



**Workshop Summary Report**  
**“Capacity Building Workshop on Exposing the Unseen  
Hands: Tackling Concealment of Beneficial Ownership”**

**Putrajaya, Malaysia**

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**APEC Anti-Corruption and Transparency Experts Working Group  
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## **1.0 INTRODUCTION**

A beneficial owner is a natural person who ultimately owns or controls an asset, even if the title to the property owned is marked on another name. Under the legal regime in some economies, the person actually owning or controlling the assets can easily remain masked by setting up anonymous companies or trusts in jurisdictions that do not require registering the beneficial owners of the companies or by hiring nominees or proxies to act in their interest. Criminals in financial crime cases have exploited the weaknesses in the implementation or a lack of beneficial ownership transparency (BOT) regulations to conceal their illegal gains. Enforcement agencies and regulators are constantly pursuing the identities of beneficial owners of funds, assets and companies to counter corruption and financial crimes. This self-funded project seeks to address issues and challenges in respect of the implementation of international standards on beneficial ownership transparency as an effective tool to combat corruption among APEC member economies.

This workshop aims to improve the capacity of economies to fight corruption from this score of improving transparency of legal entities and arrangements to know the true owners of funds and assets held by opaque entities. Even developed economies grapple with the issues of transparency and beneficial ownership matters. The project is looking into building human capital with technical capabilities and helping economies to come out with the necessary reforms to tackle beneficial ownership by enhancing the effective implementation of their laws, regulations, and strict sanctions in line with the international standards. The project also envisages that economies will work towards enhancing the transparency and availability of beneficial ownership information of legal persons and arrangements.

This Workshop Summary Report summaries the views and opinion of workshop's speakers and is intended to be used for reference of APEC Economies.

## **2.0 SUMMARY OF PRESENTATIONS BY SPEAKERS**

### **2.1 SESSION 1: Providing an overview of beneficial ownership and emerging patterns from an international perspective**

This session will give insight into the term “beneficial ownership” from various international angles to see the approaches adopted by various international bodies to address this problem multilaterally and meeting UNCAC requirements.

#### **Mr. Francesco Checchi, UNODC Regional Anti-Corruption Adviser, Southeast Asia**

In his presentation, Mr. Francesco Checchi offered the following perspective about BOT. Specifically that BOT can expose those who mastermind money-laundering activities that operate within and across jurisdictions. Money laundering activities are primarily hidden and layered in companies’ through multiple banking transactions and in assets that are both movable and immovable. BOT can help investigators in obtaining information on the true owners of the companies and the total wealth of an individual or suspect. Asset declaration is a common tool used by economies to curb corruption. With BOT, masked information can be obtained to verify their wealth vis-à-vis their income and BOT is also a system to address issues of unexplainable wealth. For the financial institution, BOT makes it easier for them to comply with Customer Due Diligence (CDD) processes, help financial institutions to understand their customers’ nature of business and to identify account holders who may be involved in any wrongdoing such as money laundering.

Corporate vehicles are mostly used to transfer, hide and launder proceeds of crime as noticed in the corruption-related investigations conducted with the assistance of the Stolen Asset Recovery Initiative (StAR) with the World Bank. These corporate vehicles are managed by professional intermediaries, incorporated in tax havens and in are formed in many types of structures such as trusts, limited liability and others.

Beneficial ownership is a natural person who effectively controls the company, whether formally or not. If no natural person is identified, the senior managing officer of the company is considered as the beneficial owner. The instruments of control may include, direct shares, indirect ownership, voting rights, nominees, contracts with managers, right to appoint a director, recipient of loan, veto and rights to profit. Economies in the South East Asia region have many levels of development and progress regarding beneficial ownership, central registry, access to information and other features.

**Ms. Alexandra Habershon, Senior Governance Specialist, World Bank**

In her presentation, Ms. Alexandra Habershon shared the following views about beneficial ownership, noting that there are many stakeholders that want to know who the beneficial owners are as they promote transparency, integrity and public accountability. Among the stakeholders are tax authorities for tax evasion cases, anti-money laundering practitioners, anti-corruption investigators and civil societies. For the private sector, beneficial ownership transparency also encourages transparency in the supply chain and reduces risk. There is also a growing call for transparency of beneficial owners from various bodies such as the Extractive Industries Transparency Initiative (EITI), G20 and others.

