Open Ownership

Guide to drafting effective legislation for beneficial ownership transparency

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Contents

Glossary

ACRA	Accounting and Corporate Regulatory Authority
AFIP	Federal Administration of Public Revenues
AML	anti-money laundering
AMLC	Anti-Money Laundering Council
AMLD	Anti-Money Laundering Directive
BO	beneficial ownership
BOI	beneficial ownership information
BOT	beneficial ownership transparency
CDD	Customer Due Diligence
CFT	combating the financing of terrorism
CTA	Corporate Transparency Act
CSO	civil society organisation
ECTEA	Economic Crime (Transparency and Enforcement) Act 2022
EITI	Extractive Industries Transparency Initiative
EU	European Union
FATF	Financial Action Task Force
FinCEN	Financial Crimes Enforcement Network
FIC	financial intelligence centre
FIU	financial intelligence unit
GLA	General Laws (Anti-Money Laundering and Counter Terrorism Financing) Amendment
IDB	Inter-American Development Bank
IMF	International Monetary Fund
KYC	Know Your Customer
LLP	limited liability partnership
MC	Memorandum Circular
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OO Principles	Open Ownership Principles for effective beneficial ownership disclosure
PACRA	Patents and Companies Registration Agency
PSC	persons with significant control
RFA	registered filing agent
ROE	Register of Overseas Entities
RORC	Registers of Registrable Controllers
SEC	Securities and Exchange Commission
SOE	state-owned enterprise
TJN	Tax Justice Network
UK	United Kingdom
UNCAC	United Nations Convention Against Corruption
US	United States

For an overview of key concepts used, please refer to Open Ownership's online glossary.[1]

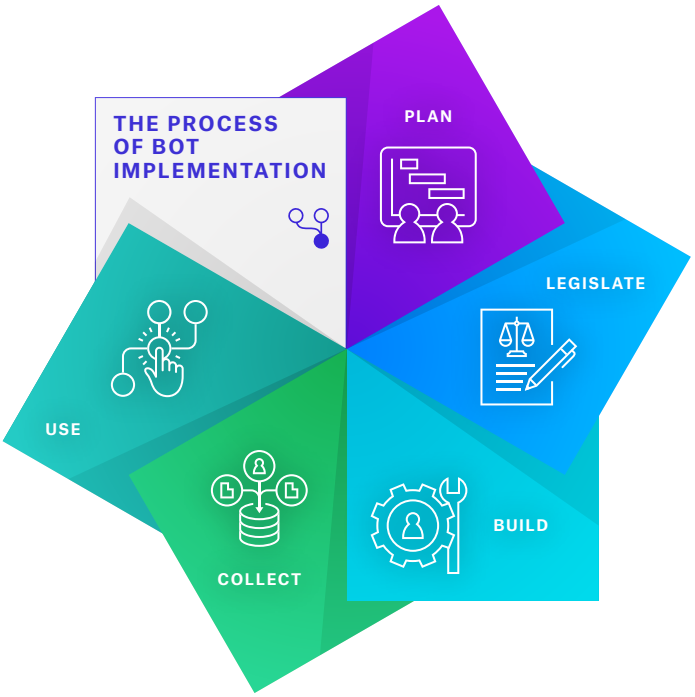
Introduction

Beneficial ownership transparency (BOT) of corporate vehicles through central beneficial ownership (BO) registers has gained momentum around the world as a policy solution to a number of challenges. Through implementing BOT, governments seek to improve public procurement and spending; foster accountability and trust in society and the economy; and combat corruption, money laundering, and related criminal activities. Irrespective of the objective, the collection, storage, and sharing of beneficial ownership information (BOI) must be anchored in legislation. Legislation is a foundational element in the implementation journey towards creating effective systems for collecting high-quality data in central BO registers as well as ensuring compliance, as it provides the legal basis for their establishment and operation.

Creating an effective, central BO register is core to BOT reforms. Effectively centralising BO data in one or more registers means that people and authorities can access authoritative information on the beneficial ownership of legal entities and legal arrangements – collectively referred to as *corporate vehicles* – rapidly and in a standardised format. To achieve this, new or amended legislation should define the parameters of BO disclosure. This includes, among others, defining who a beneficial owner is; what information should be collected on beneficial owners and entered into a register; what information should be shared and with whom; and which corporate vehicles will be subject to disclosure.

