

HIDDEN TREUHAND

HIDDEN TREUHAND
How Corporations and Individuals
Hide Assets and Money

SHELLEY A. STARK



Universal-Publishers
Boca Raton

*Hidden Treuhand:
How Corporations and Individuals Hide Assets and Money*

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Dedicated to my daughter

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I am the summation of many blessings—most of these are the people in my life.

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FOREWORD

Globalization has given impetus to an increase in relatively recent new economic and financial arrangements. These arrangements profit from the current trend of deregulation. Thus, opportunities are being offered to entrepreneurs even for inventing highly lucrative and secret ways to increase wealth. The general public is not aware of this.

This book deals with one the most exciting novelties: the Hidden Treuhand. Its recent origin can be traced to legal efforts in the 1930's of saving properties of German Jews about to be confiscated by the Nazis. Refugees from Nazi Germany began taking advantage of the legal possibility of Hidden Treuhand. Through this arrangement, the "secret power of attorney" accomplished bringing some of their properties into safe havens.

This practice subsequently spread to and began to be used by the Nazis themselves, by communists in various countries, and increasingly by wealthy Americans and corporations. The classical case of Halliburton in this respect constitutes a major segment of this book.

The European Union and international money laundering laws have strived to eliminate any violations from the banking system. But, since Treuhand works within the law and has become part of the practices within the monetary system, total successful suppression is presently quite impossible.

A lawyer or a notary public can open a bank account on behalf of a Treuhand Giver. The disclosure of this fact is commonly referred to and registered as a “special account.” Its owner remains unknown. Such a transaction is completely protected from public and even governmental scrutiny by banking secrecy laws.

The purpose of this book is to explain what a Treuhand is, how it comes about and how it is administered. This information illustrates how, by layering companies within companies within a Hidden Treuhand, one can build an economic empire. This construct can be hidden even within a capitalist free market economy. There are quite a number of law firms in Austria, Germany, Liechtenstein, Luxemburg, and Switzerland specializing in this matter. Hidden Treuhand contracts are a sensitive matter. They function without the slightest transparency and yet are fully protected by law. This instrument has evolved into the single most powerful business tool in the world of globalization today.

The author was moved to investigate this novel field of economics, mainly because of her experience in which her co-ownership in a firm simply disappeared. With detective acumen this university student of finance began to research and stumbled upon the legal construct of Treuhand.

The result is a thrilling account of historical uses of the Hidden Treuhand to almost incredible current examples and practices feasible under globalization, especially as it relates to Halliburton’s endeavors.

A reader can apply this Hidden Treuhand information to one’s business, or to understand Hidden Treuhand in order to eventually bring it under the rule of law in a democratic society.

The Hidden Treuhand thus becomes an issue for international relations and diplomacy.

Professor Ernst Florian Winter
Former Director
Diplomatic Academy of Austria

1

PROFIT WITHOUT TRANSPARENCY

“If I were asked what is the greatest and most distinctive achievement preformed by Englishmen in the field of jurisprudence I cannot think that we should have any better answer to give than this, namely the development from century to century of the trust idea.”

—Maitland

Little is known of a customary European legal practice that offers corporations and individuals an opportunity to profit from assets while keeping the owner’s identity completely secret. This practice is referred to as the ‘Hidden Treuhand’ in the English language and the ‘Verdeckte Treuhand’ in the German language. Due to globalization, the practice is spreading outside its European borders, impacting the world’s financial system, and quite possibly even providing a non-transparent means to privately profit from the financial crisis and the war in Iraq.

This story begins in an earlier century, but its legacy lives with us today. The German word ‘treu’ (pronounced *troi*) means true and implies faithful, while the German word ‘Treuhand’ (pronounced *troi-hand*) actually concerns a form of trust law.

This book concerns the very peculiar form of trust law referred to as the Hidden Treuhand that enables one to *legally* hide all trace of ownership of any asset. With the true benefactor’s identity hidden, all trace of derived income can be hidden as well.

