



# Are beneficial ownership laws important? Exploring the impact of Panama, FinCEN, and Pandora Papers on beneficial ownership laws in the UK and the US

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## ABSTRACT

Money laundering and reverse money laundering, also known as terrorism financing, have emerged as critical issues in the 21st century, posing threats to security, economic stability, and the integrity of financial systems. This article explores the growing use of anonymous shell companies as a method for executing money laundering and reverse money laundering. It focuses on two key jurisdictions: the United Kingdom (UK) and the United States of America (US).

The research draws on case studies published by the International Consortium of Investigative Journalists, including the Panama Papers, FinCEN Files, and Pandora Papers. These case studies have prompted regulatory changes in beneficial ownership. This study examines the practical implementation of laws, comparing the approaches of the UK and the US. It addresses the vulnerabilities revealed by the aforementioned case studies and assesses the actions taken by these countries in response to the leaks. The study evaluates the progress achieved in enhancing beneficial ownership regulations and reducing anonymity in shell company creation.

In conclusion, this article provides insights and recommendations for future developments in this critical area.

## 1. Introduction

This article aims to explore the extent to which shell companies are enablers of money laundering and reverse money laundering, also known as terrorism financing, in the United Kingdom (UK) and the United States (US). Shell companies are corporate structures set up with no significant business purpose primarily used for legal and or financial reasons. Money laundering involves a series of transactions to conceal the origin, ownership or destination of illegally obtained funds, whilst terrorism financing does the opposite and takes money from legitimate sources and sends it to criminal and/or terrorist organisations. Shell companies are the perfect medium to conceal transactions and make them appear more legitimate than they are. This issue has been known for a few years now and most jurisdictions have addressed this issue by developing beneficial ownership legislation which aims to reduce anonymity around shell companies. The exposé cases of Panama

Papers, FinCEN Files and Pandora Papers showcase the significance of using corporate structures to conceal proceeds of crime with money mainly coming from tax evasion, money laundering and terrorist financing.<sup>1</sup>

Even though these exposés acted as a catalyst for change for both the UK and the US, their effect towards legislative change has not been discussed by academics yet. There has been some governmental response on Panama Papers, however, many more layers of wrongdoings were revealed after 2016.<sup>2</sup> For this reason, this article will focus on legislative advancements and guidance from international organisations for beneficial ownership and its significance for the oversight of shell companies.

The recent amendments posed by the Economic Crime (Transparency and Enforcement) Act 2022 and the Economic Crime and Corporate Transparency Act 2023 will be critically discussed in light with the introduction of the Persons of Significant Control (PSC)

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<sup>1</sup> International Consortium of Investigative Journalists, 'The Panama Papers: Exposing the Rogue Offshore Finance Industry' (2016) < <https://www.icij.org/investigations/panama-papers/> > accessed on 2nd June 2023; International Consortium of Investigative Journalists, 'Inside scandal-rocked Danske Estonia and the shell-company 'factories' that served it' (2020) < <https://www.icij.org/investigations/fincen-files/inside-scandal-rocked-danske-estonia-and-the-shell-company-factories-that-served-it/> > accessed on 2nd June 2023; International Consortium of Investigative Journalists, 'Pandora Papers' (2021) < <https://www.icij.org/investigations/pandora-papers/> > accessed on 2nd June 2023.

<sup>2</sup> HC Deb 11 April 2016, vol 608 cols 23–49 W.

Register in 2016, whilst making a comparison to US legislation for beneficial ownership. The main research question that will be answered throughout this article is to what extent can shell companies be used for money laundering and reverse money laundering given the advancements of the law around beneficial ownership.

The structure of the article will be based on the guidance of secondary questions that will be answered throughout the article. There are three main sections of secondary questions which will be answered throughout certain parts. Firstly, definitions for a shell company, money laundering, reverse money laundering and beneficial ownership were already given in the introduction, and these form a foundational understanding of the context and content of the article. Secondly, the questions ‘what is the importance of beneficial ownership as proven by the case studies?’ and ‘what was the impact of the case studies, and have they triggered any changes and/or advancements in regulating beneficial ownership?’ will be answered later on when discussing the case studies within the article. Thirdly, the existing Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) regimes in both the UK and the US will be considered, whilst the significance of beneficial ownership laws for a stronger AML/CTF regime will be analysed. These issues will be analysed in a comparison between the UK and the US. The most important question that will be answered is ‘what are the latest developments in the area of beneficial ownership and how have the UK and the US tackled these issues?’. This question will be answered in the comparative part between the UK and the US. Finally, in the conclusion as well as an overview of what was said in the article, what the future of beneficial ownership regulation is will be discussed as well as recommendations for more successful implementation of these laws.

There will be an overview of the Panama Papers, FinCEN Files and Pandora Papers case studies and then the effects of each case study will be observed in a comparative way for the UK and the US. The aim of the case studies will be to introduce a background of the issues regarding anonymous shell companies before the implementation of beneficial ownership laws. The case studies will be used to provide a historical understanding and development of awareness and legislation around the use of shell companies and their association to money laundering and terrorism financing.<sup>3</sup> These case studies are pivotal to the aim of this article which is to understand how shell companies are used for money laundering and terrorism financing in the UK and the US. An important aspect of this article is to examine the outcomes of the case studies in a comparative way, which will be achieved by having a comparison between the UK and the US.

## 2. Key definitions

A shell company has been defined by the Financial Action Task Force (FATF) as ‘non-publicly traded corporation or limited liability company that might have no physical presence and generates little or no economic value’.<sup>4</sup> A shell company usually falls into three

categories, these being ‘anonymous’, ‘letterbox’ and ‘special purpose entities’ (SPEs). Firstly, an ‘anonymous shell company’ is a structured entity that ‘provides anonymity as a key element, while simultaneously guaranteeing control over the shell company and its resources’.<sup>5</sup> Secondly, ‘letterbox’ companies involves a company acting as a ‘mailbox’ company, and they are ‘generally a company registered in one Member State in which substantive economic activity takes place in another Member State’.<sup>6</sup> These types of companies are usually used to avoid employment laws and social contributions to the Member State substantive economic activity is taking place. Thirdly, special purpose entities refer to companies whose ‘core business consists of group financing or holding activities’ and they are usually mentioned in the context of them being used in ‘aggressive tax planning’.<sup>7</sup> For the purpose of this article, anonymous shell companies will be used to demonstrate the consequences of anonymity and the amount of threat these companies pose.

The second term used throughout this article is money laundering which is defined by various organisations such as the United Nations (UN), FATF and INTERPOL. The UN defines money laundering as ‘the conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions’.<sup>8</sup> Moreover, FATF defines it as ‘the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their initial origins’.<sup>9</sup> Both definitions for money laundering have a common axis of the concealment of the illicit origin of proceeds of crime. Therefore, money laundering could be defined as the action or crime by which individuals or groups use to hide or disguise the origin of illegal activities.<sup>10</sup>

The third important term that needs to be defined is reverse money laundering, which is also known as terrorism financing, hence why they are used interchangeably throughout the article. This term is not officially defined, yet it is important for this article to show how shell companies can be used to legitimise and obscure financial transactions of terrorist organisations. Terrorist financing was first used by Jeff Breinholt of the US Department of Justice when he ‘distinguished terrorist financing from conventional money laundering’ and he referred to terrorist financing as ‘reverse money laundering’ and ‘money soilage’.<sup>11</sup> Reverse money laundering is a term used instead of terrorism financing, which is defined by the UN as ‘the means and methods used by terrorist organisations to finance their activities’.<sup>12</sup> In the case

(footnote continued)

accessed on 23rd February 2023, 39.

<sup>5</sup> I. Kiendl and E. Thirion, ‘An Overview of Shell Companies in the EU’ (2018) < [https://www.europarl.europa.eu/cmsdata/155725/6%20-%20002%20EPRS\\_Shell%20companies%20in%20the%20EU\\_exec.sum.pdf](https://www.europarl.europa.eu/cmsdata/155725/6%20-%20002%20EPRS_Shell%20companies%20in%20the%20EU_exec.sum.pdf) > accessed on 23rd February 2023, 2.

<sup>6</sup> *ibid*

<sup>7</sup> *ibid*

<sup>8</sup> United Nations Office on Drugs and Crime, ‘Money Laundering’ (*United Nations Office on Drugs and Crime*) < <https://www.unodc.org/romena/en/money-laundering.html> > accessed on 16th June 2023.

<sup>9</sup> Financial Action Task Force, ‘Trade-Based Money Laundering’ (*Financial Action Task Force*, 23 June 2006) < <https://www.fatf-gafi.org/en/publications/MethodsandTrends/Trade-basedmoneylaundering.html> > accessed on 16th June 2023.

<sup>10</sup> A. Sergiu Nitu and A. Constantin, ‘Shell Companies – White Collars Mafia’ (2022) 18(3) AUDOE 252.

<sup>11</sup> J. Wheatley, ‘Ancient Banking, Modern Crimes: How Hawala Secretly Transfers the Finances of Criminals and Thwarts Existing Laws’ (2005) 26 U Pa J Int’l Econ L 347, 357; J. Breinholt, ‘Terrorist Financing’, 51 U.S. ATT’YS’ BULL., No 4, July 2003 at 33.

<sup>12</sup> United Nations Office on Drugs and Crime, ‘Combating Terrorist Financing’ (2023) < <https://www.unodc.org/unodc/en/terrorism/expertise/combating-terrorist-financing.html#:~:text=Terrorist%20financing%20encompasses>

<sup>3</sup> A. H. Al-Emadi, ‘The financial action taskforce and money laundering: critical analysis of the Panama papers and the role of the United Kingdom’ 24(4) JMLC 752; International Consortium of Investigative Journalists, ‘The Panama Papers: Exposing the Rogue Offshore Finance Industry’ (2016) < <https://www.icij.org/investigations/panama-papers/> > accessed on 2nd June 2023; International Consortium of Investigative Journalists, ‘Inside scandal-rocked Danske Estonia and the shell-company ‘factories’ that served it’ (2020) < <https://www.icij.org/investigations/fincen-files/inside-scandal-rocked-danske-estonia-and-the-shell-company-factories-that-served-it/> > accessed on 2nd June 2023; International Consortium of Investigative Journalists, ‘Pandora Papers’ (2021) < <https://www.icij.org/investigations/pandora-papers/> > accessed on 2nd June 2023.

<sup>4</sup> Financial Action Task Force, ‘Best Practices on Beneficial Ownership for Legal Persons’ (July 2018) < <https://www.fatf-gafi.org/en/publications/MethodsandTrends/Best-practices-beneficial-ownership-legal-persons.html> >

studies that will be analysed, the focus will be on money laundering and its relation to reverse money laundering/terrorism financing. A notable example of shell companies being used to facilitate terrorism financing or reverse money laundering was the financing of Al-Qaeda.<sup>13</sup> Baradaran stated, 'one of the most dangerous and accessible financial tools used by terrorists today is the anonymous shell company'.<sup>14</sup> Taking the UK and the US as examples, the UK in 2010 spent approximately £3.5 billion per year to fight terrorism, whilst the US has spent more than \$1.2 trillion which sums have 'compounded the national deficit and greatly impacted the financial markets'.<sup>15</sup> This being said reverse money laundering is a significant risk to any economy, which is why money laundering and terrorism financing are seen as 'equal'. The two activities differ in various ways, however, 'they often exploit the same vulnerabilities in financial systems that allow for anonymity and opacity in transactions'.<sup>16</sup>

The final term that will be defined is beneficial ownership which is relevant to this article because by adopting beneficial ownership laws, anonymity of owners of shell companies acting as fronts for illicit activities would be uncovered. It is important to understand the impact of anonymity and finding appropriate ways to reduce anonymity behind the ownership of shell company structures. Beneficial ownership as defined by the UK Government 'means those who ultimately own or control an asset, for example, a property or company'.<sup>17</sup> In the US the Financial Crimes Enforcement Network (FinCEN) defines a beneficial owner as 'any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests in a reporting company'.<sup>18</sup> The US definition is more precise than the UK one regarding beneficial ownership, however, the exact conditions are found in the Companies Act 2006 in the UK regarding Persons with Significant Control (PSCs).<sup>19</sup> PSCs are synonymous with beneficial owners in the UK, making existing regulation and legislation in both the UK and the US equally strong.<sup>20</sup>

The UK and the US are the two chosen jurisdictions for this article to compare the use of shell companies for the facilitation of money laundering and terrorist financing and their beneficial ownership laws. The main reason for choosing these two jurisdictions is their role in the global financial system whilst hosting significant financial centres such as London and New York City.<sup>21</sup> The three studies exposed the use of

shell companies to carry out money laundering and reverse money laundering that will help with conceptualised understanding of the loopholes leading to their illicit use. Therefore, the significance of the three case studies and their impact on the AML/CTF approach taken by the UK and the US will be discussed further.

