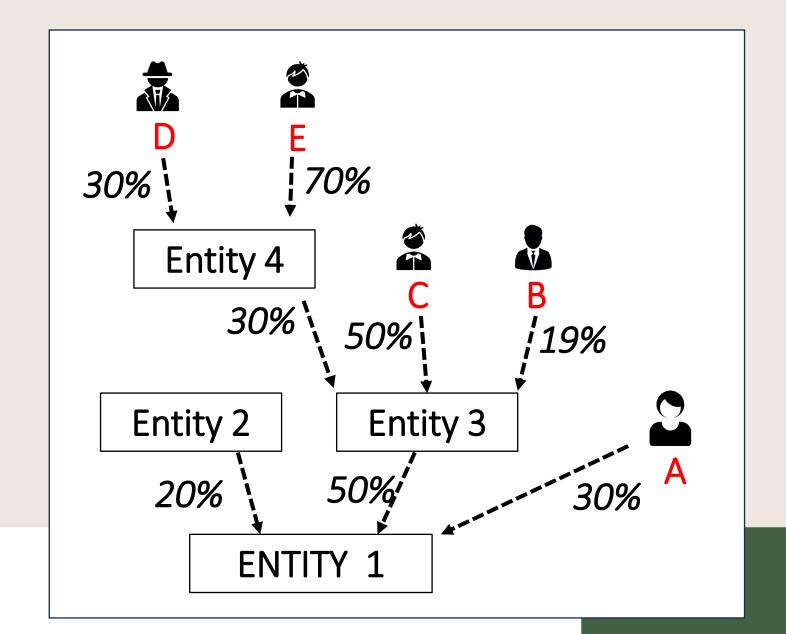


Who are the BOs?:

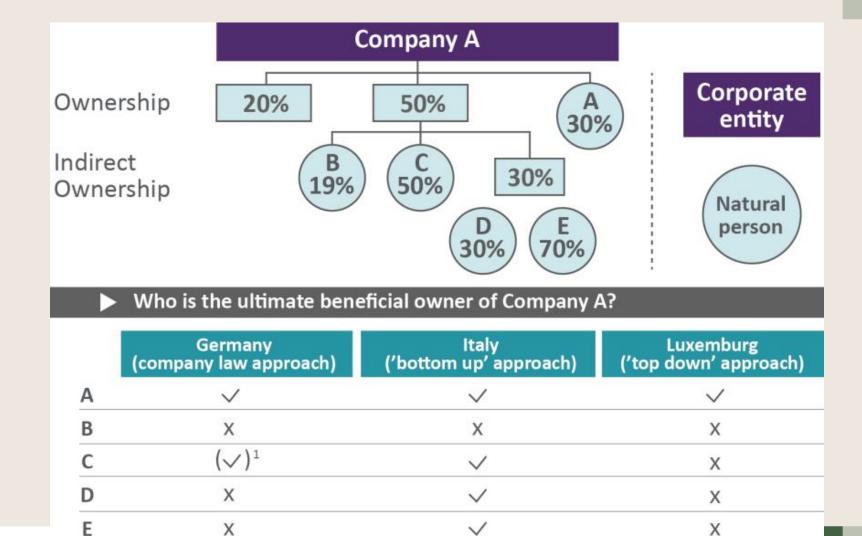
Who are **NOT** BOs?













^{*}It should be considered risk based

Ex. 5: Which registry is more reliable?

A) Commercial registry?

B) BO Registry?

C) Real estate registry?

D) Information submitted to the tax administration?



Ex. 6: Which data is more reliable?

Data available in the BO Registry

A) BOs with ownership (2023)

B) Directors (2023)

C) Address

D) Incorporation act (1980)

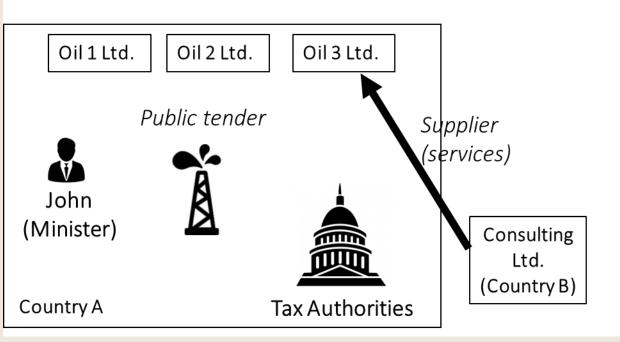


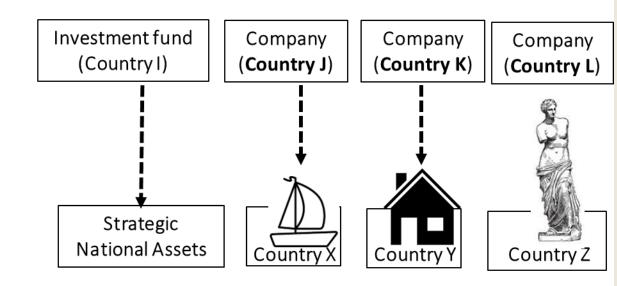
Why is Beneficial Ownership Transparency relevant?



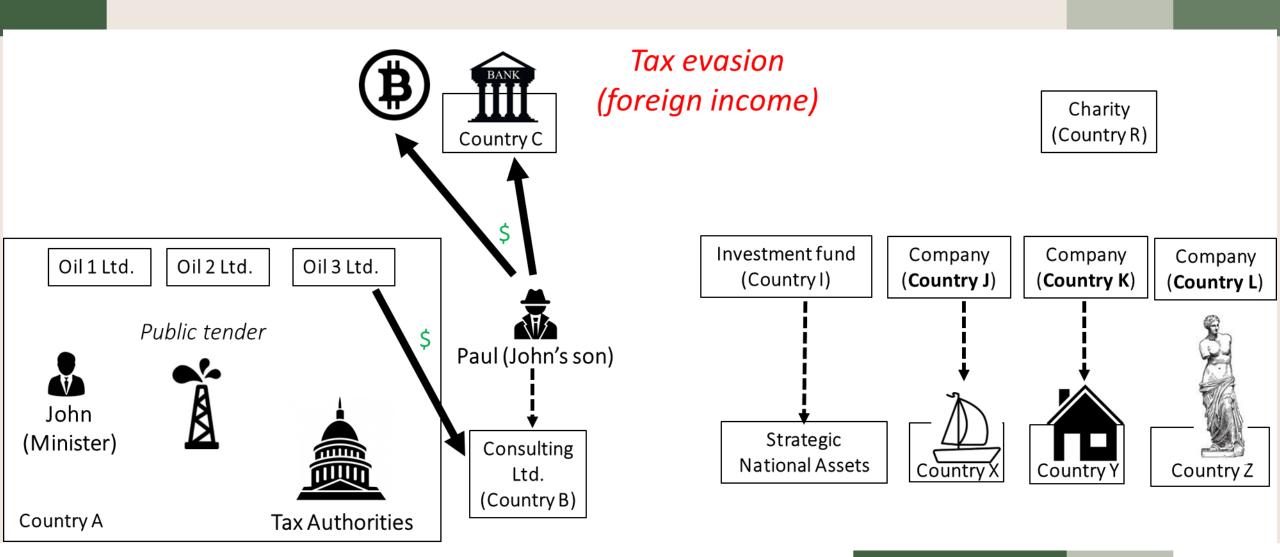
What is suspicious?

Charity (Country R)

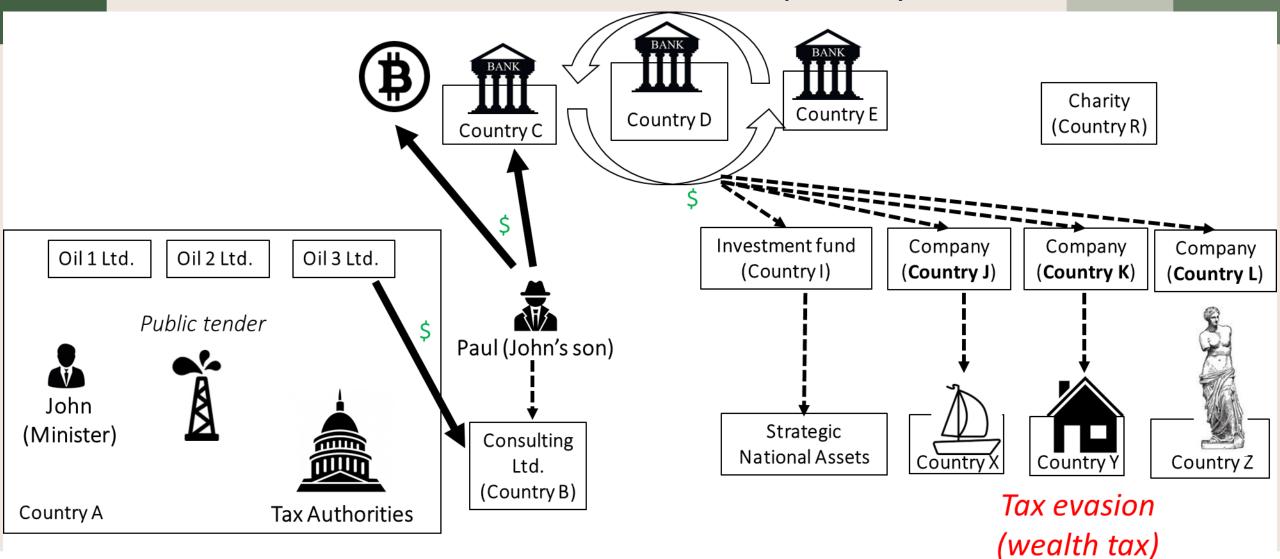














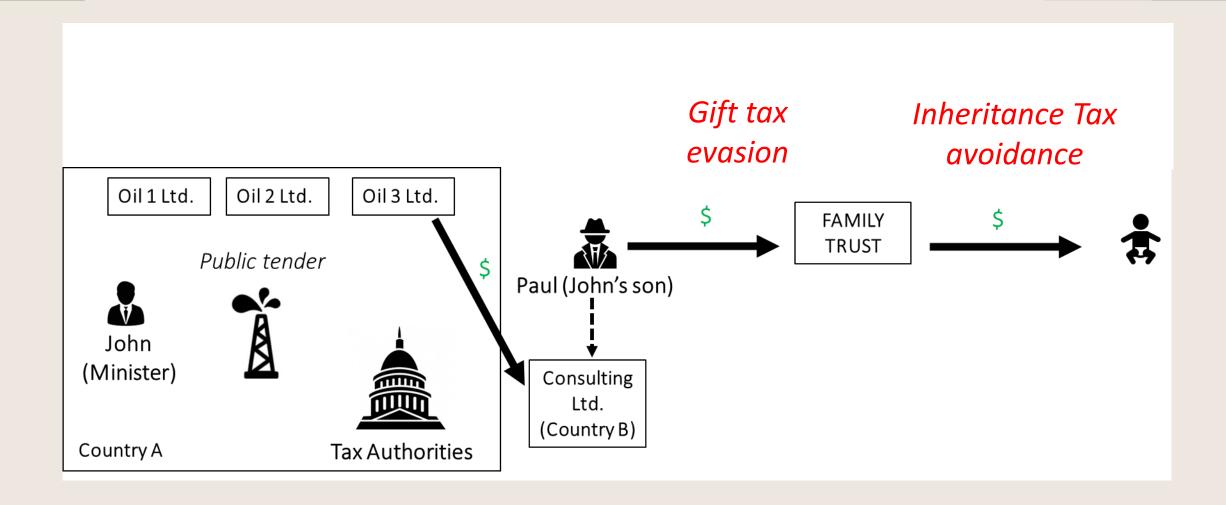
CRONISTA · ECONOMÍA Y POLÍTICA · CORTE

NO HABR A DONACIÓN EFECTIVA DE LOS FONDOS EN EL CASO DE EURNEKIAN

La Corte rechazó la constitución de un trust y pagará impuestos

La Corte Suprema de Justicia revocó un fallo que había beneficiado a Eduardo Eurnekian, relacionado con trusts constituidos en el exterior, y le dio la razón a la AFIP por considerar que el empresario no había perdido completamente el manejo sobre los bienes depositados en fideicomisos. Ahora deberá tributar impuestos a las Ganancias y sobre los Bienes Personales por los períodos en disputa.





