

Session 5:

Latest developments & best practices investigating and exposing beneficial ownership

Dr. Gordon Hook

APG Executive Secretary

G-20 & FATF statements

- ▶ **2015:** G-20 Ministers adopted *High-Level Principles on Beneficial Ownership Transparency*:
“improving the transparency of legal persons and arrangements is important to protect the integrity and transparency of the global financial system”
- ▶ **2016:** FATF reported to G-20 that there are ‘significant implementation challenges’ including failures by some G-20 member and non member economies to implement beneficial ownership standards

Relevant FATF recommendations

- ▶ Rec 10 – CDD
- ▶ Rec 11 – record keeping
- ▶ Rec 12 – PEPS
- ▶ Rec 20 – STRs
- ▶ Rec 24 – legal persons
- ▶ Rec 25 – legal arrangements
- ▶ Rec 30 – law enforcement powers
- ▶ Rec 37 – MLA
- ▶ Rec 40 – international cooperation

Putting this all together

Reporting entities have to collect BO info on natural persons from companies and trusts with attention to PEPs; keep the info for at least 5 years; and have it available to include in STRs and to provide to LEAs, both foreign and domestic, who undertake ML and TF investigations.

How are members and non-members doing?

85 member and non member economies assessed since 2014:

- ▶ Rec 24: over half fail
- ▶ Rec 25: 3/4s fail
- ▶ Rec 10: majority pass
- ▶ IO 5: 3/4s fail

What can be done to remedy this failure rate?

Confidential data leaks keep on coming

- ▶ Panama revelations in 2016 – leaked 11.5 millions documents
- ▶ Paradise Revelations in 2018 – leaked 13.4 million documents
- ▶ Extent of off-shore financial centres/tax havens in spotlight
- ▶ Other leaks:
 - ‘Off-Shore leaks’ (2013)
 - ‘Bahama leaks’ (2013)
 - ‘Lux leaks’ (2014)
 - ‘Swiss leaks’ (2015)
 - ‘West Africa Leaks’ (2018)
- Expose how off-shore financial/tax haven hide identities and funds

London Anti-Corruption Summit 2016

- ▶ 43 member and non member economies from all global regions
- ▶ Beneficial ownership information largest number of commitments. 21 member and non member economies made commitments to explore or establish registers of beneficial ownership
- ▶ For example:
 - ▶ **Indonesia:**
‘We commit to improving the transparency of the beneficial ownership of legal persons and legal arrangements to prevent misuse of these entities and arrangements for corruption, tax evasion, terrorist financing and money laundering. We commit to exploring the establishment of **public central registers** of company beneficial ownership information’
 - ▶ **New Zealand:**
‘New Zealand commits to exploring the establishment a **public central register** of company beneficial ownership information’

Beneficial ownership registers

▶ Fourth and Fifth EU Directive – registers of BO information:

- **Investment:**

- Open investment regime but only if the BO register is open to public view

- **Tax:**

- Ready access to relevant taxpayers in certain circumstances

- **Law Enforcement:**

- Allows LEAs to readily collect relevant ownership information
- Deters financial crime
- Allows sharing with foreign LEAs

Benefits of public register

- ▶ (1) Allows domestic law enforcement and other competent authorities to more efficiently investigate criminal activities;
- ▶ (2) Deters crime - more difficult for criminals to hide money flows behind anonymous companies;
- ▶ (3) Allows foreign authorities to more efficiently investigate cross-border cases and track illicit financial flows;
- ▶ (4) Facilitates greater prosperity by contributing to a more open investment regime and by ensuring value for money in public procurement.

QUESTIONS?