

Agency Cost and Uncontrollable Risks in Hiding Fortune Overseas

—Offshore Companies, Ownership of the Cannes Villa and Money Laundering in the Criminal Case of Bo Xilai

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Abstract

The Jinan Intermediate People's Court adjudicated the charges of bribery, embezzlement and abuse of power against Mr. Bo Xilai, the former Communist Party Chief of Chongqing from August 22 to 26, 2013. Bo was charged of accepting a luxury villa located in Cannes from a tycoon named Xu Ming. A conspiracy named the Montage scheme, which used offshore companies in the purpose of committing bribery and covering the beneficiary of the property abroad, emerged during the trial. With focus on the role of the offshore companies played in financing function, fake business transactions, ownership structure related to the Cannes villa, this paper is trying to answer a couple of questions: what's the time of accepting cash bribe paralleling with money laundering through a group of offshore companies, the time when the money was firstly transferred from the bribe-giver to the bribe-taker or the time when the bribe-taker became the beneficiary or controller of the assets purchased with the money? In finding out the beneficiary of a property under the name of an offshore company, is it legally required and technically possible to prove the consistence between the owner of a property and that of an offshore company?

Keywords

Offshore Companies, Money Laundering and Bribery

1. Introduction: How to Define the Offshore Company?

Not all the companies incorporated overseas are offshore companies in the legal sense. An offshore company is distinct from an ordinary business company at least in the following three aspects:

Firstly, offshore companies are incorporated under special corporate law promulgated by so called offshore financial centers such as Cayman Islands, Bermuda, British Virgin Islands and so on. Those former colonial islands deliberately attract corporations to domicile in their jurisdiction by racing to the bottom in terms of deregulation and tax reduction. In return, the revenue generated by local financial service as well as by registration administration substantially awards local economy. In other words, special corporate law for offshore companies itself functions as a legal product for profit making. Secondly, choosing offshore jurisdiction as a company's domicile is not aimed to gain capacity for doing business there. Some companies are incorporated to realize special purposes which could be legal or at least in grey area such as tax inversions, while others created for covering criminal activities like money laundering. No matter what the exact purpose offshore companies serve for, the conventional legal wisdom that the domicile of a company is the location of its headquarter and the place where main business is carried on is falsified (Company Law, 2013).

Thirdly, originally a corporate is created to do business legally, but an offshore company will neither do any business nor limit its activities within the definition of legality. Barack Obama regards offshore company as an alienation to the company law, "there's always going to be illicit movement but we shouldn't make it legal" (Obama, 2016).

The idea of corporate law for offshore companies seems to share a common feature with Delaware's corporation code, both of them lure investors to incorporate in their jurisdiction by offering company laws up to bottom (Romano, 1987). However, interstate activities involving companies, for example trade of shares, are subject to federal laws, in most circumstances the Securities Act of 1933 and the Securities and Exchange Act of 1934. With regards to offshore companies, the situation is different. If investors move across the boundaries of jurisdictions under the shell of offshore companies, the sovereignty itself forms the barrier preventing the law enforcement from one jurisdiction to another.

The multiple nationalities can be used to reach legal purpose or get benefits from activities within grey area, for instance it is not unusual for a company to get foreign status in order to take advantage of favorable tax treatment. The further an investor goes beyond his mother country, the more difficult for the domestic law enforcement reaches him. As a result, offshore companies are much easier to be manipulated in doing illegal activities such as money laundering, giving bribes and trafficking.

In the case of Bo Xilai (hereinafter referred as Mr. Bo), the court convicted Mr. Bo of taking a bribe in the form of a luxury villa located in Cannes valued at €2.32 million (approximately 16,249,709 RMB). The information emerging from the adjudication implies that several offshore companies were used as vehicles for money laundering purpose by opening deposit accounts under the names of companies in various jurisdictions as well as obfuscating the link between the money and the target asset. The above mentioned process is regarded by Mr. Pa-

trick Heri Devillers (hereinafter referred as Mr. Devillers, who is also the designer of that scheme and the witness against Mr. Bo), as the Montage scheme composed of a channel of cash flow, access of secrecy layers, and a structure of internal control. From the perspective of the prosecutor, to find out the real owner behind the Cannes villa is fundamental for establishing a concrete link between the ownership of that real estate, the source of its financing and the defendant. Taking into consideration the involvement of money laundering in this case, the exact time of accepting bribe is essential for targeting the suspect of bribe-taker. Whether the money was used for gambling or for obtaining a real estate after the acceptance of bribe seems not very relevant. If the charge of money laundering had been raised, the starting point of money laundering would be identical with the time of bribery. Why the prosecutor failed to pay attention to seemingly apparent fact of money laundering? For the purpose of convicting the bribery in terms of cash, is it legally required and technically possible to locate the real owner of the property as the final outcome resulted from spending the money?

2. Step One of the Montage Scheme: Russell Properties S.A.

2.1. Hub of Funding and Ultimate Share Holder

Money laundering through offshore companies usually start with an offshore bank account as the entrance for any outflow of money from domestic jurisdiction. Therefore, the start point of this game is to incorporate a company and open bank account in its name. Gu Kailai (hereinafter referred as Ms. Gu), Mr. Bo's wife, and Mr. Devillers created a company named Russell Properties S.A. (hereinafter referred as Russell Properties) in British Virgin Islands (hereinafter referred as BVI) on September 21, 2000 (ICIJ, 2016). Two months later, a sum of 3.22 million dollars was transferred to Russell Properties' bank account from Credit Lyonnais Shanghai Branch. This sum then flowed out and was eventually in July 2001 transformed into a holiday house, Villa Fontaine Saint Georges, located in Cannes France after series of financial arrangements of deposit, mortgage and loans between related companies (Court Records, 2013).

