

Strengthening Beneficial Ownership Disclosure in the Extractive Sector in Sierra Leone

SLEITI Workshop

Alexandra Readhead

Objectives of the Consultancy

- i. identify the current legal and regulatory framework and institutional practices related to company reporting on ownership information;
- ii. work closely with Herbert Smith Freehills (HSF) to ensure that the work to date with the National Minerals Agency (NMA) informs their legal review;
- iii. use HSF advice to inform the legal work carried out in point (i);
- iv. assess the institutional capacity of government agencies currently collecting company data to facilitate beneficial ownership data collection, and
- v. provide recommendations for legal and regulatory reforms, new or reformed institutional practices (e.g. which institutions should collect beneficial ownership data, and how), and relevant institutional capacity strengthening measures that will be needed in order to implement the MSG and Government's objectives related to beneficial ownership.

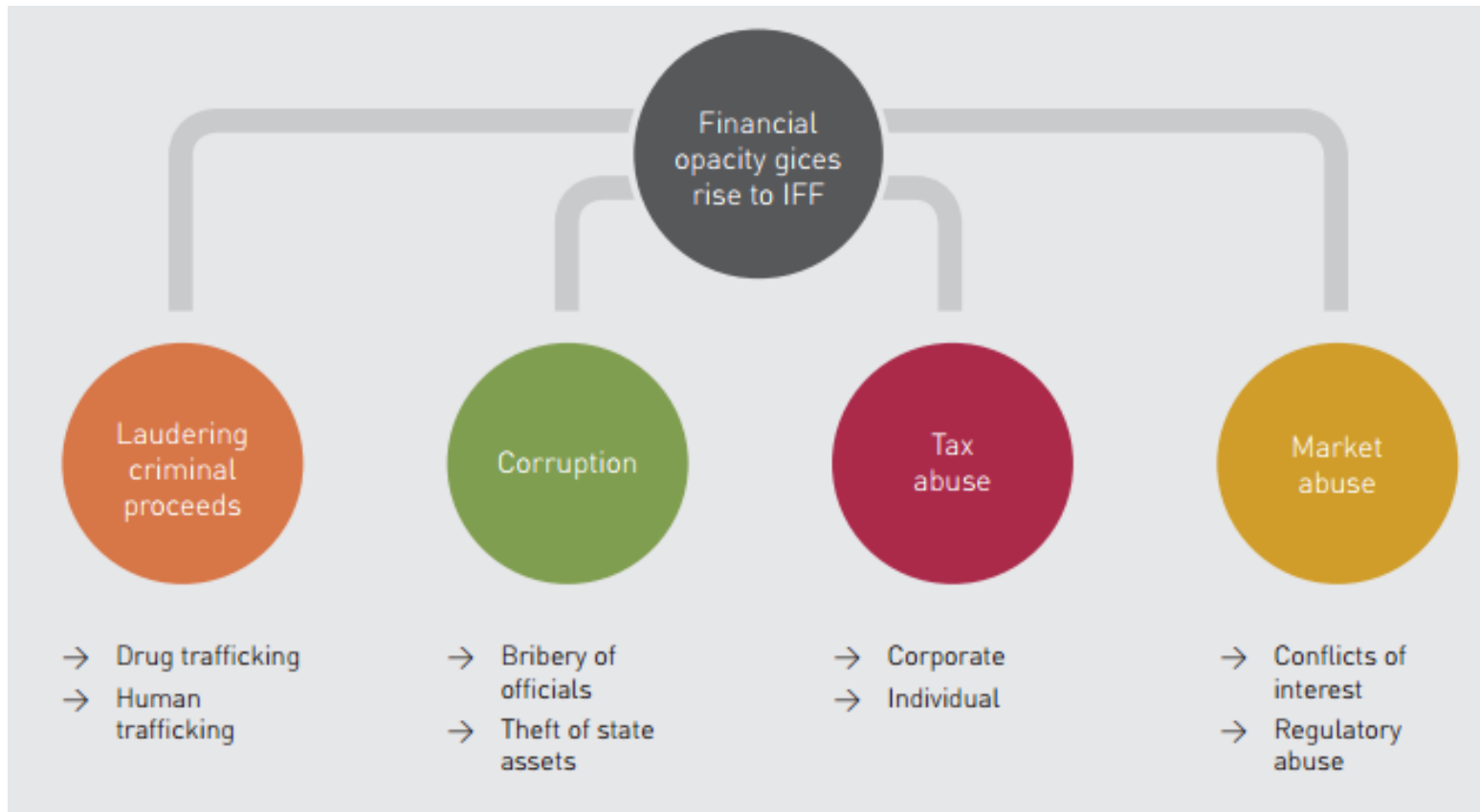
Scope of Workshop

9:30 – 9:40	Introduction and opening (SLEITI)
9:40 – 9:50	Scope, Purpose and Structure of the Workshop
9:50 – 10:30	Illicit Financial Flows: the problem, plus key concepts
10:30 – 11:30	Anonymous Companies and Misuse of Corporate Vehicles
11:30 – 11:45	Tea break
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The Problem of Illicit Financial Flows

Developing countries **lose \$1 trillion each year** as a result of corrupt or illegal cross border deals, many of **which involve companies with unclear ownership**.

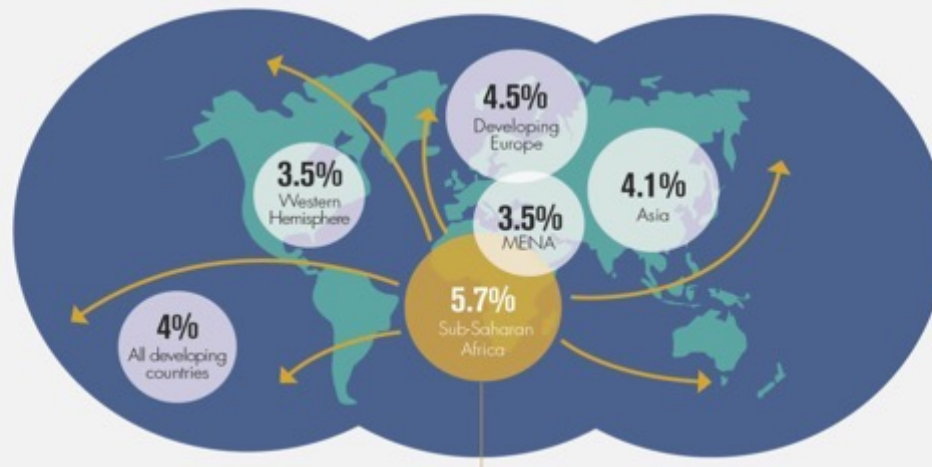
– The ONE CAMPAIGN



Illicit Financial Flows: Africa's Loss

AFRICA'S LOSSES: COST OF ILLICIT OUTFLOWS

Percentage of GDP that regions are losing in illicit financial flows



*MENA: Middle East and North Africa

Total illicit financial flows out of Africa

US\$50 BILLION
EVERY YEAR

This is equal to 5.7% of Africa's GDP and exceeds regional public spending on health

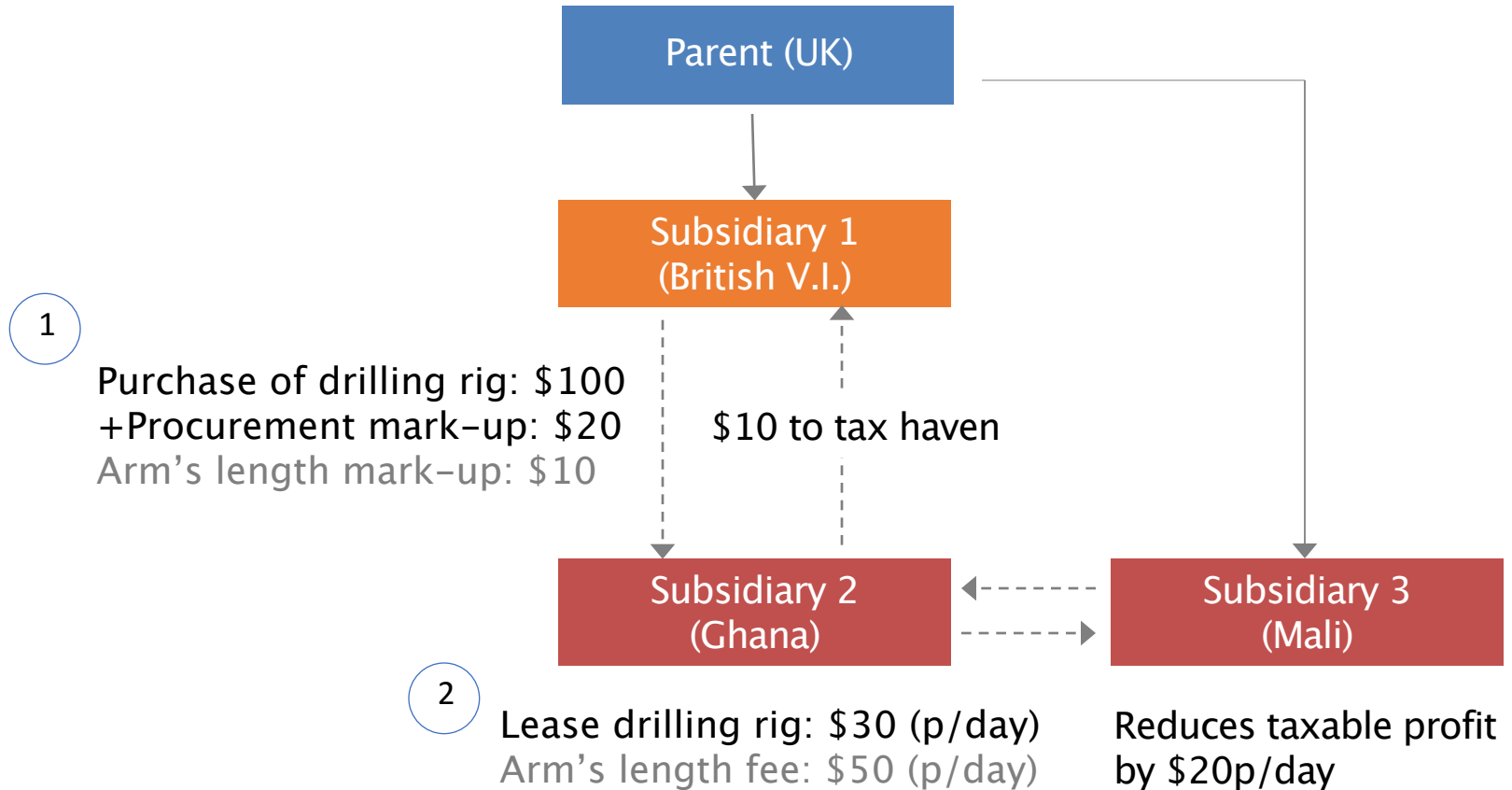
Illicit Financial Flows: Key Concepts

Tax Avoidance and Evasion: what's the difference?



