

# BENEFICIAL OWNERSHIP TRANSPARENCY

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## The Problem - Global Money Laundering

Grand corruption and international money laundering are enabled by the use of anonymous companies and trusts. The United Nations Office on Drugs and Crime (UNODC) estimates that up to 5% of global GDP, or \$800 billion - \$2 trillion is laundered globally in a year<sup>1</sup>.

Corrupt individuals use anonymous company ownership to hide the links to the sources of their illicit wealth, giving that wealth the appearance of legitimacy. A corrupt individual can then use these anonymous companies and trusts to buy property, artwork and/or luxury vehicles<sup>2</sup>.

## A Proposed Solution – Beneficial Ownership Transparency

Ending secrecy over company ownership can reveal who really owns these entities – who is their ‘beneficial owner’. A beneficial owner is the natural person who ultimately owns, controls or benefits from a legal entity or arrangement and the income it generates – this is different to a legal owner, who is the person who owns the company on paper. When a company is initially registered, the beneficial owner (potentially a corrupt individual) can use a ‘nominee owner’ or ‘nominee shareholder’ to be the one who is registered on paper as the owner. With transparency over beneficial ownership information, law enforcement would be better equipped to follow corrupt money trails and to prosecute corrupt individuals.

## Public Registers of Company Beneficial Ownership Information

A register of beneficial ownership is created when an entity such as a trust or company records who its beneficial owners are. A *central* register of beneficial ownership is created when a regulator or an official registrar collects and collates this information in one place. A *public* register is created when this central register can be accessed by anyone.<sup>3</sup>

Public registers, by being both central and public, are good for business, law enforcement and civil society and are effective tools to tackle money laundering. Some of the advantages of public registers include:

- Businesses can access company beneficial ownership information and thus know who they are really doing business with, making it easier to perform due diligence and reduce risk.
- They create a better investment climate as it gives investors more information about who they are considering investing in.
- Both foreign and domestic law enforcement agencies can access relevant company information quickly and discreetly making investigations more efficient.
- Civil society, investigative journalists, academics and concerned citizens can access this data allowing them to conduct research. Thus, more individuals would be able to identify illicit financial activity.
- More eyes on the register can also improve the accuracy of the data provided as loopholes are identified and thus the areas for reform are identified.

At the Anti-Corruption Summit in 2016, 15 countries committed to strengthening or establishing central or public registers of beneficial ownership. Ten countries committed to exploring or establishing a public register of beneficial ownership.<sup>4</sup>

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<sup>1</sup> [https://www.unodc.org/documents/evaluation/indepth-evaluations/2017/GLOU40\\_GPML\\_Mid-Term\\_In-Depth\\_Evaluation\\_Final\\_Report\\_October\\_2017.pdf](https://www.unodc.org/documents/evaluation/indepth-evaluations/2017/GLOU40_GPML_Mid-Term_In-Depth_Evaluation_Final_Report_October_2017.pdf)

<sup>2</sup> Transparency International, *The Cost of Secrecy: The Role Played by Companies Registered in the UK's Overseas Territories in Money Laundering and Corruption* (December 2018) <https://www.transparency.org.uk/publications/cost-of-secrecy/>

<sup>3</sup> <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8259#fullreport>

<sup>4</sup> 15 countries are: Afghanistan, Argentina, Australia, Bulgaria, Colombia, France, Ghana, Indonesia, Jordan, Kenya, Mexico, New Zealand, Nigeria, Spain, UK. Ten countries are: Afghanistan, Bulgaria, France, Ghana, Indonesia, Jordan, Kenya, New Zealand, Nigeria, UK.

## Implementing Public Registers of Beneficial Ownership Information

### ➤ **Towards a global norm of beneficial ownership transparency**

International standards on beneficial ownership transparency are emerging. The Financial Action Taskforce (FATF) has recommended that public registers become the international standard by 2023 and all European Union (EU) member states have committed to introduce public registers in 2019 as set out by the Fifth Anti-Money Laundering Directive<sup>5</sup>. Moreover, it has become a requirement for all EITI participating countries to ensure that oil, gas and mining companies publish company beneficial ownership data by 2020.<sup>6</sup>

### ➤ **Needs to be open data**

The public register of beneficial ownership is most effective when it is open and the data is freely available. Data should be easy to use with a searchable web interface and should be downloadable in a machine readable format and thus reusable – not in a PDF.

