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Beneficial Ownership Transparency in United Nations Convention against Corruption and Other International Frameworks

Submitted by: United Nations Office on Drugs and Crime



**Capacity Building Workshop on Exposing the
Unseen Hands: Tackling Concealment of
Beneficial Ownership
19 October 2020**

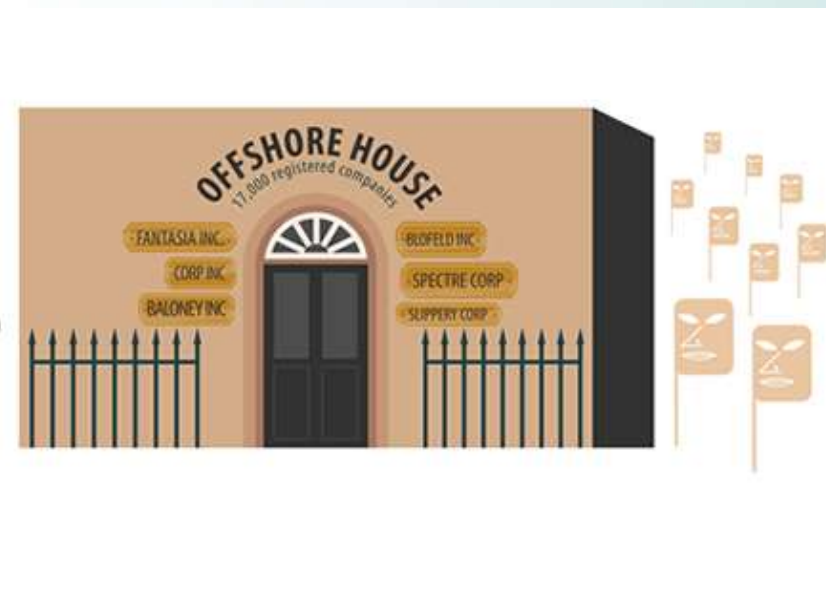
Beneficial Ownership transparency in UNCAC and other international frameworks

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The relevance of beneficial ownership transparency for anti-corruption

- For states
 - AML - tracking illicit financial flows
 - Addressing conflict of interests
 - Get information on wealth
- For FI and private sector:
 - Facilitates CDD and compliance

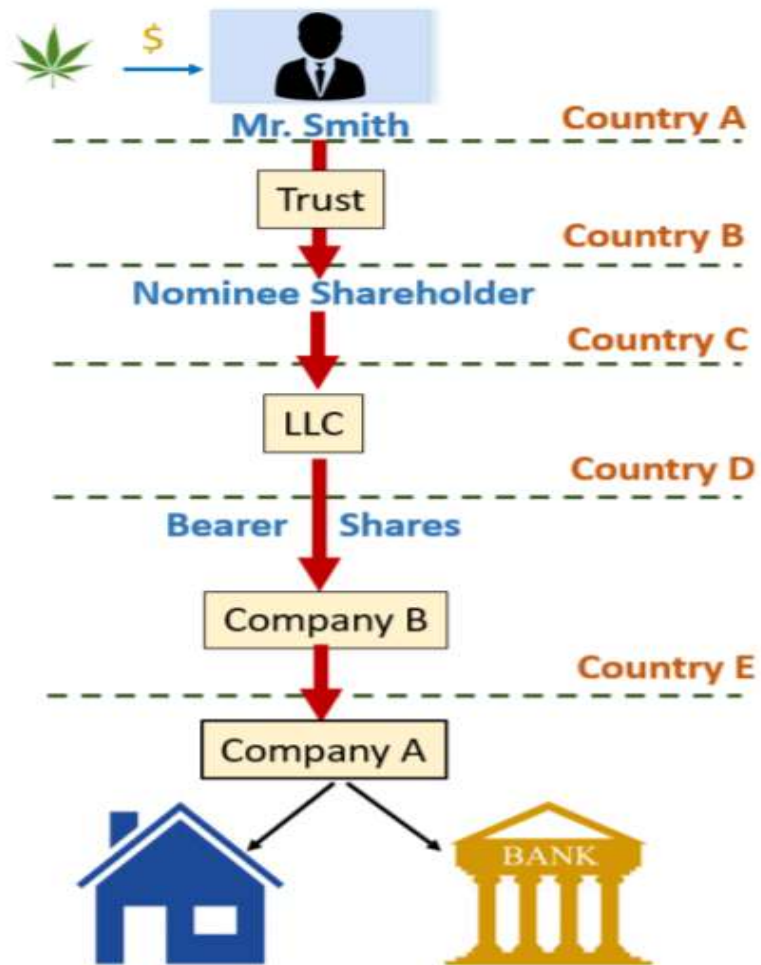


BO transparency and corruption investigations



Review of 150 cases (StAR)

- a corporate vehicle was misused to hide the money trail;
- the corporate vehicle in question was a company or corporation;
- the proceeds and instruments of corruption consisted of funds in a bank account;
- the corporate vehicle in question was established or managed by a professional intermediary.



