United Nations CAC/COSP/IRG/2018/7

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
5 April 2018

Original: English

Implementation Review Group
Ninth session
Vienna, 4–6 June 2018
Item 2 of the provisional agenda*
Review of implementation of the United Nations Convention against Corruption

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

Note by the Secretariat

Summary

The present document contains a summary of the discussions held during the international expert group meeting on beneficial ownership transparency, held in Vienna on 3 and 4 October 2017. Pursuant to a mandate in the St. Petersburg Statement, which was adopted by the Conference of the States Parties to the United Nations Convention against Corruption at its sixth session in its resolution 6/5, the meeting reviewed, in the light of recent developments, the conclusions and recommendations contained in the study entitled *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* published by the joint United Nations Office on Drugs and Crime/World Bank Stolen Asset Recovery Initiative.

* CAC/COSP/IRG/2018/1.

V.18-02075 (E) 180418 190418

I. Introduction

1. In 2011, the joint United Nations Office on Drugs and Crime (UNODC)/World Bank Stolen Asset Recovery (StAR) Initiative published the results of 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*,[1] a publication which is widely considered to be the seminal text on the subject in the field. Using cases, interviews with practitioners and evidence from researchers posing as potential customers, the publication proposed policy recommendations to guide national and international policymakers in the development and establishment of legislation, regulations and standards.

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 Anti-Corruption Summit, held in London in 2016, participants — including all Group of 20 (G-20) 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, article 12, paragraph 2 (c), 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, and article 52, paragraph 1, obliges States parties 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 guardian of the Convention, UNODC thus already has a specific legal mandate to support measures regarding beneficial ownership transparency.

4. Moreover, at its sixth session, the Conference of the States Parties to the United Nations Convention against Corruption, adopted resolution 6/5, entitled "St. Petersburg statement on promoting public-private partnership in the prevention of and fight against corruption", in which it called upon States parties to strengthen the involvement of the private sector in the fight against corruption and invited them, inter alia, to enhance transparency, including regarding beneficial ownership of private entities.

5. Against that background and on the basis of preparatory research, the international expert group meeting on beneficial ownership transparency, held in Vienna on 3 and 4 October 2017, reviewed, in the light of recent developments, the conclusions and recommendations contained in *The Puppet Masters* and discussed whether new legislation and policy developments, as well as new cases of grand corruption that emerged after the conclusion of the study, confirmed those conclusions and recommendations, or whether they indicated new trends. The meeting was organized by UNODC with financial support from the Russian Federation. The international expert group comprised more than 30 participants from the public and private sectors and international and non-governmental organizations.

II. Overview of new legislation and policy developments related to benefical ownership transparency

6. Representatives of UNODC presented an overview of new policy initiatives and legislation at the international level and in some G-20 jurisdictions. In addition, participants spoke about beneficial ownership information and obstacles to accessing it in their home jurisdictions.

[1] Available from http://star.worldbank.org/star/publication/puppet-masters.

A. New legislation and policy developments at the international level

7. Representatives of UNODC described developments in international legislation and guidelines related to beneficial ownership, focusing on the European Union, the Financial Action Task Force (FATF), the G-20, the Group of Seven (G-7) and the London Anti-Corruption Summit. In the European Union, the deadline for the transposition of the fourth anti-money-laundering directive[2] had expired on 26 June 2017. The directive contained relevant provisions on beneficial ownership, such as its definition, customer due diligence requirements and access to beneficial ownership information. In addition, a proposal for a fifth anti-money-laundering directive aimed at strengthening anti-money-laundering measures in the European Union was currently being discussed.

