

# U4 Helpdesk Answer

U4 Helpdesk Answer 2020:6

## Beneficial ownership registers: Progress to date

In the wake of the Panama and Paradise Papers, and the London Anti-Corruption Summit in 2016, beneficial ownership registers have gained significant attention. This policy area is still at an early stage, yet there is growing consensus of the importance of registers. Much evidence will be needed before a robust ex-post evaluation of their effects can be undertaken. However, this Helpdesk Answer has been able to review policy developments, implementation track records, and existing evaluations of the impact of beneficial ownership registers. It assesses what has been achieved, challenges that have impeded progress, and where future improvements might be made.

8 April 2020

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# Query

We would like to have a better understanding of beneficial ownership registers. Please provide an overview of the evidence on i) the effectiveness of policy efforts to date, ii) the effectiveness of the implementation of registers and iii) the effect of registers in terms of deterrence, assisting in prosecutions and so on.

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## Introduction

The beneficial ownership transparency agenda has gained significant momentum over the past decade. In 2014, G20 leaders adopted the High-Level Principles on Beneficial Ownership (G20 2014). These built upon the 2012 Financial Action Task Force (FATF) Recommendations (the global standard for anti-money laundering) and the 2013 G8 action plan principles to prevent the misuse of companies and legal arrangements. Further impetus came from both the fallout caused by the Panama and Paradise Papers scandals, which highlighted the need for beneficial ownership transparency and provided an opportunity to push for further reforms, as well as the London Anti-Corruption Summit in 2016. Combined with various national-level policy pressures, these developments at the international level have led to a growing group of countries committing to implement beneficial ownership registers (Open Government Partnership 2019).

## MAIN POINTS

- Important progress has been made in promoting the establishment of public, centralised registers of beneficial ownership since 2016. The foremost example of this to date is the Fifth EU Directive on Anti-Money Laundering and Counter-terrorist Financing.
- However, implementation remains uneven. Uptake has generally lagged behind national and international policy commitments. Few fully public registers exist, with the majority concentrated in the EU.
- Emerging evidence shows that registers have important roles to play in assisting in the detection and prosecution of money laundering cases by enforcement agencies.
- In addition to ensuring implementation, further progress is needed in embedding verification elements into the design of registers and ensuring that regulatory arbitrage is avoided.

A beneficial owner is defined as “the natural, living person who ultimately owns, benefits from or controls (directly or indirectly) a company or legal arrangement” (Transparency International 2017). This can differ from the company’s legal owner, who may in reality have little or no control. Complex and opaque corporate structures set up across different jurisdictions make it easy to hide the beneficial owner, especially when nominees are used in their place and when part of the structure is incorporated in a secrecy jurisdiction.

A beneficial ownership register collates information about the beneficial owner in a registry for storage and use by enforcement agencies, the private sector and, in some jurisdictions, the public. As discussed later, the kind of information recorded varies by jurisdiction. Civil society organisations recommend the following information should be recorded in the register: full name of the beneficial owner, date of birth, identification or tax number, personal and business address, nationality, country of residence and a description of how ownership or control is exercised.

When this information is collected and collated in one place by a regulator or an official registrar, it is considered a central register of beneficial ownership. The main purpose of such registers is to increase transparency in corporate ownership. This enhanced transparency is believed to have several positive consequences.

First, registers allow domestic law enforcement and other competent authorities to investigate criminal activities and detect wrongdoing. In addition to assisting public authorities, public registers allow banks, corporate service providers, lawyers, accountants and real estate agents, and other professionals with anti-money laundering obligations to easily check information when

conducting due diligence, wherever they are located. Public registers also allow for greater oversight by civil society and journalists to uncover criminal activity as well as hold individuals and governments to account for (in)action on corruption, money laundering and tax evasion, thereby assisting public authorities to fulfil their duties.

Second, and stemming from the above, it helps to deter crime by making it more difficult for the corrupt and other criminals to hide their operations and money flows behind anonymous companies.

Third, public registers allow foreign competent authorities to investigate cross-border cases and track illicit financial flows and activities, facilitating international cooperation and information sharing.

Fourth, registers may facilitate greater prosperity by contributing to a more open investment regime and by ensuring value for money in public procurement. This includes bolstering customer due diligence in the private sector, establishing a level playing field and fostering open competition (Adam Smith 2019).

Although evidence on the implementation and efficacy of beneficial ownership registers is still limited, given existing registers have just recently been implemented, this Helpdesk answer attempts to map out the policy developments to date, the record of implementation, the impact of beneficial ownership registers and challenges that may impede their effectiveness.

# The effectiveness of policy efforts to date

## International policy frameworks

Beneficial ownership transparency has been promoted in various international policy fora since the early 2010s, and substantial progress has been made in advancing this area of work. There is now widespread recognition that information on beneficial ownership is a public good (Adam Smith International 2019), that transparency of company ownership is essential in curbing corporate malfeasance (IDB and OECD 2019) and that registers are a crucial policy instrument in achieving this (European Commission 2018).