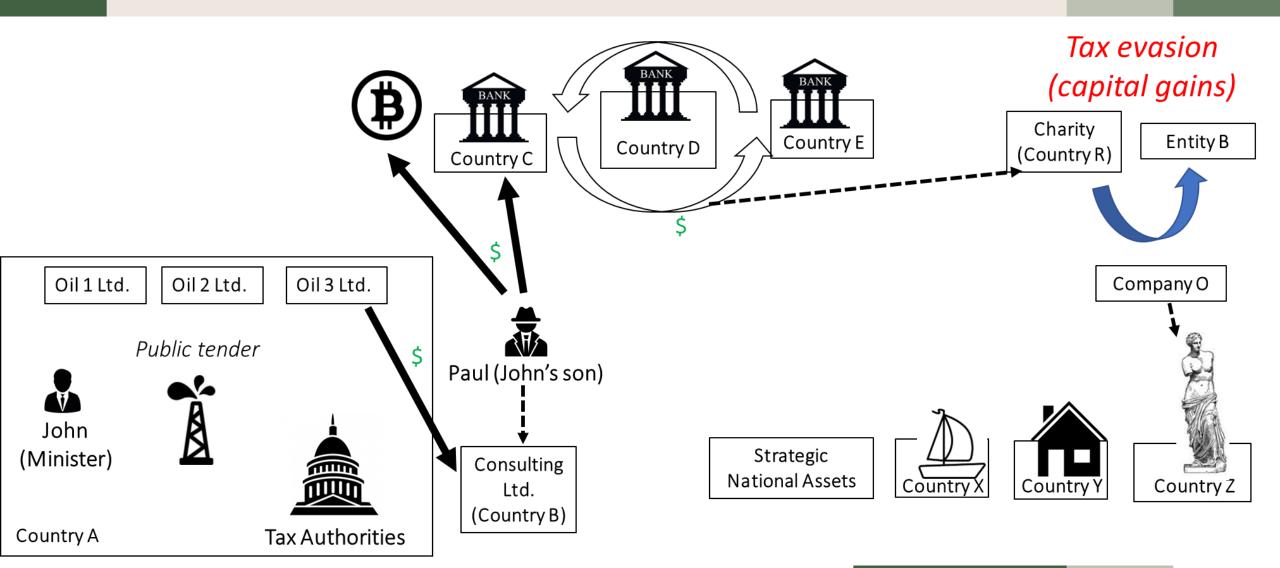


Inheritance tax: why the new Duke of Westminster will not pay billions

Juliette Garside

The fact that Hugh Grosvenor's estate is held in a trust means that his £9bn inheritance is likely to remain largely intact







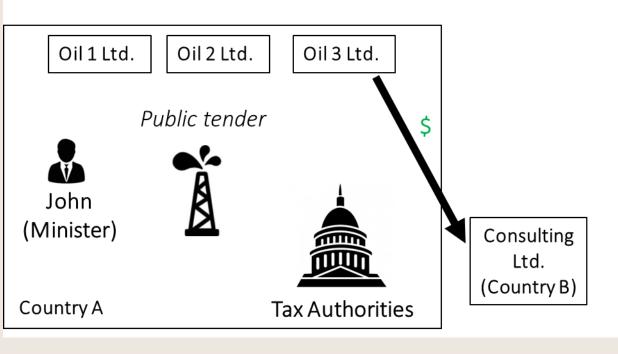
Vodafone wins Indian retroactive tax dispute

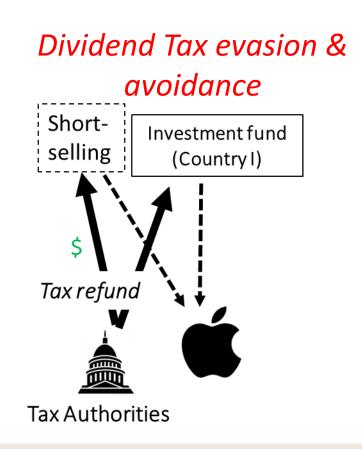
30 September 2020

India first taxed Vodafone in 2007, following Vodafone's US\$11bn acquisition of a majority stake in Hutchison Essar, an Indian telecoms company. Although the acquisition was structured so that Vodafone's Dutch subsidiary would acquire the single issued share in a Cayman Islands company (which indirectly held shares in Hutchison Essar), the Indian tax authorities imposed a US\$2.2bn capital gains tax on the share sale by arguing, among other things, that Indian law permitted the taxation of gains on the indirect transfer of shares in an Indian company.

Vodafone challenged the tax assessment in the Indian courts and, in 2012, the Indian Supreme Court held that no capital gains tax was payable because the transaction did not result in the transfer of a capital asset in India.

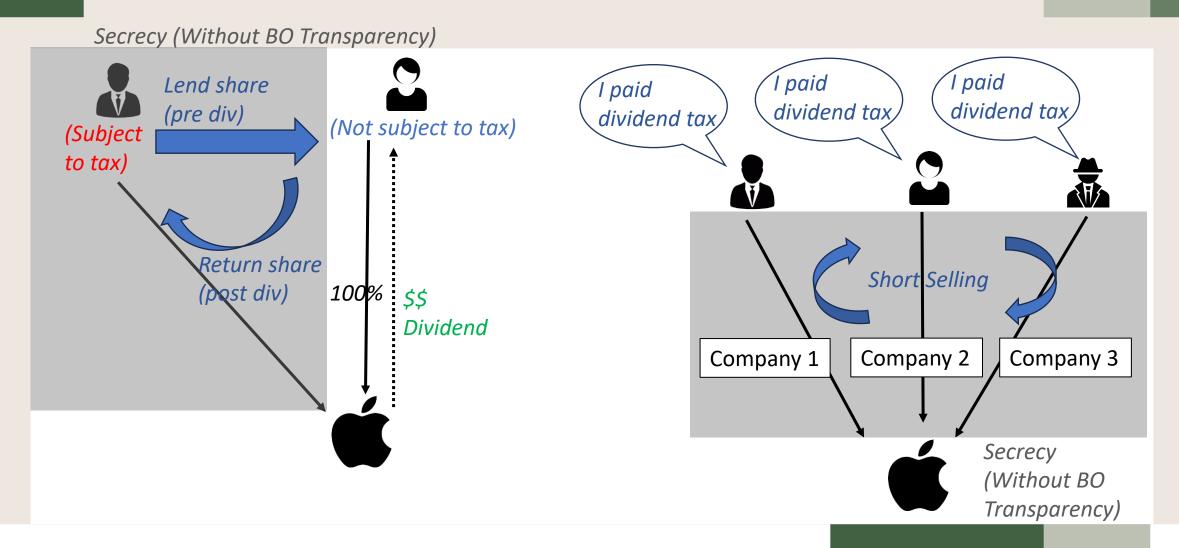




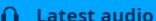




Con Transparencia de BF







BUSINESS

Cum-ex tax fraud cost €55 billion

10/18/2018

Most people will stare blankly when they hear of the "cum-ex" scandal, but the latest reports are that this tax evasion scandal is a continental-wide one, robbing taxpayers of at least €55 billion of state money.



Charity (Country R) Investment fund Company Company Company Oil 2 Ltd. Oil 3 Ltd. Oil 1 Ltd. (Country I) (Country J) (Country K) (Country L) Public tender Tax Fraud I John Strategic (Minister) Consulting **National Assets** Country Z Country X Country Y Ltd. (Country B)



Tax Authorities

Country A

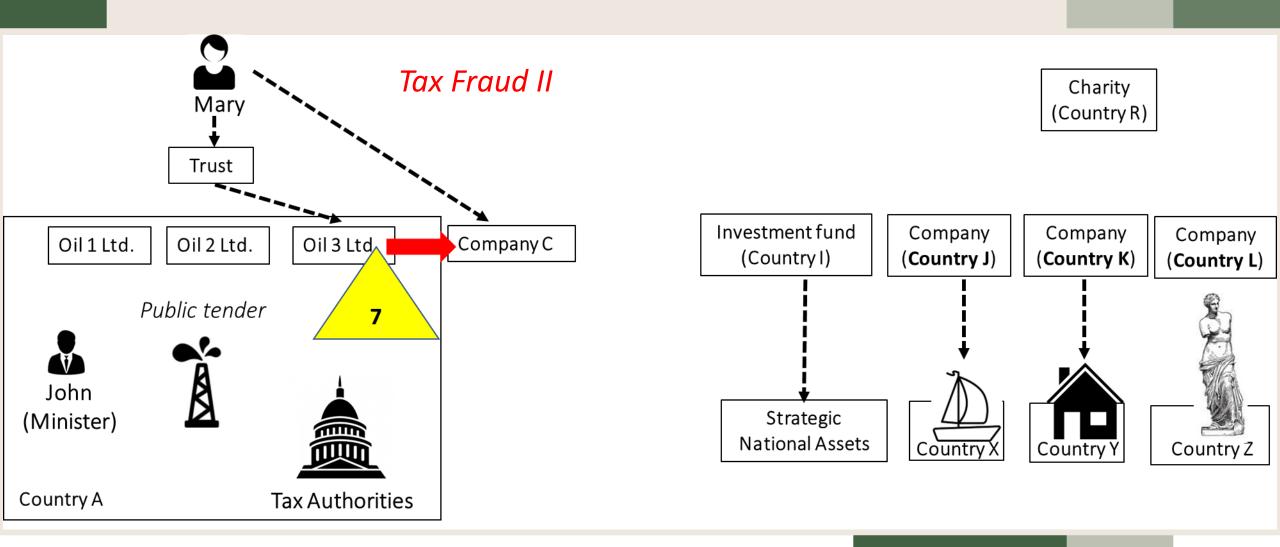
AFIP desactivó una usina de facturas truchas por un total de \$2.800 millones

01 Septiembre 2020

A través de un operativo en conjunto la AFIP, el Ministerio Público Fiscal y la Justicia Federal de Córdoba desarticularon un entramado de estudios contables y empresas dedicadas a la generación de facturas "truchas".

Entre las **metodologías fraudulentas** utilizadas por las estudios contables y empresas investigadas se identificó la apropiación de la Clave Fiscal de personas sin capacidad contributiva para generar facturas falsas que eran utilizadas para reducir el monto de los impuestos que debían pagar sus clientes.







STAR INVESTIGATION

He owed millions in taxes. Instead of paying up, he enlisted an offshore company to bankrupt his business and cheat the CRA

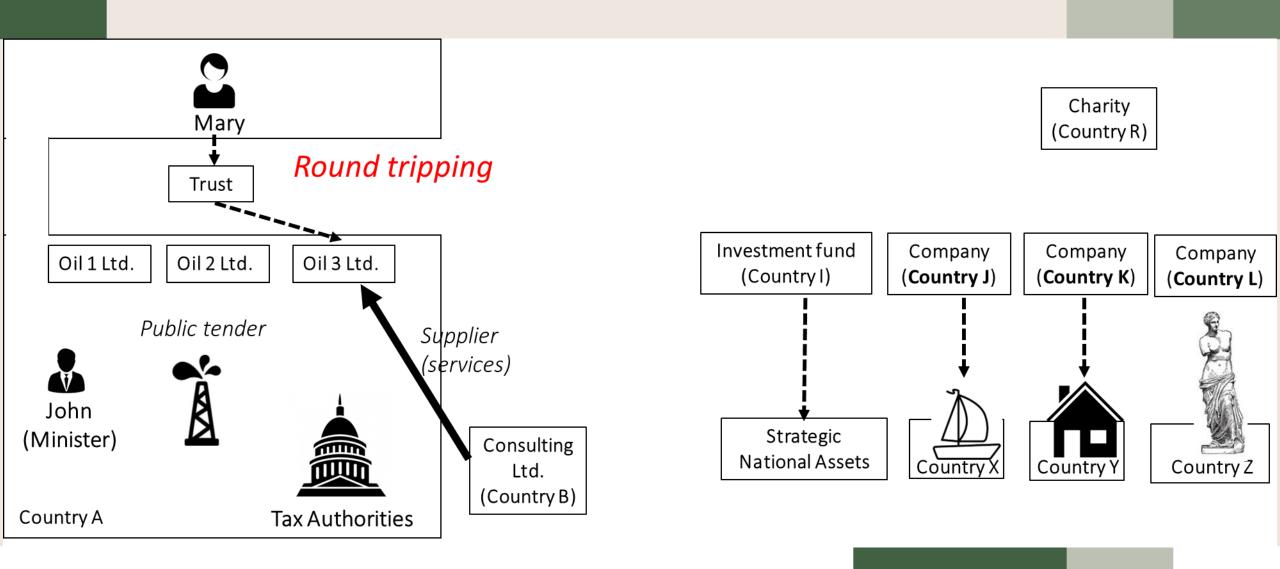
Doug McKague enlisted offshore firm La Hougue to help bankrupt his own profitable business so the CRA could never collect the taxes due, leaked documents show. McKague could not be reached for comment but his lawyer disputed the underlying facts.

Then Maple Screw created fake debt by recording a loan from another offshore entity but never actually receiving the money. This debt existed only on paper so that the CRA couldn't collect when Maple Screw went bankrupt, because a secured loan typically ranks ahead of taxes owed when an insolvent company's assets are divvied up.

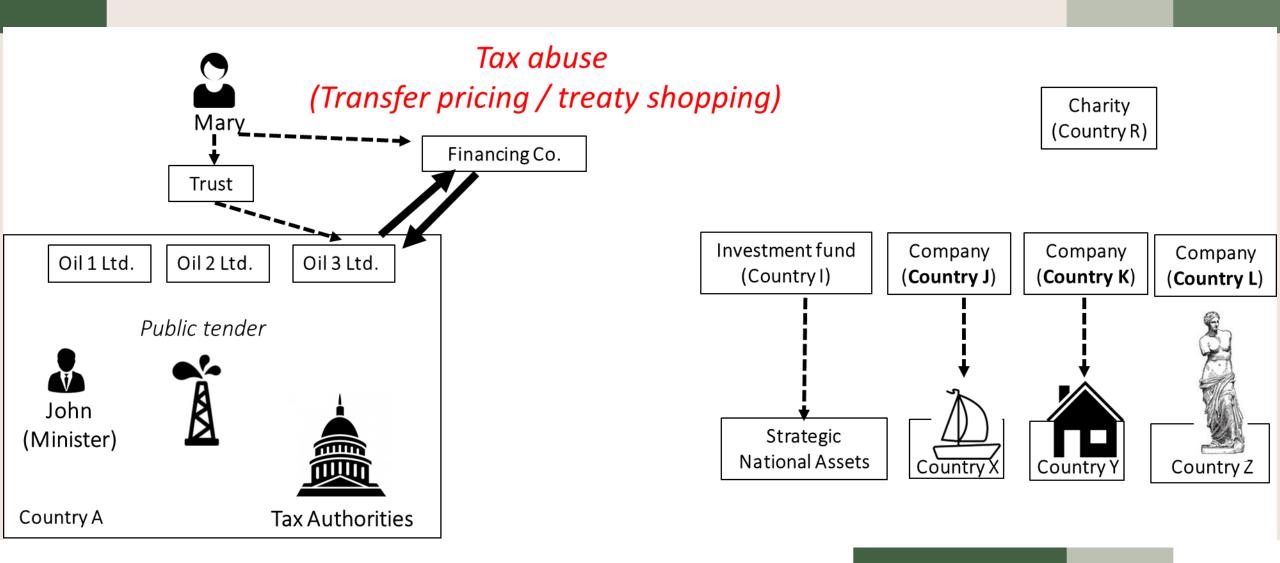
Finally, once in bankruptcy, Maple Screw's assets were liquidated. But the company that bought them up — and relaunched its business with the same staff and the same customers — was a front for McKague as well.

Today, McKague owns Maxtech Screw Products (known as MSP), which operates the same business that Maple Screw Products (also known as MSP) did, but out of a new facility in Toronto, built and leased out by another of TAX JU! McKague's front companies.