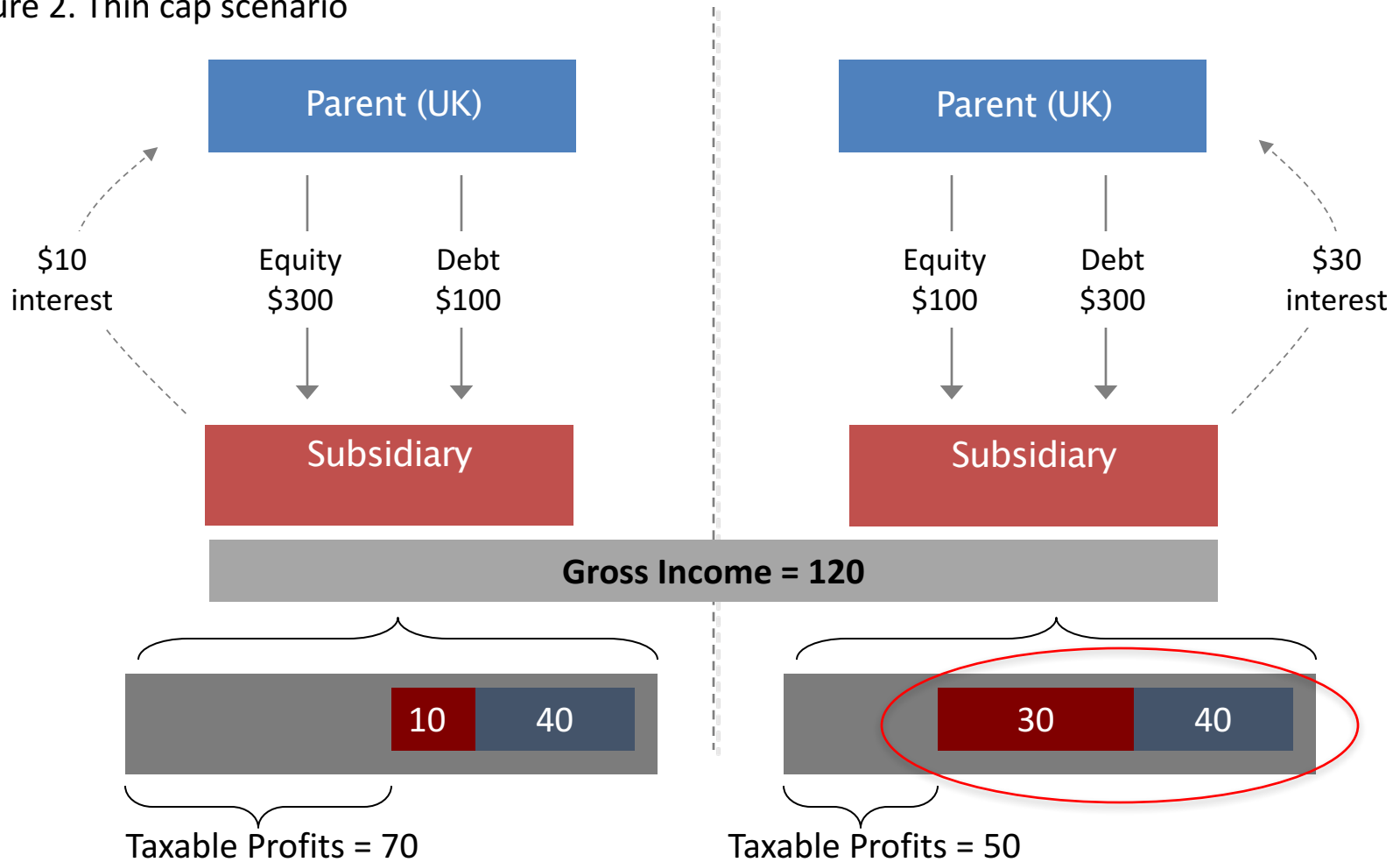
Examples of Tax Avoidance: Transfer Mispricing

Figure 1. Transfer pricing scenario



Examples of Tax Avoidance: Thin Capitalization – high levels of debt;

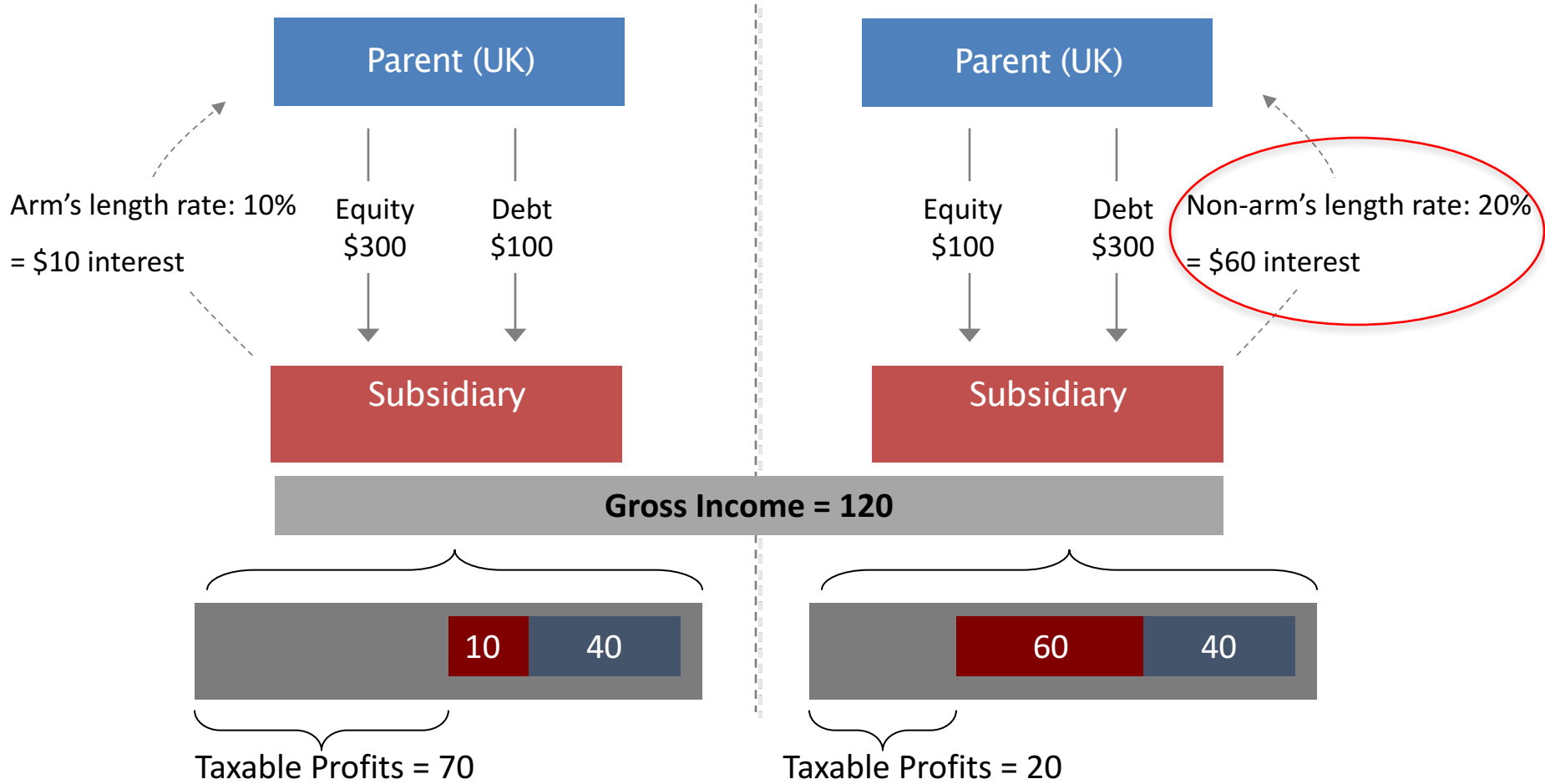
Figure 2. Thin cap scenario



* Interest rate is 10%

....and interest deductions.

Figure 3. Thin cap scenario



* Interest rate is 10%

Examples of Tax Avoidance: Treaty Shopping

How Paladin Energy Ltd. lowered its tax bill in Malawi:

The total withholding tax lost in Malawi and its journey to Australia



Source: Action Aid. *An Extractive Affair*. (2015)

- Australian uranium company
- 80% debt mainly from Paladin Netherlands BV (almost identical loans from parent in Australia), to which it also paid management fees (no employees in Netherlands);
- Tax treaty between Malawi and Netherlands (2009- 2014) – exempting WHT on interest payments & management fees (otherwise 15% as per law);
- Paid \$48mn in interest and \$134.55mn in management fees to Paladin Netherlands (2009-2014);
- No treaty: Australia & Malawi.

Money Laundering.

Money laundering is a process whereby the origin of the funds generated by illegal means is concealed (e.g. drug trafficking, gun smugglings, corruption etc).

A TYPICAL MONEY LAUNDERING SCHEME



Terrorism Financing.



In 2003 and 2004 the FBI undertook investigations into the links between Al Qaeda operatives in West Africa and their involvement in the diamond trade.

According to classified briefings given to Congressional members by the FBI's Terrorist finance team they confirmed that Al Qaeda operatives were in Liberia and Sierra Leone in order to gain access to the lucrative diamond trade.