The idea to own a property in France was not originally from Ms. Gu but from Mr. Devillers, a trusted friend of Ms. Gu, instead. Mr. Devillers may described a vision appealing to Gu: two-hour flight to London, where Gu's son was at that time attending his high school, made Cannes a convenient location for Gu; and a villa with potential to generate rental income put added value to this plan (Court Records, 2013).

Taking Mr. Devillers' advice to buy a house in France implies that Ms. Gu had great trust in Devillers. However, as the story unfolded, it turned out that Mr. Devillers might take advantage of Ms. Gu to control the network of offshore companies and the Cannes villa, which will be demonstrated as below.

2.2. Each of Gu and Devillers Owning 50% of Russell Properties, Who Is the Ultimate Beneficiary?

According to the testimonies of both Ms. Gu and Mr. Devillers, the shares in Russell Properties were equally divided between them as the company was incorporated in September 2000 (*Court Records, 2013*). Heavily relying on the advice of Mr. Devillers, Ms. Gu made the above mentioned decision believing Mr. Devillers' story that a BVI business company required for at least two share holders and Ms. Gu did not cast any doubt over his words. But Mr. Devillers just made up a story for Ms. Gu since one-person company has never been a declined option under BVI company law. As a lawyer, Ms. Gu should have basic knowledge that as a long existing business practice, one-person company was unlikely illegalized in BVI, a former colony following British legal tradition. Although the version of the International Business Companies Act (1984) was available easily on line, Ms. Gu failed to do any regulation compliance work in term of due diligence. As a result, Ms. Gu made a decision apparently against her interests: if her first priority was to be a dormant beneficiary, she should not allow her name appear in Russell Properties; if she did mind being named as Russell Properties' shareholder, she should fully own the company instead of sharing the ownership evenly with Mr. Devillers.

2.3. The Story of Nominee Shareholders: True or False?

In the court of trial, Mr. Devillers claimed himself as a nominee holding shares for the interest of Ms. Gu, and the latter agreed with Mr. Devillers by recognizing him as her agent.

Nominee shareholders in an offshore company function as a shield preventing the real owner from being identified by outsiders. According to Art. 91(1) of the *BVI Business Companies Act (2004)*, and Art. 2(1) (b) of the *Company Management Act (1990)*. In BVI, the nominee shareholder is also a licensed business usually provided by the "registered agent". From the name list of quite a few unrelated third parties (institutions or individuals), the registered agent could pick up one or more nominees for its client. The nominees' commitment to the beneficial owners is usually recorded in a trust declaration in which the nominees confirm that their obligations to hold shares on behalf of the beneficial owners, and all the rights including but not limited to claiming interests and disposing the shares exclusively belong to the beneficial owners. This trust declaration is privileged, not required to be enclosed in the incorporation file. This trust declaration is confidential document which is not required to be enclosed in the incorporation files.

Checked with BVI laws and regulations relating nominee shareholders as well as the ownership structure of Russell Properties, the testimonies of Ms. Gu and Mr. Devillers seem to be doubtful in several aspects.

1) According to the registration information of Russell Properties disclosed in April 2016, almost three years after Bo's conviction of bribery, Mr. Devillers was

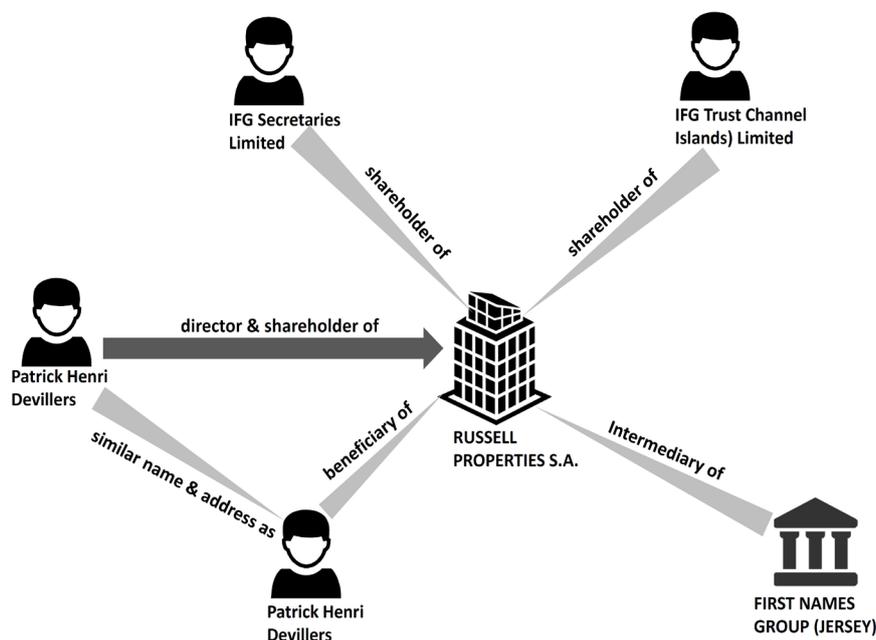


Figure 1. Related Parties of Russell Properties (ICIJ, 2016).

by no means a nominee shareholder of Russell Properties until November 29, 2011 (ICIJ, 2016). (Figure 1) From October 19, 2000 to November 28, 2011, the nominee shareholders of Russell Property were IFG Trust and IFG Secretaries without any further information indicating the beneficiaries represented by each of them. On November 29, 2011, two weeks after the murder of Mr. Neil Heywood (hereinafter referred as Heywood) who had been the manager of the Cannes villa as well as a close friend of Ms. Gu, Mr. Devillers was registered as the single shareholder, the beneficiary and the director of Russell Properties. It remains unclear whether the change of registration in 2011 is under instruction of Ms. Gu's instruction or out of Mr. Devillers' own interest. However, what beyond doubt is that Mr. Devillers failed to disclose to the court that he had been the sole shareholder, beneficiary and director of Russell Properties for almost two years.

