



BENEFICIAL OWNERSHIP: HOW TO FIND THE REAL OWNERS OF SECRET COMPANIES

A guide for journalists and civil society
in Ghana, Kenya & Nigeria

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

www.transparency.org

Authors: Ádám Földes (Sections 1-5), Maggie Murphy (Annexes)
Reviewers: Maíra Martini, Maggie Murphy and Deborah Unger
Cover photo: iStock/SasinParaksa

This publication has been generously funded by the UK Department for International Development.



Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of September 2017. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

ISBN: 978-3-96076-064-1

Printed on 100% recycled paper.



Except where otherwise noted, this work is licensed under CC BY-ND 4.0
Transparency International 2017. Some rights reserved.

TABLE OF CONTENTS

1. INTRODUCTION	2
2. WHERE IS BENEFICIAL OWNERSHIP RELEVANT?	4
PUBLIC FUNDS AND ASSETS.....	4
CORRUPTION RISKS	5
BUSINESS RISKS	6
DEMOCRACY, HUMAN RIGHTS AND ENVIRONMENTAL CRIMES	6
3. WHERE TO LOOK FOR INFORMATION.....	8
BENEFICIAL OWNERSHIP TRANSPARENCY RULES	8
REGISTER OF MEMBERS	9
CENTRAL REGISTER/BENEFICIAL OWNERSHIP REGISTER	9
PUBLIC CONTRACTING LAWS	10
PUBLIC COMPANIES	12
SECTORAL BENEFICIAL OWNERSHIP INFORMATION	12
OPENOWNERSHIP: THE GLOBAL PUBLIC BENEFICIAL OWNERSHIP REGISTER	12
ADDITIONAL SOURCES OF INFORMATION: OPEN CORPORATES AND OFFSHORE LEAKS DATABASE...	13
TRUSTS	14
FURTHER, NON-ACCESSIBLE SOURCES OF BENEFICIAL OWNERSHIP INFORMATION	14
4. WHO IS OBLIGED TO IDENTIFY BENEFICIAL OWNERS?	16
5. WHAT IF THESE LAWS ARE VIOLATED?	19
ANNEXE 1: RESOURCES	21
RELEVANT LEGISLATION AND STANDARDS.....	21
EXPLAINER MATERIAL	21
NGO ADVOCACY AND POLICY BRIEFS.....	21
ANNEXE 2: FAQ TO PROMOTE BENEFICIAL OWNERSHIP TRANSPARENCY LEGISLATION.....	22
BENEFICIAL OWNERSHIP DEFINITION	22
EXCLUSIONS AND EXCEPTIONS	24
VERIFICATION OF DATA	25
COLLECTING THE DATA	26
ROLE OF PRIVATE SECTOR.....	26

1. INTRODUCTION

WHAT IS THE PURPOSE OF THIS GUIDE?

Media reports of white-collar crime often refer to how the cases and people they were investigating were facilitated by complex and obscure company structures that were involved in transferring large amounts of money from one jurisdiction to another. The identity of the people at the centre of the crime who owned and controlled those companies (known as the “beneficial owners”) were able to be kept hidden because of secrecy laws in the jurisdictions in which they operated and the lack of information made available on the companies’ ownership structure.¹ This is too often the case in resource-rich developing countries where the reins of power are controlled by a small elite and the rule of law is too often by-passed by this elite.

It is difficult to identify a corrupt company. Companies can easily be set up for the purpose of committing a crime, or criminals can hijack legitimate companies and use them for illegal purposes. The crimes can involve siphoning off public funds to the tune of a few hundred thousand dollars or be much more devastating: wholesale looting of public budgets, backhanders for allowing companies to bypass laws and mass environmental damage or human rights violations.²

This toolkit is designed to help journalists get to the bottom of this kind of corruption. It explains the concept of beneficial ownership, details where it is relevant and indicates where to find beneficial ownership information. It is a guide to collecting this kind of information and to making use of this knowledge as a journalist or civil society organisation.³ While the general principles mentioned in this resource apply internationally, it is primarily written for journalists and civil society in Ghana, Nigeria and Kenya. These are the three African countries who made commitments at the 2016 Anti-Corruption Summit to establish public registers containing beneficial ownership information of companies operating in their jurisdictions, to make it harder for the corrupt to get away with their crimes.

It is important to note that significant challenges remain for any journalist or civil society organisation seeking beneficial ownership information. While some progress in this area has been made globally in recent years, a combination of legislative and regulatory weaknesses with data quality and access issues mean that investigations into specific companies are often frustrated in their attempts to identify the beneficial owner, particularly where the ownership structure is complex and transnational. Similarly, even in countries where beneficial ownership legislation has recently been put in place or updated, continued civil society advocacy is key to working with authorities and the private sector to address the inevitable implementation gaps.

WHAT IS A BENEFICIAL OWNER?

According to the Financial Action Task Force, the global body that sets anti-money laundering standards, a beneficial owner is “the natural person⁴ 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 control over a legal person or arrangement”.⁵ This definition extends beyond legal ownership and control to consider the notion of ultimate ownership and control. In layman’s terms, it is the real human being that has control of the company’s assets.

The term beneficial owner is used to show that there can be a difference between the legal or nominee company owners and trustees, all of whom might be registered as the legal owners of an asset, and the person or people who actually control or enjoy its benefits.

THE IBORI CASE: WHY ACQUIRING BENEFICIAL OWNERSHIP INFORMATION CAN HELP STOP CORRUPTION

James Ibori served two terms as governor of the oil-rich Delta State in Nigeria. He was convicted in a London court after skimming millions of pounds from inflated contracts for infrastructure projects in Delta State, including for a sports stadium, schools and hospitals. Ibori was also a key figure benefitting from the fraudulent sale of shares owned by Delta State in one of the biggest telecoms operating companies in Nigeria, V-Mobile (now Airtel). Authorities were able to identify £50 million of corrupt funds outside of Nigeria but believe that the real figure could be in excess of £200 million.⁶

Multi-national investigations led to him to plead guilty to 13 charges of money laundering in a **United Kingdom** court in April 2012. In the early years of his scam, from 1999 to around 2004, James Ibori admitted fraud of nearly £50 million.⁷ He bought properties in London in his own name and in the names of his family members without any serious attempt to disguise the source of the money. In a much more sophisticated manner, Ibori later engaged the services of a London-based solicitor and a corporate financier, and a Jersey-based fiduciary agent.⁸ A former Goldman Sachs investment banker provided Ibori with instructions on how to register four companies so that banks in Guernsey would not submit them to the deeper due diligence investigations recommended for companies and accounts of politically exposed persons (PEPs).⁹ They hid the route of the money using numerous shell companies and accounts in the names of his mistress, wife and sister to pass money to Channel Island trusts and elsewhere¹⁰ through a bewildering route of other shell companies, sometimes with registered addresses at commercial mail boxes in several different countries, such as Gibraltar, India, Malaysia and Mauritius. With this money, Ibori purchased more houses, luxury cars and allegedly put a payment down for a US\$20 million personal jet.¹¹

2. WHERE IS BENEFICIAL OWNERSHIP RELEVANT?

The concept of legal persons has been part of the European legal tradition, and subsequently legal tradition in most countries across the world, for more than two thousand years. Legal persons are needed to operate complex businesses, to collect capital and to limit risks and the liability of individuals. Legal persons were not created as a tool to hide ownership in business or other enterprises.

The question “who is behind this legal person” or rather “how easy is it to disguise who is behind this legal person” becomes more relevant when the specific transaction brings significant risks, or significant opportunities.

As many corruption scandals have shown in recent years, the lack of beneficial ownership transparency helps not only the corrupt, but many other criminals, including those involved in human trafficking, child labour, drug trafficking, environmental crimes of all sorts and terrorism. Because it can be hard to find beneficial ownership information, these criminals can use secrecy to launder their illicitly acquired money using shell companies to shift profits abroad or buy luxury goods and properties. It allows them to launder money by investing in or running what appears to be legitimate businesses.

