Access to Beneficial Ownership Information Of Legal Entities and Arrangements

Overview of The AFAR Beneficial Ownership Information Guide Project: Key topics and terms

Prepared by Stolen Asset Recovery Initiative (StAR)

Under the Auspices of the Arab Forum on Asset Recovery

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Introduction to the Project

The AFAR Beneficial Ownership Information Guide is a pilot project being conducted under the auspices of the Arab Forum on Asset Recovery (AFAR, or Arab Forum). The Arab Forum on Asset Recovery brings together policy makers and practitioners from the Arab region, G8 member countries and other leading financial centers to explore ways to best assist the Arab countries in transition in their asset recovery efforts.[1] The first AFAR was hosted in part by the Government of Qatar and held in Doha (2012), AFAR II was hosted in part by the Kingdom of Morocco in Marrakesh (2013) and AFAR III is hosted by the Government of Switzerland in Geneva (November 2014). The Stolen Asset Recovery initiative has provided technical support to the organization of the Arab Forums.[2]

From the beginning, capacity building on formal mutual legal assistance and informal information and intelligence sharing in the context of transnational financial crimes investigations has been acknowledged as a priority by the Arab Forum. Greater training on how to pull together the different sources of information (pre- MLA) and help open the channels for the flow of information was recognized as particularly critical in transnational asset recovery cases. In particular, it is imperative that investigators know what beneficial ownership information of legal entities (such as companies, partnerships and foundations) and trusts and similar legal arrangements exists in other jurisdictions and how that information can be accessed quickly and effectively.

A. Method

The Arab Countries in Transition specifically requested that AFAR produce a Guide – consisting of an overview and individual country profiles - that would provide practical assistance to investigators in knowing how different jurisdictions define beneficial ownership and apply it to the various forms of legal entities and legal arrangements that exist in their respective jurisdictions.

The primary intended audience of the Guide are investigators of law enforcement and supervisory authorities who are experienced in domestic financial crimes investigations including those involving misuse of companies and trusts to conceal the origin and/or destination of illicit proceeds. The investigators will have some familiarity with basic terms and concepts such as legal entities and legal arrangements, beneficial ownership, and Mutual Legal Assistance. They may also have had some training and experience in conducting international investigations of financial crimes that involved misuse of legal entities and legal arrangements, or they may be using the Guide on their first such investigation. This is not a "how to" guide on conducting a financial crimes investigation but rather a resource for a key aspect of such investigations, namely how to access efficiently and effectively the beneficial ownership information and more generally company information that exists outside of their country.

The Guide is a quick "Who," "What," "Where," "When," and "How" of beneficial ownership information. The "Who" are the legal entities and arrangements themselves, and the persons associated with them including their founders, directors, shareholders, and the service providers that act as professional intermediaries in setting up and/or administering these structures. The "What" is the information and

[1] More information on AFAR at http://star.worldbank.org/star/ArabForum/About

[2] The StAR Initiative is a joint program of The World Bank and the United Nations Office on Drugs and Crime. StAR is a key partner in the Asset Recovery Action Plan and provides support to the Arab Forum. StAR has also been actively engaged in assisting Arab countries in transition, assisting in developing strategies, improving interagency coordination, engaging in international cooperation and in facilitating their efforts to recover stolen assets.

documents or records they hold. The "Where" pertains to the jurisdiction of incorporation, formation, administration or other jurisdiction(s) where the relevant individuals, the information and documents, and financial accounts are located.

The "When" and "How" are the ways in which the information and documents held by associated persons, company registry, financial institutions, trust and company service providers and other professional intermediaries may be accessed by foreign investigators, whether it be through publicly accessible company registries or through informal and formal international cooperation channels or mechanisms. Good practices and lessons learned from actual cases provide additional practical insights.

This Guide gives a rough overview of the main topics that are relevant when discussing beneficial ownership and the way that most countries deal with them and provides some good practices from a few of the countries that have participated in the project.