While the fundamental premise that registers are desirable has largely taken hold, there are still a few more contentious issues, such as scope of the information registers should contain, and whether the data contained in the registers should be made publicly accessible.

In 2014, the G20 established the High-Level Principles of Beneficial Ownership Transparency, which aimed to “set out concrete measures G20 countries will take to prevent the misuse of and ensure transparency of legal persons and legal arrangements” (G20 2014). Following this, in 2015, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes decided to review its assessment framework to include a requirement to maintain and exchange beneficial ownership information.

The FATF Standards are perhaps the norms related to beneficial ownership with the largest geographical reach. FATF Recommendation 24 requires countries to ensure that competent

authorities, such as law enforcement, financial intelligence units and tax agencies, have access to or the ability to obtain adequate, accurate and timely information on the beneficial ownership and control of companies and other legal persons in a timely fashion. A shortcoming in this recommendation is that FATF Standards do not prescribe how access to beneficial ownership information should be guaranteed. The interpretive note only states that countries may choose the specific mechanisms they consider appropriate to achieve this objective (FATF 2014).

More recently, the FATF highlighted in its beneficial ownership best practices guidelines (2019) that country experience demonstrates using a single approach to beneficial ownership transparency is largely insufficient and ineffective. Instead, it advocates for a multi-pronged approach, using a variety of information sources, which it argues is more effective in preventing wrongdoing, increases transparency and access to accurate information. On registers, the guide highlighted that a well-resourced and proactive beneficial ownership registry can prove effective in ensuring transparency by providing a basis for competent authorities to access information (FATF 2019).

The growing international momentum around beneficial ownership crystallised at the 2016 London Anti-Corruption Summit. Along with the European Commission, 21 countries made commitments to explore or establish registers of beneficial ownership (Murphy & Raymond 2016). Several others made further commitments to beneficial ownership transparency in public procurement, as well as the property and extractives sectors (Adam Smith International 2019). In the same year, transposing the EU Anti-Money Laundering Directive, the UK became the

first country in the world to set up a publicly accessible register of companies' beneficial owners.

In addition, 23 members of the Open Government Partnership (OGP) have made commitments on beneficial ownership, with one-third of these commitments made between 2018 and 2019. This demonstrates that OGP members are taking note of the global work underway in international fora like the G20, the FATF, the OECD, the Extractives Industry Transparency Initiative (EITI) and the EU (Transparency International 2019).

## European Union standards

The most developed and targeted standards exist at the EU level. These stem from the Fourth and Fifth EU Anti-Money Laundering Directives (AMLD), a set of legislations governing anti-money laundering and counter-terrorist financing.

The 4AMLD stipulated that Member states had to introduce beneficial ownership registers in 2017 to be accessible to persons with a "legitimate interest"<sup>1</sup>. This was updated in 2018 with the introduction of the 5AMLD, which mandated that Member states establish centralised beneficial ownership registers for companies that are available to the public by 10 January 2020. It also stipulates that registers of beneficial ownership for trusts and similar legal arrangements are to be established by March 2020, accessible to competent authorities and those with legitimate interest. The national registers will be interconnected directly to facilitate cooperation and exchange information between EU Member states, with the registers envisioned to have information verification mechanisms to improve the accuracy and reliability of information (EC 2019).

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<sup>1</sup> "Legitimate interest" refers to those who can justify their interest in money laundering, terrorist financing and the associated predicate offences with readily available means. Examples of this

Although the 5AMLD represents an attempt to create unanimity across all Member states with respect to registers, significant differences remain in the extent of public access and the reliability of information available (see annex 1). Moreover, recent analysis (Global Witness 2020) shows that most Member states are late in transposing the directive and failed to comply with the January 2020 deadline.

## Sectoral interventions: focus on EITI

Important sectoral progress has also been underway. EITI conducted a pilot programme on beneficial ownership in 11 countries from 2013 to 2015 and has since continued to collect and publish beneficial ownership information in annual EITI reports. In 2016, the 51 EITI members agreed to a new rule that all oil, gas and mining companies operating in their territories will be required to disclose their beneficial owners in established registries by January 2020 (EITI 2017).

