

March 11, 2019

Bob Carlson
President, American Bar Association
321 North Clark Street
Chicago, IL 60654

Re: Beneficial Ownership Legislation

Dear President Carlson,

We write to ask the ABA to reconsider its opposition to legislation to be submitted to the Financial Services Committee of the US House of Representatives later this month, which would require U.S. corporations and LLCs formed in any of the 50 states to disclose their beneficial owners. As we understand it, the new version of the legislation will eliminate the concern regarding interference with the attorney client relationship that was at the heart of the ABA's opposition to prior versions.

Who we are

We are lawyers with expertise in the field of business and human rights¹, a field that has grown rapidly following the unanimous endorsement by the UN Human Rights Council of the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011², which the ABA also endorsed in February 2012³. Many of us are ABA members who worked to secure that endorsement and/or have been involved in the Association's efforts to advance the UNGPs since then.

The UNGPs have become "the global authoritative standard, providing a blueprint for the steps all states and businesses should take to uphold human rights."⁴ They are increasingly reflected in national laws and regulations, in the work of multi-stakeholder and standard-setting bodies, in the practices and policies of leading companies, and in the advocacy of civil society.

The ABA's opposition to modern slavery

Commendably, the ABA has also called for the elimination of slavery in all its modern forms, including: forced labor; sex trafficking, labor trafficking, trafficking in persons;

¹ We are signing this letter in our personal capacities only. Affiliations, where listed, are solely for identification purposes.

² Guiding Principles on Business and Human Rights (2011), available at https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

³ ABA House of Delegates Resolution 109, available at https://www.americanbar.org/content/dam/aba/administrative/human_rights/hod_midyear_109.authch_eckdam.pdf.

⁴ Zeid Ra'ad Al Hussein, 'Ethical Pursuit of Prosperity' (23 March 2015), available at <https://www.lawgazette.co.uk/comment-and-opinion/ethical-pursuit-of-prosperity/5047796.article>.

and trafficking in women and children. The ABA has urged governments around the world, the private sector, and the legal community to take strong action to combat modern slavery.

Beneficial ownership legislation is essential to fight sex trafficking and other human rights abuses involving U.S. companies

As lawyers involved in business and human rights issues, we believe that it is critically important for the U.S. Congress to fight modern slavery and other human rights abuses by passing beneficial ownership legislation that enables sex traffickers and other rights abusers to flourish in the U.S.

The need for such legislation is urgent, as highlighted by the recent solicitation charges filed against hundreds of men in Florida for use of illicit massage parlors that are engaged in sex trafficking. According to a very recent New York Times article⁵, this use of massage parlors “has exploded into a \$3 billion-a-year sex industry that relies on pervasive secrecy, close-knit ownership rings and tens of thousands of mostly foreign women ensnared in a form of modern indentured servitude.” However, the article points out that law enforcement efforts to combat sex trafficking outlets is hamstrung by the opacity of their ownership structures:

Above these site managers is usually a person who appears on paperwork as the massage parlor owner, but is often just a frontman running a shell company. The payouts from the shell company go to what is legally known as the “beneficial owner.”

“Very little is known of the behind-the-scene owners,” Mr. Myles [of Polaris Project, an anti-trafficking organization] said. “They are hiding behind shell companies, hiding behind mamasans. They are hiding behind fake people.”

This is not new. Lack of transparency of beneficial ownership is absolutely essential for sex trafficking schemes like this to grow and prosper. It is also essential for facilitating a wide range of abuses, including the use by kleptocrats of anonymous U.S. companies to shield their assets and their activities from scrutiny.⁶

The new bill will address the ABA’s core concern regarding interference with the attorney client relationship

⁵ Nicholas Kulish, Frances Robles and Patricia Mazzei, *Behind Illicit Massage Parlors Lie a Vast Crime Network and Modern Indentured Servitude* (March 2, 2019), available at <https://www.nytimes.com/2019/03/02/us/massage-parlors-human-trafficking.html> .