B. Beneficial Ownership Information: Evolving Area

The availability of and access to beneficial ownership information is evolving around the world, including among the participating jurisdictions. In the UK, legislation introduced in June 2014, if enacted, will change the country's definition of beneficial ownership and implement a publicly accessible central registry of company beneficial ownership information.[3] In the US, there is also pending legislation with regard to the role of state company registries and use of existing tax reporting mechanisms to collect beneficial ownership information as well as proposed rulemaking on CDD measures to be undertaken by service providers.[4] The EU 4th Money Laundering Directive will also introduce further regulation on this topic which would affect not only member jurisdictions but also other jurisdictions that have looked to the EU Directive as guidance for their legislative and regulatory frameworks.[5] The G20 Leaders are also expected to adopt during their Summit in November 2014 in Brisbane, Australia, "High-Level Principles on Beneficial Ownership Transparency" which will likely spur more changes in this area in the G20 member countries. Thus, investigators are urged to check with their foreign counterparts at the earliest stage in their investigations for the latest developments and how they may impact their investigations.

The current Guide is being presented at the AFAR III in Geneva, Switzerland to garner valuable feedback from Arab Forum participants and to prompt other jurisdictions to become part of the project by completing the project's online survey.

By compiling and making available information on as many jurisdictions as possible, the project hopes to help investigators overcome the myriad of challenges and obstacles identified in the StAR study, *The*

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[3] The Small Business and Enterprise and Employment (SBEE) Bill, full text and status at http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html

[4] US Department of the Treasury Press Release, "Treasury Issues Proposed Rules to Enhance Financial Transparency," July 30, 2014, at http://www.treasury.gov/press-center/press-releases/Pages/jl2595.aspx and Full text of notice at Federal Register, August 4, 2014, at http://www.fincen.gov/statutes_regs/files/CDD-NPRM-Final.pdf; Caroline Atkinson, "Beneficial Ownership Legislative Proposal," The White House Blog, April 4, 2014, at http://www.whitehouse.gov/blog/2014/04/04/beneficial-ownership-legislation-proposal; Full text and status of S. 1465 Incorporation Transparency and Law Enforcement Assistance Act, at http://thomas.loc.gov/cgi-bin/query/z?c113:S.1465.

[5] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (proposed EU 4th Directive), at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013PC0045 (last accessed on October 5, 2014); Guernsey also indicated that there are pending developments.

Puppet Masters: How the Corrupt Hide Stolen Assets Using Legal Structures and What to Do about It[6] and help all countries accomplish their objective of the recovery and return of the proceeds of corruption back to the countries and the people from whom they were stolen.

[6] The complete study may be downloaded at http://star.worldbank.org/star/publication/puppet-masters.

1. Who is the Beneficial Owner?

A. Definition of beneficial ownership and legal entities

The beneficial owner is defined as:

> The natural person who ultimately owns or controls the legal entity or the legal arrangement or benefits from its assets, the person on whose behalf a transaction is being conducted or both. Beneficial owners also include those persons who exercise ultimate effective control over a legal entity or arrangement.

By definition, a beneficial owner has to be a natural person, not a company or trust or any other legal structure, but an individual. Beneficial ownership is also different from legal ownership in that it is not solely related to the amount or percentage of a shareholding or other legal ownership an individual has but the exercise of direct or indirect control over the structure. Control and legal ownership often will lie in the same hands but not always. Beneficial ownership is also concerned with who derives benefit and on whose behalf transactions are being undertaken, even if someone does not legally own or directly control the structure but is, for example, acting through formal or informal nominees (such as associates, family members or other "front" men).

Even among the jurisdictions participating in this project, there exists some variation in the definition of beneficial ownership, and this is crucial to understand because the definition of beneficial ownership in a way sets the benchmark for professional intermediaries in terms of who they have to identify (and verify) as the beneficial owner.

For example, in the US, for purposes of financial accounts, an individual is deemed to be the beneficial owner as a natural person who has a level of control over or entitlement to the account and its assets. Other jurisdictions define a beneficial owner also by "effective control" exercised and benefits derived but at the same time deem any person with 25% legal ownership threshold a beneficial owner. The definition adopted by the jurisdiction affects the customer due diligence that financial institutions and other professional intermediaries must perform to identify and verify the beneficial owners of legal entities and arrangements to which they provide products and services. The advantage of such a rule is that it is relatively straightforward for service providers to apply but it also has the potential to not cover those individuals whose legal holdings fall below the threshold or not have any legal ownership at all but control the entity through other means, including informal nominees.