This legal niche has developed over time in relative secrecy in European countries where global firms often create subsidiaries that are little more than letterbox companies having no real business purpose. Case studies will explore little known uses of Hidden Treuhand, and the huge potential impact this legal practice creates within the global financial system and the world economy. To better understand what this means to you and your world, one of the case studies concerns a Hidden Treuhand in a subsidiary in Austria belonging to Halliburton and another concerns a U.S. hedge fund managed by Refco, responsible for millions of American pensions. As the financial crisis continues to unfold, it is highly likely that Hidden Treuhand is playing a pivotal role, hiding money and assets beyond the reach of law enforcement and investors.

The Hidden Treuhand has global impact, yet few have ever heard of it. It can be embedded in any corporation and subsequently imported into every country in the world. The answer to the question of how such arrangements can be made while maintaining the secrecy of their existence and yet be inherently legal is cornerstone to this publication.

This book will explain how to create a Hidden Treuhand and use this legal advantage in business. Written as an informative handbook concerning the law, history, environment, provisions, and structure of Treuhand contracts, this information illustrates how one's identity can be shielded from all public knowledge while one is engaged in business that can span the globe. With this information you can learn to be both buyer and seller in transactions, own and control any asset in the world, buy or sell real estate, corporate stock or other financial instruments, and create corporations and subsidiaries where real stockholder identity is legally shielded; and you can do all this without a shred of transparency or public knowledge. While not legal in the United States, the circumstances for creating a Hidden Treuhand in for-

eign jurisdictions remain legal and the true benefactor behind every decision and every profit cannot be revealed by any legal means.

Obviously, the word ‘Treuhand’ is German in origin. But what does it really mean? Though it is used throughout German speaking countries of Europe, the word Treuhand has many meanings within the law. The word Treuhand is a general term that covers normal activities including trusts and escrow. The parties to these activities are publicly known and the benefit of their activities is not hidden. These are ordinary functions that are listed under the umbrella term Treuhand.

Under the umbrella term for Treuhand are services, occupations and variations as to how Treuhand can be used. The word Treuhand can be expanded to Treuhänder, the German word for a trustee. In Switzerland, the word Treuhänder is applied to occupations such as financial and tax advisors for businesses and individuals. In Austria, reference to a business Treuhänder has the collective meaning of certified public accountants and tax auditors. The word Treuhand is an umbrella term that obscures both its uses and its legal meaning. There are professions called Treuhänder and there is a legal Chamber of Treuhand, but there is no clear meaning of the word. Since the word Treuhand is not a clear term in German, it cannot be exclusively described as a trust in English either. For this reason, it is best to continue using the German word Treuhand because it has no equivalent in English.

The meaning of Treuhand can best be described by the practice of Treuhand. Many Treuhand activities are legal, but this is not necessarily the case all the time. Illegal activities such as tax evasion and money laundering are possible using a variation of Treuhand: the Hidden Treuhand. With a Hidden Treuhand, it is possible to own assets in secret. This book only concerns the Hidden Treuhand.

The word Treuhand expresses nothing about the activity in which the Treuhand is engaged. Having one does not signify potential illegal activity. The term itself is an

innocent term that covers alternatives to its uses. General reference to Treuhand does not distinguish between Treuhand and the Hidden Treuhand, but both are possible. Legal commentary distinguishes between various Treuhand activities and Hidden Treuhand but legal codes do not address this difference. The law regulates Treuhand activities and therefore these activities are legal. The Hidden Treuhand is a variation of Treuhand falling neatly under the blanket of all Treuhand activities and is legitimized as a result. The law does not regulate Hidden Treuhand activities, because it is not possible to regulate what it cannot see.

This book concerns the unique opportunities afforded by a Hidden Treuhand. Understanding the current and historic practice of Treuhand helps to explain what those unique opportunities may be. The practice of Hidden Treuhand is relevant, but remains unregulated. More and more often the relevant practice of Treuhand is to be engaged in hiding an asset owner's identity from public knowledge, including tax authorities. The practice submits to legal local customs in Austria, Germany, Liechtenstein, Luxemburg, and Switzerland, but due to globalization, has moved beyond European borders via corporations and individuals who put it to personal use.

This publication makes use of Austrian legal sources to illustrate the resourceful qualities of the Hidden Treuhand. The basic legal environment concerning Treuhand contracts exists, perhaps with slight variation, in the other German-speaking European countries as well. These German-speaking countries base their law on the Napoleonic Civil Code, the ABGB (Allgemeinen bürgerlichen Gesetzbuch), General Civil Law Book, known for its particularities regarding contract law.

