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Follow-up to the St. Petersburg Statement: Report of the international expert group meeting on beneficial ownership transparency, held in Vienna from 3 to 4 October 2017

Report prepared by the Secretariat

Summary

This conference room paper has been prepared by UNODC as a summary of the discussions during the international expert group meeting on "Beneficial Ownership Transparency", held in Vienna from 3 to 4 October 2017. Pursuant to a mandate in the St. Petersburg Statement, which was adopted at the Sixth Session of the Conference of the States Parties to the United Nations Convention against Corruption in resolution 6/5, the meeting reviewed, in the light of recent developments, the conclusions and recommendations contained in the "Puppet Masters" study published by the joint UNODC/World Bank Stolen Asset Recovery (StAR) Initiative.

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I. Introduction

1. In 2011, the joint UNODC/World Bank Stolen Asset Recovery (StAR) Initiative published a study on beneficial ownership transparency entitled "The Puppet Masters — How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It" (the "Puppet Masters"), a publication which is widely considered as the seminal text in the field. Using cases, interviews with practitioners and evidence from researchers posing as potential customers, the book proposed policy recommendations to guide national legislation and regulations, as well as international standard setters.

2. The publication of the so-called "Mossack Fonseca Papers" has again highlighted the crucial importance of beneficial ownership information in tackling corruption and tracing illicit financials flows around the world. At the London Anti-Corruption Summit, participants — including all G20 countries — committed to "ending the misuse of anonymous companies to hide the proceeds of corruption". Indeed, nearly all cases of grand corruption have one thing in common: They rely on corporate vehicles — legal structures such as companies, foundations and trusts — to conceal ownership and control of assets that are the proceeds of corruption.

3. The United Nations Convention against Corruption (the "Convention") explicitly mentions transparency among private entities, including measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities, in Art. 12(2)(c), and obliges States parties in Art. 52(1) to require financial institutions to verify the identity of customers and determine the identity of beneficial owners of funds deposited into high-value accounts. As the guardian of the Convention, UNODC thus already has a specific legal mandate to support measures regarding beneficial ownership transparency.

4. Moreover, the sixth Session of the Conference of the States Parties to the United Nations Convention against Corruption adopted in resolution 6/5 the St. Petersburg Statement on promoting public-private partnership in the prevention of and fight against corruption, which calls upon States parties to strengthen the involvement of the private sector in the fight against corruption and invites them, inter alia, to enhance transparency, including regarding beneficial ownership of private entities.

5. Against this background and on the basis of preparatory research, the international expert group meeting (the "Meeting") reviewed, in the light of recent developments, the conclusions and recommendations contained in the "Puppet Masters" and discussed if new legislation and policy developments as well as new cases of grand corruption that broke after the cut-off date for the study confirmed the conclusions and recommendations proposed in the original study, or if they indicate new trends. The Meeting was organized by UNODC with financial support by the Russian Federation. The group comprised more than thirty participants from the public and the private sector, international organizations and non-governmental organizations.

II. Overview of new legislation and policy developments

6. UNODC presented an overview of new policy initiatives and legislation at the international level and in some G20 jurisdictions. In addition, participants spoke about beneficial ownership information and obstacles in accessing it in their home jurisdictions.

A. At the international level

7. UNODC presented the developments in international legislation and guidelines, focusing on the EU, the Financial Action Task Force (FATF), the G20/G7, and the London Anti-Corruption Summit. In the EU, the deadline for the transposition of the

Fourth Anti-Money Laundering Directive [1] had expired on 26 June 2017. The Directive contains relevant provisions on beneficial ownership, such as its definition, customer due diligence requirements, and the accessibility to beneficial ownership information. In addition, a proposal for a Fifth Anti-Money Laundering Directive is currently being discussed to strengthen anti-money-laundering (AML) measures in the EU.

8. The revision of the FATF Recommendations in 2012 strengthened the requirements to support countries' access to adequate, accurate and timely information on the beneficial owner of legal persons and arrangements. The Recommendations require countries to understand the money-laundering and terrorist financing risks they face associated with legal persons and arrangements, expect rapid constructive and effective international cooperation in relation to beneficial ownership information, and provides for mechanisms to ensure the availability and access to beneficial ownership information by competent authorities. Measures requiring financial institutions and designated non-financial businesses and professions [2] to undertake additional steps when dealing with domestic politically exposed persons were also included. A new methodology for the evaluation of countries' compliance against the 2012 Recommendations was adopted in 2013, and included a new framework for evaluating the effectiveness of countries' AML/CFT regimes, alongside an assessment of their technical compliance. Eleven immediate outcomes were introduced to structure the assessment of effectiveness, with one of them covering the availability to competent authorities of information on beneficial ownership. Other important immediate outcomes relevant to beneficial ownership include those that cover the effectiveness of supervision of financial institutions and DNFBPs, and effective application of AML/CFT requirements by DNFBPs and financial institutions themselves. In order to assist countries in their implementation of the relevant Recommendations, FATF issued a Guidance Paper on Transparency and Beneficial Ownership in 2014 and delivered a Report on Beneficial Ownership to the G20 in 2016. At the 2016 G7 Summit in Ise-Shima, Japan, the G7 Action to Fight Corruption stated the importance of beneficial ownership transparency. Also, the Communiqué of the 2016 London Anti-Corruption Summit and the individual country commitments stressed the importance of access to and timely collection of beneficial ownership information. Finally, the 2017 G20 Summit in Hamburg, Germany, issued a Leaders' Declaration, which underlined the commitment to advancing the implementation of beneficial ownership transparency of legal persons and legal arrangements.

