

BRIEFING NOTE: PUBLIC DISCLOSURE OF BENEFICIAL OWNERSHIP

Ask 3: Concerning UNCAC Article 12 (c) and building on Resolution 4/4, calling for the collection of beneficial ownership information through national-level public registers of companies and trusts maintained with updated current information. Notwithstanding the requirements to register beneficial ownership information, calling for customer due diligence obligations, including beneficial ownership, to be required from service providers, including lawyers and trust and company formation providers, and actively enforced.

I. What is the problem or issue?

In some countries (secrecy jurisdictions¹), it is allowed by law for individuals to hide their ownership or control of a company, trust or other corporate vehicle. These jurisdictions range from small islands (so-called offshore jurisdictions) to major G20 countries, including the United States. The hidden ownership enables individuals to hide their use of the vehicles to engage in criminal activity such as laundering of corruptly taken assets.

The global financial system facilitates the easy cross-border transfer of dirty money – the proceeds of crime, corruption and tax evasion, as well as financing for terrorist groups. This is due to a lack of transparency with respect to the identity of account holders and the willingness of a plethora of service providers to bend or break money laundering laws.² These financial institutions and intermediaries use secrecy jurisdictions all over the world to set up vast, complex networks of shell companies and fake foundations and trusts to mask the illicit nature of the funds, thereby allowing them to launder hundreds of billions of dollars annually through the world's foremost financial centres.³

The international community, notably the Financial Action Task Force, and many states have created anti-money laundering regimes to try to keep illicit money out of the legitimate financial system. It is illegal in most countries for banks and other financial institutions to knowingly handle the proceeds of crime and corruption, hold accounts or process transactions for countries facing international sanctions, and to facilitate terrorist financing. Financial institutions are supposed to follow Customer Due Diligence policies and Know Your Customer rules, so as to verify that they are not doing business with any individual or group on one or more of the aforementioned lists.

However, while on paper these systems look robust, implementation of these policies and procedures continues to be undermined by a lack of political will, lack of commitment by banks -- and lack transparency regarding the actors involved in transactions. Secrecy jurisdictions argue that it is part of their business model and they consider it necessary for their economic survival. But it is a "beggar your neighbour" kind of survival strategy and creates a dependency that leaves the economy vulnerable.

The consequences of this secrecy surrounding ownership are very real. There have been many cases of corrupt heads of state and other government figures secreting billions of dollars in public money out of the

¹ Secrecy jurisdictions are cities, states or countries where laws allow banking or financial information to be kept private under all or all but a few circumstances. The Cayman Islands, Singapore and Delaware are all examples of secrecy jurisdictions. Source: Financial Transparency Coalition.

² See "[Illicit Financial Flows from Developing Countries: 2001-2010](#)", Global Financial Integrity, December 2012.

³ See also "[Pin-Stripe Mafia: How Accountancy Firms Destroy Societies](#)", Association for Accountancy and Business Affairs: Basildon, Essex, 2011.

country, leaving behind fractured societies and under-developed economies. In one case, a dead national of one country was listed in documents as the owner of a company registered in a second country, which then opened a bank account in a third country to do hundreds of millions of dollars' worth of unknown business.⁴ There have also been cases of some of the world's largest banks processing trillions of dollars for major drug cartels. These illicit financial flows have real victims and destabilising consequences that reverberate across the globe in developing and developed countries alike.

II. Background – what is beneficial ownership?

Beneficial ownership refers to the real person who is the true owner or beneficiary of an account, trust⁵, foundation or company. Beneficial owners will ordinarily include the individuals (i) who generally have ultimate control through ownership or other means over the funds in the account and/or (ii) who are the ultimate source of funds for the account and whose source of wealth should be subject to due diligence. Mere signature authority does not necessarily constitute control for these purposes.

Current international practices allow for the ability to disguise the true beneficiaries of accounts and entities through the use of nominees, trustees, anonymous shell companies, and fake foundations and trusts.⁶ This opacity impedes the ability of financial institutions to follow the rules on 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. It also routinely stymies law enforcement investigations into such groups and persons.

III. What does UNCAC say about beneficial ownership?

The United Nations Convention against Corruption (UNCAC) recognises that the private sector is an important partner for improving transparency. **UNCAC Article 12 (2) (c)** specifically calls for *“Promoting 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”*.

Adopting requirements for the identification of beneficial ownership in public corporate registries would fulfil this obligation and significantly curtail the abuse of corporate entities for the purpose of facilitating corruption. Article 12 (2) (d) also refers to *“Preventing the misuse of procedures regulating private entities,”* which would include the formation of shell companies or trusts for the purpose of concealing the beneficial owner to circumvent anti-money laundering and other laws governing financial transactions. Shell companies are an abuse of the corporate structure and the rights and privileges afforded to (legitimate) corporate entities.