2) Instead of clarifying his position, Mr. Devillers' testimony raised another interesting question: what kinds of shares were issued by Russell Properties, registered shares or bearer shares?

According to the BVI International Business Law, Russell Properties could issue either registered shares, bearer shares or both, and the shares could be issued with or without certificates.

Before November 29, 2011, the shares in Russell Properties were held by two professional nominee shareholders named IFG Trust and IFG Secretaries respectively. If registered shares were issued, the nominees would be no doubt recorded as the owner, actually trustees. Under this circumstance, Mr. Devillers would not be regarded as a nominee of Ms. Gu in the sense of BVI corporate law.

Russell Properties could also issue bearer shares. But this possibility was slim due to the immobilization of bearer shares. In BVI, bearer shares of an international business company should be placed at an authorized or recognized custodian by the BVI Financial Services Commission, and bearer shares held by any person other than a custodian is disabled. (BVI Business Companies Act, 2004) There is no evidence showing that Mr. Devillers was licensed to act as a custodian in BVI. Moreover, the transfer of bearer shares is highly restricted in BVI. A valid transfer of bearer shares requires for registration of the new beneficiary's name and address at the company's registered office, and delivering of share certificates itself could not naturally lead to a change of ownership. Interestingly, such practice contradicts the stereotype of bearer shares held by Chinese legal academia for over one hundred years, an understanding derived from the imitation of Japanese law that whoever presents bearer shares owns the company, and transfer of the ownership of shares is simply completed by delivering the share certificates (Lai, 1983). There is no evidence showing that Mr. Devillers was licensed to act as a custodian in BVI, or there is no need to invite two nominees.

There may be another possibility that names of nominees and the equity ratio were recorded in the Articles of Association without issuing any physical share certificate, which contributes no substantial difference in the case of registered shares discussed above.

The seemingly consistency between the testimonies regarding the nominee shareholders of Mr. Devillers and Ms. Gu was used as a key evidence against Bo in his conviction of bribery. The legal reasoning was that: 1) as Mr. Devillers was only a nominee shareholder, the other shareholder Ms. Gu, Mr. Bo's wife, was the real owner of Russell Properties; 2) Ms. Gu recognizing herself as the sole owner of Russell Properties; 3) Russell Properties was used as a vehicle to finance the acquiring of the Cannes villa, and Mr. Bo knew the existence of that villa, therefore Mr. Bo accepted the bribe through his wife. However, the registration information of Russell Properties seemed in opposite to the reconstruction of facts in the court. From 2000 to 2011, Mr. Devillers was by no means a nominee shareholder of Russell Properties as his testimony claimed, and it seems not possible for Mr. Deviller legally held any shares on behalf of Ms. Gu under BVI law.

As offshore companies are frequently abused as an instrument to cover up the truth, it is questionable to what extent we can find truth through collecting and analysing their registration information. From the point of view of the author, the reference to either registration information or the witness' testimony afterwards can hardly be reliable per se in finding the "real owner" behind an offshore company. Instead of being trapped in a deliberately designed network composed of offshore companies, this paper recommends an observation of wide angle, accepting registration information and testimony concerning offshore companies only if they can be supported by other stronger evidences. A probe into the cash flow in the channel set by offshore companies could be an effective way to provide such evidences.

3. Step II of the Montage Scheme: Money Laundering and Secrecy

3.1. An Overview of the Scale of Money Laundering in China

With the background of economic globalization, money laundering brings massive cash flows into and out of China. According to the International Narcotics Control Strategy Report of 2015, “China leads the world in illicit capital flows” citing the statistics of Global Financial Integrity (hereinafter referred as GFI) “over \$1 trillion of illicit money left China between 2003 and 2012”, and “a variety of money laundering techniques are used to circumvent the restrictions” (International Narcotics Control Strategy Report, 2015). GFI believed that misinvoicing of trade and leakages from the balance of payment are key reasons for massive money outflows from China (Kar & Spanjers, 2015). The scale of outflows of money has drawn attentions of Chinese authority. Starting from 2014, a special operation was taken to hunt for economic fugitives fleeing abroad most of whom most had illegally transferred money out of China (Yang, 2014). In accordance with Chinese scholars, the total money flow out of China is approximately 215.7 billion between 2001 and 2011 (Mei & Gao, 2015). The surprising gap between GFI’s figure and Chinese scholars’ could be caused by variety of calculation methodology, selection of indexes indicating money laundering scale and their weights, but differences in laws and regulations perhaps make more contribution.

Literally, money laundering refers to those tricks for purifying proceeds from illegal sources. When comes to its legal definition, the consensus will be soon replaced by diverse meanings. For example, the U.S. Money Laundering Control Act (1986) covers proceeds generated by almost all crimes. By contrast, money laundering in Chinese Criminal Code targets only limited criminal activities such as drug-related crimes, organizational crime of gangs, terrorism, smuggling, corruption or bribery, disturbing financial system, and financial frauds.