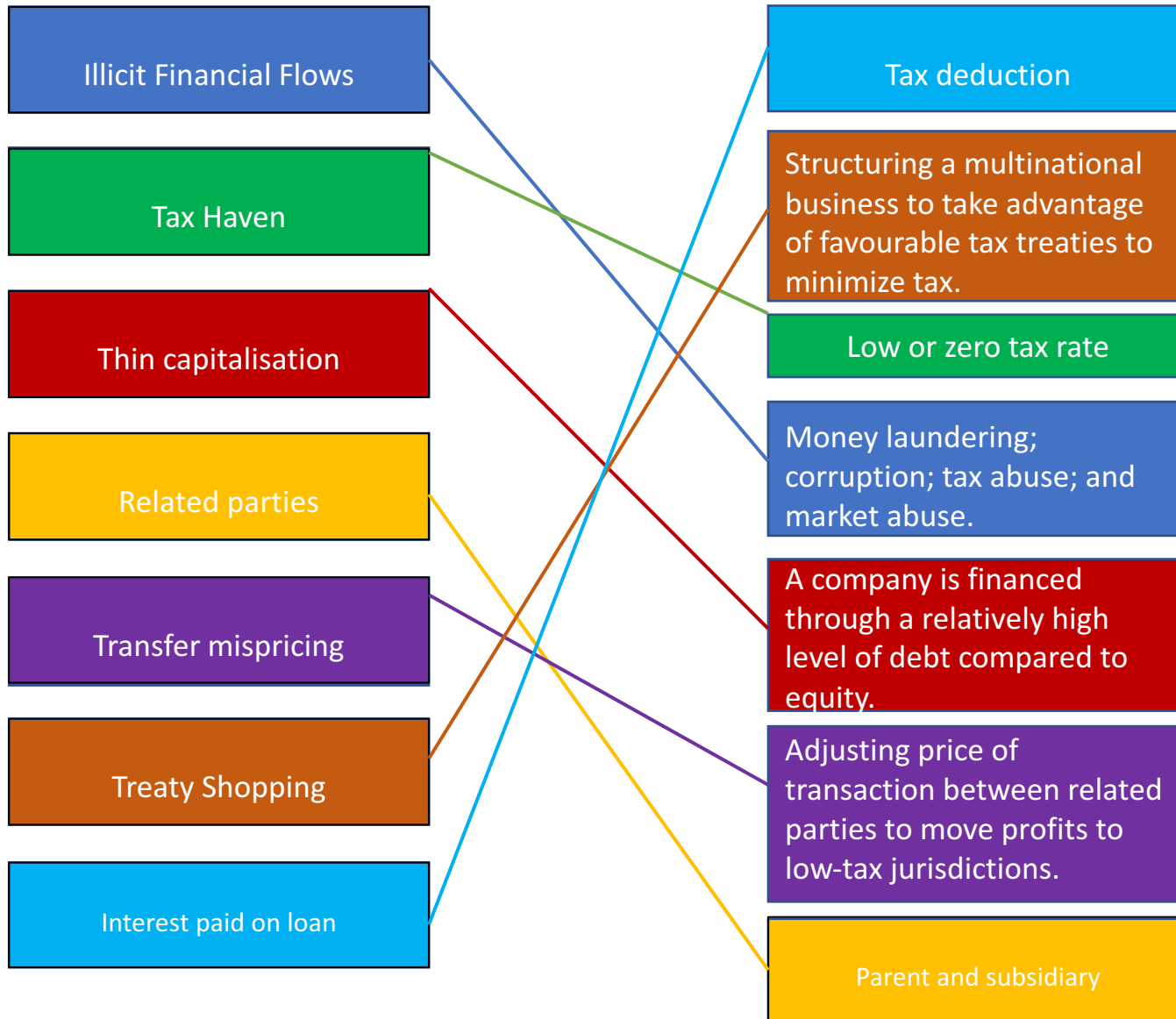
Conflict of Interest.



There are a range of international and regional initiatives to counter IFFs.



Exercise: Find the pairs



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Anonymous Companies



Beneficial Ownership – FATF Definition

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

What types of beneficial owners can you think of?

Legal Vs. Natural Persons

“Legal Persons”	“Natural Persons”
<p>Any entities, other than natural persons, that can establish a permanent customer relationship with a financial institution or otherwise own property.</p> <ul style="list-style-type: none">• companies,• bodies corporate,• foundations, anstalt,• partnerships, or• associations and other relevantly similar entities that have legal personality.	<p>An individual human being.</p>

Legal Ownership Vs. Beneficial Ownership

Legal ownership means the natural or legal persons who legally own the legal person.

Control refers to the ability to take relevant decisions within the legal person and impose those resolutions, which can be acquired by several means (e.g. owning or controlling a block of shares).

Beneficial ownership extends beyond legal ownership and control to consider the notion of ultimate (actual) ownership and control.

Focusses on both:

- The natural (not legal) persons who actually own and take advantage of capital or assets of the legal person; and
- Those who exert effective control over it (whether or not they occupy formal positions within that legal person).

Ownership and Control

Common Ways of Owning a Company:

- Ownership of shares. Example: 25 % of shares.
- Ownership of voting rights. Example: 25 % of voting rights.
- Other ownership arrangements:
 - **Nominees:** a natural person that holds an interest in a company on behalf on someone else without controlling or owning that interest.
 - **Joint ownership arrangements:** two or more people arrange to exercise their rights jointly.
- The right to appoint/ remove the majority of directors in the company (or equivalent management body).
- Personal connections or contractual associations with individuals in management or Board positions.

Ownership and Control

Other means:

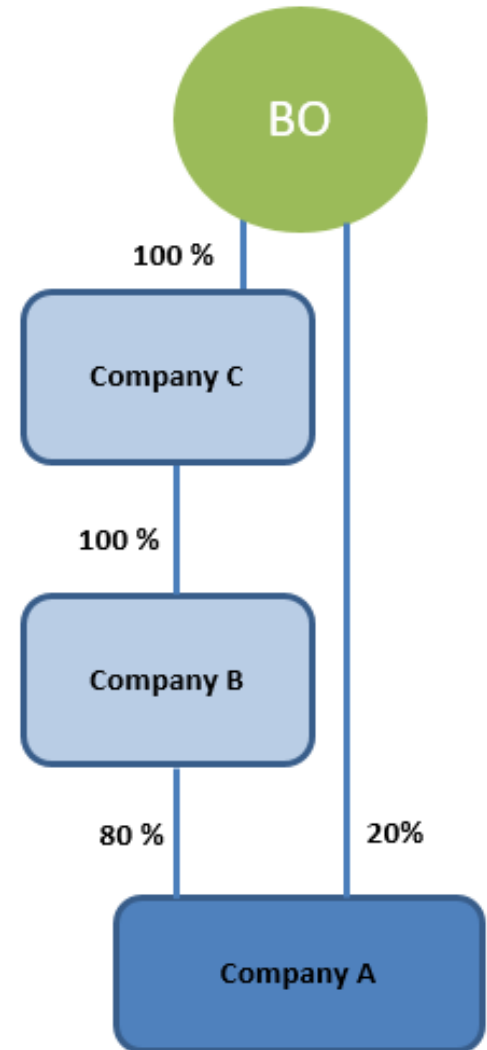
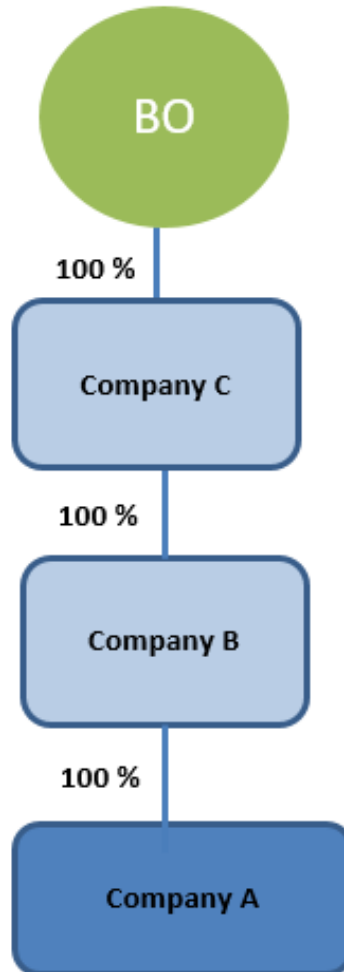
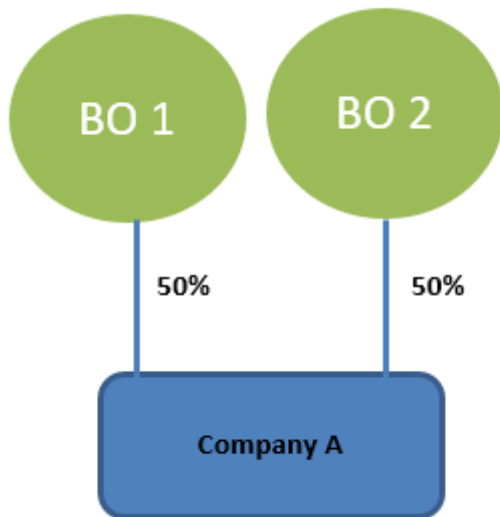
- The right to appoint/ remove the majority of directors in the company (or equivalent management body).
- Personal connections or contractual associations with individuals in management or Board positions.
 - Example: A company founder who no longer has a significant shareholding in the company he started, but makes recommendations to the other shareholders on how to vote and those recommendations are always or almost always followed.
- Right to otherwise exert significant influence on the company's activities, e.g. decision rights, veto rights, right to profit, etc.