### 3. The case studies and the approach taken by the UK and the US

The three case studies will be considered and relevant commentary supporting the aim of this article which is to explore the impact of beneficial ownership laws and how they aim to minimise money laundering and terrorist financing being facilitated through anonymous shell companies in the UK and the US. Considering the changes in legislation and initiative of the two jurisdictions following the case study leaks by the International Consortium of Investigative Journalists (ICIJ) is key to understanding the historical development of beneficial ownership laws. To complete this critical analysis in a historical manner, changes after the Panama Papers that got leaked in 2016, will be considered first. The Panama Papers leak per Verhezen, 'placed the issue of beneficial ownership at the centre of global media attention' and were the required 'platform' to persuade governments to act on the issues revealed.<sup>22</sup> Moreover, Verhezen stated that 'a more radical form of transparency' is needed.<sup>23</sup> This statement was further supported by international bodies such as transparency international, the FATF and the OECD.<sup>24</sup> When the leak happened, academics such as Fenwick and Vermeulen were hesitant with the application of stricter rules as they would cause 'reporting fatigue'.<sup>25</sup> Nevertheless, the UK implemented a public central beneficial ownership register in 2016 through Companies House.<sup>26</sup> The US held back from the creation of a beneficial ownership until recently, when it was discovered through the FATF MER that the US did not follow the recommendations regarding beneficial owners in 2014.<sup>27</sup> This has recently changed since the US will be implementing

<sup>21</sup> City of London, 'London and New York Tie as Top Global Financial Centres According to New Benchmarking Research' (City of London, 30 March 2023) < <https://news.cityoflondon.gov.uk/london-and-new-york-tie-as-top-global-financial-centres-according-to-new-benchmarking-research/> > accessed on 16th June 2023.

<sup>22</sup> M. Fenwick, E. P. M. Vermeulen and P. Lighting, 'Disclosure of Beneficial Ownership after the Panama Papers' (2016) Lex Research Topics in Corporate Law & Economics Working Paper No. 2016-3, 1, 4; The Economist, 'The Lesson of the Panama Papers' *The Economist* (9 April 2016).

<sup>23</sup> P. Verhezen, 'Fear and Regret – Or Trust: From "Transparency as a Way to Control" to "Radical Transparency to Empower"', (2015) 38 IFC Corporate Governance Knowledge Publication < <https://documents1.worldbank.org/curated/en/260321468198010273/pdf/106039-BRI-PUBLIC-PSO-38-Fear-and-Regret-Or-Trust-September-2015.pdf> > accessed on 23rd March 2023.

<sup>24</sup> OECD, 'Building Effective Beneficial Ownership Frameworks' (2021) < [https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit\\_en.pdf](https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit_en.pdf) > accessed on 24th August 2023; Transparency International, 'Shell Companies Make Fighting Foreign Bribery an Uphill Struggle. It is Time Major Economies Took Action' (2020) < <https://www.transparency.org/en/blog/shell-companies-make-fighting-foreign-bribery-a-sisyphean-task-when-will-major-economies-realise> > accessed on 26th August 2023; Financial Action Task Force, 'Guidance on Beneficial Ownership of Legal Persons' (2023) < <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html#:~:text=10%20March%202023%20%2D%20In%20March,the%20true%20owners%20of%20companies> > accessed on 26th August 2023.

<sup>25</sup> M. Fenwick, E. P. M. Vermeulen and P. Lighting, 'Disclosure of Beneficial Ownership after the Panama Papers' (2016) Lex Research Topics in Corporate Law & Economics Working Paper No. 2016-3, 1, 3.

<sup>26</sup> Government UK, 'Factsheet: Beneficial Ownership' (2023) < <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/factsheet-beneficial-ownership#:~:text=The%20two%20main%20objectives%20of,its%20kind%20in%20the%20world.> > accessed on 12th August 2023.

<sup>27</sup> Financial Action Task Force, 'Guidance on Transparency and Beneficial

(footnote continued)

%20the%20means,drugs%20or%20people%20C%20or%20kidnapping > accessed on 16th June 2023.

<sup>13</sup> S. Baradaran and others, 'Funding Terror' (2014) 162(3) U.Pa.L.Rev. 477-536.

<sup>14</sup> *Ibid.*, 482.

<sup>15</sup> A. McSmith, 'Home Office: Cost of Fighting Terrorism Triples to £3.5bn by 2010' *Independent* (10 October 2007); J. Mueller and M. G. Stewart, 'Balancing the Risks, Benefits, and Costs of Homeland Security' (2011) < <https://www.hsaj.org/articles/43> > accessed on 7th July 2023; M. J. Mandel and others, 'The Cost of Fighting Terrorism' *Bloomberg Businessweek* (16 September 2002).

<sup>16</sup> International Monetary Fund, 'The IMF and the Fight Against Money Laundering and Terrorism Financing' (IMF, 2023) < <https://www.imf.org/en/About/Factsheets/Sheets/2023/Fight-against-money-laundering-and-terrorism-financing> > accessed on 7th July 2023.

<sup>17</sup> UK Government, 'Factsheet: Beneficial Ownership' (2023) < <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/factsheet-beneficial-ownership> > accessed on 3rd March 2023.

<sup>18</sup> Financial Crimes Enforcement Network, 'Beneficial Ownership Information Reporting Rule Fact Sheet' (2022) < <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet> > accessed on 3rd March 2023.

<sup>19</sup> Companies Act 2006, ss.790 C(2) and (3); Schedule 1 A, Part 1, paras 2-6.

<sup>20</sup> UK Government, 'People with Significant Control (PSCs)' (2022) < <https://www.gov.uk/guidance/people-with-significant-control-pscs> > accessed on 3rd March 2023.

new Beneficial Ownership Information (BOI) Rules under the Corporate Transparency Act (CTA) 2020 that will be effective after January 1st 2024.<sup>28</sup> Adopting a central beneficial ownership register is essential for the minimisation of anonymity for the creation and ownership of shell companies, however, as per Gilmour, adopting beneficial ownership registers without international cooperation is a superficial way to address ownership difficulties.<sup>29</sup>

The UK highlighted three main points of action after the Panama Papers, which were explained in Hansard.<sup>30</sup> The Hansard did not state a formal reason why the Panama Papers themselves could not be used as evidence by HMRC in a prosecution, as evidence from the leak has never been challenged under s.78 of the Police and Criminal Evidence Act 1984.<sup>31</sup> This is evidence of the UK Government not taking enough steps towards the prosecution of individuals evading tax, laundering money, financing terrorism or pursuing other illicit activities through unregulated shell companies leaked by Panama Papers. The Panama Papers leak developed perceptions of academics such as Radon and Achuthan for law reforms in the US as well.<sup>32</sup> Vail commented that the existing range of investigatory powers to acquire beneficial ownership information is not enough as proven by the leak.<sup>33</sup> FinCEN on the other hand, recently took action in applying a final rule in implementing BOI reporting provisions.<sup>34</sup> This rule is implemented under the CTA 2020 which is part of the Anti-Money Laundering Act 2020.<sup>35</sup> This comes to contrast the approach currently followed by the UK for example, as the UK has a publicly available BOI register.<sup>36</sup> FinCEN's decision to keep a private register also opposes FATF's latest guidance which states 'information held by the company registry should be made publicly available'.<sup>37</sup> The Panama Papers has pushed for record-keeping of BOI in the US, however, it will be done using a different approach to what the UK is following.

A few years later, the FinCEN Files leak in 2020 brought another wave of concern regarding weaknesses in global Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) systems and vulnerabilities within the global financial system. The FinCEN Files leak consisted of leaked files that detailed money flows of over \$2.5trillion suspected to be proceeds of crime and emphasis will be placed on the

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Ownership' (2014) FATF < <https://www.fatf-gafi.org/en/publications/fatfrecommendations/documents/transparency-and-beneficial-ownership.html> > accessed on 24th March 2023.

<sup>28</sup> Corporate Transparency Act 2020.

<sup>29</sup> P. M. Gilmour, 'Lifting the Veil on Beneficial Ownership: Challenges of Implementing the UK's Registers of Beneficial Owners' (2021) 23(4) J.M.L.C. 717, 733.

<sup>30</sup> HC Deb 11 April 2016, vol 608 cols 23–49 W.

<sup>31</sup> Police and Criminal Evidence Act 1984; Lexis PSL, 'Panama Papers – What Are the Implications for UK Taxpayers?' *Lexis PSL* (13 April 2016)

<sup>32</sup> J. Radon and M. Achuthan, 'Beneficial Ownership Disclosure: The Cure for the Panama Papers Ills' (2017) 70(2) *Journal of International Affairs* 85.

<sup>33</sup> N. Vail, 'Cracking Shells: The Panama Papers & Looking to the European Union's Anti-Money Laundering Directive as a Framework for Implementing a Multilateral Agreement to Combat the Harmful Effects of Shell Companies' (2017) 5 *TEX. A&M L. Rev.* 133, 143.

<sup>34</sup> Financial Crimes Enforcing Network, 'Beneficial Ownership Information Reporting Rule Fact Sheet' (2022) < <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet> > accessed on 27th August 2023.

<sup>35</sup> Corporate Transparency Act 2020; Anti-Money Laundering Act 2020.

<sup>36</sup> *Ibid.*

<sup>37</sup> Financial Crimes Enforcing Network, 'Fact Sheet: Beneficial Information Access and Safeguards Notice of Proposed Rulemaking (NPRM)' (2022) < <https://www.fincen.gov/nprm-fact-sheet> > accessed on 27th August 2023; Financial Action Task Force, 'Guidance on Beneficial Ownership of Legal Persons' (2023) FATF < <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html> > accessed on 27th August 2023.

Danske Estonia incident.<sup>38</sup> The Danske Estonia case focused on the role of financial institutions in facilitating money laundering through shell companies predominantly set up in the UK.<sup>39</sup> Internationally, concerns include bank staff failing to detect and report crimes, reputational risks with customers involved in illicit activities, and the demand for enhanced AML/CTF measures.<sup>40</sup> The role of shell companies in this case took place in the layering phase of money laundering when transactions such as wire transfers and purchase of property was facilitated through them.<sup>41</sup> By establishing a beneficial ownership register this level of anonymity is no longer possible.

The final case study is the Pandora Papers which got released in 2021 and emphasised the use of shell companies. The Pandora Papers brought to light how shell companies are used to go around AML/CTF regulations.<sup>42</sup> The European Parliament highlighted the loopholes in beneficial ownership laws that were brought up after the Pandora Papers leak.<sup>43</sup> This case study revealed a lack of cooperation between jurisdictions and threatened to undermine the success of an interconnected system.<sup>44</sup> The European Parliament applauded the revised FATF Recommendation 24 because it recognised the necessity for a well-coordinated platform for sharing beneficial ownership.<sup>45</sup> Both the UK and the US agreed to implement and adhere to the updated FATF Recommendation 24.<sup>46</sup> The aim of the revised Recommendation 24 is to move towards a central register containing beneficial ownership information.<sup>47</sup> As per Thomas-James, a decision needs to be made by FATF whether the beneficial ownership register needs to be public

<sup>38</sup> International Consortium of Investigative Journalists, 'FinCEN Files' (2021) < <https://www.icij.org/investigations/fincen-files/> > accessed on 27th August 2023; International Consortium of Investigative Journalists, 'Inside scandal-rocked Danske Estonia and the Shell Company 'Factories' that Served It' (2020) < <https://www.icij.org/investigations/fincen-files/inside-scandal-rocked-danske-estonia-and-the-shell-company-factories-that-served-it/> > accessed on 27th August 2023.

<sup>39</sup> E. Bjerregaard and T. Kirchmaier, 'The Danske Bank Money Laundering Scandal: A Case Study' (2019) < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3446636](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3446636) > accessed on 20th June 2023.

<sup>40</sup> G. Gricius, 'The Danske Bank Scandal Is The Tip of the Iceberg' *Foreign Policy* (8 October 2018) < [https://foreignpolicy.com/2018/10/08/the-danske-bank-scandal-is-the-tip-of-the-iceberg-money-laundering-estonia-denmark-regulation-financial-crime/#cookie\\_message\\_anchor](https://foreignpolicy.com/2018/10/08/the-danske-bank-scandal-is-the-tip-of-the-iceberg-money-laundering-estonia-denmark-regulation-financial-crime/#cookie_message_anchor) > accessed on 27th August 2023.