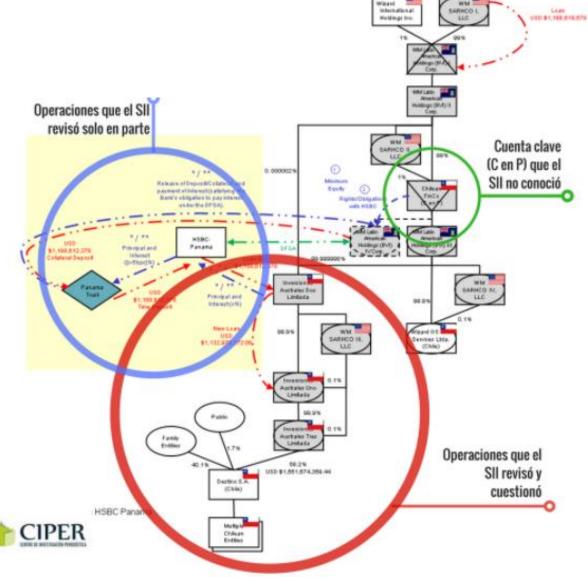


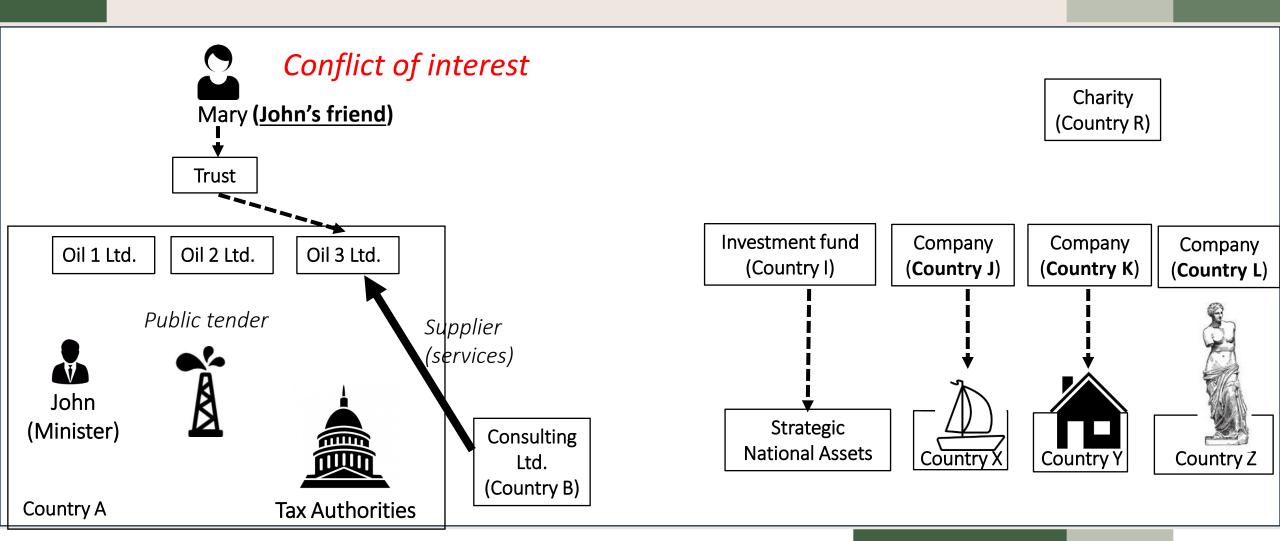
"Papeles del Paraíso": filtraciones refuerzan postura del SII en millonario juicio contra Walmart

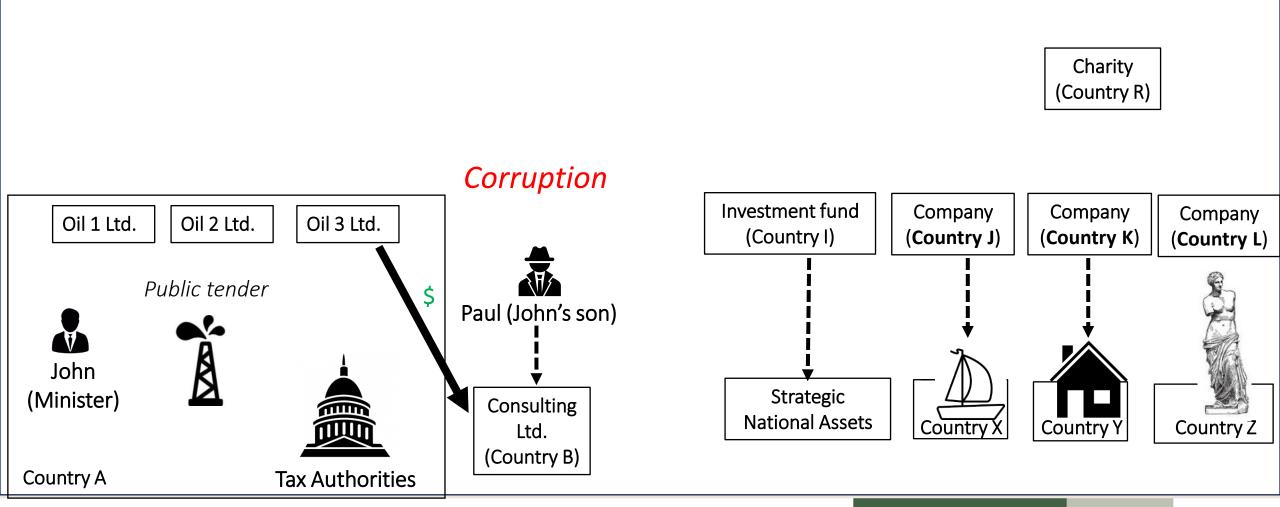
10.11.2017

Por Juan Andrés Guzmán







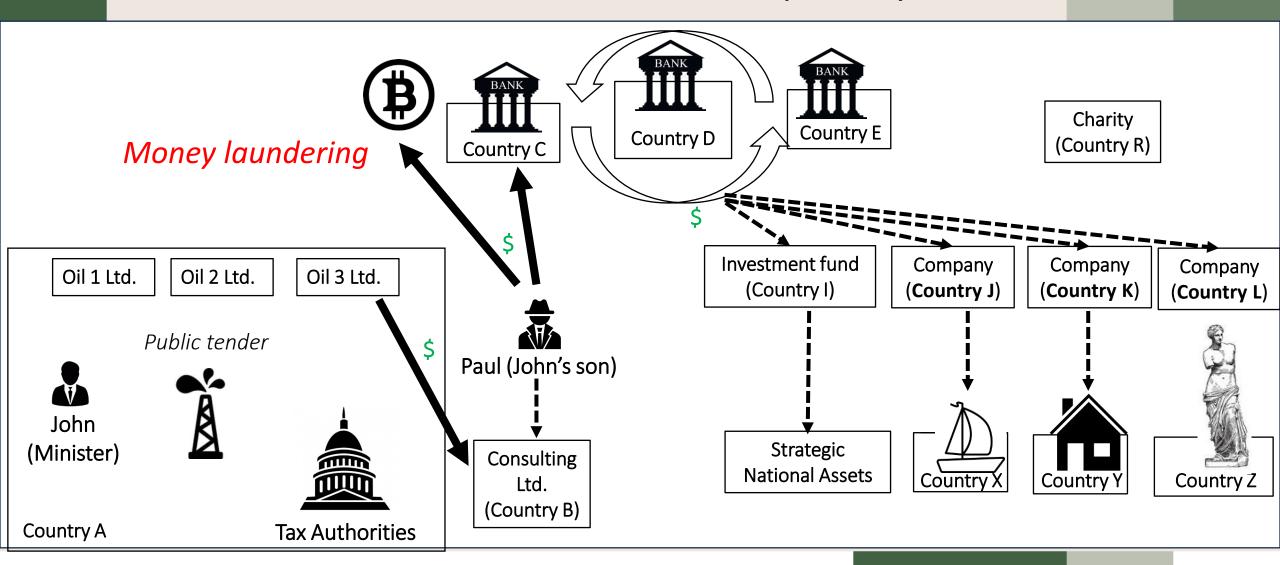




Revealed: Viktor Fedotov is tycoon behind Aquind energy project

A secretive Russian-born tycoon whose company has donated almost £250,000 to the Conservative Party can be identified today by *The Times*.

Viktor Fedotov, 73, is the ultimate owner of Aquind, which is seeking ministerial approval for plans to build a £1.2 billion undersea <u>electricity interconnector</u> between Britain and France.



LA NACION . Política

Oro, diamantes y seis empleadas domésticas: la lujosa vida de un funcionario expuso la corrupción en los corredores viales

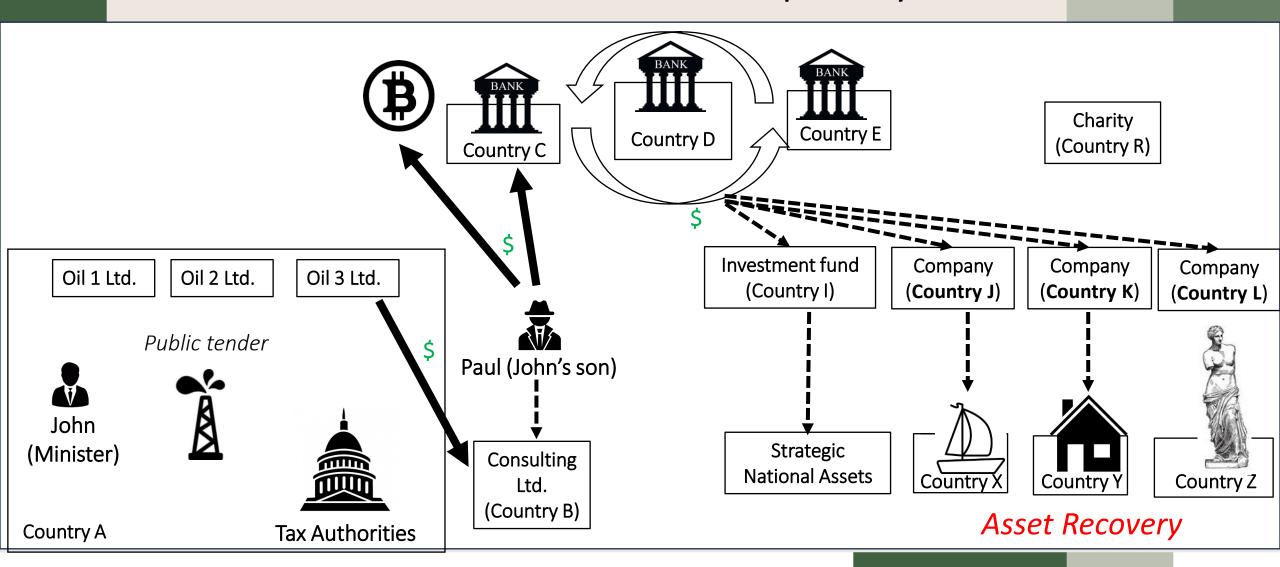
El juez Casanello procesó, embargó y prohibió la salida del país de Gustavo Gentili, extitular del Occovi, su esposa y su hermano; los vínculos con las causas Vialidad y Cuadernos

13 de abril de 2021 • 03:41



Hugo Alconada Mon

Como número uno del Occovi hasta fines de 2015, Gentili negoció con los empresarios. ¿La premisa? Toda firma que quisiera una concesión vial debía contar con el aval técnico de una "consultora especializada": Consular Consultores Argentinos Asociados.



'Unexplained wealth order' sees British businessman hand over \$13 million in property

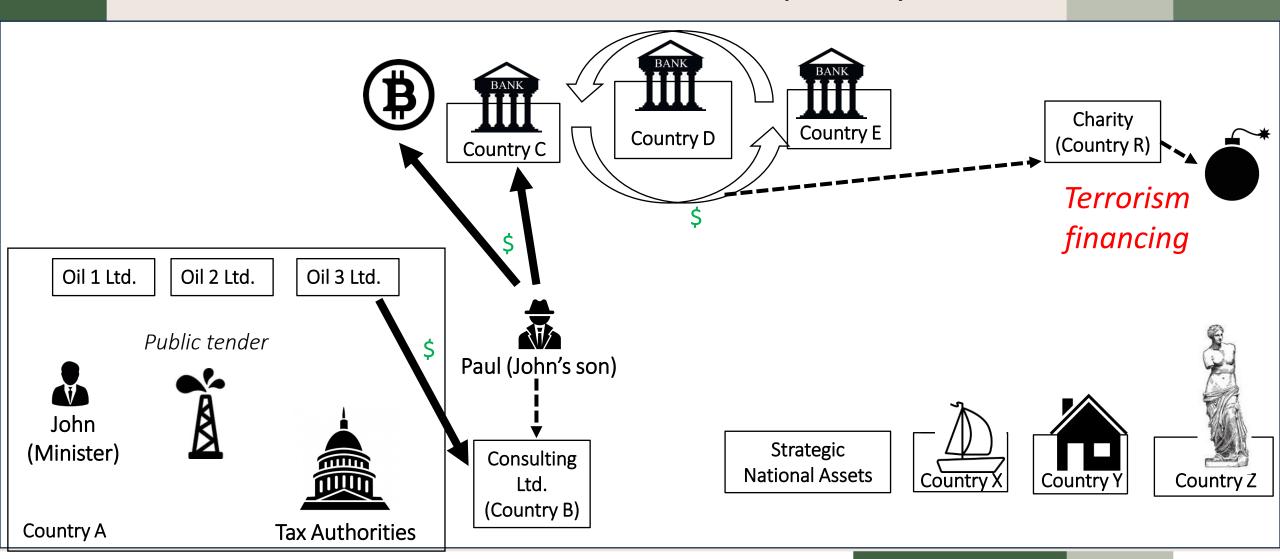
PUBLISHED WED, OCT 7 2020-5:37 AM EDT | UPDATED WED, OCT 7 2020-5:50 AM EDT







 A British businessman with suspected links to "serious criminals" has agreed to forfeit his property empire worth nearly £10 million (\$12.9 million) in an out-of-court settlement.

