



# The exposed nominee



By Martin Woods

In the absence of countermeasures to penetrate opaque structures, criminals and those parties subject of sanctions will use offshore corporate entities and nominee corporate-service providers to hide their identity and disguise the true nature of their business. Presently, there are inadequate and ineffective laws and regulations applied to the incorporation of legal entities in the majority of jurisdictions. Even FATF members have not fully complied with Recommendation 5 in this area.

Recent events involving a collection of New Zealand companies have drawn attention to the uncomfortable positions that nominee corporate service providers may find themselves in due to the actions of their clients who may be involved in criminal activities or sanction breaches.

## The Financial Action Task Force

In October 2009, Financial Action Task Force (FATF) president Paul Vlaanderen made a speech at the sixteenth Council of



Ministers meeting of the Caribbean FATF, entitled 'The Need for Enhanced Transparency'. ([http://www.fatf-gafi.org/document/50/0,3343,en\\_32250379\\_32236879\\_44002930\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/50/0,3343,en_32250379_32236879_44002930_1_1_1_1,00.html)) Within the speech he referenced and emphasised the need for greater transparency within financial services. Specifically, he made reference to customer due diligence and beneficial ownership.

*'The first issue relates to customer due diligence obligations and beneficial ownership. One of the main principles of the FATF standards is the obligation for financial institutions to identify their customers and underlying beneficial owners. The FATF is revisiting its recommendations to consider whether the current standard still is the best tool for providing maximum customer transparency.'*

There can be no doubt that evolving laws and regulations for anti-money laundering, (AML) due diligence and know your customer (KYC) will place stronger emphasis upon the need for greater transparency. Such transparency is imperative for the effective implementation of robust sanctions programs and to reduce the opportunity for money laundering.

## Offshore corporate entities

Historically, offshore financial service centres and a number of states in the US have been identified as jurisdictions that have incorporated legal entities which have been used to launder the proceeds of crime. Perhaps one of the more infamous cases is the Bank of New York investigation in which two entities incorporated in the state of Delaware were used to launder sums between US\$7 billion and US\$15 billion.

More recently criminals have chosen to use entities incorporated in the UK and others in New Zealand.

There has been a perception that the UK is well regulated and therefore highly regarded in financial business and the legal and regulatory world. Notwithstanding this, it is possible for a UK entity to be incorporated with almost no transparency whatsoever. There have been a number of instances of UK incorporated limited liability partnerships (LLPs) in respect of which offshore nominees act in the capacity of partners of the UK entities.

Regarding New Zealand incorporated entities, New Zealand laws and regulations still allow for the use of nominee shareholders as well as nominee beneficial owners. A recent FATF Mutual Evaluation report of New

Zealand (October 2009) (<http://www.fatf-gafi.org/dataoecd/31/24/43920251.pdf>) identified a number of deficiencies, including:-

*'There is no legal requirement for financial institutions to have measures in place to: identify the beneficial owner; understand the ownership and control structure of the customer; identify and verify that natural persons acting on behalf of legal persons and purporting to act on behalf of the customer are authorised to do so; verify the status of a legal person or arrangement.'*



**Criminals and launderers have begun to make more use of New Zealand incorporated entities in their criminal enterprises**

It would appear the FATF are not the only group to have identified this as an issue, as criminals and launderers have begun to make more use of New Zealand incorporated entities in their criminal enterprises. The appointed officers of these entities are often nominees from places such as the Seychelles or Vanuatu. All of these locations are a long way from the EU or the US and add an additional layer of logistical hindrance to any potential investigation.

## Flight AGW 731/732

The use and abuse of corporate nominees was never more evident than the investigation into the origins and destination of the cargo of a plane that was seized at Bangkok Airport on 12 December 2009. The cargo was in fact 35 tonnes of missiles, ammunition and weapons that had been shipped from North Korea (constituting a breach of United Nations sanctions) and was destined for Iran (also a breach of United Nations sanctions). The plane, a Russian built IL-76 bearing the registration number 4L-AWA had been leased by a New Zealand incorporated entity

called SP Trading Ltd with its registered office as c/o GT Level 5, 369 Queen Street, Auckland, New Zealand.

Investigators of Flight AGW 731/732 turned their attention to SP Trading Ltd. The director of the company is named as Lu Zhang also c/o Level 5, 369 Queen Street, Auckland, New Zealand. Searches revealed that this person is also shown as the director of 78 other New Zealand incorporated entities. The shareholder of SP Trading's 100 shares is shown as VicAm (Auckland) Ltd ("VicAm") once again with its registered office as c/o Level 5, 369 Queen Street,

Auckland, New Zealand. The director of VicAm is shown as Nesita Manceau of Level 2, Bougainville House, Port Vila, Vanuatu. This person is shown as the director of a further 280 New Zealand incorporated entities. VicAm itself is shown as the shareholder of a number of other New Zealand incorporated entities. The shares of VicAm are owned by the GT Group of Level 5, 369 Queen Street, Auckland, New Zealand.