Local economies need to study where corruption risks can occur if there is an absence of a robust beneficial ownership reporting structure. Having a proper beneficial ownership reporting structure can avoid shell companies from being used as a conduit to launder money. There are also associated issues that need to be addressed if efforts are in place to require more reporting of beneficial ownership information as it will negate the speed of company formation time and whether there can be a standard set of laws of disclosures across the economies. There is a need for political will among the economies. Ultimately all this points that the goal is to end the abuse of anonymous company structures that facilitate the criminal and corrupt in hiding their illicit assets and gain.

Slovakia has shown a good lead in verifying the beneficial owner disclosures of businesses. In Slovakia, the public can query the veracity of the disclosures made. This has led to about 70 cases being investigated for corrupt practices. The World Bank is supporting efforts to disclose and use beneficial ownership information. The World Bank can lend support and give assistance to economies by helping them to create BO registries, give technical assistance and guidance in regards to Beneficiary Ownership transparency.

**Dr. Gordon Hook, Executive Secretary, Asia/ Pacific Group Money Laundering (APGML)**

Dr. Gordon Hook concluded the first session by sharing his perspective on beneficial ownership transparency, noting that the term “beneficial ownership” appears in many international instruments issued by the Organisation for Economic Co-operation and Development, Financial Action Task Force, United Nations Convention against Corruption (UNCAC) and others. The first definition of BO was made by FAFT in 2003

and later it was revised in 2012. The 2012 definition is more encompassing in that it covers natural persons, ultimate owners and effective control. FATF Recommendations No. 24 defines legal persons and FATF Recommendations No. 25 elaborates about the legal arrangements. Recommendation No. 10 and 12 talks about the need to perform customer due diligence and on political exposed persons (PEPs).

## **2.2 Session 2: Challenges in identifying beneficial owners in corruption and money laundering investigations**

This session dives into challenges facing law enforcement agencies in their pursuit to gather information and retrieve evidence from those who help conceal perpetrators of financial crime that use nominees as a mode to transfer and hide proceeds of crime.

**Mr. Mohamad Zamri b. Zainul Abidin, Director of Anti-Money Laundering & Forfeiture of Property of Malaysian Anti-Corruption Commission (MACC), Malaysia**

Mr. Mohamad Zamri shared his professional experiences in investigating money laundering cases vis-à-vis beneficial ownership. Specifically recalling that in the 1MDB case in Malaysia, where investigators could not ascertain laundered assets to the suspects as their names were shielded by using shell companies and other methods of concealment. Among the common methods of hiding the proceeds of crime in the 1MDB case was the use of trust companies, offshore companies and nominees. The transfer of money is subtly done with the assistance of moneychangers and through hawala. Among the methods used to hide the financial trail are by using frontiers, nominees, cash-based transactions, privatization of assets, misuse of foundation and related party transactions.

The Malaysian Securities Commission Act says that account owners are the ultimate beneficiary owners. Of late, crypto currency is also used to transfer money just by using a dongle to move money abroad. The definition of control also varies from economies to economies. In Malaysia, there is form of control and ownership via “the golden share,” where “the golden share” owner is the ultimate owner. Important information about the company, such as shareholders, office bearers, directors, ownership structure, and related parties transaction can also change in moments to confuse and derail law enforcement agencies’ investigative work. Sometimes the gatekeepers, such as accountants and auditors, are also in collusion with the whole financial and company structure in order to hide the pertinent information that would enable law enforcement to identify who actually owns the company. When a law enforcement agency is not able to ascertain the correct path of investigation, there might be innocent bystanders

entangled in the investigation. All these will give a negative impression of incompetence and lack of expertise on the law enforcement agencies' part.

**Mr. Paul O'Neil, Deputy Chief Executive and General Counsel, Serious Fraud Office, New Zealand**

The next panelist, Mr. Paul O'Neil spoke about his agency's experience and challenges with investigations involving beneficial ownership issues. He began by noting that the beneficial owner is distinct from the legal owner. Corporate entities can also be used to advance criminal activities by concealing the beneficial owners and criminal activities. New Zealand considers the balance between how to capture beneficial ownership information and providing beneficial ownership information against the interests of some who may not want too much beneficiary information to be disclosed. There are some businesses that are registered in New Zealand but have no business activities locally (e.g., no bank account in a local bank) which raises suspicion as to whether they are being used as money laundering or terrorism financing vehicles. Some persons in New Zealand also hold a number of directorships (e.g., nominee director, or shadow director) in companies, complex ownership structures and trusts, which all add suspicions as to whether they are masking criminal activities. By using companies, criminals create a layer between them and their activities and conduct. These modus operandi make the job of the Serious Fraud Office (SFO) more difficult.