9. Concerning the G7 countries and the Russian Federation, domestic legislation had been adopted to transpose the Fourth EU AML Directive in France (Ordinance no. 2016-1635), Germany (Anti-Money Laundering Act 2017), Italy (Legislative Decree No. 90 of 25 May 2017), and the United Kingdom of Great Britain and Northern Ireland (Money Laundering Regulations 2017). As for the other countries, the legislative status in Canada (the Proceeds of Crime (Money Laundering) and Terrorist Financing Act), Japan (the Amended Act on Prevention of Transfer of Criminal Proceeds), the Russian Federation (Federal Law no. 215-FZ of 23 June 2016) and the United States of America(bill of the Corporate Transparency Act of 2017) was presented.

[1] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing.

[2] DNFBPs include Casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professionals, accountants and trust and company service providers.

B. At the national level

10. Several experts shared legislative efforts to identify beneficial owners in their respective jurisdictions.

11. The Australian expert reported that his country had reacted to recent recommendations on its anti-money-laundering policies by taking new measures with regard to legal persons and corporate structures. A serious financial crime task force had been established as a multi-agency body combining resources of agencies to target serious financial crime within Australia and overseas. The task force receives referrals from Government agencies and regulatory bodies, self-reporting from the private or public sectors and information from whistle-blowers, international stakeholders, and through public inquiries. Among the challenges encountered was finding the right balance in the relationship with private sector bodies, receiving timely mutual legal assistance from abroad and overcoming attorney-client privilege. With regard to the latter, a legal professional privilege practice group had been established within the Australian Federal Police. Further, actions were taken on the basis of information disclosed in the "Mossack Fonseca Papers" in 2016. The expert reported some significant high-level cases, including the "Operation Elbrus" tax fraud case that involved a number of companies with straw directors and resulted in numerous restraint orders and arrests to date.

12. Argentina had also reacted to international recommendations regarding deficiencies in its anti-money-laundering policies. New money-laundering and capital market legislation created enhanced customer due diligence requirements, and reforms were still ongoing. A plan regarding beneficial ownership transparency had been adopted that obliged, inter alia, banks to maintain a database holding critical information of all clients. Legal persons have to inform banks of their final beneficiaries and their shareholders. The FIU established new criteria for the application of customer due diligence in the banking and exchange sector, moving from a formalistic compliance approach to a risk-based approach. The expert from Argentina considered it a challenge that there was no centralized authority to collect information on companies from all the provinces in Argentina.

13. The Brazilian Internal Revenue Service adopted an instruction in 2016 that obliged any person receiving a donation to register the donor. According to new money-laundering legislation, plea bargaining with companies had been allowed. Investigators concluded numerous settlements in the "Lava Jato" case, thereby contributing to the success of the very complex investigations. The Brazilian expert considered that the legal obligations by law were sufficient, but the implementation remained generally weak. Another difficulty was that prosecutors needed a judicial order to access corporate information held by the Internal Revenue Service, and judges observed very high standards to grant such orders.

14. In Norway, Parliament requested the Government in 2015 to establish a beneficial ownership register, but it is not yet clear whether it will be open to the public and included companies registered on the stock exchange. As a member of the European Economic Area, Norway in principle intends to implement the Fourth EU AML Directive but has not yet fixed a specific date. It was stressed that in Norway, civil society had played a fundamental role in initiating and pursuing the debate about beneficial ownership, financial transparency, and a public register.

15. Nigeria started to regulate company registers in the 1990s. Each company must register all its associates with the Corporate Affairs Commission and a legal practitioner must have verified the information. As the Nigerian Government announced at the London Summit, it is committed to establishing a central organ keeping beneficial ownership information. In Nigeria, tax authorities do not keep information on beneficiaries, however, the money-laundering legislation foresees the obligation of financial institutions to identify beneficial owners. Anonymous accounts or shell companies are prohibited. Enhanced disclosure rules are in place for the extractive industries, Government officials and PEPs. Confiscation of assets can be

ordered based on the failure to disclose, which is established as a crime. The Nigerian expert mentioned a number of challenges, including the lack of a central repository of beneficial ownership information, and inadequate tools to check the information provided by companies.

16. Guernsey has a central beneficial ownership register, to which all financial institutions and trust and company service providers are required to report. The information contained therein is available to law enforcement and regulatory bodies, and the Financial Intelligence Unit can transmit it abroad through the EGMONT Group. The threshold to establish beneficial ownership is defined at 25 per cent of capital.

17. Moldova has drafted new AML legislation in order to respond to recommendations on its money-laundering policy and with the support of the European Union. The legislation improved the obligations of reporting agencies to carry out customer due diligence. The State Registration Chamber must collect and update beneficial ownership information. Since January 2017, PEPs were obliged to submit asset declarations to the National Integrity Authority, and the obligation was successfully enforced and gave rise to high expectations for improved money-laundering investigations.

