



# Department of Justice

---

**STATEMENT OF**

**JENNIFER SHASKY CALVERY  
SENIOR COUNSEL TO THE DEPUTY ATTORNEY GENERAL  
UNITED STATES DEPARTMENT OF JUSTICE**

**BEFORE THE**

**UNITED STATES SENATE  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

**HEARING ENTITLED**

**“EXAMINING STATE BUSINESS INCORPORATION PRACTICES: A  
DISCUSSION OF THE INCORPORATION TRANSPARENCY AND LAW  
ENFORCEMENT ASSISTANCE ACT”**

**PRESENTED**

**JUNE 18, 2009**

Good afternoon, Chairman Lieberman, Ranking Member Collins and distinguished Members of the Committee. I am honored to appear before the Homeland Security Committee to discuss the critical need for greater transparency in corporate formation in this country. Nearly three years ago the Department testified before the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs about the difficulties that U.S. shell companies often pose to law enforcement efforts—and the need for improved access to beneficial ownership information of these companies. In this context, we use the term “shell company” to refer to a legal entity, established under the laws of a State, that has no independent operations or assets of its own. Unfortunately, since the Committee last examined this issue, the problem has not improved. So I am pleased that the Department has another opportunity to speak with you about this important issue and that the conversation has now moved from framing the problem to developing possible legislative solutions.

The term shell company often evokes images of exotic offshore financial centers and money laundering havens. Unfortunately, some of the worst offenders are not “exotic” locales at all, but rather some of our own States. In 2006, we spoke of an unscientific internet search that we conducted using the words “shell corporation”. This most basic search brought up dozens of websites touting the anonymity, speed, and ease of using their services to incorporate companies in various U.S. states. Unfortunately, the news is no better in 2009. A similar search continues to produce sites offering U.S. companies for sale, making advertising claims such as *“When you set up with one of these shell corporations, your name is not listed on public records as the “incorporator” and First Director, which can be very key when it comes to privacy.”*; and *“Why wait months or years to establish business credit when you can own a turnkey Nevada shelf corporation with over 150k of bank credit”*. Far from attempting to disguise the anonymity that comes with shell companies or the fact that “aged” shell companies lend credibility and credit where it would otherwise not exist—on most sites these are the primary selling points. In an era of rampant mortgage and internet fraud, few things are more appealing to those seeking to evade the law than a company that comes with over \$150,000 of available credit, a public veneer of credibility, and complete anonymity.

We must find a solution that will meet core law enforcement needs by providing transparency to corporate ownership while not placing undue burdens in these turbulent economic times on the States or the vast majority of legitimate businesses who are rightly attracted to establishing a legal presence in one or more of our States.

Four critical issues must be addressed in any legislative solution: (1) the need to identify the beneficial owner of a legal entity at the point of formation; (2) the need for law enforcement to obtain accurate and timely information about the owners of existing U.S. legal entities; (3) the appropriate means of addressing the challenge of the transfer of corporate ownership—especially from corporate formation agents to corporate brokers; and (4) the penalties necessary to discourage the misuse of U.S. companies -- all without burdening the States and private business with undue costs and regulation. Several important legislative solutions have been offered by members of this Committee and by the States, I will not address those proposals directly other than to say that the Department strongly supports all efforts to address the lack of transparency in U.S. legal entities, believes that federal legislation must be at least part of the solution, and believes that the current proposals contain many good ideas upon which to base our discussions.

### **Background**

Shell companies can be loosely defined as legal entities that have no significant operations, have no significant “brick and mortar assets” and exist primarily on paper—with any U.S. presence typically consisting of a postal box or a mail drop at a company service provider office. One company formation website, in an unsuccessful effort to draw a distinction between its “shelf” corporations and shell companies, describes a shell as “an incorporated company that does not have any significant assets or operational structure, but merely serves as a clearing house for dissolving corporations, tax evasion, or for the handling of illicit funds.” This admission recognizes the reality of U.S. shell companies: Because of lax company formation laws criminals can form shell companies quickly and cheaply and obtain virtual anonymity. Even after the criminal activity is detected, so little information is currently collected during and after the formation process that the true ownership of the shell is just one more unanswered question in the overall financial investigation. This is the challenge that we face here today: how to arrive at a solution that will provide transparency to law enforcement and deprive the criminal of

this valuable tool while not imposing undue burdens on the States and on small businesses that rely on legal entities to operate.

