

## Briefing note - Beneficial Ownership Transparency

### UNCAC reference

#### Article 12. Private Sector

1. Each State Party shall take measures [...] to prevent corruption involving the private sector, enhancing accounting and auditing standards in the private sector and [...] provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

(c) Promoting transparency among private entities, including [...] measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.

#### Article 14. Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value, and [...] other bodies particularly susceptible to money-laundering [...] in order to deter and detect all forms of money-laundering, which regime shall emphasise requirements for customers and [...] beneficial owner identification, record-keeping and the reporting of suspicious transactions.

#### Article 52. Prevention and detection of transfers of proceeds of crime

1. [...] each State Party shall take such measures as may be necessary [...] to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 2 of this article, each State Party [...] shall:

(b) [...] notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiatives, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. [...] each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

Beneficial ownership transparency means that the ultimate owners of an entity, i.e., the natural persons who control an entity – possibly through a web of different companies, trusts, foundations or other entities –, are disclosed through a central public registry. A number of countries have established national public registries of beneficial owners in recent years, and others are currently in the process of implementing beneficial ownership commitments they have made. However, it is essential that all jurisdictions mandate the public disclosure of ultimate owners of entities in order to avoid safe havens that can be misused for corruption. The vast majority of grand corruption cases involve the use of shell companies and other opaque and complex corporate vehicles.<sup>1</sup>

Some jurisdictions mandate companies to hold records on their beneficial owners but do not require that this information be also reported to a central register, thus not creating any transparency. Central registries of beneficial ownership information result in more effective and faster national and international investigations, as law enforcement officials and financial intelligence units can quickly establish who controls a legal entity. Banks and other entities that have to comply with anti-money laundering regulations can more easily and effectively establish who their customers are.

While many countries have created online registries for companies and other legal entities, these registries are often not freely accessible and/or searchable and in many cases do not provide access to officers, direct owners, or company filings. In the vast majority of countries, the information is often not accessible in an open data format and under an open license that allows third actors to re-use and re-publish the information, or to link it to other relevant databases within the same jurisdiction or in other countries.<sup>2</sup>

Crucially, **beneficial ownership registries need to be freely accessible to the public online.** This allows international law enforcement bodies to easily access the information without having to go through mutual lengthy legal assistance procedures. Public access also benefits businesses by reducing transaction and due diligence costs: Nine out of ten senior private sector executives say it is important to know the ultimate beneficial ownership of the entities with which they do business.<sup>3</sup> Public access also allows the media, civil society organisations and the general public to

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<sup>1</sup> See: StAR: (2011) The Puppet Masters, <https://star.worldbank.org/publication/puppet-masters>.

<sup>2</sup> See the assessments of the openness of company registries from around the world by OpenCorporates, which has been building a global open company registry, so far containing data on more than 180 million companies, <https://opencorporates.com/registers>.

<sup>3</sup> EY: Global Fraud Survey 2016, <https://www.ey.com/gl/en/services/assurance/fraud-investigation---dispute-services/ey-global-fraud-survey-2016>.

monitor who benefits from public funds, for example through public procurement contracts or grants awarded to companies in response to the COVID-19 crisis.

### Key asks

- Member States should make a firm commitment to **creating national-level online public registers** of the beneficial owners of companies, foundations, trusts and all other legal entities and arrangements (i.e., the natural persons who ultimately control an entity, possibly through several other legal entities), with timely and accurate information that is freely accessible online for law enforcement, competent authorities as well as the public (UNCAC Articles 12.2(c) and 14).
- Member States should **promote compliance with the beneficial ownership regime**. Member States should also put in place mechanisms for the verification of data, as well as effective, proportionate, and dissuasive measures or sanctions, while ensuring an efficient and effective framework that minimises the administrative burden and costs with the public and private sectors.
- Member States should commit to **collecting and publishing beneficial ownership information** of all bidders and partners in the public sector, including companies that participate in public procurement, joint public-private partnerships, receive financial or non-financial state aid, licenses, permits, and natural resources-related contracts, take part in the privatization of public resources or otherwise are party to public contracts or agreements.
- Member States should coordinate efforts in **defining and implementing international norms on beneficial ownership transparency regimes**. They should also initiate an inclusive and collaborative process to define and adopt a common data format to record beneficial ownership information in order to enable interoperability with other data sets, to make use of all available information to investigate corruption and money laundering offences and to identify recoverable assets. This collaboration, an analysis of good practice approaches and lessons learned, and the development of new norms could be carried out within the UNCAC Working Group on Prevention.
- Furthermore, to promote transparency in the private sector (UNCAC Article 12), Member States should **make company registries freely accessible online** and commit to **ensuring that adequate, accurate and current information on corporations and other legal entities, including on officers, directors and direct owners, is accessible in real-time in a standardised open data format, utilising free, searchable, public online platforms** in order to

facilitate access for law enforcement agencies, financial institutions and obliged entities, as well as the general public.