18. In the Russian Federation, AML legislation contains the obligation of all Russian legal entities (with some exceptions) to possess and update information on their beneficial owners and keep this information for five years. The beneficial owner is defined in this legislation as an individual who ultimately directly or indirectly (via third parties), has a stake of 25 per cent or more of the capital of the relevant legal entity and the possibility to directly or indirectly control the actions of the clients. The legislation obliges all entities to take measures that are reasonable and available under the circumstances to identify beneficial owners. In case of failure to identify the beneficial owner, the legal entity is obliged to keep information on the measures undertaken. This information has to be provided to the FIU and the Federal Tax Service upon their request, ideally through an electronic channel, within five working days. Failure to identify beneficial owners or to update, maintain and provide information on them is an administrative offence and carries penalties up to the equivalent of approx. EUR 590 (officials) or EUR 7355 (legal entities). Auxiliary sources that could be used to identify beneficial ownership include the information on persons controlling or influencing banks held by the Bank of Russia, the list of affiliated persons submitted by joint stock companies, the lists of persons pertaining to the same groups disclosed by the Federal Antitrust Service, and commercial databases. Further, the expert from the Russian Federation explained that some Russian PEPs are not allowed to own foreign bank accounts, and any Russian citizen is obliged to report such accounts to the tax authorities. Cases of failure to report may be detected through international information exchange and may, in that case, result in PEPs losing their public positions.

19. The United States reformed their customer due diligence regulations in 2016, in order to align them closer with the international AML standards. Covered financial institutions must comply with these obligations no later than May of 2018. A new obligation of financial institutions to identify beneficial owners was established and will be monitored on an ongoing basis as a part of financial institutions' obligations to conduct ongoing monitoring of their customer relationship. Starting in May 2018, when legal entities establish new accounts at banks, securities broker-dealers and commodities brokers, the financial institutions must identify and verify the identity of those natural persons that directly or indirectly hold at least 25 per cent of their equities. In all cases, financial institutions must also identify and verify the identity of one natural person who has significant responsibility for controlling the legal entity. These obligations apply regardless of the nationality of the beneficial owners. The Financial Intelligence Unit (FinCEN) has the authority to issue Geographic Targeting Orders (GTOs), obligating financial institutions to report on transactions in certain geographic areas. It has most recently used this authority to require title insurance companies (a necessary participant in most real estate transactions in the

U.S.) to disclosure the beneficial owners of legal entities that purchase high-end real estate without financing in a number of U.S. markets. Further, a Congressperson has introduced legislation (the Corporate Transparency Act), which would provide the States financial incentives to implement company formation systems that meet minimum standards for the collection of beneficial ownership information. For states that do not meet the standards, the Act would authorize Treasury to implement regulations to mandate the disclosure of beneficial ownership information at the time of company formation to Treasury.

20. The expert from the Financial Action Task Force (FATF) Secretariat provided an update on the outcome of evaluations undertaken on the 2012 FATF Recommendations and in accordance with the 2013 methodology. This included FATF Recommendations 10, 12, 22, 24 and 25, and immediate outcomes 3, 4 and 5 under the effectiveness part of the methodology.

III. Introducing the “Puppet Masters”

21. The expert and the researcher from the joint UNODC/World Bank Stolen Asset Recovery (StAR) Initiative provided some background about the original “Puppet Masters” study and an overview of the research on grand corruption cases that had emerged after the cut-off date for that study, which formed part of the empirical basis for the Meeting.

A. The original “Puppet Masters” study

22. The expert from the StAR Initiative recalled the methodology and recommendations of the original “Puppet Masters” study. The study originated from the experience that missing information on the beneficial owners of corporate vehicles abroad was one of the biggest barriers to international asset recovery.

23. The authors of the study had used information from reliable open sources on 150 corruption cases in which corporate vehicles were used for hiding beneficial ownership. Further, the authors had analysed the information available in 40 company registries, and conducted a series of interviews with investigators and banks. Finally, they had conducted an audit study (“mystery shopping exercise”) involving the solicitation of offers for shell companies from a range of trust and company service providers.

24. In the analysed cases, offenders had used mostly companies (most of them shell companies), and only to a lesser extent trusts, associations and non-profit structures to hide their assets. Two thirds of the corporate vehicles were transnational (both on-shore and off-shore) and one third domestic. Over 90 per cent of the cases involved professional intermediaries. The evaluated registries only rarely contained shareholder information, and only one included beneficial ownership information. Updating and verification requirements were rarely enforced. Easy access and search functions, as well as historical record-keeping, were found to be not always available. Further, investigators faced obstacles in requesting information from other jurisdictions and in overcoming the attorney-client privilege.

25. The “Puppet Masters” did not find much evidence of the use of trusts. It did not include discussions on whether beneficial ownership information could be obtained from tax authorities, or ways to improve cooperation between law enforcement and tax authorities.

26. Since the publication of the “Puppet Masters”, beneficial ownership had moved high on the political agenda and some positive developments could be noted, especially due to international anti-money-laundering initiatives.

B. The research on new cases of grand corruption

27. As mentioned above, one of several empirical foundations of the original "Puppet Masters" study was a review of 150 grand corruption cases from a wide range of jurisdictions that involved the misuse of corporate vehicles for the purposes of hiding corrupt funds, hiding the identity of politically exposed persons (PEPs), or otherwise furthering the corruption scheme. As part of the preparation for the Meeting, UNODC conducted qualitative research into 40 new grand corruption cases that took place — or were made public — between 2010 and 2017.

28. This research represented an effort to test whether the recommendations required updates or additions. The research relied on public sources, official government and legal sources, as well as outreach to relevant practitioners and organizations. Cases for which the evidence of corporate vehicle misuse for the purpose of furthering a corruption scheme was not available or deemed insufficient were excluded from the analysis.