UNCAC Article 14 (1) (a) calls on UNCAC States Parties to institute comprehensive money laundering regulations and oversight for financial institutions, including a recommendation for record-keeping of beneficial ownership. States Parties are also supposed to apply such regulations to service providers involved in the transfer of money or other forms of value, whom the article recognises as being a particular risk for money laundering.

Know Your Customer laws, including beneficial ownership, are also explicitly cited in **UNCAC Article 52 (1)** on the *“Prevention and detection of transfers of proceeds of crime”*. This article explicitly includes senior public

⁴ See [“Grave Secrecy”](#), Global Witness, June 2012.

⁵ Trusts do not have true ownership like foundations or companies, because they are more of a legal agreement than a separate entity. Beneficial ownership for trusts, therefore, means identifying the trustee, settler(s) and beneficiaries.

⁶ See [“Anonymous companies: How hidden ownership is a major barrier in the fight against poverty and what to do about it”](#), Global Witness, May 2013.

officials, their family members and close associates (i.e. PEPs), whose accounts should receive particular scrutiny.

The UNCAC language thus touches on the issues of beneficial ownership and transparency.

IV. How can the issue be addressed?

The way to address the lack of information and transparency on the true owners of accounts is for governments to require the disclosure of this information in public registries for companies, trusts and foundations. The paper trail this would create will make it easier for banks and other companies to comply with anti-money laundering and anti-corruption laws, and it will make it easier for governments and the public to investigate possible wrong doing. Governments with existing registries for these entities⁷ can add beneficial ownership information to the entries. Any national government that has not yet created such registries should follow best practices from other countries and do so. Adding this information to existing registries significantly reduces the compliance burden for governments and the private sector. Crucially, it also means that the information would be available to the public. This transparency will strengthen accountability between government, the private sector and society.

Governments can promote private sector compliance with their own national beneficial disclosure requirements by barring access to their financial system for any entity that fails to comply with their requirements. The US Government set a precedent for this approach in the Patriot Act of 2001. It decreed that no bank registered in the United States can receive a transfer from a foreign shell bank and that no foreign bank can transfer money to the United States from a foreign shell bank. Almost overnight, shell banks went out of business, thereby quickly and effectively shutting down a practice that had been severely undermining the transparency and soundness of the global economy.

V. What are the latest developments in this area?

Governments are beginning to pay much more attention to the need for beneficial ownership declarations. The G8 adopted a collective set of principles to tackle hidden company ownership at the summit in Northern Ireland in 2013 and member states agreed to add to these principles with national action plans.⁸ The UK action plan promises to introduce a beneficial ownership registry, with a strong preference for making it public.⁹ The US government is also considering steps on disclosure issues.¹⁰ The Financial Action Task Force (FATF), the global standard-setting body for money laundering rules, has pushed to strengthen customer due diligence (see Recommendations 10 and 24-25).¹¹ The European Union is in the process of agreeing its 4th Anti-Money Laundering Directive, and is considering the extent to which beneficial ownership information should be required.¹²

VI. Why is there so much opposition to the disclosure of beneficial ownership?

Some experts and spokesmen argue that beneficial ownership transparency is too cumbersome and would jeopardise the safety and assets of people and businesses in some countries. It is not acceptable in the face of drug trafficking, weapons smuggling, human trafficking, corruption and terrorism, that banks and financial

⁷ Visit the Open Corporates website to see which countries may have existing public corporate registries: <http://opencorporates.com/>. Note that some information may come from non-government sources, so click through individual company registries for a country to check the source.

⁸ "G8 Action Plan Principles to prevent the misuse of companies and legal arrangements", 18 June, 2013.

⁹ "UK Action Plan to prevent the misuse of companies and legal arrangements", 18 June, 2013.

¹⁰ Senator Carl Levin, "Summary of the Incorporation Transparency and Law Enforcement Act", 2 August, 2011.

¹¹ "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations," Financial Action Task Force, 16 February, 2012.

¹² See [BOWNET](#).

institutions accept business from any entity with unknown owners. Individual and corporate privacy are indeed cornerstones of liberal democracy, but they should not be upheld at the expense of the wider public interest. Privacy is being used (and abused) to undermine stability, security and prosperity, and state authorities should use their powers to stop it.

SUMMARY OF KEY RECOMMENDATIONS:

- Signatories to the UNCAC should require the disclosure of beneficial ownership for all companies, trusts and foundations to bolster existing anti-money laundering laws.
- This information should be added to existing registry lists, so that it is available to the public and compliance is simple.

This paper was prepared by Christine Clough of Global Financial Integrity on behalf of the UNCAC Coalition.