A country's legislative framework must be clear, comprehensive, and practical to implement. Developing such a framework requires careful consideration, especially given that BOT as a policy area is relatively nascent and still evolving. In the journey of implementation (see Figure 1), the legislation stage is crucial, as it underpins the other stages of implementation and can enable or hamper the efficacy of the reforms. This guide aims to provide practical advice on what it means to effectively legislate for the implementation of BOT.

Figure 1. The process of beneficial ownership transparency implementation



A country implementing BOT should start with developing a clear plan for the reforms. Countries then establish an enabling legislative framework. In most countries, digital systems are built to collect, store, and share BO data with relevant actors for use. For more information, see Open Ownership's *Guide to implementing beneficial ownership transparency.*[2]

Purpose of this guide

There is a growing number of guides, toolkits, and manuals for aspects relating to implementing BOT.[3] Whilst all these resources have their specific merits, few have focused specifically on the legislative process and specific approaches taken by other countries, which is often requested by implementing agencies. This guide is intended to assist individuals involved in drafting and reviewing laws to develop a clear picture of the elements that constitute effective legislation for implementing BOT reforms, laying the groundwork for establishing a BO register. The term legislation encompasses the entire

collection of laws, which includes both primary and secondary (or subsidiary or delegated) legislation, as well as the rules, codes, policies, and directives that originate from the legislature, the executive branch, or any other regulatory or law-making body. This guide is not meant to be used as a model law, but offers a set of principles, practical examples, and considerations for designing legislation.

In implementing BO reforms, legislators may amend existing legislation to include provisions for BOT or establish new legislation on beneficial ownership. For implementing agencies and legal drafters who will be leading or participating in any of these processes, this guide will cover the elements that comprise effective legislation, including examples to illustrate emerging good practice as well as common pitfalls. This guide can also be used to equip parliamentarians who may be scrutinising the passage of a BOT bill. It may also be relevant for those with obligations under the legislation. Creating an enabling framework for the effective collection, storage, and sharing of BOI may involve new and technical concepts.

The guide focuses on the technical characteristics of an effective legislative framework for beneficial ownership rather than the external political, social, economic, and cultural factors that are known to influence implementation. Due to the differences in legal systems and contexts, there is no single best way to develop applicable legislation. Consequently, this guidance provides an overview of the core components one would expect to see in effective legislation, illustrating the importance of each component with country examples. This is not an exhaustive guide to legislating for BOT, and various elements still need to be adapted to local contexts. The guide is informed by Open Ownership's policy framework for effective disclosure (see below); international standards set by the Financial Action Task Force (FATF)[4] and the United Nations Convention Against Corruption (UNCAC); and extensive in-country experience supporting implementing agencies in different contexts around the world.[5]

Box 1. Open Ownership Principles for effective beneficial ownership disclosure[6]

The Open Ownership Principles (OO Principles) are a framework for considering the elements that influence whether the implementation of reforms to improve the BOT of corporate vehicles will lead to effective BO disclosure – that is, it generates high-quality and reliable data, maximising usability.

These principles are intended to support governments implementing effective BOT reforms and guide international institutions, civil society, and private sector actors in understanding and supporting reforms. They provide a tool to identify and separate issues affecting implementation, and provide a framework for assessing and improving existing disclosure regimes. If implemented together, the OO Principles enable disclosure systems to generate actionable and usable data across the widest range of policy applications of beneficial ownership.

The OO Principles consist of the following:

- BO should be clearly and **robustly defined in law**, with **sufficiently low thresholds** set to ensure all relevant ownership and control interests are disclosed.
- Disclosure requirements should **comprehensively cover all relevant types of entities and arrangements**.
- BO declarations should **collect sufficient detail** to allow users to understand and use the data.
- Data should be collated in a **central register**.
- **Sufficient information should be accessible** to all relevant data users without undue restrictions.
- BOI should be collected, stored, and shared as **structured and interoperable data**.
- Measures should be taken to **verify** the data.
- Data should be kept **up to date and historical** records maintained.
- Effective, proportionate, and dissuasive **sanctions for noncompliance** should exist and be enforced.

