MARI
Malaysia Reform Initiative
USAID Funded | DAI Implemented

UNMASKING THE CORRUPT THROUGH BENEFICIAL OWNERSHIP TRANSPARENCY

Prepared by: Transparency International Malaysia (TI-M)
Activity Number: 1003683

EMBASSY OF THE UNITED STATES OF AMERICA · KUALA LUMPUR ·

USAID
FROM THE AMERICAN PEOPLE

MARI
Malaysia Reform Initiative
USAID Funded | DAI Implemented

CONTENTS

LIST OF ABBREVIATIONS

LLP – Limited Liability Partnership

TI-M – Transparency International Malaysia

MACC – Malaysian Anti-Corruption Commission

GIACC – Governance, Integrity, and Anti-Corruption Center

CCM – Companies Commission of Malaysia

AMLFOP – Anti-Money Laundering and Forfeiture of Properties

LEA – Law Enforcement Agency

BO – Beneficial Ownership

PEP – Politically Exposed Person

EA – Enforcement Agencies

UNCAC – United Nations Convention against Corruption

CSO – Civil Society Organization

DOJ – Department of Justice

RCA – Relatives and Close Associates

MALAYSIA REFORM INITIATIVE (MARI)

UNMASKING THE CORRUPT THROUGH BENEFICIAL OWNERSHIP TRANSPARENCY

PREPARED BY TRANSPARENCY INTERNATIONAL MALAYSIA

ACTIVITY NUMBER: 1003683

WELCOMING SPEECH BY DR. MUHAMMAD MOHAN, PRESIDENT OF TI-M

Dr. Muhammad Mohan addressed attendees by citing the timeliness of this forum within the Malaysian context, especially as a signatory to the UNCAC and its articles: 12 on Private Sector, 14 on Measures to prevent Money Laundering, and 52 on Prevention and Detection of Transfers of Proceeds of Crime. He noted that the misuse of corporate entities has led to corruption, money-laundering, terrorism financing and other crimes.

He cited The World Bank report that mentioned 70% of all grand corruption cases (costing more than USD 56 billion) relied on anonymous companies to carry out, hide, and launder gains from corruption. The same practices were shown in the Panama Papers, where layers of ownership of offshore companies led to high risk individuals reaping unlawful benefits and escaping law enforcement. Malaysia faces the same problem, where these practices are used for corruption, tax evasion, and money laundering. TI-M had also received reports from Global Witness stating exposed politicians sitting behind large corporations, reaped benefits from foreign investors operating within the country.

From these examples he reasoned that BO transparency is imperative to prevent the crimes listed. That promoting greater transparency in private organizations will allow the identification of the legal and natural people who ultimately own, control, influence and benefit from the organization, otherwise the BO.

Dr. Muhammad Mohan delivered the welcoming speech

He stated that while Malaysia's Company Act 2016 has a section on BO, it is not comprehensive enough, which is why he holds hope for the proposed reporting framework that CCM is drafting to bring light to the provision allowing companies to obtain, report, and update BO information in a timely manner. He recommends that this information be available as an open source and accessible publicly to unmask the ultimate BO of these entities which is vital in identifying criminals and corrupt figures who benefit from hiding behind corporate arrangements.

He used the UK as an example, which has a public registry of companies that is accessible to all parties without a paywall. The UK had made it a legal requirement for companies to report, verify, and update put into the registry, a move Malaysia should potentially adopt.

KEYNOTE ADDRESS BY MR DEAN THOMPSON, CHARGE D'AFFAIRS OF U.S. EMBASSY IN MALAYSIA

Mr. Dean Thompson began his speech by acknowledging all attendees and spoke how sharing information will create a more transparent environment that will benefit Malaysia in the long run. He explained that primary method criminals execute financial crimes by concealing the identity of the BO via shell companies, allowing them to launder money, evade taxes, finance terrorism and many other financial crimes.

He explained that the misuse of BO is a global issue and that international collaboration is necessary to disrupt complex money laundering networks as money laundering threaten the integrity of global banking systems and undermines the stability of international financial markets. Thus, to effectively address it, both global and local solutions are needed. He stated that governments can ensure that local laws close loopholes which allow BO misuse and cited that the Financial Crimes Enforcement Network under the US Treasury Department had issued a ruling in 2016 that required banks and financial institutions to collect information that identified the ultimate BO from their customers to assist authorities in combatting illegal financial activities.

Mr. Thompson briefly explained the legislation used in combatting financial crimes in the US, e.g.: **US money laundering laws** target revenue and proceeds of transnational and organized crimes by prohibiting individuals from engaging in transactions with illicit proceeds, **asset forfeiture laws** used by the US DOJ to forfeit proceeds and assets of crimes.

He continued to outline the efforts that the US DOJ has taken against financial crimes as it goes across various jurisdictions. The Money Laundering and Asset Recovery Section under the DOJ leads anti-money

laundering efforts and investigates complex money laundering schemes that pose serious and substantial threats to the integrity of the US and international financial systems.

He detailed the formation of the US Kleptocracy Asset Recovery Section under the US DOJ which prosecute and investigate high level corrupt foreign officials who use the US to launder their criminal proceeds, as well as work to recover these proceeds for the benefit of the people harmed. Since its formation the initiative has targeted over USD 3.4 billion in corruption proceeds, recovered over USD 1.5 billion, obtained 8 guilty pleas, and brought matters over 12 jurisdictions.

He remarked upon the results of the collaboration between US and Malaysia in working to ensure public resources are used for public good. Using the 1MDB case as an example of the collaboration, where Jho Lo had laundered USD 700 million through financial institutions in the US, Switzerland, Singapore, and Luxembourg. Assets related to the case were recovered in the UK, US, and Switzerland and so seized and returned approximately USD 200 million to the Malaysian people.

