

RECOMMENDATIONS ON BENEFICIAL OWNERSHIP TRANSPARENCY FOR OPEN GOVERNMENT PARTNERSHIP NATIONAL ACTION PLANS

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SUMMARY

Anonymous companies underpin corrupt and criminal financial transactions. They were used in 70 per cent of grand corruption cases reviewed by the World Bank¹ and are one of the oldest tricks in the book for moving, laundering and spending dirty money.

Governments are ending anonymous company ownership by creating open, public registers of the true “beneficial” owners of companies – the individuals who ultimately control or profit from a company. Open registers of beneficial owners make it harder for corrupt individuals to hide their connection to illicit flows of capital out of a national budget. They can also help authorities recover stolen assets, prosecute criminals and deter others. Beneficial ownership transparency 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 and model commitments in national action plans

Global action to end anonymous company ownership is well underway. Twenty-one governments in the Extractive Industries Transparency Initiative (EITI) have pledged to publish extractive company beneficial ownership data by 2020.² The Organisation for Economic Co-operation and Development (OECD) is helping states to collect and exchange beneficial ownership information to fight tax evasion and money laundering.³ The European Union’s Fifth Anti-Money Laundering Directive requires member states to establish registers of beneficial company owners and 21 governments pledged to explore or establish registers at the UK Anti-Corruption Summit in May 2016.

In the OGP, 15 countries including Slovakia, the UK and Ukraine, have already used their national action plans to declare and implement world-leading initiatives on beneficial ownership. Governments must continue to build on this foundation.

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 global norms
- 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

¹ Stolen Asset Recovery Initiative, *Fact Sheet: The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*.

² EITI, *Road to 2020* (2017) Available at: eiti.org/progress-report-2017/road-to-2020 [accessed 01/04/2018].

³ OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Transparency 2017: Report on progress* (2017).

WHY IS BENEFICIAL OWNERSHIP TRANSPARENCY RELEVANT FOR FIGHTING CORRUPTION?

In the vast majority of countries, it remains legal for companies to hide the identity of their beneficial owners. Embezzlers use anonymously owned companies to move, launder and spend tainted money in the global financial system without being detected. Documents in the Panama Papers, for example, show how kleptocrats and their families used anonymous companies to secretly control state assets and purchase global real estate.⁴ Criminals including terrorists, human traffickers, sanctions-busters, drug dealers and tax evaders⁵ also use anonymous companies for the same reasons.

Money laundering

The United Nations Office on Drugs and Crime (UNODC) estimates⁶ between US\$800 billion and US\$2 trillion of illicit money is laundered every year, much of it through 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, Cyprus and Delaware. Law enforcement agencies find it extremely difficult – and often impossible – to investigate. One reason is that information on beneficial ownership, when it is collected, is of poor quality and inadequately shared between different authorities and jurisdictions. An open register of ownership allows stakeholders to access information immediately and monitor the quality of data.

Research by Global Financial Integrity, UNODC and the ONE Campaign suggests that illicit financial flows deprive developing countries of approximately US\$1 trillion a year.⁷ Returning this money to the governments from which it was stolen is extremely difficult, as law enforcement officials in Ukraine⁸ or the Philippines⁹ will testify. Stopping illicit financial flows, through beneficial ownership policy, is therefore key to promoting sustainable development – as recognised by the G7.¹⁰ In addition, the G20 has stated that “transparency over beneficial ownership is critical to preventing and exposing corruption and illicit finance.”¹¹

Bribery

The World Economic Forum estimates that corruption adds up to 10 per cent of the total cost of doing business in the private sector.¹² The bribes paid to win business and public contracts may be worth up to US\$1 trillion, according to World Bank research.¹³ Anonymous companies facilitate global bribery, which drives up costs and consequently hinders the growth of both legitimate business and economies. In an analysis of 400 foreign bribery cases, the OECD found that one in four of them involved secret companies.¹⁴ They can also obscure financial and reputational risks by hiding the identity of third parties. Transparency in beneficial ownership decreases the risk of corruption on business by making it harder to pay bribes and identifying all the parties to a transaction.

⁴ “How Family That Runs Azerbaijan Built an Empire of Hidden Wealth”, *International Consortium of Investigative Journalists* (web), 4 April 2016.

⁵ Open Societies, *Terrorism Inc: How shell companies aid terrorism, crime and corruption*, available at: www.opensocietyfoundations.org/sites/default/files/Terrorism%20INC%20Final%2010-24-13%20FINAL.pdf [accessed 28/04/18].

⁶ UNODC, *Money-Laundering and Globalization*, available at: www.unodc.org/unodc/en/money-laundering/globalization.html [accessed 28/04/18].

⁷ Global Financial Integrity, *Illicit Financial Flows from Developing Countries: 2004-2013* (2015); UNODC, *Illicit money: how much is out there?* (2011); “Trillion Dollar Scandal: The biggest heist you’ve never heard of”, *One* (web), 5 December 2014.

⁸ “The money machine: how a high-profile corruption investigation fell apart”, *The Guardian* (web), 12 April 2017.

