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RECOMMENDATIONS ON BENEFICIAL OWNERSHIP FOR OGP ACTION PLANS

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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 November 2019. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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SUMMARY

Anonymously owned companies underpin corrupt and criminal financial transactions. They were used in 70 per cent of grand corruption cases reviewed by the Stolen Assets Recovery Initiativeⁱ and are one of the oldest tricks in the book for moving, laundering and spending dirty money.

Governments are shining a light on anonymous company ownership by creating public registers of the true beneficial owners of companies – the individuals who ultimately control or profit from a company. Public beneficial ownership registers make it harder for corrupt individuals to hide their connection to illicit flows of capital. They can also help authorities recover stolen assets, assist prosecutions and act as a deterrent to would-be criminals. Beneficial ownership transparency also contributes to sustainable development, a fairer business environment and increased public trust.

This briefing discusses:

- why beneficial ownership is a priority for Open Government Partnership (OGP) members
- good practice for creating open registers
- existing commitments and recommendations for inclusion in action plans

Global action to end anonymous company ownership is well underway. By January 2020, all EU Member States must have established public beneficial ownership registers of companies to comply with new money-laundering regulations. Meanwhile, twenty-two governments in the Extractive Industries Transparency Initiative have pledged to publish beneficial ownership data on extractive companies by 2020.ⁱⁱ

In the Open Government Partnership, 23 countries have used their national action plans to make commitments on beneficial ownership transparency. At the OGP Global Summit 2019 in Ottawa, the UK government and Open Ownership established the Beneficial Ownership Leadership Group, which will “drive a global policy shift towards free, open beneficial ownership data and set ambitious best practice.”ⁱⁱⁱ

Tackling anonymous company ownership is now a pillar of the international community’s agenda. A global consensus is starting to form about the key role public beneficial ownership registers play in stemming money laundering worldwide. The G7 and G20 have addressed the issue at previous summits, while the OECD and Financial Action Task Force have recently produced research and guidance on implementation^{iv} of best practices.

Transparency International recommends that governments:

- create and make publicly available a central register (in open data format) of the beneficial owners of all corporate entities operating in the country, including foundations, trusts and partnerships
- implement the Beneficial Ownership Data Standard to ensure disclosure meets evolving global norms
- ensure that regulations clearly and narrowly define beneficial owners, provide for the timely collection and verification of appropriate information, and effectively sanction those who do not comply

WHY IS BENEFICIAL OWNERSHIP TRANSPARENCY RELEVANT FOR FIGHTING CORRUPTION?

In most countries it is legal for companies to hide the identity of their beneficial owners. Criminals use anonymously owned companies to secretly move, launder and spend tainted money in the global financial system. Documents in the Panama Papers show how kleptocrats and their families used anonymous companies to control state assets and purchase global real estate.^v Bribe-payers, sanctions-busters, tax evaders and terrorist financiers use anonymous companies for the same reasons.^{vi}

Politicians and public officials may also use anonymous companies to conceal conflicts of interest. For example in the OPL 245 scandal in Nigeria, Shell paid US\$1.1 billion to an anonymously owned company that secretly belonged to the then oil minister.^{vii}

Money laundering

The United Nations Office on Drugs and Crime estimates^{viii} between US\$800 billion and US\$2 trillion of illicit money is laundered every year, much of which passes through anonymous companies. For example, the Russian, Azerbaijan and Troika Laundromat^{ix} schemes all relied on anonymous companies.

In typical cases, criminals use strings of anonymous companies across multiple jurisdictions that are famed for their secrecy, such as the British Virgin Islands, Panama, Seychelles and the US (e.g. Delaware). Law enforcement agencies find it extremely difficult – and often impossible – to investigate corruption and other crimes. One reason is that information on beneficial ownership, when it is collected, is of poor quality and badly shared between authorities and jurisdictions.^x An open register of ownership allows stakeholders to access information immediately and monitor the quality of data.