Direct Vs. Indirect Ownership

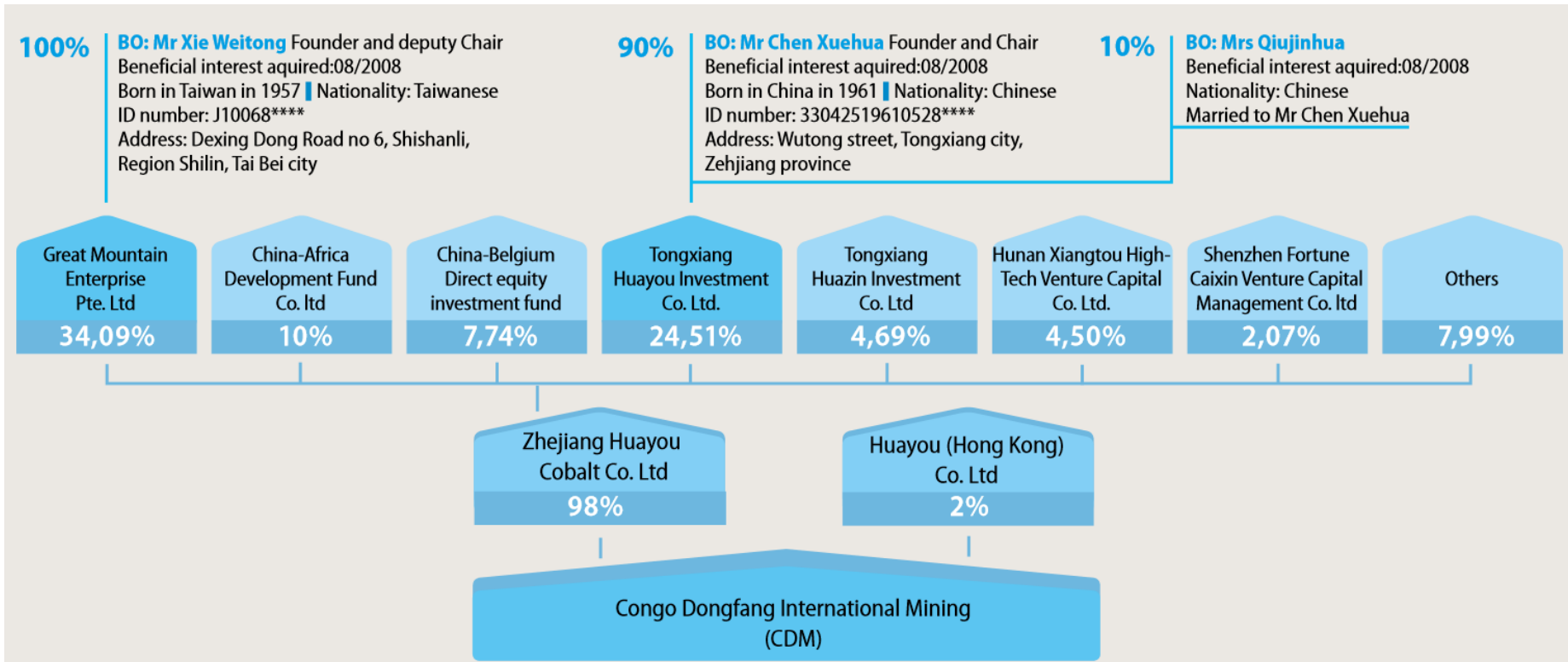
Example 3: Direct and indirect

Example 2: Indirect

Example 1: Direct



What Is the basis for beneficial ownership in this example?



- Do the beneficial owners own their interest in CDM directly or indirectly?
- What does the % threshold for beneficial ownership seem to be in DRC?

UK Definition of Beneficial Ownership

How to identify people with significant control



Politically Exposed Persons

Who is a PEP?

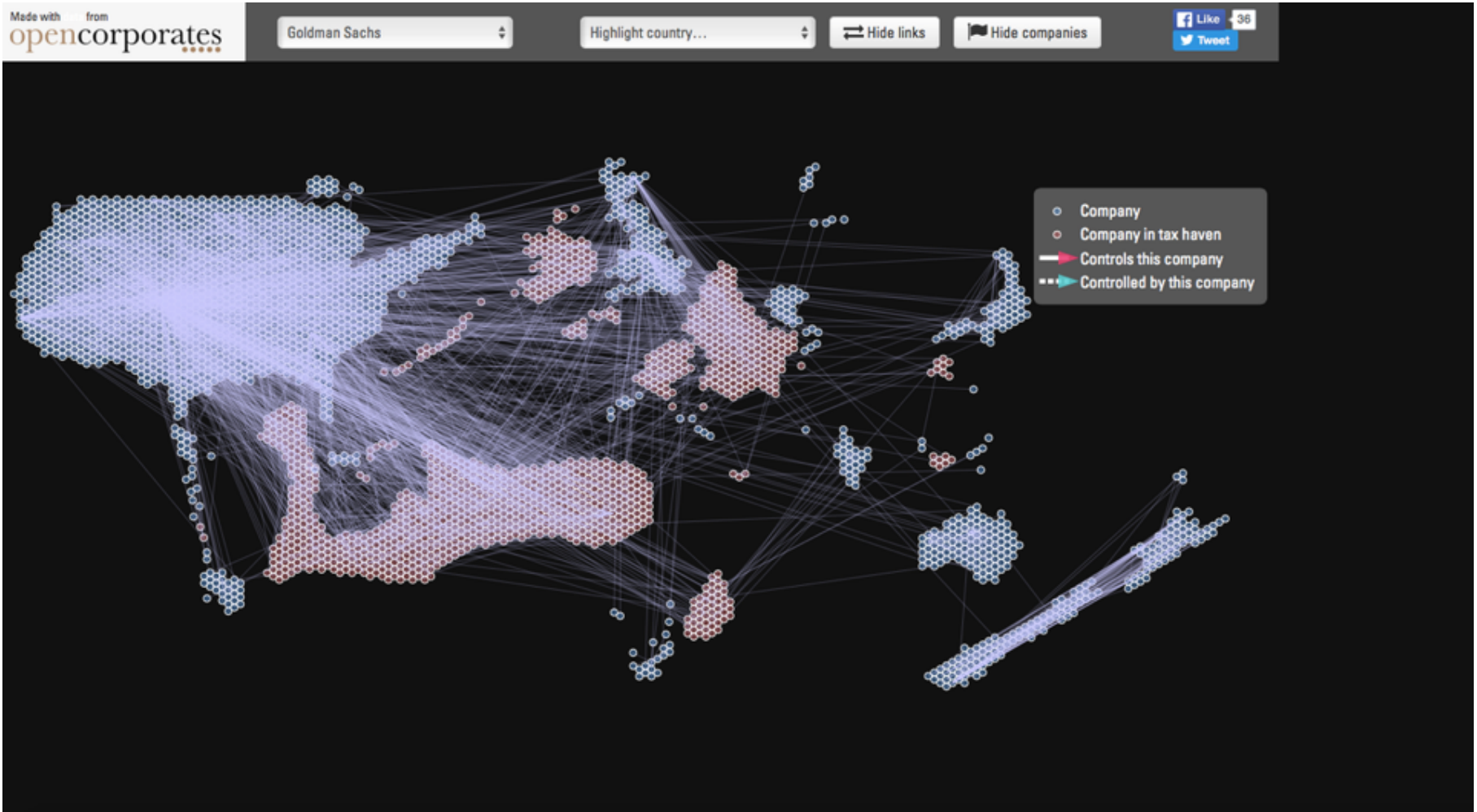
A politically exposed person (PEP) is an individual **who is or has been entrusted with a prominent public function**. Could include close **family members** and **associates**.

- Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned enterprises, or important political party officials.
- Also former officials, if they still have influential roles.
- Family members by blood, marriage or other civil partnership, can stretch beyond immediate family.
- Associates can be both personal social and professional.

Politically Exposed Persons



Complex Corporate Structures



Misuse of Corporate Vehicles to Obscure Identity

- a) **shell companies** (which can be established with various forms of ownership structure), especially in cases where there is foreign ownership which is spread across Jurisdictions;
- b) **complex ownership and control structures** involving many layers of shares registered in the name of other legal persons;
- c) **bearer shares and bearer share warrants**;
- d) **unrestricted use of legal persons as directors**;
- e) **formal nominee shareholders and directors** where the identity of the nominator is undisclosed;
- f) **informal nominee shareholders and directors**, such as close associates and family, and
- g) **trusts and other legal arrangements** which enable a separation of legal ownership and beneficial ownership of assets.
- h) **use of intermediaries** in forming legal persons, including professional intermediaries.

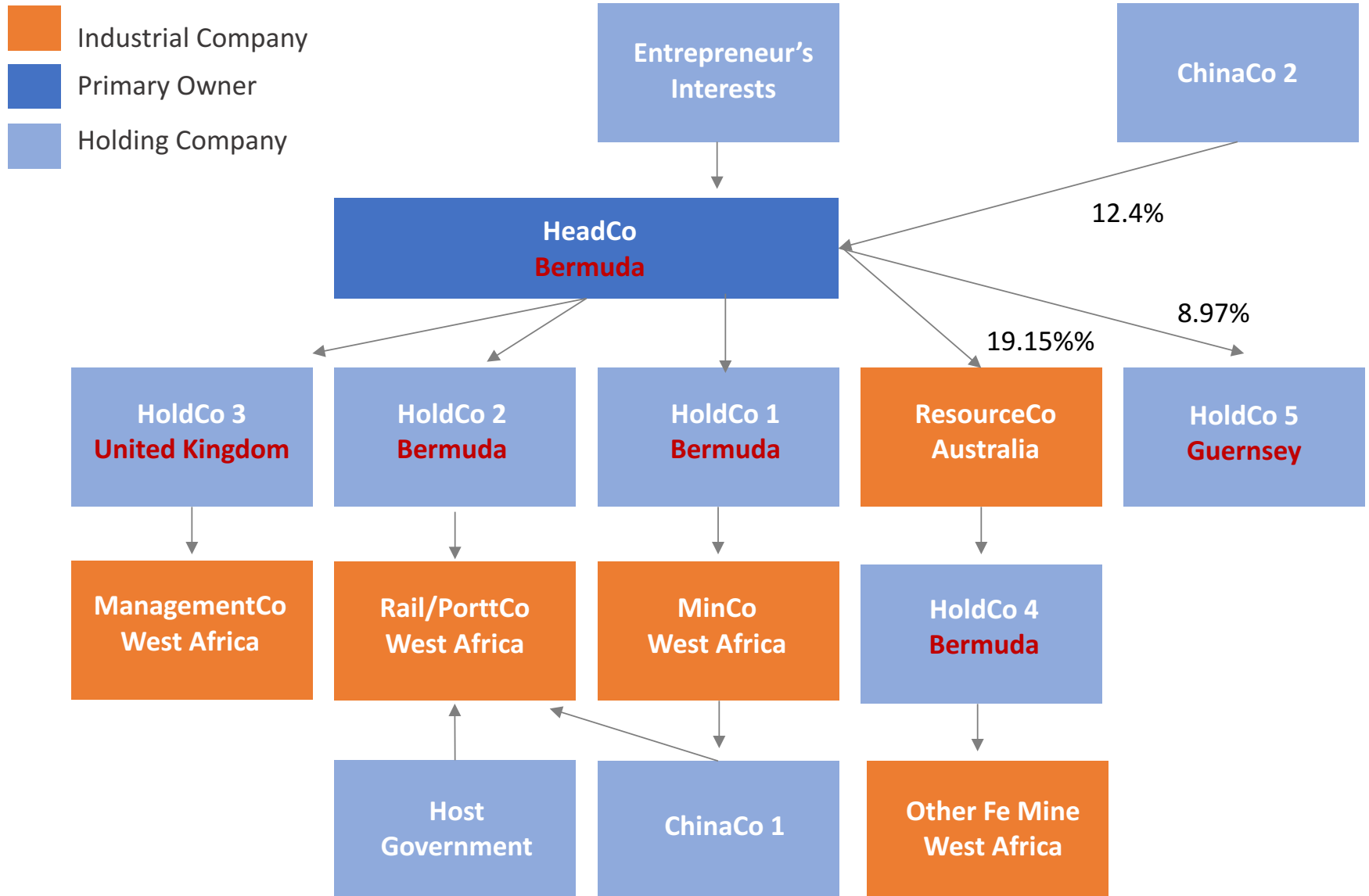
(a) Shell companies;