Despite the differences of legal definition, offshore companies are playing a crucial role of globalized money laundering activities. In the case of Bo, instead of raising the charge of money laundering against the defendant, the prosecutor narrowed his attention on the charge of bribery making all his efforts to reconstruct Bo’s connection with Russell Properties and Cannes Villa. But the prosecutor underestimated the difficulties he was confronted with. In this case, money laundering and bribery are closely connected: without money laundering, the bribery could not be started, completed or shielded; without taking money laundering into consideration, it is hard to pick up the bribe-taker covered by a network of offshore companies. Instead, with money laundering kept in mind, the bribery would emerge from the layers provided by Montage scheme.

Finally, Mr. Bo was convicted of taking bribe in form of the Cannes villa, a gift valued \$3.23 million from Mr. Xu Ming, Chairman of Dalian Shide Group, through Mr. Bo’s wife Ms. Gu. Several questions stemming from the conviction of Mr. Bo are worth close observation:

- 1) How did this big sum of money flow abroad?
- 2) How was the money “legally” transformed into a holiday house in France?
- 3) How did offshore finance services cover up real beneficiaries of property abroad?
- 4) Why so many companies and wealthy families are enthusiastic followers of offshore companies during China’s economic transition? How does the offshore company draw massive outflows from China?

The above four questions are all relevant to money flows through offshore companies which is named as the Montage scheme in this case.

3.2. Cash Flow from Bank of Communications Dalian Branch (Hereinafter Referred as Bank of Communications) to Russell International Resorts (Hereinafter Referred as Russell International)

3.2.1. Cash Flow Prior to the Offshore Financial Channel

Frauds existed in every step of the cash flow from Mainland China to the offshore account of Russell Properties.

Based on a fictitious contract between Sidelong (an affiliate to Dalian Shide Group) and Eastern American Co., Ltd (hereinafter referred as Eastern American), Bank of Communications issued an irrevocable letter of credit (hereinafter referred as L/C) with Eastern American as the beneficiary and Credit Lyonnais Shanghai Branch as the nominated bank on 7 November 2000. Eastern American presented a set of forged documents including contract, insurance policy, bill of lading and other certificates to Credit Lyonnais Shanghai Branch for honoring the L/C (*Jinan Intermediate People’s Court Criminal Judgment, 2013*). There was no payment risks demanding assurance by the issuing bank nor any “giving of value” (undertaking an obligation to make payment or making immediate payment with its own funding) by the nominated bank. On the contrary, Bank of Communication requested the American Express on November 24 to transfer \$3.23 million to Credit Lyonnais Shanghai Branch which in turns transferred this sum to an offshore account belonging to Russell Properties on November 29. This transaction is so unusual that any professional from the banks involved could notice the following red flags even with lowest due diligence.

1) Fake business deal. In order to make the remittance look like an ordinary business deal, Sidelong and Eastern American forged a trade which had never happened. According to the testimony of a witness from Sidelong, the contract was even backdated, an implication for the conspiracy after the L/C was issued.

2) Forgery. Sidelong and Eastern American collaborated or acted alone to forge the full set of documents required in the L/C including insurance policy, bill of lading, shipping documents and so on. Considering the complexity of forgery, it inevitably left some trace behind such as inconsistency among files. However, all the banks and professionals involved coincidentally ignored the flaws of the documentation.

3) The issuing bank from where importer is located while the nominated bank

from where the exporter is located is a common business practice of L/C. However, in this case, the nominated bank is in Shanghai in the same country with the importer while the exporter is thousands of miles away across the Pacific Ocean. Usually, this rare arrangement could not be accepted by exporters since it deviates from the essential purpose, reducing trade risk, of using L/C as a payment.

4) The money for buying the Cannes villa transferred from the nominated bank to Russell Properties was the same sum from American Express. Then questions arose. Who is the holder of the account of American Express? Who owned this sum of money originally? It is pity that the court files did not provide more information to unveil the mysteries although answers to these questions are crucial clues to understand the money laundering process.

Money laundering by means of L/C is a bold attempt since every step might leave traceable flaws, but it is learnt from Mr. Bo's case that this method could still work if the regulation is loose or the law enforcement is weak.

3.2.2. Cash Flows within the Offshore Financial Channel: Deposition and Mortgage, Guarantee and Creditor

\$3.22 million for buying the Cannes villa entered the offshore account controlled by Ms. Gu on 29 November 2000, which was the start point of the Montage Scheme. The end of the Montage Scheme was a holiday house of which the owner was shrouded in secrecy. As shown in **Figure 2**, started with Russell Properties the Montage Scheme travelled across five jurisdictions including BVI, Jersey, Canada, France and Luxemburg.

After Russell Properties was appointed as the entrance for funding, the ultimate controller and the funding distributor, there were two measures in the transformation from cash bribe to the Cannes villa through offshore companies.