It is clear that many implementing countries have yet to fulfil this requirement. While the EITI indicated in its 2019 annual report that over 30 countries had collected beneficial ownership information, the United Kingdom and Ukraine were the only two EITI members to have established public registers (EITI 2019). Other examples of iterative progress have begun to emerge in several regions, however. In 2020, the government of Myanmar and Myanmar EITI co-launched a new beneficial ownership register for owners of companies active in the extractives sector. This registry allows users to search a database of companies in mining oil and gas for the

include statutes and mission statements of NGOs or evidence of previous activities in countering money laundering and terrorist financing (European Commission 2016).

identities of individuals owning shares of 5% or higher. They asked 163 extractive companies to disclose their beneficial owners through an online form, with 121 companies (of which four were state-owned enterprises) submitting information about their ownership structures (EITI 2020). In 2019, Nigeria became the first African country to successfully publish a publicly available beneficial ownership register, focused on the extractives sector, including information on licensing data (Open Ownership 2020). This register consists of 56 companies in the extractives industries, and has been built using data from EITI reporting and other government registers (EITI 2019). Although this register is currently limited to the extractives sector, Nigeria also made a commitment to introduce a public centralised beneficial ownership register at the London Anti-Corruption Summit in 2016.

In 2018, the Kyrgyz parliament passed the “On Subsoil” law, requiring companies to disclose their beneficial owners when applying for or holding an extractives licence (Russel-Prywata & Lord 2019). In the same year, Open Ownership conducted an extensive review of progress on registers, and commended their progress. However, Open Ownership also highlighted the need for the Kyrgyz Republic and other countries to consider how data will be collected and used ex-ante, as well as the importance of verification systems to validate beneficial ownership information submitted. Finally, the review highlighted the need for cross-governmental coordination throughout the design and implementation of a beneficial ownership regime; for example, by electronic linking of the new registers with existing other datasets, such as land and vehicle registries and data from tax administrations (Open Ownership 2019).

A final example of a successful sectoral intervention has been the Slovakian beneficial ownership register, established in 2015 for companies participating in public procurement processes. The purpose of this legislation was to allow public scrutiny into the ownership structure of companies taking part in public procurement (TI-SK 2017). Sanctions for non-compliance include barring companies from public contracts for up to three years and fines of up to €1 million (Open Ownership 2019).

## Progress to date by secrecy jurisdictions

Secrecy jurisdictions highlighted in the Tax Justice Network’s Financial Secrecy Index (FSI) have shown considerably slower progress in implementing registers. Although the UK has perhaps made the most progress in this area, its Crown Dependencies and Overseas Territories have generally moved at a slower pace. For example, the islands of Jersey, Guernsey and the Isle of Man have introduced registers but will only make them publicly available in 2023 (Mor 2019). The three islands are well known as part of a larger network of havens for illicit financial flows (Barrington 2016). The same is true for the British Virgin Islands and the Cayman Islands.

As a European Economic Area member state, Lichtenstein was required to implement a beneficial ownership register under the 4AMLD. Lichtenstein’s legislation establishing a register of beneficial owners of domestic entities came into effect on 1 August 2019, and distinguishes between companies, foundations, foundation-like structured establishments and trusts, offering a wide overview of beneficial ownership in its jurisdiction. However, this register is not open to the public, only to

enforcement agencies and third parties considered to hold a legitimate interest (KPMG 2020).

Panama also adopted a private beneficial ownership register in 2020. This requires corporate service providers (resident agents) to provide beneficial ownership information on their clients to the register. This is only accessible to competent authorities, resident agents and registered legal entities (EY Tax Insights 2019).

In the US, Congress is considering legislation that, if passed by the Senate and signed into law by the president, would require shell companies to report beneficial ownership information to a private database (S.2563 – Illicit Cash Act). Although access would be limited to law enforcement, this would be a promising step towards slowing the US's slip into financial secrecy, now ranked second in the world for financial secrecy below the Cayman Islands (Tax Justice Network 2020). In late 2019, the US also passed the Corporate Transparency Act, requiring entities forming corporations or limited liability companies to disclose information about their beneficial owners to the Financial Crimes Enforcement Network, with sanctions for non-compliance (H.R. 3089 – Corporate Transparency Act).

## Implementation effectiveness

Although significant progress has been made at the international policy level to recognise the problems linked to beneficial ownership secrecy, progress on implementation of beneficial ownership registers is uneven, with many countries failing to meet their commitments. The reasons for this vary from powerful lobbying by concerned businesses to the

lack of political will and the absence of technical capacity.

Previous research by Transparency International (2019) has shown that the overall level of compliance on the part of countries with beneficial ownership transparency standards is low, as many countries have failed to take adequate measures such as the establishment of registers. Out of the 83 countries assessed by FATF between 2014 and September 2019, 45% were found to be “partially compliant” with the FATF Recommendation 24 that requires countries to ensure competent authorities have access to reliable beneficial ownership information, 14% “non-compliant”, and only one state “fully compliant” on this recommendation, Trinidad and Tobago.<sup>2</sup>

Looking at more specific commitments made by countries to establish beneficial ownership registers there are some signs of progress, but the pace of reform is slow given the urgency of the issue.