29. The nine corruption case studies selected for discussion at the Meeting displayed a number of characteristics that were highlighted as potential trends for further analysis in the researcher's presentation. However, due to the inherent constraints of using the case study methodology to study criminal behaviour, it was noted that these findings were anecdotal and not necessarily representative, and could therefore be incidental, rather than indicative of larger trends.

30. According to the research, the anonymously controlled corporate vehicle is still a key enabler in many different types of corruption schemes, including bribery, self-dealing, illicit enrichment, and embezzlement cases. None of the cases reviewed would have been possible without this tool.

31. The purpose of corporate vehicles in corruption schemes can go far beyond mere asset control or channeling bribe payments. The case studies reviewed demonstrated a wide variety of more creative or more sophisticated uses of corporate structures in grand corruption schemes. Such uses included: (i) inserting a corporate vehicle into a deal with the purpose of extracting profits and/or awarding an ownership stake in this corporate vehicle to a PEP; (ii) awarding natural resource licenses to a purposefully-created shell company with the intention of "flipping" the license to another company, at large profits.

32. Corruption schemes increasingly used new, more sophisticated types of corporate vehicles. For example, the use of investment funds to hide proceeds from corruption was highlighted. In one of the case studies, private overseas investment funds registered in so-called "tax havens or "secrecy jurisdictions" were used as conduits for money embezzled from a state-owned investment fund. The same case also utilized an investment fund registered in one of these "tax-havens" in an elaborate scheme to obscure the true value of an equity investment and cover-up the embezzlement. Some experts confirmed this finding by commenting on the apparent rise of the misuse of investment funds for hiding illicit gains.

33. From a law enforcement perspective, the abuse of "foreign" corporate vehicles that are incorporated outside the main jurisdiction where the corruption offense was committed constitutes the greatest problem, as it requires international cooperation. The fact that corporate vehicles were registered in a foreign jurisdiction was essential to efforts to hide the beneficial owners and corrupt funds in all case studies discussed at the IEGM, except one.

34. According to the case studies, popular corporate structure were corporations or limited liability companies, that were (i) either themselves incorporated in a "foreign" jurisdiction and/or had a corporate legal owner that was incorporated in a "foreign" jurisdiction, often a secrecy jurisdiction; and (ii) had either corporations/limited liability companies as company directors or nominee company directors, provided by trust and company service providers or trusted associates.

35. The case studies revealed indications of a potential rise in popularity of "new" jurisdictions with untainted reputations that are not flagged as high-risk in AML compliance, as other avenues for laundering corrupt funds have narrowed.

36. The case studies further revealed the frequent use of informal agent relationships for the purpose of hiding the identity of the beneficial owner. In many cases, the people occupying formal positions in corporate structures were trusted associates or relatives, rather than professional nominees. Financial intermediaries were heavily involved in facilitating the schemes. This includes banks, lawyers, TCSPs, and investment advisors. However, it was not apparent that TCSPs were used in all or most of the case studies.

37. Finally, the case studies featured a large diversity in sophistication of the techniques and corporate structures employed to hide the beneficial owners and obfuscate the money trail of the corrupt funds. While there are some indications of an increase in sophistication in corporate structures, some PEPs also resorted to quite basic or careless techniques, such as channeling money through bank accounts held in a relative's name or, in two cases, even in their own name. This underlines that PEPs who benefit from corruption schemes may not always be experts in the most advanced techniques favoured by organized crime and money-launderers.

IV. Reviewing the conclusions and recommendations of the "Puppet Masters"

38. In a series of sessions, the meeting looked at the conclusions and recommendations contained in the substantive chapters of the "Puppet Masters". In addition, a separate session was dedicated to the question whether tax authorities could be possible sources of beneficial ownership information.

A. Session 1: "The Beneficial Owner"

Moderator: Yves Aeschlimann (Switzerland)

39. The first session reviewed the conclusions and recommendations in Part 2 of the "Puppet Masters", entitled "The Beneficial Owner". This chapter deals with the definition of beneficial ownership and terminology. It concludes that beneficial ownership is a concept that is relatively straightforward in theory but difficult to apply in practice. The essence is to identify the person who ultimately controls a corporate vehicle. This identification will always be a highly context-dependent, *de facto* judgment; beneficial ownership cannot be reduced to a legal definition. The book also distinguishes between substantive and formal definitions. The difference between the substantive and formal approach is that the substantive approach remains open-minded about who the beneficial owner may be, and it takes the outcome of the formal approach (e.g. shareholdings above a certain threshold) as a working hypothesis rather than as a final, definitive conclusion.

40. On the basis of these conclusions, the book makes four recommendations: (i) Countries should ensure that the beneficial owner is always a natural person; (ii) they should consider introducing an alternative terminology for persons identified as beneficial owners under the formal approach; (iii) they should develop a clear formal standard for such persons but require deeper inquiry in high-risk scenarios; and (iv) ongoing due diligence should be used to bridge the gap between the two approaches.

41. The starting point of the discussions regarding the definition of the beneficial owner was the definition given by the FATF: "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."[3]

42. Overall, participants agreed that the four recommendations of Part 2 of the "Puppet Masters" remain valid and relevant in the context of new developments in beneficial ownership transparency since 2010.