Citizens, consumers and investors should have information on who is behind a given company to ensure they can make an informed decision and to be able to challenge decisions made on their behalf. Businesses should know who they are doing business with.¹²

Transactions that seem regular could in reality be more easily identified as risky once beneficial ownership information is made available. If you knew a drug lord owned the stores where you bought your food, would you choose to spend your money there? And if the authorities in one country knew that the person who was trying to buy a luxury yacht was actually a government official who had siphoned off the money from his or her country’s department of health, would that sale be allowed to go ahead? Equally, as an investor or company CEO, you may not wish to invest in a company or joint venture, or have a company in your supply chain if the beneficial ownership is unknown as you cannot manage your risk and potential liability.

That is why it is important to know the real identity of the beneficial owner of assets. The next section looks at where hiding beneficial ownership presents significant corruption risks in the public and private sectors, and how beneficial ownership secrecy can compromise democratic institutions, undermine environmental policy and compromise human rights.

PUBLIC FUNDS AND ASSETS

In any legal/political system where elected representatives decide on the use of taxes and other public income, there is some expectation by the constituency that the public funds are well-spent. In 182 countries that have joined the United Nations Convention against Corruption (UNCAC), it means that the public funds and properties are expected to be managed with integrity, transparency and accountability.

Transparency has many aspects and many forms. Effective right to information laws, proactive publication of government contracts, openness of court hearings, openness of the sessions of the local council or the parliament are among the best known. However, transparency does not stop here.

“Each State Party shall [...] develop and implement or maintain effective, coordinated anti-corruption policies that [...] reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.” Article 5 (1) of UNCAC

In public contracting, potential conflicts of interests and risks of corruption are always present. High-value public procurements, concessions of extracting natural resources and privatisation of public properties attract corruption. Conflicts of interest and corruption risks are present not only with high-value contracts but also for ordinary service-delivery or products purchased by central, regional and local government bodies or by state-owned companies.

Laws regulating these areas should always include provisions on preventing, exposing and resolving situations of conflicts of interest. Public officials who have the authority to decide on awarding a public contract to one of the competing bidders might not recuse themselves from decision-making or may even influence the decision so that a friend's or relative's company wins. Cases of self-dealings when decision-makers direct public funds to themselves can also occur.¹³ In these types of dealings, public officials and their associates may try to disguise their identities using an anonymously held corporate entity.

CORRUPTION RISKS

A particular area of corruption risks are **local content requirements (LCRs)** in public contracting. According to the OECD Trade Policy Note, LCRs are “policies imposed by governments that require firms to use domestically manufactured goods or domestically supplied services in order to operate in an economy”.¹⁴ When foreign companies are obligated to involve domestic companies in their investment projects or deliver products or services under public contracts, per the OECD note, this requirement does not have any economic rationale either for the foreign company or for the country imposing the policy, and that is often a red flag for corruption.¹⁵

“Local content policies may also be circumvented through the use of ‘fronts’ and shell companies. International oil and gas companies may ‘hire’ local established companies to serve as fronts to satisfy local content requirements. In this case, international oil companies may pay companies registered in the host country to participate in bidding processes; the services are then implemented by the international company, as the local company does not have the capacity or exist.” World Trade Institute¹⁶

A further area where non-transparent ownership structures pose risks are **credits, financial supports provided and investments undertaken by the state**. Conflicts of interest and corruption risks are prevalent when state-owned financial institutions, such as export-credit agencies, provide financial support or credit to companies whose ultimate beneficial owners are unknown or of which senior

managers are in fact nominees and act in the interest of individuals hiding behind non-transparent corporate structures.

When **public-private partnerships (PPP)** use complex corporate structures, there is a danger that they are there to hide conflicts of interests that benefit the parties involved. A PPP is “a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance”¹⁷ Unfortunately, these structures have occasionally been used to conceal corruption.¹⁸

BUSINESS RISKS

In the business sector it is not only wise for financial institutions and for a range of businesses and professions to find out the true identity of their clients and customers but a mandatory requirement according to international standards. This is the case for lawyers, accountants, dealers of precious metals and stones, and corporate service providers (collectively called designated non-financial business and professions – DNFBPs). International law requires countries to adopt anti-money laundering and anti-financing of terrorism legislation, and these pieces of legislation put the burden on banks, lawyers, accountants and so on to do their best to prevent, detect and report various forms of corruption, such as money laundering. If they fail to do so, both the company and their staff in charge of implementing the anti-money laundering obligations may be held criminally liable.

Transparency of beneficial ownership is not only relevant for companies because of corruption risks, but also for further aspects of fair competition (see, for example, The Business Case for Ending Anonymous Companies initiative of The B Team).¹⁹ Any manager or owner of a company that properly pays taxes and other fees collected by the state can be frustrated by competitors that evade taxes. Tax evasion is often facilitated by a corporate structure that allows the hiding of profits and the beneficiaries of the profit.²⁰ Eventually these structures may also serve for using features of the tax system or of state subsidy schemes that were not designed to benefit the particular company. In the worst cases, obscure corporate structures are set up directly for the purposes of tax fraud.

DEMOCRACY, HUMAN RIGHTS AND ENVIRONMENTAL CRIMES

Information on beneficial ownership is not only relevant for protecting public funds and securing a business environment of fair competition. It is also key for democracy and human rights.

International law foresees some form of participation in the functioning of elected representative bodies, such as national or regional parliaments, or local councils. The role of these bodies is, among others, to make laws, oversee the functioning of the executive branch and make the international and often constitutional standards on transparency and participation effective. In this context, it is also common that companies, religious bodies, labour unions, industrial associations and other citizen groups try to convince public decision-makers in any public matter. This is lobbying, but lobbying can also have a dark side when there is no transparency.

“Lobbying can provide decision-makers with valuable insights and data, as well as grant stakeholders access to the development and implementation of public policies.

However, lobbying can also lead to undue influence, unfair competition and regulatory capture to the detriment of the public interest and effective public policies. A sound framework for transparency in lobbying is therefore crucial to safeguard the integrity of the public decision-making process.” OECD²¹

It is detrimental to the functioning and trust in democratic institutions when the interests represented by bodies that try to influence public decision-makers is not transparent. Individuals who do not want to be seen in public debates and can afford to set up a non-transparent legal entity can use that entity to hide and yet still take part in influencing decisions on public matters. Such legal entities can be controlled and financed in various ways, and the ultimate beneficiary/controller can remain hidden. This person may be concealed either by the structure of the company or through the use of nominee members/owners or directors.

Commercial media have significant influence on public affairs. Despite independent media’s fundamental role in any democracy, in many countries the shareholders and even the owners of entire media companies can be opaque, with no publicly visible overlaps in media ownership or cross-financing. This lack of beneficial ownership transparency can endanger freedom of the press and freedom of information.

Business entities and their employees, as well as public bodies and public officials, can be involved in human rights violations,²² environmental disasters caused by humans, accidents stemming from the violation of labour safety rules, industrial disasters and harms caused by breaches of public health or food safety regulations. To be able to hold somebody accountable for actions or omissions that result in these damages, it must be possible to identify them. Senior managers and owners of companies may bear responsibility if they had any role in violating safety and security regulations, but it is not always clear who the actual company owners are and who exercises control over the company.

3. WHERE TO LOOK FOR INFORMATION

This section looks at where to find the rules on beneficial ownership and where to find actual beneficial ownership information. It is important to note that the majority of company registers do not verify the information reported/disclosed by companies, which means the information held in these registers may be inaccurate.

BENEFICIAL OWNERSHIP TRANSPARENCY RULES

There are significant similarities in legal systems concerning how and which laws regulate the issue of beneficial ownership transparency. Below is an overview of the laws related to transparency of ownership in Ghana, Kenya and Nigeria, followed by areas where you can apply them.