In 2014, the head of the UK Metropolitan Police's Proceeds of Corruption Unit called anonymous companies “the single biggest obstacle to investigating corruption cases.”^{xi}

Sustainable development

Research by Global Financial Integrity suggests that illicit financial flows deprive developing countries of hundreds of billions of dollars every year.^{xii} At stake is the achievement of the 2030 Sustainable Development Goals if governments do not to stop the loss of public resources by tax evasion and corruption and recover stolen assets. Asset recovery is extremely difficult, as law enforcement officials in Ukraine^{xiii} or the Philippines^{xiv} will testify. The G7 recognises that reducing illicit financial flows and recovering assets through beneficial ownership transparency is key to promoting sustainable development.^{xv}

Bribery

Anonymous companies are often used to pay or receive bribes. In an analysis of 427 foreign bribery cases, the OECD found that one in four of them involved secret companies.^{xvi} For example, in the Odebrecht scandal in Latin America, anonymous companies were used to pay bribes to officials in 12 countries. Anonymous companies can also obscure financial and reputational risks by hiding the identity of third parties. Beneficial ownership transparency improves the business environment by making it harder to pay bribes and identifying all the parties to a transaction.

WHY IS IT IMPORTANT TO INCLUDE BENEFICIAL OWNERSHIP TRANSPARENCY COMMITMENTS IN OGP ACTION PLANS?

The transnational nature of financial crime demands a coordinated solution in which a critical mass of countries work together to put an end to the international networks that are used to move tainted money in the global economy.

Moreover, unmasking and investigating the individuals behind anonymous companies often requires governments, law enforcement agents, journalists and civil society organisations from more than one country to work together.

It is logical that policy on beneficial ownership transparency should be developed and implemented in an international, multi-stakeholder forum like the Open Government Partnership.

This can ensure policy coordination across countries and a critical mass of early adopters – two elements that are required to address the transnational nature of money laundering. Members such as Slovakia, the United Kingdom, Ukraine and Denmark have already implemented world-leading initiatives that other members can learn from.

By including beneficial ownership commitments in national action plans, countries can benefit from the Open Government Partnership's formal timelines and accountability mechanisms, as well as the peer learning and technical support the OGP community provides.

OGP national action plans can also be vehicles for all members to enhance existing policies on beneficial ownership, whether developed via the EU, the Extractive Industries Transparency Initiative, the Anti-Corruption Summit or other international mechanisms.

The Open Government Partnership is a space where countries can jointly progress towards greater beneficial ownership transparency and transnational collaboration, ensuring national policies are designed and implemented with international stakeholders in mind.

OPEN OWNERSHIP

[Open Ownership](#) is a global civil society organisation that links data from corporate registries and other sources to create a single, accessible source of information on worldwide beneficial ownership.^{xvii} The initiative is developing a Beneficial Ownership Data Standard^{xviii} that provides a technical model for governments to create their own registers and to ensure that national datasets are comparable and interoperable. The site launched in April 2017 and currently hosts data from Slovakia, the United Kingdom, Ukraine and the Extractive Industries Transparency Initiative.

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TRENDS AND EXAMPLES OF GOOD PRACTICE IN BENEFICIAL OWNERSHIP TRANSPARENCY

Enabling access to quality data

Transparency is a crucial condition for the success of a central register of beneficial ownership information. Establishing an open, public register is good practice because it:

- ensures that domestic, foreign and international law enforcement agencies and tax authorities have free and immediate access to data
- allows quality control on the data because stakeholders can verify it and provide feedback
- allows data to be used for broader accountability purposes, such as citizen monitoring, journalism and academic research