In Austria, the legal foundation of Treuhand law is based on legal code numbers beginning with (paragraph) §1002 to §1042. The legal codes can be found in the General Civil Law Book (ABGB). These codes discuss Treuhand but they are in fact chapters concerning an authori-

zation and power of attorney. The codes cover the benign practice of Treuhand, but other uses less benign are possible. Treuhand law was purposefully left opaque and the meaning of Treuhand unclear. Both historical events and convenience are partly to blame for this. Current for the year 2007, the legal code §1002 is basically described as follows:

A Treuhand is a contract called an authorization contract or power of attorney, where somebody, usually a lawyer, takes over the duties of the business in his name.¹

The term used to describe the person who creates and administrates a Treuhand is a Treuhänder. The Treuhänder is usually a lawyer by profession, but this does not have to be the case. In English, the equivalent terminology is trustee. For the purpose of continuity, this book will continually refer to a Treuhänder or trustee as a Taker, and the one who hands over assets or property as a Giver. In German, the term is Treugeber (Treu+geber = true giver). These names identify the role of the participants and have close equivalents to German words in the original German text. The translations from the original German legal text have been paraphrased. For exact wording, read the footnoted text in the original German language in the ‘Endnotes.’

A Hidden Treuhand can basically be defined as a form of contract that borrows some aspects of trust law. It is the result of two relationships:

One is indirect, meaning the Giver has no direct relationship with the Taker. The Taker is the registered owner of the Giver’s asset. Visibly the Giver has no rights to the asset.

The second one is direct, meaning the Giver does in fact have a direct relationship to the Taker. The Giver has direct control over the actions of the Taker. The rights and duties of both the Giver and the Taker are de-

scribed in a written contract made binding with a power of attorney. This relationship is secret.

The Taker appears to be the owner of the assets. He is the owner of record. Sometimes the Taker will be instructed to conduct all the business duties of a CEO. The Giver controls the actions of the Taker with a contract describing the limitations and duties of the Taker and a power of attorney. This 'power of attorney' is secret. In fact, it is even referenced in legal text as a '*secret* power of attorney' (geheime Vollmacht). Its very existence is protected by attorney-client privilege. The key to the Hidden Treuhand is the 'secret power of attorney.' Without proof of the secret power of attorney' you cannot prove the existence of the Hidden Treuhand.

As a result of the Hidden Treuhand, the Taker appears to take over the duties of the business in his name and the true owner's identity is not publicly apparent. It is not outwardly recognizable if a Treuhand is in use or not. It is not even recognizable if a CEO is an employee of the company or a Taker controlled by another with a 'secret power of attorney.'

Through this means, all assets, whether they are corporate shares, financial instruments such as derivatives, bank accounts, or fixed assets can be owned in secret. The personal income derived from these assets can also be kept secret from tax authorities. Tax evasion is possible because the identity of the owner is secret and not linked to ownership of the asset. All three possibilities: the true benefactor's identity, the income from assets, and even assets themselves such as foreign subsidiaries, can be kept a secret. Even the very existence of a Hidden Treuhand is hidden. This book will illustrate variations of this phenomenon with examples. The lack of transparency creates special advantages for some and consequences for others such as governments, competitors, stockholders, and citizens.

Treuhand activities can begin innocently enough. Evidence of Treuhand activities does not tell us what

kind of activity is taking place. The purchase of a house requires escrow. In German speaking countries, escrow falls neatly under the umbrella of Treuhand. The purchase would require a lawyer and a notary public, and these same professionals are also required when creating a Hidden Treuhand. The notary public will record that the Taker is the registered owner of the property or corporate shares. The Taker and the Giver will forge a contract that details otherwise. What began as the innocent purchasing of a house or building can morph into a Hidden Treuhand at the discretion of the true owner to be.