An analysis of the implementation of the UK Anti-Corruption Summit commitments using the TI-UK Pledge Tracker shows that 83% of commitments made on beneficial ownership registers are already underway, ongoing or complete (TI-UK 2019).

On the other hand, while EU Member states were supposed to transpose the 5AMLD, establishing centralised, publicly accessible registers for companies by January 2020, a recent report by Global Witness (2020) shows that the great majority of Member states have failed to do so. Only five have completed this process within the prescribed timeline: Bulgaria, Slovenia, Denmark,

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<sup>2</sup> FATF grades all countries on each of its 40 recommendations and 9 special recommendations using four categories: compliant,

largely compliant, partially compliant, non-compliant and not-applicable.

Latvia and Luxembourg. Of these, the latter three were subjects of recent high-profile money laundering and tax avoidance scandals (ICIJ 2020). Of the 27 Member states, 17 do not yet have a public centralised register. The report also finds that public access to the register in many countries may be hindered by paywalls, strict registration requirements or restrictive search functions. (Global Witness 2020).

## Cost effectiveness

Although there is a dearth of policy experience in this area given its early stage of development, pioneering research conducted by the UK Treasury Department in 2002 and updated again in 2013 demonstrated that public registers of beneficial ownership result in significant savings for government, far outweighing their cost of implementation (UK Treasury 2002). In particular, cost in police time saved was twice as large as the combined cost to the public sector of running the database and the cost to the private sector of submitting the data.

## Scheduling delays

Implementation effectiveness of registers may also be impacted by delays to the implementation schedules, including the deadline for companies to start providing information to authorities or for authorities to start sanctioning failures to comply with new requirements. Luxembourg, for example, delayed the deadline for companies to register their beneficial ownership details by three months after only 47% of affected entities completed their registration on time. This followed the decision by the European Commission to refer Luxembourg to the European Court of Justice in 2017 after it had failed to implement 4AMLD sufficiently (ICIJ 2019). Brazil delayed requirements for registered

companies to update their registration records and declare their beneficial owners on two occasions, taking more than three years for measures to be effectively put in place (Martini & Murphy 2017).

Although Ukraine has made promising policy progress establishing a public register, this has not been without compliance issues. Only 16% of companies had submitted beneficial ownership information by August 2017, three years after the law had been introduced. By the end of 2018, it reported that 20% of registered companies had disclosed ultimate beneficial ownership information (Open Ownership 2019).

In other cases, progress has been hindered by a lack of technical capacity and prior coordination across implementing agencies on the government side, as highlighted by a recent case study of technical assistance to Ghana to assist the establishment of a national beneficial ownership register (Adam Smith International 2019).

## The effect of registers

Beneficial ownership registers are an important tool, but their existence alone is not sufficient to ensure greater corporate transparency. As registers and the information collected can vary greatly across jurisdictions, this variation is likely to differentiate their impact and efficacy across several dimensions.

## Beneficial ownership legal definition

While these variations are important to note, a recent review of existing registers by Adam Smith International (2019) also identified several areas of convergence on the technical definition and scope of reporting. This includes defining a beneficial owner as a natural person; recognising that a beneficial

owner can exercise ownership either directly or indirectly through a chain of corporate entities; and that beneficial ownership covers not only ownership but economic interest and control too.

Having an adequate definition of beneficial ownership is the first step for building a strong beneficial ownership transparency framework and ensuring the data collected in the register is relevant and helps understand who the real beneficiary of a company or trust is. Most countries have opted for a definition of beneficial owner based on a percentage of shares owned or controlled by the individual. The most common threshold is of 25% or more (Tax Justice Network 2018). While the EU Anti-Money Laundering Directive adopts a 25% threshold, it suggests that EU Member states consider applying lower percentages to determine ownership or control, taking into account the country context and risks.

Much debate exists around the required threshold for beneficial ownership registration. Depending on the type of legal entity, a 25% threshold may not be adequate to ensure the accurate and meaningful identification of all individuals who may be the real owners behind companies and trusts. A threshold of more than 25% would mean that any company with shareholder that have shares below the thresholds will not be requested to disclose its beneficial owners (Tax Justice Network 2018). Setting a threshold makes it easier for those wishing to remain anonymous to circumvent transparency rules, e.g. by restructuring their shares below the threshold and avoid disclosing their identity.

## Scope

Another broader distinction is the scope of legal entities included. Ideally, registers should have a broad coverage. All types of legal entities, including

limited partnership companies and foundations, as well as legal arrangements, such as trusts, should be required to disclose their beneficial owner to registry authorities. However, most beneficial ownership registers to date publish data on companies but not on legal arrangements (Tax Justice Network 2018).

## Information recorded

Another determinant of beneficial ownership impact is the kind of information included in the register. Civil society organisations recommend the following information be recorded in the register: full name of the beneficial owner, date of birth, identification or tax number, personal and business address, nationality, country of residence and a description of how ownership or control is exercised. However, to balance public interest and privacy concerns, countries may consider only partially disclosing beneficial ownership information to the public (for example, name of the beneficial owner, an identification number, their date of birth, their nationality, their country of residence and an explanation of how control is exercised).