Such modus operandi takes place the world over, thus international cooperation is important. The SFO New Zealand can issue notices and interview people (legal or natural persons) at any time to obtain beneficial ownership information. With the help of financial intelligence and mutual legal assistance, the SFO can obtain this beneficial ownership information from abroad. However, the request has to be targeted and not a fishing expedition. In New Zealand, one example of beneficial ownership cases involves corruption in mortgage fraud. The overall scheme involves 57 loan applications, 110 separate property transactions and loans amounting to approximately NZD55 million. In New Zealand, in order to overcome the shortcoming in beneficial ownership laws, the anti-money laundering laws cover more businesses, the registration of foreign trusts with one or more New Zealand resident trustees, and provides more powers to the New Zealand Registrar of Companies to investigate companies and limited partnerships. There also needs to be a balance between privacy, compliance, administration cost and the application of trust and confidentiality.

**Ms. Chandana Tara Ravindranath, Director, Financial Transparency and Regulatory Policy, Office of Terrorist Financing and Financial Crimes**

Ms. Chandana Ravindranath offered her agency's experience with beneficial ownership issues from a policy perspective. The importance of beneficial ownership transparency is that the lack of transparency limits the government's ability to combat money-laundering, corruption, and other national security threats. Protecting the international financial system from abuse requires collecting beneficial ownership information when an entity is formed. Currently, the biggest issue with a lack of beneficial ownership transparency is the poor global implementation of FATF standards by economies. FATF also reported in 2018 that the lack of beneficial ownership compliance in selected economies represented "back-door" entry into the global financial system. The efforts to identify and locate the beneficial owner can be difficult as it may involve many law enforcement agencies in various foreign jurisdictions. If beneficial ownership information is not up-to-date, accurate, and available for law enforcement and other competent authorities, the true ownership of bank accounts and other assets often requires that law enforcement undertake a time-consuming and resource-intensive process, providing ample time for movement of funds or additional layering to conceal the ownership or location of funds. When insufficient controls are in place to collect beneficial ownership information, law enforcement agencies have to spend time to track down that information, which causes delayed investigations. Even human traffickers and illegal gold miners establish front companies to hide the true nature of their illicit activities.

In order to overcome the shortcomings, all economies must effectively implement international standards, like FATF recommendations.

Economies must also make all efforts to have accurate beneficial owner information and take legal measures to prevent the misuse of shell companies and complex corporate structure for money laundering and terrorist financing. All economies must conduct risk assessments and communicate ways to mitigate these risks. This beneficial ownership information must also be shared within governments, across other governments, and include public and private sector engagement. There is no one solution to solve this complex problem but these steps can mitigate the risks.

### **2.3 Session 3: Transparency of beneficial ownership and issues faced by Regulators**

Identifying and verifying beneficial ownership (BO) information, including details that need to be disclosed and kept up-to-date, are among the challenges faced by regulators. This session will uncover how regulators are applying latest framework and guidelines to ensure companies comply with regulations.

**Ms. Norhaiza Jemon**, Director of Regulatory Development and Services, Companies Commission Malaysia

Ms. Norhaiza Jemon shared her agency's experiences with regulating beneficial ownership information. She started off by stating that data integrity is of the utmost concern in the Companies Commission of Malaysia (CCM) as many stakeholders will be using the information and data that is provided to them by CCM. Data integrity means data that is accurate and current. In the Malaysian Companies Act 2016, three sections, namely section 2, 51 and 56 address the concept of Beneficial Ownership (BO) and a reporting guideline entitled "Guideline for the Reporting Framework for Beneficial Ownership". The objective of the provision and guideline is to address the lack of a BO reporting framework in Malaysia that is required to be in line with international standards and to assist investigators in identifying the perpetrators using companies to hide their illegal wrongdoing. The onus is on the company to report the BO information and report to the Registrar of Companies. The reporting persons should also take the necessary measures to obtain and verify the beneficial owner(s) who is a natural person(s). Since the law came into force, the CCM discovered that the number of reporting companies is quite low and there are also inaccuracies in the information provided. The CCM has conducted regular dialogue sessions with the various stakeholders and from the feedback received, they claim that there is a lack of guidance around the task of verifying the BO information and the parameters of reporting.