He closed his speech by acknowledging that collecting, updating, and monitoring all verified information of the BO of every account is a challenging large scale effort and that transactional costs will occur, especially for small organizations that lack staffing, but commitment is necessary as it brings results. He stated that uncovering corruption, exposing shady networks, and unveiling the true beneficiaries, requires courage and political will. He acknowledged that the Media and CSOs serve as beacons around the world to shine the light on the corrupt, sometimes, at great risk to themselves.

PRESENTATION BY MR EMMANUEL LY-BATALLAN, HEAD OF THE ECONOMIC SECTION OF THE FRENCH EMBASSY IN MALAYSIA

Mr. Emmanuel Ly-Batallan presented France's approach to BO transparency, the eco-system that was built to tackle the issue and the lessons they have learned so far. The first instance of BO was the G7 Summit held in Paris in 1989, where the FATF was created to combat money laundering. The first official motion to address BOs in France was in 1990, where banks and financial institutions were required to conduct customer due diligence as part of anti-money laundering efforts.

As an EU member state, there were six EU directives related to anti-money laundering and counter terrorism funding for France to adopt by a certain date. The fourth directive is the core piece of legislation on BO, which clearly defined as 'any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted.' The Directive was transposed to French legislation by 2016, making France the first member state to do so in the EU.

Through the Ordinance of 1 December 2016, France amended its Monetary and Financial Code and Penal Code, which was then complemented by other texts related to BO. The efforts allowed France to form the conditions for what constitutes as a BO and shaped the approach they would take in creating their BO registry.

Complementing legal texts also came via guidelines that are compulsory while some are just ordinary guidelines from supervisory of regulatory bodies like:

- AMF (Financial Market Authority), it is a regulatory body with sanction powers in charge of regulation and supervision of financial markets. They issued their guidelines 29th of November 2019.
- ACPR (Prudential Supervision and Resolution Authority), it is an independent authority that is part of the central banking system which supervises banking systems and insurance companies. It holds regulatory and sanction powers so they can compel banking institutions and take steps to issue fines or take legal action, through the public prosecutor where necessary.
- CNGTC (National Council of Commercial Courts' Clerks), a private body that plays an official role, commercial courts are responsible for commercial register that is similar to CCM. The body has issued rules to explain how they will tackle issues and advise companies on their obligations.
- ANSA (National Association of Public Companies), grouping of the biggest public companies, including the listed ones.

Mr. Ly-Batallan shared the French system in tackling beneficial ownership

The French definition of BO is “any natural person(s) who directly or indirectly owns at least 20 to 25% of the capital or voting rights or ultimately control the company by any other means (If no, BO can clearly be identified, then the legal representative(s) of the company)”. Every registered companies comes under this rule except for publicly listed companies because they must already follow a strict set of rules for transparency, along with declarations and controls. Companies are obligated to obtain and update accurate information on their BO, the bigger the company, the bigger that obligation grows. Additionally, companies are required to submit information in accordance to customer due diligence, particularly for banking and financial institutions. NGOs engaged in financial operations, though registered under different rules, must declare their BOs.

Based on the FATF recommendation 24, the 3 approaches for BO transparency were; a registry approach, company approach, and existing information approach. A national registry fulfilled all three approaches and that the BO registry can be a supplementary side of the already existing national company registry both under the purview of the commercial courts’ clerks. However, while the company registry is public, BO information is only accessible to magistrates, LEAs, or independent authorities working on preventing money laundering and terrorist funding. France also has their own financial intelligence unit, TRACFIN, which is an authority that investigates suspicious financial activities and reports illegal acts to prosecutors and their Finance Judicial Investigation Service under Tax and Customs.

Sanctions can be taken if there is a breach of company obligations. Civil penalties are decided by the court where the president of the commercial court can sanction companies to declare their BOs and inform the public prosecutor for any further actions. Criminal penalties are imposed by the court as it is a criminal offence if a company does not declare its BO, so the legal representative would face 6 months jail time and fines up to EUR 7,500 or more. Penalties can also be escalated to closing down a company and barring the legal representative from engaging in business activities.

Mr. Ly-Batallan concluded his presentation with the lessons that were gathered in this process. BO is a multifaceted tool that requires a complete ecosystem to combat effectively, laws, supporting agencies, investigating bodies, and a culture of civil service are needed to tackle the issue effectively. France has The High Authority from transparency of public life have PEPs and public figures declare their assets, even retired civil servants. The body would keep all information for the duration of an individual’s employment for review of any suspicious activities during their employment.

The results of this system need to be assessed, which is why a mutual review of France’s BO registry will be done in 2020 and the results of that is expected to be ready in early 2021. Furthermore, due to the huge collection of data logged in the registry, profiling, risk analysis and targeting controls are needed to effectively identify criminal activity.

Finally, the BO registry raises many questions about personal data and right to privacy so there is a need to find the balance between privacy of individuals and the public access to declaration of BOs. While transparency brings forth efficiency and reveals corruption, personal data is a concern and has been protected in France since the Data Processing and Freedom Act (1978).