In addition to information on the beneficial owners, it is also important that a range of information about the legal entity, including information on shareholders, directors and nominees is captured. This can include information such as legal status and existence including name, type of legal entity, registration date, formation documents, physical location, and the names and addresses of persons holding legal control (for example, directors and officers) and legal ownership (shareholders or members).

## Accessibility

One of the most apparent distinctions is whether a register is public or not, and how access to recorded data takes place. Among civil society actors, open access is widely recognised as perhaps one of the most crucial elements in beneficial ownership registers. Public accessibility allows these actors to flag any potential quality issues in the data, as well as to detect potential wrongdoing.

For example, in the UK, the FATF Mutual Evaluation Report (MER)<sup>3</sup> noted that NGOs have undertaken bulk data analysis and reported potential inaccuracies. This led to the identification of approximately 4,500 companies listing other companies on the Persons of Significant Control (PSC) register in situations where this was not permitted, which in turn prompted Companies House to take action against these companies (FATF 2018). The MER concluded that the public character of the PSC register played an important role in facilitating social accountability, which helped ensure the accuracy of the information provided. It further noted that the centralised register (which includes PSC information) was reportedly accessed over 2 billion times in 2016/17, demonstrating the clear demand for public access.

Public registers also allow direct access by entities and professionals with anti-money laundering obligations, not only supporting due diligence but also ensuring the data is cross-checked against information provided by customers, which could help improve accuracy.

Moreover, public registers allow direct access by foreign competent authorities, which facilitates cross-border investigations as highlighted above.

Registers that are easy to navigate and that use an effective search function are likely to have a much greater impact. The Tax Justice Network (2017), for example, recommends that users should be allowed to search by all category types (for example, entity name, date of incorporation, name of owner, director and residence of owners or director).

When it comes to private registers, the way authorities can access the data can have an impact on the effect of registers. For example, if competent authorities have direct access to the information, instead of having to request it from the register authority, timely access to beneficial ownership information is more likely to be guaranteed. Authorities will also be able to use the information in a proactive manner to identify potential suspicious activities and transactions.

It is essential that the information recorded in the registry is up-to-date and that access to historical records, such as information on past shareholders and directors, is guaranteed, as it may offer useful insights in identifying and/or verifying who the beneficial owners are.

It is also important that the information stored is as interoperable as possible, as suggested by the Open Government Partnership (OGP 2019). Aligning the type of information required would facilitate easier exchanges of information between governments, financial intelligence units (FIUs) and enforcement agencies, and eliminate the need for lengthy mutual legal assistance requests that

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<sup>3</sup> These are FATF peer reviews of its members, conducted on an ongoing basis to assess levels of implementation of the FATF Recommendations.

form much of the backbone of cross-border financial crime investigations today. To this end, the Beneficial Ownership Data Standard (BODS) has been established with the support of Open Ownership. This is a tool that helps governments implementing registers to collect and publish data based on common publication patterns and interoperability.

## Dissuasive sanctions

As previously discussed, while many countries have made progress at the policy level, the effectiveness of implementation remains a challenge. Of particular concern is the low level of compliance once registers are introduced, with many obliged entities failing to meet the deadlines for submitting data.

To this end, the FATF best practice guidelines on beneficial ownership (2019) recommend applying sanctions that are effective, proportionate and dissuasive. These can include administrative sanctions, such as rejecting registrations or refusing to proceed with a requested activity until all requested information is submitted. For example, entities that fail to file the relevant beneficial ownership information may not be allowed to register as a company until they comply or establish a business relationship with designated non-financial businesses and professions.

Sanctions for impartial compliance or compliance failure may also include fines and prosecution, including criminal sanctions. In Austria, where a report is not filed or is found to be incomplete or incorrect, fines of €200,000 can be imposed where deemed to be intentional or €100,000 for gross negligence. In France, the same offence may lead to a fine of €7,500 and a six-month prison sentence (FATF 2019). In some jurisdictions, courts may

also dissolve legal entities and seize their assets. This is the case in Denmark, where the Danish Business Authority (DBA) had dissolved an estimated 7,500 companies that had failed to register beneficial ownership information in the public register by 2018. In 2019, 99.80% of entities covered by company laws under the authority of the DBA had registered their beneficial ownership information (FATF 2019).

## Assisting in detection and prosecutions

It is important to note that there is no comprehensive data on how law enforcement and other competent authorities make use of beneficial ownership information in their investigations. However, existing evidence on the challenges authorities face when investigating crimes that involve anonymous companies is a good indication of how useful timely access to this data is for authorities.