### Best practices

- The **United Kingdom** was the first country to launch a publicly accessible beneficial ownership registry. Companies House registers company information and makes it available to the public in a **freely accessible, searchable online register**, which also includes company filings and data on direct owners as well as the beneficial owners.<sup>4</sup> In 2018, the UK register was accessed more than 6 billion times, **creating an estimated total benefit between £1 billion and £3 billion per year.**<sup>5</sup>
- **41 countries are fully committed to implementing beneficial ownership transparency.** Another 45 countries are partially committed.<sup>6</sup> This includes the member states of the European Union, which have to have publicly accessible beneficial ownership registries that will in the future become interconnected.<sup>7</sup>
- **Slovakia requires that all domestic and foreign entities that partner with the public sector and receive public resources**, including all bidders on public procurement contracts, such as entities participating in privatizations, receiving grants, subsidies, permits or licenses, as well as companies operating in the healthcare sector, **disclose their beneficial owners in a central, publicly accessible database.** The framework also includes a mechanism for the verification of ownership information.<sup>8</sup>
- Georgia's company registry is freely accessible and easily searchable online.<sup>9</sup> The NGO Transparency International Georgia has set up a platform linking company ownership data with public procurement data and data on donations to political parties<sup>10</sup> and also uses the data to monitor and verify officials' asset and interest declarations and identify possible conflicts of interest and indications of wrongdoing.

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<sup>4</sup> <https://beta.companieshouse.gov.uk/>.

<sup>5</sup> Gov.uk (2019): New report estimates value of Companies House data at up to £3 billion per year, <https://www.gov.uk/government/news/new-report-estimates-value-of-companies-house-data-at-up-to-3-billion-per-year>.

<sup>6</sup> Open Ownership (June 2020): Worldwide commitments and actions, <https://www.openownership.org/map/>.

<sup>7</sup> Provisions of the EU's 5th Anti-Money Laundering Directive, [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing_en).

<sup>8</sup> UNCAC Coalition: Key Take-Aways from the CoSP8 Special Session: Getting Serious about Beneficial Ownership Transparency (2019): <https://uncaccoalition.org/our-key-take-aways-from-the-cosp8-special-session-getting-serious-about-beneficial-ownership-transparency/>.

<sup>9</sup> <https://enreg.reestri.gov.ge/>.

<sup>10</sup> Transparency International Georgia: <https://www.transparency.ge/politicaldonations/en>.

- OpenOwnership has been developing the Beneficial Ownership Data Standard to serve as a framework for collecting and publishing beneficial ownership data, and enabling the resulting data to be interoperable, more easily reused, and of higher quality. A common data standard enables the exchange of data between implementing countries and allows for a rapid build-up of best practice on collecting, storing, and publishing beneficial ownership data.<sup>11</sup>

### Further reads

- Open Ownership: A Guide to Implementing Beneficial Ownership Transparency, <https://www.openownership.org/guide/>.
- Transparency International and UNCAC Coalition: Recommendations for robust action to ensure transparency in company ownership – submission to the 10<sup>th</sup> resumed session of the UNCAC IRG, [https://uncaccoalition.org/wp-content/uploads/TI-Statement-to-IRG-on-Beneficial-Ownership.23.8.19.REV\\_final.docx](https://uncaccoalition.org/wp-content/uploads/TI-Statement-to-IRG-on-Beneficial-Ownership.23.8.19.REV_final.docx).
- Transparency International: Just for Show? Reviewing G20 Promises on Beneficial Ownership, [https://www.transparency.org/whatwedo/publication/just\\_for\\_show\\_g20\\_promises](https://www.transparency.org/whatwedo/publication/just_for_show_g20_promises).
- FATF: Mutual Evaluations (in particular on Recommendations 24 and 25), <http://www.fatf-gafi.org/publications/mutualevaluations>.
- OECD: Beneficial Ownership Implementation Toolkit, <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>.

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<sup>11</sup> <https://www.openownership.org/what-we-do/the-beneficial-ownership-data-standard/>.