PRESENTATION BY MR RAYMON RAM, SECRETARY-GENERAL OF TI-M

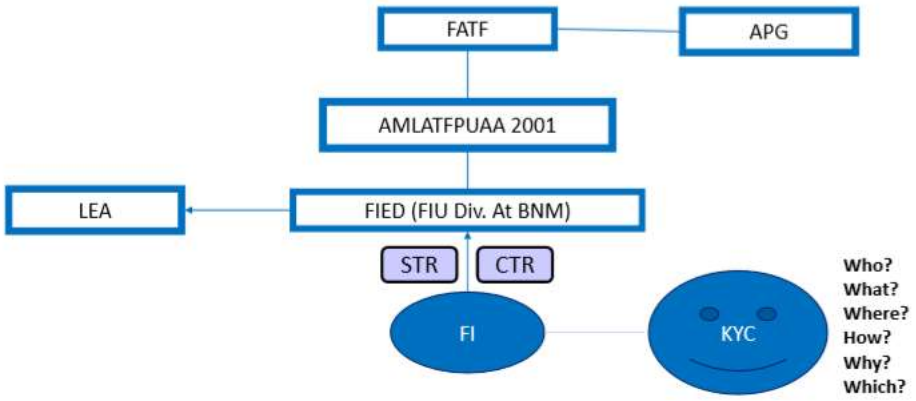
Mr. Raymon Ram began his presentation by sharing his experience as a risk management consultant and civil society advocate. He found that in most cases of financial crime, there is a constant abuse of corporate entities to mask the perpetrators hiding behind their schemes. The sheer nature of corporate entities being "legal persons" that is separate from individuals (natural persons) makes it ripe for confusing the audit trail and masking the ultimate beneficiary of such establishments. Criminals at large, such as money launderers, tax evaders and corrupt individuals hide behind multiple layers of holding companies, subsidiaries and trusts to mask themselves away from such illegal schemes.

Real cases can also be cited from various countries around the world. From developed, under-developed and corruption prone nations. Take for instance the case reported by Global Witness, an International Anti-Corruption watchdog, on Teodorin Obiang, the son of the President of Equatorial Guinea, who took and spent $38 million of his country's money on a private jet using an anonymous company based in the British Virgin Islands. Monies were siphoned and transferred through various off-shore entities and ultimately ending up back to the ultimate beneficiary. According to the case against him built by the US DOJ, the Brazilian authorities have arrested him in the country where they had a carnival and he had paid off performers up to USD 30 million to have their performance themed Equatorial Guinea.

Another case highlighted in 2015 saw the expose of Peruvian drug trafficking ring Sanchez-Paredes that used anonymous companies in Florida to help launder US$31 million in drug money through banks in the United States. Drug traffickers also launder their funds, and, in most cases, anonymous companies are present where money moves to offshore accounts and reenters the country via multiple layers of companies, built through trusts and returning to a natural person. Another example is the Maduro regime in Venezuela, where the currency is almost extinct having no monetary value and the president is alleged to have looted national oil companies of USD 2 billion. Lastly, The Nigerian dictator, Sani Abacha used British Virgin Islands companies to hold $450 million of the $2 billion assets he stole from the government during his time in power.

Malaysia has had similar issues cropping up as well, with harsh allegations and cases where government officials are found to have stacks of money in their houses and it is unclear where the money came from. We also have cases where mining, timber and logging in certain states have been said to be controlled by families of the elite. Case examples have been clearly reported by international watchdog groups like Global WITNESS. We also know of on-going cases that are being tried in court, one which clearly used the corporate layering structure to launder and to spend corrupt money. The crop of the matter boils down to three separate elements which facilitate such activities. (1) financial institutions that enable fast movement of funds that sometimes confuses the money trail, (2) anonymous companies set up by auditors, accountants and a lawyers, and (3) secrecy laws as practiced in the Cayman Island, British Virgin Islands (BVI) to say a few, where its economy is entirely reliant on foreign investments (sometimes dodgy or questionable).

The Anti Money Laundering and Counter Terrorism Financing (AML/CTF) compliance in the banking sector is overseen by Bank Negara Malaysia (BNM), through the Financial Intelligence and Enforcement Department (FIED) under their wing. They work within the AMLA Regulatory Framework which adopts International Recommendations such as those provided by the Financial Action Task Force (FATF) that BOs must be declared for one to open an account in commercial and investment banks.



The Malaysian AMLA regime has the Anti-Money Laundering, Anti Terrorist Financing and Proceeds of Unlawful Activity Act 2001 (AMLATFPUAA 2001) that regulates the actions and powers of the FIED, that acquires, analyzes and disseminate suspicious transactions reports to various Law Enforcement Agencies (LEAs).

Financial institutions have a duty to ensure that Know Your Customers (KYC) responsibilities are fulfilled and information is made available for authorities and LEAs. Fulfilling Customer Due Diligence (CDD) under KYC establishes high risk individuals and PEPs so that information can be obtained before establishing a relationship with the client and shapes the ongoing relationship.

Personally, Mr. Ram has seen companies where shareholders are personal drivers, members of indigenous communities, and schoolteachers who had no clue of what they were signing up for. Masked shareholders like this creates space that facilitates corruption, tax evasion, money laundering and other forms of financial crimes. Identifying BO requires a full analysis of shares held by particular individuals, in particular, trusts to find who the real shareholders and directors are as they are always a natural person hiding behind these corporations.

Malaysian provisions on BO under the Companies Act 2016, Section 56, talks about the obligation of Company Secretaries to issue notices and declare the BO of a particular corporate entity, hence this includes shareholders, and those who have voting rights in the company. Section 56(6) states that regulators can issue a notice in writing to the company secretary to fulfil obligations under section 56(1) or (2) and to immediately provide the regulator with the required BO information obtained.

Mr. Ram applauds the current efforts undertaken by the Companies Commission of Malaysia (CCM) to make available a BO registry for authorities and LEAs. However, he would like to suggest that the a BO registry be made public so that CSOs, journalists, and the general public can use this information to monitor companies, research and identify the flow of illicit funds, as well as relevant authorities and LEAs who would use these registries in their investigations. Businesses can also use this information when they conduct due diligence in their daily commercial work. A public registry would also ease foreign and domestic LEAs in their own investigations.