<sup>41</sup> J. Garside, 'Is Money Laundering Scandal at Danske Bank the Largest in History?' *The Guardian* (21 September 2018) < <https://www.theguardian.com/business/2018/sep/21/is-money-laundering-scandal-at-danske-bank-the-largest-in-history> > accessed on 27th August 2023.

<sup>42</sup> T. J. Gorny, 'The Pandora Papers and the Effect on AML Compliance Teams in the Future' (2021) < <https://www.sanctions.io/blog/the-pandora-papers-and-the-affect-on-aml-compliance-teams-in-the-future#:~:text=Not%20only%20do%20the%20Pandora,around%20anti%20money%20laundering%20regulations> > accessed on 27th August 2023.

<sup>43</sup> European Parliament, 'REPORT On Lessons Learnt from the Pandora Papers and Other Revelations' (*European Parliament*, 29 March 2023) < [https://www.europarl.europa.eu/doceo/document/A-9-2023-0095\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0095_EN.html) > accessed on 28th August 2023.

<sup>44</sup> *Ibid.*; Transparency International, 'Pandora Papers: How Heads (Of State) Roll' (Transparency International, 15 October 2021) < <https://www.transparency.org/en/blog/pandora-papers-chile-pinera-dominga-heads-of-state-roll> > accessed on 28th August 2023.

<sup>45</sup> *Ibid.*

<sup>46</sup> Financial Action Task Force, 'Guidance on Beneficial Ownership of Legal Persons' (2023) < <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html> > accessed on 28th August 2023; U.S. Department of State, 'Summit for Democracy Commitment on Beneficial Ownership and Misuse of Legal Persons' (U.S. Department of State, 29 March 2023) < <https://www.state.gov/summit-for-democracy-commitment-on-beneficial-ownership-and-misuse-of-legal-persons/> > accessed on 28th August 2023.

<sup>47</sup> *Ibid.*

information and improve existing information exchange mechanisms.<sup>48</sup> Further awareness that the Pandora Papers brought are the Register of Overseas Entities introduced by the UK through the ECA 2022 and for the US, the introduction of the first final rule on the creation of a register for beneficial ownership information through the Corporate Transparency Act (CTA).<sup>49</sup> Overall, the Pandora Papers have resulted in an organised response to revise Recommendation 24, and for both the UK and the US to improve on their central registers and/or create the first final rule on beneficial ownership information collection.<sup>50</sup>

### 3.1. The change of beneficial ownership regulation through the time for the UK and the US

The UK was the first G20 country that implemented a public register of beneficial owners through Companies House.<sup>51</sup> This decision of the UK Government was heavily influenced by the 2015 National Risk Assessment of Money Laundering and Terrorism Financing after its findings of suspected billions of pounds as proceeds of crime and laundered through the UK each year.<sup>52</sup> The observations made pushed the UK Government into creating more transparency and therefore inserted provisions for beneficial ownership transparency into the Companies Act 2006.<sup>53</sup> The public register is called the Persons with Significant Control (PSC) Register, and a PSC is essentially beneficial owner.<sup>54</sup> To elaborate on UK existing laws on public beneficial ownership register, Part 1 of the ECA 2022 is aimed at the registration of overseas entities with the Companies House.<sup>55</sup> This is where the Register for Overseas Entities (RoE) was introduced as mentioned above following the Pandora Papers leak. Part 1 of the ECA 2022 came into force on the 1st of August 2022 and since its implementation 26,342 overseas entities were registered until early March 2023 out of the 139,152 companies that were asked to register, amounting to only 18.9% of companies being registered out of those required.<sup>56</sup> How fast

<sup>48</sup> D. Thomas-James, 'Editorial: Interdicting Economic Crime Through Beneficial Ownership: An International Standard at Last?' (2022) 25(3) *Journal of Money Laundering Control* 489, 490.

<sup>49</sup> UK Government, 'Register of Overseas Entities' (2023) < <https://www.gov.uk/government/collections/register-of-overseas-entities> > accessed on 28th August 2023; Financial Crimes Enforcement Network, 'Beneficial Ownership Information Reporting' (2022) < <https://www.fincen.gov/boi> > accessed on 28th August 2023.

<sup>50</sup> Risk Screen, 'Pandora Papers and the Future of Ultimate Beneficial Ownership' (*Risk Screen*, 17 November 2021) < <https://riskscreen.com/blog/pandora-papers-and-the-future-of-ultimate-beneficial-ownership/> > accessed on 10th August 2023; Financial Action Task Force, 'Public Statement on Revisions to R.24' (FATF, 4 March 2022) < <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/R24-statement-march-2022.html> > accessed on 10th August 2023.

<sup>51</sup> UK Government, 'Enhancing Transparency of Beneficial Ownership Information of Foreign Companies Undertaken Certain Economic Activities in the UK' (2016) < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/512333/bis-16-161-beneficial-ownership-transparency.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/512333/bis-16-161-beneficial-ownership-transparency.pdf) > accessed on 26th August 2023; Does de Willebois van der E. and others, 'The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It' (2013) accessed on 26th August 2023, 18.

<sup>52</sup> HM Treasury, 'UK National Risk Assessment of Money Laundering and Terrorist Financing' (2015) < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468210/UK\\_NRA\\_October\\_2015\\_final\\_web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf) > accessed on 26th August 2023, 3.

<sup>53</sup> Companies Act 2006, ss.790 C(2) and (3); Schedule 1 A, Part 1, paras 2-6.

<sup>54</sup> UK Government, 'People with Significant Control (PSCs)' (2022) < <https://www.gov.uk/guidance/people-with-significant-control-pscs> > accessed on 26th August 2023.

<sup>55</sup> Economic Crime (Transparency and Enforcement) Act 2022, Part 1.

<sup>56</sup> Companies House, 'Register of Overseas Entities: The Story so Far' (*Companies House*, 7 March 2023) < <https://companieshouse.blog.gov.uk/2023/03/07/register-of-overseas-entities-the-story-so-far/> > accessed on 26th

and how successful the implementation and enforcement of this Act is thus far is arguably also caused by 'public attention' and 'political will'.<sup>57</sup> Most recently, the Economic Crime and Corporate Transparency Act 2023 became law in October 2023, bringing in significant changes such as the expansion of the identification principle, a failure to prevent fraud offence and extended pre-investigation powers to the Serious Fraud Office (SFO) and Companies House.<sup>58</sup> The success of the new Act cannot be established since it has been in force for a few months and no results or observations have been published by the Government yet.

In contrast, the US lacks a central beneficial ownership register and has only recently moved towards establishing one through the CTA. The CTA is part of the Money Laundering Act, and the addition of this final rule aims to strengthen the US' AML/CTF approach.<sup>59</sup> Most recently, New York has announced that the State will independently implement their own public beneficial ownership through the LLC Transparency Act (LLC Act).<sup>60</sup> The approach taken by New York as an independent state is different to what the US will be taking as a whole, with the New York register having publicly available information and a fine of \$250 for non-disclosure of beneficial owners.<sup>61</sup> This is in contrast to the approach taken through the CTA which will not be a public register. As per Recommendation 24, a register containing beneficial ownership information must be public or in an 'alternative mechanism if it ensures rapid and efficient access to beneficial ownership information'.<sup>62</sup> The step taken by New York independently is a start towards pushing the US for a public register containing beneficial ownership information. As per Dechert LLP, the aim of the CTA is 'to prevent money laundering and the financing of terrorism through the use of shell companies'.<sup>63</sup> This statement reinforces the relevance of strong beneficial ownership laws and the prevention of money laundering and terrorist financing being facilitated through shell companies.

The topic of money laundering and terrorist financing facilitated through shell companies is not extensively explored within the academic community, making it an intriguing subject for research. The FATF and its publications including Mutual Evaluation Reports (MERs), Guidance and Publication papers are used to develop a deeper understanding of the topic and the requirements for a successful beneficial ownership register. It should be noted that the FATF Recommendations are not binding in international law and the FATF itself is an inter-governmental group with no legal personality of its own.<sup>64</sup> FATF, however, supports jurisdiction to maximise the effectiveness of anti-

(footnote continued)

August 2023.

<sup>57</sup> Eversheds Sutherland, 'The UK Government Introduces the Economic Crime and Corporate Transparency Bill' (*Eversheds Sutherland*, 27 September 2022) < <https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Financial-services-and-dispute-investigation/The-UK-Government-introduces-the-Economic-Crime-and-Corporate-Transparency-Bill> > accessed on 26th August 2023.

<sup>58</sup> Economic Crime and Corporate Transparency Act 2023.

<sup>59</sup> Corporate Transparency Act 2020; Anti-Money Laundering Act 2020.

<sup>60</sup> LLC Transparency Act.

<sup>61</sup> Pillsbury, 'New York Legislature Passes LLC Transparency Act' (2023) < <https://www.pillsburylaw.com/en/news-and-insights/new-york-legislature-passes-llc-transparency-act.html> > accessed on 28th August 2023.

<sup>62</sup> Financial Action Task Force, 'Guidance on Beneficial Ownership of Legal Persons' (2023) < <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html#:~:text=10%20March%202023%20%2D%20In%20March,the%20true%20owners%20of%20companies> > accessed on 26th July 2023.

<sup>63</sup> Dechert LLP, 'Are You Ready for the Corporate Transparency Act?' (*Dechert LLP*, 27 June 2023) < <https://www.dechert.com/knowledge/onpoint/2023/6/are-you-ready-for-the-corporate-transparency-act-.html> > accessed on 29th August 2023.

<sup>64</sup> G. Stessens, *Money Laundering: A New International Law Enforcement Model* (CSICL 2000); C. Rose, *International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems* (OUP 2015), 177-2015.

money laundering procedures using more measures other than keeping a beneficial ownership register such as the reporting of international transfers and the imposition of targeted financial sanctions.<sup>65</sup> These measures, as per Moiseienko, are 'united in their objective of preventing money laundering, detecting it or confiscating the proceeds of crime'.<sup>66</sup>

The importance of MERs lies with recording improvements made in following the guidance provided through the FATF Recommendations. The UK has improved massively since the 2007 MER which concluded that 'the UK was only compliant with 18 out of 40 Recommendations, largely compliant on nine, partially compliant on nine and non-compliant to three'.<sup>67</sup> In 2018, the UK received the best rating out of 100 countries for its AML/CTF regime and recognition that the UK is fully compliant with UN Conventions.<sup>68</sup> The US on the other hand has recently made progress in complying with FATF Recommendations such as for example their recent agreement to implementing Recommendation 24 and acting on it through the final rule introduced in the CTA.<sup>69</sup> In 2022, the US was still non-compliant with four recommendations, partially compliant to five, largely compliant to twenty two and compliant to nine.<sup>70</sup> A successful AML/CTF regime as per Putman, mainly depends on the efficiency of its components.<sup>71</sup> Therefore, it is important to consider the different aspects contributing to strong AML/CTF measures for each jurisdiction and how to keep improving.

The methodology and methods for this research have been identified based on the research questions and what the article aims to portray.<sup>72</sup> The appropriate methodology for this research is the socio-legal methodology which will be supported by comparative and case study methods. Allowing for external influences towards the law is an important distinction to be made to evaluate the successes and failures of achieving positive results using this methodology.<sup>73</sup> As a result, this methodology will aid in discovering the social and political contexts that influence decisions about shell companies and the laws governing beneficial ownership in the UK and the US. The UK and the US were the two chosen jurisdictions based on their importance as global financial markets.<sup>74</sup> The aim for this comparison is to establish whether one of

the two jurisdictions managed to do more in terms of regulation and has seen better results than the other.<sup>75</sup> The choice of methods is an important basis for the success of the implementation of the socio-legal methodology.