This is particularly true for cross-border investigations. Research by Transparency International found that competent authorities report greater challenges in identifying the beneficial owner of a company when a foreign company is involved or is part of the ownership structure of a domestic company. In these cases, in the absence of public beneficial ownership registers, authorities usually have to resort to complex and lengthy mutual legal assistance requests. This can cause serious delays in investigations (Transparency International 2019).

For example, in the 2016 Canadian FATF MER, law enforcement agencies confirmed that in many investigations where the companies are owned by foreign entities or foreign trusts, identifying the beneficial owner was not possible as foreign

jurisdictions would not respond to requests by Canadian authorities for the information.

The 2016 US FATF MER made it clear that, for authorities such as the Department of Justice's Office of International Affairs, access to "adequate, accurate and current beneficial ownership information remains one of the fundamental gaps in the US context". It also noted that the US legal framework is seriously deficient in this regard, which often impinges on the timeliness of investigations (FATF 2016). This was echoed in the 2020 US Treasury report, which highlighted that the lack of a requirement to collect beneficial ownership information at the time of company formation and after changes in ownership is one of the most significant vulnerabilities exploited by illicit actors in the US (US Treasury 2020).

In the UK, a 2019 review of the Persons of Significant Control (PSC) conducted by the Department for Business, Energy and Industrial Strategy (BEIS) found that all enforcement organisations interviewed had used the PSC register to inform criminal investigations, with most reporting weekly use. Companies House also reported that between 2017 and 2018, requests for assistance in law enforcement investigations had increased by 26%. In another case, their support to law enforcement led to the prosecution and imprisonment of an individual for offences related to human trafficking and modern slavery (Companies House 2018). Another study analysed the impact of the extension of the PSC to Scottish Limited Partnerships (SLPs). SLPs had become strongly associated with corruption, organised crime and tax evasion. After the introduction of the PSC regime, the rates of incorporation of SLPs dropped by 80% in the final quarter of 2017 relative to 2015 (Global Witness 2019).

Although it is not possible yet to demonstrate an empirical causal link between registers and successful law enforcement investigations, anecdotal evidence reveals some promising cases where beneficial ownership served as a powerful tool to detect financial crime, while highlighting other recent major international cases where their presence could have proven essential.

In 2018, a former high-profile Ukrainian businessman who had faked his own death was arrested in France by using registry data to identify him as the beneficial owner of a Luxembourgian company that had purchased a castle worth €3 million in France (TIME 2018). The Prosecutor General's Office in Ukraine is reportedly also attempting to use beneficial ownership registers to track an estimated US\$5.5 billion of stolen assets linked to the nationalisation of the country's largest bank in 2016 (Open Ownership 2019).

In the Czech Republic, TI-CZ was able to show Prime Minister Andrej Babiš was a controlling entity of Agrofert. As the sole beneficiary of two trust funds that owned 100% of the shares of Agrofert, Babiš was able to receive millions of euros in subsidies from the EU every year, which was ruled to be a clear conflict of interest by the European Commission (Reuters 2019). Although a register of beneficial owners was not available in the country at the time, beneficial owners have to be disclosed in neighbouring Slovakia when participating in a public procurement process. As a result, when Babiš's companies bid for government contracts there, TI-CZ was able to see that the prime minister was the ultimate beneficiary of the company that had received subsidies. This demonstrates the value of these registers and their potential in detecting conflicts of interest and wrongdoing, not only by enforcement agencies, but also by civil society organisations.

Finally, four recent large-scale cases of money laundering and corporate secrecy further highlight the potential role of beneficial ownership registers.

In Nigeria, the OPL 245 scandal saw Shell and ENI pay US\$1.1 billion to an anonymously owned company secretly belonging to the then oil minister, Dan Etete. While Etete used an alias to hold his shares, it was later proven that he was the beneficial owner of the company (Global Witness 2015).

Investigations into the offshore finance industry following the Panama papers have helped to recover over US\$1.2 billion around the world through raids, fines and audits (ICIJ 2019). This case further highlighted the detection and asset recovery-potential for registers of beneficial ownership (Obermaier and Obermayer 2018). Investigation and asset recovery efforts around the Paradise Papers are also still underway, with the Lithuanian authorities recently revealing that these leaks helped to expose US\$45 million stolen from Ukio Bankas by its former owner, Vladimir Romanov (Fitzgibbon 2020).

More recently, the Luanda leaks have highlighted how Isobel dos Santos used secretive companies in the UK's Overseas Territories and Crown Dependencies to amass a fortune of GB£1.7 billion, which was then invested into a range of high-value assets including property in London and artwork.

## Deterrence effect

As mentioned, ex-post empirical studies to determine the deterrent effect of registers have yet to be conducted. However, intuitively, criminals are less likely to engage in financial crime if information about the entities they use to move money and their relationship to those entities are publicly available.