The legal system of each country is structured in a different way; legal provisions are present in many forms in a range of acts, regulations, guidelines. The names of the laws vary from country to country. The following is a list of the relevant laws in Ghana, Kenya and Nigeria.²³ These indicate where you can find beneficial ownership rules in your country's legal system.

International law obligations

There are three major international law instruments that define country level anti-money laundering obligations:

- [UNCAC](#) covers 182 countries
- [Convention on Transnational Organized Crime](#) (UNTOC) covers 189 countries
- [Financial Action Task Force](#) (FATF) monitors the implementation of the FATF Recommendations in about 190 jurisdictions

Companies

- Companies Act (Ghana)
- Companies Act (Kenya)
- Companies and Allied Matters Act (Nigeria)

Capital markets

- Capital Markets Act (Kenya)
- Securities and Exchange Commission Rules and Regulations (Nigeria)

Anti-money laundering

- Anti-Money Laundering Act (Ghana)
- Anti-Money Laundering Regulations (Ghana)
- Proceeds of Crime and Anti-Money Laundering Act (Kenya)
- Proceeds of Crime and Anti-Money Laundering Regulations (Kenya)
- Money Laundering (Prohibition) Act (Nigeria)

- Central Bank of Nigeria Anti-Money Laundering/Combating the Financing of Terrorism Regulations for Banks and Other Financial Institutions (Nigeria)
- Anti-Money Laundering/Combating the Financing of Terrorism Regulations for Designated Non-Financial Business and Professions (Nigeria)
- Anti-Money Laundering/Combating the Financing of Terrorism Manual for Capital Market Operators issued by the Securities and Exchange Commission (Nigeria)

Trusts

- Registration of Documents Act (Kenya)
- Trustee Act (Kenya)

Tax

- Income Tax Act (Kenya)
- Tax Procedures Act (Kenya)

REGISTER OF MEMBERS

Companies are required to keep a register of its members – who owns the company. Some legal systems also require companies to record and keep up to date information on the beneficial owners of the members, in case any member is a legal person or any member who acts as a nominee and represents someone else (the beneficial owner). Often the ownership chains are long and complex; one legal person can own another legal person that owns another legal person. Ultimately, at the end of an ownership chain, there the people in control: the ultimate beneficial owners.



FreelImages.com / Jean Scheijen

If the register of members contains information on the beneficial owners then it is easy to find out who ultimately owns or controls the company.

Companies have to provide access to their register of members. It depends on the particular legislation whether this rule applies to public companies only or also to private companies.

CENTRAL REGISTER/BENEFICIAL OWNERSHIP REGISTER

Companies are required to maintain a register of its members, and are also required to provide the content of this register to the central company/beneficial ownership register of the country, if such a register exists. Some countries may start collecting beneficial ownership information, but have subnational or regional company registers; others have central company registers that (can) hold beneficial ownership information too. A central register also contains beneficial ownership information if the companies' registers of members contain that and the law requires passing this information on the central register. Ghana, Kenya and Nigeria have each committed to establish a public beneficial ownership register which would make finding the information much easier.

TOOL 1: Test the registers

Choose a company you are interested in – it may be a company that is relevant for your work or a company in the news – and request access to the register of members. Each company has to keep that register in their offices and you can get access to it. You may have to pay a fee to inspect their documents, but this fee will not be high. Some legislation requires you to give reasons why you need this information and say how you will use the information. Request a copy of the pages, documents you need or ask permission to take a photo of them.

If there is a central register in your country, repeat this exercise there. Companies feed the central register with information. They have to regularly submit updates, though the central register may be a month late compared to the register of members maintained by the company. Check the law (see next chapter) for how soon companies are required to submit updates and changes and then compare what you found in the register of members and in the central register.

Are there differences between the two? Is it within the timeframe provided to companies to send updates? Is there another explanation for the differences?

Registers of members can be more detailed than the central register and occasionally there are some details that you cannot access due to, for example, security reasons. However, these exceptions are clearly spelt out by laws governing the registers.

PUBLIC CONTRACTING LAWS

In public contracting, some legislation requires the disclosure of the (applicant) contracting partner's ownership structure, including beneficial owners. If this requirement is part of the legal system of your country, then public contracting documentation will contain beneficial ownership information.

Government contracts, bidding documentation (at least the winning bid), documentation on the performance of the contract are typically available under your country's right to information, if your country has such legislation. Some public procurement documents may be published online or in print if, for example, there is a public procurement bulletin for the central government or for the entire country. In other cases, information could be scattered in various places, such as on local government websites or in annexes of decisions of the local council, among others.

TOOL 2: Get hold of beneficial ownership information through public contracts

Choose a public contract you are interested in. It may be a public contract about a major investment project, a privatisation of some national assets, purchase of public services. There should be contracts covering all the expenses of the state and covering a wide range of incomes (except taxes, customs and other incomes that are collected as required by laws).

If your country has a right to information law, you can use it to request access to public contracting documents. If the country's public procurement law or other law relevant to the specific contract you are interested in requests the private contracting party to disclose its ownership structure, including the beneficial owners, then you can request the document/piece of information that contains this disclosure. Right to information is a human right,²⁴ and no one should be required to give any reason for exercising this right. Most right to information laws follow this approach, but some weaker ones require the requesters to give reasons.²⁵

If your country does not have a right to information law, other pieces of legislation, such as the law on public procurements, may have provisions on access to information. The country's constitution may also recognise the right to information, and you can refer directly to the constitutional provision. If you need help with an information request, any of the organisations listed and present in your country may be [able to assist you](#).

OPEN CONTRACTING GLOBAL PRINCIPLES

These principles gather norms and best practices for disclosure and participation in public procurement. They serve as a guide to advance open contracting around the world. According to principle 3. c. (viii) the government shall require the disclosure of the "identity of the contract recipient and any statements of beneficial ownership provided".²⁶

TIP: Check, whether your country has made any commitment about publishing open contracting data.

Find commitments [online](#).

PUBLIC COMPANIES

Legislation on public companies traded in stock exchanges in most cases requires more transparency of ownership than the rules on private companies. Securities exchange commissions or similar bodies regulating the capital market in a country may also hold beneficial ownership information on public companies. However, their rules may impose reporting requirements of any direct or indirect ownership only over a certain threshold of ownership in the company. Beneficial ownership information held by these regulatory bodies is also accessible to the public.

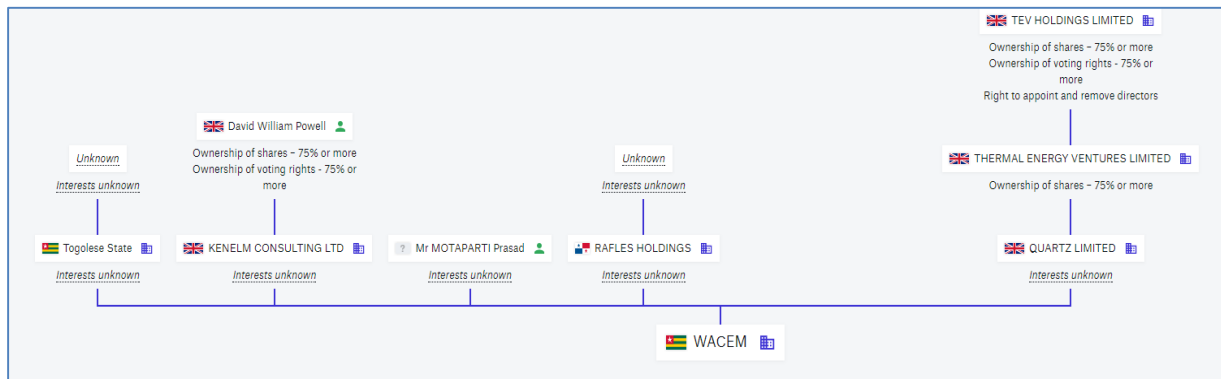
SECTORAL BENEFICIAL OWNERSHIP INFORMATION

The Extractive Industries Transparency Initiative (EITI) has already started collecting beneficial ownership information on extractive companies, and these are published in their reports²⁷ and through the beneficial ownership pilot conducted by EITI in 11 countries from 2013-2015. They state that “[b]y 2020, all EITI countries have to ensure that companies that apply for or hold a participating interest in an oil, gas or mining license or contract in their country disclose their beneficial owners”.²⁸

Another sectoral example is the fisheries sector, where the European Union is planning to set up “an EU electronic fishing authorisation register [...] which would be accessible to the public. It would contain data on the IMO number²⁹, the details of the company and beneficial owner and the type of authorisation and fishing opportunities”.³⁰ It will provide better control over EU vessels fishing outside EU waters.