How to create an offshore shell company

by Logan Whiteside & James Frater @CNMoneyInvest



(b) Complex structure of West African Iron Ore mine creates opportunities for profit shifting;



(c) Bearer shares and bearer warrants;



(c) Legal persons as directors or shareholders;

ALLOTROPES Diamond Company Limited

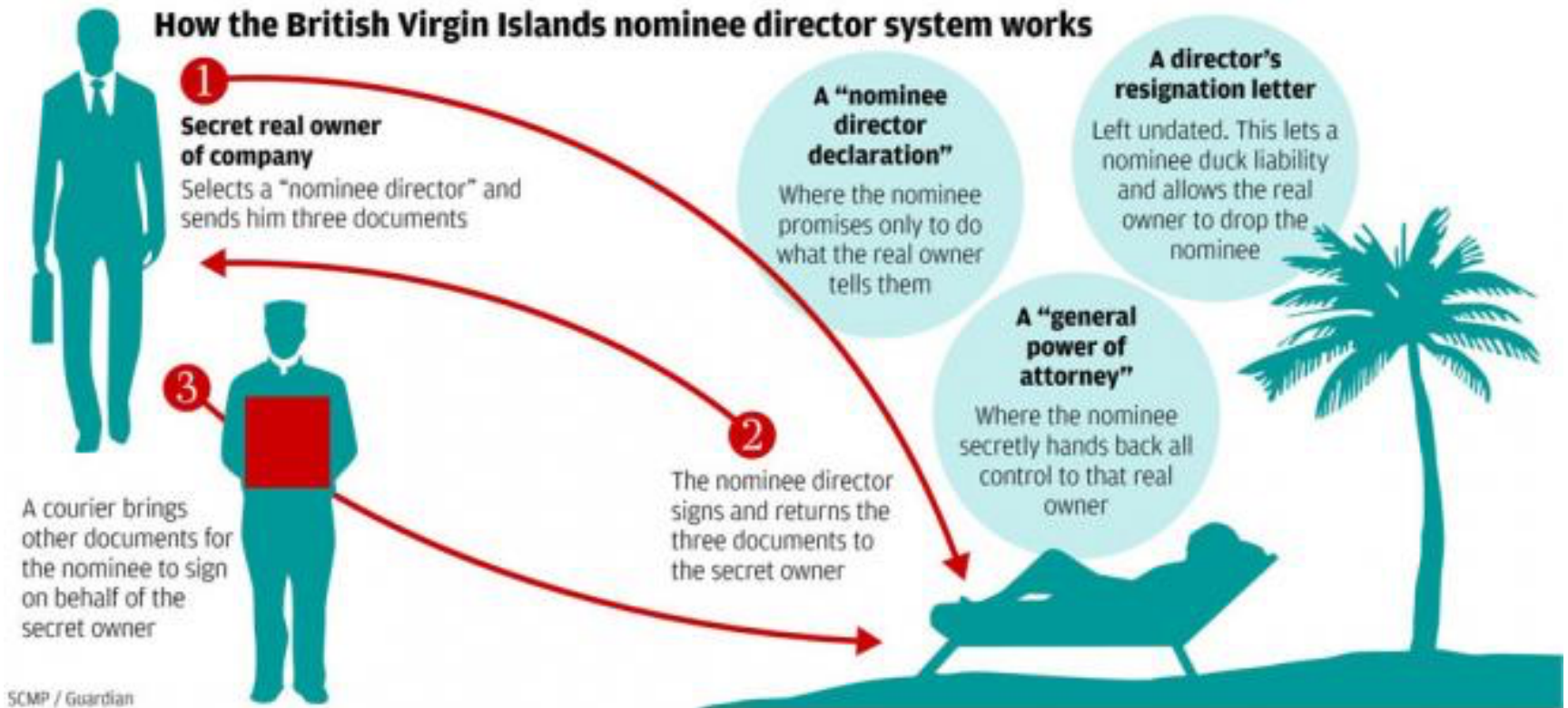
<u>Shareholders</u>	<u>Percentage</u>
Joseph Bundu Kowai	50.00%
Joshua Allan Letcher	50.00%

Problem:

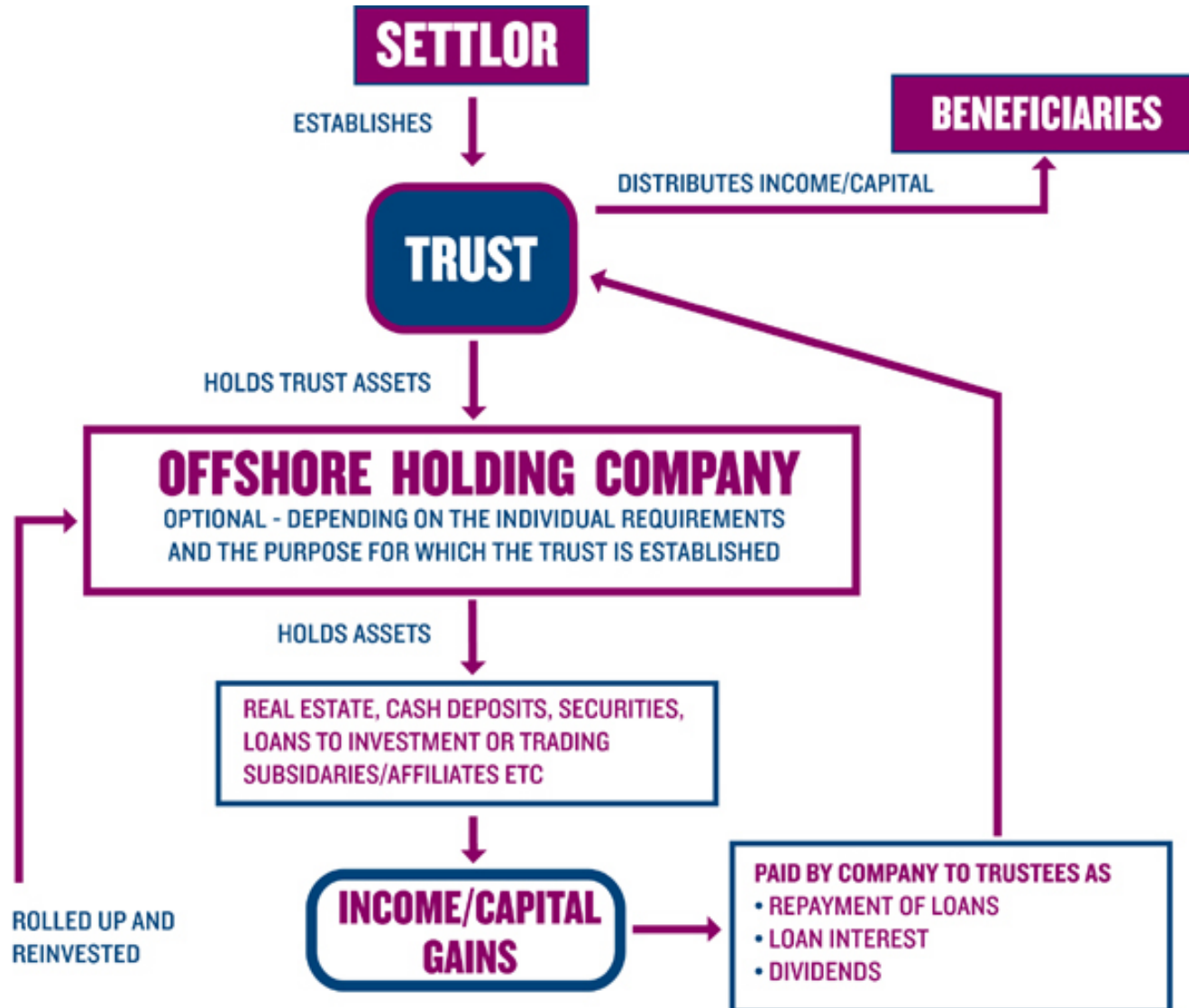
AMR Gold (SL) Limited

<u>Shareholders</u>	<u>Percentage</u>
AMR GOLD HOLDINGS LTD	99.00%
AVIVIT GOLD COMPANY LTD	1.00%

(d) Nominee shareholders and directors (formal and informal);



(e) Trusts;



(e) Intermediaries;

An **intermediary** is a firm or person (such as a broker or consultant) who acts as a mediator on a link between parties to a business deal, investment decision, negotiation, etc.