In response to the international investigation and media interest, GT Group issued a statement, in which it was stated:

*'All persons employed by, contracted by, or subcontracted by GT Group Limited in relation to the incorporation and Nominee Directorship and Nominee Shareholding of SP Trading Limited have no knowledge of the activities of SP Trading Limited and are in no way involved with the shipment of any items of any kind, at any location and by any means.'*

These events raise the possibility that nominee directors and shareholders may find themselves accountable for breaches of laws or regulations, including international and domestic sanctions.

## The GT Group

The GT Group was set up by Geoffrey Taylor, (hence the GT) also known as Lord Geoffrey Taylor (<http://www.gtgroupoffshore.com/>). Among other things, Taylor has previously promoted the corporate and commercial virtues of Hutt River Province. This is a self-declared principality within Australia that has absolutely no recognition or standing within the international community and is not actually a country, territory or jurisdiction at all. (<http://www.principality-hutt-river.com/>). In a number of instances, fraudsters and money launderers have sought to use passports purchased from this website to open bank accounts and launder money.

Geoffrey Taylor and his family (Michael Taylor, Ian Taylor and Paul Taylor) provide offshore corporate services to a range of clients. They have actively marketed their services at conferences in Eastern Europe. An important question for all of the members of the Taylors is: do they know their clients? Furthermore, do they know their clients' clients? They may answer that legally they do not need to.

Within an article from the *Wall Street Journal* published on 18 December 2009 it is stated:-

*'Mr Taylor said he had no information about Lu Zhang because he only did "the incorporation of the company."*

The Mr Taylor in question is Michael Taylor. Given that Lu Zhang is shown as c/o GT Group c/o Level 5, 369 Queen Street, Auckland, New Zealand and is the nominee

director of 78 other New Zealand companies, how can Michael Taylor of the GT Group have no information in respect of the nominee director of a company that was incorporated by the GT Group and is indeed owned by the GT Group? One scenario that comes to mind is that Lu Zhang was appointed by the GT Group, the owner on paper of SP Trading through VicAm.



Within an article from *Barron's* Ian Taylor stated:-

*'GT Group Limited is a service provider, not a detective agency.'*

*'Perhaps a hardware store should not be allowed to sell bolt croppers.'*

Additional information within the statement released by the GT Group indicates that they were in fact instructed by a UK company to establish SP Trading and hold out that it is for the UK company to know the identity of their own instructing client. Based on its own statements, GT Group has set up a company (SP Trading) and provided nominee director and shareholder services for a fee upon the receipt of instructions from a UK company with no knowledge as to who the ultimate controllers or beneficial owners of SP Trading might be:

**GT Group has set up a company (SP Trading) and provided nominee director and shareholder services for a fee upon the receipt of instructions from a UK company with no knowledge as to who the ultimate controllers or beneficial owners of SP Trading might be**

*'Upon contacting the UK Company that ordered the incorporation of SP Trading Limited, GT Group Limited were provided with the following statement.'*

*<http://www.gtgroupoffshore.com/image/Press%20Release%20GT%20Group%20Limited.pdf>*

*'We would like to inform you that "SP TRADING LTD" Company received air charter request from a Hong Kong company, for the general cargo carrying (oil-field equipment) on route Northern Korea – Ukraine (technical stop) – Iran.*

*Our Company demanded full packing list of the cargo to be carried, in order to ensure character of the transported cargo.*

*The agreement has been signed on 04.12.2009. Air company "Air West LTD"*

*has been involved by "SP TRADING LTD" on ACMI conditions, with reference to the Agreement # 5 – 11 – 2009/11 by and between "SP TRADING LTD" and "Air West LTD".*

*Before applying requests for the over fly and landing permissions, our Company received AIRWAYBILL from Hong Kong company filled by Consignor in Northern Korea, where, with compliance to previously received packing list, oilfield equipment has been specified.*

*Only after the above mentioned procedures "Air West LTD" Company proceeded to the flight planning, in accordance to the regulations of ICAO and IATA, mentioning character of the transported cargo. "SP TRADING LTD", "Air West LTD" and crew of the aircraft could not even imagine that the transported cargo doesn't match to those mentioned in packing list and AIRWAYBILL.*

*As per international transportation regulations, crew accepts cargo on board with reference to the documentation issued by the shipper and responsible ONLY for its safety. Crew has no right to open cargo package and check content. Air Charter Contract states that "Air West LTD" takes no responsibility for non-coincidence of the cargo to be carried with the documents provided on board.*

*Being aware of aforementioned, by deception and forgery, a Hong Kong shifted responsibility on to "SP TRADING LTD", "Air West LTD" and crew of the aircraft.*

*Hereby, accordingly to the aforementioned, we declare that we do not consider ourselves guilty of what happened and kindly asking you to exempt "SP TRADING LTD", "Air West LTD" and our employees from juridical and other proceedings.'*

The statement gives no indication as to the identity of the UK company and gives no indication as to the identity of the parties that ultimately own and control the company.