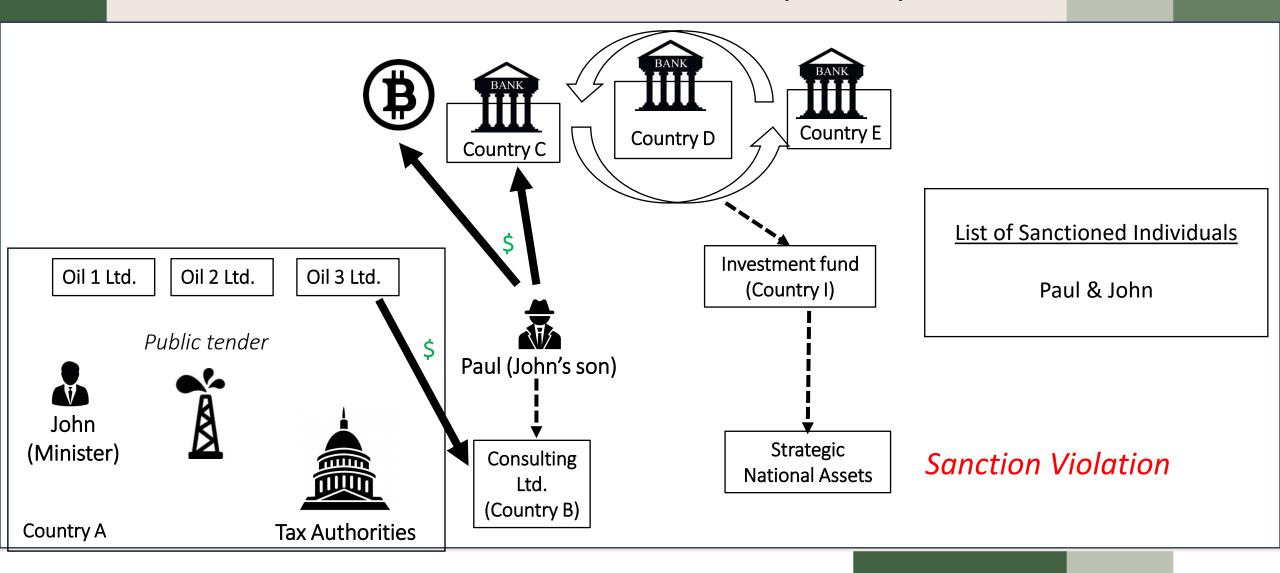




Las fundaciones y las lavadoras industriales de subrepticio blanqueo

Recientemente, un exempleado de la fundación de un famoso futbolista se ratificaba en la Audiencia Nacional de las acusaciones denunciadas por él mismo de fraude fiscal, blanqueo y estafa presuntamente realizados a través de esta fundación. En concreto, en la denuncia de este exempleado se señalaba que el futbolista y su entorno se habrían presuntamente beneficiado de la fundación para recibir pagos personales que no fueron destinados a sociales y, de este modo, evitar el pago de impuestos.

El propio **rey Juan Carlos** utilizó dos fundaciones para manejar el dinero que tenía presuntamente oculto en **Suiza** procedente del supuesto cobro de comisiones de los contratos logrados para empresas españolas en el extranjero como, por ejemplo, el **proyecto del AVE a La Meca**.



Deutsche Boerse to pay \$152 million in U.S. sanctions probe

By Anna Yukhananov, Aruna Viswanatha

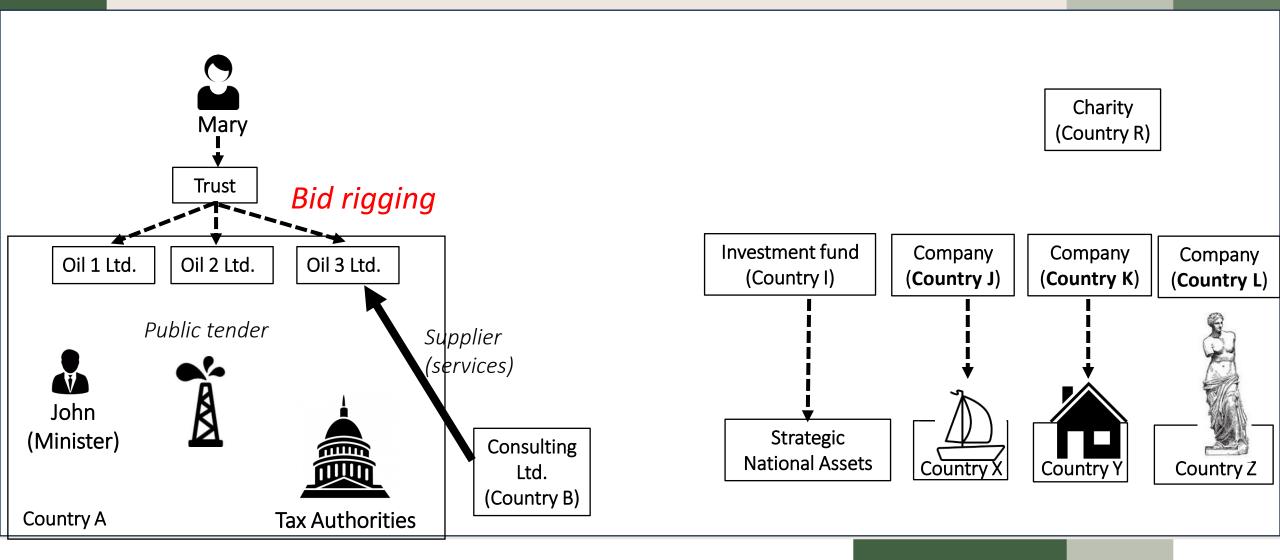
3 MIN READ



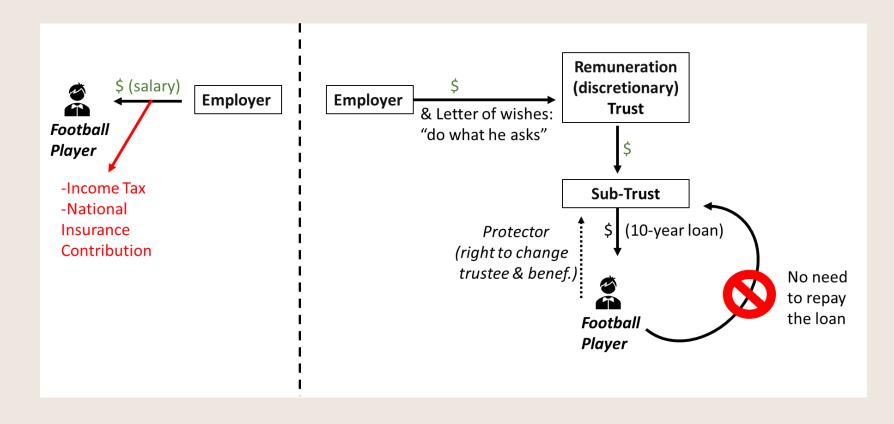
WASHINGTON (Reuters) - A Deutsche Boerse unit agreed to pay \$152 million to settle allegations that it held some \$2.8 billion in securities in the United States for the central bank of Iran, the U.S. Treasury said on Thursday.

The unit, Clearstream Banking of Luxembourg, had an account with a U.S. financial institution in New York from December 2007 to June 2008 through which Iran's central bank held interest in 26 corporate and sovereign bonds, the Treasury Department said. It did not name the U.S. financial institution involved.

"Clearstream provided the government of Iran with substantial and unauthorized access to the U.S. financial system," Adam Szubin, who leads the Treasury office that enforces U.S. sanctions, the Office of Foreign Assets Control, said in a statement.

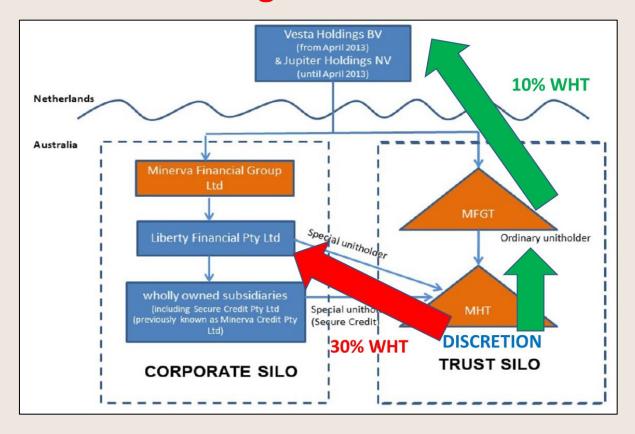


Labour Income Tax Evasion





Withholding Tax Evasion





Agenda

Concept and importance

Beneficial ownership registration

Challenges

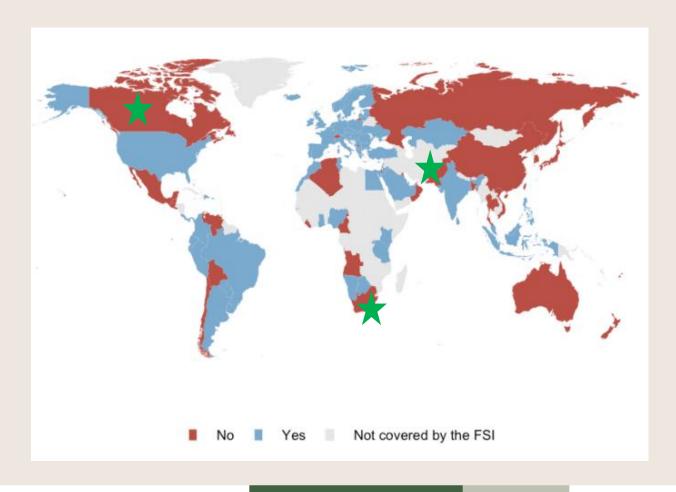
Sources and investigations



JURISDICTIONS WITH BO REGISTRATION LAWS

Figure 1. Evolution of number of countries with beneficial ownership registration laws covered by the Financial Secrecy Index (FSI) 81 Number of jurisdictions 2018 2020 2022

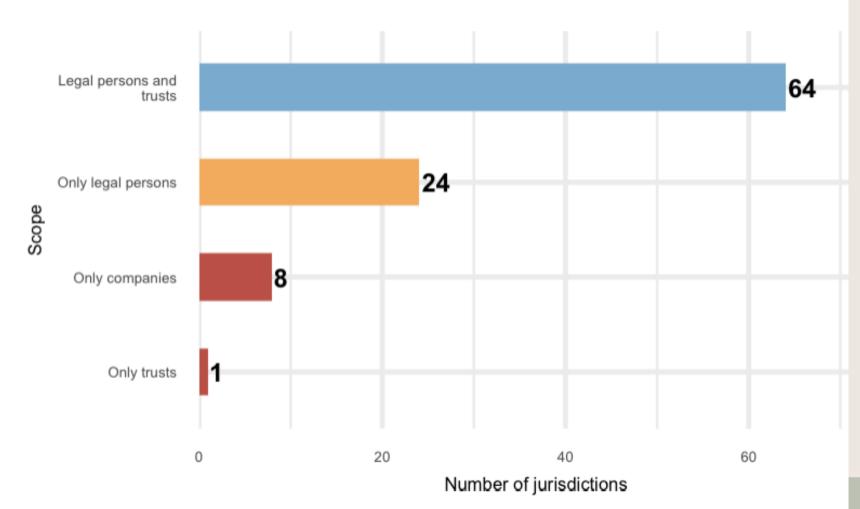
FSI edition





Type of Legal Vehicle

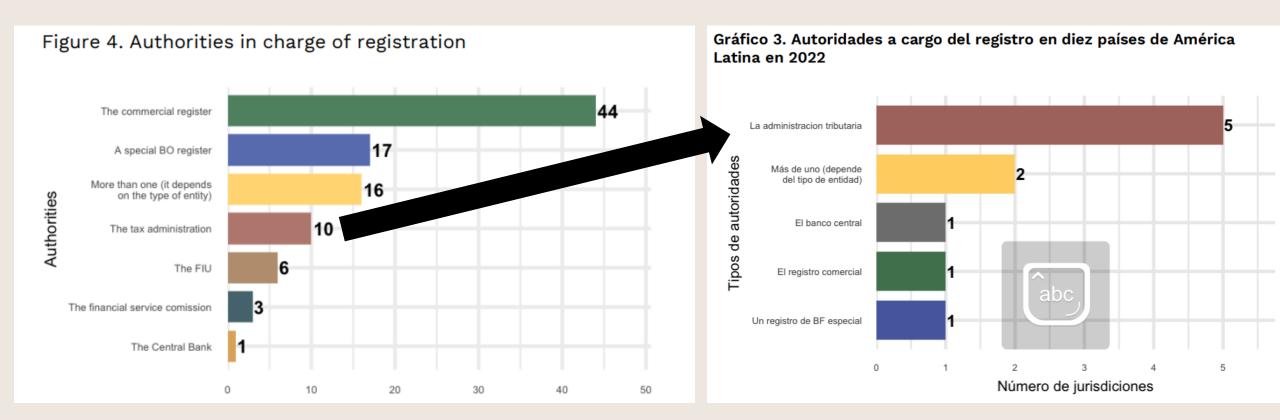
Figure 8. Scope of beneficial ownership registration





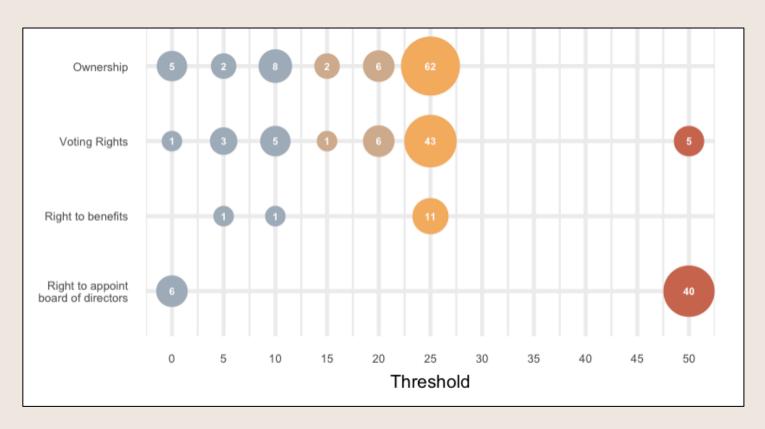
Authority in charge

Global Latam





BO Definition



25% ownership/votes

Control via other means

Senior manager



Details of BO

- -Name (prefix)
- -DOB
- -Address
- -Residency(ies)
- -Nacionality(ies)
- -TIN.
- -Passport
- -Nature of BO (tipo control)
- -PEP
- -Date since BO?
- -Ownership chain