Since the United Kingdom's public beneficial ownership register was first published in 2016, Global Witness and DataKind have regularly analysed millions of ownership records. They have identified and reported data-quality issues, which led the UK company registrar to improve the way it collects information. Global Witness and DataKind were also able to cross-reference the data because it is published in open data format against other accountability datasets on tax and politically exposed persons. Using a global dataset on politicians, they found that 390 beneficial owners of UK companies were probably politicians from around the world, which raised red flags. Further investigative leads like this were generated using a 'red flags' algorithm. Civil society organisations also published all the code they wrote during the project and created digital tools for others to use in investigations of beneficial ownership in Britain. These actions enriched the United Kingdom's oversight framework.^{xi}

Supporting civic participation

In the complex, multi-jurisdictional fight against crime and corruption, governments can recruit additional skills and capacity by facilitating the participation of the media, civil society organisations and the private sector. Governments should remember that everyone has something to gain from tackling corruption. Good practice includes:

- consulting data users before, during and after the publication of a register and responding to feedback
- consulting entities with anti-money laundering obligations to better understand the risks and strategies for mitigation
- joining multi-stakeholder initiatives to remain abreast of evolving standards for disclosure and interoperability

The business community is a core user of beneficial ownership data. The B20, which represents the G20 business community, has advocated for beneficial ownership transparency since 2014.^{xx} Research by the B Team shows that beneficial ownership data helps companies to conduct due diligence, manage supply chain risks and seek redress or remedy.^{xxi} It also levels the playing field when bidding for public contracts, as companies with political connections and potentially unfair advantages can be identified. Consultations with companies on their data needs before, during and after disclosure helps them to increase the integrity of their operations.

Promoting integrity and accountability

The primary function of beneficial ownership registers is to deter and detect corruption and financial crimes. Successful policy has several features and good practice includes:

- Defining beneficial owners in clear, narrow, unambiguous language and using appropriate thresholds to determine ownership or control (such as between one and ten per cent). The Tax Justice Network provides guidance on how to formulate a definition.^{xxii}
- Applying disclosure rules to all corporate entities. Foundations, trusts and companies are used to hide

ownership of assets.

- Enforcing meaningful sanctions against those who do not comply, including fines, director disqualification, debarment from bidding for public contracts and criminal penalties for company owners and/or directors.

In 2018, the public register of beneficial ownership in Slovakia showed that Andrej Babiš, the prime minister of the Czech Republic, was the beneficial owner of an agricultural company that was receiving EU subsidies. The European Parliament had previously determined that politicians should not receive EU subsidies, which led Transparency International Czech Republic to submit a complaint to the European Commission. The commission investigated and in 2019 it found that Babiš had a conflict of interest and ordered the Prime Minister to repay €17 million in subsidies received over the previous two years.^{xxiii}

Another source of global momentum for implementing beneficial ownership registers is the Extractive Industries Transparency Initiative. This initiative prescribes a standard of transparency and good governance for the natural resource sector, to which 51 governments have subscribed. After a successful pilot, Extractive Industries Transparency Initiative members agreed to collect beneficial ownership data by 2020. Twenty-two countries have pledged to publish this information.^{xxiv}

THE ANTI-CORRUPTION SUMMIT AND BENEFICIAL OWNERSHIP TRANSPARENCY

In May 2016, governments from 43 countries – including 34 OGP participating countries – gathered in London at the [Anti-Corruption Summit](#) to agree on a package of actions to tackle corruption. As a result, governments signed the Global Declaration Against Corruption and made more than 600 commitments on a range of issues, including at least 65 commitments on transparency and the sharing of beneficial ownership information.

A recent assessment of progress in implementation of the Summit pledges found that 83 per cent of commitments made on beneficial ownership transparency are underway, ongoing or completed.^{xxv}

These and other commitments made at the Anti-Corruption Summit can be embedded in national action plans in OGP participating countries.

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EXISTING COMMITMENTS

Twenty-three OGP members have made commitments on beneficial ownership. These are: Armenia, Australia, Bulgaria, Canada, Chile, Croatia, France, Ghana, Indonesia, Ireland, Kenya, Latvia, Liberia, Mongolia, Nigeria, North Macedonia, Norway, the Philippines, South Africa, the United Kingdom, Ukraine and the United States.