Different aspects of this policy framework are covered in primary and secondary legislation to varying extents.

How this guide is structured

This guide covers the various approaches to legislative reform as well as the different types of legislation that should be considered, including whether provisions should be a part of primary or secondary legislation.

It subsequently provides an overview of the various components of effective legislation, grouped together based on where they may commonly be found. For each component, it will contain the following:

1. an introduction to **what** the component is and **why** it is important;
2. country examples showing **how** the component has been accommodated in law;[7]
3. an example of **where** in legislation the component may be best accommodated.

Approaches to legislative reform

Creating a standalone law or amending existing laws

Broadly, there are currently two approaches to legislating for BOT. Whilst some governments opt for new, standalone laws on BOT, others embed BOT provisions in existing legislation through legislative amendments. In the latter, the amendments can either be embedded through an omnibus bill – a single piece of legislation that simultaneously amends several pieces of related legislation – or by amending one or several existing pieces of legislation separately. In the former, a new law providing a comprehensive framework for beneficial ownership is enacted. There are advantages and disadvantages to both of these approaches, and the best approach will depend on the context, the legislative drafting customs and processes, and the legal systems and forms of government of the jurisdiction in question. A country may alternate between approaches at different points in time when iterating on reforms.

Standalone approach

The standalone approach involves enacting specific primary legislation specifically for the implementation of BOT through the establishment of a BO register and related requirements. This could be in the absence of previous BOT legislation or in an attempt to review and centralise the existing legislative framework to address a specific policy objective or strategic objective. This law should set the standard and primary framework for the implementation of BOT. Foundational concepts should be laid out in this standalone law.

Potential benefits

A standalone law can ensure that all relevant provisions are housed in the same legislative act, which can enable consistency and enforceability, as it can remove any doubt as to the authority of the respective implementing agencies and clearly restate the policy goals behind implementation. With standalone legislation in place, government agencies could cross-reference this standalone law and provide more nuanced provisions for BOT, e.g. those specific to a particular sector (e.g. the extractive sector) or subject matter (e.g. tax) not covered in the standalone legislation. This can make the legislative framework for BOT easier to understand and comply with, and prevent unnecessary administrative burden and duplication.

For countries where different laws govern specific corporate vehicles, such as the Limited Liability Partnership Act, the Companies Act, the Close Corporations Act, and the Trustees Act, standalone legislation could serve the purpose of consolidating the BOT requirements into one law, thereby making it more accessible. This could be particularly helpful to trust and company service providers, who may assist various types of corporate vehicle. A standalone law can also consolidate different BOT provisions from several pieces of legislation, providing an agreed position on core elements of a BOT regime, such as definitions and reporting obligations. This can ensure that BO disclosure requirements apply uniformly.

Another consideration is the principle of hierarchy between specific and general laws, jurisprudentially, the *lex specialis* principle. It states that where two laws govern the same factual situation, a law governing a specific subject matter prevails over the general law, unless there is a clear intent for the general law to prevail.[8] This principle prevents the simultaneous application of special and general rules on a subject matter,[9] and can guide statutory interpretation in cases of conflicting laws. Whilst effective legislation should be consistent and not contain any conflicts, this may occur in practice. For example, multiple laws may define core concepts of beneficial ownership, such as control, differently, which could create ambiguity on what definition to apply when complying with reporting requirements. For countries where this

doctrine is applicable, a standalone law could secure the enforceability of a standard definition and remove room for different interpretations, especially in the case of new laws and regulations and the absence of case law. A standalone law can streamline the provision and roll-out of guidance to different implementing agencies.

There may still be certain contexts where BO may have to be defined differently. In these instances, where there is a justifiable reason for multiple definitions of a beneficial owner to exist, the standalone law could simply cross-reference such provisions or laws and indicate the instances where they are applicable.

Box 2. Country example: United Kingdom

In the **United Kingdom** (UK), Schedule 2 of the Economic Crime (Transparency and Enforcement) Act 2022 (ECTEA) defines a beneficial owner for the purposes of the UK's Register of Overseas Entities (ROE).[10] In its definition it includes individuals who:

- hold more than 25% of shares or voting rights in the company;
- hold the right to appoint or remove the majority of the board of directors of the company;
- have the right to exercise, or actually exercise, significant influence or control over the company.