### ➤ **Privacy concern**

The public register should balance privacy and transparency concerns. This could be through case-by-case exemptions for personal security reasons. For example, the EU's Fifth Directive on Money Laundering makes exceptions for the disclosure of beneficial ownership if there is a "disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor."<sup>7</sup>

### ➤ **Verification**

For public registers to be an effective tool to tackle money laundering, the information submitted has to be accurate and verified. If the registers rely on companies self-reporting or financial services submitting the data, then this is even more important. Therefore, the beneficial ownership registrar needs to be properly resourced and empowered to be able to verify this information.

### ➤ **Data validation**

Another tool to ensure that the data submitted to the registrar is accurate is to control how the data is entered. If the data is submitted online, then the amount of 'free text' that is allowed to be entered should be limited. Instead, most data such as the nationality of the beneficial owner or the date of birth, should be entered via a pre-populated drop down box - users could then select the option that applies to them. This will reduce inaccuracies, typos and the deliberate false entering of data.

### ➤ **Robust Sanctions**

Lastly, to ensure the accuracy of data, countries should implement robust sanctions and penalties for the submittal of false data. This could be in the form of monetary fines or even prison sentences. Moreover, for these sanctions to be an effective deterrent, they must also be enforced.

## Case Study: UK Public Register

The UK's public register of beneficial ownership, introduced in 2016, is fully downloadable and reusable. The register defines a beneficial owner as an individual who:

- Holds more than 25% of shares in the company and/or voting rights in the company
- Holds the right to appoint or remove the majority of the board of directors of the company
- Has the right to exercise or actually exercises significant influence or control over the company
- 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.

Since the register has been in operation since 2016, it has been noted that:

- There is demand for beneficial ownership information – people want and are using the UK PSC register. Global Witness (2018) reveal "after paywalls were removed in June 2015, access to UK company data grew exponentially to over 2 billion data searches a year, compared with just over 6 million access requests for paid information during 2014-2015."<sup>15</sup>

<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>

<sup>6</sup> <https://eiti.org/beneficial-ownership>

<sup>7</sup> <http://data.consilium.europa.eu/doc/document/PE-72-2017-INIT/en/pdf>

- Transparency International UK has been campaigning for the UK's registrar, Companies House, to be better resourced. This would allow Companies House to be able to verify the beneficial ownership information.
- Civil society organisations Global Witness and OpenOwnership, have also made recommendations:
  - Defining a beneficial ownership threshold lower than 25%.
  - Beneficial owners' holding of shares should be reported in exact percentages.
  - The register should use unique identifiers in addition to personal data such as name and month and year of birth
  - Basic data validation systems such as multiple-choice fields should be used to improve data quality.

## Property Registers

Public registers of company beneficial ownership information are just one component of full beneficial ownership transparency, another component is a *property* register. A property register would ensure that all foreign entities that own or buy property in a particular country have to declare their beneficial owners. For example, the UK is in the process of introducing a property register that should be operational by 2021, after this, if a foreign entity buys or owns property in the UK it must identify and register its beneficial owner with Companies House, the UK registrar<sup>8</sup>. Entities that fail to comply in the UK would be unable to sell, buy, lease or mortgage their property and be subject to fines and prison sentences. A property register would:

- Make it harder for corrupt individuals to sue opaque company structures registered in secrecy havens to obscure their identity when buying property.
- Reduce the potential for illegal activity and help deter future illicit investments.
- Make it easier for regulators, legitimate businesses and the general public to know who really owns the property in their country.
- Enable law enforcement agencies to carry out effective investigations more easily
- Make the property market more transparent, give people more confidence in it and thus, in the long term, make it more attractive to legitimate investors.

## International and Domestic Cooperation

Criminals use chains of companies incorporated in different jurisdictions to hide their criminal activity, making it harder for law enforcement to investigate. Due to the cross border nature of this criminal activity, it is necessary for countries to establish mechanisms to exchange beneficial ownership information in a timely and effective manner. This international cooperation could take one of the following forms:

- A mutual legal assistance treaty
- A letter rogatory
- A memorandum of understanding
- An informal arrangement

Alternatively, if a country has a public register; foreign countries would also have access to that beneficial ownership information, without needing to make a formal arrangement. Also, in April 2016, Germany, France, Italy, Spain and the UK agreed to an automatic exchange of beneficial ownership information agreement that would enable "international real-time access to tax and law enforcement agencies on company ownership".<sup>9</sup> Over 40 countries have now joined this agreement.<sup>10</sup>

Lastly, countries should ensure that beneficial ownership information is shared effectively within government departments and that the legal framework allows the sharing of confidential information.

