

TRANSPARENCY OF LEGAL ENTITIES AND ARRANGEMENTS

THE CHALLENGE

Corruption around the world is facilitated by people's ability to launder and hide the proceeds of corruption. Dirty money enters the financial system and is given the semblance of originating from a legitimate source often by using corporate vehicles offering disguise, concealment and anonymity. Corrupt politicians used secret companies to obscure their identity in 70% of more than 200 cases of grand corruption surveyed by the World Bank.¹ Global detection rates of illicit funds by law enforcement are estimated to be as low as 1 per cent for criminal proceeds and the seizure rate is thought to be even lower, at 0.2 per cent.²

CURRENT STATUS

Despite the strengthening of global anti-money laundering standards, such as those set by the Financial Action Task Force (FATF) and the United Nations Convention against Corruption, significant loopholes continue to exist. A key loophole for money launderers is the lack of information collected and published on those who ultimately own and control companies, trusts and other legal structures, the **beneficial owner**. An absence of information about who ultimately owns companies means it is easier to get away with crime as several cases have shown.³

Few jurisdictions require these structures to share this information with their national authorities and currently no country makes this information freely available to the public⁴. The UK has committed to doing so. Twenty-seven out of 34 OECD countries store or require insufficient beneficial ownership information for legal persons, and no country is fully compliant with the beneficial ownership recommendations for legal arrangements.⁵

The G20 Anti-Corruption Working Group will develop high level principles on actions G20 countries will take to prevent the misuse and to ensure the transparency of legal entities and arrangements. The aim is to have their endorsement at the Brisbane G20 Summit in November 2014.

RECOMMENDATIONS

- **G20 Leaders** should endorse strong high-level principles with a commitment to considerably enhance implementation of FATF recommendations within a two year period.
- **Each G20 country** should adopt individual action plans to tackle misuse of entities and legal arrangements.
- **The G20 Anti-Corruption Working Group** should ensure the high-level principles recognise and support a move towards public registers of beneficial ownership information, which is freely available and in machine-readable format, as a new global transparency standard.
- **G20 countries**, as an interim step, should require that companies involved in government procurement processes or in privatization of state assets must disclose their beneficial ownership information.
- **G20 countries** should conduct a thorough assessment of efforts made by their financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) - such as casinos, real estate agents, dealers in precious metals and stones, and company service providers - to implement their due diligence obligations.
- **G20 countries** must hold to account the senior management of financial institutions that have facilitated money laundering and corruption.
- **G20 countries** should also enhance the transparency of those who ultimately own, control or benefit from trusts and other legal structures. Making this information public should be considered, with the relevant safeguards in place in the context of each G20 country.

¹ World Bank/UNODC Stolen Asset Recovery Initiative, *The Puppet Masters*, October 2011, <https://star.worldbank.org/star/publication/puppet-masters>.

² UNODC, "Illicit Financial Flows" 2011.

³ The European horsemeat scandal is a recent example, as is the case of the Scandinavian Star, a ship that caught fire and sank killing 159 people in 1990. The ship owners have yet to be identified. See: Romana Puiulet, Daniel Bojin, and Paul Radu, *Offshore Secrecy: The Horsemeat Scandal, Organized Crime and Corruption Reporting Project*, February 15, 2013 and Erik Solheim, *Rich Countries' Dirty Money*, February 16 2014.

⁴ Christian Aid and Global Witness, 'Company ownership: which places are the most and least transparent?' November 2013.

http://www.globalwitness.org/sites/default/files/library/GW_CA_Company%20Ownership%20Paper_download.pdf

⁵ OECD, 'Measuring OECD responses to illicit financial flows from developing countries' 2013. <http://www.oecd.org/dac/governance-development/IFFweb.pdf>

SUPPORTING INFORMATION

Why should the registers be public?

Public registers would reduce red tape for law enforcement: Having critical information on beneficial ownership accessible, discreetly and at short notice, would greatly aid cross-border investigations. A public register reduces the need to make lengthy mutual legal assistance requests, which is especially helpful for countries with limited resources. If ownership information is available only on demand, there is a risk that money launderers will receive advance warning of an investigation and shift their assets to a different jurisdiction where they can be hidden again.