However, the concept of beneficial ownership has been defined differently in UK tax law for the purpose of enforcing tax treaty laws; it is defined as "'the sole and unfettered right to use, enjoy or dispose of' the asset or income in question".[11]

Potential drawbacks

Beneficial ownership relates to the rights afforded by ownership in law – such as *control* through voting rights, or *benefit* through dividend payments. It is a particularly helpful concept where these rights are split, e.g. where an individual can control or benefit from a corporate vehicle without direct, legal ownership. BOI can be seen as a logical extension of information that needs to be disclosed by companies for their proper functioning in society. With a standalone law, BOI may be perceived as separate from the broader compliance framework for companies, and broader access to this information may not be seen as justified if it does not form part of the information that companies need to disclose in order to ensure a well-functioning business environment.

In the majority of countries, international standards such as those set by the FATF, UNCAC, the Organisation for Economic Co-operation and Development (OECD), and the Extractive Industries Transparency Initiative (EITI), are a main driver of BOT reforms.[12] The review processes of these standards mean that, in most cases, countries have to make progress with implementation within a short period of time. Consequently, processes like legislative amendments are often under time pressure and rushed. Developing and enacting a standalone law requires considerable time, resources, extensive and ongoing consultation, and legal capacity, particularly if the standalone law is also serving the purpose of consolidating several pieces of legislation and providing an agreed position on core concepts of BOT. In light of the practical reality in many countries, the standalone approach may be less feasible.

Box 3. Country example: Cayman Islands

The Beneficial Ownership Transparency Act, 2023 in the **Cayman Islands** applies to six different types of corporate vehicles – companies, limited liability companies, limited liability partnerships (LLPs), limited partnerships, foundation companies, and exempted limited partnerships.[13] The authorities responsible for operationalising the provisions of the Beneficial Ownership Transparency Act and making regulations are the respective registrars in charge of the different corporate vehicles and the minister responsible for financial services.

Prior to the Act, rules on BO disclosure were included in several pieces of legislation,[14] including the Companies Act, the Limited Liability Companies Act, and the Limited Liability Partnership Act. With the Beneficial Ownership Transparency Act, these BO provisions have been consolidated, harmonised, and codified in a single law.[15] This is intended to make it easier for users of the regime to identify and understand their obligations.[16]

In addition, the Act amended the definition of "beneficial owner" in a way that makes it conceptually more aligned with the definition under the Cayman Islands Anti-Money Laundering Regulations (the AML Regulations).[17] However, one notable difference is that the relevant threshold for determining beneficial ownership is 25% or more in the Beneficial Ownership Act and 10% or more under the AML Regulations. This amendment is expected to increase consistency across legislation in the Cayman Islands

where the concept of beneficial ownership is used so that corporate vehicles and their service providers do not need to be familiar with the rules, and can apply different rules for different regimes.

Embedded approach

This approach entails establishing the basis for the collection of BOI in existing legislation, such as laws governing companies, trusts, or anti-money laundering/combating the financing of terrorism (AML/CFT) requirements, with secondary legislation providing further detail.

Potential benefits

The embedded approach includes BO reporting obligations in existing requirements to provide and update basic information about a corporate vehicle, such as the requirement to file annual returns; provide information about directors and shareholders; and record any changes to the constitution of an entity. It therefore takes a holistic view of the information required for a well-functioning business environment, and sees BOI as part of this. This may provide better legal grounds for broader access. This framing may also affect how government agencies, reporting corporate vehicles, and professional service providers view BO reforms, and allows for better integration with existing compliance requirements. For example, nominee directors and shareholders may be used to create opaque ownership and control structures. The disclosure of these nominee relationships is closely related to and can form part of BOI. This is an argument for these types of requirements being better placed in legislation governing companies, along with BO provisions. Thus, amending existing legislation may be more efficient than enacting standalone laws, as it leverages established legislative and administrative processes as well as enforcement mechanisms.