The Hidden Treuhand has consequences concerning the rights of others. The hidden aspects have the potential to effect elements of civil and business law. For example: a group of investors come together to buy a fitness center and hide their identity in a Hidden Treuhand. The investors could evade personal income tax on their share of profits. Profits are easily transferred offshore or to another Treuhand. Usually this is done using another company, such as a subsidiary also owned via a Hidden Treuhand. The Taker pays necessary taxes as if the property belongs to him because externally and officially the property does belong to him. Liens cannot be executed against the true owner for property that outwardly does not belong to him. The property instead outwardly belongs to the Taker. Property held in 'trust' in this manner could not be affected by a bankruptcy proceeding against the Giver. A citizen would be unable to prove that the Taker is not the real owner. The investors/Givers can send profits offshore, and thereby evade liens, avoid entangling the asset in a personal lawsuit such as bankruptcy or a divorce, and evade wife and child support, and yet, the Giver could continue to receive dividends.

One example is tragic and unfortunate for those affected but thousands of examples would be alarming. Before this book made it to the publishers, it was discovered that thousands of Germans evaded tax through the services of the LGT Bank in Liechtenstein using a combina-

tion of Treuhand and foundations to hide the true owner's identity and Germany is alarmed. (The LGT stands for Liechtenstein *gross*, which means big, Treuhand bank: Liechtenstein big Treuhand bank). This is but one bank that targets only Liechtenstein.

Perhaps more alarming is how this latest news story does not acknowledge that Hidden Treuhand is available in Germany. In this case, the money transferred to Liechtenstein was earned in Germany; otherwise, Germany would not be claiming tax evasion. True owner identity of the asset in Germany is hidden in a Hidden Treuhand. The taxes were firstly evaded in Germany. Liechtenstein merely facilitated the deception because Germany does not have banking secrecy. Even though Liechtenstein is blamed for facilitating tax evasion, the scandal over tax evaders does not begin in Liechtenstein. It begins in Germany. It begins with the use of a Hidden Treuhand.

The Hidden Treuhand and banking secrecy work in tandem to hide money in Austria, Liechtenstein, Luxembourg, Switzerland, and other jurisdictions offering banking secrecy.

The tax evasion scheme through Liechtenstein works by creating a foundation or corporation that appears to be fully owned by the Taker and not the true owner. The foundation or corporation sends the owner an invoice that he must pay. The owner via his Taker in Germany sends his money to his foundation or corporation in Liechtenstein that is also in a Hidden Treuhand construction. There is a 0.1% tax on paid-in-capital per year in Liechtenstein and you have to pay the Taker for his services. Most banks pay interest on savings, but a tax haven such as the Principality of Liechtenstein charges to safely bunker the money. This tells us something about the use of Hidden Treuhand. It is for high worth individuals and may be responsible for the ever-widening income gap between such individuals and simple wage earners. Its use is mainly confined to business or property owners.