B. Beneficial ownership of trusts and other legal arrangements

In the case of a trust or similar legal arrangements, several people arguably could qualify as the beneficial owner:[7]

- The *Trustee*, because he conducts the day-to-day management of the asset held in trust and could – if he wanted – dispose of it in any way he liked. He is, however, legally bound to act in the interest of the beneficiary as set out in the deed of the trust. He is not, therefore, an ultimate controller bur rather acts on behalf of someone else and is under fiduciary obligations.
- The *Settlor*, because he initiated the trust and contributed the asset to the trust in the first place. In trusts of most jurisdictions, he no longer is able to exercise control over the trust. Some jurisdictions permit a settlor to be a beneficiary.

[7] This section on beneficial ownership of trusts is excerpted from the *Puppet Masters*, at 22-23.

- The *Beneficiary*, because he stands to benefit. But he similarly (with settlors in trusts of most jurisdictions) cannot exercise control over the trust.
- The *Protector*, permitted by trusts of some jurisdictions, who can exercise some degree of control over the trustee, and therefore the trust.

Accordingly, following international standards, the participating jurisdictions make it mandatory for countries to require their trustees to know the identities of all the above listed persons, as well as any other natural person exercising ultimate effective control over the trust.

2. Basic Company Information:

A. What is basic company information?

Basic company information is an important element of beneficial ownership information. It is understood to include at least the following: Company name, Proof of incorporation, Legal form and status, Address of the registered office, Basic regulating powers (e.g. memorandum & articles of association), List of Directors, Register of its shareholders or members, which contains the names and number of shares held by each shareholder and categories of shares (including the voting rights associated with them). Typically jurisdictions require companies formed in their jurisdiction to maintain this information and to keep it current. While basic company information may be more pertinent for proving (or refuting) legal ownership of an entity, it could also provide valuable clues that lead to the beneficial owners.

B. Role of the Company Registry

Basic company information is kept in the company registry of the jurisdiction where it was incorporated and/or operates and to a certain extent also by the company itself. The company registry is the first source of information for investigators when seeking information about an incorporated entity. All jurisdictions surveyed require an entity to be registered with the company registry. This may be held at the national level or, in a federal system, at the state level. Most financial center company registries nowadays provide online, public access for free (or for a nominal fee) to some of the information and documents required to be filed. The sites, however, vary as to the different search functions and almost always, an investigator must have the name or partial name of the legal entity or its unique identifier number to conduct a search.

There is quite some consistency among jurisdictions as to the types of information and documents required to be filed with the registry, but there are some differences to be aware of. One key difference is the role of the registered agent/registered office. Information as to the name and address of the locally resident registered agent/registered office is available in the company registry when they are required to be used to form a company. But in addition, some smaller well regulated financial centers may require that the registered agent/registered office verify and hold the beneficial ownership information and make that information available to the competent authorities on request.

Another difference goes to the nature of the company registry in the jurisdiction. Most company registries in the world are referred to as an administrative or “passive” registry. This means that the registry checks the documents filed by the companies for completeness but it does not have the responsibility to verify the accuracy of the information submitted. Nevertheless, the information and documents held by the Registry constitute government records and those filing them are required to attest to their truthfulness. Although the degree of the reliability of the information and records may

vary, they can nevertheless potentially serve as important sources of evidence or clues to evidence of legal ownership, other sources of information (including associated persons and professional intermediaries), links to other involved legal entities or arrangements and associated assets.

3. International Cooperation Mechanisms

The transnational nature of the involved offenses and location of beneficial ownership information outside of their own country necessitates investigators' reliance on the assistance of foreign counterparts. Assistance may be requested via two channels: informal information and intelligence sharing and formal mutual legal assistance in criminal matters and regulator-to-regulator assistance mechanisms.

A. Informal information and intelligence sharing

Informal information and intelligence sharing refers to the broad category of non-evidentiary information that investigators may obtain from foreign counterparts. The range of assistance varies among jurisdictions, but can include assistance in public document and source searches, interviews with witnesses, and information in government databases. Some jurisdictions urge law enforcement agencies in requesting states to seek informal assistance before sending a formal MLA request to ensure that the requests have sufficient basis and benefit from MLA request drafting (and refining) assistance, as needed.