1) A shell company, Residences Fontaine St Georges, was created to serve as the legal owner of the Cannes villa. €200,000 was assigned out of the \$3.22 million by Russell Properties on 17 May 2001 to incorporate Residences Fontaine St Georges through an agent Investissements Custodian Inc located in Canada (hereinafter referred as the Canadian company). Namely the Canadian company

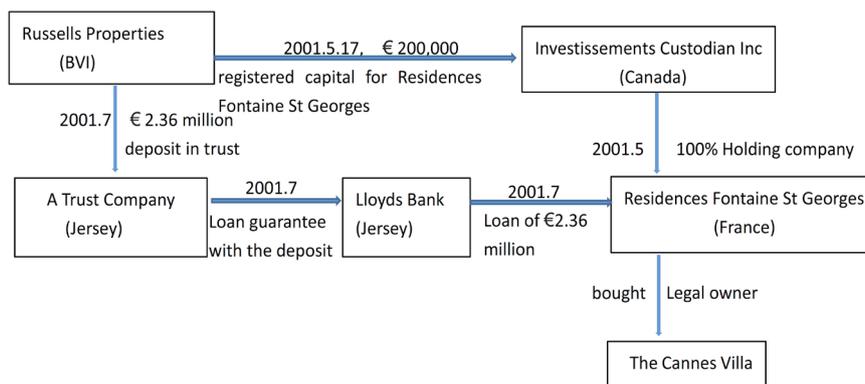


Figure 2. Map of Cash Flow from Russell Properties to the Cannes Villa (2001-2006).

fully owned Residences Fontaine St Georges, but it was Russell Properties who was the real controller based on a trust agreement with the Canadian company. Besides registered as the legal owner, Residences Fontaine St Georges was managing company of the Cannes villa.

2) The financing plan for buying the Cannes villa through the same amount deposit and loan for the same period in the same offshore bank was to cover up the real source of the money. In detail, a trust company in Jersey deposited €2.36 million at Lloyds Bank in its name but on behalf of Russell Properties on 3 July 2001, and the deposit period was 5 years expiring in 2006 (*Jinan Intermediate People's Court Criminal Judgment, 2013*). Coincidentally, also in July 2001, Residences Fontaine St Georges applied for a 5-year mortgage of €2.36 million from the same bank guaranteed by the above mentioned deposit.

Cash flows shown in **Figure 2** disclosed some plausible correlations leading to money laundering activities:

First, \$3.22 million equaled €2.7 million with the exchange rate in May 2001, approximately the price of the Cannes villa plus the registered capital of Residences Fontaine St Georges.

Second, the Jersey trust company would not provide a guarantee out of no reason. A loan for buying the Cannes villa and a deposit of exactly the same amount and the same period which would offset in the future reflected a clear route of cash flow from Russell Properties to the Cannes villa.

Third, the Cannes villa was the destination of the Montage scheme while Russell Properties was the core of equity ownership, financing plan and secrecy layers. In this framework, the beneficiary behind the scene manipulated the Montage scheme through either Russell Properties' holding company power over Residences Fontaine St Georges which legally owned the villa, or its controlling role in the allocation of funding.

Before 2006, there was a Canadian company placed in the middle between Russell Properties and Residences Fontaine St Georges as the trustee of the former and the sole shareholder of the latter. In the year of 2006, Russell Properties' deposit in trust at Lloyds Bank expired and so did the loan of Residences Fontaine St Georges. In the same year, in response to Ms. Gu' instruction of transferring her shares in Russell Properties to Mr. Xu Ming, Mr. Devillers delivered lawyers' advice that a simplification to the current over-complicated ownership structure of Russell Properties was recommended. Consequently, Mr. Devillers and his lawyers presented Ms. Gu with a solution to simplify ownership and pay off the loan. According to this solution, Russell Properties provided €31,000 in cash to incorporate another shell company Russell International in Luxemburg holding all the shares in Residences Fontaine St Georges transferred by the Canadian company and after the transaction the Canadian stepped down. Russell Properties lent all the money in its soon expiring deposit to Russell International, and with this sum of money Russell International paid off the debt owed by its wholly owned subsidiary Residences Fontaine St Georges. Here is the end of

the cash flow within the network of offshore companies, and Russell Properties emerged as the creditor of the Cannes villa's legal owner Residences Fontaine St Georges.

3.3. Offshore Company's Function of Secrecy

The increasing importance of the offshore company in global money laundering is highly connected with the secrecy service it provides. Based on ten years of study on money laundering, a UN report states "criminal organizations are making wide use of the opportunities offered by financial havens and offshore centres to launder criminal assets", and "effectively shielding foreign investors from investigations and prosecutions from their home country". The "extensive array of facilities" offered by offshore centres including strict banking secrecy, convenient registration of international business companies or shell companies, nominee shareholders, and trust service. All these "facilities" work together to form secrecy layers where even the clients themselves probably get lost (Blum, et al., 1998). "Secrecy is the badge of fraud", commented by Justice Millet on the secrecy provided by offshore companies in a judgment of a money laundering case (Hampton & Levi, 1999).

The Montage Scheme is an archetypal case of money laundering by using "extensive array of facilities" of offshore banks, offshore companies and offshore trust. A wall composed of offshore facilities succeeded in shielding Ms. Gu, the real owner of the Cannes villa behind the property's named owners, a series of shell companies covering the source of funding, and obscuring the trace of cash flow. To individuals or organizations engaged in money laundering, layer of secrecy displayed in the Montage Scheme is rather seductive.

With layers of secrecy, a channel for money laundering, which is represented by the Montage Scheme in Mr. Bo's case, could be easily and quickly built up. Each company looks as if an independent segment acting for hiding ill-gotten gains and thwarting corruption investigations. Meanwhile, every segment alone deviates investigators from approaching the truth and all affiliated offshore companies work together distracting, misleading, confusing and finally frustrating investigations.