43. With respect to recommendations 1 and 2, experts stated that the definition of beneficial ownership at times still represents a challenge, especially in cross-jurisdictional cooperation and investigations. There was consensus among experts that recommendation 1 was critical to efforts to increase beneficial ownership transparency in corruption cases. This was also borne out by the case studies prepared for the Meeting, which frequently featured corporate legal owners that were typically registered in foreign jurisdictions. Some experts highlighted that while the beneficial owner is always a natural person, such a natural person could be acting on the orders of a third person who is hiding behind a "straw man".

44. The expert from the Russian Federation pointed out that different legal definitions that generally fall under the concept of beneficial ownership can be found in different fields of law, e.g. tax law, corporate law, competition law and AML/CFT law. He questioned the usefulness of different terminology, like "person with significant influence or control", for persons identified as beneficial owners under the formal approach and suggested that the concept of beneficial ownership could instead be seen as an "umbrella" category that is comprised of several sub-categories. However, the continued relevance of recommendation 2 was evident from the fact that different definitions of beneficial ownership were employed during the experts' discussion, leading to difficulties in communication on the topic.

45. Other experts found the distinction useful but stressed that the identification of a person with significant influence or control, e.g. a person holding more than 25 per cent of the shares in a company, was only a first step in the identification of the beneficial owner and that substantive inquiries beyond that step were necessary. Switzerland's legislation was mentioned as an example for a jurisdiction that implemented this recommendation by differentiating between the beneficial owner and the controlling person of a corporate entity. It was noted that the United Kingdom's register of "people with significant control" also makes this distinction by choosing to label the person with a minimum of 25 per cent ownership stake a "person with significant control", thereby acknowledging that this person may be different from the beneficial owner.

46. Experts further discussed whether the most widely used minimum threshold of 25 per cent ownership interest is appropriate, or needs revision. Argentina was named as an example of a jurisdiction that uses a lower threshold, which was viewed as favourable by some experts. Other experts noted that lowering the minimum quantitative threshold would inevitably lead to a dilution of the quality of beneficial ownership data. The United States expert pointed out that the reduction of the threshold (e.g. in the draft Fifth EU AML Directive) would have repercussions for the application of enhanced due diligence. Nevertheless, he did not think that such a lower threshold had consequences for the definition of beneficial ownership.

47. It was further noted that an overly narrow, formal definition of beneficial ownership that relies on minimum percentage thresholds of legal ownership is problematic as it creates loopholes and is vulnerable to workarounds by actors actively trying to hide beneficial ownership information. In this context, the continued relevance of principal-agent relationships in the context of grand corruption schemes was identified as a major obstacle to identifying beneficial owners of corporate vehicles. As many beneficial owners use trusted associates to delegate effective

[3] FATF Guidance, *Transparency and Beneficial Ownership*, October 2014, p. 8. As noted in the FAFT guidance, "an essential element of the FATF definition of beneficial owner is that it extends beyond legal ownership and control to consider the notion of ultimate (actual) ownership and control."

control and legal ownership over corporate structures, a practice that was confirmed in many of the case studies prepared for the Meeting, experts noted that the threshold approach cannot be relied on as the sole or main solution to gaining access to beneficial ownership information — though it may provide helpful clues for investigators. Therefore, most experts expressed support for a principle-based, substantive approach to identifying beneficial owners over a purely formal approach. There was a consensus that there should be a focus on effective implementation of the existing FATF standard.

48. Representatives from the private sector highlighted that ongoing due diligence (recommendation 4) helps address the problem of distinguishing beneficial ownership from effective control over a corporate structure. This recommendation addresses the need for ongoing monitoring of the active life of a bank account which typically reveals clues about the identity of the beneficial owner. Even though the controller of the bank account may be a different person than the beneficial owner, the objective of the financial service provider is to identify the person at the end of the chain who benefits financially from the corporate structure. One expert memorably pointed out that the beneficial owner is usually the person who calls the financial service provider in the event of a stock exchange crash to check on his/her investments.

49. Participants further noted that for financial institutions, the requirement for ongoing due diligence in recommendation 4 is reflected in the FATF Standards (Recommendation 10) through requirements for financial institutions to assess the beneficial owner of customers and to undertake ongoing monitoring, as well as in the Fourth EU AML Directive. In this context, experts raised issues around relying on information gained through self-reporting and raised the question of penalties for legal entities that are negligent in updating beneficial ownership information or deliberately provide misinformation. Furthermore, experts questioned whether the monitoring requirement could be honed to focus on monitoring of corporate registers and, where utilized, beneficial ownership registers, in light of issues relating to the static nature of the information, in conjunction with the lack of audit/enforcement regarding updating of corporate and beneficial ownership information.

B. Session 2: “Where Does the Beneficial Owner Hide?”

Moderator: Vadim Tarkin (Russian Federation)

50. This session looked at the conclusions and recommendations in Part 3 of the “Puppet Masters”, entitled “Where Does the Beneficial Owner Hide?”. In this chapter, the study noted that, in the vast majority of grand corruption cases, corporate vehicles — including companies, trusts, foundations, and fictitious entities — were misused to conceal the identities of the people involved in large-scale corruption. Of these corporate vehicles, the company (especially the corporation and the limited liability company) was the most frequently used. Most companies used to conceal beneficial ownership were non-operational, although operational companies were also used, particularly for paying bribes. Shelf companies posed a particular problem, as they provided individuals with a company history and a set of company officials unrelated to the corrupt individual.

