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Submitted by email via uncac@un.org

UNCAC CoSP 10 – Beneficial Ownership Transparency for Asset Recovery

The Financial Accountability and Corporate Transparency (FACT) Coalition, a non-partisan U.S.-based alliance of more than 100 state, national, and international organizations promoting policies to build a fair and transparent global system and to curb the harmful impacts of corrupt financial practices, is pleased to present this submission to the UNCAC Conference of the States Parties.¹ The FACT Coalition and its members were instrumental in the decade-long campaign to effect beneficial ownership reform in the United States, and remain committed to its successful implementation. We likewise support establishing and refining global standards for beneficial ownership transparency and complementary anti-money laundering provisions.

Countries committed to asset recovery and return must work together to advance beneficial ownership reforms, and to share information for effective and efficient investigations into cases of corruption. Further, policymakers in both contexts must take steps to ensure that beneficial ownership data information is complemented by strong anti-money laundering (AML) protections to prevent, detect, and recover illicit financial flows derived from the proceeds of corruption.

Beneficial Ownership and Asset Recovery

The world's kleptocrats use secretive financial vehicles to steal, move, and invest the proceeds of financial corruption. By identifying the true, "beneficial" owner behind otherwise anonymous legal entities, law enforcement, tax authorities, and national security officials have additional means to prevent, investigate, and prosecute corruption, as well as to recover and return its illicit proceeds.

At the 2021 UNCAC Conference of States Parties, States unanimously adopted Resolution 9/7 pursuant to UNCAC Articles 12(2)(c) and Article 14(1)(a), in which they pledged to enhance the use of beneficial ownership information to facilitate the identification, recovery and return of

¹ To learn more about the FACT Coalition and its members, see <https://thefactcoalition.org/about-us/>.

proceeds of crime.^{2,3} As the Resolution notes, efficient and accurate beneficial ownership information will allow “States parties to better detect, deter and prevent acts of corruption.”⁴

Progress in Global Beneficial Ownership Transparency

There has been a sea-change in the global landscape of beneficial ownership transparency since the adoption of Resolution 9/7. Today, 132 jurisdictions have either implemented or pledged to advance beneficial ownership registries in their jurisdictions.⁵ It is crucial that these tools are leveraged to support local and cross-border corruption investigations and asset recovery efforts.

Global South in Focus: Africa and Nigeria’s Leadership

According to a UN estimate, US\$88.6 billion leaves Africa annually in illicit financial flows, including from corruption: this is a sum that is equivalent to 3.7 percent of the continent’s GDP.⁶ While this figure is staggering, African States are taking steps domestically to implement beneficial ownership directories and improve the tools necessary to crack down on these flows. As of this year, 23 of 54 African States have laws and regulations in place to improve corporate transparency, including by establishing their own beneficial ownership directories.⁷ In 2023, Nigeria led the continent by being the first State to adopt a beneficial ownership directory that uses the Beneficial Ownership Data Standard (BODS), which prioritizes data quality, transparency, and interoperability of its system with other countries.⁸

² UNCAC Resolution 9/7, December 2021, <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html#Res.9-7>. See also UNCAC Coalition, “Beneficial Ownership Transparency,” 2021, <https://uncaccoalition.org/learn-more/beneficial-ownership-transparency>.

³ UNCAC Article 12(2)(c) calls on states to promote “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.” UNCAC Article 14(1)(a) calls on States to “institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions.” See p. 14 and 16, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁴ UNCAC Resolution 9/7, December 2021, <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html#Res.9-7>.

⁵ Open Ownership, “Open Ownership map: Worldwide action on beneficial ownership transparency,” <https://www.openownership.org/en/map>.

⁶ UN Conference on Trade and Development, “Tackling Illicit Financial Flows for Sustainable Development in Africa,” 2020, https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf.

⁷ Tax Justice Network Africa, “The State of Play of Beneficial Ownership Registration in Africa in 2022,” March 2023, <https://taxjusticeafrica.net/sites/default/files/publications/The%20State%20of%20Play%20of%20Beneficial%20Ownership%20Registration%20in%20Africa.pdf>.