Investigators can obtain informal assistance in different ways. One ways may include a phone call or e-mail to a direct contact in another jurisdiction acquired through past cooperation or through informal networking. Investigator networks include the Camden Asset Recovery Interagency Network (CARIN)[8] which has practitioners from 53 jurisdictions and 9 international organizations and other regional asset recovery networks, the StAR-Interpol Global Focal Point Initiative[9] which brings together investigators working on international asset recovery cases, and the UNCAC Open-ended Intergovernmental Working Group on Asset Recovery.[10] In addition, certain countries may have law enforcement attaches and representatives from their prosecutorial agencies posted in many countries to provide informal investigative assistance.[11]

In addition there are law enforcement networks such as INTERPOL and The Egmont Group of Financial Intelligence Units. Almost every country has an INTERPOL liaison office through which information and intelligence can be requested. With regard to Egmont, member jurisdictions' financial intelligence units can share financial intelligence with a foreign counterpart FIU through the Egmont Secure Web (ESW).[12] The available information may include bank account information, cross-border and currency transaction reports, suspicious transaction reports, reports of cash purchases, criminal information, and records that may be on file with a public registry, some of which may provide insight into beneficial ownership of legal entities. The table below lists jurisdictions that are involved in the Arab Forum and their membership status in the Egmont Group.

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[8] Overview at https://www.europol.europa.eu/sites/default/files/publications/carin_leaflet_2013_0.pdf.
[9] Description at http://www.interpol.int/en/Crime-areas/Corruption/International-asset-recovery/.
[10] Description and work at http://www.unodc.org/unodc/en/treaties/CAC/working-group2.html.
[11] US Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation, at 3.
[12] The Egmont Group, http://www.egmontgroup.org/about/list-of-members/by-region/americas (as of July 21, 2014)

Table: Egmont Membership Status of Arab Forum Participating Countries

Egmont Group		
Members		**Non-Members**
Antigua and Barbuda	Italy	Bahrain
Australia	Japan	Iraq
Austria	Jersey, Bailiwick of	Jordan
Belgium	Lebanon	Kuwait
Belize	Liechtenstein	Libya
Bermuda	Morocco	Oman
British Virgin Islands	Qatar	Saudi Arabia
Canada	Russia	Yemen
Cayman Islands	South Africa	
Cyprus	Spain	
Egypt	Switzerland	
France	Tunisia	
Germany	Turkey	
Gibraltar	United Arab Emirates	
Guernsey, Bailiwick of	United Kingdom	
Hong Kong SAR	United States	
Isle of Man		

B. Formal International Cooperation

Some sources may not be accessed via informal channels because for example, its authorities do not have a legal basis for providing the requested informal assistance. Moreover, when testimony or documents are required for evidentiary purposes, investigators must seek formal mutual legal assistance (MLA) in criminal matters or via regulator-to-regulator (including tax authorities) mechanisms as established by formal agreements.

The Country Asset Recovery Guides which have been drafted in the context of the AFAR and are available on the AFAR website can be consulted for further guidance. A complete list of the Country Asset Recovery Guides of participating jurisdictions and others that have been published under the auspices of the Arab Forum and G20 are listed in Annex 1.

In summary, the MLA mechanism is usually governed by a bilateral Mutual Legal Assistance Treaty (MLAT) between the Requesting State and the Requested State. If there is no bilateral treaty between the two jurisdictions, international or regional conventions such as the Vienna Convention, the Palermo Convention (UNTOC), the United Nations Convention against Corruption, and the UN Convention for the Suppression of the Financing of Terrorism may serve as legal basis. In addition, jurisdictions including Jersey provide assistance pursuant to a Letter of Request to its Attorney General. Each jurisdiction has a designated Central Authority to which requests should be sent.

A wide range of assistance may be provided, including interviews with witnesses, evidence gathering, obtaining testimony under oath, and execution of searches and seizures.

The later sections of this Guide on "Good Practices in International Cooperation" and "Lessons Learned" contain actual case examples.