The conditions necessary to implement public registries for BO information are as follows; (1) Global norms of transparency as stated by FATF would need to be customized according to each country's own laws, (2) Open data for more stakeholders to learn this information and comprehend the situation, (3) Privacy concern

is a challenge, as addressed in the 5th EU directive provision which mentioned if there was a disproportionate risk of kidnapping or blackmail or the BO being a minor, then an exemption can be made, (4)Verification of information provided by companies across all relevant authorities, (5) Data validation to ensure the integrity of data provided or that the custodians of this data are able to manage, secure and maintain the integrity of the information while being constantly accessible, and (6) Robust sanctions would be needed to ensure companies comply with what is needed in terms of their BO information and that failure to comply will result in serious legal actions.

The FATF has also provided further recommendations and highlighted challenges like; (1) some counties that have implemented BO have not conducted risk assessments. This hinders their ability to identify companies that are prone to corruption or would have a PEP behind it, while Malaysia has the AMLA Regime to conduct the risk assessment (2) ensuring that information is updated, one country had established their BO registry 4 to 5 years ago but the information had not been updated or verified since rendering it useless, (3) Ensuring timely access to competent authorities, (4) Declaration of nominee arrangements, Malaysia has proxy nominees on boards, shareholders, directors, etc., (5) Harsh company sanctions, and (6) co-operation in information sharing between international and domestic authorities.

Mr. Raymon Ram talked on TI-M recommendations in implementing beneficial ownership framework in Malaysia

The publicly accessible UK BO registry makes for a good case study or example of a BO registry where they defined BOs as any individual who; (1) holds more than 25% of shares in the company and/or has voting rights in the company, (2) holds the right to appoint or remove the majority of the board of directors of the company, (3) has the right to exercise or actually exercises significant influence or control over the company, (4) holds the right to exercise, or actually exercises significant influence or control over a trust or firm that would satisfy one of the first four conditions of it were an individual.

The UK BO registry is also be complemented by a property registry and international-domestic corporation initiatives. They also have future plans of having a registry for foreign owned companies in the UK that may or may not include trusts.

For Malaysia to move forward, TI-M believes that we need to have a well-established BO registry in place, there will be a lot of work to do and many concerns to be addressed but it will be for the greater good. To achieve this we would need; (1) risk assessments to be conducted properly so high-risk companies are

scrutinized more as resources cannot be allocated to monitor all companies, having targeted options would be the most efficient method, (2) open source and publicly available information, (3) accurate timeline of BO information submitted so that all stakeholders can have access to updated and verified information, (4) Immobilizing nominee arrangements while we cannot realistically forbid them, these arrangements need to be scrutinized heavily and declarations of the ultimate owners be made when the need arises, and (5) Effective, proportionate & dissuasive sanctions to be enforced, good enforcement would require sanctions and punishments being laid down on those who do not comply.

In conclusion, corporate entities are vehicles for the corrupt to carry out their illicit activities and having BO transparency takes the keys away from them to further take us for a ride.

PRESENTATION BY PN NORHAIZA JEMON, DIRECTOR REGULATORY DEVELOPMENT & SERVICES DIVISION OF COMPANIES COMMISSION OF MALAYSIA

Pn Norhaiza Jemon began her speech by explaining CCM's role and their efforts in establishing the BO reporting framework. CCM oversees all matters regarding business entities and have 8.95 million businesses registered in Malaysia, where only less than 30% are active, while the rest has ceased operations. Out of the active companies in Malaysia 30% of them are required to follow the BO reporting framework. CCM is currently going through a more detailed assessment of business entities that need to be included in the BO reporting framework.

Legal reforms had been made to establish the BO reporting framework with the Companies Act 2016 amended to include a clear BO definition. The current definition has been misinterpreted especially when read as a standalone, without Section 8 which also defines it as 'a person who has interest of shares' to cover effective control. CCM has also empowered companies to obtain and maintain BO information in accordance to Section 51, 56 and 68 using the framework as a self-regulated approach. Companies are required to submit information through their annual return and CCM has the power to have companies report to CCM about their BO information regardless of what stage they are in. So, the guidelines that CCM is drafting will assist companies in compiling the information submitted satisfactorily. If shareholders fail to comply with CCM's notices is committing an offence. Upon receiving the information the company can also require the person concerned to provide BO information.

Section 56(3) s on voting power as effective control so if Section 56 is read along with Section 8 it would be understood that even an interest in a share would require compliance with Section 56 and that is the framework that CCM has added in terms of the Companies Act to identify BO within CCM's framework.

The guidelines has been finalized on 4 December 2019 for reporting framework, in consultation with fellow regulators like, Bank Negara, MACC, the Securities Commission, the Stock Exchange, who want to ensure that the framework for the corporate community is workable and can be implemented to deliver accurate and timely information. Professional bodies were also consulted for their input on the framework. Company Secretaries who have experience in BO information in cross border reporting with other countries feel that the guidelines is invaluable.

Pn. Norhaiza explained CCM's beneficial ownership reporting framework that will be enforce in 2020

There are a lot of concerns to be managed as this disclosure could infringe on privacy. These issues need to be highlighted to the public.

The goal is to harmonize the reporting framework with International standards. FATF has provided clear definitions of BOs, while the Companies Act 2016 requires some navigation to get a complete definition of BOs. Hence the BO definition is included in the framework to ensure that the general public reporting is clear on the criteria of what will trigger the BO reporting framework.

For the scope of the reporting framework, CCM requires all companies to report their BO information, the only entities exempted currently are financial institutions, companies whose shares are quoted in the stock exchange, and companies whose shares are in the central depository system. Private enterprises and subsidiaries of publicly listed companies are still required to report their BO information to help all parties especially LEAs in using this information in the future.