### 3.2. An analysis of case studies

Case studies are an integral part of this article since they will be used to showcase the significance of past events into reforming regulation to prevent similar events from reoccurring. Case studies are significant because they represent significant historical events and how particular circumstances lead to a condition that must be prevented from re-occurring.<sup>76</sup> The aim of this part is to provide an understanding of the events that happened and how those contributed to the facilitation of financial crime. The common aspect of the three case studies is the contribution of shell companies for the facilitation of money laundering and terrorism financing. The analysis of these case studies is closely aligned to the aim of this article which is to understand the relationship between anonymous shell companies, money laundering and terrorism financing, whilst understanding the impact of beneficial ownership laws in mitigating these risks. The most relevant cases that showcased the facilitation of financial crime using anonymous shell companies are some of the most popular leaks made by the International Consortium of Investigative Journalists (ICIJ). Those cases are the Panama Papers, the FinCEN Files and the Pandora Papers that will be used to provide historical context of the issues that caused the leaks.<sup>77</sup> What caused the issues of anonymity and the requirement of beneficial ownership laws as a result of Panama Papers will be discussed, as well as the shift of focus to the UK Companies Register after the FinCEN Files with a focus on the case of Danske Estonia. The Pandora Papers will also be discussed to understand the impact of Know Your Customer (KYC) procedures and the changes in the compliance sector of financial services after the leak. Following this approach, the reader will be able to understand how the information links together and understand whether there is any positive progress happening. After considering an overview of events historically since the leaks happened, the updates of legislation and policies for the UK and US respectively will be critically analysed in a comparative form.

#### 3.2.1. Panama Papers

One of the most important case studies historically as a financial crime exposé, is the Panama Papers leak. The Panama Papers is one of the biggest data leaks that exposed a system 'that enables crime, corruption and wrongdoing, hidden by secretive offshore companies'.<sup>78</sup> It is also the biggest whistleblowing case that revealed documents regarding 'financial records, emails chains and corporate filings' which were all linked back to one Panamanian law firm, Mossack Fonseca.<sup>79</sup>

(footnote continued)

< <https://cepr.org/voxeu/columns/understanding-global-role-us-economy> > accessed on 11th July 2023.

<sup>75</sup> J. Smits, *Elgar Encyclopedia of Comparative Law* (Edward Elgar, 2006) 57–60.

<sup>76</sup> S. Crowe and others, 'The Case Study Approach' (2011) 11 *BCM Med Res Methodol* 100.

<sup>77</sup> International Consortium of Investigative Journalists, 'The Panama Papers: Exposing the Rogue Offshore Finance Industry' (2016) < <https://www.icij.org/investigations/panama-papers/> > accessed on 3rd March 2023; International Consortium of Investigative Journalists, 'Inside scandal-rocked Danske Estonia and the shell-company 'factories' that served it' (2020) < <https://www.icij.org/investigations/fincen-files/inside-scandal-rocked-danske-estonia-and-the-shell-company-factories-that-served-it/> > accessed on 2nd June 2023; International Consortium of Investigative Journalists, 'Pandora Papers' (2021) < <https://www.icij.org/investigations/pandora-papers/> > accessed on 2nd June 2023.

<sup>78</sup> International Consortium of Investigative Journalists, 'The Panama Papers: Exposing the Rogue Offshore Finance Industry' (2016) ICIJ < <https://www.icij.org/investigations/panama-papers/> > accessed on 3rd March 2023.

<sup>65</sup> AUSTRAC, 'Money Transferred To and From Overseas: International Funds Transfer Instruction (IFTI) Reports' (2021) < <https://www.austrac.gov.au/business/core-guidance/reporting/money-transferred-and-overseas-international-funds-transfer-instruction-ifti-reports> > accessed on 29th August 2023; A. Moiseienko, *Corruption and Targeted Sanctions: The Law and Policy of Anti-Corruption Entry Bans* (Brill Nijhoff 2019).

<sup>66</sup> A. Moiseienko, 'Does international law prohibit the facilitation of money laundering?' (2023) 36(1) *L.J.I.L.* 109, 122.

<sup>67</sup> N. Ryder, S. Bourton and D. Hall, 'The United Kingdom, organized crime and money laundering' in D. Jasinski, A. Phillips and E. Johnston, *Organised Crime, Financial Crime and Criminal Justice* (Routledge, 2023) 220.

<sup>68</sup> FATF, 'Mutual Evaluation Report of the United Kingdom' (2018) < <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER-United-Kingdom-2018.pdf> > accessed on 14th August 2023.

<sup>69</sup> Financial Action Task Force, 'The United Kingdom's Progress in Strengthening Measures to Tackle Money Laundering and Terrorist Financing' (2022) < <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fur-united-kingdom-2022.html> > accessed on 26th July 2023.

<sup>70</sup> Ibid.

<sup>71</sup> R.D. Putman, 'Diplomacy and domestic politics: the logic of two-level games' *International Organization* (1998) 42(3) 427–460.

<sup>72</sup> M. Salter and J. Mason, *Writing Law Dissertations* (Pearson Education Limited 2007) 39.

<sup>73</sup> S. Taekema, W. van der Burg, *Towards a Fruitful Cooperation between Legal Philosophy, Legal Sociology and Doctrinal Research: How Legal Interactionism May Bridge Unproductive Oppositions*, in R. Nobles, D. Schiff, *Law, Society and Community: Socio-Legal Essays in Honour of Roger Cotterrell*, (Ashgate, 2014), 141.

<sup>74</sup> M. Feridun, 'Cross-jurisdictional Financial Crime Risks: What can we Learn from the UK Regulatory Data?' (2023) ahead of print JFC < <https://www.emerald-com.ezproxy.uwe.ac.uk/insight/content/doi/10.1108/JFC-03-2023-0044/full/html> > accessed on 11th July 2023; M. Stocker and others, 'Understanding the Global Role of the US Economy' (*CEPR*, 27 February 2017)

The response to Panama Papers was the involvement of jurisdictions in strengthening the laws around money laundering and tax evasion.<sup>80</sup> One of the most crucial questions arising from the Panama Papers is the identity of Mossack Fonseca's true clients, with over 100 ICIJ media partners worldwide revealing offshore financial secrets involving various personalities, including world leaders, politicians, criminals, and celebrities.<sup>81</sup> The whistleblower, who is also known as John Doe, provided a statement as justification for the leak.<sup>82</sup> In the statement, John Doe explicitly states that even though 'shell companies are not illegal by definition', they are 'used to carry out a wide array of serious crimes that go beyond evading tax'.<sup>83</sup> The contribution of shell companies towards the financial crimes of money laundering and reverse money laundering are known in the cases of Syria, Russia and Uganda.<sup>84</sup> As per the Parliamentary Assembly 'offshores apparently played a part in financing war crimes in Syria' and the services provided by Mossack Fonseca were 'accused of supplying fuel to the Syrian Air Force'.<sup>85</sup> Moreover, a company in Uganda paid Mossack Fonseca to help them avoid \$400 m in taxes and that amount would have covered the government's health budget for a whole year.<sup>86</sup> These examples showcase the risks taken by Mossack Fonseca and explain the Panamanian Supreme Court's decision to charge Mossack Fonseca associates 'with covering up the illicit origin and ownership of money and assets'.<sup>87</sup> This is the only charge the Supreme Court could issue since the creation of anonymous corporations in Panama was legal as per a Panamanian law passed in 1927.<sup>88</sup> The prime reason that Mossack Fonseca was able to carry out these activities is because they were legal to a large extent by Panamanian Law.

Panama Papers exposed the ability of shell companies to be used to hide financial crimes other than tax evasion, such as money laundering and the intention to use money for reverse money laundering. Anonymous shell companies are 'useful for money laundering through real estate transactions', however this is not the only reason that anonymous shell companies are used.<sup>89</sup> The importance of anonymity

for the creation of these corporate structures should be emphasised. Mossack Fonseca was operating in at least 21 jurisdictions, and all those jurisdictions allowed the incorporation of companies without the requirement of real identity of owners.<sup>90</sup> The mere requirement of Mossack Fonseca was to keep records of the clients and they often failed to do that too.<sup>91</sup> The lack of monitoring for setting up companies alarmed international organisations such as the OECD, UN and FATF.<sup>92</sup> After the Panama Papers were released in 2016, beneficial ownership regulation became the a focal point for discussion, however, that was not enough of a motivator for all jurisdictions at least within Europe to create beneficial ownership registers.<sup>93</sup> This issue is a running thread among the following cases that will be discussed.

### 3.2.2. FinCEN Files – Danske Estonia

The second case study related to the aim of this article is the case of Danske Estonia from the FinCEN Files leak. The case of Danske Estonia shifted the focus on the role of financial institutions in the facilitation of money laundering.<sup>94</sup> This case was one of the major cases presented in the FinCEN Files leak by ICIJ.<sup>95</sup> The documents leaked in FinCEN Files detailed money flows of over \$2 trillion suspected to be proceeds of crime or corruption.<sup>96</sup> Specifically, to the case of Danske Estonia, it all started with an initial email from the 54-year-old Estonian banker, also known as the whistle-blower of the case. He suspected the existence of nine anonymous companies in the UK for serious financial crimes and threatened to go to the authorities. In 2014, that moment started to unravel one of the largest money laundering scandals in history.<sup>97</sup> After further investigations, there were hundreds of mysterious UK registered companies holding bank accounts with Danske Estonia but had no obvious business activity or public owners that were visible. This was largely due to allowing business with non-resident customers.<sup>98</sup> Danske Bank Group was separate to the Estonian branch, and many documents including customer information were written in Estonian or Russian, therefore Group could not have the same insight into the branch.<sup>99</sup> The

<sup>79</sup> C. F. S. Del Mundo, 'How Countries Seek to Strengthen Anti-Money Laundering Laws in Response to the Panama Papers, and the Ethical Implications of Incentivizing Whistleblowers', (2019) 40(1) Northwest.J.Int'l L. & Bus. 89.89.

<sup>80</sup> *ibid*

<sup>81</sup> International Consortium of Investigative Journalists, 'Panama Papers: Mass Prosecution Forces Mossack Fonseca Back Into the Spotlight in Panama' (2022) < <https://www.icij.org/investigations/panama-papers/mass-prosecution-forces-mossack-fonseca-back-into-the-spotlight-in-panama/> > accessed on 3rd March 2023.

<sup>82</sup> International Consortium of Investigative Journalists, 'Panama Papers: John Doe Statement' (2016) < <https://www.icij.org/investigations/panama-papers/20160506-john-doe-statement/> > on 3rd March 2023.

<sup>83</sup> *Ibid*.

<sup>84</sup> International Consortium of Investigative Journalists, 'The Panama Papers: Victims of Offshore' (3 April 2016) < [https://www.youtube.com/watch?v=F6XnH\\_OnpO0](https://www.youtube.com/watch?v=F6XnH_OnpO0) > accessed 3rd March 2023; Parliamentary Assembly, 'Lessons from the 'Panama Papers' to Ensure Fiscal and Social Justice' (2016) < <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23018&lang=en> > accessed on 7th September 2023.

<sup>85</sup> *Ibid*; J. Garside and D. Pegg, 'Mossack Fonseca serviced Assad cousin's firms despite Syria corruption fears' *The Guardian* (5 April 2016) < <https://www.theguardian.com/news/2016/apr/05/mossack-fonseca-panama-papers-rami-makhlouf-syria-assad-hsbc> > accessed on 7th September 2023.

<sup>86</sup> *Ibid*; K. Watkins, 'Forget the Camerons, the African Giveaway is the real Panama Papers Story' *The Guardian* (26 April 2016) < <https://www.theguardian.com/news/2016/apr/26/forget-the-camerons-the-african-giveaway-is-the-real-panama-papers-story> > accessed on 7th September 2023.

<sup>87</sup> International Consortium of Investigative Journalists, 'Panama Papers: Mass Prosecution Forces Mossack Fonseca Back Into the Spotlight in Panama' (2022) < <https://www.icij.org/investigations/panama-papers/mass-prosecution-forces-mossack-fonseca-back-into-the-spotlight-in-panama/> > accessed on 3rd March 2023.

<sup>88</sup> *Ibid*.

<sup>89</sup> Council on Foreign Relations, 'How Anonymous Shell Companies Finance Insurgents, Criminals and Dictators' (*Council on Foreign Relations*, 7 September 2017) < <https://www.cfr.org/report/how-anonymous-shell-companies-finance-insurgents-criminals-and-dictators> > accessed 3rd March 2023.

<sup>90</sup> International Consortium of Investigative Journalists, 'Explore the Panama Papers Key Figures' (2017) < <https://www.icij.org/investigations/panama-papers/explore-panama-papers-key-figures/> > accessed on 3rd March 2023.

<sup>91</sup> D. Pegg, 'Panama Papers Firm Did Not Know Who 75 % of Its Clients Were' *The Guardian* (20 June 2018) < <https://www.theguardian.com/world/2018/jun/20/panama-papers-firm-mossack-fonseca-did-not-know-who-75-of-its-clients-were> > accessed on 2nd June 2023.