4. Sources of Beneficial Ownership Information and How to Access

A. Legal entities and associated persons

Most countries have four basic categories of legal entity:

- Public companies
- Private limited liability companies
- Partnerships
- Foundations and other forms

All have some requirements as to what information and documents they should maintain and keep up to date and file with the company registry. Access to these information and documents are discussed below under "Company registry."

While incorporation requirements vary by jurisdiction and form of entity, it can be seen from the tables of characteristics of the legal entities, they all have what is referred in this Guide as "Associated Persons":

- Incorporators/founders
- Directors
- Shareholders
- Other senior managers
- Nominee Directors – formal and informal
- Nominee Shareholders – formal and informal
- Others (employees, contractors, vendors, business associates)[13]

These "associated persons" may be the beneficial owners or have information regarding the beneficial owners. Nominee directors and shareholders fall into two categories: "professional" nominees such as TCSP firms or other individuals who provide the nominee services as a business and may be required by the jurisdiction that licenses them to know the identity of the natural person on behalf of whom they are providing the services and the so-called "informal" nominees such as associates, family members or friends who "front" for the beneficial owner(s). The way that foreign investigators can access records and documents held by the professional nominees varies by jurisdiction. Some are able to provide access on an informal basis while others can only do so through a formal MLA process.

Lastly, public companies are subject to greater reporting requirements, including for beneficial ownership threshold levels, to other government authorities which may be publicly available.

Most entities require a minimum of at least one natural person in order to form the entity. With a very limited number of exceptions, all entities are required to register with the Company Registry in their respective jurisdictions (or states).

[13]Service providers and professional intermediaries such as Registered Agent, Trust and Company Service Provider, Lawyers/Notaries, Accountants/Auditors, and Financial Institutions will be discussed below under their respective categories.

Directors do not typically have a residency requirement, but often there will be a requirement for a Resident Agent, who maintains information and documents as required by the Company Registry and other relevant authorities. Some jurisdictions require that the Resident Agent be a Trust and Company Service Provider licensed and supervised by the jurisdiction and are subject to Customer Due Diligence (including verification of beneficial ownership) and recordkeeping requirements and to make such records available to authorities on request.

Tax filing requirements also vary among the entities, and sometimes depend on whether there is income associated with the entity.

For most forms of companies the issuance of bearer shares is prohibited. The individual in legal possession of the physical shares is deemed to be their owner and thus the owner of the company. The problem is knowing who owns the shares at any given point in time.

The use of nominee directors varies, but it is important to distinguish between someone who is considered a director in name only, from an actual director who is involved in the day to day management or direction of the company and who possesses knowledge of the individuals connected with the company and its activities. The former, even if not actually defined as a nominee director in the relevant jurisdiction, in reality is a nominee director. Thus even if a jurisdiction does not permit nominee directors, it is important to look past the title and see what the director's actual role in the company is and what information they possess on the company and the beneficial owner.

B. Trusts and other legal arrangements

Because trusts are considered to be essentially private contracts, almost no country registers them. Liechtenstein is among the few exceptions.

Trustees that are licensed professionals are subject to fiduciary regulations and subject to CDD and recordkeeping requirements, including verification of the beneficial owners, as well as other trustee(s), settlor(s), and protectors (if any). The information may be accessed by domestic competent authorities, including financial services commission which license and supervise the trustees. In the US and UK, where the trusts have tax obligations, tax authorities may have information as to the trustees, settlor(s), protectors (if any), and beneficiaries. The information may be accessed through formal international cooperation mechanisms.

C. Company registry

The Company Registry is almost always a repository for basic company information- and in a very limited number of cases also collects beneficial ownership information.

Most company registries make the following information publicly available online for free or for a nominal fee:

- Name of legal entity
- Entity number (assigned by the Registry)
- Type of legal entity
- Date of incorporation
- Current status (active, etc.)
- Principal address of business
- Principal purpose of business

- Memorandum
- Articles of Incorporation
- Application/Certificate of Formation

Jurisdiction practices vary with regard to:

- Registered Agent/Registered Office information (if jurisdiction requires)
- Officer/Director information
- Shareholder/Member information
- Shareholder Register
- Annual/biennial reports
- Register of charges
- Historical Documents (example: past annual filings)

Some of the information and documents held by the Registry are accessible online for free. Additional information and documents can be requested from the Registrar or inspected in person at the Registry, while other information and documents are accessible only through domestic law enforcement or supervisory authorities. Hence, investigators should consider first contacting their foreign counterparts in order to get a full understanding of what is available at the company registry and how best to access the information.