Much first-hand information disclosed in Mr. Bo's trial, which is unprecedentedly transparent, makes it a valuable case to have a direct insight into the secrecy mechanism within offshore jurisdictions. With Mr. Xu Ming's promise to provide funding, Ms. Gu consulted with her French friend Mr. Devillers the idea to purchase a house abroad. Mr. Devillers fully understood Gu's needs: a property with a potential to generate revenue on one hand and sophisticated layers of secrecy preventing the beneficiary from being exposed on the other hand, as shown in **Figure 3**. All the front companies spreading in this network shared a common task of erasing any connection of Mr. Gu with the Cannes villa.

Figure 3 illustrates that any investigation trying to find out the owner of

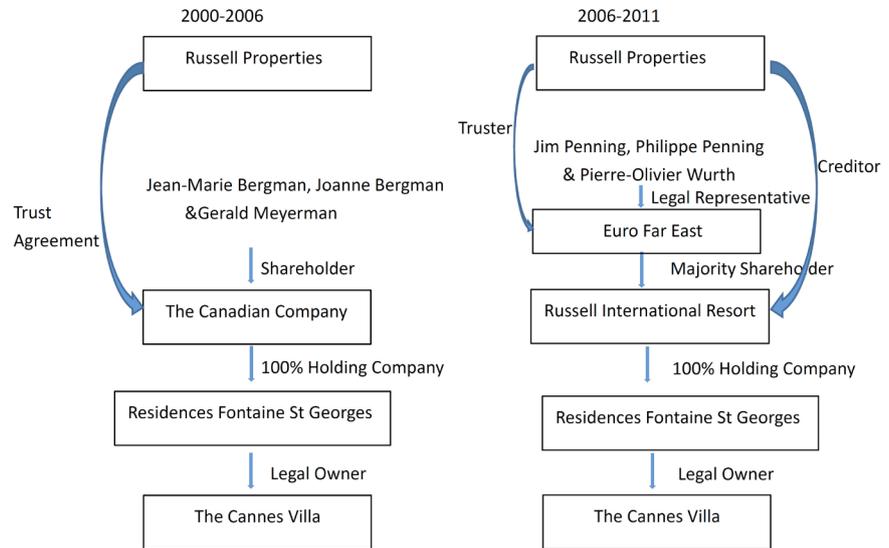


Figure 3. Layers Concealing the Beneficiary of the Cannes Villa.

the Cannes villa by following the Montage Scheme will be led to directions far away from Ms. Gu.

The legal owner of the Cannes villa before 2006 was Residences Fontaine St Georges and its shares went to the Canadian company owned by a Canadian couple Jean-Marie and Joanne Bergman and an American Gerald Meyerman. Mr Bergmans answered in a telephone interview that his company held shares in Residences Fontaine St Georges as a nominee at request of an intermediary whose identity he declined to disclose and yet he did not know who the ultimate owner was. The American shareholder was a friend of Mr and Mrs Bergmans who had never involved in the management nor known the existence of this villa (Page, 2013). Therefore, the relationship between the above mentioned intermediary and Russell Properties remains unknown.

In 2006, Russell International, as a replacement of the Canadian company, started to act as the sole shareholder of Residences Fontaine St Georges. Russell International's majority shareholder was a company named Euro Far East located in Luxemburg and its legal representatives Jim Penning, Philippe Penning and Pierre-Olivier Wurth refused to give comments on their role related to the property (Page, 2013). All the clues ended here, and the investigation within the Montage Scheme was led to several foreigners with no link to Ms. Gu or her family.

4. Analysis

4.1. Offshore Companies Are Instrumentality for Misleading, Therefore Seeking Truths within the Network of Offshore Companies Will Definitely Be Far Away from the Truth

Jurisdictions set up boundaries for international law enforcement but do not hold back illicit capital movement. Once confronted with investigation or un-

certainty in one jurisdiction, money flows out seeking for refuge in other jurisdiction and offshore companies are products to provide shelter for suspicious capital movement. Compared with piercing the corporate veil case by case, international cooperation could be a more efficient and long-term solution to fight against illicit capital flows.

Offshore techniques including layers of secrecy, nominee shareholders, custodians for bearer shares and other similar designs work together for a common purpose of dragging “fox hunter” into a jungle hard to make a way out. Even though first hand information about offshore companies involved in Mr. Bo’s case was disclosed by Ms. Gu and Mr. Devillers, the identity of the owner of Russell Properties and that of the Cannes villa could not be legally defined beyond doubts as observed in the UN report that “once the money is inside the (offshore) banking system, most of the battle is lost” (Hampton & Levi, 1999).

Assuming that after Mr. Xu Ming granted the money in the offshore account of Russell Properties, which was controlled by Ms. Gu and Mr. Devillers, in November 2000, there was no further activity other than the incorporation of several offshore companies, specifically no purchase of the Cannes villa, what would be the bribe, when and where would the bribery complete? If bringing bribery and money laundering together, a persuasive inference would be reasonably developed: 1) Mr. Xu Ming bribed Ms. Gu with cash in November 2000; 2) Ms. Gu incorporated several offshore companies to cover up the bribery; 3) No matter the money was used to purchase a property or services, or was stolen, it had no relevance to whether Ms. Gu took a bribe or when the bribery was done. However, it remains unclear why the prosecutor failed to pay his attention to prima facie evidence of money laundering (e.g. forged documents for getting a L/C to transfer money out of China) but exclusively focused on the ownerships of offshore companies and the Cannes villa, leading the investigation exactly into the trap set up by the Montage Scheme. As shown in **Figure 3**, six foreigners were found out to be the shareholders of the ultimate holding company of the Cannes villa.