In our testimony three years ago, we discussed some of the difficulties domestic shell companies pose to criminal investigations. While corporations certainly have an important and legitimate commercial role to play in both the national and global economy, they may also be used for illicit purposes, including money laundering, bribery and corruption, fraud, tax evasion, immigration and visa fraud, and other forms of illegal activity. Increasingly, illicit money networks, or professional money launderers, if you will, use shell companies as a necessary tool of their trade in schemes to launder money for drug trafficking and other international criminal organizations, and to finance terrorism. Shell companies are specifically used for this purpose because they are very easily formed, can provide an essentially anonymous legal entity with which to open domestic and foreign bank accounts and, in the case of U.S. shells, carry an air of legitimacy. Criminals trade on this air of legitimacy and the good names of our States by sending illicit money through shell company bank accounts fraudulently disguised as legitimate economic trade. The criminal source, destination, and true ownership of the money is protected from law enforcement scrutiny by State laws which do not require the beneficial owners of companies to adequately identify themselves.

Shell companies, or facially legitimate companies, have been used in visa fraud schemes to facilitate the issuance of business visas (B-1, L and H visa categories) to those who wish to migrate to the U.S. illegally. They have also been used to facilitate the issuance of visas and entry into the U.S. of members of organized crime groups.

Companies are easily formed. To do so, a company principal or someone acting on the company's behalf submits formation documents to the appropriate State office. Documents may be submitted in person, by mail, or online, and "the process can take anywhere from 5 minutes to 60 days." *Company Formations: Minimal Ownership Information is Collected and Available* (GAO-06-376) (GAO Report). In addition, a "minimal amount of basic information generally is required to form a company." (GAO Report, p.7) Typically, the documents must give the company's name, an address where official notices can be sent to the company, share information for the company, and the

names and signatures of the persons handling the incorporation process. Few states require ownership information when a company is formed, nor do they require any updates. (*GAO Report*, p.13) Even the initial required information regarding shareholders is not always accurate or up to date. (*GAO Report*, p.43) States generally do not verify the identities of incorporators or company officials. (*GAO Report*, p.21) In sum, someone either within or outside of the United States, without any verification of identification, can form a corporation within as little as five minutes. The corporation is then a legal entity that can engage in business and open a bank account.

Because shell companies effectively conceal the identities of the persons using the companies for illegal activity, the use of shell companies to facilitate criminal schemes continues to grow more sophisticated. Criminals want to use U.S. shell companies because those entities do not receive the same level of scrutiny as those established in foreign jurisdictions that share comparatively weak corporate regulation – jurisdictions that are often labeled “offshore havens.” Additionally, the U.S. companies have an air of legitimacy in the foreign countries where criminals may want to obtain bank accounts. Criminals are increasingly opening bank accounts for their shell companies in offshore jurisdictions where customer identification requirements may be less rigorous than in the United States. These companies then gain access to the U.S. financial system through correspondent banking relationships with U.S. financial institutions.

The following scenario illustrates how this structure works. First, a corporate formation agent forms thousands of companies in a State that does not require the agent to collect or verify ownership information. The agent then markets these “shelf companies” around the world. A professional money launderer buys several and uses them to open bank accounts in a foreign country. The foreign bank has a correspondent account at a bank in New York. The criminals then make wire transfers using those accounts, which appear to be legitimate trade transactions from a U.S. company that has a bank account in New York. This kind of illicit money movement system allows international criminal organizations to move billions of dollars without detection. U.S. law enforcement agencies cannot determine who is perpetrating the scheme through the records maintained by the State of incorporation because the criminals used nominees on the paperwork and purchased the shell company via an intermediary. Law enforcement

also cannot determine who is perpetrating the scheme through the U.S. bank account records because a correspondent account only identifies the foreign bank as its account holder. The records do not identify who controls accounts within the foreign bank, so ironically, U.S. law enforcement must try to get information about a U.S. company from the foreign country, which is difficult for many reasons, and often simply not possible at all.

The use of domestic shell companies in criminal schemes not only frustrates our domestic law enforcement efforts, but also frustrates the efforts of our foreign law enforcement counterparts. When the perpetrators use U.S. shell companies to open bank accounts in foreign countries to launder money or otherwise facilitate criminal activities in those countries, foreign law enforcement will go to the foreign bank to obtain information about the owners of the accounts. If the bank account is in the name of a U.S. company, foreign law enforcement has to request information on the beneficial owners of the company from the United States. The U.S. State in which the company was formed almost never has that information to provide because it is not required to be collected during corporate formation. The United States is unable to provide assistance to foreign law enforcement which not only frustrates foreign criminal enforcement efforts but also domestic enforcement efforts, but also damages our ongoing relationships with our foreign law enforcement counterparts. As you might imagine, foreign counterparts who have watched their investigations frustrated by weaknesses in U.S. law are not always quick to assist with U.S. investigations involving collection of evidence in their country.