The "Guideline for the Reporting Framework for Beneficial Ownership" issued by the CCM has seven principles, which includes a reporting requirement, continuous reporting obligations and the parameter of reporting (board members, company secretary and shareholders receiving regulatory notices), processes and procedures. The reporting requirement deemed necessary by CCM is also harmonised with international standards issued by the FATF. There is a plan to amend the Malaysian Companies Act 2016 to enhance the legislation on beneficial ownership.

**Mr. Andres Knobel, Lawyer and Senior Researcher, Tax Justice Network**

Mr. Andres Knobel offered his NGO's perspective on beneficial ownership transparency, specifically that the Tax Justice Network conducts two indices: the financial secrecy index and corporate tax haven. From the study, it is reported that those who want to hide their ill-gotten gains and launder money will head to those places where financial secrecy is high and it will also be a tax haven. Generally, to form an organisation, it can be in the form of companies, partnerships, private foundations, domestic law trusts and foreign law trusts with local trustees. All economies have their own unique regulations to register an organisation, where some economies only requires minimal information. Therefore, the challenge is to ensure the information is updated and that there are sufficient identity details. For some organisations and economies, there is a threshold as to who is to be identified as the beneficial owner. Another issue is the accessibility of the information to the public. For private foundations and trusts, there must also be information on the settlor/ founder, trustees, councils, protectors and beneficiaries.

As of May 2020, there are 81 jurisdictions that require Beneficiary Ownership (BO) information to be legally registered. However, this does not mean that the laws in these economies are effective. There has definitely been a steady progress for the past two years. At the moment, the best economies to follow on BO regime are: New Zealand on open data and online accessibility for legal ownership; Denmark and United Kingdom for high transparency; and Denmark and Bulgaria for BO information on partnership. Tax Justice Network is of the opinion that no one economy can be seen as having adequate laws to cover all kinds of organisations. For example, in New Zealand they have legal ownership published online but not BO. Most economies practise a threshold, whereby if a person owns more shares than the threshold, the BO information must be registered. For some economies, if you have one share, you must register the BO. Among challenges faced by investigators include looking for the actual beneficial owners in some company structures. There are some companies that are deliberately created with a long and complex ownership structure as to avoid the ease of detecting the beneficiary. This is when one company owns another company and in turn that company owns the actual active companies. There are some who deliberately put the ownership of a company to a trust. Therefore when the owners of the trust is undetected, the owner of the company too will be undetected. Another challenge with BO registration is accuracy of the BO registration information.

**Mr. Santun Maspari Siregar, S.H., M.H., Director of Civil Law Ministry of Law and Human Rights**

Mr. Siregar spoke next, offering his agency's experience with beneficial ownership transparency. In Indonesia, there are Presidential Regulations and three Ministry of Law and Human Rights Regulation to regulate beneficiary ownership (BO) reporting. All the regulations cover seven types of organisations, such as non-governmental organisations, foundations and others. The threshold for BO disclosure in Indonesia is 25 percent shares or voting rights. The ultimate BO is the one who has the right to appoint and terminate the board members and other entitlement.

There are some successful cases where the BO modus operandi were used to conceal the ill-gotten gains. The cases were handled by the Indonesian police and the anti-corruption authority. In Indonesia there are three persons who can submit the BO information: the founder of the corporation, public notary, and an authorised person of the company. Information is to be submitted electronically to the Director General of Legal Affairs. The regulations also address the time of data submission. Should there be an amendment of the BO information, proper updating is also required. Yearly updates are mandatory. The Ministry of Law and Human Rights supervises the whole procedure. There are two major challenges to BO in Indonesia: the BO submission of the company is self-regulated and finding a balance between company's compliance with the laws and personal privacy information issues.

**2.4 Session 4: Vulnerabilities of specialists and professional intermediaries exploited in concealing beneficial ownership**

This session gives insights into the vigorous compliance efforts and vulnerabilities of specialists and professional intermediaries that include lawyers, accountants, and trust & company service providers (TCSPs), which can unknowingly be used as a conduit to be exploited by criminals who engage in money laundering and broader organised and syndicated crime.