CCM has defined BO as an individual who; (1) has interest, directly or indirectly, in at least 20% of the shares, unlike the FATF standard is at least 25% of the voting shares of the company, (3) Has the right to exercise significant influence or dominant control whether formal or informal over the company or the directors or the management of the company, (4) Has the right or power to directly or indirectly appoint or remove a director(s) who hold a majority of the voting rights at meeting of directors, (5) is a member of the company and, under an agreement with another member of the company, controls alone a majority of the voting rights in the company. These are all elements in Section 8(4) of the Companies Act 2016, framed in a clearer way.

CCM provides assistance to companies that do not have shares, and the BO in these cases is an individual who; (1) has the right to exercise significant influence or dominant control whether formal or informal over the company or the directors or the management of the company, (2) has the right or power to directly or indirectly appoint or remove a director(s), or (3) has the right to exercise, or actually exercises dominant influence or control over the company. So, this definition applies to CLBGs (Companies Limited by Guarantee) or any other arrangements, including legal agreements or trusts.

The framework is very clear that the onus is on the company to obtain and maintain their BO information to ensure that the information is accurate, up-to-date and can be accessed in a timely manner. Although obligations have been imposed on company secretaries or agents, in the case of foreign companies, to lodge the BO information with the registrar. CCM is relying a lot on corporate intermediaries and even with the implementation of Section 241 of the Companies Act 2016 which empowers the registrar to issue licenses, they are the reporting institutions from the perspective of the Companies Act 2016 so they need to do their part in ensuring the BO information is up to date and accessible by LEAs.

BO information sets the requirements, how to obtain the BO information, how to identify it, how to obtain, verify it, the obligation of that information to be entered into the Registrar of Members and to update the information as and when there are changes to the BO information and the obligation to provide access to competent authorities even at company level.

CCM has provided steps on how to identify BO by reviewing all documents or information available at company level, through shareholder agreements, constitution, and to consider the interest holders of the company or any other evidence to show interest or rights in the company or any other actions that can be taken depending on the company. The guideline encourages companies to put in place comprehensive policies regarding BO.

Moving forward, the framework implementation has provided a timeline for business entities to comply with the BO information that is intended to be implemented by early 2020. From the effective date of the guidelines, companies or business entities are given 6 months to comply with the BO requirements after which the Registrar will invoke its power to require this information to be submitted to the registrar. CCM will study and amend the law to allow this information to be given to the public at large.

PRESENTATION BY TN MOHAMAD FAIZAL SADRI, DEPUTY DIRECTOR AMLFOP DIVISION OF MACC

Tn. Mohamad Faizal Sadri began his speech by explaining his position within the MACC and the work he is doing. BO is a global issue and as regulators, the accuracy of BO information provided by companies to CCM is a concern. Culprits behind the criminal activities will be identified.

He hoped by January 2020, CCM can have final guidelines for BO and form the BO registry similar to one that is in the UK. This would significantly lessen his investigations.

Regulators consider BOs as the natural person who enjoys the criminal proceeds. Information on legal arrangements, how money is laundered, and how the corrupt use BO as a vehicle to hide their money laundering and true identities of culprits and money trails is necessary.

METHODOLOGY TO IDENTIFY BO

MACC has multiple methods to identify BOs. The first is through official records, like CCM and ROS (Registry of Societies) and hopefully once CCM's BO reporting framework is launched, accurate information disclosed by Malaysian companies will ease MACC investigations. Anti-Money Laundering investigations also assess records from local authorities, land registrar, tax authorities, banking documents (through authorized signatories), annual reports, and audited accounts.

Investigations conducted by MACC is primarily to collect information through interviews that interviewees and suspects would voluntarily share information. Their investigations are also based on documentary evidence, e.g.: meeting minutes, business emails, telephone records and video conferences between culprits and their accomplices. They also monitor social media.

One unavoidable method is through physical intelligence/surveillance via phone call interceptions, which have its own challenges as culprits tend to use phone numbers that are registered to complete strangers, minimizing linkage evidence. These tactics used by culprits cause delays in most investigations. Physical surveillance & cross border movement have been utilized to identify the culprit and their accomplices linking them as documentation related to crimes tend to end at their accomplices.

Financial trails identified through collaboration with Bank Negara and FIU have been monumental in MACC investigations. Suspicious transactions will be disclosed to MACC by Bank Negara Financial institutions are also legally required to disclose suspicious transactions to the FIU, who will then disseminate the information to relevant LEAs. Information related to money laundering and corruption is relevant to MACC investigations.

CHALLENGES TO IDENTIFY BO

Identifying BOs have come with their fair share of challenges, which Tn. Faizal has experienced in his investigations. Obscure financial trails lead to many difficulties in identifying culprits as they would operate in cash to avoid alerting financial institutions or LEAs. To curb this, Bank Negara had set the CTL (Cash Transaction Limit) for businesses from RM 50,000 to RM25, 000 per day on November 2019, they are also promoting a cashless society for people to adopt, which certain businesses are still resistant to take on but it is on the rise. While virtual currency is gaining traction globally, Malaysian money launderers are still

distrustful of virtual currencies so still primarily deal in cash. MACC had a money laundering case where the culprit had a huge amount of money stashed in homes or even in the form of credit/debit cards.

There are no standardized legislation and jurisdiction when it comes to the definition of “control” and “ownership”. There is also difficulty in determining control and ownership in terms of golden shares. Tn. Faizal recalled a case where the BO was not on any documentation related to companies and had use proxies and his PEP as a vehicle to obtain money and launder criminal proceeds.