RAMON FONSECA

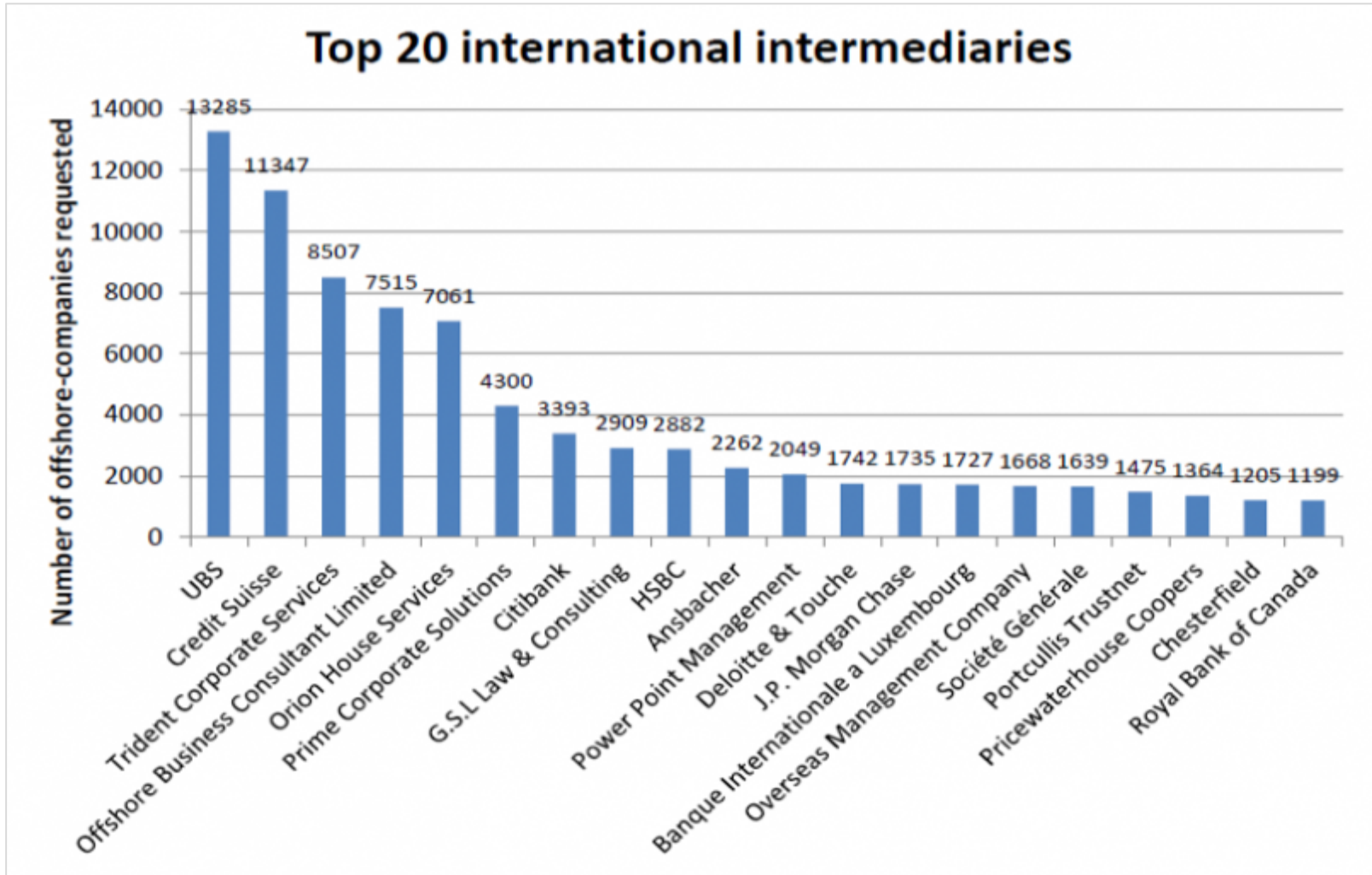
CO-FOUNDER, MOSSACK FONSECA & CO



JURGEN MOSSACK

CO-FOUNDER, MOSSACK FONSECA & CO

(e) Intermediaries;

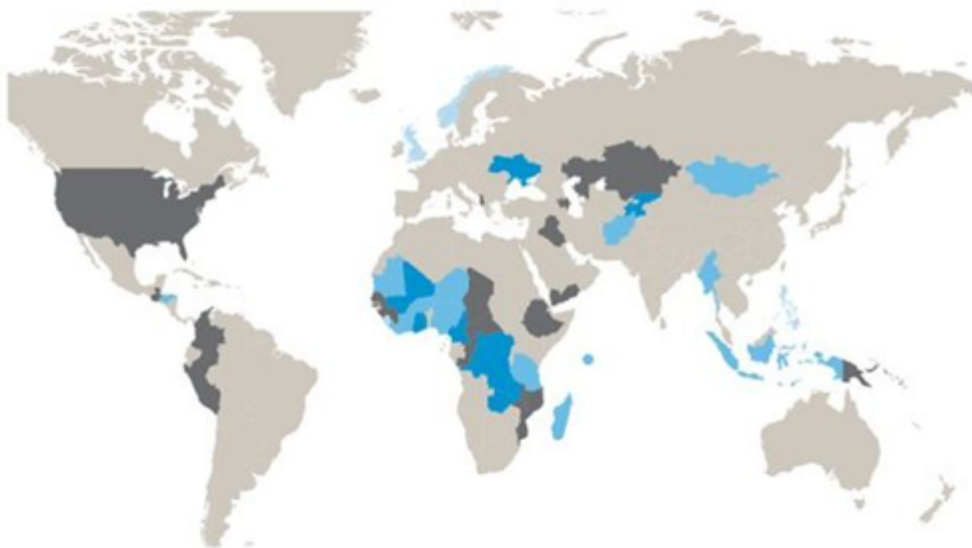


Source: The Greens: European Free Alliance <http://www.greens-efa.eu/en/article/who-are-the-middlemen-helping-to-dodge-tax-or-launder-dirty-money/>

EITI and beneficial ownership



BENEFICIAL OWNERSHIP WHAT IS HAPPENING IN EITI COUNTRIES



Status of EITI countries

- Countries where one or more company has disclosed their beneficial owners
- Countries where one or more company has disclosed their legal owners
- Countries that have begun addressing beneficial ownership
- Other EITI countries

May 2013: EITI Standard recommends establishment of beneficial ownership register.

October 2013: 11 EITI countries sign up to EITI's beneficial ownership pilot.

January 2016: 29 EITI countries are working on beneficial ownership; 9 countries have EITI Reports that disclose the beneficial owners of one or more companies.

February 2016: EITI requires that countries must disclose their beneficial owners no later than 1 January 2020.

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Presentation of Findings: Legal Gap Analysis

Review conducted by Herbert Smith Freehills – note: HSF cannot advise on Sierra Leonean law, and have undertaken the review on a "common sense" basis, with a view to international best practice.

Summary: Key gaps in existing legislation, based on EITI Standard 2.5

a) Publicly available registers of beneficial owners;

- the Mines and Petroleum Acts provide for publicly available registers of ownership interests. However, these registers fall short of EITI standard 2.5(a), as they do not require beneficial ownership disclosure.

b) Definition of beneficial ownership;

- the term beneficial owners (or equivalent) is used in the Mines Act and the Petroleum Act, but is not defined.

c) Type of information to be disclosed.

- to the extent beneficial ownership disclosure is required under the relevant Acts, the details of beneficial owners to be disclosed falls significantly short of the relevant information requirements in EITI standard 2.5(d).

Publicly Available Register

Relevant sections of EITI standard 2.5(a)	Mines & Minerals Act 2009	Petroleum Act 2011	Companies Act 2012
<p>It is recommended that implementing countries: maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets.</p>	<p>All applications for the grant of a mineral right be recorded in a register of mineral rights, including information on shareholders (s41(1)).</p> <p>This register of mineral rights is publicly available (ss 39, 49).</p> <p>No public register of BOs (only legal owners).</p>	<p>The Minister is required to maintain three registers (ss 19(1), 20(3), 36(2), 117)).</p> <p>None of the registers disclose anything about beneficial ownership.</p> <p>A person may, upon payment of a prescribed fee, inspect the register of qualified persons or petroleum rights (ss 19(2), 117(2), 119(1)).</p>	<p>CAC is required to establish and maintain a company's registry (s8(b)).</p> <p>There is no public register of beneficial owners.</p>

Beneficial Ownership Information

Relevant sections of EITI standard 2.5(d)	Mines & Minerals Act 2009	Petroleum Act 2011	Companies Act 2012	AMLCFT 2012
<p>Information about the identity of the beneficial owner should include:</p> <ul style="list-style-type: none"> - name; - Nationality; - country of residence; - PEPs; - national identity number; - date of birth; - residential or service address, and means of contact. 	<p>No information on BOs required, apart from shareholders >5%.</p> <p>No public officer can acquire a right or interest in any mineral right (s19(1)).</p> <p>A member of the MAB must also disclose any interest in any matter to the Board. (s 15(1)).</p>	<p>No information on BOs required, apart from shareholders >5%.</p> <p>Public officers are restricted from acquiring interests in petroleum rights and the Director General is required to disclose any interests they have.</p>	<p>No equivalent provision.</p>	<p>No equivalent provision.</p>

Assuring Accuracy of Beneficial Ownership Information

Relevant sections of EITI standard 2.5(e)	Mines & Minerals Act 2009	Petroleum Act 2011	Companies Act 2012
<p>This could include:</p> <ul style="list-style-type: none"> • requiring companies to attest the BO declaration form through sign off by a member of the senior management team or senior legal counsel; • or submit supporting documentation. 	<p>It is an offence punishable by fine for making a false entry in the mining cadastre or producing a false document (s 171).</p>	<p>The Minister can cancel the qualification of a company for a petroleum right where the company supplies false or misleading information regarding the names of beneficial owners holding 5% of the shares. (s 35(6) and (s 16(5)).</p>	<p>Fines apply for failure to comply with the register provisions referred to above.</p>