**Mr. Mohd Fuad Arshad, Financial Intelligence and Enforcement, Bank Negara (Central Bank) Malaysia**

Mr. Arshad was the first panellist for this session, sharing that Malaysia has been implementing a comprehensive Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) framework to combat money laundering/ terrorism financing (ML/TF) activities in accordance with FATF standards. The framework consist of four elements: Legal framework, Domestic & International Cooperation, Preventive

Measures (Reporting Institution) and Combating Measures: Financial Intelligence Units (FIUs) and Law Enforcement Agencies (LEAs). Under the National Risk Assessment conducted, professional intermediaries are to be in the “medium to high” ML/TF. The assessment conducted was to identify ML/TF inherent risks and the control measures to be taken by the Designated non-financial Businesses and Professions (DNFBPs). The DNFBPs were in the category of vulnerabilities as they were often associated with the practices and services offered by professional intermediaries to conceal beneficial owners.

Among the methods used to conceal the beneficial owners is by having legal arrangement with proxies and the use of shell companies. This is where layers of entities were formed to give legitimacy to the shell companies through corporate history and pre-established bank accounts. The practice and services of providing nominees (including directorship and shareholding), virtual office and mailbox services often disguise the real controllers and beneficial owners of the legal person, their assets and their transactions. Facilitating transactions through trust accounts or client accounts, for example in a property transaction, will create layers to further hide the sourcing of funds that could originate from illegal activities. Malaysia has adhered to the FATF Recommendations with requirements on transparency of beneficial ownership (BO) in addressing the vulnerabilities of professional intermediaries.

In an effort to address the vulnerabilities of DNFBPs, the AML/CFT regime in Malaysia requires professional intermediaries (e.g., lawyers, accountants, company secretaries and trust companies) be made as reporting institutions under the Anti-Money Laundering Act 2001 and regulatory instruments. Therefore, they have to report to the Central Bank of Malaysia if they suspect their clients of money laundering. The Central Bank of Malaysia has taken an approach of supervisory and monitoring to address the vulnerabilities of professional intermediaries. As such, the Central Bank conducts on- and off-site examination, remote supervision and awareness sessions to help these professional intermediaries fend off or mitigate their exposure to money laundering and terrorism financing risk.

**Ms. Hue Dang, CAMS-Audit, VP & Global Head of Business Development & New Ventures, Senior Asia Pacific Leader for the Association of Certified Anti-Money Laundering Specialists (ACAMS), Hong Kong China.**

Ms. Hue Dang shared her organisation’s perspective on these issues, noting that implementation of effective measures and vigorous compliance efforts is needed to be executed by trust & company service providers (TCSPs) as to ensure that there are not

unknowingly involved in their clients' money laundering activities. This in a way will help Designated non-financial Businesses and Professions (DNFBPs) to identify how they could be exploited by criminals who are engaged in money laundering and syndicated crime. The Panama & Paradise Papers have shown a classic example of how offshore companies and complex ownership structures can be by individuals to hide their ownership of seemingly legitimate entities. Such structures and operations can be used to launder dirty money or reduce a company's tax burden. These companies are formed by TCSPs.

The role of TCSPs is crucial as they may have an understanding the type of business activity the company is doing and its potential to launder money in their dealings, including through foreign transfers, using of nominees, fraud, falsifying documents, and others. In order to have effective measures, economies should ensure TCSPs implement mandatory requirements of AML/CTF policies and controls, risk assessments, and know your customer (KYC) / Customer Due Diligence (CDD). If needed, they should also conduct enhanced due diligence for high-risk customers, Politically Exposed Persons (PEP) and Non-residents and foreign companies. FATF Guidance supports the implementation of a risk-based approach and provides specific guidance for the TCSPs and their supervisors to consider risk criteria and implement mitigation measures commensurate with the nature, size and complexity of the TCSP business. Training should be given to these TCSPs to enable them to play a major role in combating money laundering and terrorism financing. ACAMS Hong Kong China is of the opinion that economies should implement International standards on AML/CFT to promote financial integrity.