⁸ This is a standard widely accepted as the best practice for beneficial ownership data structure, organization, and interoperability. See Open Ownership, “Nigeria adopts Beneficial Ownership Data Standard for its new national register,” May 26, 2023, <https://www.openownership.org/en/news/nigeria-adopts-beneficial-ownership-data-standard-for-its-new-national-register>.

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This is a crucial example of the new tools that law enforcement can leverage to investigate corruption and asset capture locally. Effective asset recovery demands robust investigations at the local and regional levels, which can then inform international efforts to detect, track, recover, and return assets.

Global North in Focus: Recent Developments in the U.S., U.K., and Canada

Kleptocrats use developed countries to hide, invest, and enjoy the proceeds of corruption. Enhanced steps to prevent, detect, and recover illicit investments in these economies are crucial to the broader fight against corruption.

There has been immense progress to improve transparency in developed countries. Numerous developments this year have demonstrated promise that some of the world's largest economies are cracking down on illicit finance. Consider the following, just since October 2023:

- Canada passed a law establishing a public, federal corporate beneficial ownership directory;⁹
- The United Kingdom passed its second Economic Crime Act, in which Companies House was granted new authority to verify data in the existing public UK beneficial ownership directory, and to enforce the quality of the data in that directory;¹⁰ and
- The U.S. is inching closer to launching a nationwide corporate beneficial directory on January 1, which is expected to cover at least 32 million entities.¹¹

Further, there is greater cooperation between developed and developing countries to move forward together in improving the quality of beneficial ownership data. In March 2023, 38 countries signed a pledge on beneficial ownership that promises, among other things, to make progress on verifying information in each country's databases.¹² This aligns with the commitments in Resolution 9/7 on asset recovery, in which States pledged to implement

⁹ Medina, Brenda, "Canada poised to create public company registry to curb financial secrecy," International Consortium of Investigative Journalists (ICIJ), November 3, 2023, <https://www.icij.org/investigations/panama-papers/canada-poised-to-create-public-company-registry-to-curb-financial-secrecy>.

¹⁰ Press Release from UK Government, "Robust new laws to fight corruption, money laundering and fraud," October 26, 2023, <https://www.gov.uk/government/news/robust-new-laws-to-fight-corruption-money-laundering-and-fraud>.

¹¹ Federal register estimates 32.6 million entities will report in the first year, with up to 5 million additional companies reporting in subsequent years. See Financial Crimes Enforcement Network, "Beneficial Ownership Information Reporting Requirements," 87 Federal Register 59498-59596, September 2022, <https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements>.

¹² U.S. Department of State, "Summit for Democracy Commitment on Beneficial Ownership and Misuse of Legal Persons," March 29, 2023, <https://www.state.gov/summit-for-democracy-commitment-on-beneficial-ownership-and-misuse-of-legal-persons>.

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“effective mechanisms for relevant domestic authorities or entities to verify or check beneficial ownership information provided by legal persons and legal arrangements.”¹³

Challenges to Using Beneficial Ownership in Asset Recovery

While these developments demonstrate the significant trend toward progress, States must ensure that the pledges made through UNCAC, multilaterally, and at the country-level are fulfilled. First, countries must continue to implement their own beneficial ownership directories. Second, UNCAC Resolution 9/7 requires countries to “facilitate the efficient exchange of adequate and accurate beneficial ownership information in a timely manner.”¹⁴ For jurisdictions that already have beneficial ownership directories in place, there are currently three major roadblocks to achieving this outcome: (1) supplying adequate access to beneficial ownership data, (2) facilitating efficient cross-border information sharing, and (3) ensuring the accuracy and quality of the data collected and maintained.