Definition of Beneficial Ownership

Relevant sections of EITI standard 2.5(f)	Mines & Minerals Act 2009	Petroleum Act 2011	Companies Act 2012	AMLCFT 2012
<p>Definition of beneficial ownership:</p> <ul style="list-style-type: none"> - natural person(s) who directly or indirectly ultimately owns or controls the corporate entity; - should also specify reporting obligations for politically exposed persons; - publicly listed companies, required to disclose the name of the stock exchange and include a link to the stock exchange filings; - joint ventures: each entity within the venture should disclose its BO unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. 	None.	None.	None.	<p>Section 1(a)(b):</p> <p>A BO is “an individual who ultimately owns or controls the rights to or benefits from property, including the person on whose behalf a transaction is conducted; or a person who exercises ultimate effective control over a legal person or legal arrangement.”</p>

Definition of Politically Exposed Persons

Relevant sections of EITI standard 2.5(f)	Mines & Minerals Act 2009	Petroleum Act 2011	Companies Act 2012	AMLCFT 2012
No definition of a PEP.	None.	None.	None.	<p>Section 27(a):</p> <p>A PEP is “persons holding prominent public positions domestically or in a foreign country such as heads of state or government, senior politicians on the national level, senior government, judicial, military or party officials on the national level, or senior executives of state- owned enterprises of national importance, or individuals or undertakings identified as having close family ties or personal or business connections to such persons.”</p>

Preliminary Review of Core Minerals Policy

Mentions of BO in the CMP	Gaps
<ul style="list-style-type: none">• “Support the implementation of transparency and accountability provisions provided for in law, regulations and EITI Standards including mandatory declaration of beneficial ownership of mining companies, all mineral rights licensing processes, as part of existing record keeping systems.”• “Contribute to the implementation of the Disclosure of Beneficial Ownership road map.”• “Establish legal requirement for the mandatory disclosure of beneficial ownership of mining companies.”	<ul style="list-style-type: none">• No definition of BO;• No threshold for establishing BO;• No definition of PEPs;• No mention of BO or PEPs information requirements.

Key Implementation Considerations

Should the beneficial ownership disclosure requirements apply to all companies or only those in the extractive asset space?

- EITI standards only require that it applies to companies in the extractive asset space;
- UK extends BO disclosure requirements to all sectors and all UK companies and limited liability partnerships (other than certain listed companies).

Should there be exemptions from beneficial ownership disclosure requirements?

- In the UK there is an exemption from requirements to report on beneficial owners for listed companies trading on certain 'regulated markets';
- If Sierra Leone is to adopt such a rule, consideration should be given to whether the exemption applies to companies listed on all exchanges or only to specific exchanges.

What steps to identify beneficial owners should a company be obliged to take?

- The UK requires companies to take "reasonable steps" to identify its registrable BOs.

How should companies provide assurance that their beneficial ownership disclosures are accurate and current?

Do all four

Option 1.

Attestation. Require the company to certify the beneficial ownership declaration form. Consider disclosing the name of the person certifying the form.

Option 2.

Supporting documentation. Require the company to attach supporting documentation to the declaration form, e.g. articles of association, powers of attorney, or copies of shareholder registers, verifying the correctness of the information.

Option 3.

Confirmation procedure. Require that the company requests and provides a written confirmation from the beneficial owner.

Option 4.

Identify verification. Require that the company provides a verification of the identity of the BO, e.g. by attaching a copy of proof of identity (e.g. passport copy) to the BO declaration form.

Key Implementation Considerations

Will Sierra Leone create one central public register, have multiple registers, or require each company to maintain its own register?

- Standards recommend that implementing countries maintain a publicly available central register.
- If the BO is to apply across all industries, it will be most efficient to have a single central register maintained by the Corporate Affairs Commission. If the regime is to apply to extractive industries only, it may be more efficient and logical to have multiple registers, given registers under the Mines Act and Petroleum Act are already in existence.

Who will maintain the register?

- Depends on the answer to the above question.

How should a BO who has a controlling ownership interest in a company be defined?

- The UK uses a 25% ownership threshold;
- Sierra Leone may want to use a higher threshold given a lower volume of companies.

Key Implementation Considerations

Should persons who control a company other than through a controlling ownership interest be included in the definition of beneficial owners?

- UK approach captures such controlling interests – the disclosure requirement applies to any individual who:
 - has the right to exercise, or actually exercises, significant influence or control over the company or
 - holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company.
- If this approach is adopted, then a statutory definition or guidance will need to be provided as to the meaning of "significant influence or control" (or the equivalent terms).

What information should be provided?

- EITI standard 2.5(d) sets out the expected and recommended information that should be provided.

Who should be captured by the definition of politically exposed persons?

- The AMLCFT Act 2012 provides a definition of PEPs.

PUBLIC REGISTER OF DOMESTIC POLITICALLY EXPOSED PERSONS OF UKRAINE

We name all officials who are Politically Exposed Persons in Ukraine.

[Check](#)

Corrupted high level officials easily launder dirty money through the international banking system. That is why special control rules over the financial transactions of public figures were introduced in the world: each financial institution must determine who their clients are, what is the nature of their money and assets and where do they come from. If a client is politically exposed person then his/her financial transactions must be carefully checked.

12967

Individual profiles

7287

Profiles of Politically Exposed Persons

5680

Profiles of close associates and family members

Politically Exposed Persons

The Ukraine Public Register of Domestic PEPs:

The register includes the following information on domestic PEPs:

- Full name
- Type of PEP (PEP, close associate, family member, etc.)
- Date and place of birth
- All officially confirmed places of residence including abroad
- Citizenship
- All officially confirmed places of work (full name of the agency, official website, position, year of appointment and dismissal)
- Financial statement
- List of related individuals (close associates, family members)
- List of related legal entities (full name, type of connection)

Where relevant, the register also includes extended information including about the business reputation of the PEP, such as international sanctions, criminal proceedings, criminal records, involvement in corrupt practices, business connections with other PEPs.

Key Implementation Considerations

Assuming a central register of beneficial ownership is established, should the agency maintaining the register verify the information provided?

- In the UK Companies House is not charged with verifying the beneficial ownership information disclosed by companies.
- However, in light of the different circumstances applying in Sierra Leone (i.e. lower volume of companies registered), it may be appropriate for the Sierra Leonean agency/ies charged with maintaining the beneficial ownership register to be tasked with verifying the information provided.

See a later slide for suggestions on criteria for selecting companies for verification.

What sanctions should apply to companies or beneficial owners which fail to comply with its obligation to disclose and keep up to date accurate beneficial ownership information?

- Criminal and civil sanctions could be imposed for non-compliance to incentivise participants to comply. These could include fines and imprisonment.

Key Implementation Considerations

What obligations should apply to registrable beneficial owners?

In the UK, registrable beneficial owners are under various obligations including:

- A requirement to notify a company of their registrable status;
- A positive duty on registrable beneficial owners to notify the company of any changes to their required particulars within two months of the change occurring;
- A duty to respond to notices seeking the required information.

Presentation of Findings: Institutional Assessment

GoSL institutions currently collecting company data, plus plans to collect BO information:

	NMA & PD	CAC	NRA	FIU	SLEITI
Company data	<p>Industrial license applicants and petroleum license applicants disclose shareholders of >5%, and related parties.</p> <p>NMA is updating forms to include information on directors, officials, related parties, shareholders, criminal and civil proceedings/ findings.</p>	<p>All mining license applicants must be registered with the CAC. Registration process requires disclosure of shareholders >5%.</p> <p>Other relevant company data includes: business name, date of incorporation, registration type, description of business activity, management details.</p>	<p>All mining license applicants must apply for a Tax Identifier Number (TIN) – this includes shareholder information (no limit).</p> <p>NRA receives financial statements (inc. list of directors), tax returns, and transfer pricing documentation.</p>	<p>Focuses on AML/CFT. Monitors customer due diligence in banking; will work with NMA in 2017 to monitor AML/CFT activities in the mining sector.</p> <p>Receives transaction reports from the commercial banks. FIU can access ‘account opening’ packages from banks.</p>	<p>Reconciles mining company and government payment data.</p>
BO Disclosure	<p>Once BO legislation is introduced, NMA will amend license and reporting forms accordingly.</p>	<p>Voluntary BO disclosure included in the Corporate Governance Code of Conduct - to be published in 2017.</p>	<p>Plans to introduce transfer pricing documentation requirements in 2017.</p>	<p>FIU will work with CAC in 2017 to enhance information collection on BOs.</p>	<p>Developed a BO roadmap; plans to introduce voluntary BO disclosure in 2015 SLEITI report.</p>

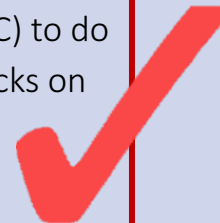
Which GoSL institution should be charged with implementing BO disclosure requirements?

Two questions to consider here:

1. Which GoSL institution has capacity to collect, and most importantly verify, beneficial ownership information?
2. Which GoSL institution does it makes sense to take the lead on beneficial ownership given its mandate, and position?

Assessment of Institutional Capacity to Collect and Verify BO Information.