D. Trust and company service providers

The term "Trust and Company Service Provider" carries different meaning (and significance) in different jurisdictions, where they may be categorized as a single business or profession or in other jurisdictions the services are performed by different professionals such as notaries, lawyers and accountants. It may be more helpful think about a TCSP as anyone providing one or more of the following services:

- Acting as formation agent of legal entities;
- Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities;
- Providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal entity or arrangement;
- Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement; and
- Acting as (or arranging for another person to act as) a nominee shareholder for another person.[14]

Smaller, well regulated international financial centers typically require that incorporations and other company related services must be carried out through a TCSP licensed and supervised by that jurisdiction. In those jurisdictions, the TCSPs are required to conduct CDD on beneficial ownership and to maintain records that they must make available to authorities on request.

[14] List of covered activities under FATF Recommendation 22 (Designated Non-Financial Businesses and Professions, Trust and company service providers), when TCSPs "prepare for and carry out transactions for a client concerning" these activities.

E. Financial institutions

Financial institutions are regulated entities, required to conduct Customer Due Diligence in almost all countries in the world, including verification of beneficial ownership of legal entities and arrangements and maintain records that they must make available to authorities upon request. In addition to beneficial ownership related records and documents, FIs maintain in their client files notes on phone conversations and in-person meetings, authorized signatory and power of attorney and other information that may be useful in identifying the natural person(s) who controls the financial accounts and benefits from them.

The challenge for investigators is most often figuring out which financial institutions hold the assets in the first place. Few countries have central registers of bank accounts such as exists in Brazil and France. And not all countries require legal entities to hold a bank account in the jurisdiction of formation, and in fact, in the *Puppet Masters* it was found that bank accounts in the name of legal entities were often held in a jurisdiction that differed from its formation. In significant investigations, the US financial intelligence unit (Financial Crimes Enforcement Network, FinCEN) may be able to search a vast swath of the U.S. financial system (22,000 financial institutions) for accounts or transactions of individuals, entities, and organizations engaged in, or reasonably suspected of engaging in, terrorist acts or money laundering activity. This process, known as a 314(a) request, can provide lead information within two weeks of FinCEN's query. Foreign law enforcement, through FinCEN, may use a 314(a) request after other investigative alternatives have been exhausted or are unavailable. The responses from institutions are either positive or negative and follow-up in the form of subpoenas may be necessary to determine facts pertaining to beneficial ownership.

Access to information held by financial institutions is almost always through formal international cooperation channels.

F. Other service providers/Professional intermediaries

When investigators seek to access information held by attorneys regarding the establishment and operation of a legal entity by one or more of their clients, they may encounter attorneys who would seek to justify their refusal to divulge such information by invoking attorney-client privilege (or "legal professional privilege").

Investigators should guard against the unjustified use of this privilege. Many jurisdictions have carved out statutory exceptions to legal privilege where the attorney is acting as a financial intermediary (such as providing the services listed above) or in some other strictly fiduciary or transactional capacity, rather than as a legal advocate.

5. Good Practices in International Cooperation

The following examples were provided by the respective jurisdictions.

A. Use of Investigatory and Open Source Tools to Confirm that the Legal Owner was a Nominee/"Front" for the Beneficial Owner of Misused Companies (US)

In September 2012, the United States received a formal treaty request for mutual legal assistance from Country X. The request sought to confirm the ownership of two companies by an individual arrested, but not yet charged, with crimes in Country X. The request also sought information as to whether other U.S.-based companies that the suspect had wired money to were owned by or associated with the suspect. The United States was able to confirm using open-source and FIU information that the initial