Countries may leverage on the efficiency of this approach to demonstrate progress within a short period of time to international standard-setting bodies like the FATF and the OECD. For example, it may be less cumbersome for a country to amend its Companies Act and include, at the very least, a definition of a beneficial owner and obligations for disclosure, leaving other details to be ironed out in subsidiary legislation, than to pass a standalone law. Both public consultations and the passage of these provisions through parliament may take less time than for a new standalone bill. Therefore, with the embedded approach, countries may be able to achieve incremental wins and demonstrate progress within a shorter period of time than it would if a standalone approach was adopted.

Potential drawbacks

Embedding BO provisions within existing legislation may increase the complexity of existing regulatory frameworks. This could make it more difficult for stakeholders to navigate and comply with regulatory requirements. A country may also have to amend several pieces of legislation to cover all relevant entities and nuances for specific sectors, sometimes in quick succession. This means that extra caution is required to avoid inconsistencies in the BO provisions. For example, the BO provisions in a Companies Act may be limited to companies. Specific requirements and nuances for other corporate vehicles such as trusts or LLPs will have to be covered in their respective legislation. Which law the provisions are embedded in will have a bearing on the grounds for access. For example, embedding the provisions in AML legislation may limit the grounds for access to a broader range of users.

Box 4. Country examples: Ghana, Namibia, South Africa, and Zambia

In **Ghana**, BOT was legislated for through the 2019 amendment to the Companies Act, which defines beneficial ownership and provides a legal basis for the creation of a central register of beneficial owners. The Companies Act makes the provision of information on beneficial owners part of the requirements for registering or incorporating a company in Ghana. It also includes BOI as part of the information a company should keep in their register of members, and makes BO part of the annual returns filing. The Companies Act delegates powers to the Registrar of Companies to make secondary regulations to aid the implementation of a BO regime. More comprehensive provisions on Ghana's BO disclosure regime are detailed in its 2023 Companies Regulations.[18] Following the amendment to the 2019 Companies Act, the Anti-Money Laundering Act – which also regulates business entities such as limited liability companies – was amended in 2020. The amendment includes a definition of a beneficial owner for AML purposes, which differs from the definition in the Companies Act.

In **Namibia**, the government legislated for BOT in 2023 by amending the Financial Intelligence Act, the Companies Act, and the Close Corporations Act, and enacting a new Trust Administration Act. These laws were amended simultaneously, and they required careful consideration and coordination across the legal drafters and relevant agencies involved to ensure consistency.

In **South Africa**, the General Laws (Anti-Money Laundering and Counter Terrorism Financing) Amendment (GLA) Bill proposed to amend five existing pieces of primary legislation. The initial draft proposed to house the definition of beneficial ownership in the Financial Intelligence Centre (FIC) Act, and place references to this definition in the Companies Act, Trust Property Control Act, Nonprofit Organisations Act, and the Financial Sector Regulation Act. Consultations of the initial draft of the GLA Bill revealed significant concerns that the bill would increase the complexity of existing regulatory framework, and would make it more difficult for stakeholders to navigate and comply with regulatory requirements. Specifically, there were concerns over the potential unintended consequences of the use of other terms such as "client" and "accountable institution" in the FIC Act, which were not relevant to other Acts amended by the GLA Bill. Consequently, beneficial ownership was defined in the context of each Act, whilst retaining the uniformity of the core concepts of beneficial ownership to the extent possible. The GLA Bill became law in 2022.[19] In 2023, the Tax Administration Laws Amendments Bill, 2023 initially proposed that the definition of beneficial ownership of a partnership should cross-refer to the FIC Act definition. However, a separate definition was inserted into the Bill for the same reason separate definitions were inserted under each of the acts amended by the GLA Act.[20]

Similarly, **Zambia**'s BOT provisions are embedded in legislation through amendments to the Companies Act in 2017 and 2020, which contain core provisions, such as the definition of a beneficial owner, the obligation to disclose and update BOI, and the requirement for the Patents and Companies Registration Agency (PACRA) to establish a central register of beneficial owners. More detailed provisions on BOT are provided in Zambia's Companies (General) Regulations of 2019.

Those making the choice between a standalone approach and an embedded approach to BO legislation should consider a number of factors, such as the legal and regulatory context, including the jurisdiction's legal system, form of government, institutional capacity and, more importantly, the policy objectives of the reforms. Both approaches have their merits and challenges, and countries must carefully consider these factors when designing their BO regulatory frameworks. Whilst some countries like Kenya and Nigeria have embedded BO provisions in their respective primary legislation, they have standalone secondary legislation for BOT. Regardless of the approach a country chooses to adopt, considerations must be made to other existing legislations that may have a bearing on the legislation on BOT, particularly legislations that also regulate the operations of legal persons and arrangements.