In addition, the United States has been cited with non-compliance through the Financial Action Task Force (FATF) – a multilateral body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing -- for our weak State incorporation laws which do not require the provision of beneficial ownership information. The FATF recognizes that shell companies are widely used to launder the proceeds from crime and that the identification of a company's beneficial owners is essential for preventing and punishing money laundering. *See FATF Report on Misuse of Corporate Vehicles*, p.5 (October 2006) (available at [http://www.fatf-gafi.org/pages/0,2987,en\\_32250379\\_32235720\\_1\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html)).

This problem of U.S. shell companies has indeed become so acute that other jurisdictions have recognized that criminals and tax evaders regularly use U.S. shell companies in their illicit activity when accurate beneficial ownership information is not required. For example, Brazil recently expanded its definition of tax havens, in Article 22 of Law 11,727/2008, to include countries and locations with laws that do not allow access to information concerning the corporate structure of legal entities, their ownership, or identification of the beneficial owner attributed to non-residents. Most, if not all, commentators suggest that this legislation was directed specifically at U.S. States such as Delaware and Nevada.

The lack of shell company ownership information, or access to it, presents an increasingly serious problem for domestic and foreign law enforcement in dismantling international criminal organizations and prosecuting money launderers. Moreover, the problem presented by formation agents who set up and sell multiple companies to foreign brokers requires not just verified information on beneficial ownership when the company is formed, but also regularly updated and accurate information maintained in the state of incorporation and readily accessible to law enforcement.

It is our job to solve this growing problem. The steps taken by other jurisdictions to address the problems presented by shell companies demonstrate that the problem is not insurmountable.

#### **I) DOJ/Law Enforcement Priorities**

The underlying criminal and national security problems to which U.S. shell companies contribute are unquestionably severe. Likewise, the scope of the problem, that is, the prevalence of criminals misusing U.S. shell companies, is certainly broad. That is why the Department is so heartened to see that, through the leadership of Members of this Committee, the discussion among all of the stakeholders has moved beyond the stage of defining the problem to developing a solution. We are convinced that such a solution is possible and can be crafted in a manner that is workable for law enforcement, State governments, and the private sector, that is, a solution that will benefit everyone but the would-be criminals and terrorists.

As noted earlier, the Department has identified four critical issues that must be addressed for an effective and comprehensive solution to the problem of shell companies. I will address each of these issues in turn and discuss possible solutions from the Department's perspective.

**A) Identifying the Individual/Beneficial Owner Behind the Entity**

Criminals exploit and abuse current State incorporation standards to facilitate their criminal activities and conceal their identities by using shell companies that have no real existence and little to no transparency as to ownership—beneficial or otherwise.

The Department recognizes that no system will be foolproof and no system can ever provide perfect information. That being said, we believe the key to transparency of legal entities at the formation stage is threefold: (1) requiring the provision of correct beneficial ownership information at the time of formation for all legal entities; (2) consistently defining beneficial ownership across all 50 states to ensure that criminals cannot exploit definitional gaps between different state systems; and (3) requiring photo identification to provide law enforcement with at least a name and a face to further their investigation where the information provided to a state is either false or missing.

While the collection of beneficial owner information should be the focus of any comprehensive system, to be effective such information must be collected from more than just corporations. While company laws vary from state to state and thus no list is exhaustive, at a minimum, proposed legislation should include all statutory business entities in a particular state including: for profit corporations, nonprofit corporations, limited liability partnerships, limited partnerships, limited liability companies, associations, cooperatives and cooperative associations and statutory trust entities. Anything less than complete coverage of all legal entities will create loopholes and drive illicit traffic to that weak link. For example, if LLPs are not covered, but LLCs and corporations are, criminals will simply cease using LLCs and corporations and move to the less regulated LLPs. In law enforcement circles, this principle is known as “the least protected house” principle. Essentially, the house with the weakest locks is the one that gets burgled. In money laundering and other financial crimes, the weakest and least regulated industry, state or entity is often the one victimized.