<sup>92</sup> Efficient Frontiers, 'Panama, Paradise and the Pandora Papers' (Efficient Frontiers International, 13 December 2021) < <https://efilimited.com/resources/panama-paradise-and-the-pandora-papers/> > accessed 2nd June 2023.

<sup>93</sup> Transparency International, 'Panama Papers Four Years On: Anonymous Companies and Global Wealth' (2020) < <https://www.transparency.org/en/news/panama-papers-four-years-on-anonymous-companies-and-global-wealth> > accessed on 16th June 2024.

<sup>94</sup> International Consortium of Investigative Journalists, 'Inside scandal-rocked Danske Estonia and the shell-company 'factories' that served it' (2020) < <https://www.icij.org/investigations/fincen-files/inside-scandal-rocked-danske-estonia-and-the-shell-company-factories-that-served-it/> > accessed on 2nd June 2023.

<sup>95</sup> *Ibid*.

<sup>96</sup> International Consortium of Investigative Journalists, 'About the FinCEN Files Investigation' (2020) < <https://www.icij.org/investigations/fincen-files/about-the-fincen-files-investigation/> > accessed on 20th June 2023.

<sup>97</sup> E. Bjerregaard and T. Kirchmaier, 'The Danske Bank Money Laundering Scandal: A Case Study' (2019) < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3446636](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3446636) > accessed on 20th June 2023.

<sup>98</sup> Financial Times, 'How Danske Bank's Estonia branch became a Pipeline for Dirty Money' (2019) < <https://www.youtube.com/watch?v=XYb5UUopLrA> > accessed on 20th June 2023.

risks for a smaller sized bank such as Danske Estonia ending up being involved in financial crime is not increased nor decreased, there are just different risks.<sup>100</sup> A reason that money launderers may prefer to use a community bank or small credit union is the lack of resources compared to large financial institutions.<sup>101</sup> The significance of the Danske Estonia case for this article is the responsibility of financial institutions for transaction monitoring and having strong internal controls and measures against money laundering and terrorist financing. Financial institutions pose a responsibility under both UK and US law through the Financial Conduct Authority (FCA) and the Financial Crime Enforcement Network (FinCEN) respectively to carry out due diligence on their customers and ensure that they meet basic requirements such as named Ultimate Beneficial Owners (UBOs) and an address that the company's activities take place.<sup>102</sup> Estonia, however, does not enforce any Know Your Customer (KYC) regulations even to this day officially, yet state on their website that Estonia follows European guidance as participating in international organisations.<sup>103</sup> The approach taken by Estonia emphasises the importance of international cooperation on beneficial ownership regulation and enforcement of an international standard towards due diligence. These positions will be discussed further throughout the article.

### 3.2.3. Pandora Papers

The most recent leak made by ICIJ is the Pandora Papers leak which highlighted how shell companies are used for illicit purposes and are used to circumvent Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regulations. The Pandora Papers is the largest leak to date, acting as the 'wake-up call' from past case studies such as the Panama Papers and FinCEN Files which caused a wave of reforms.<sup>104</sup> The data shared showcases mechanisms that wealthy individuals use to avoid or evade tax through shell companies and/or incognito bank accounts.<sup>105</sup> The Pandora Papers showed that offshore activities take place everywhere in the world and that includes the world's largest democracies.<sup>106</sup> There are key players in this process and these include 'elite institutions – multinational banks, law firms and

accounting practices – headquartered in the U.S. and Europe'.<sup>107</sup> The importance of the Pandora Papers lies in proving the increased complexity of action required to figuring out 'safe-havens for illicit finance'.<sup>108</sup> Their release caused a shift of focus towards the creation of central beneficial ownership registers. There were also responses from organisations such as Transparency International and the FATF as also mentioned in the introduction.<sup>109</sup> The Pandora Papers were the final push towards the enforcement of beneficial ownership laws and appears to be one of the motivators for the US to apply a final rule on the Corporate Transparency Act.<sup>110</sup> The use of shell companies to carry out financial crimes is evident in all three case studies, however, Pandora Papers signposted the danger posed by wealthy individuals using corporate structures to conceal their wealth. This once again signposts the importance of having beneficial ownership registers, so each country knows whether an individual has shares or influence over companies and as a result understand the tax responsibilities of each person in a transparent way.

Overall, the Panama Papers, FinCEN Files and Pandora Papers all contributed towards the development of regulation for shell companies and an emphasis was made around the minimisation of anonymity when it comes to their creation. These cases are central for understanding the historical development of regulations around beneficial ownership, which is the most popular method of protecting shell companies against the anonymity of owners. These case studies

<sup>99</sup> Bruun & Hjejle, 'Report on the Non-Resident Portfolio at Danske Bank's Estonian Branch' (2018) < <https://danskebank.com/-/media/danske-bank-com/file-cloud/2018/9/report-on-the-non-resident-portfolio-at-danske-banks-estonian-branch.pdf> > accessed on 20th June 2023.

<sup>100</sup> K. Sherwood, 'Smaller Banks, Higher Risks?' *Acams Today* (10 March 2020) < <https://www.acamstoday.org/smaller-banks-higher-risks/> > accessed on 24th July 2023.

<sup>101</sup> *Ibid.*

<sup>102</sup> Financial Conduct Authority. 'COB 5.2 Know Your Customer' (2004) < <https://www.handbook.fca.org.uk/handbook/COB/5/2.html?date=2006-03-01> > accessed on 16th June 2024; Financial Crimes Enforcement Network, 'Customer Due Diligence Requirements for Financial Institutions' (2016) < <https://www.fincen.gov/resources/statutes-regulations/federal-register-notices/customer-due-diligence-requirements> > accessed on 16th June 2024.

<sup>103</sup> Finantsinspeksioon, 'International Cooperation' (2018) < <https://www.fi.ee/en/financial-supervision/international-cooperation> > accessed on 16th June 2024.

<sup>104</sup> J. Tobin, 'Pandora Papers, Money Laundering and Corruption' (House of Lords Library, 10 November 2021) < <https://lordslibrary.parliament.uk/pandora-papers-money-laundering-and-corruption/#:~:text=The%20pandora%20papers%20are%20the,activities%20such%20as%20money%20laundering> > accessed on 31st July 2023; N. Hearty, 'Pandora Papers: Waking Up or Sleepwalking?' (2021) 164(74) *Solic. J.* < <https://heinonline.org/HOL/LandingPage?handle=hein.journals/solicjo197&div=354&id=&page=> > accessed on 24th July 2023.

<sup>105</sup> *Ibid.*

<sup>106</sup> International Consortium of Investigative Journalists, 'Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak' (2021) < <https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/> > accessed on 7th September 2023.

<sup>107</sup> International Consortium of Investigative Journalists, 'Offshore Havens and Hidden Riches of World Leaders and Billionaires Exposed in Unprecedented Leak' (2021) < <https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/> > accessed on 7th September 2023; International Consortium of Investigative Journalists, 'Global Banks Defy U.S. Crackdowns by Serving Oligarchs, Criminals and Terrorists' (2020) < <https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/> > accessed on 7th September 2023; International Consortium of Investigative Journalists, 'Leaked Documents Expose Global Companies' Secret Tax Deals in Luxembourg' (2014) < <https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/> > accessed on 7th September 2023.

<sup>108</sup> K. Blackwell KC, 'The Pandora Papers – Leaks, Loopholes and Lethargy' (2 Hare Court, 18 October 2021) < <https://www.2harecourt.com/training-knowledge/the-pandora-papers-leaks-loopholes-and-lethargy/> > accessed on 7th September 2023.

<sup>109</sup> Transparency International, 'Pandora Papers: How Heads (Of State) Roll' (Transparency International, 15 October 2021) < <https://www.transparency.org/en/blog/pandora-papers-chile-pinera-dominga-heads-of-state-roll> > accessed on 28th August 2023; FATF, 'Guidance on Beneficial Ownership of Legal Persons' (2023) < <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html> > accessed on 28th August 2023; U.S. Department of State, 'Summit for Democracy Commitment on Beneficial Ownership and Misuse of Legal Persons' (U.S. Department of State, 29 March 2023) < <https://www.state.gov/summit-for-democracy-commitment-on-beneficial-ownership-and-misuse-of-legal-persons/> > accessed on 28th August 2023; European Parliament, 'REPORT On Lessons Learnt from the Pandora Papers and Other Revelations' (*European Parliament*, 29 March 2023) < [https://www.europarl.europa.eu/doceo/document/A-9-2023-0095\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0095_EN.html) > accessed on 28th August 2023; Government UK, 'Find and Update the Register: Search the Register' (2023) < <https://find-and-update.company-information.service.gov.uk> > accessed 29th July 2023; V. P. Spears, 'Rules, Regulations and Releases' 139(5) (2022) *The Banking Law Journal* 241; Comply Advantage, 'What Does The Pandora Papers Leak Mean for AML/CFT Compliance?' (2021) < <https://complyadvantage.com/insights/pandora-papers-leak-aml-cft-compliance/> > accessed on 7th September 2023.

<sup>110</sup> Financial Crimes Enforcement Network, 'Fact Sheet: Beneficial Ownership Information Access and Safeguards Rule' (2023) < <https://www.fincen.gov/news/news-releases/fact-sheet-beneficial-ownership-information-access-and-safeguards-final-rule#:~:text=The%20CTA%20makes%20it%20unlawful,is%20authorized%20under%20the%20CTA.> > accessed on 16th June 2024.



highlight the use of shell companies for money laundering and terrorism financing among other illicit activities, therefore, academic commentary on these case studies is important to understand their significance both from a legal perspective and the impact on societies and economies. Moreover, they also portray a method of understanding the legal loopholes for avoiding the disclosure of beneficial owners and/or owners. The issues briefly discussed in will be further analysed in a comparative manner between the UK and the US.

### 3.3. A comparison between the UK and the US

Anti-money laundering laws have been an increasingly important topic for both the United Kingdom (UK) and the United States (US). The aim of this article is to explore how anonymous shell companies are associated to money laundering and terrorism financing and how beneficial ownership regulations minimise this phenomenon. Beneficial ownership registers are or will be implemented by both jurisdictions. Implementing beneficial ownership registers as an Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF) measure proves to be one of the key measures to protect a jurisdiction against the facilitation of illicit activities through corporate structures.<sup>111</sup> This part will examine proposed regulations for beneficial ownership laws critically and compare the outcomes achieved for each jurisdiction. With the responses of each jurisdiction to the case studies mentioned above, this part will focus on what the two jurisdictions did in a similar way and what each has done differently after the case study leaks. This will allow for a comparison of different approaches, providing an overview of how two of the major financial centres in the world are approaching beneficial ownership laws.

#### 3.3.1. The effects of case studies

After the Panama Papers scandal in 2021, it was discovered the UK and the US have similar ownership structures with both jurisdictions having diffused or ‘widely dispersed stockholders’.<sup>112</sup> What that means is no single person, specifically shareholder, owns enough stocks in a company to have the ability to exercise power over the company individually. As per Nougayrede, geographical dispersion of shareholders makes it more possible to ‘fall into the cracks between national regulatory regimes’.<sup>113</sup> This leads to non-disclosure of beneficial owners in some cases since there is no designated person with ownership of more than 25 % of the company’s shares. In such cases, the OECD expects jurisdictions to use ‘the tiered identification process’.<sup>114</sup> The tiered process provides a diagram as guidance to explain three steps of identifying a senior managing officer. The issue of identifying beneficial owners is mitigated through the threshold being set at 25 % which was found to be acceptable for both the UK and US, and it is up to jurisdictions to decide on an appropriate threshold. In the UK, in addition to the 25 % beneficial owner threshold there is a condition that aims to ensure that anyone who exercises significant control over a company is still registered, even if they own less than 25 % of the shares.<sup>115</sup>

<sup>111</sup> Transparency International, ‘The Uses and Impact of Beneficial Ownership Information’ (2023) < [https://knowledgehub.transparency.org/assets/uploads/helpdesk/The-uses-and-impact-of-beneficial-ownership-information\\_2023.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/The-uses-and-impact-of-beneficial-ownership-information_2023.pdf) > accessed on 13th August 2023.

<sup>112</sup> M. Fenwick and E. P.M. Vermeulen, ‘Disclosure of Beneficial Owners After Panama Papers’ (2016) 3 Lex Research Topics in Corporate Law & Economics Working Paper < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2777152](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2777152) > , accessed on 13th August 2023.

