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WRITTEN BY WAYNE ATKINSON

WHY PEOPLE IN GLASS (COMPANIES) HOUSES SHOULD NOT THROW STONES

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The UK has taken the lead on the international stage against the use of the 'corporate veil' by money launderers in two ways – by opening a public registry of beneficial owners at Companies House and by trying to force its offshore satellites to do the same. As part of regular columns for Compliance Matters by experts in Guernsey's legal sector, Wayne Atkinson of Collas Crill argues the irony of this, with the UK having plenty to learn from these jurisdictions when it comes to screening corporate arrangements.

In April 2018, a rather remarkable story briefly hit the UK papers fascinating that limited class of people who like me, and I hope dear reader you, are intrigued by the minutae of compliance and related issues.

The story concerned one Kevin Brewer, a 65-year-old company formation agent, who had been prosecuted for deliberately falsifying information submitted to Companies House in the UK. The interest around the case related primarily to two issues - firstly Mr Brewer was the first person ever prosecuted for this crime in the UK, and secondly he claimed to have committed the act complained about (falsely registering companies in the name of, amongst others, Liberal Democrat Vince Cable) with a view to drawing attention to the flaws of Companies House in what is in effect an act of whistleblowing.

The issue, in essence, is that in the UK, anyone can form a company using the Companies House website. It is, as a colleague of mine once pointed out in a fit of pique, as easy as buying a tin of beans. As a result, UK companies are open to abuse from all over the world. There are or have been UK companies supposedly owned and operated by toddlers, registered erroneously in the name of the prime minister and any other number of absurdities.

In April this year, the company behind the Telegram Messenger app was forced to issue a tweet pointing out that a purportedly massively capitalised new company formed in the UK with Telegram Messenger's tech billionaire founder Pavel Durov named as director and secretary had nothing to do with them or Mr Durov. It was either a prank or a flat-out fraud enabled by the lack of checks at Companies House.

How is this possible you may ask? As any person can form a company electronically in the UK without the direct intervention of service providers or regulators. By removing service providers with an anti-money laundering function from the system the government has inevitably opened the system up to abuse for money-laundering. This is, to say the least, an unsurprising result.

Yet the politicians of the UK seem focused on the risks posed not by the abuses on their doorstep but rather on abuses taking place offshore in the crown dependencies and British Overseas Territories. Except of course this kind of abuse very rarely takes place in those jurisdictions, all of which by one means or another have systems in place to address the issue. Here in Guernsey, companies can only be formed by a professional service provider, licensed and required to have appropriate systems in place to identify their clients. The same is true in the BVI and Cayman. Jersey requires direct interaction with a financial services regulator. But then that makes sense, international finance centres do incorporate a lot of companies and the result is, they've become rather good at doing so properly.

In fact, when it comes to compliance, generally we're really rather good at that. Again, we have to be. For the international finance centres, financial services business is to a lesser or greater extent such a significant contributor to the economy that local governments are obliged to focus on ensuring international requirements are met. By putting responsibility for formation (and ongoing compliance) on licensed service providers, the international finance centres create a clear control on abuse. Uploading misinformation in this environment requires not only an intent to deceive but a successful deception of, or criminal conspiracy with, a government licensee. As the CEO of one licensee pointed out to me recently as I advised him on compliance, the licence is the firm's most valuable asset because without it, the firm simply cannot undertake its business lawfully. Since

holding such a licence or authorisation invariably requires the ongoing satisfaction of a regulator that your controls are appropriate there is a powerful incentive (staying in the industry) to preventing abuses. Similarly, for individuals in these jurisdictions the risk of a sanction that makes one unemployable in finance and rules out a large proportion of jobs in a small community is a disincentive perhaps not present in the UK with a different breadth of job opportunities.

By way of example of how highly regarded these offshore regimes are, by those who know in 2016 MONEYVAL reported Guernsey as being compliant or largely compliant with 48 out of 49 of the FATF recommendations - the highest standard of any jurisdiction so far assessed. The UK has not been evaluated since 2007 but we await the results of this year's UK FATF on-site visit eagerly.

The story is similar in other areas where international standards are set. Take this exchange from June 2018 between David Richardson, interim director-general for customer strategy and tax design at HM Revenue and Customs, and Commons Treasury sub-committee chairman John Mann.

Richardson: "None of the overseas territories have been difficult or not co-operated. They are all independent jurisdictions and they have different people, but it is not part of our gripe or agenda that one is more co-operative than another. They have all signed up to the same standards in terms of what they will exchange with the UK and internationally."

Mann: "As the OBR has pointed out, you are only getting about a quarter of what you anticipate as the yield from the Crown dependencies. Are you saying, therefore, that none of them are particularly co-operative?"

Richardson: "That is not a reflection on the Crown dependencies; it is a reflection on the individuals who were investing in the Crown dependencies, as to whether they were prepared to use the opportunity to settle with us. One needs to be careful not to regard the authorities in those jurisdictions as the same as the people who are investing there."

Mann: "People listening might be puzzled. You are remarkably keen to defend the overseas territories and Crown dependencies in terms of how co-operative they are."

I'm not sure why anyone informing themselves of the position would be puzzled. Guernsey, Jersey and the Isle of Man all received the top rating of ‘compliant’ from the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes.

The UK, for those keeping score, was ‘largely compliant’ on a par internationally with Burkina Faso, El Salvador and the Seychelles but below higher rated jurisdictions like Lithuania, Iceland, South Africa and Columbia. Nonetheless Mr Mann prefers to point the finger at the crown dependencies.

There will of course be instances of abuse in the crown dependencies and overseas territories; it would be hopelessly naive for us to expect a perfection record year after year whilst operating at the scale the international finance centres collectively do. But those instances shouldn’t detract from the fact that international finance centres have developed world-leading skills in operating this kind of business properly.

One area where the UK of course does surpass the international finance centres is its provision of a public beneficial ownership register; sunlight is the best disinfectant is the rallying cry. If we assume this really is the case and that there are benefits of such a public register beyond the tabloids writing stories around pop star's yearly earnings, then the strength of this argument remains contingent on the integrity of the information on the register. As the old saying about databases goes: garbage in equals garbage out. If the directors and shareholder information is unverified and inaccurate why would the beneficial ownership information be any different.

Each of the crown dependencies has pledged that if and when a public beneficial ownership register becomes the global standard, they will play to that standard. As previously noted; they're very good at meeting global standards and no doubt will continue to be to ensure their ongoing value and use to the global financial services industry. It would be helpful if the UK's politicians understood and acknowledged that. If they could put aside the cheap point-scoring and come learn some lessons from some of the world's leading compliance jurisdictions, they might just do something about Companies House.

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WE ARE GUERNSEY is the brand under which Guernsey Finance promotes the island's financial services sector internationally. Guernsey Finance - the promotional agency for the island's finance industry internationally - is a joint industry and Government initiative responsible for the promotion of Guernsey. Under the leadership of Chief Executive Dominic Wheatley, the agency ensures that the core values and competencies of the island's finance sector are accepted and respected by the global community and that financial business development flows are enhanced.

PO Box 655, St Peter Port,
Guernsey, GY1 3PN
+44 (0)1481 720071
INFO@WEAREGUERNSEY.COM

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