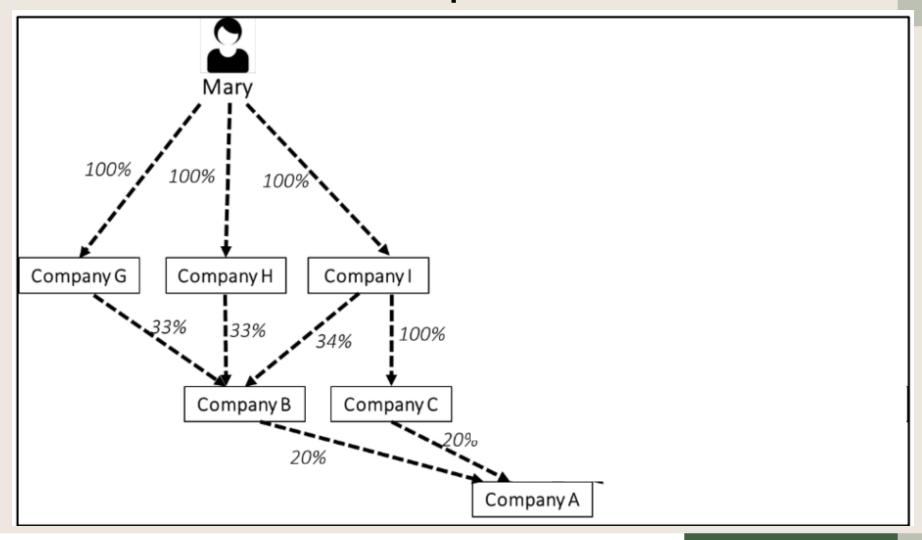


Details of BO

- -Name (prefix)
- -DOB
- -Address
- -Residency(ies)
- -Nacionality(ies)
- -TIN.
- -Passport
- -Nature of BO (tipo control)
- -PEP
- -Date since BO?
- -Ownership chain
 - TAX JUSTICE NETWORK

- -Gender (Mafia italiana)
- -Mohammed x 14 & Ju.an
- -75 years old? Minor
- -Address exists? Many on that address?
- -Golden visas

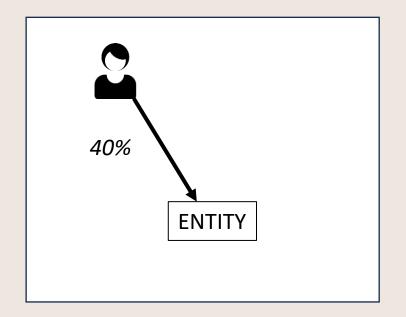
Ownership chain





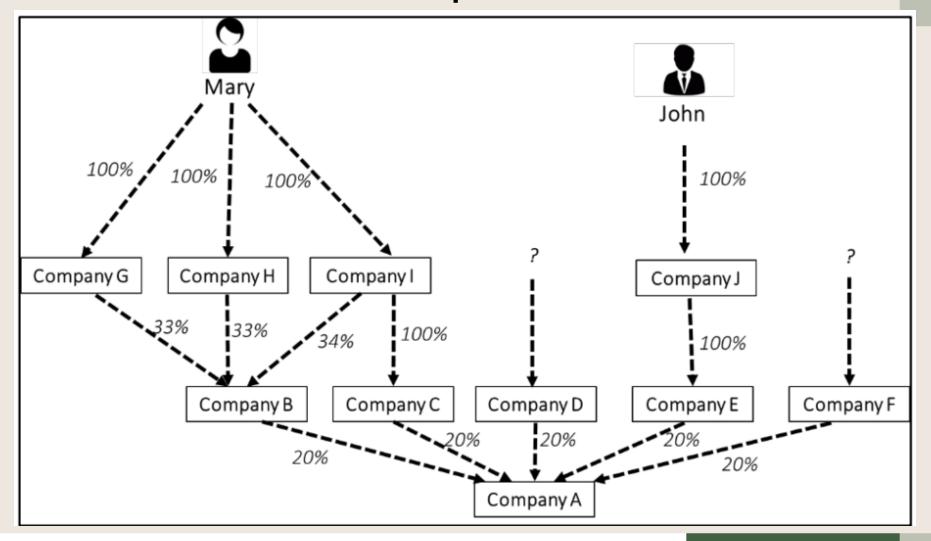
Ownership chain

If Mary is the only BO, how many other BOs are there? (Definition = +25%)





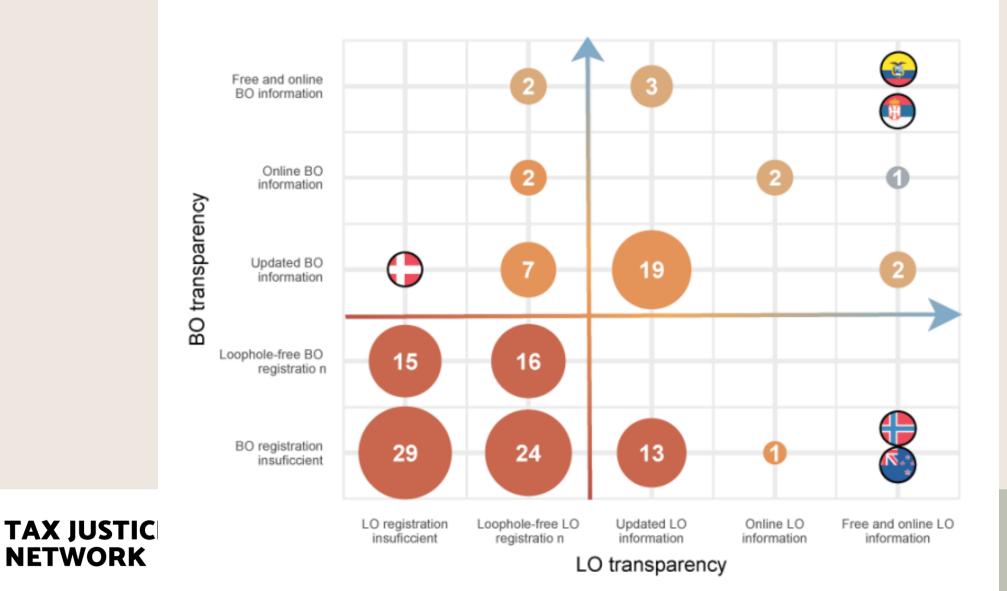
Ownership chain

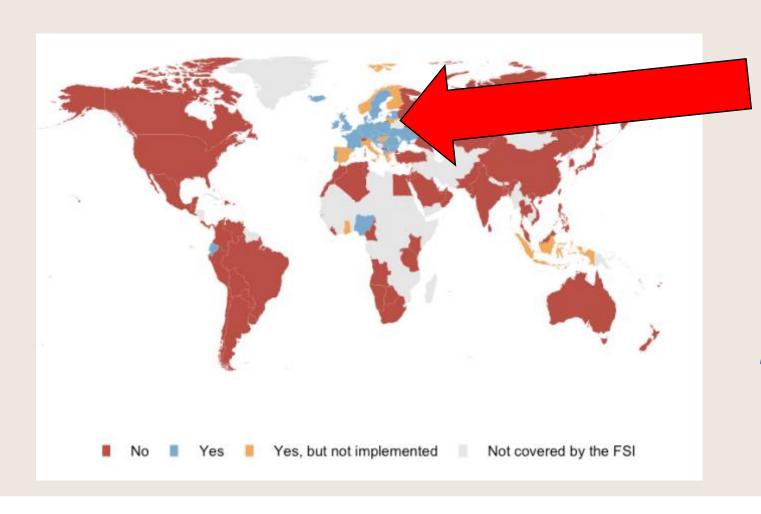




RO VS I O

Figure 15. Interaction between legal and beneficial ownership transparency





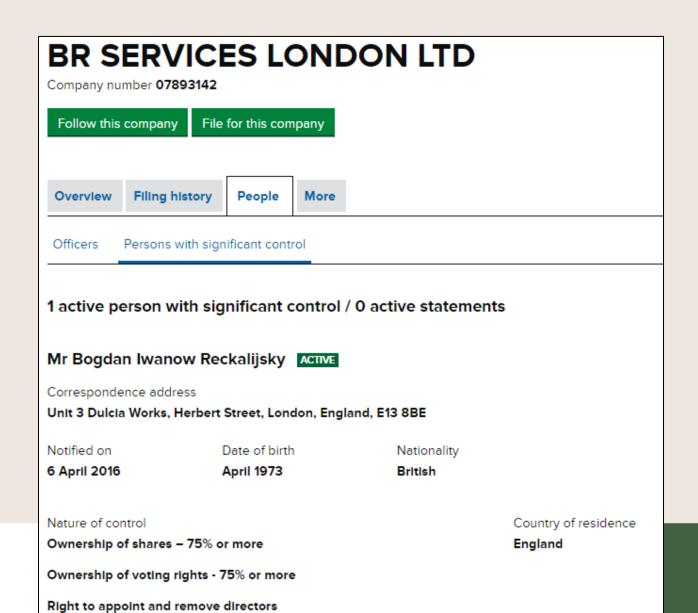
ECJ RULING 2022:

Public access (for AML) is invalid,

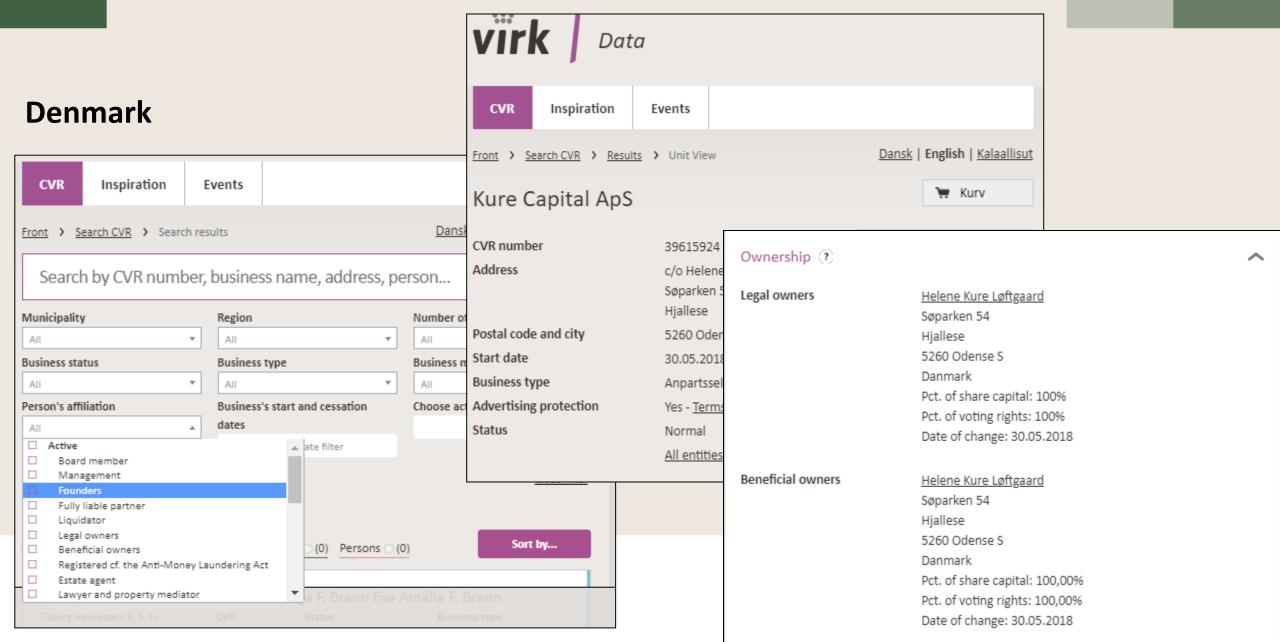
But investigative journalists, CSOs & firms have a legitimate interest



UK







Ecuador





Ecuador



KARDEX DE ACCIONISTAS

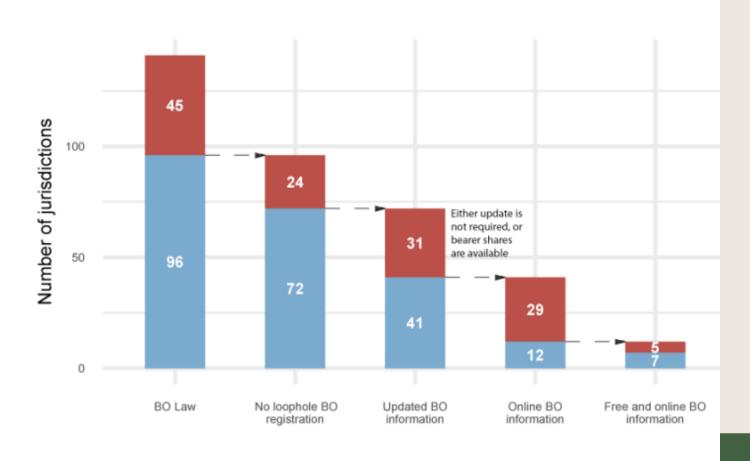
Identificación	Nombre	Transacción	Fecha de Resolución	Tipo Inversión	Valor
		CONSTITUCION	2004-09-27	NACIONAL	400.00
		CONSTITUCION	2004-09-27	NACIONAL	400.00
				SUBTOTAL:	800.00
		TRANSFERENCIA DE ACCIONES	2005-10-04	NACIONAL	-400.00
		TRANSFERENCIA DE ACCIONES	2005-10-04	NACIONAL	-400.00
		TRANSFERENCIA DE ACCIONES	2005-10-04	NACIONAL	400.00
		TRANSFERENCIA DE ACCIONES	2005-10-04	NACIONAL	400.00
				SUBTOTAL:	0.00
		TRANSFERENCIA DE ACCIONES	2005-10-10	NACIONAL	-400.00
		TRANSFERENCIA DE ACCIONES	2005-10-10	NACIONAL	-400.00
		TRANSFERENCIA DE ACCIONES	2005-10-10	NACIONAL	800.00
				SUBTOTAL:	0.00

	V °	Identificación	Nombre	Nacionalidad	Tipo Inversión	Capital	Restricción
4 1		0991244735001	PORTADORA SPAGLIO S.A.	ECUADOR	NACIONAL	43,200.0000	s
	1	0913594453	OSPINA DIAGO BIANCA ISABEL	ECUADOR	NACIONAL	7,500.0000	s
	2	0912128394	US. ADIAGO JUAN ES AN	ECUADOR	NACIONAL	7,500.0000	s
	3	0911186468	OSP OSE PO FRANCISCO MAURICIO	COLOMBIA	SUBREGIONAL	135,000.0000	s
	2	0912134236	DIAGO FRANCO MARGARDA	ECUADOR	NACIONAL	43,200.0000	s