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<sup>8</sup> <https://www.gov.uk/government/consultations/draft-registration-of-overseas-entities-bill>

<sup>9</sup> <https://www.gov.uk/government/news/uk-leads-european-calls-for-g20-action-on-beneficial-ownership>

<sup>10</sup> <https://www.gov.uk/government/publications/joint-statement-on-beneficial-ownership-information>

Overview	Country	Commitment	Status
Public Register	<a href="#">Afghanistan</a>	Establishing public central registers of company beneficial ownership information	Ongoing
	<a href="#">Ghana</a>	Ghana is committed to preventing the misuse of companies and legal arrangements to hide the proceeds of corruption and commits to strengthening further both the Companies Bill and the Petroleum (Exploration and Production) Bill that are currently before Parliament to ensure that we have public beneficial ownership information and central register for all sectors, including oil and gas sector, in line with UNCAC and FATF Recommendations as well as the Extractive Industries Transparency Initiative (EITI) standards that Ghana is implementing; ensuring that accurate and timely company beneficial ownership information, including in the extractives, is available and accessible to the public	Ongoing
	<a href="#">Jordan</a>	Jordan commit to exploring public central registers of company beneficial ownership information.	Not Included
	<a href="#">Kenya</a>	Kenya will take measures in line with her new Companies regulatory framework to establish public central registers of company beneficial ownership information.	Ongoing
	<a href="#">Nigeria</a>	Nigeria is committed to establishing a public central register of company beneficial ownership information. (The President of Nigeria has presented a draft Money Laundering Prevention and Prohibition Bill to the National Assembly in February, 2016. This Bill has defined Beneficial Ownership in line with FATF standards.)	Inactive
	<a href="#">UK</a>	The UK's public central register of company beneficial ownership information for all companies incorporated in the UK will be launched in June 2016.	Complete
Property	<a href="#">Afghanistan</a>	Taking steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting. Supporting the establishment of transparent central registers of foreign companies bidding on public contracts and buying property, and intend to explore options for taking similar action.	No Data
	<a href="#">Mexico</a>	We will take steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting.	Underway
	<a href="#">Nigeria</a>	Nigeria will establish a transparent central register of foreign companies bidding on public contracts and buying property.	Ongoing
	<a href="#">Nigeria</a>	We are taking steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting. Nigeria is already collating this information through the Extractive Industry Initiative process and would extend it to other sectors.	Ongoing
	<a href="#">UK</a>	The UK will also establish a public register of company beneficial ownership information for foreign companies who already own or buy property in the UK, or who bid on UK central government contracts.	Overdue
Domestic/International Access for Law Enforcement	<a href="#">Afghanistan</a>	Ensuring that law enforcement agencies have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction,	Ongoing
	<a href="#">Kenya</a>	Kenya commits to ensuring that international and domestic law enforcement agencies have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction.	Ongoing Ongoing
	<a href="#">Mexico</a>	We commit to promote that law enforcement agencies at the national/federal level, have full and effective access to beneficial ownership information for companies and other legal entities registered within their jurisdiction.	Ongoing

Domestic/International Access for Law Enforcement	<a href="#">Nigeria</a>	We are committed to implementing bilateral arrangements that will ensure law enforcement in one partner country has full and effective access to the beneficial ownership information of companies incorporated in the other partner country.	Ongoing
Automatic Exchange of Information	<a href="#">Afghanistan</a>	Joining the pilot initiative for automatic exchange of beneficial information	No Data
	<a href="#">Nigeria</a>	We commit to joining the pilot initiative for automatic exchange of beneficial information.	Inactive
Central Register	<a href="#">Kenya</a>	Kenya welcomes the establishment of transparent central registers of foreign and local companies bidding on public contracts and buying property, and will pursue options for taking similar action.	Ongoing
	<a href="#">Mexico</a>	We commit to exploring interoperability of different databases regarding public contracts information and business registries.	Underway
Public Contracting	<a href="#">Afghanistan</a>	Taking steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting. Supporting the establishment of transparent central registers of foreign companies bidding on public contracts and buying property, and intend to explore options for taking similar action.	No Data
	<a href="#">UK</a>	The UK will also establish a public register of company beneficial ownership information for foreign companies who already own or buy property in the UK, or who bid on UK central government contracts.	Overdue