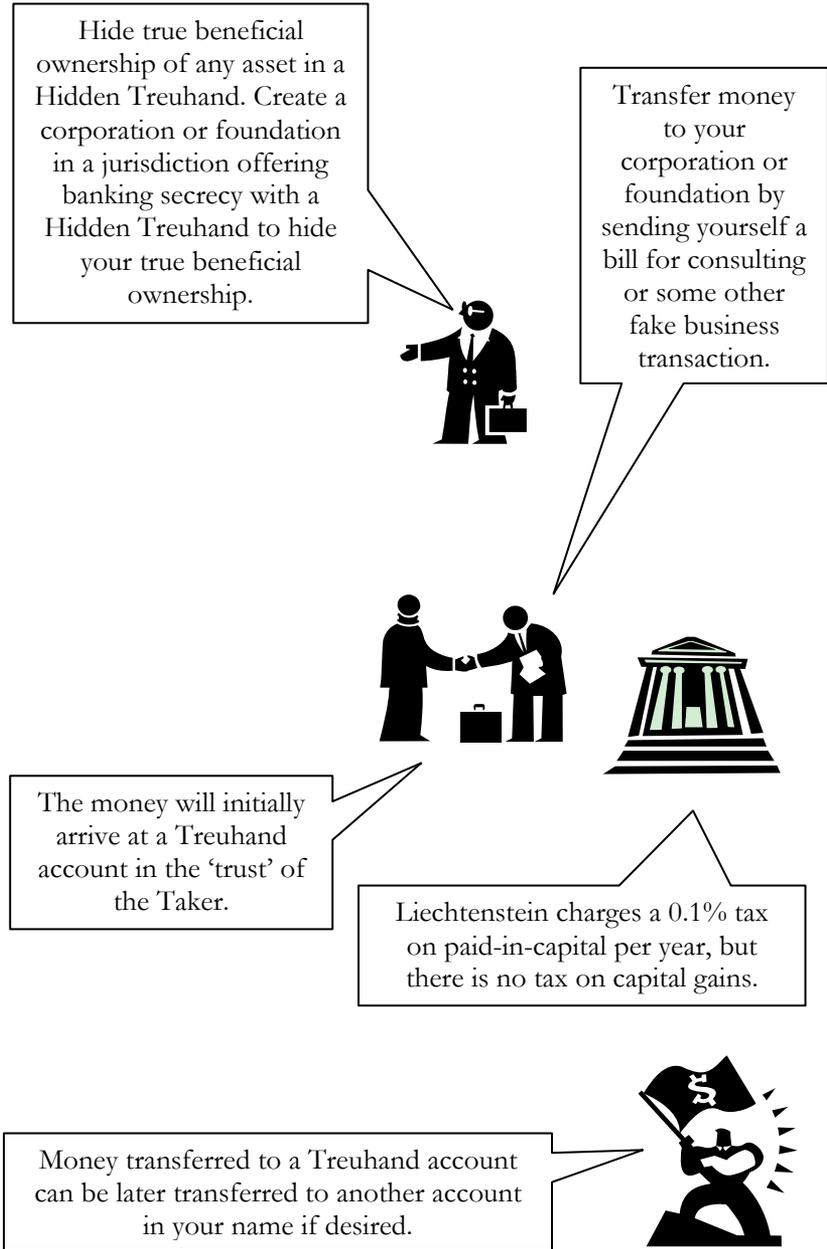


Figure 1: Hidden Treuhand Works in Tandem with Banking Secrecy

The fact is: the Hidden Treuhand can hide beneficial ownership of an asset located anywhere in the world including the United States of America. As recently as February 2009, a U.S. government lawsuit alleges that 52,000 Americans hid an estimated \$14.8USD billion in Swiss bank accounts in the UBS bank. The Department of Justice is trying to force the UBS bank to disclose the identities of the account holders, but it is highly unlikely they will succeed, in part because the accounts can be easily transferred to Treuhand accounts if they are not already. Also, if these Americans were to have another citizenship, for instance, Israeli, then they need not disclose they are American citizens at all.

More importantly as affects the American stock market, these offshore centers engage in security transactions and create fictitious shell-companies for their clients thereby avoiding taxation and transparency. U.S. markets and investors are directly affected by this trend, as is the global financial system.

Hiding the money earned from hidden assets requires banking secrecy so there is no connection between the real owner, the asset, and the income earned. In Europe, Germany's neighbors: Austria, Liechtenstein, Luxembourg, and Switzerland, all offer banking secrecy. All the same European jurisdictions that offer banking secrecy, with the *addition* of Germany, also offer legal security for creating a Hidden Treuhand.

The LGT Treuhand AG advertises that they specialize in asset structuring and boast offices worldwide including the U.S. Are those kinds of services integrated with Hidden Treuhand and offered to American taxpayers on U.S. soil? One would have to wonder because the investigation over tax evasion in Liechtenstein has widened to include the British, Australians and Americans.

The LGT Treuhand Bank is the Principality of Liechtenstein's largest and most important bank. It belongs to the royal dynasty ruling Liechtenstein and is run by a prince of Liechtenstein. But they are certainly not run-

ning a monopoly for Treuhand services. There are many firms offering Treuhand services to citizens worldwide. There are thousands of Treuhand Takers throughout Austria, Germany, Liechtenstein, Luxemburg, and Switzerland. (Google Treuhand) It is highly likely that the list of customers seeking Treuhand services might also include criminal organizations and terrorist groups.

To date, little seems to be understood concerning the impact Hidden Treuhand could have on a number of issues. It is not legally available in the United States, but it is in Europe. And while Germany bemoans the tax evaders running to Liechtenstein, little has been mentioned of all the versions of the Treuhand available in Germany. Treuhand is recognized in a general sense. This legitimizes its use. Despite the scandal, all aspects of Treuhand business are still available and it is a thriving cottage industry throughout the German speaking countries.