Public Registries are a cost effective way of improving compliance with anti-money laundering legislation, tackling crime and recovering assets. Two cost-benefit analyses carried out by the European Commission in 2007⁶ and by the UK Companies House in 2002⁷ found that public registers would be more cost effective than closed ones. The latter study found a public registry would save £30.3 million (37 million euros) in police time alone.

Greater disclosure means better investment decisions and less risk of misallocated capital. Public registers would help the business community to identify who owns the companies they are trading with, and thus better inform their investment decisions within a healthy, functioning market economy⁸.

Transparency enhances trust. Public beneficial ownership registers would allow civil society, academics, journalists and ordinary citizens to scrutinise who owns companies and other legal structures, as well as to identify false or incomplete information and detect crime and corruption.

Due Diligence

Consultations by FATF in 2011⁹ and the European Commission in 2012¹⁰ found **leading banking associations** broadly in favour of increased transparency around beneficial ownership as a way to facilitate their due diligence obligations. Business groups, such as the British Institute of Directors and the European Banking Federation, support the creation of public registries.¹¹

Although more reliable and updated beneficial ownership information should make it easier for the financial sector to comply with anti-money laundering regulations, this alone is not enough. Governments and banking supervisory authorities should require banks to further improve their Know Your Customer (KYC) procedures, especially their sharing of information regarding politically exposed persons (PEPs).

Trust Transparency

The World Bank found that trusts are the second most used vehicle for corruption purposes after companies.¹² Efforts to tackle money laundering must also tackle secrecy and misuse of trusts, foundations and other legal structures. Given the scale of financial crime made possible through corporate vehicles, privacy concerns need to be balanced against the public's need to prevent crime. Nineteen FATF members reported in 2010 that trust service providers have collected information who owns, controls or benefits from trusts.¹³ G20 countries should also enhance the transparency of those who ultimately own, control or benefit from trusts and other legal structures. It should be encouraged to make this information public, as France legislated for in 2013.¹⁴ Such disclosure would ensure that public information is limited to that which is strictly necessary, and the possibility of some limited exemptions could be retained, subject to appropriate scrutiny.

⁶ European Commission Cost Benefit Analysis of Transparency Requirements in the Company/Corporate Field and Banking Sector Relevant for the Fight Against Money Laundering and Other Financial Crime <http://transcrime.cs.unitn.it/tc/855.php>

⁷ HM Treasury/DTI, Regulatory impact analysis, Disclosure of beneficial ownership of unlisted companies, July 2002, http://www.hm-treasury.gov.uk/d/ownership_long.pdf

⁸ Institute of Directors (IOD) 'Enhancing the transparency of UK company ownership and increasing trust in UK business' 16/09/2013.

⁹ Financial sector responses to the FATF consultation on proposed changes to the FATF standards (7/01/2011):

<http://www.fatfgafi.org/media/fatf/documents/publicconsultation/First%20public%20consultation%20document%20responses%20financial%20sector%20part%201.pdf>

¹⁰ Responses received by DG Internal Market, European Commission, on the application report for the review of the 3rd EU Anti-Money Laundering Directive (31/07/2012): http://ec.europa.eu/internal_market/company/financial-crime/received_responses/index_en.htm

¹¹ See op-ed from the IoD's director general: Simon Walker, 'Government has "anti-enterprise undercurrent"', The Telegraph, 15 August 2013.

<http://www.telegraph.co.uk/finance/yourbusiness/10246151/Government-has-antienterprise-undercurrent.html>. 'EBF Position on the EC Proposal for a 4th EU AML Directive' 22 April 2013. <http://www.ebf-fbe.eu/>

¹² Stolen Asset Recovery Initiative, 'Puppet Masters: how the corrupt use legal structures to hide stolen assets and what to do about it.' 2011.

¹³ FATF, October 2010, "Money Laundering Using Trust and Company Service Providers," <http://www.fatfgafi.org/media/fatf/documents/reports/Money%20Laundering%20Using%20Trust%20and%20Company%20Service%20Providers.pdf>

¹⁴ Assemblée Nationale, 'Projet de loi relatif à la lutte contre la fraude fiscale et la grande délinquance économique et financière.' 5/11/2013. <http://www.assemblee-nationale.fr/14/pdf/ta/ta0237.pdf>