- **Access to Information:** Public access to beneficial ownership information is important, not only to provide an additional audit of the quality of the data but to leverage this data for the public interest including for anti-corruption. Nevertheless, there have been recent rollbacks in the public availability of this data, particularly in Europe. Even in countries without public directories, jurisdictions must still work to improve the ease with which law enforcement can access this data, as well as how institutions within the same government use and share information. States should make sure competent law enforcement and tax authorities are able to incorporate this seamlessly into their activities.
- **International Information Sharing:** Even though in Resolution 9/7, States pledge “to afford one another, without delay, effective mutual legal assistance, and to take meaningful steps to facilitate effective cooperation and remove barriers,”¹⁵ significant barriers are still in place. Interviews with developing country competent authorities suggest that their mutual legal assistance (MLA) requests to developed countries are often severely delayed, or even go unanswered.¹⁶ As beneficial ownership information becomes an increasingly important investigative and prosecutorial tool, we fear these

¹³ UNCAC Resolution 9/7, December 2021, <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html#Res.9-7>.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Yansura, Julia; Mavrellis, Channing; Kumar, Lakshmi; and Helms, Claudia; “Financial Crime in Latin America and the Caribbean: Understanding Country Challenges and Designing Effective Technical Responses,” *Global Financial Integrity*, October 2021, pp. 154-155, <https://34n8bd.p3cdn1.secureserver.net/wp-content/uploads/2021/10/GFI-LAC-Financial-Crime-Report.pdf>.

delays will further complicate information sharing for anti-corruption and asset recovery efforts. In cases in which States are implementing non-public BO registries, access rules should be designed to ease international information sharing. Further, there should be greater communication between jurisdictions on expectations and best practices regarding requests. Finally, there should be significant investment in building the capacity of authorities both to submit and to process these requests.

- **Data Quality:** While countries have pledged this year to move toward verification, and while international standard setters like the Financial Action Task Force have added verification to their BO standards,¹⁷ many States must still incorporate processes into their existing or forthcoming databases. States need to commit the necessary resources to implement technology-driven verification to ensure “adequate and accurate” beneficial ownership data.

Progress to address these steps are crucial to facilitating asset recovery and return.

Contextualizing BO and Asset Recovery in Broader AML Reforms

Corporate transparency is most effective for asset recovery and return when it is complemented by the full suite of risk-based anti-money laundering controls, as UNCAC Article 14(1)(a) recommends.¹⁸ Recent journalistic exposés and global political developments have laid bare how leaky the global anti-money laundering framework can be. By pursuing more effective anti-money laundering safeguards, developed and developing countries add tools to their toolbox for going after the proceeds of corruption.

For instance, the United States is working to introduce a rule to bring anti-money laundering obligations to professionals servicing its \$50 trillion real estate sector.¹⁹ This draft rule is expected to be published in the coming months. This aligns with the U.S.’ push to bring non-financial business professionals, sometimes called “enablers”, within its AML framework.²⁰ While this is just one example, there is momentum in developed and developing countries alike

¹⁷ Financial Action Task Force, “Public Statement on Revisions to R.24,” March 2022, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/R24-statement-march-2022.html>.

¹⁸ UN Convention Against Corruption, 2003, Article 14(1)(a), p. 16, https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

¹⁹ U.S. Financial Crimes Enforcement Network, Advanced Notice of Proposed Rulemaking, “Anti-Money Laundering Regulations for Real Estate Transactions,” 86 Federal Register 69589-69602, December 2021, <https://www.federalregister.gov/documents/2021/12/08/2021-26549/anti-money-laundering-regulations-for-real-estate-transactions>.

²⁰ FACT Coalition, “House Approves Bipartisan Act to Rein In the Enablers of Corruption,” July 15, 2022, <https://thefactcoalition.org/house-approves-bipartisan-act-to-rein-in-the-enablers-of-corruption>.

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to make it harder for corrupt officials to rely on financial gatekeepers to move and invest their illicit funds. Finally, countries must close the enforcement gap to make sure that industries responsible for fulfilling these AML obligations are doing so.

Thank you for the opportunity to comment. If you have any questions, you can contact Erica Hanichak (ehanichak@thefactcoalition.org).

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