4.2. Agency Cost of Employing Offshore Companies for Money Laundering

Due to secrecy services, offshore companies are widely used in the transnational money laundering activities. International money laundering is not a one-person job, the beneficiary has to rely on “professional services” offered by various agents for the incorporation, opening offshore accounts, installment of layers, and providing legal cover of illicit assets. As known to all, there have always been risks of agent’s loyalty for the agents will act in their own interests rather than the principal’s even in legal businesses. Any rational principal would not count on the agent’s “professional ethic” in an illegal engagement and it is not hard to imagine the agent would never miss opportunities to take advantage of the principal.

In Mr. Bo's case, Ms. Gu gave her full trust to Mr. Devillers at the very beginning, delegating him the power of designing and operating the scheme of international money laundering. If we trace back the practice of the Montage Scheme, Mr. Devillers' advices to Ms. Gu, either the alleged mandatory requirement for at least two shareholders or the equal division of shares, diverted from Gu's best interests. As the scheme unfolded, Ms. Gu's awareness of the agency costs and deep concerns about losing control were reflected by repeated changed ownership structure of the Cannes villa.

However, Ms Gu's intention to reconstruct the ownership of Russell Properties has never been realized. Her first proposal was to transfer all her shares to Mr. Xu Ming failed in 2006, so did her second try to Mr. Heywood in 2007. In the year 2011, Ms. Gu, for the third time, instructed a transfer to Ms. Jiang Feng who was a close friend of Mr. Xu Ming and this transfer was unsurprisingly another failure. It should be noted that all the above mentioned transfers were implemented by Mr. Deivellers and Ms. Gu only gave her rough commands. With regards to the reasons causing unsuccessful transfers, Mr. Devillers blamed the complicated ownership structure for the first failure, and as a follow-up measure he simplified the ownership structure by creating Russell International but the transfer never happened. Mr. Devillers explained in his testimony that "back to 2007, the law firm received a photocopy of a passport and an instruction for share transfer with no further supporting documents; the firm had no idea on how to follow up, and eventually lost the documents". The aborted share transfer of 2007 was due to the recklessness of lawyers, but it was confusing why lawyers had never asked Gu for confirmation or clarification, why these so called professionals just "recklessly" put the issue aside and even lost the documents. Strangely, both the lawyer and Mr. Devillers had never informed Ms. Gu of the failure of second transfer. As a result, till the day Ms. Gu testified in Mr. Bo's trial in 2013, she still believed that "in the second half year of 2007 I transferred my 50% shares in Russell Properties to Neil, and Neil held those share on my behalf." In 2011, Ms. Gu instructed another transfer in her belief from Mr. Heywood to Ms. Jiang Feng which again failed for Ms. Jiang Feng's hesitation according to Mr. Devillers but for non-cooperation of related persons according to Mr. Jiang Feng. After several unsuccessful transfers, Mr. Devillers eventually got all the shares in Russell Properties in November 2011 from two nominees IFG Trust and IFG Secretaries. The only successful transfer ever since the incorporation of Russell Properties made Mr. Devillers the sole shareholder rather than Ms. Jiang Feng which Ms. Gu was originally intent for (Page, 2016). The repeated unsuccessful transfers marked that Russell Properties diverted from the purpose it was created for, and Ms. Gu's control power over the company was not so strong as she claimed.

Out of her concerns of the agent's betrayal in 2007, Ms. Gu replaced Mr. Devillers with Mr. Heywood as the manager of Residences Fontaine St Georges which owned the legal title of the villa. However, what beyond Ms. Gu's expecta-

tion was that the alienation of agency grew so widely that the situation was soon out of her control. Ms. Gu seemed quite naive in creating a checking and balancing mechanism between her two agents. In a criminal organization, deceit, betrayal and revenge are day-to-day practice among its members because the rule governing principal-agent relationship in this kind of organization is totally out of the reach of law or ethics (Roper, 2012, Connett, 2015). The Hollywood style response to dishonesty, for example murder, blackmail, or kidnapping, dramatically occurred in Mr. Bo's case.

5. Conclusion

Represented by BVI International Business Companies Act, offshore jurisdictions present international legal products including offshore companies and offshore accounts to fulfill the needs for capital mobility. These legal products are not for attracting investments but for providing channels for money flows. Of course, the service is not for free, and the passengers have to pay for their pass. Compared with its small population of no more than 30,000, 600,000 incorporations in total and 5,000 new companies registered every month in BVI are really impressive, and International Business Companies are by far the most popular offshore company model in twenty years since the enactment of International Business Companies Act. Estimated by Professor Gabriel Zucman, 7.5 trillion dollars, equaling 8% of the world's financial wealth, is held offshore (Zucman, 2015).

At the beginning of this century, illicit outflows began to draw worldwide attention. In accordance with the statistics of GFI, the illegal cash flow out of China leads the world between 2003 to 2012. A joint action was launched in 2015 by State Administration of Foreign Exchange, the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security to strike illegal foreign-exchange transactions involving more than one trillion RMB through offshore instruments and "underground banks" (Annual Report 2015 State Administration of Foreign Exchange, 2016). Illegal capital outflows are closely connected to China's marketization: market drives the redistribution of social wealth; the process of redistribution is paralleling with corruption and illegal gains. In China, the religious word "sin" (Yuan Zui) is frequently used to refer to the co-existence of accumulation of wealth and illegal activities. Quite a few wealthy people are holding deep concerns about their safety, and the offshore companies offer an excellent solution for them, the money with sin quietly moves abroad and all the traces of the movement could be erased or buried into the maze of offshore companies. After the process of laundering, dirty money gets its newborn like baptized Christian. The Montage scheme is just one of thousands of money laundering cases using the above mentioned method.