⁹ “The \$10bn question: what happened to the Marcos millions?”, *The Guardian* (web), 7 May 2016.

¹⁰ “G7 Leaders Reaffirm Commitment to Tackling Illicit Financial Flows, Promoting Sustainable Development”, *Global Financial Integrity* (web), 5 June 2014.

¹¹ Ministry of Foreign Affairs of Japan, *G20 Anti-Corruption Action Plan 2017-2018*, available at: www.mofa.go.jp/files/000185882.pdf [accessed 25/06/18].

¹² World Economic Forum, *Partnering Against Corruption Initiative (PACI)*, 2011.

¹³ D. Kaufman, *Myths and Realities of Governance and Corruption* (World Bank).

¹⁴ LexisNexis, *The Hidden World of Beneficial Ownership*.

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

The OGP is an ideal forum for countries to commit to policies that fight anonymous ownership. Through the partnership, members can debate and coordinate a global solution, develop common standards and inspire one another with good practice. Holding global embezzlers and criminals to account is a cross-border, multi-stakeholder process.

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

OGP national action plans can be vehicles for all members to expand and develop their intentions, whether expressed through EITI or the Anti-Corruption Summit, to end anonymous companies. Indeed, the OGP Paris Declaration cites beneficial ownership as a key policy to address transparency, integrity and anti-corruption.

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 related to transparency and the sharing of beneficial ownership information.

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

TRENDS AND EXAMPLES OF GOOD PRACTICE IN BENEFICIAL OWNERSHIP TRANSPARENCY

Increasing government transparency

Transparency is a crucial condition for the success of a register and OGP members like the UK are leading the way in this respect. 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

In June 2016, the UK published the world's [first open register of beneficial ownership](#). Data scientists from the civic and private sectors subsequently found that 3,000 companies listed their beneficial owner as a company with a tax haven address, which is not permitted, and reported the data-quality issue to Companies House. The scientists, meeting at a “hackathon”, were also able to cross-reference the register – because it is published in open-data format – against other datasets used for accountability. They discovered that 76 beneficial owners share the same name and birthday as someone on the US sanctions list.¹⁵ In a later analysis of this data it was found that some 4,000 beneficial owners were listed as being under the age of two.¹⁶

Supporting civic participation

In the complex, multi-jurisdictional fight against crime and corruption, governments can recruit additional skills and capacity by facilitating participation from the media, civil society organisations (CSOs) and the private sector. Governments should remember that everyone has something to gain by 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 such as EITI and Open Ownership, to commit to implement the global standards for data disclosure

The B20, which represents the G20 business community, has identified 15 cases in which companies need to access beneficial ownership data.¹⁷ It helps companies, for example, to conduct due diligence and manage supply chain risks. Beneficial ownership data can also level the playing field, as those with political connections and possible unfair advantages can be identified, according to [research](#) by The B Team.¹⁸ Creating public registers of ownership allows companies to use data to increase the integrity of their own operations and therefore of the market as a whole.

¹⁵ “What does the UK beneficial ownership data show us?”, *Global Witness* (web), 22 November 2016.

¹⁶ “In pursuit of hidden owners behind UK companies”, *Global Witness* (web), 6 February 2018.

¹⁷ The B Team, *Putting beneficial ownership transparency into practice*, 2015, available at: bteam.org/wp-content/uploads/2015/11/BOT-Report-Dec-9.pdf [accessed 28/04/18].

¹⁸ Ownership Transparency, *About Ownership Transparency*, available at: <http://ownershiptransparency.com/about-ownership-transparency> [accessed 14/04/18]; The B Team, *The Business Case for Ending Anonymous Companies* (2015).

Promoting integrity and accountability

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

- defining beneficial owners in clear, narrow and unambiguous language and using appropriate thresholds to determine ownership or control (such as between 1 and 10 per cent)
- applying disclosure rules to all corporate entities. Foundations and trusts, as well as companies, are used to hide ownership of assets, World Bank research shows¹⁹
- enforcing meaningful sanctions against those who do not comply. Financial penalties alone are unlikely to be effective deterrents. The Tax Justice Network outlines a range of [additional mechanisms](#) governments can deploy, like debarment or criminal penalties for owners and/or directors of corporate entities²⁰

In Slovakia, all government contractors must declare their beneficial owners under a law which aims to prevent companies with government connections gaining an unfair advantage in the procurement process.²¹ Companies who fail to submit accurate credentials may be fined and see their contracts with public sector bodies terminated. Since the policy was [implemented](#), the growth of Slovak firms owned in offshore destinations has dropped from 10 per cent to 1 per cent per annum.²²

Another source of global momentum for implementing beneficial ownership registers is EITI. 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, EITI members agreed to collect beneficial ownership data by 2020. Twenty-one countries have pledged to publish this information.²³

OPEN OWNERSHIP

[Open Ownership](#) is a global civil society initiative funded by UK Aid that links data from corporate registries and other sources to create a single, accessible source of information on worldwide beneficial ownership.¹⁷ The initiative is developing a Beneficial Ownership Data Standard¹⁸ that provides a technical model for governments to create their own registers and to ensure that national datasets are comparable and inter-operable with one another. The site launched in April 2017 and currently hosts data from Slovakia, the UK, Ukraine and EITI.