Not enough to approve BO Law

Figure 14. Beneficial ownership registration and public access for companies





Agenda

Concept and importance

Beneficial ownership registration

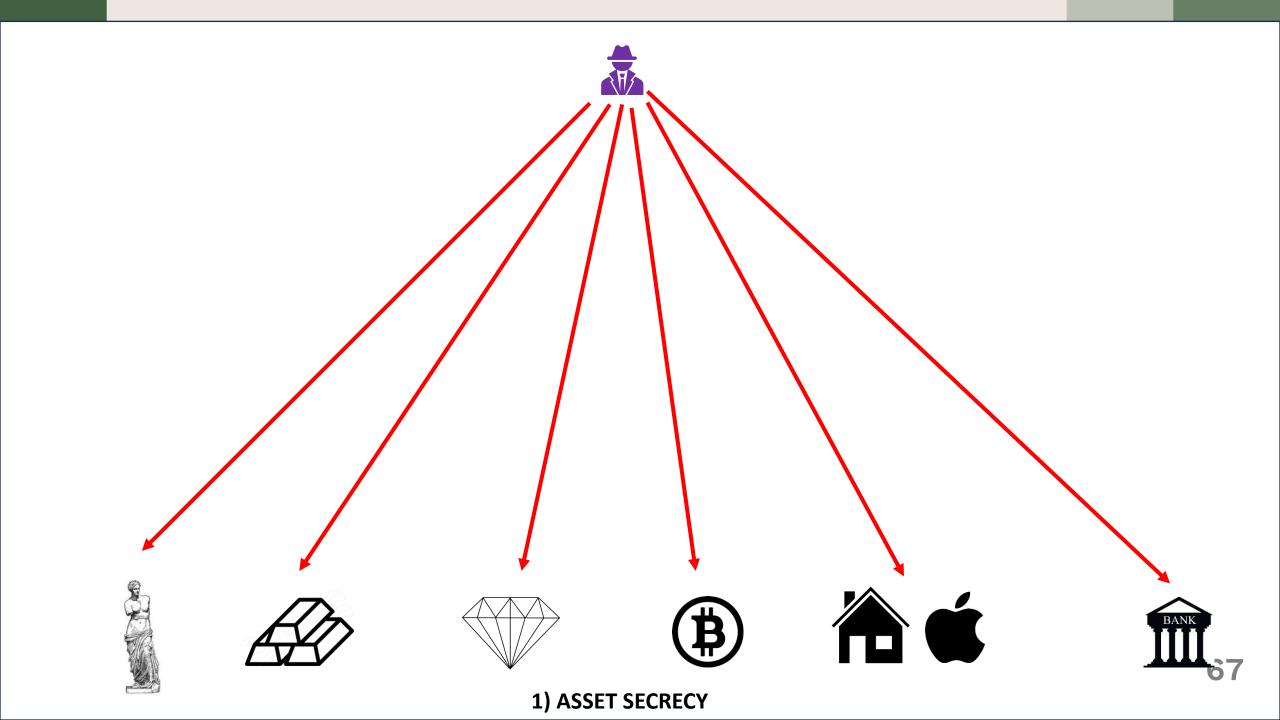
Challenges

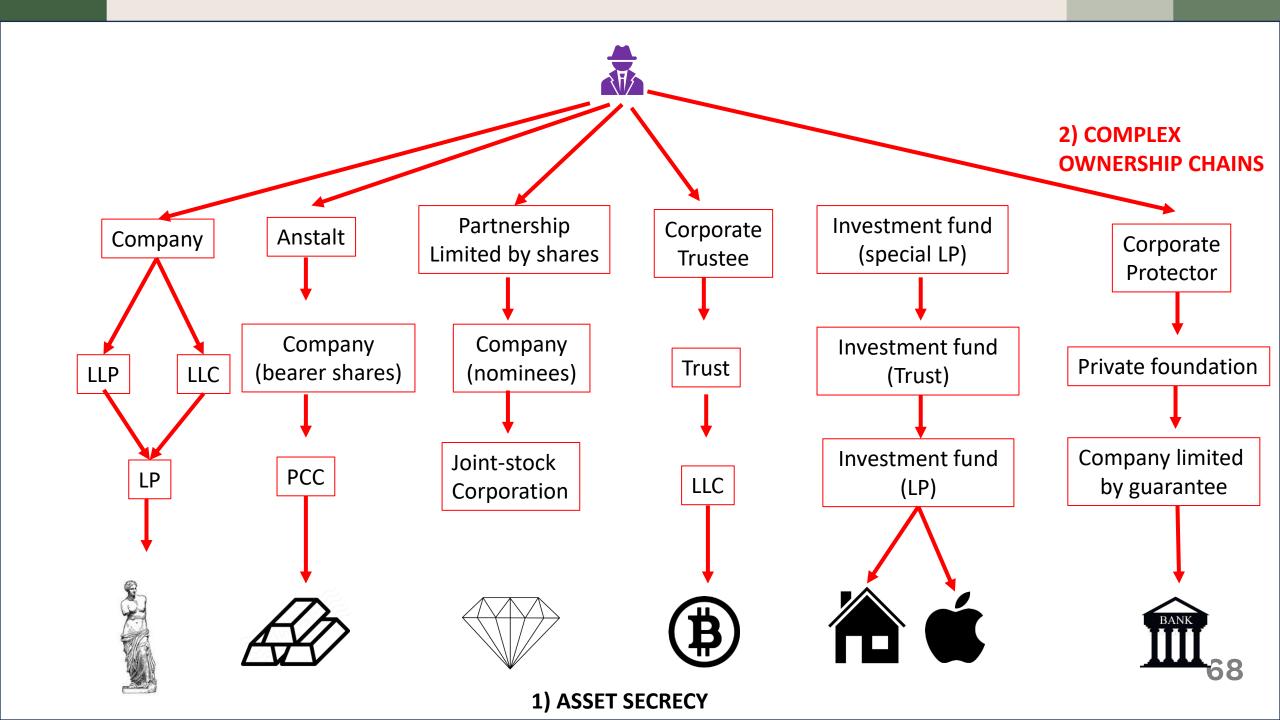
Sources and investigations

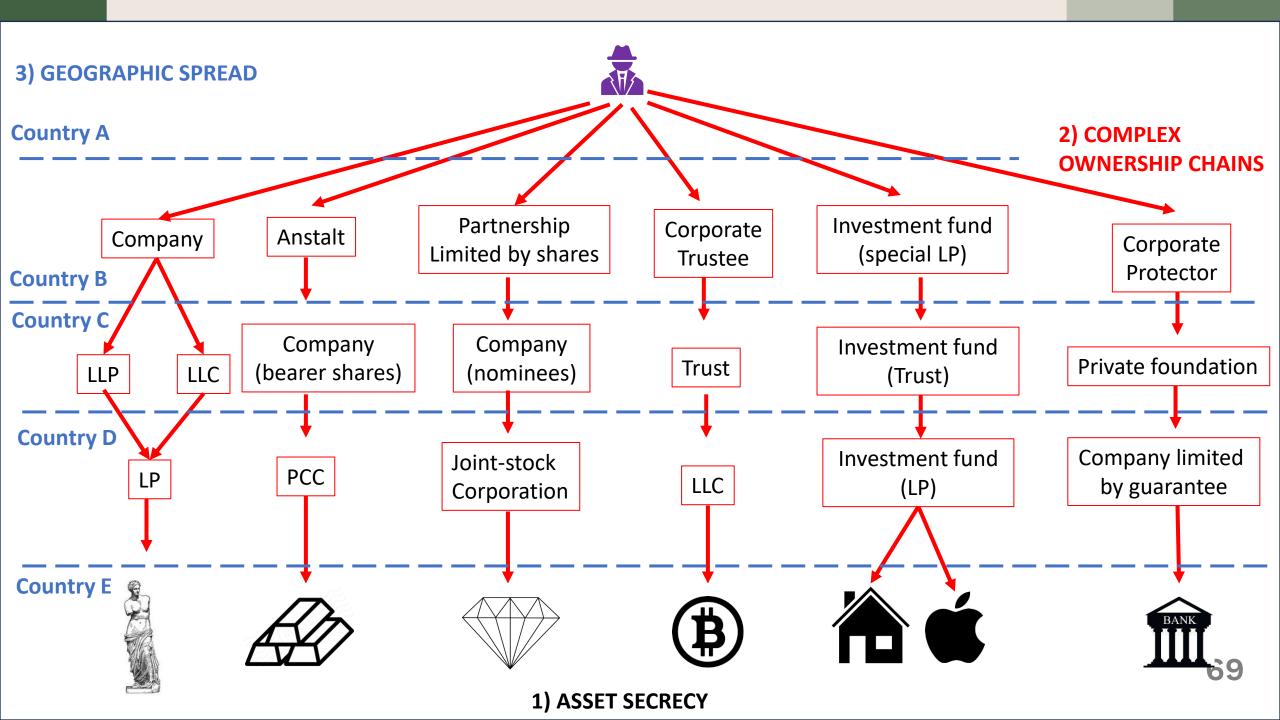


The ABC of Secrecy





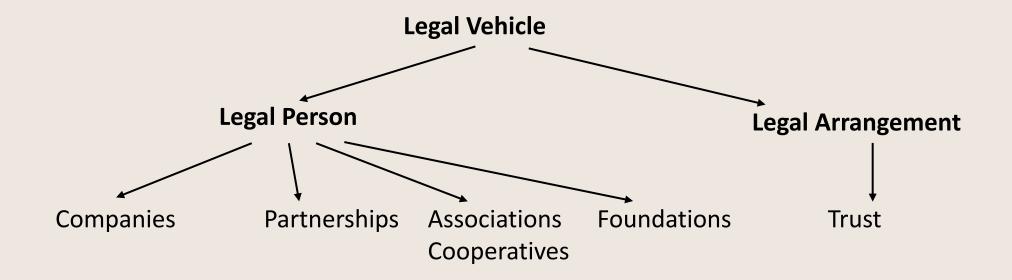




Strategy 2: Legal vehicles



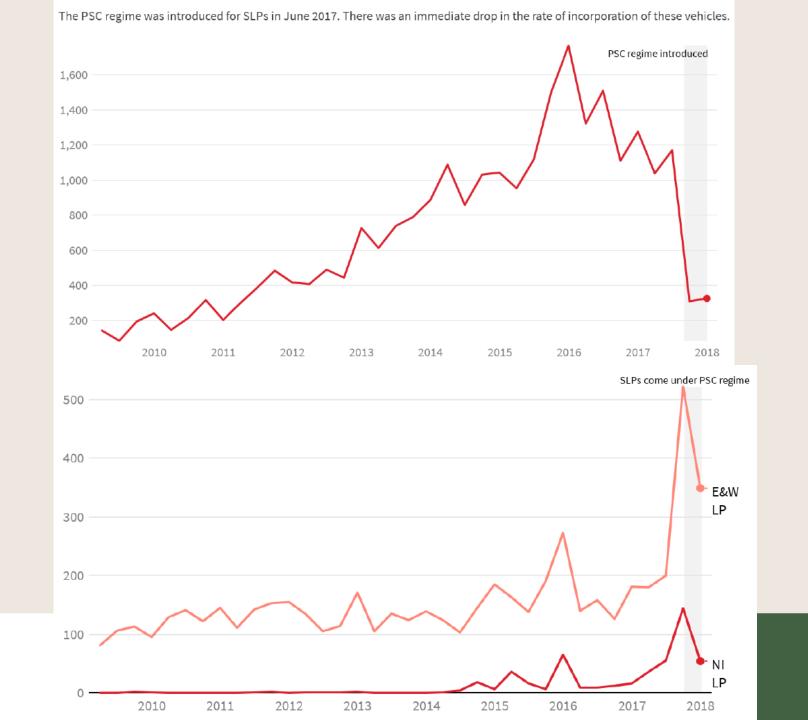
Types of Legal Vehicles



- * Anstalt
- * Protected Cell Company / Series LLC

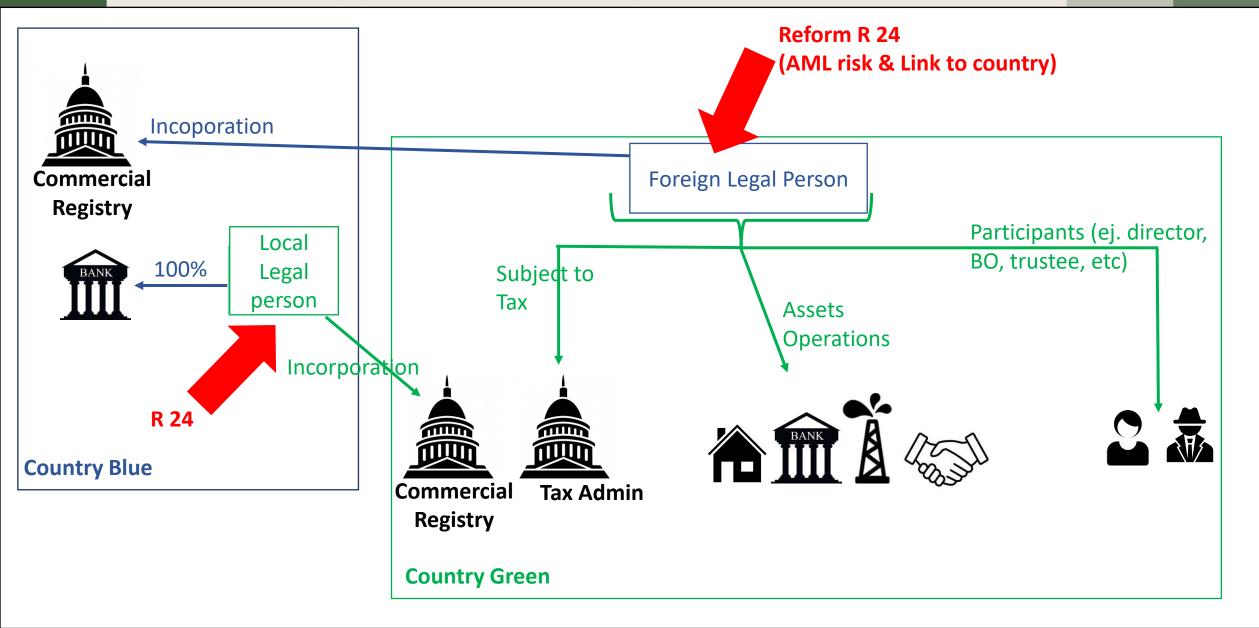
- * Disretionary Trust
- * Purpose Trust