	NMA	PD	CAC	NRA
Staff working on compliance	4 in Mining Cadastre Office; 4 in Compliance Unit.	-	4 out of 12 staff working on compliance.	4 staff in Extractive Industry Tax Unit.
Company data collection systems	Mining Cadastre System (MCAS)	-	Setting up a database - new companies in the database, transitioning all other companies previously registered with the OARG across.	Tax returns entered manually; in process of moving to e-returns.
Knowledge and experience of BO	NMA has received training on conducting integrity due diligence, including BO. It is exploring the options for outsourcing some due diligence activities to corporate consultancies.	-	- Currently use records from Companies House in the UK and the U.S. Securities and Exchange Commission (SEC) to do background checks on companies.	-

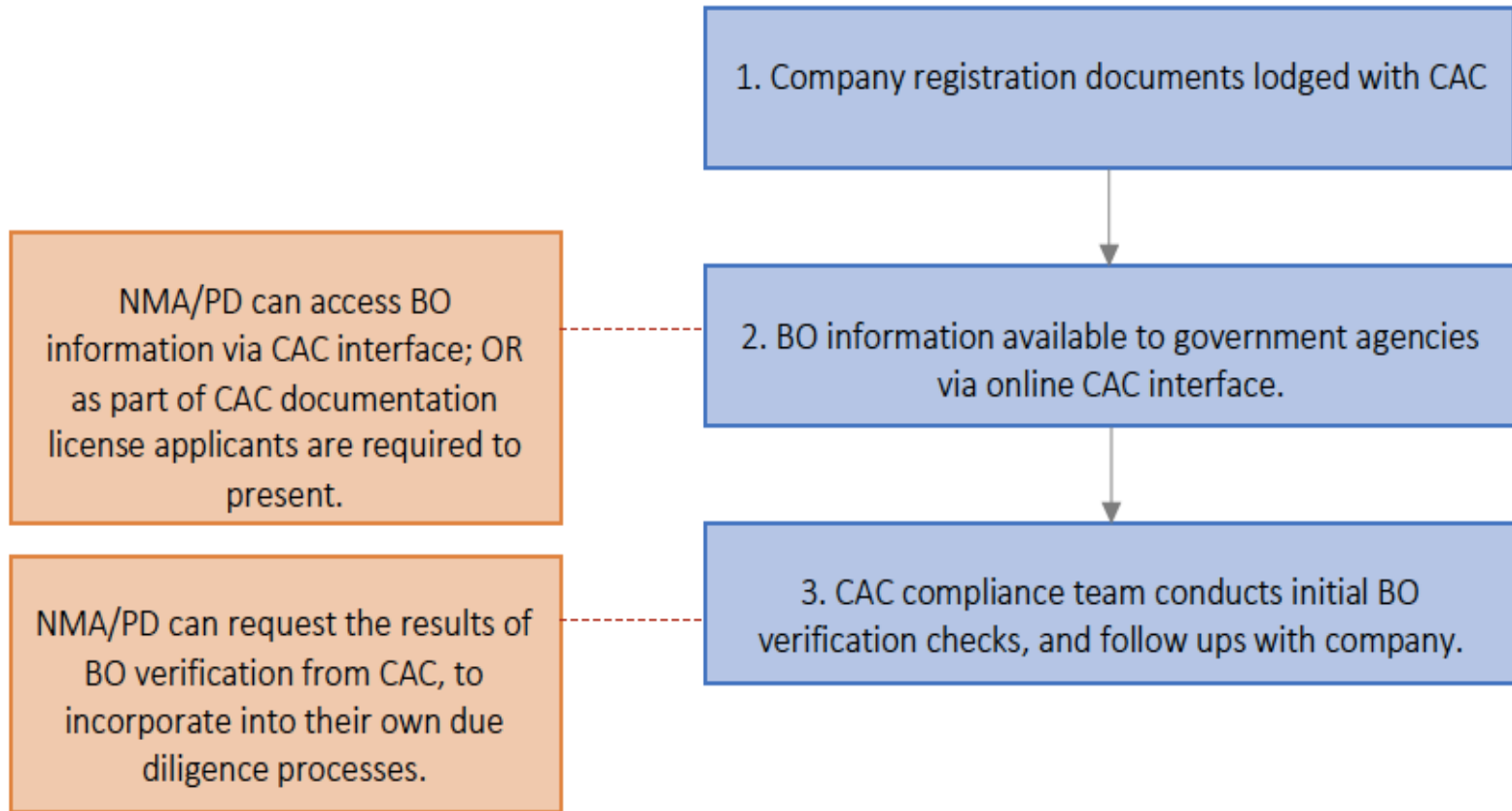


Why CAC is the Most Appropriate GoSL Institution to Collect and Verify BO Information?

1. All four institutions are relatively similar insofar as capacity to collect and verify BO information – all require technical support in this area;
2. CAC is the most appropriate insofar as institutional mandate:
 - Opaque corporate ownership structures present a risk to all sectors of the economy in Sierra Leone, thus beneficial ownership legislation should cut across sectors, making CAC the most appropriate institution to take the lead;
 - All companies must be incorporated in Sierra Leone, and registered with CAC, before they can apply for a Tax Identifier Number from NRA, or an industrial mineral license, or petroleum license, from the NMA or PD respectively;
 - All information collected by CAC during the company registration process is available to the NRA, NMA, AND PD on request; meaning any beneficial ownership data received by CAC could be accessed by these institutions for their own due diligence purposes;
 - CAC's role cuts across sectors, and it is the first point of contact for all companies seeking to operate in Sierra Leone.

Integration of BO Disclosure into CAC Processes

Figure 4. Integrating BO Collection and Verification in CAC Company Registration Procedures



Options for Collecting Beneficial Ownership Data

Medium-Term:

a) CAC should amend the following forms to include BO disclosure requirements (this may have begun?) –

Initial BO Disclosure

- Form AA: company incorporation and registration form

Updates to BO Data

- Form 317: annual return form

b) CAC should integrate BO data into company register.

Short-Term:

SLEITI should amend the reconciliation reporting template to include BO disclosure requirements.

The two approaches must be aligned i.e. work from the same definition, threshold, and BO information requirements.

Beneficial Ownership Disclosure Requirements

1. Natural Persons Exercising Significant Influence and Control

Identify the ultimate beneficial owners (natural persons) of significant share of the entity :

- First name + Middle initial + Last name
- Functional title & role
- Date of birth (at least the year)
- Place of birth (at least the country)
- Country of citizenship
- Country of residence
- National identity number
- description of current and expected roles and functions
- service address - building name/ street number, street, county/region, postcode, country
- residential address - same as above
- Are they a PEP? Reason for PEP designation including dates when they assumed and left office.

Explain the Nature of Control

- a) Ownership of shares:** percentage of shares in the company held indirectly or directly e.g. more than X% but not more than Y%.
- b) Ownership of voting rights:** percentage of voting rights held in the company directly or indirectly e.g. more than X% but not more than Y%.
- c) Ownership of right to appoint/remove directors:** individual holds, the right to appoint or remove a majority of the board of directors of the company.
- d) Significant influence or control:** the individual has the right to exercise, or actually exercises, significant influence or control over the company (only tick if none of above apply).

Note: The same format should be repeated for individuals exercising control via a firm, or a trust.

Beneficial Ownership Disclosure Requirements

2. Legal Entities Exercising Significant Influence and Control

Identify Legal Entities with Significant Control:

- Full company name
- Date of incorporation or creation
- Place of incorporation or creation
- Full address
- Nature of business

Identify the ultimate beneficial owners of the legal entity:

- First name + Middle initial + Last name
- Functional title & role
- Date of birth (at least the year)
- Place of birth (at least the country)
- Country of citizenship
- Country of residence
- National identity number
- description of current and expected roles and functions
- service address - building name/ street number, street, county/region, postcode, country
- residential address - same as above
- Are they a PEP? Reason for PEP designation including dates when they assumed and left office

Verification of Beneficial Ownership Data

Spot Checks on High-Risk Companies

For example, if CAC is responsible for administering BO disclosure, it could use the following data to determine which companies to do spot checks on -

Data Point	Relevance	Weight	Algorithm	Scoring	Source
CAC Data					
Type of legal entity	Foreign entities present a higher risk.	22	Type of legal entity	Foreign = 22; Private = 16; Public = 10; Local = 5	Form AA
Activity	Mining is high risk to revenue.	8	Type of activity	Mining = 8; Banking = 7; Finance/Insurance/Real Estate = 6; Construction = 5; Transport/ communication = 4; Commerce = 3; Government = 2; Other = 1	Form AA
Capital	More capital increases likelihood that the company presents a high risk to revenue.	20	Amount of capital.	1 million = 20 points; 500 thsd = 10 points; 100 thsd = 5 points; 1 thsd = 1 point.	Form AA
Shareholder Nationality	Certain countries may be considered high-risk.	10	Number of shareholders from high-risk countries	5 = 10 points; 4 = 8 points; 3 = 6 points; 2 = 4 points; 1 = 2 points; 0 = 0 points.	Form AA
Shareholder: % of shares	Companies that have minority shareholders may be subject to internal checks and balances.	15	Percentage of company owned by majority shareholder.	100% owned by one shareholder = 15 points 70% owned by one shareholder = 10.5 points 50% owned by one shareholder = 7.5 points 40% owned by one shareholder = 6 points	Form AA
Corporate shareholders	Corporate vehicles may be misused to facilitate money laundering and terrorist financing by disguising the ultimate beneficial owner.	25	Percentage of company owned by corporate shareholders.	100% naturally owned = 0 points 100% corporate owned = 25 points 50% corporate owned = 12.5 points Etc.	Form AA
Total					/100

Preliminary Recommendations

Legal Reforms*

Medium-term –

- **CAC to include BO disclosure requirements in the Corporate Governance Code of Conduct, which will subsequently amend the Companies Act 2012.**
 - The definitions of BOs and PEPs in the AMLCFT 2012 are adequate and could be replicated in the Code and Companies Act 2012, however, they are missing:
 - specific reporting obligations for PEPs,
 - inclusion of BO data in a publicly available company register;
 - as well as BO information requirements and assurance.

Short term –

- **The Core Minerals Policy is currently being finalized. The MMR should use this opportunity to strengthen BO disclosure requirements for the mining sector now, and subsequently update the Mines and Minerals Act 2009.**
 - This must be done jointly with the CAC to avoid conflicting laws.
 - MMR could explore the option of formally delegating enforcement of BO disclosure in the CMP and updated MMA, to the CAC.

*These recommendations do not reflect the views of HSF, which is unable to advise on Sierra Leonean law.

Preliminary Recommendations

Institutional Reforms

Medium-term -

- **CAC should be the GoSL institution to collect and verify BO information;**
 - Form AA and the Annual Return form needs to be updated to include BO information requirements;
 - The company register will also need to be updated to accommodate new data fields.

Short term –

- **SLEITI should incorporate BO disclosure requirements in the reconciliation reporting template for the 2015 report.**
 - BO requirements should be developed jointly with CAC to avoid conflicting information.
 - BO information collected should be forwarded to the CAC for storing and verification, as well as the NMA and PD to be used in their due diligence processes.

Thank You