OPENOWNERSHIP: THE GLOBAL PUBLIC BENEFICIAL OWNERSHIP REGISTER

[OpenOwnership](#) is a new global register that collects and connects all publicly available beneficial ownership information into one place.³¹ It is currently in beta phase and consists of the beneficial ownership information from the UK’s Persons of Significant Control register,³² the Slovakia Public Sector Partners Register, which contains information on beneficial owners with public contracts in Slovakia, and EITI pilot data. Currently there are almost four million companies included, and this number will increase as more countries start to publish their own public beneficial ownership information through public registers.



OpenOwnership: part ownership structure for West African Cement (WACEM) (September 2017)

ADDITIONAL SOURCES OF INFORMATION: OPEN CORPORATES AND OFFSHORE LEAKS DATABASE

[OpenCorporates](#) is the largest open database of companies and company data in the world. While it does not have a specific focus on beneficial ownership, a search on OpenCorporates can provide a sense of the overall structure and basic corporate data for a particular company.

[The Offshore Leaks database](#) is maintained by the International Consortium of International Journalists (ICIJ). It contains data on almost 500,000 offshore companies, foundations and trusts, drawn from leaks provided to the consortium by anonymous whistleblowers during their investigations, including the Panama Papers.

RIO TINTO PLC

Company Number 00719885
Other Identifiers SEC CIK number: 863064
Status Active
Incorporation Date 30 March 1962 (over 55 years ago)
Company Type Public Limited Company
Jurisdiction United Kingdom
Registered Address 6 St James's Square
 London
 SW1Y 4AD
 United Kingdom
Industry Codes 70100: Activities of head offices (UK SIC Classification 2007)
Latest Accounts Date 2016-12-31
Previous Names THE RTZ CORPORATION PLC
 RIO TINTO-ZINC CORPORATION P L C
Directors / Officers ANN FRANCES GODBEHERE, director, 9 Feb 2010-
 ANNE MARIE ALICE LAUVERGEON, director, 15 Mar 2014-
 CHRISTOPHER JAMES LYNCH, director, 1 Sep 2011-
 DAVID EDWARD CONSTABLE, director, 10 Feb 2017-
 ELEANOR BRONWEN EVANS, secretary, 7 Jun 2013-

Company network

Not yet available for this company. Click to find out more

Corporate Grouping USER CONTRIBUTED

RIO TINTO 16

Others in this grouping (See all 16)

Rio Tinto á Íslandi hf. (Iceland, 28 Apr 1966-)
Rio Tinto Alcan Fund Inc. (Canada, 8 Nov 2004-)
RIO TINTO ALCAN INC. (Canada, 1 Jan 2008-)
Rio Tinto Alcan International Ltd. (Canada, 27 Jul 1977-)
ACC RIO TINTO EXPLORATION LIMITED (India, 21 Nov 1996-)
ACC RIO TINTO EXPLORATION LIMITED (India, 22 Apr 1999-)
SOUTHERN PLATINUM CANADA CORP. (Canada, 24 Jun 2004- 1 Sep 2004)
Ashton Mining of Canada Inc. (Canada, 15 Jan 2007- 1 May 2013)
RIO TINTO FINANCE (USA) PLC (United Kingdom, 20 Jun 2007-)
RIO TINTO FINANCE PLC (United Kingdom, 19 Jan 1940-)
FTSE 100 INDEX 98
 Others in this grouping (See all 98)
3i GROUP PLC (United Kingdom, 1 Nov 1973-)
ABERDEEN ASSET MANAGEMENT PLC (United Kingdom, 2

OpenCorporates (October 2017)

TRUSTS

Trusts are a type of legal arrangement. Trusts do not have directors or a secretariat, but each trust has a trustee who has information on the parties to the trust. Countries with good beneficial ownership transparency laws require trustees to collect beneficial ownership information on all the parties to the trusts they administer: the settlor (who donates the assets), the trustee (who manages the arrangement and is the legal owner), the protector (who may act as an intermediary between the settlor and the trustee) and the beneficiaries (who receive the funds).³³ In some countries there are trust registers, though rules on registration vary.

FURTHER, NON-ACCESSIBLE SOURCES OF BENEFICIAL OWNERSHIP INFORMATION

Each country's anti-money laundering legislation makes it mandatory for financial institutions and designated non-financial business and professions (DNFBPs) to obtain and keep up to date beneficial ownership information on their clients. This information is not available to the public, as it is protected by attorney client-privilege, bank secrecy or other exceptions. The same applies to financial intelligence units (that are part of a law enforcement body, of the prosecution service or of a tax authority) and other competent authorities³⁴ which may also hold beneficial ownership information but cannot provide access to such information for crime prevention and criminal investigation reasons.

TOOL 3: Get an overview of anti-money laundering efforts of public bodies

News stories sometimes show how law enforcement authorities in money laundering or other corruption cases open investigations, press charges and how the courts eventually convict some of the perpetrators. It is far less visible whether financial institutions and DNFBPs detect suspicious transactions, submit suspicious transaction reports to competent authorities, such as the financial intelligence unit of the country, and whether the authorities react on these reports.

Anti-money laundering bodies, especially the financial intelligence unit of a country, hold relevant information and are able to create statistics on suspicious transaction reports and related follow-ups by authorities. These statistics are occasionally published on their websites or in annual reports or can be obtained through a right to information request. As statistics do not say anything about concrete cases, there is nothing confidential about them, therefore such information has to be disclosed. You can find the name of the main anti-money laundering body/financial intelligence unit in your country on [this list](#).

A further possible source of statistics is the UNCAC country review reports.³⁵ Country reports of the first review cycle look into anti-money laundering enforcement, and the country reports of the second cycle examine prevention of money laundering.

If you are interested in conducting a more detailed analysis, Transparency International's report on anti-money laundering efforts of countries of major financial centres can be a useful resource.³⁶

4. WHO IS OBLIGED TO IDENTIFY BENEFICIAL OWNERS?

As in many areas of crime prevention, the law makers delegate the responsibility of detecting and preventing criminal offences. In the field of anti-money laundering, this delegation goes as far as imposing obligations on private entities, and failure to comply with these rules can be criminally sanctioned.

In a legal system where there are effective beneficial ownership transparency rules in force, the following obligations are part of the system:

- The first layer of obligations applies to legal or nominee company owners, trustees and the beneficial owners themselves. They are subject to obligations to disclose ownership structures and beneficial owner identities to companies, financial institutions, DNFBPs and authorities.
- The second layer applies to companies. The law requires them to identify beneficial owners, relationships between beneficial owners and legal or nominee company owners. Obligations of trustees in this area are comparable to companies' obligations – they have to identify all parties to the trust (the settlor, beneficiaries and eventually the protector).
- The third layer is financial institutions and DNFBPs who have to identify all of the above-mentioned natural and legal persons (companies, beneficial owners of companies, trustees, etc.), and in the case where they detect a suspicious transaction initiated by any of their (potential future) clients, they have to report it to the financial intelligence unit of the country.