The complex and layered structures of corporations make the BO verification process murky, especially in terms of their criminal proceeds and assets. If the assets and proceeds are not recovered or were transferred to various people they are not legally linked to, even if the BO is captured and convicted, once their jail term is over, they can continue to benefit from their criminal proceeds. Other complexities that hinder the investigations are lax laws and regulations that lead to weak or non-existence control, no public offices for investigators to assess, registration functions delegated to agents, adding another layer of anonymity, and flexibility to change ownership.

Collusion has created more obstacle for prosecutors and LEAs to secure evidence as there are instances where gate keepers are in cohort with the culprits, like their lawyer, accountant, company secretary, people with the skills to facilitate these crimes. Other tactics include concealment of information where appointed proxies & nominees are related or family members, and that the disclosed BO information is inaccurate, and there is a risk of destruction of evidence and/or properties if information can be accessed in a timely manner, culprits could take measures to transfer properties outside of MACC’s jurisdiction hampering the investigation.

There are issues in BO implementation and enforcement, where the accessibility, integrity and veracity of BO information need to come with comprehensive BO provisions under CCM to cover every angle possible. The limited capacity and capabilities of regulatory, supervisory, and enforcement bodies that ensure that laws and regulations related to BO are complied with affect investigations where BO databases are comprehensive, accessible, updated, and error free, the available of competent staff to review, supervise and enforce BO requirements, and gatekeepers inability to ensure complaints by their clients/customers. There are also inadequate sanctions to force compliance, he personally believes that Malaysia needs more stringent penalties for those who intentionally do not comply to the law regarding BO information submission to respective entities.

IMPACT OF CHALLENGES

The repercussions of getting wrong information, would set the case in the wrong direction, which would lead to the arrest of a lower ranking accomplice in the BO scheme instead of the true BO. This affect asset recovery as lower ranking accomplices do not have much in terms of assets versus the BO who had benefited from their criminal activities and escape law enforcement.

Ineffective arrest ultimately affects the reputation of LEAs, as they are perceived to be incapable of investigating complex structures so there is a strong need for LEAs to build on their skills to combat BOs.

Tn. Faizal briefed on the challenges in addressing beneficial ownership through case study

CASE STUDY #1

Excessive card expenditures in the multi million range was raised by a financial institution that alerted FIU suspecting that the transaction was related to money laundering. FIU then forwards it to Bank Negara who analyzed it and submitted it to MACC. The suspect had built 20 to 30 companies registered under various people in personal network, who are considered PEPs, while holding control over all of them. There was no documentation of his BO until onsite investigations found the financial trail that led to a company that belonged to the culprit's son and so the real BO was identified and arrested.

CASE STUDY #2

A state EXCO member who abuses his position and power, while also using legal arrangements to launder money. All payments were facilitated by a law firm that funneled the proceed to his various companies and how own personal accounts. This case exemplifies why financial institutions need to conduct extended customer due diligence when it comes to PEPs.

MOVING FORWARD

Tn. Faizal stated that moving forward BO investigations would need more joint operations between regulators and LEAs to bring the full force of the law against offenders. It will create greater sharing of expertise and human capital resources and more accessibility to information.

Continuous capacity building to upskill and reskill Law Enforcement Officers with prevalent knowledge, latest trends, modus operating and typologies, so they are better equipped to carry out complex investigations like those relating to BO. Due to Money laundering becoming a complex and expansive system that funnels multibillions across borders, LEA officers need to be able to cope, especially for cross border cases.

Greater risk assessment to be conducted that identifies of high-risk areas and people due to limited resources, targeting high risk areas in terms of corruption and money laundering would be the most effective approach. Therefore, we need to adopt and adapt our risk assessments as it was set out in the FATF recommendation 1. There is also a need to development of strategic action plan to mitigate the identified high risks, which is why the MACC, LEAs and regulators are collaborating to discuss high risk areas in Malaysia.

In the future, Tn. Faizal hopes to see more strategic collaboration, i.e.: information sharing with FIU to further build on the strong network and cooperation. The goal to join International and regional networks means that local authorities and LEAs need to build their skills up, with close cooperation with regional peers.

Q&A SESSSION, MODERATED BY MS CYNTHIA GABRIEL, DIRECTOR OF CENTER TO COMBAT CORRUPTION AND CRONYISM (C4)

From left to right: Ms Cynthia, Mr Ly-Batallan, Mr Raymon, Pn Norhaiza and Tn Faizal during the Q&A session

The Q&A Session opened with Moderator, Ms. Cynthia Gabriel, framing the discussion by asking the panelists questions about BO transparency and money laundering

MS CYNTHIA: Malaysia has seen corrupt leaders unmasked following a surge of public support, this work can be difficult without the public as MACC had shared. The panel welcomes critical comments and ask attendees to be frank as to deal with corruption is to be clear and understand the complexity of the issue. Within the Malaysian context, the Official Secrets Act hinders transparency in BO, how can that be overcome? We also recognize the difficulties of this work would new legislation help detect money laundering or would it be due to more joint collaborations?

TN FAIZAL: The main objective of establishing the MACC was to create strong collaborations between countries with similar entities and address high risk crimes in Malaysia. In November 2018, MACC launched an effort similar to that in the UK where a public-private partnership was created between Bank Negara, LEAs, and regulators. Where the parties would share information to address financial crimes, for national leaders and underworld activities. The goal is to effectively address high risk crimes like human trafficking, smuggling, and corruption. Now, with data provided by Bank Negara, and Customs, MACC can design a plan to address these issues more effectively via multiple approaches.

MS CYNTHIA: A lot of company information held by CCM is behind a paywall making it difficult for CSOs to assess the transparency of companies, would it beneficial to make all the information publicly available? Based on my experience on local councils, the same BO would be bidding for the same tenders and procurements under different company names.