While the scope of covered entities must be as expansive as possible, the Department agrees with proposals that exempt certain well defined categories of legal entities. Broadly speaking, the Department believes that companies which are (1) regulated by a U.S. Federal or State body; and (2) required by the regulator to provide beneficial ownership information, should be exempt. Given the disparate norms used by foreign regulators and the fact that the relevant information is not maintained in the United States, we believe it is inappropriate to extend such an exemption to companies regulated by foreign regulatory bodies.

In addition to having a comprehensive list of covered entities, it is critical to have a consistent, working definition of beneficial ownership. While many claim that the task of defining beneficial ownership is impossible, to the contrary, there are a number of definitions worldwide for “beneficial owner” which may assist in drafting this important definition, including but not limited to the definitions contained in: 31 CFR 103.175; 17 CFR 240.13d-3; the United Kingdom Money Laundering Regulations, effective December 15, 2007;<sup>1</sup> and the European Union (Third Anti-Money Laundering Directive).<sup>2</sup> The definition adopted in S. 569 offers a reasonable approach, although we recommend that it should be slightly modified to clarify that the beneficial owner must be a “natural person” as opposed to another legal entity.

The Department strongly recommends that States be required to adopt a uniform definition of beneficial ownership and obtain the name, current address, and a copy of either a government-issued identification or passport, (including a legible photograph of either form of identification) for each beneficial owner. Due to the variety and quality of documentation world wide, we recommend that the States accept either government-issued identification issued in the United States or passports for U.S. persons, but only passports for foreign registrants.

Additionally, to the extent that a formation agent is used, we recommend that the agent be required to take reasonable steps to verify the information and sign a

---

<sup>1</sup> Used by the United Kingdom in conjunction with the Financial Action Task Force (FATF), a leading international organization combating money laundering and terrorist financing.

<sup>2</sup> Used by the European Union in conjunction with the FATEF.

certification that, to the best of his/her knowledge, the ownership information provided by the agent to the state is true and complete.

### **B) Obtain Information in an Accurate and Timely Manner**

While the collection of accurate beneficial owner information is critical, its usefulness is significantly undermined if law enforcement cannot receive the information in an accurate and timely manner. Specifically, law enforcement must be able to obtain (through an appropriate process) all beneficial ownership information for a legal entity in a timely fashion. We recommend that the information be available upon service of (1) a civil, criminal or administrative subpoena, summons, or investigative demand from a federal or state law enforcement authority, federal or state prosecutor, federal or state agency or committee or subcommittee of the United States Congress; or (2) a written request made by the Federal Government on behalf of another country under an international treaty, agreement, convention or other mutual legal assistance request. We recommend that the information be provided no later than 5 working days after service of the request.


### **C) Issues Relating to Transfer of Ownership**

Unfortunately, no matter how strong a system we create at the point of formation, this is only half the battle. Often, criminals will perpetrate their schemes using so-called “shelf” or “aged” companies that were created at some point in the past and are now a valuable commodity for resale because of their history of good standing, credit, and sometimes even their banking relationships. In such cases, the trail very often goes cold with either the initial company formation agent or the middleman who is brokering a resale, neither of whom know or often care who has purchased the shell company. Therefore, any meaningful legislative solution must also address the point of transfer.

As evidenced by the array of websites offering such services, the sale of “off the shelf” corporations and limited liability corporations (i.e., entities that are already formed and ready to be sold to a potential buyer) is big business in the United States. This is not to suggest that advertising companies on the internet in this manner is illegal or that either the seller or purchasers of companies advertised in this way necessarily intend to

violate the law. However, one need only look at current websites offering such shelf companies to understand the allure to fraudsters, money launderers and other criminals.

For example, one website promotes such companies as follows:



---

### Shelf Companies

A shelf company is a company that has been formed but never been used. Each company listed was originally filed by SmallBiZ.com, is in good standing, has no current business activity, no assets, no liabilities and no stock has been issued.

---

#### Why Buy a Shelf Corporation or LLC?

- › **Instant History** - Establish months or years of history instantly.
- › **Better Credit** - A company with history has an easier time obtaining financing, credit cards & leases.
- › **Better Image** - A shelf company looks better with age.
- › **Contract Bidding** - Some vendors require that your company have a minimum time of existence.
- › **Save Time** - A shelf corporation is ready to begin business immediately. Any potential delays in startup are avoided.

---

#### Why Buy A SmallBiZ.com Shelf Company?

- › **Price** - Our prices are the very lowest available anywhere!
- › **Company Name** - Each of our shelf companies already have an excellent name. However, we can change the name of the company for only \$100 more.
- › **Buy Now** - Buy a shelf company now and we will send you your shelf company documents via Next Day Air (included).
- › **Our Guarantee** - We guarantee that the company you purchase has never had any operational experience. We can guarantee this because we formed the company and maintained control since its formation.