8. The revision of the Forty Recommendations of the Financial Action Task Force on Money Laundering in 2012 strengthened the requirements in order to support countries' access to adequate, accurate and timely information on the beneficial ownership of legal persons and arrangements. The Forty 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 provide for mechanisms to ensure the availability of and access to beneficial ownership information by competent authorities. Measures requiring financial institutions and designated non-financial businesses and professions (DNFBPs)[3] to undertake additional steps when dealing with domestic politically exposed persons were also included. A new methodology for the evaluation of countries' compliance with the Forty Recommendations was adopted in 2013, and included a new framework for evaluating the effectiveness of countries' regimes related to anti-money-laundering/combating the financing of terrorism (AML/CFT), as well as an assessment of their technical compliance with the Forty Recommendations. Eleven immediate outcomes were introduced as measurement indicators for assessing effectiveness, with one of them covering the availability to competent authorities of information on beneficial ownership. Other important immediate outcomes relevant to beneficial ownership included those that covered the effectiveness of supervision of financial institutions and DNFBPs, and the effective application of required AML/CFT measures 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 submitted a report on beneficial ownership to the G-20 in 2016. At its Summit held in Ise-Shima, Japan, in 2016, the G-7 issued a declaration entitled "G-7 Action to Fight Corruption" in which it recognized the importance of beneficial ownership transparency. In addition, the communiqué and the commitments of individual countries emanating from the London Anti-Corruption Summit in 2016 stressed the importance of access to and timely collection of beneficial ownership information. Moreover, the Leaders' Declaration adopted at the G-20 summit in Hamburg, Germany, in 2017 underlined the G-20 countries' commitment to advancing the implementation of beneficial ownership transparency of legal persons and legal arrangements.

9. Concerning the G-7 countries and the Russian Federation, domestic legislation had been adopted to transpose the fourth European Union anti-money-laundering 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). The

[2] 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.

[3] Designated non-financial businesses and professions include casinos, real estate agencies, dealers in precious metals and stones, lawyers, notaries and other independent legal professionals, accountants and trust and company service providers.

legislative status of beneficial ownership transparency in the other G-7 countries and the Russian Federation was also presented, including that of Canada (Proceeds of Crime (Money Laundering) and Terrorist Financing Act), Japan (Act on Prevention of Transfer of Criminal Proceeds, as amended in 2016), 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).

B. New legislation and policy developments at the national level

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

11. The expert from Australia 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 participating agencies to target serious financial crime within Australia and overseas. The task force received referrals from government agencies and regulatory bodies, self-reports from the private and public sectors and information obtained from whistle-blowers and international stakeholders, as well as through public inquiries. Among the challenges encountered were finding the right balance in the relationship with private sector bodies, receiving timely mutual legal assistance from abroad and overcoming obstacles presented by attorney-client privilege. With regard to the latter, a legal professional privilege practice group had been established within the Australian Federal Police. Furthermore, actions had been taken on the basis of information disclosed in the "Mossack Fonseca papers" in 2016. The expert reported on some significant high-level cases, including the "Operation Elbrus" tax fraud case, which had involved a number of companies with "straw directors" and had resulted in numerous restraining orders and arrests.

12. The expert from Argentina reported that his country had also reacted to international recommendations regarding deficiencies in its anti-money-laundering policies. New money-laundering and capital market legislation had 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 on all their clients. Legal persons had to inform banks of their final beneficiaries and their shareholders. The financial intelligence unit had 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 of Argentina.

13. The expert from Brazil reported that the Internal Revenue Service of Brazil had adopted an instruction in 2016 that obliged any person receiving a donation to register the donor. In accordance with new money-laundering legislation, plea bargaining with companies had been allowed. Investigators had concluded numerous settlements in the "Lava Jato" case, thereby contributing to the success of the very complex investigations. The expert from Brazil considered that the obligations prescribed by law were sufficient, but that their 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 in granting such orders.

14. The experts from Norway reported that, in Norway, Parliament had requested the Government in 2015 to establish a beneficial ownership register, but it was not yet clear whether it would be open to the public and include companies registered on the stock exchange. As a member of the European Economic Area, Norway in principle intended to implement the fourth European Union anti-money-laundering directive, but had not yet fixed a specific date for its applicability. 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 establishing a public register in that regard.

15. The expert from Nigeria reported that his country had started to regulate company registers in the 1990s. Each company had to register all its associates with the Corporate Affairs Commission, and a legal practitioner had to verify the information. As the Government of Nigeria had announced at the London Anti-Corruption Summit in 2016, it was committed to establishing a central organ for keeping beneficial ownership information. In Nigeria, tax authorities did not keep information on beneficiaries; however, the money-laundering legislation foresaw the obligation of financial institutions to identify beneficial owners. Anonymous accounts or shell companies were prohibited. Enhanced disclosure rules were in place for the extractive industries, government officials and politically exposed persons. Confiscation of assets could be ordered on the basis of the failure to disclose, which was established as a crime. In addition, the expert from Nigeria mentioned a number of challenges, including the lack of a central repository of beneficial ownership information and inadequate tools for checking the information provided by companies.