PN NORHAIZA: CCM formulated the BO idea in 2014/5, where there was no point of reference of any country that has made their BO registry public and so have designed it based on FATF standards at that point of time. The registry was designed to give LEAs avenue to carry out justice and so the information will be made available to them and authorized people who need access to that BO. Local laws, like the Personal Data Protection Act, prevent the registry from going public but with enough political will, the laws can be amended.

MR RAYMON: I applaud CCM in drafting this platform and recognize that making the registry public will require political will and there are a few workarounds available to address concerns, like the Corporate Liability Provision to be enacted in June 2020, companies can have access to BO information and that will be part of the due diligence clause. There's also the 5th directive under the EU where BO information doesn't have to be disclosed if there is significant risk of blackmail or if they are a minor.

MR LY-BATALLAN: In France, the balance between private data law and the registry was a long process starting from 1979. Even now, access to our BO registry is only available to LEAs, independent authorities we have found balance between private data law. WE want people to be accountable to what they do in 1979. That's a long process. Access to BO registry for now is not public but it is for authorities, LEA independent authorities and people designated have free access to it. Given our experience, as you mentioned -. This is a way to tackle crime as the perpetrators don't have to repeat anything while we do.

QUESTION ROUND 1

Dr. Loi Kheng Min, Former TI-M member: Based on Section 17A of the Malaysian Anti-Corruption Commission Act 2009, which touches on corporate liability, company directors, and controllers, how would the BO registry under CCM define controller? Would it be the financial controller of the company or a controller equivalent to BO?

Mr Ramachandran, Member of TI-M: Corruption taking shape in Malaysia is rampant as its going top down. Therefore, we should prepare the future of this country by introducing proper value education at the primary level so that at we'll have citizens who believe they need to create their own wealth in the next decade or so.

Dato Dr. Vincent NG, MYPJ: Question in 2 parts, 1. Malaysia has sufficient laws to combat corruption, but it lacks enforcement. 2. The heads of operations of these corrupt operations continue to go free, e.g.: MBPJ expenses which are not transparent, and they often have big budget projects for basic infrastructure. Why is that? How do we tackle these kinds of suspicious activities?

MS CYNTHIA: To note, that we have institutions that investigate these types of claims and very often they would need proof of wrongdoing to take action.

PN NORHAIZA: Regarding the definition of 'controller', the Companies Act 2016 explains how control is extended beyond ownership. So, if Section 17A covers issues beyond ownership that would include BO as they have dominant influence. Meaning that individuals with golden shares or negatives shares can be considered as the BO.

MR LY-BATALLAN: It's very clear that BO goes beyond shareholding, we look at voting rights, control through shareholder agreements or any concrete means to permit control over company even if it's not legal.

PN NORHAIZA: I think our BO guidelines will detail that further, as people can be creative about limitations set, so the guideline will be clear on the BO be it one person or a collective. We hope that the information disclosed to the BO registry will be accurate and list out each shareholder and we believe that the 6-month period we gave companies to compile and submit this information is sufficient, given that they would have to verify every one of their shareholders.

MS CYNTHIA: LLPs could be a loophole for companies to not disclose the identities of their directors and shareholders. E.g.: Taib Mahmud, who still holds a range of companies that have registrations under the Companies Act 2016 and have LLPs. Could you elaborate on that?

PN NORHAIZA: The BO reporting framework will cover LLPs in that we require new LLPs to disclose BO information registration and submit their annual declaration where we would request BO information. We impose the same information requirements for those in control of LLPs as companies limited by shares. However, if one of the companies involved are in the exempted categories, they would remain exempted because their BO information would be with other authorities in Malaysia.

QUESTION ROUND 2

Mr Balbeer Singh, MACC: It's very enlightening to know that CCM is coming up with guideline on BO and that synergy developing is great. Will the synergy between CCM and MACC be extended to other entities like LHDN, Immigration or Bank Negara, to address any other possible loopholes?

PN NORHAIZA: BO in procurement process is a matter deliberated by MOF, CCM, and MACC's part of the task force. The information that currently resides with CCM would address some of the issues related to procurement and assess company actions. The Companies Act 20016 does have gaps in terms of activities and CCM hopes that MACC will develop laws related to Bos in the procurement process that addresses these gaps. CCM has no issues to amend local laws to make BO registry public, it only requires political will. CCM officially are facilitators for these cases to provide information to LEAs as well as MACC.

TN FAIZAL: MACC have proposals for top management regarding BOs for more specific activities within the government procurement process. Malaysia has a rampant problem with 2-dollar companies getting million-dollar projects, we need to assess how companies with these limited capitals would be able to carry out big budget projects, how do they secure these projects through the tender process? Usually there are invisible hand pulling strings to grant them these projects and the board that grants these projects at times are acting under duress as these companies could be related to various PEPs. Often these 2-dollar companies are decoys and MACC is focused on this misuse of BO vehicles by collaborating with other regulatory bodies and minimize the risk posed by these companies. One approach is to have the MOF exclude 2-dollar companies from the procurement process and have companies fully declare on whose behalf they are acting on if they wish to take part in the government tender process as they are executed with the peoples' money and government assets. This information would be cross checked between CCM and MOF. Developing the skills of officers in CCM and the MOF, when dealing with the company applications so they can recognize suspicious activities and alert LEAs, is another approach.

MS CYNTHIA: Will this new provision be incorporated into the MACC Act or drafted as a separate law?

TN FAIZAL: We propose to have a new provision to incorporate to existing MACC law, but it is up to our top management as it is in line with the National Anti-Corruption Plan until 2030. So, this new provision will be more effective and rational as it will extensively cover many items across the board.