51. Based on these conclusions, the Puppet Masters made five recommendations: (i) Jurisdictions should perform a systematic risk analysis of the cases in which corporate vehicles are being used for criminal purposes, to determine typologies that indicate a heightened risk; (ii) they should develop a definition as to what constitutes a shelf company, and should make them less desirable to illicit actors; (iii) they should require financial institutions or service providers to obtain a “Declaration of Beneficial Ownership,” from their clients; (iv) they should abolish bearer shares; and (v) they should bring together law enforcement and trust and company service providers to educate them on the types of corporate vehicles and constructions used by criminals.

52. Confirming the risk analysis in the "Puppet Masters", the presentation by the StAR consultant showed that in the overwhelming majority of cases, corporations and limited liability companies were used to hide assets. According to the available empirical data, trusts only accounted for a very small portion of the corporate vehicles used to hide assets in grand corruption cases. However, this might also be a result of the difficulties to investigate such structures. The expert from Switzerland observed that he had seen an increase in the use of trusts registered in "untainted" jurisdictions. Generally, participants agreed that trusts might present a considerable AML and supervisory risk because they were difficult to find, mobile, unregulated common law entities. However, it was noted that there was a lack of understanding of the risk, i.e. whether the lack of data means that trusts are not being used, or whether it means that illicit actors are doing a good job of obscuring the use of trusts. Moreover, some experts observed that criminals seek to maintain a high degree of control over the assets they beneficially own and this might be more difficult to achieve in a trust. Moreover, trusts were more expensive to set up and administer. The Russian expert shared his experience on defining trusts and other similar entities as "foreign structures without legal personality" as a way to deal with a common law institute in a continental law system. Such an approach allowed financial institutions to identify trusts during the customer due diligence and "Know-Your-Customer" procedures as a client and not just as a natural person.

53. The experts further noted that — also due to increased AML/CFT regulation and enforcement — the level of sophistication had increased over the last 25 year. Nowadays more complex structures are encountered, that were established in multiple jurisdictions. The Meeting should explore which type of company is used for which purpose. It was further added that beneficial ownership was a dynamic concept and the beneficial owner could change over time. Therefore, if a register only contained the person who was the beneficial owner at the time the company was set up, there was a high likelihood — e.g. in the case of shelf companies — that the owner would change later. The approach used in the Russian Federation to oblige legal entities to possess, update and maintain information on their beneficial owners was mentioned as a useful tool to mitigate such situations.

54. With regard to shelf companies, the expert from the World Bank pointed out that time and effort required to incorporate a company have been reduced substantially in all relevant jurisdictions. Therefore, the legitimate advantages of having shelf companies available have all but disappeared. Moreover, it was noted that due to reporting obligations it was relatively easy to verify if a company was active or not. Some noted there was a tendency to acquire older companies to create the impression that it is well established. Another trend seemed to be the use of certain Limited Partnerships, whose use had seen a dramatic increase.

55. Mandatory beneficial ownership declarations were considered a good practice but it was important that one form did not fit all situation. Mere self-declaration was of little value. Banks needed experience and guidance to ask the right questions. Some countries had produced guidelines to define beneficial ownership. Several experts underlined the importance of on-going monitoring. Stricter scrutiny and could make a big difference. However, one expert remarked that "private bankers don't ask questions".

56. Experts agreed that bearer shares, although still used to conceal beneficial ownership, were not a major problem in practice any more. Many jurisdictions had already abolished this type of shares. Therefore, the recommendation to that effect had somewhat lost its relevance.

C. Session 3: "Finding the Beneficial Owner"

Moderator: Frederic Raffray (Guernsey)

57. Session 3 looked at the conclusions and recommendations in Part 4 of the "Puppet Masters", entitled "Finding the Beneficial Owner". In this chapter, the study

described the relevant actors and institutions that can (i) help to identify the corrupt persons behind a corruption scheme or (ii) establish a link between a known target and certain assets. It concluded that corporate registers constituted a primary source of information in the search for beneficial ownership information. However, the value of these registers could be significantly enhanced. Evidence from the database of grand corruption cases showed that trust and company service providers were often involved in establishing and managing the corporate vehicles encountered in grand corruption investigations and that they were generally in a position to obtain good information on the natural persons ultimately controlling the corporate vehicle. Also, the services provided by financial institutions were crucial to the money-laundering process since without them, it would be impossible to launder funds on a significant scale. Finally, the more complex arrangements were rarely established without an international element.

58. Based on these findings, the study made 14 recommendations. These recommendations concerned the content and set-up of corporate registers (recommendations 1-4); the introduction of unique identifiers (recommendation 5); the responsibility of trust and company service providers and their use as gate-keepers (recommendations 6-9); attorney-client privilege (recommendation 10); and the obligations of financial institutions to collect beneficial ownership information, conduct customer due diligence and ensure compliance (recommendations 11-14).

59. Experts highlighted that the establishment of dedicated beneficial ownership registers was the one area that had possibly seen the greatest evolution since the publication of the “Puppet Masters”. For instance, in the European Union, a new directive (the Fourth EU AML Directive[4]) required EU members to set up a central beneficial ownership register in each member State. Several experts (e.g. from Brazil, Moldova, Norway and Guernsey) informed the Meeting that their countries intended to or had recently introduced beneficial ownership registers. Some States, like the United Kingdom and Slovakia, have made these registers publicly accessible, although the majority of States only grants access to competent authorities and FIUs.

60. Despite this great increase in the number of registers, several experts remained skeptical about their practical usefulness. Registers could only provide good quality information if a number of conditions were fulfilled, including some form of on-going verification and enforcement of legal requirements.