An additional channel of deterrence is that criminals will know that these registers are also used by enforcement agencies, which bolsters these agencies' detection capacity and increases the chances of being caught. The OECD Centre for Tax Policy and Administration reiterated this view at the launch of its Beneficial Ownership Toolkit 2018, stating "...transparency of beneficial ownership information is essential to deterring, detecting and disrupting tax evasion and other financial crimes" (OECD 2018).

## The business case for beneficial ownership registers

Beneficial ownership registers also have important value for companies and business associations alike as they allow obliged entities access to information that enables them to conduct customer due diligence and fulfil their money laundering obligations. In 2020, the European Banking Federation publicly supported beneficial ownership registers, which it described as "one of the most striking examples of how technology can facilitate banks' compliance work" (European Banking Federation 2020).

There is a robust case to be made to the private sector that beneficial ownership registers are in their own self-interest. This could, in turn, have useful spill-over effects, such as where multi-national corporations increasingly see them as a standard operating norm and begin to pressure countries to adopt these where this has not already been done.

Registers hold the potential for important reputational gains for companies. Moreover, they allow them to conduct their due diligence with respect to their suppliers, markets and competitors,

thereby reducing the risks of expanding a firm's trade and investment portfolio (Adam Smith 2019).

Public beneficial ownership registers also allow private sector actors to manage their financial risk exposure and bolster stability by knowing their business partners. The importance of this was highlighted by the 2008 financial crisis, where assessing risk exposure related to collapsing banks was made difficult because investors and financial institutions could not be sure whether they had invested in or been exposed to these banks' subsidiaries (The B Team 2015). Greater beneficial ownership transparency through the use of public registers allows for greater risk management, improving their stability.

Beneficial ownership registers can also increase competitiveness. Corruption creates market distortions by stopping the best and most competitive companies from winning contracts or having their projects approved. Recognising this, the B20 Coalition of business associations from G20 countries has advocated for a uniform and consistent approach to beneficial ownership transparency to produce harmonised regulation that can level the playing field (B20 2014).

There are strong indications that the private sector recognises the value of beneficial ownership registers. For instance, in the UK, studies have found that the business community is a core user of these registers. The UK PSC review conducted by the BEIS in 2019 found that 22% of surveyed businesses had used the register to search for information on other businesses. The same was true for all financial institutions interviewed, who reported using the register to identify the PSCs of prospective corporate clients during the onboarding process (BEIS 2019).

Moreover, the financial cost of compliance to businesses was relatively small, with a mean of GB£287 and a median of GB£125. Ninety-five per cent of surveyed businesses felt the process had not affected the way they operate (BEIS 2019). However, relatively little work to date has been directly conducted with this sector in multiple countries. Gaining a better global understanding of sub-sector needs and how registers might fulfil these will likely prove to be a useful future exercise.

## Challenges

### Unique identifiers and verification of information

Beyond policy and legal implementation challenges, one of the biggest hurdles to the effective use of registers is the lack of a verification process for information that is provided.

Without an automated system of verification, registers risk becoming akin to depositories of self-declared information, irrespective of the accuracy of the data provided.

There are some simple measures that can be taken to help alleviate this issue, however. This includes using electronic forms that include as many pre-selected fields as possible, which can serve to validate and constrain responses to be entered; for example, address, postal code and date of birth (Open Ownership, no date). Additionally, each person entered should receive a unique ID.

Register officials should also be empowered and mandated to run further validation checks relying on technology that uses automated processes. For example, the Tax Justice Network (2019) recommends that an automated system should be established to verify all of the information provided

by checking that it is consistent with existing government databases, such as voter, property and vehicle registers.

This technology would come with a cost, but may be less expensive than the systems currently used in the private sector to verify customer information. For example, in the US alone spending on anti-money laundering compliance costs were estimated to total US\$25.3 billion per year, according to a survey by LexisNexis Risk Solutions in 2018. By comparison, based on a study of one early implementer, Adam Smith International (2019) estimated that the cost of establishment and the annual operating cost of a beneficial ownership register are at least GB£770,000 and GB£150,000, respectively.

There are already good examples emerging of how information could be cross-checked against other government databases. In Denmark, for example, the company register automatically checks the business address provided upon registration of the company in the Danish Address Register (DAR) to make sure that the address exists (FATF 2019). In Austria, the beneficial ownership register is aligned with other registers in the country, allowing for real-time checks (FATF 2019). Other measures that could help improve the accuracy of the beneficial ownership information include:

- setting up more stringent requirements for legal entities considered as high-risk (e.g., complex ownership structures with multiple layers, involvement of foreign beneficial owners, among others), where register authorities can request more information or conduct off-site inspections
- requiring obliged entities (financial institutions and others with anti-money laundering obligation) to report inconsistencies found

while conducting due diligence checks on customers. In Austria, for example, a new law established an electronic system that enables obliged entities to red-flag a particular legal entity in the company register if the beneficial owner recorded differs from the one identified by the obliged entity. The red-flagged legal entity will automatically be notified about the remark (the obliged entity that set the remark cannot be identified) and has to submit a new report correcting the information or providing further evidence of the accuracy of the data (FATF 2019).