two companies were owned by the suspect and that the companies had been registered, and unregistered, in a handful of states. The United States was also able to locate a third company owned by the suspect, which the suspect used to acquire assets. That company was located by a financial investigator by matching an email address associated with the suspect to state-held corporate registration forms. The U.S. Department of Justice sought the appointment of a commissioner to gather evidence on behalf of Country X; the court granted the application and the commissioner issued several subpoenas. Financial institutions responded, confirming the suspect's control over numerous accounts in the name of the initial two companies as well as the suspect's wire activity. Additionally, U.S. law enforcement agents conducted interviews with persons affiliated with the companies listed by Country X as suspicious due to the circumstances under which they received foreign funds. These in-person and phone interviews confirmed that the suspect was not the beneficial owner of the recipient companies, a useful fact for authorities in Country X. The information detailed above was provided by the United States to Country X in May 2013. Country X sent supplemental treaty requests building on the U.S. information. Pursuant to subsequent requests, assets, suspected to be the proceeds or instrumentalities of crime, were restrained in the United States.

B. Trusts and use of restraint orders (Jersey)

Jersey received an MLA Request from Country Y to the Jersey Attorney General in an internet gambling case involving two Jersey trusts – into which profits from illegal internet gambling were settled. Notices were issued pursuant to the Investigation of Fraud (Jersey) Law, 1991, requiring production of documentary evidence concerning the trusts and underlying companies. Notices issued approximately 12 weeks following receipt of the Request. A *Saisie judiciare* (Restraint Order) in respect to the properties of trust pursuant to reciprocal Proceeds of Crime Regulations; principal trust assets consisted of an immovable estate in Central America and cash held in Swiss banks. Defendant applied to the Royal Court seeking to discharge the *Saisie judiciare*. A fully contested hearing followed and the team of Country Y prosecutors traveled to the Island to assist.

C. Evidence of control of companies to determine beneficial ownership (Guernsey)

On 10 October 2013 the Supreme Court of a European jurisdiction (after a hearing lasting 2.5 days) upheld convictions and confiscation orders made against Individual A and Individual B for offences of fraud and gross breach of trust arising out of their management of shipping companies held within a business group. Both individuals were sentenced to 5 and 4 years imprisonment respectively, suspended for two years, and confiscation of significant sums was ordered. These orders are now due to be registered before the Royal Court in Guernsey. [According to the Supreme Court Judgment which dealt with the confiscation orders], "the relationship between (Individual A and Individual B) and the individual companies and devices is such that the defendants exercised control over them and in reality were the beneficial owners of their funds".

In the opinion of the prosecutor who conducted this case, these convictions and confiscations could not have been secured and upheld without the evidence from Guernsey. The charges spanned a period from 1997-2004 and involved companies administered in Guernsey under trust arrangements in Guernsey or other jurisdictions. The prosecutor specifically identified the evidence transmitted from Guernsey identifying Individuals A and B as beneficial owners of the entities administered in Guernsey, as well as other evidence, which demonstrated the manner in which "control" was being exercised over the entities by these individuals. The assistance provided to the authorities of the European jurisdiction was based on a substantial amount of documentary evidence secured through Production Orders served in

Guernsey, together with interviews and evidence taken in Royal Court of Guernsey by Commission Rogotoire, as well as a restraint of funds held in Guernsey secured in 2005. The prosecutor further indicated that some 60 per cent of the evidence relied upon to secure the conviction and confiscation came from Guernsey and on appeal the figure was 70% from Guernsey and another jurisdiction. Guernsey provided the substantive cooperation from 2005 to 2010; cooperation also continued after this time.

D. Execution of request: Bank account records (Liechtenstein)

Liechtenstein received a Letter of Request from Country Zin a fraud, embezzlement and money laundering case for the seizure of documents relating to accounts at a Liechtenstein bank for which DS was the account holder, beneficial owner or authorized signatory. The Request was received on July 1, and on July 13, 2013. The Princely Court issued a written decision regarding the seizure. Hereinafter, the bank filed a total of 2'355 documents, i.e. documents regarding accounts for which DS was the customer, but also accounts for which DS was the beneficial owner or authorized signatory. On August 8, 2013, the parties affected by the request for legal assistance were invited to the so-called "Ausfolgungstagsatzung" on August 23, 2013 (this hearing gives the parties the opportunity to raise any objections to the transmission of the documents seized to the requesting authority). At this hearing, DS, who appeared in person, submitted the request that no documents should be transmitted to the authorities of Country Z. However, on the same day the Princely Court issued a written decision authorizing the transmission of the documents seized to the foreign prosecuting authorities (with the exception of three documents). No appeal was lodged and the relevant documents were therefore sent to the requesting authority on September 16, 2013.