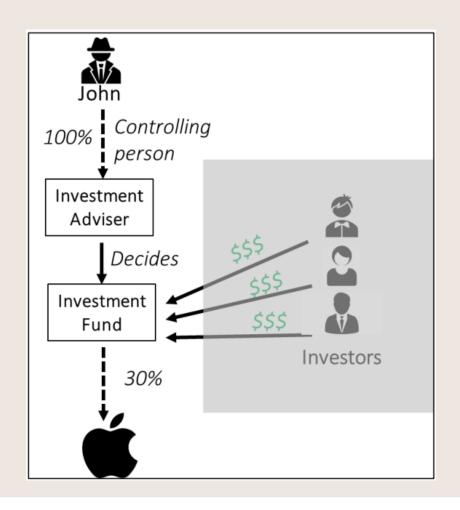




Triggers for legal vehicles



Exemption for Listed Companies

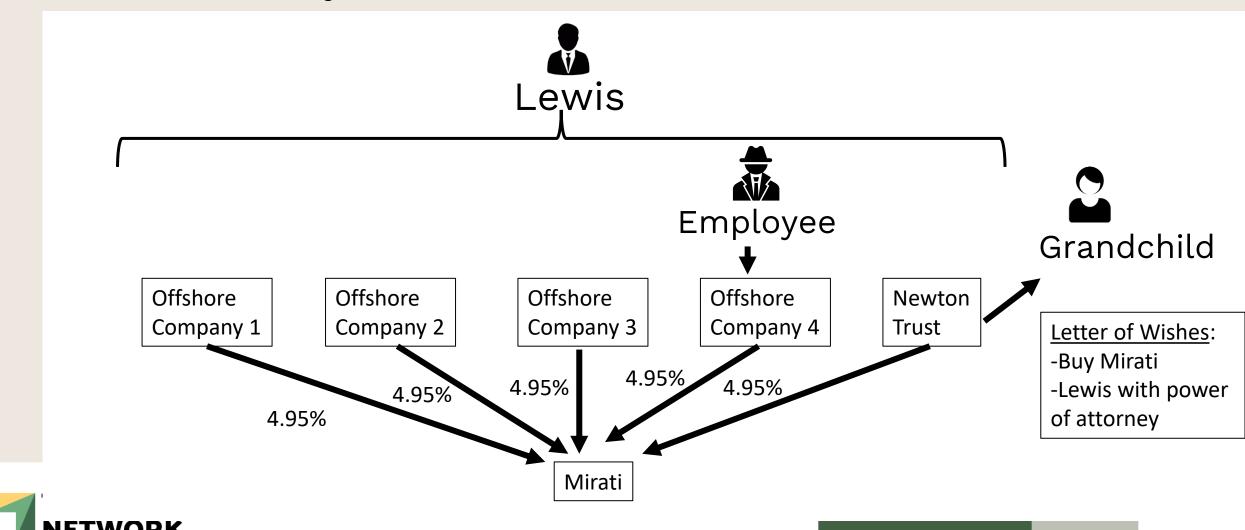


Schedule 13D is commonly referred to as a "beneficial ownership report." The term "beneficial owner" is defined under SEC rules. It includes any **person** who directly or indirectly shares voting power or investment power (the power to sell the security). When a person or group of persons acquires beneficial ownership of more than 5% of a voting class of a company's equity securities registered under Section 12 of the Securities Exchange Act of 1934, they are required to file a Schedule 13D with the SEC.

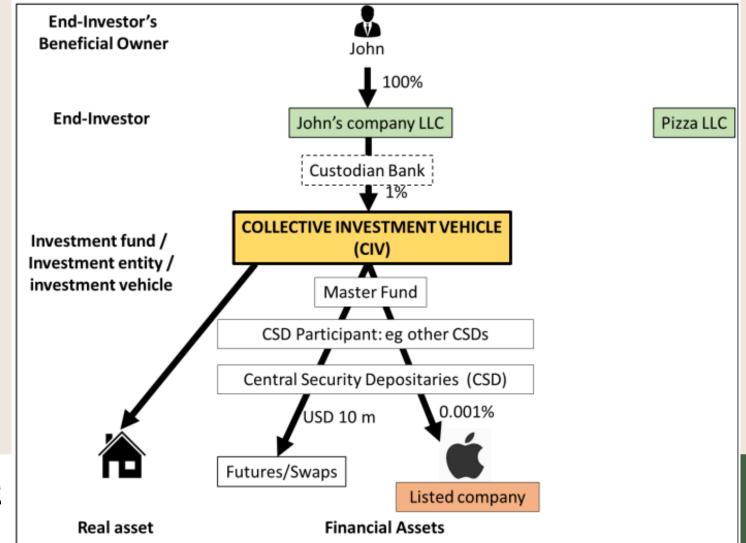


Listed Companies

Mirati: no one may own more tan 19.99% (Canada Law)

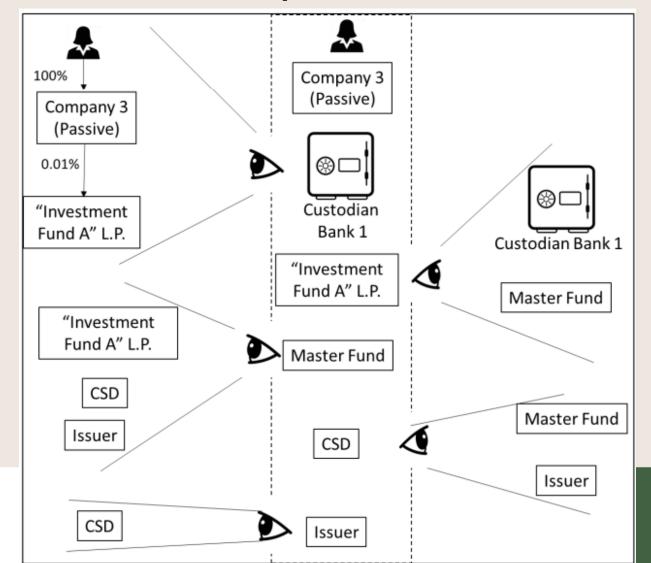


Exemption for Invesment Funds (LP, trust, exemption or threshold)





Exemption for Invesment Funds (LP, trust, exemption or threshold)



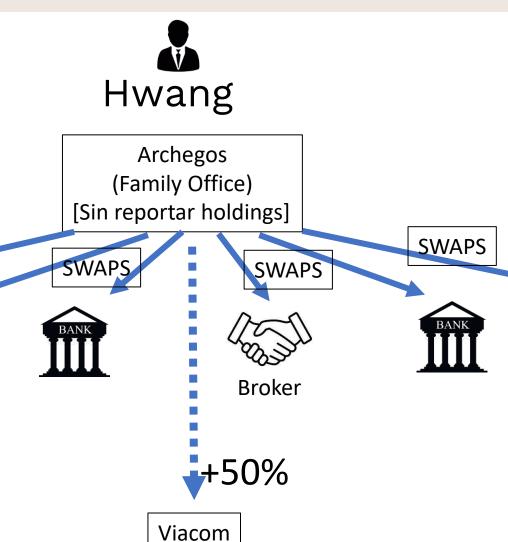


Investment Fund

The companies at the center of Archegos's trading scheme lost more than \$100 billion in market capitalization

SWAPS

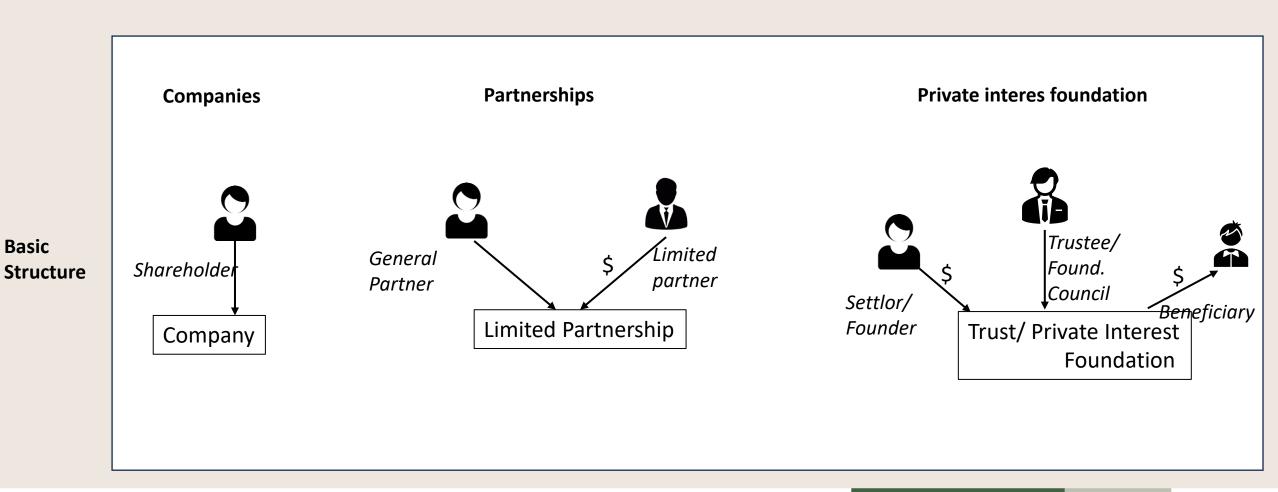
Broker



HWANG effectively controlled more than 50% of the freely trading shares of Viacom – and no one outside of Archegos knew about it—not investors purchasing Viacom in the market, or the executives at Viacom itself, or even the banks and brokerages who held the stock as part of the swaps. Because, as alleged, by using various banks and brokerages for his swaps, HWANG made sure that no single institution would have any idea that he was behind all of this trading

Broker

Complexity within covered legal persons





But there are many types of legal persons

Companies

<u>Partnerships</u>

Unlimited company = Soc. irregular

Joint-stock = SA / SAS

LLC = SRL

Sociedad en comandita por acciones

Soc. K e indust.

Company limited by guarantee

PCC = Series LLC

General partnership = Sociedad colectiva

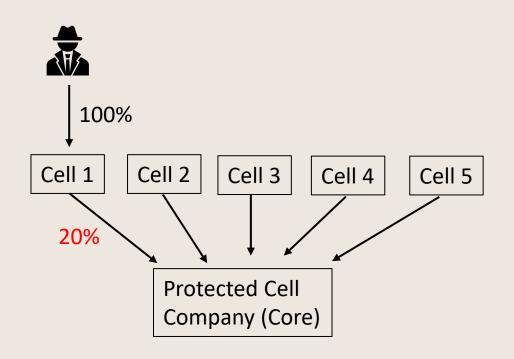
LP (s/ personería jurídica) = Soc. com. Simple