2425

¹⁹ Stolen Asset Recovery Initiative, *How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (World Bank: 2011).

²⁰ A. Knobel, M. Meinzer and M. Harari, *What should be included in Corporate Registries? A Data Checklist* (Tax Justice Network: 2017)

²¹ "Parliament adopts anti-shell law", *The Slovak Spectator* (web), 25 October 2016.

²² G. Šipoš, *How to make beneficial ownership register work* (Transparency International Slovensko: 2017)

²³ EITI, *Road to 2020* (2017) Available at: eiti.org/progress-report-2017/road-to-2020 [accessed 01/04/2018].

²⁴ "New tool to track corporate ownership around the world", *Open Contracting Partnership* (web), 3 April 2017.

²⁵ "Introducing the Beneficial Ownership Data Standard", *Open Ownership* (web), 29 June 2017.

EXISTING COMMITMENTS

The UK used its national action plan to pledge and deliver a public register of beneficial ownership, and Ukraine has made commitments in its plan to improve its mechanisms for information verification in its register. Yet the burst in global activity from states, linked to the work of the EU, G20, Financial Action Task Force, OECD, EITI and Anti-Corruption Summit 2016, is generally not reflected in the national action plans of OGP members.

In total, 14 OGP members have made commitments on beneficial ownership, according to the Independent Reporting Mechanism Commitment Database. These are: Australia, Bulgaria, France, Ghana, Ireland, Kenya, Liberia, Mongolia, Nigeria, Norway, South Africa, the UK, Ukraine and the USA.

In Africa, Ghana, Kenya and Liberia have committed to developing public registers while Nigeria will create, but not publish, a register of beneficial ownership.

France and Ireland are the only EU member states in the OGP to use their national action plans to support the transposing to domestic law of the Fourth Anti-Money Laundering Directive, which mandates states to create registers of beneficial ownership information.²⁶

In procurement, Bulgaria has pledged to collect information on the beneficial owners of companies who bid for large contracts while Ghana has committed to “provide information on the beneficial owners winning public contracts”.

Australia and Norway have pledged to consult and examine policy options on beneficial ownership while South Africa has used its national action plan to affirm its commitment to implementing its G20 action plan.

EITI states Australia, Mongolia, Norway and the UK have also used the OGP to underline their extractive industry transparency commitments, which includes the collection of beneficial ownership data on extractives companies.

The USA 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.²⁷

States that bring existing initiatives into the OGP will benefit from the peer learning, formal timelines and accountability mechanisms of the forum. They can also ensure that their policies reflect the highest international standards.

OGP PARIS DECLARATION AND BENEFICIAL OWNERSHIP TRANSPARENCY

The Paris Declaration is a set of collective actions where governments and CSOs can join forces and work together on to push open government forward, and advance reform at the global, national and subnational levels.

Ending abuse of anonymous companies is one collective action within the Paris Declaration. Fourteen countries and CSOs have committed to “reduce the opacity around corporate ownership by collecting accurate, adequate, and timely basic and beneficial ownership information.”

To see what collective actions have been proposed on ending abuse of anonymous companies and to include your own visit: <https://paris-declaration.ogpsummit.org/>.

²⁶ “Commission strengthens transparency rules to tackle terrorism financing, tax avoidance and money laundering”, *European Commission* (web), 5 July 2016.

²⁷ “Customer Due Diligence Requirements for Financial Institutions”, *Federal Register* (web), 5 November 2016.

WHAT ELEMENTS SHOULD A COMMITMENT ON BENEFICIAL OWNERSHIP INCLUDE?

Vulnerabilities in ownership regulations allow criminals to hide, launder and spend their money in multiple ways. 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, including foundations, trusts and partnerships

To be effective, registers of beneficial owners must apply to all types of corporate entities – otherwise criminals will simply switch to an alternative. Registers should include entities registered in foreign jurisdictions that operate within the jurisdiction of the register. Registers must also be fully searchable, regularly updated and contain all historical changes in ownership. Establishing a public register ensures that all bodies – including law enforcement, tax authorities and civic organisations from domestic and foreign jurisdictions – have free and immediate access to information.

Implement the Beneficial Ownership Data Standard (BODS) 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. Open Ownership is developing holistic guidance for implementation²⁸ and also operates a helpdesk that provides hands-on support to governments working on implementation.

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 and comprehensive manner. Transparency International²⁹ and the Tax Justice Network³⁰ 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 or receiving dividends).

²⁸ Beneficial Ownership Data Standard, available at: beneficial-ownership-data-standard.readthedocs.io/en/master/ [accessed 28.06.18].

²⁹ Transparency International, *Technical guide: implementing the G20 beneficial ownership principles*, 2015.

³⁰ A. Knobel and M. Meinzer, *Drilling down to the real owners – Part 1* (Tax Justice Network: 2016).

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