MR RAYMON: CCM's registry is a great effort in BO transparency, but it will definitely not be perfect upon launch. As the French have done it and it took them years to improve their own registry to better identify gaps and improve. While the ideal is to have the registry publicly available to put more eyes on these companies involved in public procurements, the current goal is to have the registry set up and keep monitoring and assessing its effectiveness to achieve the objectives set forth.

FINAL QUESTION

Ms Shuhairoz Mohamed Shukeri, Institut Integriti Malaysia: No one has mentioned politicians, who we know are BOs and play a significant role in procurements. What will be the Malaysian laws be to curb this in the future? For instance, the procurement of ineffective visas and passport processes under the Immigration Department were managed by politicians. What can we do to curb politicians from disrupting the procurement process?

Ms Shuhairoz from INTEGRITI raised question to the panelists

PN NORHAIZA: We have crafted the BO definition to cover significant or dominant control, which will cover anyone irrespective of their political position, including PEP, if they are controlling the company, they are the BO. The challenge is to identify who is a politician depending on the context, which then can be checked against the registry. For example, if there is evidence of a minister controls a company, we can take action against said company for not naming that minister in their BO information.

CONCLUSIONS

MR RAYMON: PEP, biggest challenge, not just PEP but also RCAs are the highest risk because politicians often put RCAs as the BO rather than themselves. Being a CSO advocate I believe that the measures and frameworks being set up are a good step forward and MACC is working closely with CCM and Bank Negara and other stake holders, we're happy to see that. So, moving forward let's get the platform up, identify the gaps and the work on the challenges.

MR LY-BATALLAN: We've got a special attention to PEP that including French ambassadors abroad, when they return to France and as we discussed with Pn Latheefa before, every elected MP must declare their assets in France. The High Authority of Transparency of public life have registered 50,000 declaration of

assets that is publicly accessible. Anyone can know their interests, real estate and shares held in which companies, so transparency is the key there and Malaysia is engaging in the right direction and I'm sure you'll succeed in getting a better society through that.

PN NORHAIZA: For SSM, this is an exciting journey and a new start in real transparency, this will be a platform we can all test the accuracy of the information and how it can benefit corporate community at large. Hope that by moving forward we will work to make it more publicly available, we're more than happy to hear the comments from this room and hope to get more work and study done to make this a publicly available platform.

TN FAIZAL: In my personal view regarding BO and PEP, PEP pose the highest risk of financial crimes due to their network access and position, a group of people who are connecting the influential and powerful. Granted PEP could even include personal assistants and drivers of politicians due to their own exposure. So, moving forward we would need collective action from all levels to address PEPs, particularly from the GIACC, who are in the best position to spearhead this work to identify PEP and draft policies regarding them as Malaysia does not currently have a list of PEPs. Research would have to be done to identify people who fall under this category and whether cross relation associates should be considered as a PEP.

MS CYNTHIA: It's essential to have these discussions on a more localized level to drive public pressure for greater transparency. To instill these priorities so the private sector will know that their actions are being scrutinized. The importance of regulatory bodies have also been highlighted and their strength is depending on the clarity of their legal mandate and independence to combat PEPs. This forum marks a great start from TI-M to have these discussions regarding such a technical issue. A lesson to be taken in would be France's development of cross-border regulations as no corrupt offender would keep their money locally. It is essential to understand the issue and connecting with the National Anti-Financial Crime Center would be one step to assist in this process.

Participants jotted down important notes throughout the forum

CLOSING REMARKS BY YBHG PN LATHEEFA BEEBI KOYA, CHIEF COMMISSIONER OF MACC

Pn. Latheefa Koya officially ended the forum by giving her closing remarks

YBhg. Pn Latheefa began her talk by addressing two comments made during the Q&A session. She elaborated on corporate liability and how it includes BO, but a corrupt crime needs to be established before MACC can take action through vicarious liability to the senior management of the company, that could include the BO, controller, company secretary, directors, etc. The controller has to have effective control towards the corrupt act, hence section 17A.

As for the MBPJ complaint, she could not comment further as she did not have the relevant information but assured the gentleman that she will personally follow up on the matter.

She continued her closing statement by defining BO and the harm it causes. Legal people have been abused for the benefit of money launderers, tax evaders, and corrupt figures as the Panama papers has revealed, the layers of ownership of offshore companies that led to the corrupt reaping unlawful benefits and escaping law enforcement. MACC had received reports of politicians sitting behind corporations to benefit from foreign investors who conduct exploration exercises and business in the country.

The current BO provision in the Companies Act 2016 may be limited but the proposed BO reporting framework developed by CCM will give strength to the provision and have companies submit their BO information in a timely manner. Specifically, this concerns companies reporting obligation about a natural person holds shares or ownership interest of more than 20% for one corporation or multiple, which will also indicate indirect ownership.

This initiative will get the ball rolling for more transparency and a multipronged approach would be needed. As FATF had released their best practices on BO in October, it called for at least using one or more of the proposed approaches; registry approach, company approach, and existing information approach, to ensure the information about BO is obtained and kept in a certain location. It should allow for cross sectional referencing.

MACC recognizes the need to include a provision in its act as well to criminalize such practices that enable corruption to take place. Good to note that BO information will be vital to authorities and LEA, it can also be used in due diligence exercises in the corporate sector hence shedding light on true ownership and transparency in the management of a company when it's about to get into an arrangement, partnership or any business partnership. While there is a lot of work ahead, I believe that it's time for Malaysia to move towards greater BO transparency. Unmasking the ultimate BO is vital to identifying culprits who continue to benefit from their schemes by hiding behind such arrangements.