The rules of identification, verification, recording information, keeping information up to date, reporting suspicious transactions or applying clients, sanctions for the failure to comply with these obligations are rather complex. At the international level, UNCAC, UNTOC and in most details the FATF Recommendations describe these obligations (see Chapter 3. Where to look for information). At the national level, the anti-money laundering laws define these obligations.

Financial institutions are defined by the FATF as “any natural or legal person who conducts as a business one or more of the following activities or operations for or on behalf of a customer:

1. acceptance of deposits and other repayable funds from the public
2. lending
3. financial leasing
4. money or value transfer services
5. issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)
6. financial guarantees and commitments
7. trading in: (a) money market instruments (cheques, bills, certificates of deposit, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.”

RISK ASSESSMENTS

There are many ways in which domestic and/or foreign companies and other legal arrangements can be misused for money laundering. Criminals continue to invent techniques to conceal their illegal activities such as bribery and money laundering. The risk landscape is constantly changing; law enforcement and tax authorities can keep up with these changes if there are regular national-level risk assessments that show actual high-risk areas.

TIP: Check, whether your country has conducted any anti-money laundering risk assessments within the last three years. If yes, has it communicated this information to financial institutions and DNFBPs? Is the risk assessment available online? Were financial institutions, DNFBPs, private sector and civil society consulted in its preparation? Do laws and regulations in the country address areas assessed as high risk?

FATF lists as designated non-financial businesses and professions:

1. casinos
2. real estate agents
3. dealers in precious metals
4. dealers in precious stones
5. lawyers, notaries, other independent legal professionals and accountants
6. trust and company service providers

Dealers in luxury goods are missing from the FATF's list, but this list is not definite. National law makers can include further financial institutions and designate further professions and businesses as needed, considering the actual money laundering risk areas in the country.

For example, the list of DNFBPs in Nigeria includes supermarkets, construction companies, dealers in mechanised farming equipment and machineries and practitioners of mechanised farming. These might not be present in the legislation of other countries.³⁷

TOOL 4: Test the designated non-financial business and professions

Law makers put significant anti-money laundering obligations on DNFBPs. They have to find out a lot about their (potential) customers/clients, record such information and report suspicious transactions to authorities. Very often these professionals and businesses are not aware that they have such obligations, and failure to comply with them can result in serious penalties.

Check the anti-money laundering legislation of your country to see which financial institutions and designated professions and businesses are listed. Select some of them and ask them in an interview or in any other form whether they are aware that they have these obligations and how they comply with them in practice.

USE OF THE FINANCIAL SECTOR BY TEODORO OBIANG MBASOGO OF EQUATORIAL GUINEA

In the mid-2000s, a US Senate subcommittee became curious about the Government of Equatorial Guinea sending money and receiving loans that approached US\$700 million into accounts at just one US bank: the Riggs National Bank in Washington D.C. The investigation by the Senate Permanent Subcommittee on Investigations (PSI) found the bank had opened over 60 accounts for the government of Equatorial Guinea, including for President Teodoro Nguema Obiang Mbagasa, senior government officials and their relatives (including Teodoro Obiang Mbasogo).³⁸ According to the investigation's report, the bank had also created offshore corporations and opened accounts in the names of those offshore corporations for the president and his sons; accepted millions of dollars in cash deposits from the president, his wife, and other Equatorial Guinean officials; and facilitated numerous suspect transactions involving millions of dollars, without alerting law enforcement. The PSI report concluded that Riggs Bank "turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement".³⁹ Riggs Bank closed the Equatorial Guinea accounts in 2004 and subsequently pleaded guilty to failure to report suspicious monetary transactions by high-risk customers and agreed to pay a US\$16 million fine, in addition to a US\$25 million civil penalty, for its handling of the Equatorial Guinean and other accounts.⁴⁰

A second Senate investigation showed that Teodoro Obiang Mbasogo moved over US\$100 million in suspect funds into or through at least six other US banks by employing professionals such as attorneys, real estate and escrow agents to help him bypass anti-money laundering and PEP controls, and by taking advantage of wire systems that were not equipped to screen out high-dollar transfers sent by PEPs from high-risk countries.⁴¹

5. WHAT IF THESE LAWS ARE VIOLATED?

Any law that sets obligations has to foresee sanctions too, so as to make the obligations effective. Companies acts require members/shareholders to provide the companies with their personal data and particulars of their ownership, and the companies have to record these in the register of members. Companies are obligated to provide information from the register of members to the central/beneficial ownership register, if such a centralised register exists in the country. Companies acts tend to match non-compliance with any obligation and sanctions.

For example, the Companies Act of Ghana imposes a sanction of a fine of not less than 150 penalty units (approximately US\$420 – each penalty unit is about US\$3) or a term of imprisonment of not less than a year and not more than two years or both where a legal entity fails to give correct information regarding beneficial ownership information or where it gives false information.⁴²

Anti-money laundering laws are no less strict. Either the anti-money laundering act or the criminal code imposes criminal sanctions on those (natural or legal persons) who violate anti-money laundering obligations. To make these rules operational someone has to trigger investigations and eventually prosecutions.

According to international standards, financial institutions and DNFBPs are required to submit reports on suspicious transactions⁴³ to the financial intelligence unit and this unit decides whether the report merits a full investigation or if the suspicion was not well-grounded. Besides the financial institutions and DNFBPs who are obligated to report, anyone else who suspects money laundering or other criminal offences can report these to the authorities. It may be the financial intelligence unit that is part of a law enforcement body, or the prosecution service or a tax authority where you can report your suspicions, but other authorities, like an ordinary police officer, can also accept reports and then refer it to the competent authority.

Violations of the obligations of company law are most likely regulated in a way that the head of the company registry (e.g. the registrar) is the authority that can receive reports.

Central banks and other regulatory agencies of the financial sector often have the competence to examine violation of financial institution's obligations. In legal systems where there is a mandatory membership requirement for lawyers, auditors or other professions in a self-regulatory body – such as a bar association for lawyers – the self-regulatory body can examine violations of their own rules, which can result in further investigation by enforcement bodies.

Acts regulating the capital markets of a country may also contain criminal sanctions. The authority in charge of regulating and overseeing the capital markets can impose sanctions for the violation of the capital market rules applicable to public companies or, in more serious cases, refer the case to criminal justice authorities.

TOOL 5: Find old crime stories to analyse from a beneficial ownership perspective

Anti-money laundering laws are not new; they have been around for at least 20 years. Your country had to include the money laundering offence in the criminal code at the latest when it joined either of the two above-mentioned UN conventions. Legal provisions on obligations and sanctions look good on paper, but it is more interesting to look into the practice.

If these laws have ever been applied in your country, it must be possible to find some traces of it. Newspapers may have reported on stories where shell companies enabled the wrongdoers to hide bribes, launder illegal assets or defraud the tax authority. If any of these cases reached the courts, there must be some records of charges and eventually of court sentences.

1. Choose a case where a lack of beneficial ownership transparency facilitated the commission of a criminal offence. Approach the court that decided on the case and request a copy of the court decisions of various instances. If there is any online service of case law of your country, that can be a useful source too.

2. Based on the court decisions try to find answers to the following questions.

- Who was charged in the case?
- How did the authorities find out about the wrongdoing? Did someone report it to them? Was it a suspicious transaction report?
- If a financial institution had any role in the case, did it fulfil its duty of reporting/stopping suspicious transactions?
- If any lawyers, accountants or auditors had any role in the case, did they comply with their anti-money laundering obligations?
- If the wrongdoer used the illegal assets to buy real estate, a luxury car or yacht, did the real estate, car or yacht dealers comply with their anti-money laundering obligations?
- Who was sanctioned in the case? Only the main perpetrator or any of the accomplices who enabled the crime? If the accomplices were sanctioned, were these regular employees, senior managers or the legal person (such as a bank)?

