

Good practices and challenges with respect to Beneficial Ownership:

Fostering and enhancing the effective recovery and return of proceeds of crime

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Outline

Introduction

Definition of Beneficial Ownership

**Applicable Articles of UNCAC & FATF
Recommendations**

Nigeria's Experience

Features of an effective BO system

**Use of Beneficial ownership information to
identify and trace proceeds of crime**

Challenges

Recommendations

INTRODUCTION

- Legal entities, trusts, and other arrangements have remained a subject of abuse for ML, bribery & corruption, as well as other criminal activities.
- These corporate vehicles as a veritable tool for obscuring and converting proceeds of crime for reintegration into the financial system.
- Thus, the need for information on *beneficial owners of companies & other arrangements, their sources of funds, assets, and activities* to be readily available for LEAs cannot be overemphasized
- Accordingly, Nigeria places a lot of importance on Resolution 9/7 sponsored during the 9th COSP at Sham El Sheikh, and the other resolutions on Assets recovery.

Who is a Beneficial Owner?



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 Includes those persons who exercise **ultimate effective control** over a legal person or arrangement.

Means by which Beneficial Ownership can be Obscured

- Use of shell companies
- Complex ownership structures
- Use of bearer shares
- Unrestricted use of legal persons as directors
- Informal nominee shareholders
- trusts

PS: it could involve a combination of any of the above or involve multiple jurisdictions resulting in limited availability of information

Applicable Articles of UNCAC

- **Article 12 (2) (c) of the UNCAC** 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.”
- **Article 14 (1) (a)** extends this requirement to include keeping a record of beneficial ownership information and applying these rules to service providers.
- **Article 52 (1)** states that government should require financial institutions to verify the beneficial ownership information for high-risk accounts, including PEPs and their close associates and family members and high-value accounts.

Applicable FATF Recommendations

Rec 10
Customer Due Diligence

Rec 24
Transparency of Beneficial Ownership of Legal Persons

Rec 25
Transparency and Beneficial Ownership of Legal Arrangements

Rec 31
Powers of LEAs to access documents & information for investigation

Recs 37 & 40
MLA & other forms of International Cooperation

Nigeria's Experience

- Nigeria's first Beneficial Ownership register was launched in 2019, for the extractive sector
- In 2020, the Companies and Allied Matters Act established the Persons with Significant Control register to house information of persons holding at least 5% shares, voting rights or control in all companies registered in Nigeria.
- Disclosure is at 3 levels:
 - at the point of registration,
 - point of filing an annual return, and
 - where there is a change in beneficial ownership
- Issuance of bearer shares is strictly prohibited
- Filing of BO information has been completely automated
- Nigeria just concluded its first Risk Assessment on Legal persons & Arrangements and the Corporate registry is set to commence risk-based supervision to ensure transparency of legal persons
- Interagency cooperation

Features of an effective BO system

Risk Assessment

Adequacy, Accuracy & Timeliness

BO Information in Nigeria

Verification through a multi-pronged approach

**Sanctions (EPD)
Non/false-disclosure**

Timely Access and Use by LEAs and other Competent Authorities

Use of Beneficial Ownership Information in the Identification & Recovery of Proceeds of Crime (POC)

- Much-needed attention should be given to **the use of BO information** to assist LEAs in:
 - *Identifying those natural persons who may be responsible for underlying criminal activities or have information relevant to the investigation*
 - *Following the money in financial investigations and locating suspicious assets within and outside the country*
 - *Establishing the true purpose of accounts/assets held by corporate vehicles*
 - *Establishing the source or use of funds or property associated with a corporate vehicle*

Nigeria's Experience: **Case Study 1**

- Mr. B was an Executive Director of a Project in a Government Commission and a Board Member.
- The Board awarded a contract to XY Ltd (owned by a close associate of Mr. B) for the recovery of debt owned by the Commission. Over **N100, 000,000,000.00 (One Hundred Billion Naira)** was recovered by XY Ltd for the Commission out of which the sum of **N10, 000,000,000.00 (Ten Billion Naira)** was paid to them as recovery fees.
- To receive a kickback from XY Ltd, Mr. B gave the Bank details of two companies; OPC Ltd and ADM Ltd owned by two of his friends' (Messrs. C and D)
- Investigations using beneficial ownership information and extensive analysis of bank financial statements revealed that within a period of two years, a total sum of **N3, 650, 000, 000,000.00 (Three Billion, Six Hundred and Fifty Million Naira)** was paid into the corporate Bank accounts of – OPC Ltd and ADM Ltd on behalf of Mr. B.
- **The funds paid into the account of ADM Ltd were converted into USD and delivered to Mr. B through proxies, while the ones paid to OPC Ltd were applied towards purchasing very expensive choice properties on behalf of another company -VLC Ltd wholly owned by Mr. B.**
- While the investigation was ongoing, **Mr. B changed the beneficial ownership information and director of VLC Ltd to another of his Associates.**
- Most of the assets were recovered and forfeited to the Federal Government through a Non-Conviction Based Forfeiture as provided in the new Proceeds of Crime Act 2022. Mr. B is currently facing a trial for Money Laundering

Nigeria's Experience: **Case Study 2**

- Mr. A, an Executive Director in a Government Agency got presidential approval to award some contracts for the provision of maritime security contracts.
- Payments were made to several companies purporting to be security consultants and the contracts were never executed.
- Investigation by the LEA, which included **the use of beneficial ownership information**, revealed that the companies were in fact not security consultants but **Bureau De Change operators owned by associates of Mr. A**, and the funds paid were converted to USD and handed over to him in cash.
- Mr. A was prosecuted and convicted for Laundering over **N1, 678, 006, 666.6 (One Billion, Six Hundred and Seventy-Eight Million, Six Thousand, Six Hundred and Sixty-six Naira, Six Kobo)** through these companies.

CHALLENGES

- Verification of Beneficial Ownership Information
- Difficulty in accessing timely BO information where ownership structures cut across different jurisdictions
- Delays in receiving responses on MLA requests sent to some jurisdictions on BO information

Recommendations

- Importance of timely response to Mutual Legal Assistance requests cannot be over-emphasized. State Parties should simplify and make public the processes and requirements for requesting Mutual Legal Assistance
- It is key for countries to adopt technology and other innovative means to ensure connectivity to various sources for the verification of BO information.
- State parties should **not stop** at providing competent authorities with access to BO information.
- Further steps should be taken to ensure Law Enforcement Agencies are sensitized on how BO information could be effectively used to identify and recover proceeds of crime.



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