16. The expert from Guernsey stated that Guernsey had a central beneficial ownership register, to which all financial institutions and trust and company service providers were required to report. The information contained therein was available to law enforcement and regulatory bodies, and the financial intelligence unit could transmit it abroad through the Egmont Group of Financial Intelligence Units. The threshold to establish beneficial ownership was defined at 25 per cent ownership of capital.

17. The expert from the Republic of Moldova reported that her country had drafted new anti-money-laundering legislation, with the support of the European Union, in order to respond to recommendations on its money-laundering policy. The legislation had 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, politically exposed persons had been obliged to submit asset declarations to the National Integrity Authority, and that obligation had been successfully enforced and had given rise to high expectations for improved money-laundering investigations.

18. The expert from the Russian Federation reported that, in in his country, anti-money-laundering legislation contained the obligation of all Russian legal entities (with some exceptions) to possess and update information on their beneficial owners and keep such information for five years. The beneficial owner was defined in that legislation as an individual who ultimately and directly or indirectly (via third parties) has a stake of 25 per cent or more in the capital of the relevant legal entity and the possibility to directly or indirectly control the actions of the clients. The legislation obliged all entities to take measures that were reasonable and available under the circumstances to identify beneficial owners. In the case of failure to identify the beneficial owner, the legal entity was obliged to keep information on the measures undertaken. That information had to be provided to the financial intelligence unit 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 was an administrative offence and carried penalties up to the equivalent of approximately 590 euros (for officials) or 7,355 euros (in the case of legal entities). Auxiliary sources that could be used to identify beneficial ownership included 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 Antimonopoly Service and commercial databases. Furthermore, some Russian politically exposed persons were not allowed to own foreign bank accounts, and all Russian citizens were obliged to report such accounts to the tax authorities. Cases of failure to report might be detected through international information exchange

and might, in such instances, result in politically exposed persons losing their public positions.

19. The expert from the United States reported that his country had reformed its customer due diligence regulations in 2016 in order to align them more closely with the international anti-money-laundering standards. Affected financial institutions were to comply with those obligations no later than May 2018. A new obligation of financial institutions to identify beneficial owners had been established and would be monitored on an ongoing basis as a part of financial institutions' obligations to conduct ongoing monitoring of their customer relationships. As from May 2018, when legal entities established new accounts at banks, securities broker-dealers and commodities brokers, the financial institutions were to 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. Those obligations applied regardless of the nationality of the beneficial owners. The financial intelligence unit, the Financial Crimes Enforcement Network, had the authority to issue geographic targeting orders, obligating financial institutions to report on transactions in certain geographic areas. It had most recently used that authority to require title insurance companies, which were necessary participants in most real estate transactions in the United States, to disclose the beneficial owners of legal entities that purchase high-end real estate without financing in a number of United States markets. Furthermore, a congressional representative had introduced legislation (the Corporate Transparency Act) that would provide the states with financial incentives to implement company formation systems that meet minimum standards for the collection of beneficial ownership information. For states that did not meet the standards, the Act would authorize the Department of the Treasury to implement regulations mandating the disclosure of beneficial ownership information to it at the time of company formation.

20. The expert from the FATF secretariat provided an update on the outcome of evaluations undertaken on the Forty Recommendations and in accordance with the 2013 methodology. This included recommendations 10, 12, 22, 24 and 25, and immediate outcomes 3, 4 and 5 under the effectiveness part of the methodology.

III. Background on *The Puppet Masters*

21. The expert and the researcher from the StAR Initiative provided some background on *The Puppet Masters* and an overview of the research on grand corruption cases that had emerged after its publication, which formed part of the empirical basis for the expert group meeting.