<sup>113</sup> D. Nougayrede, ‘After the Panama Papers: A Private Law Critique of Shell Companies’ (2019) 52(2) *The International Lawyer* 327,332.

<sup>114</sup> OECD, ‘A Beneficial Ownership Implementation Toolkit’ (2019) < <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf> > accessed on 13th August 2023.

<sup>115</sup> UK Government, ‘Factsheet: Beneficial Ownership’ (2023) < <https://www.gov.uk/government/publications/economic-crime-and-corporate->

Respectively, in the US FinCEN, which is the department of Treasury in the US analysing information for financial transactions, stated the beneficial owner definition to be any individual who ‘exercises substantial control over a reporting company’ as well as the 25 % threshold.<sup>116</sup> The issue of dispersed stockholders also known as shareholders, got attention after the Panama Papers and it got addressed by governments mostly through the inclusion of more shareholders rather than following the 25 % threshold for ownership of shares strictly.

The FinCEN Files was an investigation that occurred between the Panama and Pandora Papers leak happened, as explained above. This investigation shifted the focus on the US and the importance of the US as a jurisdiction and the involvement of banks in money laundering.<sup>117</sup> The findings of the FinCEN Files pointed to ‘the consequences of allowing banks themselves to lead the world’s anti-money laundering defences against kleptocracy, crime and terror, even as they earn huge profits from these same malefactors’.<sup>118</sup> The specific example of Deutsche Bank has been used in this research because the bank cleared billions for anonymous clients of Danske Bank Estonia despite concerns for money laundering.<sup>119</sup> All banks that were ‘named and shamed’ in the FinCEN Files case denied any wrongdoing. Another interesting finding from the FinCEN Files is how financial institutions such as banks choose to file a Suspicious Activity Reports (SARs) to FinCEN rather than stopping the activity directly.<sup>120</sup>

As stated above in the case studies analysis, the Pandora Papers case revealed individuals who used anonymous shell companies to keep their UK property acquisitions anonymous.<sup>121</sup> Respectively, in the US the spotlight was on how law firms and specifically Baker McKenzie, are using their ‘lobbying and legislation-drafting expertise toward shaping permissive financial laws around the world’.<sup>122</sup> Both jurisdictions have introduced the requirement of a risk-based approach for onboarding customers in financial institutions.<sup>123</sup> This led to changes in the

(footnote continued)

transparency-bill-2022-factsheets/factsheet-beneficial-ownership#why-are-the-thresholds-set-at-25—it-would-be-easy-to-avoid-this-by-having-five-20-shareholders > accessed on 14th August 2023.

<sup>116</sup> FinCEN, ‘Beneficial Ownership Information Reporting Rule Fact Sheet’ (2022) < <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet#:~:text=Under%20the%20rule%2C%20a%20beneficial,interests%20of%20a%20reporting%20company> > accessed on 13th August 2023.

<sup>117</sup> F. Shiel and D. Starkman, ‘About the FinCEN Files Investigation’ (*ICIJ*, 19 September 2020) < <https://www.icij.org/investigations/fincen-files/about-the-fincen-files-investigation/> > accessed on 13th August 2023.

<sup>118</sup> Ibid.

<sup>119</sup> International Consortium of Investigative Journalists, ‘German Prosecutors Drop Probe into Deutsche Bank Ties to Estonian Dirty Money Scandal’ (2020) < <https://www.icij.org/investigations/fincen-files/german-prosecutors-drop-probe-into-deutsche-bank-ties-to-estonian-dirty-money-scandal/> > accessed on 10th September 2023.

<sup>120</sup> B. Wolf, ‘FinCEN Files’ leaker Harmed US Anti-Laundering Regime and Should be Prosecuted, Say Bankers’ (*Thomson Reuters*, 16 October 2020) < <https://www.thomsonreuters.com/en-us/posts/investigation-fraud-and-risk/fincen-files-leak-prosecution/> > accessed on 10th September 2023.

<sup>121</sup> S. Goodley and J. Smith, ‘Revealed: Pandora Papers Unmask Owners of offshore-held UK property Worth £4bn’ *The Guardian* (5 October 2021) < [https://www.theguardian.com/news/2021/oct/05/pandora-papers-reveal-true-owners-offshore-held-uk-property-london?CMP=twt\\_gu&utm\\_source=Twitter&utm\\_medium=Echobox=1633416680](https://www.theguardian.com/news/2021/oct/05/pandora-papers-reveal-true-owners-offshore-held-uk-property-london?CMP=twt_gu&utm_source=Twitter&utm_medium=Echobox=1633416680) > accessed on 12th August 2023.

<sup>122</sup> J. Rudolph, ‘Closing Pandora’s Box: Leaked Papers Expose Need for US to Act on Enablers of Dirty Money’ (*Just Security*, 7 October 2021) < <https://www.justsecurity.org/78506/closing-pandoras-box/> > accessed on 19th August 2023.

<sup>123</sup> E. Esoimeme, ‘The Pandora Papers: How Anti-Money Laundering Procedures and Controls Should Have Flagged \$300 Million Earlier’ (2022) < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3978080](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3978080) > accessed on 19th August 2023.

Compliance sector as Know Your Customer (KYC) and Adverse Media searches were introduced with the aim of identifying individuals that were involved in leaks such as the Pandora Papers and risk assess them reflecting their past activity.<sup>124</sup> Moreover, emphasis on Enhanced Due Diligence (EDD) checks has been made, especially on shell companies and corporate service providers.<sup>125</sup> EDD checks enable organisations to identify transactions from high risk individuals in a more effective way than usual KYC and CDD checks. This helps with the reduction of financial and reputational risks for the organisations carrying out these checks by identifying clients that may be involved in money laundering or terrorism funding.<sup>126</sup>

### 3.3.2. Legislative reforms

Overall, the Panama Papers leak in 2019, the FinCEN Files leak in 2020, and the Pandora Papers leak in 2021 have re-emphasized the legal and reputational consequences connected to an organization's failure to fully uphold its obligations. Businesses, people, and financial institutions should make sure they are abiding by the law and their obligations.<sup>127</sup> These case studies led to the careful consideration of beneficial ownership laws in both jurisdictions with the aim of increasing transparency for owners of shell companies. The definition of a beneficial owner is similar in both jurisdictions as well as the requirements to 'qualify' as a beneficial owner of a company. This is because there is a more general international understanding of what a beneficial owner is and how the term is understood on an international level by the OECD.<sup>128</sup> When it comes to national legislation, the UK has acknowledged the need for a central beneficial ownership register and acted first by implementing guidance for Persons with Significant Control (PSCs) in Companies Act 2006, whilst the US will implement central beneficial ownership laws through the Corporate Transparency Act (CTA) which will be in force in January 2024.<sup>129</sup> Beneficial ownership laws are important in preventing money laundering and terrorism financing because they aim to increase transparency of ownership of companies and therefore prevent the misuse of entities resulting by the anonymity of owners.

Foreign registers for both jurisdictions have been enforced through legislation, with the US being the first out of the two jurisdictions to implement relevant laws through the Foreign Account Tax Compliance Act (FATCA).<sup>130</sup> Through the FATCA, financial institutions are obliged to share information about any US customers they have in other jurisdictions. To make his exchange of information more attractive to other jurisdictions, bilateral inter-governmental agreements (IGAs) were introduced.<sup>131</sup> This is not discussed in detail in this article due to the nature of the Act being based upon tax requirements and the information not necessarily being used for Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) purposes. Shortly after the

introduction of FATCA, the OECD published common reporting system (CRS) in 2014 to which 105 countries committed.<sup>132</sup> However, there have been issues with CRS, mostly reflecting the weaknesses of the global reporting regime.<sup>133</sup> These weaknesses include the large number of countries not participating in the CRS and different timings for implementation among other issues. Disadvantages include timings for implementation of the CRS in most of the participating countries and lack of transparency in the due diligence process.<sup>134</sup> From the US' perspective, the IGAs have loopholes and as per the European Parliament, there is no uniform requirement to disclose beneficial owners of US account holders.<sup>135</sup> There is also overlap with General Data Protection Regulation (GDPR) laws as also highlighted by the European Parliament which prevent the lawful transfer of such information.<sup>136</sup> The European Parliament also produced a resolution 'decrying the lack of reciprocity under FATCA' and made the observation 'that the United States is becoming a significant enabler of financial secrecy for non-US citizens'.<sup>137</sup> Information on FATCA/CRS and the state of implementation as well as its success has not been discussed sufficiently recently to understand how beneficial adopting this part of the law has been. It has been established that if the framework operates on an agreed timeframe for all jurisdictions, it could be a successful method of sharing information.

The UK has acted more recently to tackle the issue of money laundering and terrorism financing through shell companies by introducing a foreign beneficial ownership register. Similar to the US, since the RoE is new there is only some information published regarding its progress thus far. To elaborate on UK existing laws on the public beneficial ownership register, Part 1 of the new Economic Crime Act is aimed the registration of overseas entities with the Companies House.<sup>138</sup> Only 18.9% of the 139,152 overseas companies were required to register pursuant to the new Economic Crime Act's Part 1 have done so since the Act came into effect on August 1, 2022.<sup>139</sup> As of early March 2023, 26,342 overseas entities had been registered out of the total.<sup>140</sup> There are several issues uncovered with the RoE that do not just relate to non-compliance but gaps in legislative scope.<sup>141</sup> These issues relate to failures to register, no beneficial owners to register, trusts having no

<sup>132</sup> A. Knight, 'CRS – A Mid-Term Retrospective' (2018) 24(3) *Trusts and Trustees* 250.

<sup>133</sup> *Ibid.*

<sup>134</sup> OECD, 'Model Competent Authority Agreement' (2014) < <https://www.oecd-ilibrary.org/docserver/9789264216525-4-en.pdf?expires=1692530116&id=id&accname=guest&checksum=F5EEAD4750709C2064BF4CF1F1132237> > accessed on 13th August 2023; *ibid.*

<sup>135</sup> European Parliament, 'FATCA Legislation and its Application at International and EU Level: An Update' (2022) < [https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/734765/IPOL\\_IDA\(2022\)734765\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/734765/IPOL_IDA(2022)734765_EN.pdf) > accessed on 13th August 2023.

<sup>136</sup> *Ibid.*

<sup>137</sup> Forbes, 'The Pandora Papers Shed New Light on the US As A Tax Haven' *Forbes* (12 October 2021) < <https://www.forbes.com/sites/insider/2021/10/12/the-pandora-papers-shed-new-light-on-the-us-as-a-tax-haven/> > accessed on 13th August 2023; European Parliament, 'Implementation of EU Requirements for Exchange of Tax Information' (*European Parliament*, 16 September 2021) < [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0392\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0392_EN.html) > accessed on 13th August 2023.

<sup>138</sup> Economic Crime (Transparency and Enforcement) Act 2022, Part 1.

<sup>139</sup> Economic Crime (Transparency and Enforcement) Act 2022, Part 1; Companies House, 'Register of Overseas Entities: The Story so Far' (*Companies House*, 7 March 2023) < <https://companieshouse.blog.gov.uk/2023/03/07/register-of-overseas-entities-the-story-so-far/> > accessed on 13th August 2023.

<sup>140</sup> *Ibid.*

<sup>141</sup> A. Advani and others, 'Catch me if you can: Gaps in the Register of Overseas Entities' (2023) < <https://warwick.ac.uk/fac/soc/economics/research/centres/cage/manage/publications/wp680.2023.pdf> > accessed on 7th September 2023.

<sup>124</sup> Comply Advantage, 'What Does the Pandora Papers Mean for AML/CTF Compliance?' (2021) < <https://complyadvantage.com/insights/pandora-papers-leak-aml-cft-compliance/> > accessed on 19th August 2023.

<sup>125</sup> *Ibid.*

<sup>126</sup> TransUnion, 'What is Enhanced Due Diligence (EDD)?' (2022) < <https://www.transunion.co.uk/blog/what-is-enhanced-due-diligence#:~:text=The%20EDD%20process%20is%20part,sanctions%2Dbusting%20or%20terrorism%20funding.> > accessed on 10th September 2023.

<sup>127</sup> L. E. Ritchie, 'The Pandora Papers: Associated Risks and the Rising Importance of Beneficial Ownership' (2021) < <https://www.osler.com/en/blogs/risk/november-2021/the-pandora-papers-associated-risks-and-the-rising-importance-of-beneficial-ownership> > accessed on 19th August 2023.