---

#### What Comes With Each Shelf Company?

- › **Original Articles** - Original file stamped docs from the formation state
- › **Filing Receipt** - Original doc from state indicating filing completion
- › **Appointment Form** - Original signed Appointment form to you
- › **Tax Paid Acknowledgement** - Proof that taxes are paid up to date\*
- › **Forms CD** - Either Corp. Forms or Operating Agreement on CD included
- › **Registered Agent** - Registered agent service for 12 months included
- › **Other Items** - Each shelf company is slightly different (call for more info)

---

#### Available Shelf Companies

Company Name	Type	State	Form. Date	Price	Details	How to Buy
Comprehensive Creations, Inc.	INC	CO	3/30/05	\$2699	FOUR YEAR OLD CORP! Includes: SmallBiZ Secretary* compliance service!	<a href="#">BUY NOW</a>
Forward Thinking Group, Inc.	INC	DE	07/30/07	\$1249		<b>SOLD</b>
Begal Group, Inc.	INC	CO	12/29/07	\$699	Includes: SmallBiZ Secretary* compliance service!	<a href="#">BUY NOW</a>
Concept Dimensions, Inc.	INC	CO	12/29/07			<b>SOLD</b>
Platinum Choices, LLC	LLC	CO	12/29/07	\$699		<a href="#">BUY NOW</a>
Priceless Commodities, Inc.	INC	CO	12/29/07			<b>SOLD</b>
SomeDay Ventures, LLC	LLC	CO	12/29/07			<b>SOLD</b>
Nationwide Property Ventures, LLC	LLC	CO	12/29/07	\$699		<a href="#">BUY NOW</a>
	INC	FL	01/04/08	\$699		<b>SOLD</b>
Capstone Properties, LLC	LLC	DE	08/01/08	\$799		<a href="#">BUY NOW</a>

Another website lists the following Nevada corporation for sale:

## Shelf Corporation with Credit

AGED SHELF CORPORATION WITH CREDIT - TOLL FREE (888)286-9279

### Shelf Corps with Credit For Sale

*Aged shelf corporations with credit* inventory:

#### Nevada Shelf Corporation with Credit

- D&B credit profile with 85 Paydex Score
- Multiple vendor tradelines
- 3 years old reputable, REAL business
- 100k credit line - equipment leasing™ - zero balance
- 30k bank issued credit lines - Visa, MC

#### Assur\*\* \*\*\*\*\* Services Inc

This company has been an operating business for over 3 years in the Clark County/Las Vegas, NV area. There is no outstanding debt and all tradelines have little or no balances

owing. No late payments have ever been made on any accounts. As a matter of fact, payments are usually made at least a week or two in advance of the payment due date which is why the Paydex Score is so high - an 85 Paydex score is equivalent to a 750+ personal FICO score. Why wait months or years to establish business credit when you can own a turnkey Nevada shelf corporation with over 150k of bank credit and get a jumpstart on your business venture right now.

**Own this Nevada shelf corporation with credit for \$49,900**

Criminals who are abusing State incorporation practices to conceal their identities seem to prefer such “off the shelf” corporations. By purchasing shelf companies, criminals can easily circumvent State incorporation requirements and rely on the fact that the current update requirements of most States will give criminals months if not a year head start on law enforcement authorities that are pursuing an investigation. To combat this practice, the Department strongly recommends legislation that: (1) requires all covered legal entities to provide updated beneficial ownership information to the State at the time of any transfer, sale, or change in beneficial ownership; (2) provides the sale or transfer of the ownership interest is not effective until such time as the proper documentation has been received by the Secretary of State; and (3) requires all legal entities to yearly certify that their beneficial ownership information is current, true and correct.

This increase in the sale of “shelf” or existing companies highlights an important loophole that the proposal endorsed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) seeks to correct: that of a “look back” to existing companies. There are literally hundreds of thousands of U.S. companies that currently exist. Unless a mechanism is put into place to also regulate these entities and gather their beneficial ownership information, there exists a serious risk that they can and will be misused.

Take for example another U.S. company currently being offered for sale:

**27 Years Old Nevada Corporation with Credit**

- 22 Years old Experian credit file

- EIN
- Bank Account
- No Judgements or Liens
- No UCC filings or Collections
- Clean credit history

\*\*\*\* Music \*\*\*\*

This company has been an operating business since early 1981 in the state of Nevada - Mineral County area. There is no outstanding debt and it has a clean credit history. Business classification is "Furniture and Home Furnishings Store" - SIC code 5700.