According to the Organization for Economic Cooperation and Development: "stricter regulatory and supervisory measures have been put in place and access to beneficial ownership information and trust formation rules has been strengthened in most OECD countries and in many offshore centers. Almost all the jurisdictions identified as potential tax havens by the OECD in 1998 have committed to the principles of transparency and effective exchange of information. Only three still remain on the OECD's list of uncooperative tax havens: Liechtenstein, Monaco and Andorra."² It took until 2008 for the OECD to recognize that the list is too short and as of yet, there is no mention made of the Hidden Treuhand.

Despite high taxes for wage earners, Austria is considered a tax haven offering both Hidden Treuhand and banking secrecy. The concern over tax havens is about banking secrecy and the lack of transparency. Banking secrecy is still a problem despite growing efforts to combat money laundering or the financing of terrorism. Banks have accepted restrictions resulting from efforts to combat money laundering or the financing of terrorism,

but these restrictions do not inhibit Hidden Treuhand activities. The Hidden Treuhand needs banking secrecy at some point to best function. Eventually, funds need to be transferred to jurisdictions that offer banking secrecy. This will be covered in chapter eight. Treuhand, together with banking secrecy renders it virtually impossible to prosecute a well-constructed tax evasion scheme.

In fact, none of the current scandal would have come to light if it were not for the fact that the banking secrets were stolen from the LGT Bank. The German intelligence service paid the former employee of the LGT Bank €4.2 million for the LGT Bank information. There are plenty of jurisdictions that still offer a great deal of banking confidentiality including Cyprus, Panama, Singapore, Austria, Luxembourg, and Switzerland; even Delaware offers a great deal of anonymity. Even if efforts go forward to curb rogue states from offering such easy access to tax evasion schemes, competitors will step in. A likely candidate is the emirate of Dubai, the home away from home for Halliburton.

The Hidden Treuhand undermines the best efforts of organizations to put an end to negative effects of tax evasion and money laundering. Years have passed since 1998 and the trends in asset management, financial markets, and the push for globalization have created new ways and improved on the past means of hiding and moving money and assets. This legal niche plays a major role in these trends. It is inconspicuous. It is difficult for authorities to even distinguish whether property is the property of the listed beneficiary or whether the property is in fact held in a Hidden Treuhand.

One of the reasons for the difficulty in perceiving the purpose of a Treuhand is that it is created at the same time an asset is purchased or is created as a fundamental part of a corporation. For example: if you were to purchase property and did not choose to hide the property in a Hidden Treuhand, it would be difficult to do it at a later date. If there was a lien or a bankruptcy and others knew

that you owned the property, it could lead to difficulties if you tried to hide the property at such a later date. For this reason, the Hidden Treuhand should be created at the same time as the property is purchased or the corporation is created. This is also true for the creation of corporate subsidiaries.

Whereas tax evasion tactics can be pinpointed to a jurisdiction or a bank, as in the LGT bank and Liechtenstein case, the Hidden Treuhand can be embedded in a corporation and in subsidiaries giving the secret beneficiary global reach. This form of Treuhand is not just about tax evasion or even money laundering. It is about creating secret empires.

The Hidden Treuhand can take different forms within a corporation. It can function so that one or more stockholders can be hidden, and in turn, they can hide some or all their shares. The structure is flexible and adjustable at any time, so shareholders can adjust public exposure.

But the Hidden Treuhand structure can also be used to hide an internal interest group represented by the Taker with a minimal share holding in a corporation. In such a case, a Hidden Treuhand can be created by making the Taker a stockholder for as little as 1% of a corporation. The contract and power of attorney create a relationship between the Taker and the Giver(s). When a corporation has a Hidden Treuhand embedded in its corporate structure, there is absolutely no way of knowing who the members are in the internal interest group or who is benefiting.

The Hidden Treuhand structure is essentially an unincorporated entity that is embedded within the corporation. The internal interest group represented by the Taker is unincorporated because its members are not listed as shareholders. This method empowers a hidden interest group to control the corporation through a Taker without evidence of their identities. Only the Taker and the internal interest group members involved in a Hidden Treuhand have intimate knowledge of its existence or purpose.