<sup>128</sup> OECD, 'A Beneficial Ownership Implementation Toolkit' (2019) < <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf> > accessed on 13th August 2023.

<sup>129</sup> *Ibid.*

<sup>130</sup> Foreign Account Tax Compliance Act.

<sup>131</sup> PwC, 'FATCA, IGA's and Information Reporting' (2012) < <https://www.pwc.com/jg/en/publications/pwc-ci-fatca-seminar-slides-march-2013.pdf> > accessed on 13th August 2023.

beneficial owners, unincorporated partnership structures and corporate beneficial owners.<sup>142</sup> The UK Government has produced guidelines on approaches towards Companies House enforcement to ensure compliance as a follow-up to the registration requirement.<sup>143</sup> The 'Companies House enforcement approach' which will be a report published later in 2023.<sup>144</sup> Even though the role of overseas registers is crucial to increase global transparency over ownership as discussed in previous parts, existing loopholes in the process of collecting information need to be addressed. The Economic Crime and Corporate Transparency Act 2023 aims to give Companies House more powers to challenge the authenticity of information, have a requirement for a registered email address and information share powers for Companies House to share data with law enforcement and regulators.<sup>145</sup> These amendments will help Companies House to include more accurate and verified information, avoiding fraudulent entries.<sup>146</sup> An example of insufficient information being on the register is when an Indian billionaire agreed to buy Hannover Lodge a property worth £113 m and the beneficial owner appeared to be a Cypriot Trust – Proteas Trustee Services.<sup>147</sup> This is the result of trust information not being public 'to maintain a proportionate balance between transparency and privacy'.<sup>148</sup> From a quick search online, it can be established that the Cypriot Trust named as the beneficial owner in the above example can be found on the ICIJ Offshore Leaks Database for Paradise Papers.<sup>149</sup> After looking a bit deeper, the trust is owned by a law firm in Cyprus which proves the point discussed above of law firms using the legal loopholes to their favour and being legally able to make these actions.<sup>150</sup> Trusts differ to companies, however, the goal of avoiding public exposure and avoiding a public register can still be achieved as long as there is no uniformity in the laws regarding beneficial ownership disclosure internationally. Both jurisdictions have a long way to go to improve the transparency of such overseas registers and the collection of information regarding trusts. Establishing these practices will help advance AML/CTF practices since transparency will help in the identification of company owners and therefore trace any suspicious transactions easier.

### 3.3.3. The role of the FATF

Both the UK and US are members of the Financial Action Task Force (FATF), and their progress can be tracked through Mutual Evaluation Reports (MERs) for their adherence to the FATF Recommendations.<sup>151</sup> The two jurisdictions aim to follow the latest guidance on Recommendations and have both agreed to comply with the revised FATF Recommendation 24 during the second Summit for Democracy.<sup>152</sup> As

discussed in Parts 4 and 5, Recommendation 24 deals with beneficial ownership and transparency. Both the UK and the US made a commitment to 'efficient access to beneficial ownership information'.<sup>153</sup> The UK's AML policy has been deemed as generally compliant by international organisations such as FATF after the fourth MER, however, London has been known as a global centre for money laundering.<sup>154</sup> The fourth MER from FATF praised the UK's compliance with their Recommendations and noted that the UK had no Recommendations being Non-Compliant (NC).<sup>155</sup>

On the other hand, the US is compliant on 9 Recommendations and largely compliant on 22 of them. It remains partially compliant on 5 of the 40 Recommendations and not compliant on 4 of them, with the 4 Recommendations being relevant to due diligence of Designated Non-Financial Business and Professions (DNFBPs) and the transparency and beneficial ownership of legal persons.<sup>156</sup> Even though the latest US MER was published in 2020 there would not be a change for the NC Recommendations since the register for beneficial ownership in the US is still not in force. The FATF's peer review process is 'unmistakeable' and reflects on the seriousness of with which domestic regulatory agencies in major financial centres take it.<sup>157</sup> Through MERs, it is evident 'the US position on corporate transparency has lagged relative to the UK'.<sup>158</sup>

However, numbers published by Credas show that even though the US has a much higher estimation for the value of money laundering, it has a lower percentage relating to the Gross Domestic Product (GDP) with only 1.4% compared to the UK percentage which is at 4.3%.<sup>159</sup> These statistics show that compliance with FATF Recommendations do not signify the volume of money laundering in a jurisdiction and do not ensure a lower percentage of value given the GDP of each jurisdiction. The UK has been a 'leader' with complying to FATF Recommendations and having a public central beneficial ownership register, however, still has higher percentages of money laundering value compared to the US.

Even though the UK has been praised for their advanced AML/CTF regime, there is still work to be done towards its strengthening. If the system was flawless, there would not be any case studies brought on by the UK's failure to comply to regulations. The HM Treasury recognises that there is 'more to be done to make our AML regime more effective'

<sup>142</sup> Ibid.

<sup>143</sup> UK Government, 'Register of Overseas Entities: Approach to Enforcement' (2023) < <https://www.gov.uk/government/publications/register-of-overseas-entities-approach-to-enforcement/register-of-overseas-entities-approach-to-enforcement#introduction> > accessed on 19th August 2023.

<sup>144</sup> Ibid.

<sup>145</sup> Economic Crime and Corporate Transparency Act 2023, Part 1.

<sup>146</sup> D. Ryan and others, 'Economic Crime and Corporate Transparency Act 2023 – Key Developments' (*Skadden*, 26 February 2024) < <https://www.skadden.com/insights/publications/2024/02/economic-crime-and-corporate-transparency-act-2023#:~:text=On%2026%20October%202023%20C%20the,a%20number%20of%20significant%20changes.> > accessed on 20th June 2024.

<sup>147</sup> W. Louch and C. O'Murchu, 'UK Government Resists Moves for Tighter Corporate Transparency' *Financial Times* (9 August 2023) < <https://www.ft.com/content/83d3739c-cb56-406a-be42-3ecf1cb9e1f5> > accessed on 15th August 2023.

<sup>148</sup> Ibid.

<sup>149</sup> ICIJ, 'Offshore Leaks Database' (2023) < <https://offshoreleaks.icij.org/nodes/56095592> > accessed on 19th August 2023.

<sup>150</sup> A. M. Sofocleous & Co Ltd, 'Proteas Management Services Ltd' (2018) < <http://www.sofocleous.com.cy/en/the-firm/andreas-sofocleous-group-of-companies/proteas-management-services-ltd> > accessed on 19th August 2023.

<sup>151</sup> Financial Action Task Force, 'Members' (2023) < <https://www.fatf-gafi.org/en/countries/fatf.html> > accessed on 20th August 2023.

<sup>152</sup> U.S. Department of State, 'Summit for Democracy Commitment on Beneficial Ownership and Misuse of Legal Persons' (2023) < <https://www.state.gov/summit-for-democracy-commitment-on-beneficial-ownership-and-misuse-of-legal-persons/> > accessed on 19th August 2023.

<sup>153</sup> Ibid.

<sup>154</sup> A. Nice 'The ISC Russia Report Highlighted Problems that Cannot be Solved by the Intelligence Services Alone' (2020) < <https://www.instituteforgovernment.org.uk/blog/isc-russia-report> > accessed on 19th August 2023; N. Shaxson, 'The City of London is Hiding the World's Stolen Money' *The New York Times* (11 October 2021) < <https://www.nytimes.com/2021/10/11/opinion/pandora-papers-britain-london.html> > accessed on 19th August 2023.

<sup>155</sup> Financial Action Task Force, 'The United Kingdom's Progress in Strengthening Measures to Tackle Money Laundering and Terrorist Financing' (2022) < <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fur-united-kingdom-2022.html> > accessed on 20th August 2023.

<sup>156</sup> Financial Action Task Force, 'United States' Progress in Strengthening Measures to Tackle Money Laundering and Terrorist Financing' (2022) < <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fur-united-states-2020.html> > accessed on 20th August 2023.

<sup>157</sup> A. Moiseenko, 'Does International Law Prohibit the Facilitation of Money Laundering?' (2023) 36(1) L.J.I.L. 109, 114; D. B. Hollis and J. Newcomer, 'Political' Commitments and the Constitution' (2009) 49(3) Va.J.Int'l L. 507, 540-4.

<sup>158</sup> D. Thomas-James, 'The United States Corporate Transparency Act: A Review' (2021) 42(9) Comp. Law. 302-303.

<sup>159</sup> Credas, 'OECD Money-Laundering Leader Board' (2022) < <https://credas.com/news/oecd-money-laundering-leader-board/> > accessed on 11th September 2023.

which will hopefully lead to more successful guidance and implementation of proposals made in the recent Economic Crime Plan 2.<sup>160</sup> The goal for the UK for 2023–2026 is to reduce money laundering and recover more criminal assets to the extent that money laundering is related.<sup>161</sup> On the other hand, the US was late to acknowledge the importance of beneficial ownership disclosure and the creation of a central register, has legislated to introduce towards it.<sup>162</sup> A few years will be needed to understand how well the new laws are implemented and further compare with the results the UK currently shows regarding disclosure of beneficial owners and the loopholes created on the FinCEN disclosure database.<sup>163</sup>

To conclude with, the UK appears to have a more advanced AML/CTF regime, however, the US is expected to catch up soon with the implementation of the CTA and the creation of a central beneficial ownership register. The amount of money laundering going on in each country is greater in percentage relating to GDP in the UK even though the US has a larger value of money laundering than the UK. The UK has been largely compliant with the majority of the FATF Recommendations and has only transposed up to the Fifth MLD before Brexit, with the Sixth MLD which has not been implemented containing advanced definitions for money laundering. The US has their own AML/CTF regime and is only subject to following the guidance of OECD and FATF and has shown signs of improvement by agreeing to implement Recommendation 24. Both jurisdictions have increased their awareness and have acknowledged the risks posed by anonymous shell companies for money laundering and terrorism financing. This can be proven from the continuous steps taken to provide new guidance and legislation, mitigating the facilitation and effects of these financial crimes. It is a critical point for both jurisdictions to specify which one is doing better than the other. There are upcoming laws for both jurisdictions that will have an impact on tackling money laundering and terrorism financing.

#### 4. Conclusion and Recommendations

This article has argued that the facilitation of money laundering and terrorism financing is possible through shell companies and has researched the role of beneficial ownership regulations in mitigating the risk. Understanding the results of the Panama Papers, FinCEN Files and Pandora Papers as well as the issues that caused them were central in making an analysis regarding existing issues with the legal frameworks around Anti-Money Laundering and Counter-Terrorist Financing (AML/CTF) regimes for both jurisdictions. There is a clear link between the use of shell companies and the facilitation of illicit activities, not being limited to money laundering and terrorism financing.<sup>164</sup> The main advantage of using anonymous shell companies is the anonymity and therefore the protection given towards the operators behind them.<sup>165</sup>

<sup>160</sup> HM Treasury, 'Review of the UK's AML/CTF Regulatory and Supervisory Regime' (2022) < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1085407/MLRs\\_Review\\_Report\\_-\\_2.5\\_for\\_publication.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085407/MLRs_Review_Report_-_2.5_for_publication.pdf) > accessed on 21st August 2023; HM Government, 'Economic Crime Plan 2' (2023) < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1147515/6.8300\\_HO\\_Economic\\_Crime\\_Plan\\_2\\_v6\\_Web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf) > accessed on 21st August 2023.

<sup>161</sup> UK Government, 'Economic Crime Plan 2023–2026' (2023) < <https://www.gov.uk/government/publications/economic-crime-plan-2023-to-2026#:~:text=The%20economic%20crime%20plan%20is%20intended%20to%20build%20on,legitimat%20economic%20growth%20and%20competitiveness.> > accessed on 21st August 2023.

<sup>162</sup> K. Herrick and others, 'Corporate Transparency – New Rules to Govern All Entities Doing Business in the United States' (2023) < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4529466](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4529466) > accessed on 21st August 2023.

<sup>163</sup> Ibid.

<sup>164</sup> Comply Advantage, 'Shell Companies and Money Laundering' (2020) < <https://complyadvantage.com/insights/shell-companies-money-laundering/> > accessed on 2nd September 2023.