- setting effective and dissuasive sanctions for companies and beneficial owners that provide false information, including criminal liability, as highlighted above

## Displacement effects and regulatory arbitrage

Company formation centres attract both legitimate and illegitimate businesses. They are attractive for many reasons: ease of registering a company, lower costs and taxes, and lax regulations, anonymity and secrecy rules. Offshore company formation is a lucrative business, seen by many countries as an important source of revenue, particularly by small island states.

Advances in beneficial ownership transparency are likely to make life difficult for those seeking to use anonymous companies to hide illicit activity. The corrupt are therefore likely to capitalise on loopholes in regulatory systems to circumvent unfavourable regulations and look for company formation centres with higher risk appetite, which is why it is key to ensure a global level playing field.

The lack of clear international standards requiring countries to collect and maintain public beneficial

ownership information of companies incorporated in their territory leaves these offshore centres in the comfortable position of continuing to offer offshore services at scale, without necessarily being capable of keeping track of who the real owners of the companies are. This means that the corrupt and other criminals may still find a place where it is much easier to remain anonymous, hampering attempts by foreign authorities to identify, investigate and prosecute corruption and other crimes (Transparency International 2019).

Nevertheless, with a growing number of countries improving beneficial ownership transparency rules, the reputation of countries that continue to offer anonymous companies is likely to suffer, which may limit the ability of the corrupt and criminals to use these companies to open bank accounts and purchase assets in many countries. That 53 countries committed to the systematic sharing of beneficial ownership information in 2016 demonstrates a clear demand for enhanced standards and international cooperation on these matters (Mor 2019). Support for this tool from powerful governments in the global financial system would encourage its uptake around the world.

## Further research and empirical evidence

Promising anecdotal evidence of the impacts and use of beneficial ownership registers is beginning to emerge. However, a dearth of empirical evidence remains to be uncovered to further strengthen the understanding of this instrument, how it may be used and what causal effects it may have.

Governments, civil society and academia should continue to fund, support and conduct further empirical research where possible to further our understanding of the potential for beneficial

ownership registers and how they may be improved. This will likely prove essential in furthering the beneficial ownership transparency agenda and winning over stakeholders who have yet to be convinced.

## Annex 1: Existing registers of beneficial ownership

Country	Public register of beneficial ownership	Private register of beneficial ownership
Alderney Island		✓
Austria	✓	
Brazil		✓
Belgium	✓	
Bermuda		✓
British Virgin Islands		✓
Bulgaria	✓	
Cayman Islands		✓
Costa Rica		✓
Croatia		✓
Cyprus		✓
Czechia		✓
Denmark	✓	
Ecuador	✓	
Estonia	✓	
Finland		✓
France		✓
Germany	✓	
Gibraltar		✓
Greece		✓
Guernsey		✓
Hungary		✓
Indonesia		✓
Ireland	✓	
Isle of Man		✓
Latvia	✓	
Lichtenstein		✓
Lithuania		✓
Luxembourg	✓	
Malta		✓
Netherlands		✓
Poland <sup>4</sup>	✓	
Portugal		✓
Romania	✓	
Slovakia		✓
Slovenia	✓	
Spain	✓	
Sweden	✓	
Trinidad and Tobago	✓	
Turks and Caicos		✓
Ukraine	✓	
United Kingdom	✓	
United Arab Emirates		✓
Uruguay		✓

Note: Only identified public and private beneficial ownership registers already in existence at the date of publication are listed above. This list constitutes an indication of existing registers at the time of publication and should not be considered to be fully representative of all existing registers. This table does not include countries that have legislated for the creation of beneficial owners but have not yet established the register itself, nor does it include countries with sectoral public registers only such as those of the EITI, discussed in this answer paper.

In this list, public registers refer to all open, centralised registers of beneficial ownership. This also includes registers which are accessible to the public for a fee. Private registers refer to registers accessible only to law enforcement or members of the public that can prove demonstrated interest. This list has been compiled using research by Global Witness (2020), Transparency International (2018) and the Tax Justice Network Financial Secrecy Index (FSI) 2020.

<sup>4</sup> Poland's register is accessible only with a company's identification number.

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DFAT (Australia), GIZ/BMZ (Germany), Global Affairs Canada, Ministry for Foreign Affairs of Finland, Danida (Denmark), Sida (Sweden), SDC (Switzerland), Norad (Norway), UK Aid/DFID.

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## **KEYWORDS**

Beneficial ownership – corporate transparency- registers

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