Challenges in Identifying Beneficial Owners in Corruption and Money Laundering Investigations

Submitted by: Malaysia
Siemens: corruption made in Germany
Draining Nigeria of its assets
Fujimori’s Peru: death squads, embezzlement and good public relations
Kadyrov’s Chechnya: bikers, boxers, bribes
Shutting down competition in Tunisia
Ukraine’s missing millions
Ricardo Martinelli’s spy-game in Panama
The 1MDB fund: from Malaysia to Hollywood
The Russian Laundromat (with a little help from Moldova)
Spain’s largest corruption scandal: Gürtel
Venezuela’s currencies of corruption
The Panama Papers
Maldives: a paradise lost
Teodorín Obiang’s #LuxuryLiving in Equatorial Guinea
How the Gupta family captured South Africa through bribery
Lebanon’s garbage: the stench of corruption
FIFA’s football parallel universe
Myanmar’s dirty jade business
Fighting impunity in Guatemala
Turkey’s “gas for gold” scheme
The Azerbaijani Laundromat
Paradise Papers: where the rich & powerful hide their money
Operation Lava Jato: clean cars, dirty money
The Troika Laundromat
Andrej Babiš’s conflict of interest in Czechia

“more than $4.5 billion” (US DOJ)
Objectives of Criminal

• Obtain as much money as possible.
• Hide as much money as possible.
• Spend as much money as possible.
MORE COMPLEX MONEY LAUNDERING SCHEME

Diagram showing the flow of criminal proceeds through various accounts, vehicles, pensions, investments, homes, and other assets.
COMPLEX MONEY LAUNDERING SCHEME
Issues?

1) Mechanisms of Hiding the Money Trail

2) *How to Spend it?*
   Acquisition of Luxury Assets
   “Integration”
## Corruption Mechanisms (tracked)

### Most common:
- Misuse of foreign shell companies (incl. offshore)
- Use of nominees or associates to obscure connection to PEP
- Misuse of domestic shell companies
- Fake consultancy agreements
- Bid rigging/preferential treatment in public procurement
- Privatization of state assets
- Deceptively named corporate vehicles
- Misuse of foundations
- Use of cash
- Related party lending

### Also featured but rare:
- Manipulation of regulations and import quotas
- Use of share purchase agreement to disguise bribes
- Use of bearer shares
- Fake Invoices
- Misuse of trusts
- Misuse of lawyers account

### Very novel/creative:
- Use of financial restructuring to cover up embezzlement
- Raising funds for graft through bond issuance
CURRENT TRENDS

CHALLENGES...

THE BENEFICIAL OWNERSHIP

THE 1MDB
1Malaysia Development Berhad
**BO under UNCAC**

**BENEFICIAL OWNERSHIP**

“The real person who is the true owner or beneficiary of an account, trust, foundation or company”

Who generally have ultimate control through ownership or other means over the funds in the account

Who are the ultimate owner of source of funds for the account and whose source of wealth should be subject to due diligence

Ability to disguise the true beneficiaries of accounts and entities through the use of nominees, trustees, anonymous shell companies, and fake foundations and trusts

Due diligence and knowing your customer to limit the access of terrorists, criminal groups, entities under international sanctions and potentially corrupt politically exposed persons (PEPs) to the legitimate financial system
INTRODUCTION

Beneficial owner is a legal term where specific property rights ("use and title") in equity belong to a person even though legal title of the property belongs to another person. Black’s Law Dictionary (2nd Pocket ed. 2001 pg. 508).