A. Origins and methodology of *The Puppet Masters*

22. The expert from the StAR Initiative recalled the methodology and recommendations made in *The Puppet Masters*. The impulse for the study and resulting publication originated from experiences in which the lack of information on the beneficial owners of corporate vehicles abroad had been 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 to hide beneficial ownership. Furthermore, the authors had analysed the information available in 40 company registries, and had conducted a series of interviews with investigators and banks. Moreover, 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 cases analysed, offenders had mostly used companies (most of which were shell companies) and, only to a lesser extent, trusts, associations and non-profit structures to hide their assets. Two thirds of the corporate vehicles had been used transnationally (both onshore and offshore) and one third domestically. Over 90 per cent of the cases had involved professional intermediaries. The evaluated registries had only rarely contained shareholder information, and only one had included beneficial ownership information. Requirements for updating and verification had rarely been enforced. It had been found that easy access and search functions, as well as historical record-keeping, had not always been available. Furthermore, investigators faced obstacles in requesting information from other jurisdictions and in overcoming obstacles posed by attorney-client privilege.

25. The authors of *The Puppet Masters* had not found much evidence of the use of trusts. The study had included neither discussions on whether beneficial ownership information could be obtained from tax authorities, nor ways to improve cooperation between law enforcement and tax authorities.

26. Since the publication of *The Puppet Masters*, the issue of beneficial ownership had become a high priority on the global political agenda and some positive developments could be noted in that regard, owing in particular to international anti-money-laundering initiatives.

B. Research on new cases of grand corruption

27. As mentioned above, one of the several empirical foundations of *The Puppet Masters* was a review of 150 grand corruption cases from a wide range of jurisdictions that had involved the misuse of corporate vehicles for the purposes of hiding corrupt funds and the identities of politically exposed persons, or otherwise furthering a corruption scheme. As part of the preparations for the expert group meeting, UNODC conducted qualitative research into 40 new grand corruption cases that had taken place, or had been made public, between 2010 and 2017.

28. That research represented an effort to determine whether the Forty 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 in which the evidence of corporate vehicle misuse for the purpose of furthering a corruption scheme was not available or was deemed insufficient were excluded from the analysis.

29. The nine corruption case studies selected for discussion at the international expert group meeting displayed a number of characteristics that were highlighted as potential trends for further analysis in the presentation by the researcher from the StAR Initiative. However, it was noted that, owing to the inherent constraints of using the case study methodology to study criminal behaviour, the findings were anecdotal and not necessarily representative, and therefore could have been incidental, rather than indicative of larger trends.

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

31. The purposes of corporate vehicles in corruption schemes can go far beyond mere asset control or channelling 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 inserting a corporate vehicle into a negotiated contract for the purpose of extracting profits and/or awarding an ownership stake in the corporate vehicle to a politically exposed person, and awarding natural resource licences to a shell company created with the specific intention of transferring the licence to another company, at large profits.

32. It was found that corruption schemes increasingly involved the use of new, more sophisticated types of corporate vehicles. For example, the use of investment funds to hide the proceeds of corruption was highlighted. In one of the case studies, private overseas investment funds that had been registered in so-called tax havens or secrecy jurisdictions had been used as conduits for money embezzled from a State-owned investment fund. In the same case, an investment fund registered in one of the tax havens had been utilized in an elaborate scheme to obscure the true value of an equity investment and cover up the embezzlement. Some experts at the meeting confirmed that finding, commenting on the apparent rise in the misuse of investment funds for the purpose of concealing illicit gains.

33. From a law enforcement perspective, the abuse of "foreign" corporate vehicles that were incorporated outside the main jurisdiction where the corruption offence was committed constituted the greatest problem, as such circumstances required international cooperation. In all but one case study discussed at the expert group meeting, the fact that corporate vehicles had been registered in a foreign jurisdiction had been essential in efforts to hide the beneficial owners and proceeds of corruption.

34. The case studies revealed that popular corporate structures were corporations or limited liability companies that were 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 that had either corporations or limited liability companies as company directors or nominee company directors that had been provided by trust and company service providers or trusted associates.

35. The case studies also revealed indications of a potential rise in the popularity of "new" jurisdictions with untainted reputations that have not been flagged as high-risk in terms of compliance with anti-money-laundering requirements, 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, including banks, lawyers, trust and company service providers and investment advisors, were heavily involved in facilitating the schemes. However, it was not apparent whether trust and company service providers were used in all or most of the case studies.