OECD, beneficial ownership toolkit

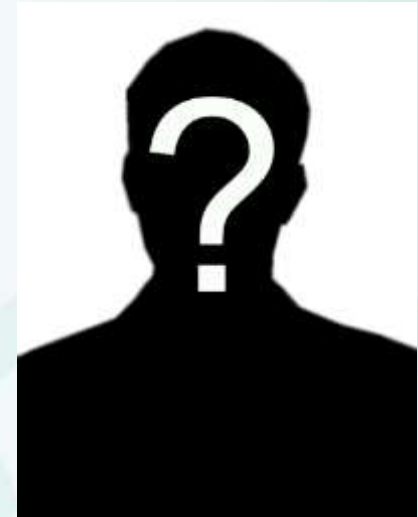
Definition

- **natural** (not legal) persons who actually own and take advantage of capital or assets of the legal person;
- who really exert effective control over it (whether or not they occupy formal positions within that legal person),
- and/or the natural person(s) **on whose behalf a transaction is being conducted.**



Definitions (EU-AML Directives)

- the natural person(s) who ultimately owns directly or indirectly 25% of the company > UBO
- If no natural person is identifiable > the senior managing official(s) are UBO



Forms of direct and indirect ownership and control

Ownership of
shares

Ownership of
voting rights

Other (nominees
–joint ownership)

Contractual or
personal
association
with
managers /
directors

Right to
appoint or
remove
majority of
directors

Recipient of
loans or
benefits (e.g.
tenancy rights
–licenses)

Other ability
to extent
influence (e.g.
veto rights –
right to profit)

International frameworks on Transparency of company ownership

UNCAC Art 12: Private Sector

Promote transparency among private entities, including, where appropriate, measures regarding the **identity of legal and natural persons** involved in the establishment and management of corporate entities

FATF: Recommendation 24 - 25.

Jurisdictions must ensure there is adequate, accurate, and up-to-date **information on basic and beneficial ownership of legal persons** formed in that jurisdiction, and that such information can be provided to a competent authority in a timely manner.

BO Registries, EU AML Directives

- “Member States” should ensure that entities incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership.
- “Member States” **should ensure that beneficial ownership information is stored in a central register located outside the company**
- **5th Directive: public access to the registry**

Beneficial Ownership registries in Southeast Asia

Member/ Non-Member Economies	Central Registry	Legal Persons	Verification	Sanctions	Public Access
<i>Cambodia</i>	No	n/a	n/a	n/a	n/a
<i>Indonesia</i>	Yes	Limited liability companies, foundations, associations, cooperatives, limited and unlimited partnerships, foreign corporations	If deemed necessary, unclear in practice	Yes	Yes, upon registration, for a fee
<i>Malaysia</i>	Not yet	Domestic and foreign companies under the Companies Act 2016, domestic and foreign limited liability partnerships under the LLPA 2012, government- or state-owned companies	n/a	n/a	n/a
<i>Myanmar</i>	Partially	Legal persons registered under the Myanmar Companies Act, and operating or applying to operate in the extractive industries	Not specified in regulations	Yes, criminal sanctions based on a conviction	Partially; public access for legal persons operating in the extractive industries
<i>Philippines</i>	Partially	SEC registered stock and non-stock domestic corporations		Yes	No
<i>Thailand</i>	No	n/a	n/a	n/a	n/a

FI - CDD requirements related to BO

UNCAC Article 14. Measures to prevent money-laundering

- (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions [...] that shall emphasize
- **beneficial owner identification**
- record-keeping
- reporting of suspicious transactions;

UNCAC Article 52. Prevention and detection of transfers of proceeds of crime

- to require financial institutions to **determine the identity of BO of funds deposited into high-value accounts**
- Enhanced scrutiny on the accounts of PEPs



Outcome document conference on BO Transparency in SEA (Malaysia July 2019)

1. Adopting **a legislative definition of ‘beneficial owner’** that captures the natural person(s) who ultimately owns or controls the legal person or legal arrangement. Consider lowering the **threshold for control** through ownership of shares or voting rights below 25 percent.
2. Ensuring **that legal persons** maintain beneficial ownership information onshore and that information is adequate, accurate, and current.
3. Requiring **financial institutions and designated non-financial businesses and professions (DNFBPs)**, including trust and company service providers, to take, based on the risk assessment, necessary measures to identify and verify the beneficial ownership of their customers and **disclose any discrepancies to the relevant authorities**, including the holder of the legal entity register.
4. Consider **setting up a central register** of the beneficial owners of all registered legal persons and legal arrangements.

5. Ensuring that **competent authorities have timely and direct access** to adequate, accurate and current information regarding the beneficial ownership of legal persons. Consider the feasibility of making the registers of beneficial owners **accessible to the public** through online publication, including in open-data format.

6. Beneficial ownership registers should be searchable, regularly updated and contain all historical changes in ownership, as well as the nature and extent of the beneficial interest held.

7. **Ensuring, through robust validation and verification, that the beneficial ownership information is adequate, accurate, and current.** Establishing effective and dissuasive individual and corporate sanctions for violation of the obligation to obtain, hold or provide information that is accurate and current.

8. Maintaining the ultimate beneficial ownership **information of high-value valuable assets** so it can be accessible to the appropriate public authorities, including law enforcement.

9. **Ensuring effective cooperation domestically and internationally in information exchange on beneficial ownership**, including by providing the details of the beneficial ownership of legal persons or other legal arrangements in a timely manner to the competent authority lawfully requesting those details. Member and non-member economies should also consider developing beneficial ownerships guides.

10. **Consider to promote and support the use and monitoring of beneficial ownership data by the civil society and media**, including together with other relevant information, for example, on the Politically Exposed Persons, public procurement, asset and interest disclosures of public officials.

For more

www.unodc.org/corruption
www.track.unodc.org



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