In Mr. Bo's case, the fact whoever is the owner of the Cannes villa is not necessarily relevant to the bribery. The conviction of bribery in giving cash depends on whether the control of the money is transferred from the bribe-giver to the

bribe-taker rather than whether the bribe-taker is the owner of any property purchased with the money given by the bribe-giver. When the \$3.23 million provided by Mr. Xu Ming entered the offshore account controlled by Ms. Gu on 29 November 2000, the crime of bribery was completed. However, the process of money laundering did not stop. A complete process of money laundering composed of three stages: placement, layering and integration, (Sultzer, 1995-1996) and in Mr. Bo's case, the placement was carried out in form of money transfer from Mr. Xu Ming to Russell Properties, the task of layering was undertaken by the Montage Scheme to cover up the trailing of cash flow as well as the transformation from money bribe to the Cannes villa, and the last stage called integration started to function 16 months after Mr. Bo's trial as reported by the Global Times that the villa was put on sale. Disregarding the fact that the financing plan, transaction arrangement and ownership structure of the Cannes villa are an integration of bribery and money laundering, the prosecution against Mr. Bo by using the villa as a single bribe without taking into consideration of money laundering left questionable loopholes to the conviction. The sale of Cannes villa indicates that the Montage Scheme is still working although the owner or beneficiary was put into jail, and although the Chinese court ruled that the villa be "illegally obtained through bribery and shall be confiscated" (Jinan Intermediate People's Court Criminal Judgment, 2013).

Deep water flows quietly, the international mobility of money shielded under offshore companies is also a quiet movement. Therefore, the importance of information collection could never be overestimated in checking the growth of offshore companies. The offshore company hides the truth, therefore, mandatory requirement for information disclosure would be a countermeasure. There are two recommended approaches for information collection and exchange.

5.1. Collection and Exchange of Over Sea Information

1) Expansion of Extraterritorial Effect of Domestic Law: An Approach Represented by the FCPA.

In cracking down bribery overseas in exchange for business, the Foreign Corrupt Practices Act of 1977 (hereinafter referred as FCPA) is applied to a wide range of individuals and entities, including U.S. persons and businesses, domestic and foreign companies listed in the U.S., and foreign persons and businesses acting in the territory of the U.S. In other words, the FCPA breaks the traditional boundaries between *lex personalis* and *jus soli*, and claims a jurisdiction of extraterritoriality, expanding its judicial effect abroad. The FCPA accounting provisions require issuers, senior managers, and controllers to make financial reports and maintain adequate internal control system for the purpose of detecting clues for potential corruptive payments. Although the enforcement of law overseas can not work without an international collaboration, which is the core in difficulty, the enforcement of the FCPA overseas has proved to be a success. From the point view of Deputy Attorney General Sally Quillian Yates, reliable infor-

mation contributes significantly to the effective enforcement of FCPA. (Yates, 2015) U.S. Department of Justice and Securities and Exchange Commission (hereinafter referred as SEC) exercise multiple methods to gather information regarding potential FCPA violations including tips from whistleblowers, self reporting and mandatory information disclosure, information discovered in other investigations, referrals from other offices or agencies, public sources (such as media reports and trade publications) and proactive investigative techniques. Although the power of world's largest economy is an important factor for the extraterritorial effect of the FCPA which can not be ignored, the FCPA brought forth an innovative approach in terms of collecting information overseas.

2) Establishment of Disclosure and Exchange Mechanism: An Approach of International Cooperation.

The offshore company is popular among players engaging in illegal activities because it creates the difficulties for the enforcement of law by duplicating dozens of its egos and then frustrating an international collaboration in terms of law enforcement. As a separate investigation and law enforcement alone can never pierce secrecy layers spreading across jurisdictions, the transnational collaboration in law enforcement is fundamental in fighting against transnational crimes shielded by offshore companies. A significant step has been made by G20 and OECD to end banking secrecy and offshore abuse in 2009, and Global Standard for Automatic Exchange of Financial Account Information in Tax Matters was presented by OECD under the mandate of G20 in 2014. With the execution of the 34 members and 13 non-members the first information exchange is scheduled in 2017. The new standard provides for "annual automatic exchange between governments of financial account information, including balances, interest, dividends, and sales proceeds from financial assets, presorted to governments by financial institutions and covering accounts held by individuals and entities, including trusts and foundations". It is noted that quite a few offshore financial centers such as Switzerland, Luxemburg, Singapore and BVI committed to implement the Standard, implying positive impact of the collective actions of G20 and OECD countries towards offshore abuse. With the exchanges of information becoming regular and going deeper, the ability of law enforcement to identify suspicious offshore accounts and transactions overseas will be substantially enhanced.

5.2. Mandatory Information Disclosure by "Destination Country"

Offshore jurisdiction is by no means the final destination for capital outflows. Money temporarily sleeping offshore will sooner or later leave (the last task of money laundering "integration"). This paper describes the potential final destinations of outflows as "destination countries". Information disclosure for offshore companies could be introduced into laws and regulations in destination countries in order to obtain information covered by offshore secrecy. For example, when an offshore company is engaged in incorporating a local subsidiary, opening a business office, bringing a law suit or making custom clearance in a

destination county, it is required to make full disclosure of the articles of association, nominee shareholders, beneficiaries, controllers and related parties. Furthermore, if a group of destination counties could develop common standards for information disclosure associated with exchange mechanism through conventions or agreements, it is possible to penetrate securities formed by offshore companies.

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