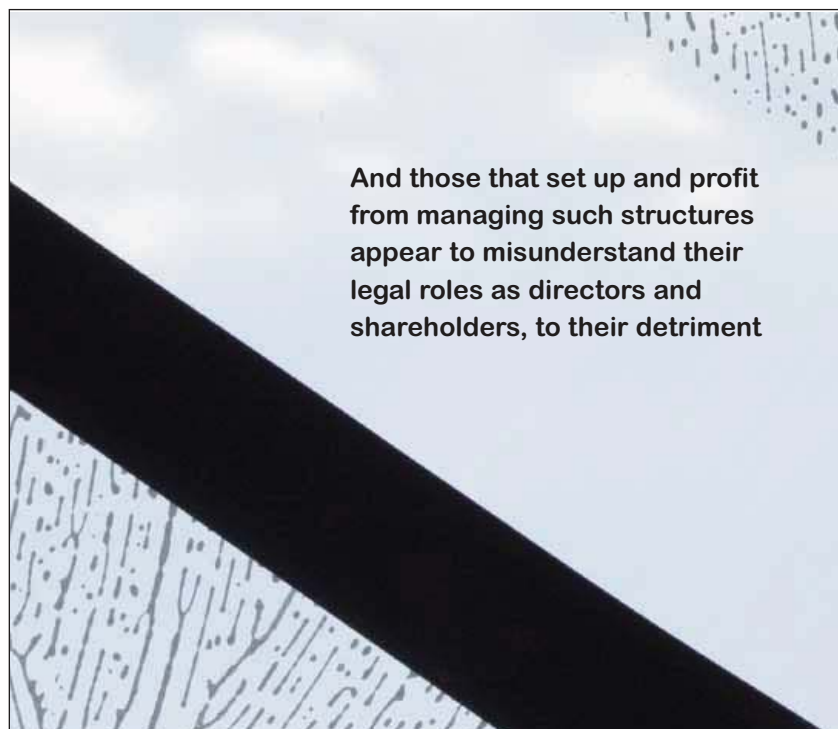
What then was the role of GT Group on an ongoing basis? Does a nominee director of a company have no responsibilities or accountabilities whatsoever? Can Lu Zhang and the Taylors take the money for incorporating and controlling an opaque structure such as SP Trading behind which others hide, operate and commit crimes and at the same time deny any accountability or responsibility?

### The role of the banks and plane's cargo

The Belgian organisation, International Peace Information Service (IPIS), has secured copies of the air waybill and the charter agreement for the plane and the cargo. (<http://www.ipis-research.be/arms-trade.php>). The documents have been stamped with what appears to be the official company stamp for SP Trading Ltd and it is signed with an illegible signature. The documents also reveal that the transaction was priced in US dollars and that SP Trading Limited holds a bank account with the Estonian branch of Sampo Bank (Sampo Bank is a wholly owned subsidiary of Danske Bank). In turn, Sampo Bank used their correspondent relationship with Deutsche Bank to clear the transaction.

Given that the leasing transaction was in US dollars, the full force of the Office of Foreign Asset Control (OFAC) requirements applied to all parties engaged in this transaction, including, but not limited to, the clearing banks in the US and the banks located outside the US. Clause 6.1.3 of the aircraft lease says that the lessor will control the aircraft's flight and technical operation through its representative being on board the aircraft. Clause 4.1 makes it clear that the lessor supplied the crew with the aircraft for Flight AGW 731/732.

As Vlaanderen said, 'It's all about transparency'. At a time when the US authorities are resolving regulatory actions against a number of European banks for stripping



offending data from wire transfer messages, those that wish to continue breaching sanctions have found other methods and processes. The seizure of the plane at Bangkok Airport and subsequent investigations demonstrate that criminals can achieve criminal objectives, laundering money and breaching sanctions by using opaque offshore structures. The power of secrecy havens to help criminals meet their objectives must not be forgotten in the noise that will follow the release by FATF of the new blacklist of countries which 'pose a threat to the international financial system' because of weak laws or weak implementation of laws.

And those that set up and profit from managing such structures appear to misunderstand their legal roles as directors and shareholders, to their detriment. Any other outcome means that a nominee director or shareholder can act with impunity, implementing instructions from the beneficial owners without liability. No doubt law enforcement may be attracted to plea bargains which involve the giving up of identities of the beneficial owners and controllers by nominee service providers.

Transparency is one key, it is only when a bank or a financial services business can see right through a transaction (or a customer or counterparty) that it can identify, manage or reject the risks therein. As to the roles played by nominees, firms will need to be sure that they are fulfilling a legitimate purpose and equally that they are able to identify the parties upon whose behalf the nominees are acting.

Addressing the way companies are incorporated is another key area for reform. It is time to tighten up incorporation systems making nominee directors and shareholders illegal and subjecting government agencies that incorporate companies to the full force of FATF recommendations, including identification and verification of identity requirements for shareholders and directors as well as monitoring and reporting suspicious matters. ■

*About the author: – Martin is an experienced AML practitioner. A former detective who imprisoned money launderers he knows how they operate and think. He now applies that knowledge and is an innovator in AML systems and controls.*

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