3. If your country has a well-functioning criminal statistics system, operated, for example, by the office of the attorney general, it is worth asking for statistics on these cases. You will get far fewer details than from a court file, but it can be telling anyway. The country has to report its anti-corruption enforcement as it is one of the obligations in the indicators of Goal 16 of the United Nations Sustainable Development Goals.⁴⁴

ANNEXE 1: RESOURCES

RELEVANT LEGISLATION AND STANDARDS

Legislation that covers the country of interest's major international law instruments:

- UN Convention Against Corruption, which covers 182 countries⁴⁵
- Convention on Transnational Organized Crime (UNTOC), which covers 189 countries⁴⁶
- Financial Action Task Force (FATF) sets global anti-money laundering standards and monitors the implementation of the FATF Recommendations in about 190 jurisdictions,⁴⁷ which means that the same international anti-money laundering law obligations apply to most countries and differences stem from national implementations of the same standards.

EXPLAINER MATERIAL

- [Transparency International Glossary](#)
- [Transparency International EU video](#) - Dodgy: Short & Simple Recipes for Secrecy
- [Financial Transparency Coalition](#)
- [Investopedia](#) - beneficial ownership video

NGO ADVOCACY AND POLICY BRIEFS

- [Global Witness](#): 8 Reasons Why Everyone Needs to Be Able to See Company Ownership Information
- [Open Government Partnership Comment](#): is Beneficial Ownership Transparency Possible in Nigeria?
- [Open Society Foundations, October 2013](#): Terrorism Inc – How Shell Companies Aid Terrorism, Crime and Corruption

ANNEXE 2: FAQ TO PROMOTE BENEFICIAL OWNERSHIP TRANSPARENCY LEGISLATION

The purpose of the following frequently asked questions is to support advocacy to promote beneficial ownership transparency legislation.

BENEFICIAL OWNERSHIP DEFINITION

Is there a global definition of beneficial ownership?

The FATF defines the beneficial owner as “the natural person 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 control over a legal person or arrangement”.⁴⁸ The definition thus extends beyond legal ownership and control to consider the notion of ultimate ownership and control. An adequate definition of beneficial ownership in national legislation should therefore focus on the real living person, the “natural” (not just legal) persons who actually own and take advantage of the capital or assets, rather than just the persons who are legally (on paper) entitled to do so. It should also cover those who de facto exercise control, whether or not they occupy formal positions or are listed in the corporate register as holding controlling positions.

It is useful to have these discussions at the national level as it is important to debate various questions, such as a threshold. The best definition will arise from experience in the country.

Some definitions of beneficial ownership include a threshold. For example, you only have to report as beneficial owners people who own 25 per cent or more of the company. Is that enough?

The majority of countries use a quantitative approach to identify certain owners, controllers or beneficiaries as the beneficial owner. Control is therefore defined based on the holding of a certain percentage of shares, voting rights or property. This is the case, for instance, in the EU Fourth Anti-Money Laundering Directive, which indicates that at least any natural person holding more than 25 per cent of share capital qualifies as a beneficial owner.⁴⁹ In some countries this percentage is lower. In the United States, for example, the Securities Exchange Act establishes a threshold of 5 per cent.⁵⁰ In certain high-risk sectors, such as extractive industries, there may be no threshold at all. The 25 per cent threshold can often be too high as significant and problematic conflicts of interest can exist when individuals control much less than 25 per cent of a company.

However, on some occasions this quantitative approach is not useful in identifying the real beneficial owner. A person may exercise control over a corporate entity without holding shares or a position within the management of the company – through, for example, the use of nominee shareholders and shareholder agreements, or through kinship (or other types of affiliations), directors and persons in senior management positions, among others.⁵¹ For instance, research from Global Witness shows that in the United Kingdom up to 410,000 people control UK companies indirectly, which allows them to more easily hide tax evasion and the proceeds of corruption.⁵²

How would you set appropriate national ownership thresholds?

Setting an appropriate threshold at national level requires a good understanding of the ownership structure of companies in the country. It may be seen as an iterative process whereby the government can assess after a certain period whether the threshold level is deemed appropriate or not. For example, if the percentage of companies not reporting any beneficial owner is high, then it may mean that the threshold level has been set too high, whereas if the number of these companies is relatively limited then it allows for focus only on those companies and to check whether there is a legitimate reason for not reporting any beneficial owner. This is also why senior managers should never be listed as beneficial owners if no candidate meets the threshold criterion, otherwise no red flag can be raised and those cases would remain undetected.

Governments may consider adopting a more granular and differentiated approach, for instance, by setting sector-specific thresholds or subjecting politically exposed persons (PEPs) to different threshold policies. For example, Liberia has set the threshold at 5 per cent for hydrocarbon projects and mining development projects, and at 10 per cent for other regular mining permits. In Tajikistan, if a PEP has a stake in an extractive project, his share is subject to compulsory disclosure, irrespective of the level of shareholding.

If I locate the beneficial owner to the legally required threshold, is that enough?

When defining beneficial ownership, countries may opt to determine controlling shareholders based on a threshold (for example, persons owning more than a given percentage of a company). This, however, should not be considered sufficient in identifying the beneficial owner, but rather it should be considered as one evidential factor to be taken into account, among others.

The EITI has practical advice⁵³ on what to do when no beneficial owner can be identified when the threshold is applied. For example, in the EITI pilot in Liberia, it was decided that where a single individual does not own/control 5 per cent of an oil company (the applied threshold), the top five shareholders with the greatest share of ownership will be requested to disclose their beneficial owners.

What other kinds of criteria should be considered?⁵⁴

To be eligible for the beneficial ownership label, the candidate should pass a series of ownership and control tests:

- Natural person test: the beneficial owner is always a natural person, i.e. an individual human being, as opposed to a legal person which may be fictitious, such as a company, a trust, a foundation or any other type of legal entities or arrangements.
- Ownership test: the beneficial owner is any individual holding, directly or indirectly, at least one share in the entity or alternatively, holding shares or interests above a certain threshold (i.e. 1 per cent or 5 per cent or 10 per cent).
- Voting test: the beneficial owner is any individual, with the direct or indirect right to at least one vote, or alternatively, any individual holding directly or indirectly voting rights above a certain threshold (i.e. 1 per cent or 5 per cent or 10 per cent).
- Directors' appointment or removal test: the beneficial owner is any individual with the direct or indirect right to appoint or remove at least one director or manager.

- Residual test: any individual with direct or indirect control over the entity (for example, decision or veto rights on business operations, right to profit, contractual associations, joint ownership arrangements).

The beneficial owner can also be:

Default criteria – in situations (if applicable) where no individual passes any of the above beneficial ownership tests, at least the top 5 or 10 owners (for example, members, shareholders, etc.) are identified as beneficial owners.

The beneficial owner is never:

- a legal person or entity
- a physical person who is an agent, nominal owner or intermediary
- senior managers unless they pass the residual test described above. If no beneficial owner is identified as per the criteria above, the senior manager is registered as such, not as a beneficial owner. This should raise a red flag.

How far should you go to take into account family members who might be exercising “control” over an entity?

The FATF explicitly requires enhanced due diligence if the customer is a domestic or foreign PEP. PEPs are “individuals who hold or held a prominent public function, such as the head of state or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party officials. The term often includes their relatives and close associates⁵⁵”.

This means that any information if the beneficial owner is a PEP – including family members – should be verified and updated more frequently. A beneficial ownership register is simply a record of ownership or control and does not imply any accusation of wrongdoing.

Should there be an element of intent in the definition of beneficial ownership? What if the person is hiding his/her identity for legitimate reasons?

The definition does not include an element of intention because whether or not you are hiding your ownership or why does not matter. All that matters is whether you are the individual ultimately benefiting from the company or trust, etc. A beneficial ownership register is simply a record of ownership or control and does not imply any accusation of wrongdoing.

EXCLUSIONS AND EXCEPTIONS

Isn't having this information public a security issue for the individual, especially PEPs?