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

IV. Review of the conclusions and recommendations of *The Puppet Masters*

38. In a series of thematic sessions, the international expert group meeting examined the conclusions and recommendations contained in the substantive parts of *The Puppet Masters*. In addition, a separate session was dedicated to the question of whether tax authorities could be possible sources of beneficial ownership information.

A. Session 1. The Beneficial Owner

Moderator: Yves Aeschlimann (Switzerland)

39. In session 1, participants reviewed the conclusions and recommendations in part 2 of *The Puppet Masters*, entitled "The Beneficial Owner". Part 2 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 study also distinguishes between substantive and formal definitions of beneficial ownership. The difference between the substantive approach and the formal approach is that the substantive approach involves remaining open-minded about who the beneficial owner may be and taking 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 study makes four recommendations regarding the concept of beneficial ownership: (a) countries should ensure that the beneficial owner is always a natural person (recommendation 1); (b) they should consider introducing an alternative terminology for persons identified as beneficial owners under the formal approach (recommendation 2); (c) they should develop a clear formal standard for such persons but should require deeper inquiry in high-risk scenarios (recommendation 3); and (d) ongoing due diligence should be used to bridge the gap between the two approaches (recommendation 4).

41. The starting point for the discussions regarding the definition of "beneficial owner" was the definition given by 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."[4]

42. Overall, participants agreed that the four recommendations contained in part 2 of *The Puppet Masters* remained 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 represented 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. That was also borne out by the case studies prepared for the expert group meeting, which frequently featured corporate legal owners that had typically been registered in foreign jurisdictions. Some experts highlighted that, even though 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 could be found in different fields of law, for example, tax law, corporate law, competition law and AML/CFT law. He questioned the usefulness of having alternative terminology, such as "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 comprised several subcategories. Notwithstanding that view, the continued relevance of recommendation 2 was evident from the fact that different definitions of beneficial

[4] Financial Action Task Force/Organization for Economic Cooperation and Development, *FATF Guidance: Transparency and Beneficial Ownership*, October 2014, p. 8. As noted in the FATF 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".

ownership were employed during the experts' discussion, leading to difficulties in communication on the topic.

45. Other experts found the distinction in terminology 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. The legislation of Switzerland was mentioned as an example of a jurisdiction that implemented recommendation 2 by differentiating between the beneficial owner and the person in control of a corporate entity. It was noted that, in the United Kingdom, the register of "people with significant control" also made that distinction in that it labelled the person with a minimum of 25 per cent ownership stake as a "person with significant control", thereby acknowledging that that person might be different from the beneficial owner.

46. Experts also discussed whether the most widely used minimum threshold of 25 per cent ownership interest was appropriate, or needed revision. Argentina was mentioned as an example of a jurisdiction that used 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 in the quality of beneficial ownership data. The expert from the United States pointed out that the reduction of the threshold (e.g., in the draft fifth European Union anti-money-laundering 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 noted that an overly narrow, formal definition of beneficial ownership that relies on minimum percentage thresholds of legal ownership was problematic as it created loopholes and was vulnerable to workarounds by actors actively trying to hide beneficial ownership information. In that connection, 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 used trusted associates to delegate effective control and legal ownership over corporate structures, a practice that was confirmed in many of the case studies prepared for the expert group meeting, experts noted that the threshold approach could not be relied on as the sole or main solution for gaining access to beneficial ownership information, though it might 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 noted that ongoing due diligence (recommendation 4) helped address the problem of distinguishing beneficial ownership from effective control over a corporate structure. That recommendation addressed the need for ongoing monitoring of the active life of a bank account, which typically revealed clues about the identity of the beneficial owner. Even though the controller of the bank account might be a different person than the beneficial owner, the objective of the financial service provider was to identify the person at the end of the chain who benefited financially from the corporate structure. One expert pointed out that the beneficial owner was usually the person who called the financial service provider in the event of a stock exchange crash to check on his or her investments.