**Ms. Sandra Orihuela**, Global Corporate Compliance Council, Orihuela Abogados | Attorneys at Law, Peru

Ms. Oriheula offered a private sector perspective, starting off by noting that legal practitioners, either knowingly or unknowingly, may provide or offer their technical expertise and know-how to a client who in turn facilitates money-laundering activities. Legal practitioner who adopt FATF Recommendations may detect these crimes by conducting stringent and proper verification and screening of clients that have suspicious transactions, raise red flags and are operating in high-risk industries and economies. Red flags may be spotted during anti-corruption screenings of existing and potential clients, intermediaries or other third parties. When an unusual or suspicious transaction of engagement is detected, it requires further analysis as it may otherwise expose the company to acts of corruption. For instance, service providers or any intermediaries may have been subjected to an investigation related to corruption or bribery, accused of criminal prosecution for violations of anti-corruption laws,

suspended or debarred from doing business in a certain economy, or has not implemented a strict Code of Conduct or Ethics and Anti-Corruption policy. Having a better understanding of risk assessment will enhance the ability of legal practitioners to be protected from clients who unknowing to them are facilitating money laundering and financing terrorism.

The life sciences industry faces critical risk challenges as years goes by. This group of people who consist of end-user customers are public entities, intermediaries, service providers, distributors/agents, health care professionals and public procurement processes. With the current coronavirus pandemic (COVID-19) situation, criminals seek out to take advantage of the pandemic and may try to exploit any vulnerabilities in the anti-money laundering system. A new issue faced by the life science industry has been increased counterfeit and substandard medical products. Other challenges include those faced by the mining industry, where the government officials are involved mostly in licenses, permits, and authorization.

With all the challenges faced by various industry players, it is highly advisable to implement best practices to mitigate risk. Risk management is important in any organization as it is a process that empowers activities or businesses with the necessary tools that can adequately identify and deal with potential risks.

## **2.5 Session 5: Latest development and best practices experience in regulating, investigating and exposing beneficial ownership**

This session continues to take stock of the best practices and latest developments in APEC economies in relation to beneficiary ownership investigation, regulation and FATF recommendations.

### **Dr. Gordon Hook, Executive Secretary, Asia/ Pacific Group Money Laundering (APGML)**

Dr. Hook began this panel discussion noting that under FAFT, there are nine recommendations that are related to Beneficial Ownership (BO), which ranges from Customer Due Diligence (CDD), legal persons, mutual legal assistance and international cooperation. The record-keeping obligation is five years, whereby it is required by financial institutions keep transaction records for the past five years retrievable for Law Enforcement Agencies to check. Since 2014, 85 members of the FAFT have been assessed on the Recommendation, namely Recommendation 24: Legal persons (over half failed), Recommendation 25 and Immediate Outcome 5:- legal arrangements (three quarter failed) and Recommendation 10: Customer Due Diligence

(majority passed). The FATF is doing a good job to address the situation in some economies. Over the years, there have been some confidential data leaks, such as the Panama papers. There are some positive development in BO information in Canada, Indonesia and New Zealand. The European Directive also looks into BO registers for investment, tax and law enforcement agencies. The importance of public registers of BO is to allow law enforcement agencies to detect loots, investigate more efficiently, and facilitate greater prosperity of the shared economic wealth.

**Mr. Richard Chin, National Manager Intelligence Operations, Australian Transaction Reports and Analysis Centre (AUSTRAC)**

Mr. Chin offered his organization's perspective, sharing that beneficial ownership is helpful as it tears down the illicit funds and the masterminds behind nefarious schemes. In Australia, the threshold for beneficial ownership is 25 percent ownership of the entity. The threshold also includes formal and informal understanding to ensure the controlling mind is registered. Australian investigation agencies have powers to get information from land registry, companies' registry and other places of information for investigation purposes. Of late, there has been usage of professional intermediaries (knowingly or unknowingly) in helping to conceal beneficial ownership details. AUSTRAC works with all parties, such as local authorities (e.g., tax agency and police), private sector (Financial Intelligence), international partners (Egmont, J5) and regional partners for data sharing and to help in cases to disrupt complex crime and serious financial crime. It is also important to have partnership to counter money laundering, tax crime, detect funds flows related to corruption and regional sharing of Politically Exposed Person (PEP) list. Agencies must also exploit the data and combine data with other agencies to have a better understanding of the data by using data sets and analytics. These sorts of partnership (e.g., foreign jurisdiction and private sector) helped Australian authorities to break a crime involving four economies. The challenges in identifying BO is global compliance with FATF Recommendations and Immediate Outcome, delays in information sharing and poor collection of data. In conclusion, all economies should leverage the Asia Pacific collaboration framework to harness the power of partnership to enhance our response and to deal with these criminal threats.