There may be specific cases in which individuals have legitimate reasons to remain anonymous for their own safety. It is important that no class or grouping of company should be whole-scale exempt from being included on the register. Anyone seeking anonymity should apply and be assessed on a case by case basis. Of the 1.3 million companies whose beneficial ownership information was disclosed in the UK as of 17 November 2016, only about 30 individuals had been granted the right not to have their identities disclosed.⁵⁶

Some people argue that a public register connecting PEPs and rich individuals to companies will increase their security risk because their levels of wealth will be more public. However, it is unlikely that the register would have this effect, and there is no evidence of this from countries that have established public registers.

Does releasing the data not violate the right to privacy?

Any register would establish the right balance between what they collect and what they publish. For example, in the UK, the register collects the full date of birth but only discloses the month and year of birth. It does not include details on the residential address of the individual.

It has been said that privacy should be proportionate to power – the more influence you have in public life, the more you can expect to be subject to accountability, which often requires enhanced transparency. Encryption techniques can enhance the security of the information provided.

The European Union has decided that information should be made available to the public when this is legitimate, necessary and proportionate. Provided that the necessary safeguards are in place, making the beneficial ownership information of companies and trusts public conforms with data protection legislation and privacy rights.⁵⁷

Are there legitimate reasons why a company would not want to disclose beneficial ownership information?

Reasons companies have given for not wanting to disclose this information include protecting brands in the early stages of a venture or to secure better interest rates. Neither of these issues relate to corruption but they are interestingly similar reasons to why companies are supportive of beneficial ownership transparency: they seek full information on companies they invest in, enter into a partnership with or purchase from to manage their own risk.

Banks have a duty to keep their customers' information and transactions confidential within the limits of the law. Banks cannot withhold information when the request for such is done through lawful means.

Is it possible for banks to do anything that would negate the interests of their customers? It is possible to disclose information about beneficial owners with restricts on information such as full address.

VERIFICATION OF DATA

How can you make sure the information is accurate?

Accuracy of the data is absolutely crucial for any beneficial ownership register to be able to assist money laundering and corruption investigations, regardless of whether the register is public or private. Indeed, if the data is not published, there is less scrutiny of the data and fewer inaccuracies will be spotted.

When data is public, the risks are increased for anyone considering shielding their identity to launder money. Accompanying the register with sanctions for inaccurate or outdated information would be an additional incentive to comply with regulations. The UK has a range of sanctions for non-compliance with providing information into the register, including up to two years in prison.

Triangulation of data should take place, by systematically cross-checking beneficial ownership information with other databases of information (for example, PEPs registers, suspicious activity report systems, financial intelligence unit, banking records, and so on). The interconnection of databases in the future would also allow for better verification of data.

How should the registry be updated if companies' beneficial owners change?

Companies should be required to promptly update their information if their beneficial ownership information changes. In the UK, companies only need to update their information within 28 days of the changes taking place within the company filings (called confirmation statement). The UK government had recognised that the original time period of one year did not ensure the PSC information provided is “current”, which is a requirement under the EU's Fourth Money Laundering Directive.

What happens if people don't give the right information (either by mistake or on purpose)?

Accompanying the register with sanctions for inaccurate or outdated information would be an additional incentive to comply with regulations and ensure companies realise the importance of their filings. However, before sanctions are imposed, guidance and support could be provided to ensure people understand how they should submit their data and why the data is important.

COLLECTING THE DATA

Is it expensive to establish a public register?

As Global Witness reported,⁵⁸ there have been three cost-benefit analyses of a public beneficial ownership registry, all of which concluded that public registries of beneficial ownership would be more cost effective than the status quo. The latest Global Witness estimate was that a register that is searchable and updated as and when ownership changes would cost the UK government £11 million a year (with an initial outlay of £0.5 million to set up). Cost for the UK private sector would be £4 million a year (with an initial outlay of £24 million). The 2002 study estimated the savings in police time alone from having a public registry of beneficial ownership to be £30 million a year.

The European Commission arrives at similar conclusions in a cost-benefit analysis of beneficial ownership transparency published in 2007: the direct costs for law enforcement authorities to access beneficial ownership data in the course of their investigations would be three times lower with an online public disclosure system compared to an intermediary-based system relying on obliged entities to provide them with the relevant information.⁵⁹

ROLE OF PRIVATE SECTOR

How do we ensure non-financial business and professions (lawyers, accountants, real estate agents, corporate service providers, etc.) find out who they are doing business with?

Often there is a lack of a clear understanding by obliged entities of the difference between a legal and a beneficial owner. Often, they only trace back to a parent company instead of a real living human being.

At the same time, those obliged entities face real challenges trying to identify and verify the beneficial owners, especially when they are located overseas and/or in secrecy jurisdictions. Depending on the specific jurisdiction and client concerned, public sources can be either non-existent, inaccessible or

untrustworthy, and obliged entities can rely solely on information provided only by the client without being able to cross-check and verify the information. Cooperation with foreign authorities and company registers can also be problematic and tedious. This significantly undermines obliged entities' capacity to ensure the timeliness and accuracy of the data provided.⁶⁰

The law should require those with reporting obligations to use means such as cross-checking the data provided with other government registries or using network analysis tools, to identify the actual beneficial owners, especially in the case of suspicious transactions.

It is crucial that governments ensure that control and sanction mechanisms for regulatory breaches and non-compliance with anti-money laundering obligations are proportionate in relation to the risks identified and effectively enforced.

ENDNOTES

- ¹ See, for example, the Azerbaijani Laundromat feature in The Guardian, 4 September 2017: "Everything You Need to Know About the Azerbaijani Laundromat". <https://www.theguardian.com/world/2017/sep/04/everything-you-need-to-know-about-the-azerbaijani-laundromat>
- ² Reuters. 16 March 2016. "Women Forced to Trade Sex for Land Rights, Global Research Finds". <http://www.reuters.com/article/us-women-landrights-sex/women-forced-to-trade-sex-for-land-rights-global-research-finds-idUSKCN0WI2RC>
- ³ Also look into Transparency International's Anti-Corruption Glossary: <https://www.transparency.org/glossary> and Financial Transparency Glossary: https://www.transparency.org/whatwedo/publication/financial_transparency_glossary. If you are interested in further details on this topic, read Transparency International's Technical Guide: Implementing the G20 Beneficial Ownership Principles: https://www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles
- ⁴ Natural person is any real, living individual. Legal person is a legal fiction, a non-human entity, for example, a business company, a foundation or a government agency, which can have rights and obligations. See more details about legal persons and legal arrangements in Transparency International: Technical Guide: Implementing the G20 Beneficial Ownership Principles, 2015, pages 7-8. https://www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles
- ⁵ FATF. 2014. Transparency and Beneficial Ownership. FATF Guidance. <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>
- ⁶ Reuters (web). 2 May 2013. "Jailed Former Nigerian Oil State Governor Loses Appeal in Britain". Reuters (web), 2 May 2013, www.reuters.com/article/2013/05/02/us-britain-nigeria-ibori-idUSBRE9410SG20130502
- ⁷ The Guardian. 17 April 2012. "Former Nigeria State Governor James Ibori Receives 13-Year Sentence". <http://www.theguardian.com/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced>
- ⁸ Judgement of Judge Pitts in Regina V James Onanefe Ibori delivered on Tuesday, 17 April 2012.
- ⁹ Reuters. 9 December 2013. "Ex-Goldman Sachs Banker Jailed in UK in Nigerian Corruption Case", <http://www.reuters.com/article/2013/12/09/us-britain-banker-corruption-idUSBRE9B80OE20131209#BBgm5HDJx2iBzYyp.97>
- ¹⁰ The Guardian. 4 March 2015. "UK Properties Held by Offshore Firms Used in Global Corruption, Say Police". the guardian, 4 march 2015, <http://www.theguardian.com/uk-news/2015/mar/04/uk-properties-held-by-offshore-firms-used-in-global-corruption-say-police>
- ¹¹ This Day-Live (Nigeria). 28 February 2012. "The Case against Ibori". <http://www.thisdaylive.com/articles/the-case-against-ibori/110253/>
- ¹² Global Witness. 30 June 2016. Eight Reasons Why Everybody Needs to Be Able to See Company Ownership Information (Not Just the Police). <https://www.globalwitness.org/en/blog/eight-reasons-why-we-all-need-be-able-see-beneficial-ownership-information-rather-just-police/>
- ¹³ Sarah Saadoun. 20 June 2017. "Ill-Gotten Goods": Equatorial Guinea is a Case Study in Self-Dealing. <https://www.hrw.org/news/2017/06/20/ill-gotten-goods-equatorial-guinea-case-study-self-dealing>
- ¹⁴ OECD Trade Policy Note. February 2016. The Economic Impact of Local Content Requirements. <https://www.oecd.org/tad/policynotes/economic-impact-local-content-requirements.pdf>
- ¹⁵ Stone, S., J. Messent and D. Flaig. 2015. "Emerging Policy Issues: Localisation Barriers to Trade", OECD Trade Policy Papers, No. 180, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5js1m6v5qd5j-en>
- ¹⁶ U4 Expert Answer. September 2014. Local Content Policies and Corruption in the Oil and Gas Industry. <https://www.transparency.org/files/content/corruptionqas/2014-15.pdf>
- ¹⁷ <http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships>
- ¹⁸ <https://ppp.worldbank.org/public-private-partnership/overview/practical-tools/good-governance-anticorruption>
- ¹⁹ <http://bteam.org/plan-b/ending-anonymous-companies-report-published/>
- ²⁰ <https://financialtransparency.org/issues/country-by-country-reporting/>
- ²¹ <http://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf>
- ²² <http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>
- ²³ The list may not be complete and these are not the full names of the laws as they do not include the year of the adoption and/or further details, neither do they refer to the amendments of the laws.
- ²⁴ UN Human Rights Committee (HRC). 12 September 2011. General Comment No. 34, Article 19, Freedoms of Opinion and Expression, CCPR/C/GC/34. <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>
- ²⁵ Find details at <http://www.rti-rating.org/>
- ²⁶ <https://www.open-contracting.org/get-started/global-principles/>