49. Participants noted that, for financial institutions, the requirement for ongoing due diligence contained in recommendation 4 was reflected in recommendation 10 of the Forty Recommendations, which contained requirements for financial institutions to assess the beneficial owners of customer accounts and to undertake ongoing monitoring, as well as in the fourth European Union anti-money-laundering directive. In that context, experts raised issues in regard to relying on information gained through self-reporting, as well as penalties for legal entities that were negligent in updating beneficial ownership information or that deliberately provided

misinformation. Furthermore, experts questioned whether the monitoring requirement could be honed to focus on the monitoring of corporate registers and, where utilized, beneficial ownership registers, in the light of issues relating to the static nature of the information and the lack of auditing and enforcement with regard to the updating of corporate and beneficial ownership information.

B. Session 2. Where Does the Beneficial Owner Hide?

Moderator: Vadim Tarkin (Russian Federation)

50. In session 2, the experts examined the conclusions and recommendations contained in part 3 of *The Puppet Masters*, entitled "Where Does the Beneficial Owner Hide?". In that part, it was 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 those corporate vehicles, the company (in particular the corporation and the limited liability company) was the most frequently used. Most companies that were used to conceal beneficial ownership were non-operational, although operational companies were also used, in particular 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. On the basis of those conclusions, five recommendations with regard to the use of corporate vehicles to conceal beneficial ownership were made in *The Puppet Masters*: (a) 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 (recommendation 1); (b) they should develop a definition as to what constitutes a shelf company, and should make such companies less desirable to illicit actors (recommendation 2); (c) they should require financial institutions or service providers to obtain a declaration of beneficial ownership from their clients (recommendation 3); (d) they should abolish bearer shares (recommendation 4); and (e) they should bring together law enforcement and trust and company service providers to educate them about the types of corporate vehicles and constructions used by criminals (recommendation 5).

52. Confirming the risk analysis contained in *The Puppet Masters*, the presentation by the StAR consultant showed that, in the overwhelming majority of cases, corporations and limited liability companies had been 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, that might also be a result of the difficulties faced in investigating such structures. The expert from Switzerland observed that he had seen an increase in the use of trusts registered in "untainted" jurisdictions. Participants generally agreed that trusts might present a considerable risk to anti-money-laundering and supervisory efforts because they were common law entities that were difficult to find, mobile and unregulated. However, it was noted that there was a lack of understanding of the risk, i.e., as to whether the lack of relevant data meant that trusts were not being used, or whether it meant that illicit actors were doing a good job of obscuring the use of trusts. Moreover, some experts observed that criminals sought to maintain a high degree of control over the assets they beneficially owned and that that might be more difficult to achieve in a trust. Moreover, trusts were more expensive to set up and administer. The expert from the Russian Federation shared his experience in 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 as clients and not just as natural persons in the course of carrying out customer due diligence and "know-your-customer" procedures.

53. The experts further noted that, owing in part to increased AML/CFT regulation and enforcement, the level of sophistication had increased over the previous 25 years. At the time, more complex structures were encountered that had been established in

multiple jurisdictions. The expert group meeting should explore which type of company was used for which purpose. In addition, beneficial ownership was a dynamic concept and the beneficial owner could change over time. Therefore, if a register only contained information on the person who had been the beneficial owner at the time the company was set up, for example, in the case of shelf companies, there was a high likelihood 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 for mitigating such situations.

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

55. Mandatory beneficial ownership declarations were considered a good practice, but it was important to understand that one form did not fit all situations. 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 ongoing monitoring. Stricter scrutiny could make a big difference. However, in that regard, one expert remarked that “private bankers don’t ask questions”.

56. The experts agreed that bearer shares, although still used to conceal beneficial ownership, were no longer a major problem in practice. Many jurisdictions had already abolished that type of share. Therefore, the recommendation to that effect had somewhat lost its relevance.

C. Session 3. Finding the Beneficial Owner

Moderator: Frederic Raffray (Guernsey)

57. In session 3, the experts examined the conclusions and recommendations contained in part 4 of *The Puppet Masters*, entitled “Finding the Beneficial Owner”. In that part, the study described the relevant actors and institutions that could help to identify the corrupt persons behind a corruption scheme or 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 such 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 useful information on the natural persons ultimately in control of the corporate vehicle. In addition, the services provided by financial institutions were crucial to the money-laundering process because without them, it would be impossible to launder funds on a significant scale. Moreover, more complex arrangements were rarely established without an international element.