61. There was some discussion whether block chain technology could make registers more reliable and protect against false entries. However, it was pointed out by some experts that while this technology could make registers tamper-proof, it did nothing to solve the fundamental problem of registers, namely that incorrect beneficial ownership data is supplied to the register.

62. In Nigeria for example, a tax identification number (TIN) was used as unique identifier for all legal entities. This enabled investigators to efficiently collect evidence from different domestic agencies within the jurisdiction (for example, tax, licensing, or municipal authorities).

63. The important role played by trust and company service providers (TCSPs) in the collection of beneficial ownership information was stressed by several experts. The expert from Guernsey presented the experience with his domestic “gate-keeper” regime, where all non-residents establishing a legal entity were required to go through a trust and company service provider. These service providers were regulated under the domestic AML compliance regime and were required to collect beneficial ownership information. Several experts agreed that TCSPs could play a crucial role in the collection of beneficial ownership information and that they should be subject to regulation in a strict AML/CFT regime.

[4] See article 30 of the directive. The directive had to be transposed into national law by Member States by 26 June 2017.

64. In response to this, some experts noted that in many jurisdictions, corporate vehicles could be established without the involvement of a TCSP. Likewise, limiting the mandatory use of TCSPs to non-residents (recommendation 9) could undermine the effectiveness of a gate-keeper regime in jurisdictions like the US, where many corporate vehicles are established by residents. A suggestion was made to make the use of TCSPs mandatory to ensure the existence of a domestic holder of beneficial ownership information. Already, many civil law jurisdictions required a notarial deed for the establishment of corporate entities. In Spain, the information held by notaries was accessible in a centralized database and in Liechtenstein a regulated TCSP must be on the board for the entire duration of the company.

65. With regard to recommendation 10, there was consensus that attorney client privilege is a major obstacle in all common law jurisdictions. The expert from Australia shared his experience how the Australian Federal Police had mitigated problems arising from legal professional privilege (LPP) by establishing a dedicated LPP practice group comprising lawyers and law enforcement officers. That group gives advice relating to current investigations and advocacy services for teams executing search warrants. The members of the group engage directly with legal representatives or other parties claiming LPP with a view to resolving or minimising LPP claims.

D. Session 4: Tax authorities as possible sources for beneficial ownership information

Moderator: Young Lee (United States)

66. While the “Puppet Masters” recognized that tax authorities could provide useful details about corporate vehicles[5], it did not explore this avenue in any detail. Nevertheless, many believe that the information held by tax authorities could be useful to obtain information on the beneficial owner, although there are significant challenges associated with this approach. Also, the G20 Finance Ministers have asked FATF and the Global Forum on Transparency and Exchange of Information for Tax Purposes to work closely on improving the implementation of the international standards on transparency, including the availability of beneficial ownership information and its international exchange.

67. An expert from the Vienna University of Economics and Business (WU Wien) initiated the session by explaining the Tax and Good Governance Project and presenting its findings. Most jurisdictions had a legislative framework that dealt with the exchange of information between agencies. However, as the second edition of the OECD Report on “Effective Inter-agency Cooperation in Fighting Tax Crimes and Other Financial Crimes” had shown, that legal framework was seldom utilized or fully applied in practice.

68. Experts highlighted the restrictions for the exchange of information with tax authorities. Since the collection of tax information targeted specific tax offences, authorities in some countries could not share it for the investigation of other conduct. Some experts pointed out that tax information was, in the first place, not collected and structured in a way that favoured even tax investigations, but in a way suitable strictly for taxation purposes. In the United States, tax authorities may only share information with other agencies if such agencies use the information for the same reason it was collected, i.e. to identify tax fraud and evasion. Tax information had been found to be abused in the past, and therefore there are strict statutory limitations on the use of tax information for non-tax purposes. Under existing U.S. tax agreements with other jurisdictions, tax information can generally only be transferred for tax purposes, and this limitation is rigorously enforced. Further, several experts mentioned data protection requirements that presented obstacles to data sharing in criminal cases beyond tax matters. Further, even where tax authorities may share

[5] See p. 102.

information with investigators, tax authorities and money-laundering investigators were situated in different parts of government and therefore lacking a continuous cooperation.

69. Other experts identified avenues through which their legislation allowed their authorities to share tax information for the purposes of investigation of other offences. In the Russian Federation, tax information could be shared domestically by tax authorities in cases when there is an indication of a criminal offence. The legislation provides a mechanism and grounds for the domestic disclosure of tax information. In addition, the Russian expert explained that despite the existence of this legislation, agencies concluded domestic bilateral agreements in order to clarify the type of information that could be shared and the applicable procedures. In Ghana, the legislation allows tax authorities to share information without limitations, and the police may easily request information from tax authorities, under the sole condition that the collected information must be used for the purpose stated in the request.

70. The expert from the Financial Action Task Force Secretariat made reference to the cooperation of FATF with the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organization for Economic Co-operation and Development (OECD). Finally, experts listed some OECD handbooks that may be useful for authorities regarding sharing of information, namely, (i)"Improving Co-operation Between Tax and Anti-Money Laundering Authorities", (which, according to one expert, states that an effective approach could be to grant tax authorities access to suspicious transactions reports[6]); (ii) "Effective Inter-Agency Co-Operation in Fighting Tax Crimes and Other Financial Crimes"; and (iii) "Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors".