Creating a register with the information of beneficial owners behind all companies will help resolve the issue of anonymity with the requirement of transparency.<sup>166</sup> Beneficial ownership disclosure was first encouraged by the Financial Action Task Force (FATF) Recommendations and the United Kingdom (UK) was the first G20 country to implement a public beneficial ownership known as the People with Significant Control (PSC) Register.<sup>167</sup> The United States of America (US) took action more recently with the imposition of the first final rule for beneficial ownership information through the Corporate Transparency Act (CTA).<sup>168</sup> It is important for all jurisdictions to act towards the promotion of transparency and therefore contribute towards a stronger AML/CTF regime.<sup>169</sup> Strengthening beneficial ownership regulation results in stronger regulations for AML/CTF and increases transparency resulting to more difficulty in facilitating illicit activities through shell companies.

Improving the transparency of beneficial owners does not imply that additional loopholes will not be created, however, it is a major step towards minimising the effect of anonymity. Both the UK and the US have room for improvement in their AML/CTF regimes, even though the UK has been identified by the FATF 'as an example of international best practice'.<sup>170</sup> A criticism by the Institute of Government to the UK is that it 'needs to stay ahead of technology and techniques, not just react after an event'.<sup>171</sup> This statement highlights the positive action taken by the UK after the developments from the Panama Papers, FinCEN Files and the Pandora Papers. The UK acted towards the creation of a Register of Overseas Entities (RoE) and took legislative steps towards verifying beneficial owners of companies through Companies House.<sup>172</sup> Since these case studies aim to expose legal loopholes within various jurisdictions' AML/CTF regimes, therefore these cases will continue to come to light when any new loopholes are discovered.<sup>173</sup> This proves that there is room for improvement for most jurisdictions and not just the UK and the US regarding stronger AML/CTF regimes.

<sup>165</sup> Global Financial Integrity, 'Anonymous Shell Companies' (2023) < <https://gfinetegrity.org/issue/anonymous-shell-companies/> > accessed on 2nd September 2023.

<sup>166</sup> Basel Institute on Governance, 'Beneficial Ownership Transparency is a Pillar of Anti-Money Laundering Systems – So It Needs to Stand Up. Insights from the Basel AML Index 2021' (2021) < <https://baselgovernance.org/blog/beneficial-ownership-transparency-pillar-anti-money-laundering-systems-so-it-needs-stand> > accessed on 2nd September 2023.

<sup>167</sup> OECD, 'United Kingdom Register of People with Significant Control: transparency in the public integrity system' (2020) < <https://www.oecd.org/governance/policy-framework-on-sound-public-governance/chapter-one-united%20kingdom.pdf> > accessed on 2nd September 2023.

<sup>168</sup> FinCEN, 'Beneficial Ownership Information Reporting' (2023) < <https://www.fincen.gov/boi> > accessed on 2nd September 2023.

<sup>169</sup> Financial Action Task Force, 'Transparency and Beneficial Ownership Information' (2014) < <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-transparency-beneficial-ownership.pdf.coredownload.pdf> > accessed on 2nd September 2023.

<sup>170</sup> D. Benton and N. Ryder, 'Terrorism Financing, the United Kingdom, and the Financial Action Task Force: A Series of Omissions or Missed Opportunities?' in M. Dion, *Sustainable Finance and Financial Crime* (Springer 2023) 353–374.

<sup>171</sup> Institute for Government, 'The ISC Russia Report Highlighted Problems That Cannot Be Solved by the Intelligent Services Alone' (2020) < <https://www.instituteforgovernment.org.uk/article/comment/isc-russia-report-highlighted-problems-cannot-be-solved-intelligence-services-alone> > accessed on 2nd September 2023.

<sup>172</sup> Government UK, 'Register an overseas entity and its beneficial owners' (2022) < <https://www.gov.uk/guidance/register-an-overseas-entity> > accessed on 4th September 2023.

<sup>173</sup> FinTech Global, 'An Anniversary to Forget: One Year from the FinCEN Files Leak' (*FinTech Global*, 1 October 2021) < <https://fintech.global/2021/10/01/an-anniversary-to-forget-a-year-on-from-the-fincen-files-leak-in-regtech/> > accessed on 4th September 2023.

#### 4.1. Recommendations

Based on this research, a recommendation for improvement towards the UK is to transpose the guidance in the Sixth European Union (EU) Money Laundering Directive (the Sixth Directive).<sup>174</sup> The reason that the UK has not implemented the Sixth Directive is because the UK left the EU (Brexit) and the belief that the 'UK goes much further than the EU directives'.<sup>175</sup> The amendments set out within the Sixth Directive include the extension of criminal liability to companies, increased penalties for those committing money laundering and makes improvements in the cooperation between Member States.<sup>176</sup> According to the Law Society of England and Wales, the reason for the UK not transposing the Sixth Directive is because most amendments are already part of UK law except criminal liability for money laundering offences.<sup>177</sup> This triggered a review for corporate economic crime and a governmental response to a call for evidence.<sup>178</sup> The Call for Evidence regarding this topic resulted in evidence submitted to be 'inconclusive'.<sup>179</sup> The UK's Economic Crime Plan 2023–2026 aims to reform the AML/CTF supervisory regime by making a commitment for the introduction of legislation to amend for the identification doctrine and introduce new 'failure to prevent' corporate criminal liability offences.<sup>180</sup> This was done in response to an impact assessment made by the Home Office stating that 'corporate liability laws for economic crime are not fit for purpose'.<sup>181</sup> The identification doctrine has been criticised by a number of academics and the existing legal doctrine was developed over time since *Tesco v Natrass* in 1971.<sup>182</sup> There is some advancement made within the Economic Crime and Corporate Transparency Act 2023, however, the Act has not been in force for long enough to have any results for discussion. The new Act could be the key of an improved corporate criminal liability framework for the UK if the advancements

<sup>174</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, PE/30/2018/REV/1, O.J. L 284, 12.11.2018, 22–30.

<sup>175</sup> N. Ryder, S. Bourton and D. Hall, 'The United Kingdom, organized crime and money laundering' in D. Jasinski, A. Phillips and E. Johnston, *Organised Crime, Financial Crime and Criminal Justice* (Routledge, 2023) 205; Ministry of Justice, 'Eighth Annual Report to Parliament on the Application of Protocols 19 and 21 to the Treaty on European Union (TEU) and the Treaty on the Functioning of the Union (TFEU) in Relation to EU Justice and Home Affairs (JHA) Matters' (1 December 2016–30 November 2017) (2018) 7.

<sup>176</sup> Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, PE/30/2018/REV/1, O.J. L 284, 12.11.2018, 22–30; PwC, 'Highlights of the 6th Anti Money Laundering Directive (6AMLD)' (2021) < <https://www.pwc.com/mt/en/publications/financial-crime-news/highlights-of-the-6th-anti-money-laundering-directive.html> > accessed on 4th September 2023.

<sup>177</sup> The Law Society, 'Anti-Money Laundering After Brexit' (2021) < <https://www.lawsociety.org.uk/topics/brexit/anti-money-laundering-after-brexit> > accessed on 4th September 2023.

<sup>178</sup> Government UK, 'Spotlight on Corporate Crime Laws' (2020) < <https://www.gov.uk/government/news/spotlight-on-corporate-crime-laws> > accessed on 4th September 2023.

<sup>179</sup> Government UK, 'Corporate liability for economic crime: call for evidence' (2020) < <https://www.gov.uk/government/consultations/corporate-liability-for-economic-crime-call-for-evidence> > accessed on 4th September 2023.

<sup>180</sup> HM Government, 'Economic Crime Plan 2' (2023–2026) < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1147515/6.8300\\_HO\\_Economic\\_Crime\\_Plan\\_2\\_v6\\_Web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf) > accessed on 5th September 2023.

<sup>181</sup> The Home Office, 'Impact Assessment' (2023) < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1163432/5\\_IDD\\_Impact\\_Assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163432/5_IDD_Impact_Assessment.pdf) > accessed on 5th September 2023.

<sup>182</sup> *Tesco Supermarkets v Natrass* [1971] UKHL 1; K. Laird, 'Deferred prosecution agreements: the latest developments' (2021) 4 Crim. L. R. 283; N. Ryder, 'Too Scared to Prosecute and Too Scared to Jail?' A Critical and Comparative Analysis of Enforcement of Financial Crime Legislation Against Corporations in the USA and the UK (2018) 82(3) J. Crim. Law 258.

within the Act are followed.

As discussed within the comparison of the UK and the US, the concept of international cooperation on the collection of beneficial ownership information is also important to be considered and be further enhanced to allow all jurisdictions to access the information when needed. There is a known loophole from the Organisation for Economic Co-operation and Development (OECD) Common Reporting System (CRS) as it applies for tax purposes only and would not capture beneficial owners of companies and/or trusts.<sup>183</sup> The recommendation implied by Knobel and which is also compatible to what was analysed in this article, is to utilise existing methods and tools such as the CRS and expand its scope to accommodate the registration of beneficial owners on the register. The OECD has published guidance including amendments to the CRS regarding the expansion of reporting requirements and 'look through requirements' regarding persons in control of publicly traded entities.<sup>184</sup> The success of this measure is questionable due to the numerous loopholes that are created. An example was given by Cartin and Erksine, 'funds held in a French bank account by a UK resident are reportable under the CRS but if the UK resident uses those funds to buy a property in France a report no longer needs to be made'.<sup>185</sup> This observation creates concern regarding existing controls and requirements for information sharing between jurisdictions. Optimistically, in the future there will be a shift in focus towards beneficial ownership information sharing among jurisdictions through a common system.<sup>186</sup> Understanding the appropriate amount of information that is publicly shared regarding beneficial ownership will also aid in the advancement of a common information sharing system.<sup>187</sup> Using the US as an example to successfully participate in such a practice, they would need to have a robust amount of information regarding beneficial owners first. For CRS to work in a successful way, there needs to be alignment of timelines among most jurisdictions for implementing a common beneficial ownership register.<sup>188</sup>

Following suggestions made by academics and creating recommendations because of this research, improvements will be made in international cooperation as well as applying criminal liability offences. An example for a criminal liability offence is failure to prevent money laundering which once adopted, will aid in the minimisation of money

<sup>183</sup> A. Knobel, 'Beneficial Ownership Transparency: How to Fix A Serious Secrecy Loophole in the Automatic Exchange System' (*Tax Justice Network*, 26 April 2022) < <https://taxjustice.net/2022/04/26/beneficial-ownership-transparency-how-to-fix-a-serious-secrecy-loophole-in-the-automatic-exchange-system/> > accessed on 4th September 2023.

<sup>184</sup> PwC, 'OECD amends CRS to expand scope and enhance reporting' (2022) < <https://www.pwc.com/us/en/services/tax/library/oecd-amends-crs-to-expand-scope-and-enhance-reporting.html> > accessed on 4th September 2023; OECD, 'Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard' (2022) < <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.pdf> > accessed on 4th September 2023.

<sup>185</sup> A. Cartin and A. Erskine, 'The Continuing March Towards Transparency: The Latest UK Disclosure Obligations' (*Taylor Wessing*, 24 April 2023) < <https://www.taylorwessing.com/en/insights-and-events/insights/2023/04/the-continuing-march-towards-transparency-the-latest-uk-disclosure-obligations> > accessed on 4th September 2023.

<sup>186</sup> Global Witness, 'The Companies We Keep: What the UK's Open Data Register Actually Tells Us About Company Ownership' (2022) < <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-0> > accessed on 4th September 2023.

<sup>187</sup> Open Ownership, 'Data Protection and Privacy in Beneficial Ownership Disclosure' (2019) < <https://www.openownership.org/en/publications/data-protection-and-privacy-in-beneficial-ownership-disclosure/iv-how-can-we-balance-beneficial-ownership-and-privacy-concerns/> > accessed on 2nd September 2023.

<sup>188</sup> A. Knight, 'CRS – A Mid-Term Retrospective' (2018) 24(3) *Trusts and Trustees* 250.

laundering and terrorism financing to begin with. Reducing the ability to remain anonymous behind a corporate structure will then minimise a secondary loophole created for anyone wanting to carry out illicit acts. It is evident from the case studies analysed throughout the article that shell companies are used for money laundering and terrorism financing among other illicit acts. Furthermore, it is understood from the research set out in this article that adequate beneficial ownership laws aid in making the facilitation of money laundering and terrorism financing through shell companies more difficult. This is the result of increased transparency when it comes to creating a shell company. The topic of anonymous shell companies and how they are used to launder money is important and needs to be researched further in the future. Further research on this topic will improve the recommendations made in this article to improve relevant legislation and help to identify the most

successful methods of tackling the facilitation of money laundering and terrorist financing using shell companies.

#### **CRedit authorship contribution statement**

**Marina Aristodemou:** Writing – original draft.

#### **Declaration of Competing Interest**

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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