58. On the basis of those findings, 14 recommendations with regard to finding the beneficial owner were made in part 3 of *The Puppet Masters*. The recommendations concerned the content and establishment 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 noted 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, the fourth European Union anti-money-laundering directive[5] required each member State of the European Union to set up a central beneficial ownership register. The experts from Brazil, Norway, the Republic of Moldova and Guernsey informed the expert group meeting that their countries intended to or had recently introduced beneficial ownership registers. Some States, such as the United Kingdom and Slovakia, had made those registers publicly accessible, although the majority of States had only granted access to competent authorities and financial intelligence units.

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

61. There was some discussion as to whether blockchain technology could make registers more reliable and protect against false entries. However, it was pointed out by some experts that, although such technology could make registers tamper-proof, it did nothing to solve the fundamental problem of registers, namely, that incorrect beneficial ownership data was often supplied to them.

62. In Nigeria, for example, a tax identification number was used as a unique identifier for all legal entities. That 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 in the collection of beneficial ownership information was stressed by several experts. The expert from Guernsey described the “gate-keeper” regime in Guernsey, in which all non-residents establishing a legal entity were required to go through a trust and company service provider. The service providers were regulated under the domestic anti-money-laundering compliance regime and were required to collect beneficial ownership information. Several experts agreed that trust and company service providers 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.

64. In response, some experts noted that, in many jurisdictions, corporate vehicles could be established without the involvement of a trust and company service provider. Likewise, limiting the mandatory use of trust and company service providers to non-residents (*The Puppet Masters*, part 3, recommendation 9) could undermine the effectiveness of a gate-keeper regime in jurisdictions such as the United States, where many corporate vehicles were established by residents. A suggestion was made to make the use of trust and company service providers mandatory to ensure the existence of a domestic holder of beneficial ownership information. Many civil law jurisdictions already required a notarial deed for the establishment of corporate entities. In Spain, the information held by notaries was accessible from a centralized database, and in Liechtenstein, a regulated trust and company service provider must be on the company’s board for the entire duration of its existence.

65. With regard to recommendation 10, there was consensus that attorney-client privilege was a major obstacle in all common law jurisdictions. The expert from Australia described how the Australian Federal Police had mitigated problems arising from legal professional privilege by establishing a dedicated practice group on legal professional privilege comprising lawyers and law enforcement officers. That group gave advice relating to current investigations and advocacy services for teams executing search warrants. The members of the group engaged directly with legal

[5] See article 30 of 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. The directive was to be transposed into national law by European Union member States by 26 June 2017.

representatives or other parties claiming legal professional privilege with a view to resolving or minimizing such 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,[6] it did not explore that possibility in any detail. Nevertheless, many believe that the information held by tax authorities could be useful for obtaining information on the beneficial owner, although there are significant challenges associated with such an approach. Moreover, the G-20 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 initiated the session by describing the University's Tax and Good Governance Project and presenting its findings. The expert noted that most jurisdictions had a legislative framework that dealt with the exchange of information between agencies. However, as explained in the second edition of the report by the Organization for Economic Cooperation and Development (OECD) on effective inter-agency cooperation in fighting tax crimes and other financial crimes, that legal framework was seldom utilized or fully applied in practice.

68. Some experts remarked on the restrictions on the exchange of information with tax authorities. As the collection of tax information targeted specific tax offences, authorities in some countries could not share it for the purpose of investigating other conduct. It was pointed out that tax information was not collected and structured in a way that favoured even tax investigations, but rather in a way that was strictly suitable for taxation purposes. In the United States, tax authorities could only share information with other agencies if such agencies used the information for the same reason for which it had been collected, i.e., to identify tax fraud and evasion. Tax information had been abused in the past, and therefore there were strict statutory limitations on the use of tax information for non-tax purposes. Under existing United States tax agreements with other jurisdictions, tax information could generally only be transferred for tax purposes, and that limitation was rigorously enforced. Furthermore, several experts mentioned data protection requirements that presented obstacles to data sharing in criminal cases beyond tax matters. It was further noted that, even where tax authorities could share information with investigators, tax authorities and money-laundering investigators were situated in different parts of government and therefore lacked a mechanism for 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. The expert from the Russian Federation explained that, in his country, tax information could be shared domestically by tax authorities in cases where there was an indication of a criminal offence. The legislation provided a mechanism and grounds for the domestic disclosure of tax information. In addition, despite the existence of the legislation, agencies concluded domestic bilateral agreements in order to clarify the type of information that could be shared and the applicable procedures. It was noted that, in Ghana, the legislation allowed tax authorities to share information without limitations, and the police could easily request information from tax authorities, under the sole condition that the collected information must be used for the purpose stated in the request.