**Mr. Hiroshi Ozaki, Director, AML / CFT Policy Office, Strategy Development and Management, Financial Services Agency, Japan**

Mr. Ozaki concluded this panel discussion by sharing that in Japan, an amendment to the Act on Prevention of Transfer of Criminal Proceeds (APTCP) requires that the beneficial owner (BO) of a legal person or legal arrangement should be verified up to the natural person who controls the legal person through holding voting rights therein or

through other means. This amendment was made in October 2016 after looking into FAFT recommendations. In addition, the Japanese Financial Services Agency has two more guidelines to tackle BO. In Japan the definition of BO is made on the threshold of 25 percent of ownership or other arrangements. If there is none, then it is the person who controls the policymaking of finance, management and operation and lastly the most senior management person. There must be a natural person as the BO. The declaration must be made by the BO or a representative of the BO. If it is a high-risk transaction, the BO information must also be in the share register and securities report. The Japan Financial Services Agency (JFSA) also requires further verification tasks, which the Financial Institutions need to do after doing a risk assessment on the company. The FATF recommended this best practise as a multi-pronged approach where several sources of information are used to prevent the misuse of legal persons for criminal purposes and to implement measures to make the BO of the legal persons transparent. An example would be the Registry is obtained and holds up-to-date beneficial ownership registration and the companies themselves are required to obtain and hold current beneficial ownership information. As a way forward, the Ministry of Justice is currently considering the following three proposals: a (i) new system in which certificates on the BO of legal persons are issued at the commercial registries upon application by the legal persons; (ii) information is recorded in the centralized database of the commercial registries; and (iii) the commercial registries issue certificates of the information to the legal persons. If implemented, these measures are expected to improve the due diligence practice on BO of legal persons by adopting the registry approach and is also expected to effectively increase transparency of legal persons in Japan.

### **3.0 CONCLUSION**

Corruption investigations and eradication efforts are an ongoing and uphill battle. Beneficiary ownership transparency is an anticorruption focus area that deserves attention because bad actors can use opaque shell entities to hide the proceeds of corruption and other forms of crime. Besides siphoning the illegal proceeds through a myriad of questionable financial arrangements, these monies also transacted and kept by associates and proxies to avoid the beneficiary owners from being detected by law enforcement agencies and regulators.

In this consideration, the importance of beneficiary ownership transparency can be viewed from a few perspectives:

Law Enforcement Agency: The job of investigating financial malfeasance is tedious. The complexity of investigations has increased due to ease of money transfers globally and

the use of newer forms of financial instruments. All law enforcement agencies only have power to operate within their borders. To investigate the ill-gotten money that is placed abroad, international cooperation is necessary. Without BO transparency, money can be easily hidden and masked to avoid detection. BOT will benefit all law enforcement agencies involved, both in the jurisdiction where the crime originated and the jurisdiction where the money transits and/or is kept.

Regulators (tax, central bank, company registry): Persons from this sector also need to be vigilant. Law enforcement agencies have difficulty in charging perpetrators of corrupt cases in the court of law due to the nature of criminal proceedings (e.g., burden of proof). Regulators can help to fill in the gap by ensuring that companies are held accountable so as to ensure that only matters related to principal activities of the company is done through the company. If companies are compelled to disclose information such as the actual owners and beneficiaries' details, corrupt actors will think twice about abusing companies for money laundering activities.

Professionals - trust & company service providers (TCSPs) and Designated non-financial Businesses and Professions (DNFBPs): Companies must have professionals within and outside to manage them for regulatory purposes. These professionals are paid by the proprietors to run the administration of the company and should not merely tick and check boxes to comply with the basic BO requirements. They are also to be on the forefront of this issue and should report if they observe that the actual proprietors of companies are using the corporate vehicle to engage in illicit activities.

In conclusion, there needs to be a concerted effort in acknowledging the problem at hand and conduct gap analyses to see how the abuse of corporate vehicles are taking place due to the lack of BOT that has inherently facilitated money laundering of corrupt proceeds.

Designing a dedicated law of BOT is one good long-term plan but even that is not in and of itself sufficient. Member economies must also engage in mutual legal assistance in criminal matters with different APEC and other economies' jurisdictions. Other important steps to put in place include having a regulatory framework, customer due diligence, sharing of information, network of international agencies, good whistle-blower policies, and public-private sector partnership.

The workshop was conducted to learn about the progress of laws and regulations on BO within APEC economies and to look into the areas of concern from different stakeholders such as law enforcement agencies, regulators and others. \*