-
- ²⁷ See, for example, Zambia Extractive Industries Transparency Initiative's 2015 Beneficial Ownership report. https://eiti.org/sites/default/files/zeiti_bo_report_-_final_version_13_07_15_0.pdf
- ²⁸ <https://eiti.org/beneficial-ownership#ending-company-anonymity-the-key-to-fighting-corruption>
- ²⁹ International Maritime Organization (IMO) number: the ship's registration number.
- ³⁰ European Parliament. Press Release. 2 February 2017. "More Transparency and Accountability for EU Vessels Fishing outside the Union". <http://www.europarl.europa.eu/news/en/press-room/20170131IPR60317/more-transparency-and-accountability-for-eu-vessels-fishing-outside-the-union>
- ³¹ <https://register.openownership.org/>
- ³² <https://beta.companieshouse.gov.uk/>
- ³³ Transparency International EU Office. January 2014. Fighting money laundering in the EU: From secret companies to public registries. January 2014, www.transparencyinternational.eu/wp-content/uploads/2014/01/TI-EU-Policy-Paper-Beneficial-Ownership.pdf
- ³⁴ Competent authorities are law enforcement and tax authorities that are mandated to detect, prevent, investigate and prosecute money laundering. These authorities are defined and often listed in anti-money laundering laws.
- ³⁵ <http://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>
- ³⁶ Transparency International. February 2017. Top Secret Countries Keep Financial Crime Fighting Data to Themselves. https://www.transparency.org/whatwedo/publication/top_secret_countries_keep_financial_crime_fighting_data_to_themselv
- ³⁷ Regulation 2 of the Federal Ministry of Industry, Trade and Investment (Designation of Non-Financial Institutions and Other Related Matters) Regulations, 2013
- ³⁸ United States Senate Permanent Subcommittee on Investigations. 15 July 2014. Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the PATRIOT Act, Case Study Involving Riggs Bank. www.hsgac.senate.gov/imo/media/doc/ACF5F8.pdf?attempt=2.
- ³⁹ United States Senate Permanent Subcommittee on Investigations, July 2014.
- ⁴⁰ United States Senate, Permanent Subcommittee on Investigations. 4 February 2010. Keeping Foreign Corruption Out of the United States: Four Case Histories. www.hsgac.senate.gov/subcommittees/investigations/hearings/-keeping-foreign-corruption-out-of-the-united-states-four-case-histories
- ⁴¹ United States Senate Permanent Subcommittee on Investigations, February 2010.
- ⁴² Section 32 (14) of the Companies Act of Ghana
- ⁴³ "If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU)." – Recommendation 20 of the FATF Recommendations
- ⁴⁴ <https://sustainabledevelopment.un.org/sdg16/>
- ⁴⁵ <https://www.unodc.org/unodc/en/corruption/ratification-status.html>
- ⁴⁶ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en
- ⁴⁷ <http://www.fatf-gafi.org/countries/>
- ⁴⁸ FATF. 2014. Transparency and Beneficial Ownership. FATF Guidance.
- ⁴⁹ The Fourth Anti-Money Laundering (AML) Directive maintains this threshold but advises countries to adjust it according to their context.
- ⁵⁰ Vermeulen, E. 2013. Beneficial Ownership and Control: A Comparative Study – Disclosure, Information and Enforcement. www.oecd-ilibrary.org/governance/beneficial-ownership-and-control_5k4dkhwckbqv-en?crawler=true
- ⁵¹ Global Witness. The Great Rip Off. <http://greatripoffmap.globalwitness.org/#/>.
- ⁵² Christian Aid. 2015. UK Leads World with New Law to Reveal Who Really Owns Companies. www.christianaid.org.uk/pressoffice/pressreleases/march_2015/uk-leads-world-with-new-law-to-reveal-who-really-owns-companies.aspx
- ⁵³ <https://eiti.org/document/guidance-on-implementing-beneficial-ownership>
- ⁵⁴ This section comes from Transparency International EU's publication Under the Shell: Ending Money Laundering in Europe, April 2017. http://transparency.eu/wp-content/uploads/2017/04/EBOT-REPORT-TIE-014-16_clean.pdf
- ⁵⁵ Financial Action Task Force, June 2013, FATF Guidance: Politically Exposed Persons, <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>
- ⁵⁶ Global Witness. 22 November 2016. What Does the UK Beneficial Ownership Data Show Us? <https://www.globalwitness.org/en/blog/what-does-uk-beneficial-ownership-data-show-us/>
- ⁵⁷ Transparency International EU. April 2017. Under the Shell: Ending Money Laundering in Europe. http://transparency.eu/wp-content/uploads/2017/04/EBOT-REPORT-TIE-014-16_clean.pdf
- ⁵⁸ <https://www.globalwitness.org/en/archive/howell/>
- ⁵⁹ European Commission. February 2007. Cost Benefit Analysis of Transparency Requirements in the Company/Corporate Field and Banking Sector Relevant for the Fight Against Money Laundering and Other Financial Crime, Contract Nr.DG.JLS/D2/2005/01. www.transcrime.it/wp-content/uploads/2013/11/CBA-Study_Final_Report_revised_version.pdf
- ⁶⁰ Transparency International EU. April 2017. Under the Shell: Ending Money Laundering in Europe. http://transparency.eu/wp-content/uploads/2017/04/EBOT-REPORT-TIE-014-16_clean.pdf



Transparency International
International Secretariat
Alt-Moabit 96, 10559 Berlin, Germany

Phone: +49 30 34 38 200
Fax: +49 30 34 70 39 12

ti@transparency.org
www.transparency.org

Blog: voices.transparency.org
Facebook: [/transparencyinternational](https://www.facebook.com/transparencyinternational)
Twitter: [@anticorruption](https://twitter.com/anticorruption)