Shelf-Corp.com offers the lowest pricing on aged corporations guaranteed! Why pay \$30,000, \$40,000 or more somewhere else when you can buy this **aged corp with credit** here for thousands less!

**27 years aged old, Nevada corporation is on sale now for only \$15,000**

Here, a company that has been in existence since 1981 can be purchased “with credit” for a mere \$15,000. This ad illustrates the inherent problem of any legislation that is exclusively forward looking. Such legislation will again merely create a loophole, drive illegitimate traffic to that loophole, and create a new and lucrative market for “aged” companies that do not have to disclose any beneficial ownership information.

The Department recommends that current legislative efforts include a “look back” provision that will require existing companies to provide current beneficial ownership information. If the company fails to provide such information then the Secretary of State should be required to initiate dissolution proceedings against the company.

**D) Penalties for the Misuse of Legal Entities/Penalties for False Information and/or Willful Blindness**

In an effort to enforce this system, the Department believes it is critical for both States and the Federal Government to have a variety of tools at their disposal for the enforcement of shell company legislation. The Department envisions the legislation providing three distinct enforcement tools.

First, in addition to any civil or criminal penalty that may be imposed by a State, the Department believes it is also critical to protect our national interest in enforcing federal law, by providing both civil and criminal penalties under federal law, similar to those contained in S. 569. The Department would strengthen the penalties in S. 569 by consistently applying the criminal intent of acting “knowingly.” This modification will prevent individuals from escaping liability by acting “willfully blind” in their formation and use of our legal entities. Moreover, the Department also recommends adopting language similar to that contained in the Aggravated Identity Theft Statute, 18 U.S.C. 1028A §§ (2), (4), authorizing consecutive prison sentences for repeated and aggravated violations. Such a provision would target those criminally complicit service providers that are the worst offenders in this area and who repeatedly promote and use U.S. shell companies for criminal activity.

Second, those individuals who act negligently or recklessly in providing false information to the State or failing to update information with the State, should be subject to civil penalties.

Third, States should be required to immediately dissolve any legal entities that (1) fail to certify that their beneficial ownership on file with the State is current, true and correct; and (2) are shown to have otherwise failed to comply with the statute.

These three tools will allow the Government to bring effective, proportional and dissuasive sanctions against bad actors while not implicating otherwise innocent failures by small business to file required paperwork.

## **II) Other Issues**

In addition to the broad framework that has been provided above, the Department believes there are a number of secondary suggestions that will positively impact any proposed legislation in this area.

First, in the course of discussing possible solutions, some parties have suggested making a specified individual located in the State of formation responsible for collecting beneficial ownership information only after a request is made by law enforcement for this information. The Department strongly opposes such an idea. Such a provision would be easy to evade as suspects could transfer ownership from one person to the next so that the

trail is already cold by the time the specified individual reaches out to his last known contact. It would also openly signal the existence of a criminal investigation.

Next, the Department believes that any legislative solution must apply equally to both U.S. and foreign persons applying to form a legal entity or become a new owner of a preexisting legal entity. To only require foreign persons to provide beneficial ownership information or a copy of a passport would invite fraud as an increasing number of individuals could be expected to falsely claim to be a U.S. person or use straw actors. Such an approach may raise questions of consistency with our international undertakings and obligations, and would be contrary to the open investment policy of the United States.

Finally, the legislation should require that all States that have not already done so pass legislation prohibiting so called “bearer shares” to bring the United States fully into compliance with the Financial Action Task Force recommendations on this issue.

### **III) Conclusion**

I would like to conclude by expressing the gratitude of the Department of Justice for the continuing support that this Committee has demonstrated for anti-money laundering enforcement. The Department believes that we must continue to strengthen our anti-money laundering laws, not only to disrupt and dismantle drug trafficking and other international criminal organizations, but also to fight terrorism, white collar crime and all forms of criminal activity that generate or utilize illegal proceeds. The downside of globalization is that it affords perpetrators of crime new outlets and vehicles for these crimes, and thus poses new threats.

The Department is committed to safeguarding the privacy and civil liberty interests of Americans and is confident that those interests are not at risk when the federal government takes sensible steps to rein in the abuse of shell corporations. We in the Department of Justice look forward to working with Congress and with our colleagues in the Department of Treasury and the Department of Homeland Security, to address the issues identified in this hearing.