LLP

LLLP

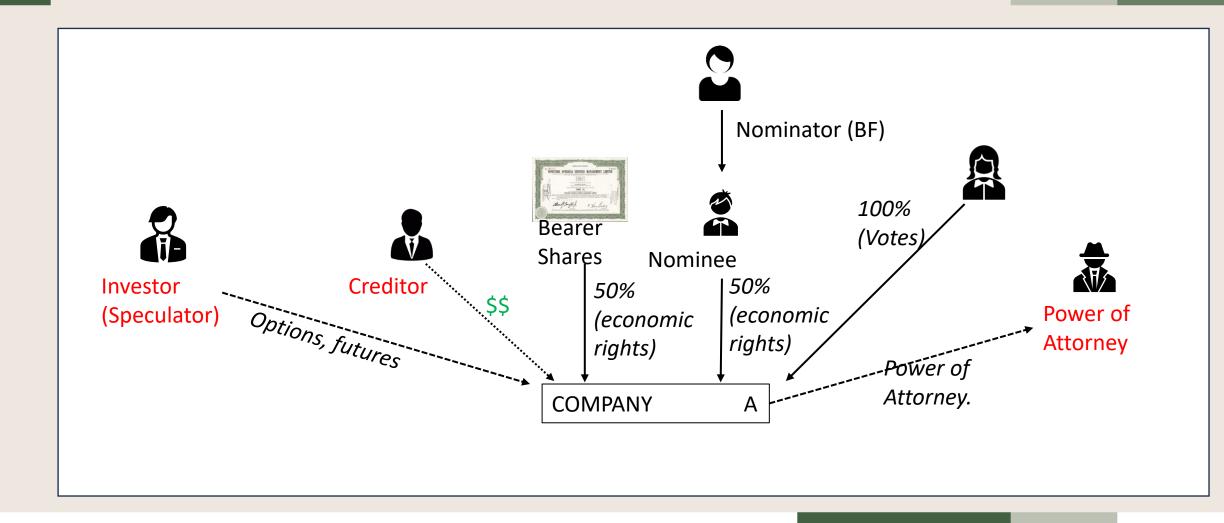


Protected Cell Company



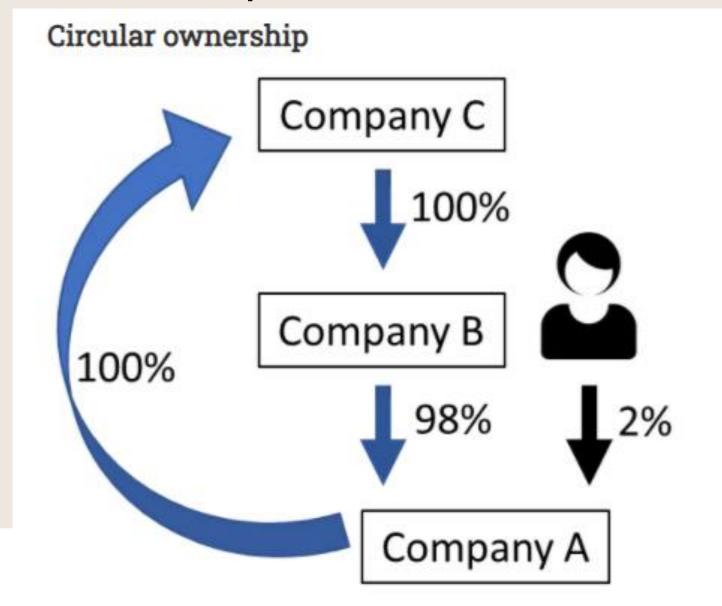


Types of participants



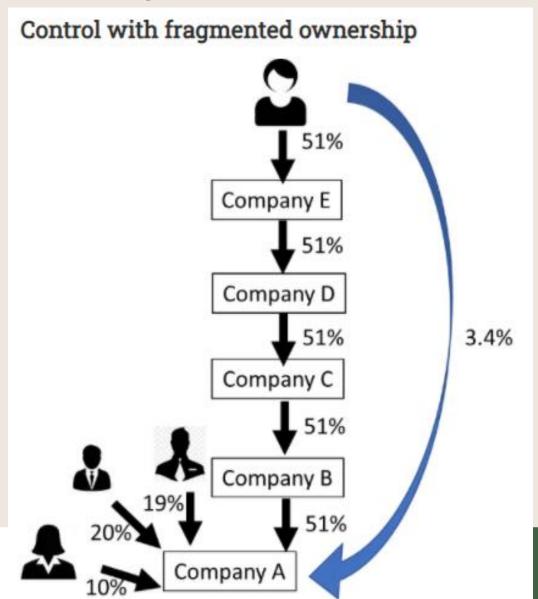


Complex Structures



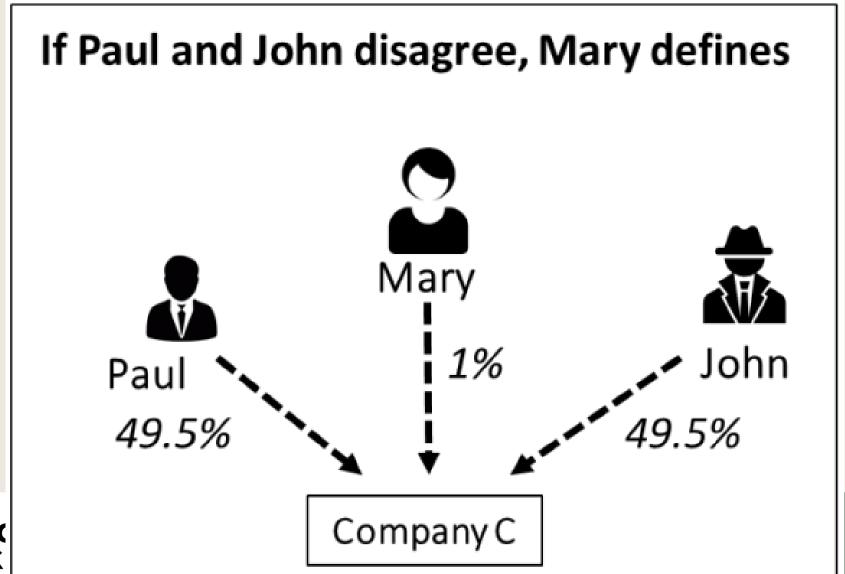


Complex Structures



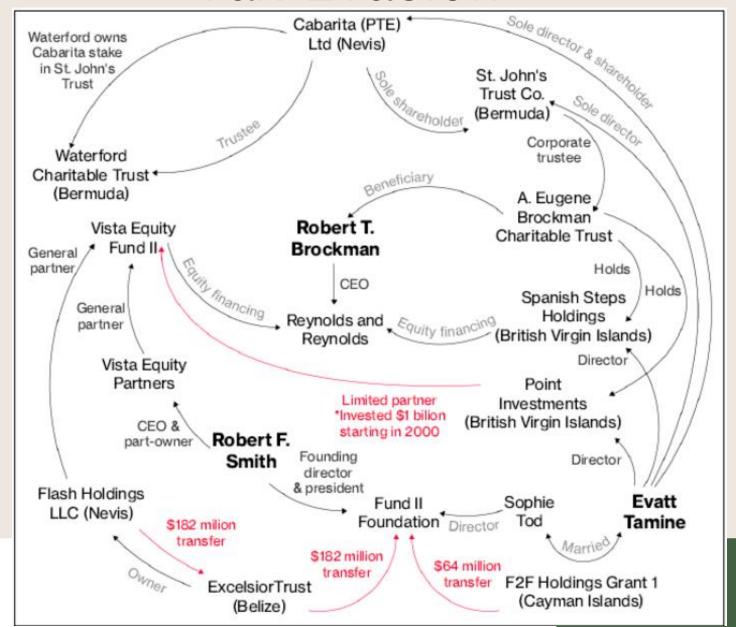


Complex Structures



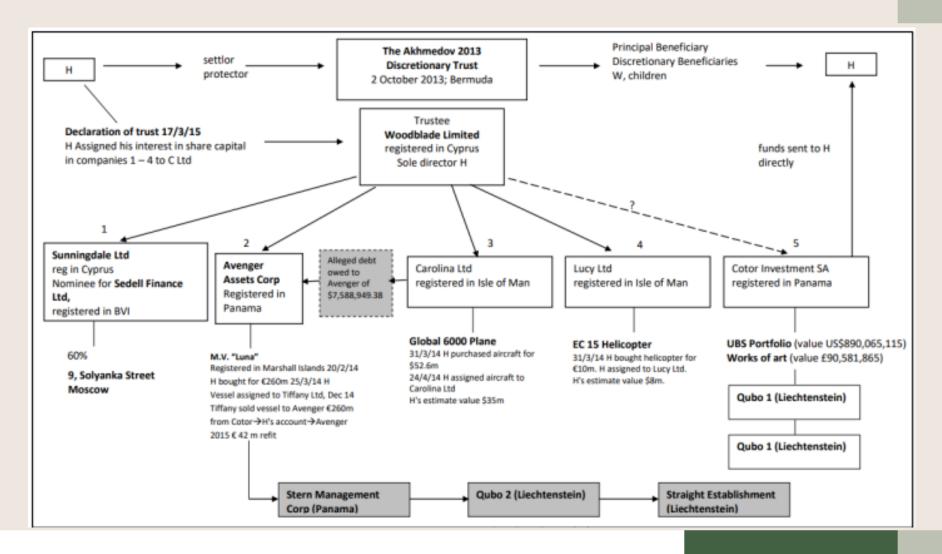


Tax Evasion



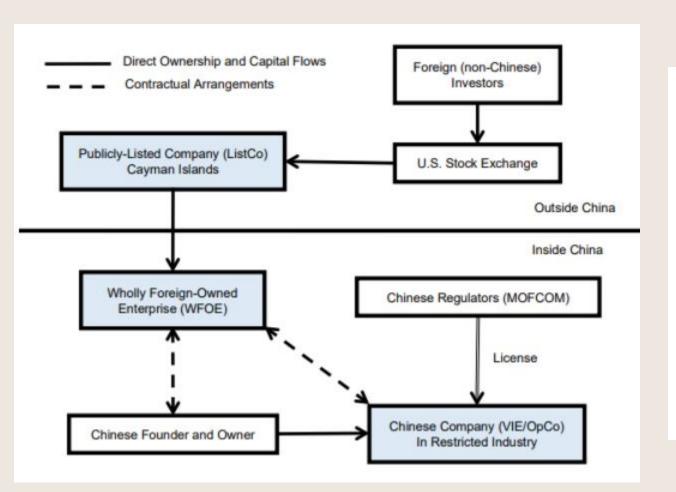


Divorce





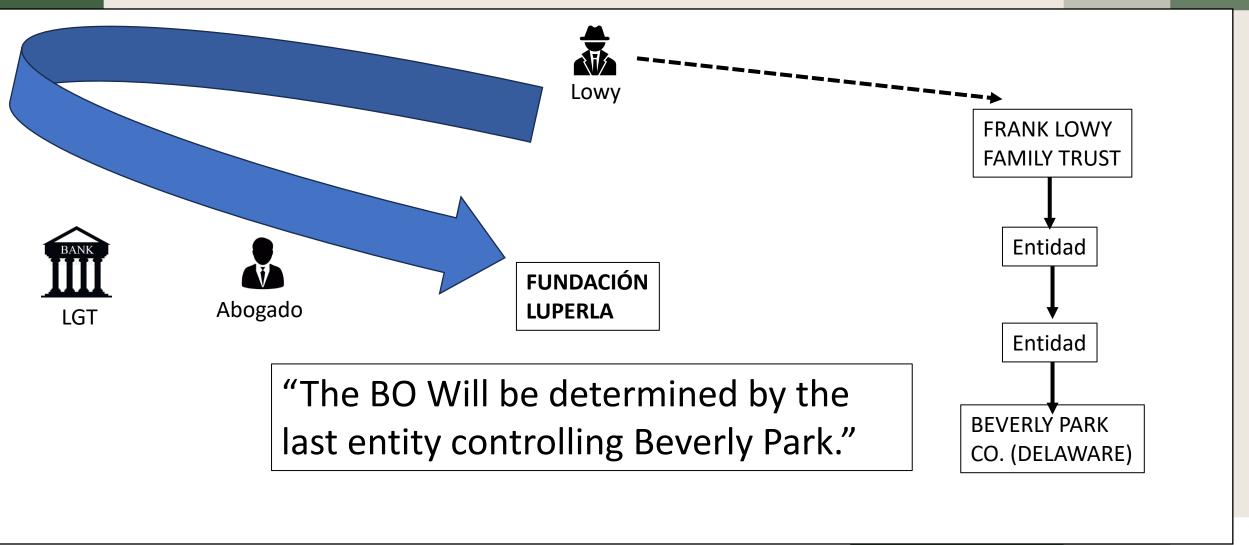
Control without ownership



- A loan agreement and equity pledge agreement: WFOE (foreigners) transfers money to the VIE (strategic industry) as an interest-free loan and gets as collateral all of VIE's assets and liabilities.
- A call option agreement: WFOE (foreigners) has the right to purchase the VIE at a pre-determined price, usually the amount of the loan agreement.
- A **power of attorney** in favour of WFOE (foreigners), granting it shareholder rights such as voting, attending shareholder meetings and submitting shareholder proposals.
- A technical services agreement and an asset licensing agreement designating WFOE (foreigners) as the exclusive provider of services. These "services" justify why WFOE may get all of the VIE's pretax income (as payment for those services).



Indirect determination of the BO





Agenda

Concept and importance

Beneficial ownership registration

Challenges

Sources and investigations



Considerations

- The existing information available to authorities, originating in any type of source that is relevant (e.g.: free and paid sources, public sources or subject to tax secrecy, local and international sources, etc.).
- The ability to carry out mutual assistance actions with institutions at the domestic and international level.
- Personal and institutional relationships with local and international authorities and actors.
- The contact of the taxpayer/investigated person and the danger of them finding out about the investigation
- Time, available resources and institutional capacity.



Type and Nationality

Sources of registries & loopholes: Global Forum Peer Review, FATF Mutual Evaluations, TJN's Financial Secrecy Index

ID 474 - Companies, beneficial ownership, online information .

Question: Are the beneficial owners of companies with limited liability published and available in a public online record for free, or for a cost of up to 10 €/US\$/GBP?

Answer: FREE & EASILY COPIED: Yes, beneficial ownership is always available for free & can be easily copied.

· Information on the beneficial owners of companies is freely available at the commercial register, in a machine

Notes:

- readable format. In addition, beyond the registrar' search mechanism, it is also possible to download information on the beneficial owners in a CSV format (Open Data Portal of the Commerci PMLTPF, last amended in 2019, "any person has the right to receive information from the State Revenue Service and online information from the Enterprise personal ID (in the case).
- To conduct a search in the commercial register website, no registration is reduced, so that when searching for a random word, such as 'capital', several can only be conducted with the legal entity's name in search mechanism, sin possible to search with the beneficial owners' name. Given that the search manual available for searching documents in the register (such as decisions, or news only include information on legal persons. However, no other filters are availated includes the registration number, the registration date, the address and the analysis.

For those companies that have registered beneficial owners, information available includes full name, the
personal ID (in the case of the Latvian ID, the first six numbers are the birthday), nationality, country of residence,
and the means of control. In the case of indirect ownership, information on the legal entity through which
ownership is exercised is also included, and this information includes the full name of the company, its address,
and its registration number. In addition, upon registration, historical beneficial ownership data is available (the
latter is confirmed by Transparency International(2021)).

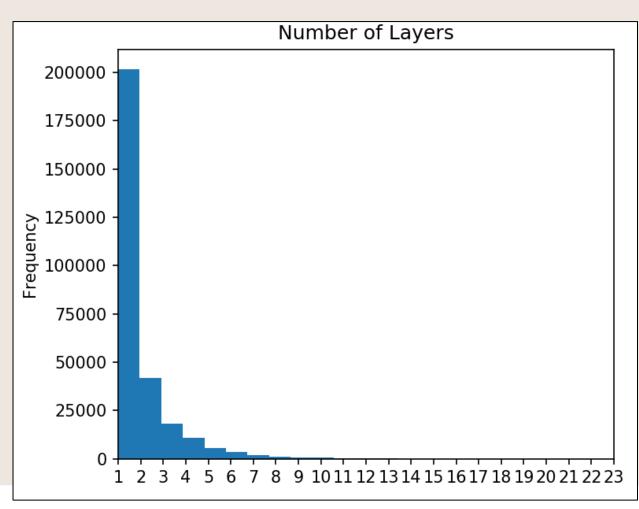
Sources:

- Law on the Prevention of Money Laundering and Terrorist and Proliferation Financing (PMLTPF), last amended in 2021.
- · Open Data Portal of the Commercial Registrar



(PMLTPF, as amended in 2019: Sct. 18.3(1)).

Information from the Registry



BO Registry (verified? Ownership chain?)

Commercial Registry – Follow the ownership chain



Information from online sources







OCCRP Aleph

The global archive of research material for investigative reporting.

243

Q Try searching: Vladimir Putin, TeliaSonera

442m

Public entities Public datasets

141

Countries & territories





Information from local authorities

(MoU): bank accounts, STR/SAR, case law, Civil registries, real estate registry, credit card consumption

Information from foreign authorities

Upon Request - AEOI [Egmont]

(Use info to reveal offshore strategies)

"Seventy per cent of beneficial owners from the UK used offshore trusts to hold their accounts, mostly via Cyprus, St Kitts and Nevis and the Cayman Islands."

Information from third-parties

Financial institutions, DNFBPs

(Mandatory Disclosure Rules – BEPS 12/CRS) [Argentina, Mexico, the US]

Information from investigated entity?

(Repeat for ownership chain)

Check BO details (address exists? Age? Economic profile?)

Check relationships: bank transactions, contracts, invoice suppliers/customers

Analyse Risk

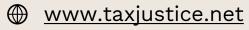
- 1-Reason for the structure
- 2-Opacity risk (eg FATF grey list)
- 3-Tax risk (triangulation, treaty shopping)
- 4-"Sanction risk" (match list of sanctions)
- 5-Nominee risk (No. of entities under management, economic profile)
- 6-Inconsistencies (eg electricity consumption vs number of emploees/income)

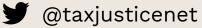


Thank You

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