⁶ For example, the laundering in the U.S. of Equatorial Guinea’s sovereign wealth, which was siphoned off by its kleptocratic ruling family. See, e.g., *United States of America v One White Crystal-Covered “Bad Tour” Glove and other Michael Jackson Memorabilia, Real Property Located on Streetwater Mesa Road in Malibu, California, One 2011 Ferrari 599 GTO*, Second Amended Verified Complaint, USDC CDCal, No. CV 2 11-3582-GW-SS (June 11, 2012); and Lisa Mosal, *Manna From Heaven”? How Health and Education Pay the Price for Self- Dealing in Equatorial Guinea* (June 15, 2017), available at <https://www.hrw.org/report/2017/06/15/manna-heaven/how-health-and-education-pay-price-self-dealing-equatorial-guinea>

Yet the ABA to date has opposed prior versions of the legislation that would create a central register of beneficial ownership information for U.S. corporations and LLCs. The ABA has raised a number of objections, but its core issue appears to be grounded in concerns that the legislation would interfere with the attorney-client relationship.

As we understand it, however, the new bill to be submitted to the Financial Services Committee of the House of Representatives would eliminate that fundamental concern. Earlier versions of the bill would have subjected formation agents to anti-money laundering (AML) rules applicable to banks, including the need to establish AML programs and filing suspicious activity reports (SARs) with the Treasury Department. This would have included lawyers helping applicants without U.S. passports or drivers licenses if the lawyer did not contract to a separate formation agent in the U.S.

The new bill has removed language that would subject formation agents (including lawyers) to the AML rules. With that removal, the basis for the ABA's core concern about interference with the attorney-client relationship disappears.

The ABA should reconsider its opposition to transparency reform of beneficial ownership of U.S. companies

Given the widespread and severe human rights abuse suffered by many human beings by slavery; the ABA's endorsement of the UNGPs and its strong commitment to end slavery; and the essential role played by lack of corporate transparency in enabling such abuse, we respectfully urge the ABA to reconsider its opposition to transparency reform on beneficial ownership of U.S. companies.

Thank you for considering this new information. We would be pleased to address any questions you or your staff may have.

Sincerely,

John F. Sherman, III, Esq.

Former adviser to the Special Representative of the UN Secretary General on Business and Human Rights, Professor John G. Ruggie, author of the UN Guiding Principles on Business and Human Rights.

Former co-chair, International Bar Association Corporate Social Responsibility Committee

Former chair, International Bar Association Business and Human Rights Working Group
General Counsel and Senior Advisor, Shift
Boston, Massachusetts

Douglass Cassel, Esq.
Emeritus Professor of Law, Notre Dame Law School
New York, New York

Carey R. D'Avino, Esq.
New York, New York

Elise Groulx Diggs, Esq., Ad.E. LL.M
Washington, DC
Convener of the Business and Human Rights Advisory Board of the American Bar
Association Center for Human Rights
Vice-chair of the Business and Human Rights Committee of the International Bar
Association.
Doughty Street Chambers, London, UK

Anthony Ewing, Esq.
Lecturer in Law, Columbia Law School
Co-Director, Teaching Business and Human Rights Forum
New York, New York

Silvia M. Garrigo, Esq.
Key Biscayne, Florida

Vivek Krishnamurthy, Esq.
Lecturer on Law, Harvard Law School
Affiliate, Berkman Klein Center for Internet & Society, Harvard University
Senior Fellow, Carr Center for Human Rights Policy, Harvard Kennedy School
Cambridge, Massachusetts

Amy K. Lehr, Esq.
Former adviser to the Special Representative of the UN Secretary General on Business
and Human Rights, Professor John G. Ruggie, author of the UN Guiding Principles
on Business and Human Rights
Washington, D.C.

Mitt Regan, Esq.
McDevitt Professor of Jurisprudence
Director, Center on Ethics and the Legal Profession
Co-Director, Center on National Security and the Law
Georgetown University Law Center
and
Senior Fellow, Stockdale Center for Ethical Leadership
United States Naval Academy
Washington, DC

Gare A. Smith, Esq.
Chair, Corporate Social Responsibility Practice
Foley Hoag, LLP
Washington, DC

Robert C. Thompson, Esq.
Member, Working Group on Business and Human Rights Arbitration
New York, New York

Copies to:

Holly Cook
Director, ABA Governmental Affairs Office
1050 Connecticut Ave, NW
Washington, DC 20036

The Honorable Maxine Waters
Chairwoman, Financial Services Committee
United States House of Representatives
Washington, DC 20024

The Honorable Patrick MacHenry
Ranking Member, Financial Services Committee
United States House of Representatives
Washington, DC 20515