One third of the 33 existing commitments were made in 2018 and 2019. This growth in activity shows how OGP members are taking note of the global work being done by the G20, the Financial Action Task Force, the OECD, the Extractive Industries Transparency Initiative and the EU.

The Independent Reporting Mechanism has reviewed 16 of the commitments made between 2013 and 2016. Notable examples of these pledges are described below.

Ireland, Norway and the United Kingdom used their national action plans to pledge and deliver public registers of beneficial ownership. Ghana and Kenya have pledged a register and are aiming to make it operational in 2020.

Ukraine made commitments in its third national action plan to improve mechanisms for information verification. The Independent Reporting Mechanism considered this pledge to have transformative potential but it is yet to be implemented.

The United States has used its action plan to mandate financial institutions that do business with anonymous companies to collect beneficial ownership information and share it to support law enforcement investigations, financial sanctions and tax compliance.^{xxvi}

The Extractive Industries Transparency Initiative states that Australia, Mongolia, Norway and the United Kingdom have also used the Open Government Partnership to underline their extractive industry transparency commitments, which includes the collection of beneficial ownership data on extractive companies. South Africa has used its national action plan to affirm its commitment to implementing its G20 action plan.

States who bring existing initiatives into the Open Government Partnership will benefit from the forum's peer learning, formal timelines and accountability mechanisms. They can also ensure that their policies reflect the highest international standards.

OGP BENEFICIAL OWNERSHIP LEADERSHIP GROUP

At the OGP Global Summit 2019 held in Ottawa, the UK government and Open Ownership launched a global coalition of governments and partners to advance beneficial ownership transparency, called the Beneficial Ownership Leadership Group. The group seeks to promote beneficial ownership transparency by facilitating discussions on international best practice and advancing a set of co-created [principles](#) through the Open Government Partnership and other platforms.

WHAT ELEMENTS SHOULD A COMMITMENT ON BENEFICIAL OWNERSHIP INCLUDE?

Vulnerabilities in company ownership regulations allow criminals to hide, launder and spend money without detection. Governments must respond with robust transparency and enforcement policies.

Transparency International recommends that governments:

Create and publish a central, open register (in open data format) of the beneficial owners of all registered corporate entities and arrangements, including foundations, partnerships and trusts

To be effective, beneficial ownership registers must cover all types of legal entities and arrangements. They should also include entities registered in foreign jurisdictions that operate within the jurisdiction of the register. Registers must be fully searchable, regularly updated and contain all historical changes in ownership. Establishing a public register ensures that all bodies – including law enforcement agencies, tax authorities and civic organisations from domestic and foreign jurisdictions – have free, immediate access to information.

Implement the Beneficial Ownership Data Standard to ensure disclosure meets global norms

Implementing the Beneficial Ownership Data Standard is a simple way of ensuring beneficial ownership data is published in a structure and format that facilitates cross-jurisdictional analysis. This allows data to be linked and compared transnationally, which is crucial for achieving accountability. Changes to international norms are captured by updated iterations of the standard. Therefore, by working with the standard and its developer, Open Ownership, governments stay up to date. Open Ownership also provides holistic implementation guidance and a helpdesk for hands-on support.

Ensure that regulations clearly and narrowly define beneficial owners, provide for the collection and verification of appropriate information and effectively sanction those who do not comply

Individuals hiding behind anonymous companies may seek to avoid identification by exploiting legal loopholes. Governments must prevent this by adopting regulations that capture the meaning of beneficial ownership in a precise, comprehensive manner. [Transparency International](#) and the [Tax Justice Network](#) provide recommendations on how to define beneficial owners.

Financial criminals may also seek to provide inaccurate or incomplete information. Robust procedures to collect and verify information prior to publication can help to mitigate this, but they must also be supported by meaningful sanctions, such as the exclusion of a non-compliant individual from exercising their rights within the company (for example, voting and receiving dividends).

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