[6] See *The Puppet Masters*, p. 102.

70. The expert from the FATF secretariat made reference to the cooperation of FATF with the secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes. Lastly, experts identified some OECD publications that addressed the sharing of information that might be useful for authorities, namely, "Improving Cooperation Between Tax and Anti-Money Laundering Authorities" (which, according to one expert, stated that an effective approach could be to grant tax authorities access to suspicious transactions reports[7]), "Effective Inter-Agency Cooperation in Fighting Tax Crimes and Other Financial Crimes" and "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. In session 5, the experts explored topics that were not treated in *The Puppet Masters* but that were deemed by the experts to be relevant to beneficial ownership transparency and could therefore be included in future editions of the publication.

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 unincorporated entities, some experts proposed to look beyond corporate vehicles and trusts. Although insurance products that included a bank account might already be on the decline, they were still relevant. In addition, investment funds, which did not have a corporate structure, were not legal entities and were exempt from some obligations, needed some examination. In the same vein, it was suggested that private equity, hedge funds and shadow banking should be added 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 might 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 might have led to a shift to more informal agency relationships, in which assets were held by friends, relatives or "straw men". That was a situation well known from organized crime. Whereas in the past, such relationships had been governed by side letters, such letters seemed to be disappearing and were being replaced with oral agreements that were more difficult to trace.

75. One expert mooted the idea of limiting the complexity of corporate structures. However, another expert thought that, although complexity was a risk factor, it was not automatically an indicator of 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 laid in getting access to such data. In some respects, developments in tax matters were far ahead of developments in AML/CFT matters in that authorities had automatic access to a large amount of financial information. In particular, with the establishment of the Standard for Automatic Exchange of Financial Account Information in Tax Matters by OECD and G-20 countries, the automatic exchange of information was now becoming the global standard.

[7] In accordance with recommendation 29 of the Forty Recommendations of the Financial Action Task Force on Money Laundering, countries' financial intelligence units should have access to the widest possible range of information, including administrative information, to enable them to receive and analyse suspicious transaction reports for possible cases of money-laundering or terrorist financing.

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

78. Some experts mentioned country-by-country tax reporting and the OECD project on base erosion and profit shifting (BEPS). Others cautioned that considering the issue of tax evasion in the absence of elements of corruption would lie outside the focus of the international expert group meeting.

79. Participants agreed that the use of attorney-client privilege and/or legal professional privilege was a major issue and merited further study. Holding a dedicated workshop on that matter was proposed. The approach taken by Australia, creating a special practice group, was considered 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 that field over the previous 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 that the question of how expensive and difficult it is to register a corporate vehicle in various jurisdictions should be examined. A very low cost for such registration could be an indicator that the amount of due diligence exercised in the registration process itself was necessarily limited, as the exercise of such due diligence represented a significant 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 any kind of business, agree to give the host country access to all relevant information.

83. The role of financial intelligence units in the sharing of information was also highlighted, although it was noted that information obtained through that channel was often limited to use for intelligence purposes.

84. It was also noted that privacy laws, data protection and limitations on data retention, such as 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 those topics before they were instrumentalized for the purpose of challenging beneficial ownership transparency regulation, for example, in the European courts.

85. Lastly, 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 earlier was in large part the result of initiatives by non-State actors with an interest in fighting corruption. Non-governmental organizations, 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 papers" by an international consortium of media organizations. Revisions or updates to the recommendations could react to those important new developments by addressing questions of access to information about legal entities by non-State actors and, more broadly, including recommendations on the role of investigative journalism.

V. Conclusion and outlook

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

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

88. In terms of substance, it was agreed that the expert group meeting should concentrate on a review of the recommendations contained in *The Puppet Masters* and generally focus on new developments and topics that were missing from it.

89. On a related note, it was suggested that a dedicated workshop on the use of attorney-client privilege and/or legal professional privilege be held.