The legal assistance procedure lasted about 3 months, which corresponds to the normal duration in such a case. A more rapid execution would have only been possible if DS and the other relevant account holders would have given their consent to the transmission of the seized documents to the requesting authority.

If the requesting authority had only requested documents relating to accounts "of DS", Liechtenstein authorities could only seize the documents related to the accounts in the name of DS himself. However, those accounts that are in the name of legal entities of which he might be the beneficial owner or for which he is only an authorized signatory could not be seized.

Accordingly, if a foreign law enforcement authority requires to have documents regarding all accounts that are related to a specific defendant, the request should – mutatis mutandis - read as follows:
"Seizure of documents relating to accounts at Bank X, for which the person Y (in the period from ... to ...) is/was the account holder, beneficial owner or authorized signatory. (Italics added.)

If the requesting authority requires for their criminal proceedings not only information regarding the content of a specific account, but for example information regarding the path taken by a certain asset within Liechtenstein, the foreign authority should seek seizure of documents regarding all accounts located in Liechtenstein through which assets have flowed. However, this presupposes that the cash flow or transfer of securities can actually be reconstructed and that the assets have not been mixed with other assets. However, this is the best approach to avoid a supplementary request for legal assistance after completion of the first request. Accordingly, the original (first) request should be formulated comprehensively and sufficiently substantiated.

E. Execution of request: Business records (Liechtenstein)

If the requesting authority needs the business records of a certain legal entity or entities of which an accused person is the beneficial owner, the requesting authority should be aware of the following: These documents are neither with the bank nor kept with the Commercial Register, but as a rule - at least as far as Liechtenstein legal entities are concerned - with a Liechtenstein trustee. Therefore, it is necessary to request additionally the seizure of those documents. If the requesting authority does not know the relevant trustee, the foreign authority should request the seizure of business records at the relevant company or at the representative office or kept by the "managing trustee".

Conclusion

Investigators of transnational financial crimes frequently confront the task of having to find out the beneficial owners of legal entities and legal arrangements formed or operating in or being administered from foreign jurisdictions. He/she must be able to quickly ascertain what beneficial ownership information of legal entities and legal arrangements is available in foreign jurisdictions and how it can be accessed. It is not a simple task.

In searching for the beneficial owners, investigators must first understand that the definition of beneficial owner vary from jurisdiction to jurisdiction. Public sources of beneficial ownership information are also limited and most of the time, cannot be relied on without independent verification. But they can provide evidence on legal ownership, and may also provide valuable clues to beneficial ownership. Professional intermediaries such as trust and company service providers, lawyers and accountants and financial institutions may prove to be the most reliable sources of beneficial ownership information, but to gain access to them and the documents they hold may be possible only through international cooperation, through informal and/or formal channels.

It is hoped that the country guides will be of assistance to investigators who must navigate the many paths, ultimately leading him/her to the beneficial owners.

Annex 1: Country/Jurisdiction Asset Recovery Guides

Produced under auspices of the AFAR and G20 Anti-Corruption Working Group

Accessible at Stolen Asset Recovery Initiative (StAR) AFAR Resources:
http://star.worldbank.org/star/ArabForum/asset-recovery-guides
http://star.worldbank.org/star/UFAR/ufar-asset-recovery-guides

Country/ Jurisdiction	Arabic	Chinese	English	French	German	Italian	Russian	Spanish	Ukrainian
Argentina			YES						
Australia			YES						
Brazil			YES						
British Virgin islands			YES						
Canada	YES		YES	YES					
China			YES						
France	YES		YES	YES					
Germany	YES		YES		YES				
India			YES						
Italy	YES		YES	YES					
Japan	YES		YES	YES					
Jersey, Bailiwick of	YES		YES						
Lebanon	YES		YES						
Mexico			YES						
Russia	YES		YES						
Saudi Arabia			YES						
South Africa			YES						
South Korea			YES						
Spain			YES						
Switzerland	YES		YES	YES	YES	YES			YES
Turkey			YES						
United Kingdom	YES		YES	YES					
United States	YES	YES	YES	YES	YES	YES	YES	YES	