Definition of ‘beneficial owner’ from the Glossary to the FATF Recommendations

“Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.”
**BO Legislations in Malaysia**

**Section 56 and 68 of the Companies Act 2016**
- the empowerment for companies to request information on beneficial ownership from their shareholders
- requirement on companies to notify the Companies Commission of Malaysia on their BO
- Increase sanction for breaches

**Labuan Companies Act 1990**
- Trust companies to declare & maintain accurate and timely records of BO

**Section 16 of the Anti-Money Laundering, Anti-Terrorism Financing And Proceeds of Unlawful Activities Act 2001**
- Requirement for Reporting Institutions to conduct ‘Customer Due Diligence’
- Reasonable measures to identify customer and a person acting on his behalf, and beneficial owner and verify their identification

**Section 25 of the Securities Industry (Central Depositories) Act 1991**
- The account holder is deemed as the BO
Challenges in Establishing B.O.

Lack / Obscure Audit & Financial Trail

- Transactions conducted in cash will minimize/eliminate audit trail
- Financial trail will come to dead end when transactions are switched to cash
- Outside of the financial system

Uses of Virtual Currencies

- Borderless & Mostly unregulated entities
- Lack of audit / financial trail except at the point of entry & exit

Ownership & Control

- Non standardized legislations among jurisdictions
- Definition of ‘control’ & ‘ownership’ – countries and context
- Determination of ownership & control – golden shares, control in absence of shareholding

Complex Structure of Corporate Ownership

- Lax law and regulation – weak or non existence control
- Multiple layering & complex structure – corporate shareholders
- No public office
- Registration functions delegated to agents
- Flexibility to change ownership

In Malaysia - The exchangers are reporting institutions under the AML regime
Challenges in Establishing B.O.

Collusion

Inability to secure evidence for prosecution & enforcement

- Gatekeepers are in cohort with criminals, e.g. lawyer, accountant, company secretary
- Concealment of information – appointed proxies & nominees are related or family members
- Risks of destruction on evidence & dissipation of properties

Implementation & Enforcement Issue

Accessibility, integrity & veracity of beneficial ownership information

- Lack of capacity & capability of regulatory, supervisory & enforcement bodies to ensure rules & regulations on beneficial ownership are complied with:
  - Comprehensive and accessible databases - updated & error free
  - Availability of competent human capital to review, supervise and enforce the requirements
  - Inability of the gatekeepers to ensure compliant by their clients/customer
- Inadequate sanction to force compliance
Impacts

1. Wrong case direction + Wrong case recommendations = Innocent parties charged / convicted

2. Assets Recovery effort
   - Properties / Assets obtained from corrupt activities are not fully recovered

3. Reputation of the LEAs
   - Accusation of incompetent investigators
   - Shoddy investigation - Crime pays
<table>
<thead>
<tr>
<th>Major Consequences</th>
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<tr>
<td>Erosion/undermining of public trust in government</td>
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<td>Loss in public revenues</td>
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<tr>
<td>Erosion/undermining of economic competition in affected sector</td>
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<tr>
<td>Political instability &amp; mass public protests</td>
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<td>Loss in foreign aid</td>
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<tr>
<td>Inflated consumer prices in affected sectors</td>
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<tr>
<td>Long-term harm to financial sector, incl. currency depreciation</td>
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<tr>
<td>Erosion of public trust in financial institutions</td>
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**2nd ORDER**

- Stifling of economic development
- Increase in economic inequality
- Threat to political stability
- Threat to financial stability
- Threat to national security
- Threat to democratic order
MACC INTELLIGENCE-BASED INVESTIGATION (IBI)

GATHERING INFORMATION THROUGH:

1. INFORMAL INFORMATION SHARING WITH FOREIGN COUNTERPARTS (DOJ, FBI, AFP, NCA UK, FOREIGN AGC’S OFFICE, CAD, SWISS PROSECUTOR, CCDI etc.);
2. INTELLIGENCE SHARING WITH FIU VIA EGMONT GROUP;
3. INTELLIGENCE SHARING WITH DOMESTIC LEA’S;
4. SERIES OF UNOFFICIAL ENGAGEMENT WITH FOREIGN AUTHORITIES SUBSEQUENT TO MLA’S;
5. LEVERAGE ON NETWORKING WITH WORLD BANK, StAR, UNODC, IACCC
DOMESTIC COOPERATION

BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Suruhanjaya Syarikat Malaysia
Companies Commission of Malaysia
(Ageni di bawah KRONHEP)

LHDN
MALAYSIA
MACC INVESTIGATION APPROACH

MANAGING TEAM-BASED INVESTIGATION

1. SPEARHEADED BY DCC (O) MACC
2. SET-UP OF TASKFORCE SECRETARIAT FOR COORDINATION OF OPERATION INVOLVING INTER-AGENCY TASKFORCE & MACC;
3. TASKFORCE – MOBILISATION OF OFFICERS FROM DIFFERENT DIVISIONS;
4. ENGAGEMENT OF EXPERTS FROM OTHER AGENCIES, CENTRAL BANK (FIU) & AGC;
5. DEDICATED OPERATION CENTRE – ACTING AS ONE-STOP CENTRE FOR 1MDB INVESTIGATION;
6. EFFECTIVE UTILISATION OF RESOURCES BY ENSURING NON-OVERLAPPING OF TASK, EACH TEAM/ OFFICERS HAVE OWN DEDICATED TASK;
7. EXPEDITING EVIDENCE GATHERING PROCESS.
1MDB is a transnational case that involves many member and non-member economies. To expedite investigation, MACC seek full cooperation from countries such as:

1. UNITED STATES
2. SWITZERLAND
3. SINGAPORE
4. INDONESIA
5. NETHERLAND
6. FRANCE
7. LUXEMBOURG
8. UNITED KINGDOM
9. BARBADOS
10. SEYCHELLES
11. CHINA & HONG KONG, CHINA – ENGAGEMENT WITH CCDI

** Series of the meeting have been held in Malaysia, Singapore, USA, Switzerland, etc.
INTERNATIONAL COLLABORATION IN INVESTIGATION – CROSS BORDER INVESTIGATIONS

MUTUAL LEGAL ASSISTANCE – ASSISTING IN PRE-LAUNCHED M.L.A (FACTS & ASSISTANCE WERE DISCUSS BEFORE THE M.L.A SEND TO THE RESPECTIVE ECONOMY)

SHARING FACTS & EVIDENCE – SOME FACTS ARE NOT BEING DISCLOSED UPON OFFICIAL REQUEST MADE BY ATTORNEY GENERAL CHAMBERS OR VIA EGMONT CHANNEL.

ASSISTANCE IN BRINGING BACK THE SYPHONED FUNDS & ASSETS FROM ABROAD
Moving Forward

Joint Investigations
- Full force of the law against the offenders – multiple offences under different laws
- Shared expertise and human capital resources
- Accessibility to information

Capacity Building
- Continuous capacity building to equip Law Enforcement Officers with the prevalent knowledge, latest trend, modus operandi & typologies
- Upskilling with the latest technology & applications

Risk Assessment
- Identification of high risk areas
- Allocation of appropriate resources on focus areas
- Development of strategic action plan to mitigate the identified high risk areas

Strategic Collaboration
- Information sharing with Financial Intelligence Unit
- Members of International & Regional Network e.g. IACCC & ARIN-AP
- Close cooperation with regional peers
Case Study

MALAYSIA

1. **State Agency**
   - Chairman
   - Logging Concessions

2. **Senior Minister**
   - Had the authority and final decision to further award logging concessions for the 1,008,778 hectares of forest granted to the State Agency

3. **Logging Companies**
   - Proxy
   - Bank Account
   - Bank Account
   - Bank Account

OVERSEAS

3. **Bank Account**
   - Kickbacks

Impact
- Required more time to complete investigation
- Statutory time bar in securing documentary evidence

Kickbacks were credited into overseas bank accounts managed by the Senior Minister’s associates

December 1970, the State Government granted the State Agency a logging concession for 1,008,778 hectares of forest