E. Session 5: What was missing from the "Puppet Masters"?

Moderator: Emile Van der Does de Willebois (World Bank/StAR Initiative)

71. Session 5 explored topics that were not treated in the "Puppet Masters" but were deemed by the experts to be relevant to beneficial ownership transparency and could be included in the future.

72. The moderator explained that there were two major areas that had not been explored in the "Puppet Masters" in any depth, namely unincorporated entities and cooperation with tax authorities.

73. With regard to the first point, some experts proposed to look beyond corporate vehicles and trusts. While insurance products that include a bank account might already be on the decline, they were still relevant. Also, investments funds, which did not have a corporate structure, were not a legal entity and were exempt from some obligations, needed some examination. In the same vein, it was suggested to add private equity, hedge funds and shadow banking to the list of entities that could be explored further. Shelf companies and so-called "one-day companies" ("fly-by-night companies") that were quickly closed down after their establishment in order to escape obligations also posed challenges that could merit closer inspection.

74. Some experts noted that agency relationships could also be used to disguise the beneficial owner. Indeed, the increasing regulation of professionals may have led to a shift to more informal agency relationships, where assets are held by friends, relatives or straw men. This was a situation well-known from organized crime. While in the past, these relationships were governed by side letters, these letters seemed to be disappearing and were replaced with oral agreements that were more difficult to trace.

[6] FATF Recommendation 29 states that countries' Financial Intelligence Units should have access to the widest possible range of information including administrative information to enable it to receive and analyse suspicious transaction reports for possible cases money-laundering or terrorist financing.

75. One expert mooted the idea of limiting the complexity of corporate structures. However, another expert thought that while complexity was a risk factor, it was not automatically an indicator for illegality; the main use of companies was to limit liability.

76. It was further emphasized that tax authorities held a wealth of information that was relevant to beneficial ownership information. The problem was getting access to this data. In some respects, the development in tax matters was far ahead the development in AML/CFT matters in that authorities have automatic access to a large amount of financial information. In particular, with the establishment of the Common Reporting Standard (CRS) by the Global Forum on Transparency and Exchange of Information for Tax Purposes, the automatic exchange of information was now becoming the global standard.

77. Experts observed that tax information was often confidential and tax authorities were often not authorized to share this information with other agencies. This was the case especially after confidential tax information had been abused for political purposes in some cases in the past, which led to strong safeguards against the sharing of this information.

78. Some experts mentioned country-by-country tax reporting and the OECD project on base erosion and profit shifting (BEPS). However, others cautioned that treating tax evasion absent elements of corruption would lie outside the focus of this Meeting.

79. Participants agreed that the use of attorney client privilege/legal professional privilege was a major issue and merited further study. Holding a dedicated workshop on this matter was proposed. The Australian approach to create a special practice group was considered as a good practice that might be replicated in other jurisdictions.

80. With regard to beneficial ownership registers, many experts thought that, given the remarkable development in this field over the last years, it was time to update the relevant recommendations and discuss the options for countries to establish registers or alternative solutions. Some experts advocated recommendations on minimum content requirements, and on their interoperability.

81. The moderator suggested to look into the question of how expensive and difficult it is to register a corporate vehicle in various jurisdictions. A very low cost could be an indicator that the amount of due diligence that is exercised in the registration process is necessarily limited too because it represents an important cost factor.

82. It was proposed that a possible solution to the problem of secrecy and lack of beneficial ownership transparency might be so-called transparency guarantees or agreements. In return for access to their markets, States should require that companies seeking to exploit natural resources, or wishing to conduct business at all, agree to give the host country access to all relevant information.

83. The role of the FIUs in the sharing of information was also highlighted, although it was noted that information obtained through this channel are often limited to intelligence purposes.

84. It was also noted that privacy laws, data protection and limitations on data retention, like the right to be forgotten, were principles that could potentially be used to oppose calls for greater beneficial ownership transparency. More generally, human rights questions had so far been largely absent from the debate. Therefore, it might be advisable to address these topics before they were instrumentalized to attack beneficial ownership transparency regulation, e.g. in the European courts.

85. Finally, it was suggested that a review of the “Puppet Masters” should not focus exclusively on improving international cooperation and improving the capabilities of *state authorities*. Indeed, the marked cultural shift towards greater beneficial ownership transparency since the publication of the “Puppet Masters” seven years ago was in large part the result of initiatives by non-state actors with an interest in

fighting corruption. NGOs, civil society organizations, media and journalists' consortiums, and private companies all played key roles in detecting, exposing and documenting corruption cases, as witnessed by the publication of the leaked Mossack Fonseca documents by an international consortium of media organizations. Revisions or updates to the recommendations could react to these important new developments by addressing questions of access to information about legal entities by non-state actors and, more broadly, including recommendations about the role of investigative journalism.

V. Conclusion and outlook

86. The last session was dedicated to discussing the way forward. Participants thought that the previous sessions had shown that this international expert group meeting could provide added value to the debate on beneficial ownership transparency.

87. For the second meeting of the group, which was envisaged for the first half of 2018, several experts suggested that representatives of tax authorities and AML and prudential supervisory bodies should also be invited. Others felt that auditors and practitioners from the sector of trust and company service providers could contribute to the discussions of the Meeting. The importance of civil society representatives was also stressed.

88. In terms of substance, it was agreed that the Meeting should concentrate on a review of the recommendations and generally focus on new developments and topics that were missing from the "Puppet Masters".

89. On a related note, it was suggested to hold a dedicated workshop on the use of attorney client privilege/legal professional privilege.