Considering other legislation

Corporate vehicles are an integral part of society, and different aspects of their operations are governed by a range of laws, regulations, and regulators. For legislation on BOT to be effective, it should be coherent with broader legal and regulatory frameworks, particularly those that regulate corporate vehicles. Therefore, it is important that when a government plans to legislate for BOT reforms consideration is given to all the other pieces of legislation that may have a bearing on the BOT legislation. The approach South Africa took included a holistic review of the existing legislative framework, establishing a legislative review drafting committee that liaised closely with a committee that oversaw South Africa's FATF mutual evaluation follow-up process, as well as a standing legal and policy sub-committee of the Inter-Departmental Committee on BOT.

Considering other relevant legislation is key to avoiding inconsistencies and ambiguities in the legal framework. Ensuring the framework is clear also facilitates and enables compliance for corporate vehicles. For example, most jurisdictions will already have a definition of BO in their laws, most likely in their AML legislation relating to KYC/CDD obligations, and this definition may contain a threshold for establishing beneficial ownership.[21] In some cases, BO reporting requirements may even exist in specific legislation, such as those governing the extractive sector. Multiple, conflicting definitions can create legal ambiguity and increase the compliance burden. Therefore, it is important to understand existing regulatory frameworks, as this will inform the design of laws that

are implementable and align with existing compliance and enforcement mechanisms. Existing laws will also need to be reviewed to ensure the effective use of BOI. The analysis of existing legislative and regulatory frameworks should be considered along with international standards.

The table below highlights a range of laws that are likely important to be considered when a country is legislating for BOT. This will differ per legal context, and may not be exhaustive. It also includes specific considerations for each type of law.

Table 1. Overview of considerations for relevant legislation

Type of legislation	Specific considerations
Legislation relating to any of the corporate vehicles covered, for example: – company law – partnership law – trust law – laws governing non-profit organisations – laws governing stock exchanges and listed companies	– What existing reporting obligations do corporate vehicles have? – Does any of this information relate to the concept of beneficial ownership? – Are corporate vehicles required to file periodic updates to a regulatory authority? – Who is the registrar or relevant authority that registers and regulates corporate vehicles, and what authority or powers do they have? – Are there any existing definitions of beneficial ownership? Do these include specific criteria or thresholds, particularly for ownership and voting rights? – Are there any existing BO reporting requirements? – Are relevant terms such as "control", "substantial economic interest", and "significant influence", already defined in any of these laws, regulations, or guidance? – Will any amendments need to be made to require and enable the use of BOI?
AML legislation	
Tax legislation	
Banking and finance legislation	
Legislation relating to relevant policy areas, such as legislation on procurement, extractive industries, and fisheries	
Privacy and data protection legislation	– What rights do citizens have that may be affected by the collection and sharing of personal data? – What relevant rights do citizens have under digital government, information, and transparency legislation? – What legal provisions need to be put in place for the processing and retention of personal data? – How can the access to information be designed to be both proportional and necessary to the infringement on other existing rights? What safeguards need to be put in place? – Are particular types of personal data envisioned to be collected classed as sensitive? – How do privacy and data protection laws, and digital government, information, and transparency laws affect any plans for the sharing of data between government agencies?
Digital government, information, and transparency legislation[22]	
Relevant international conventions and agreements	– What legal provisions or mechanisms need to be put in place to comply with these multilateral/bilateral agreements?

It is important to note that considering these laws does not imply that they need to be amended or modified. It may be necessary for some specific definitions and obligations to exist within other areas of law, such as in bank licensing or for double taxation agreements. The core concepts of these definitions should be harmonised to the extent possible. The value of this exercise is for legal drafters to understand existing legislation and, where necessary, cross-reference these provisions, or flag them in secondary legislations and guidance.[23]

Primary and secondary legislation

Governments have taken different approaches to the amount of detail on specific aspects of BO disclosure to include in either primary or secondary legislation. There are a number of context-specific considerations that may determine how best to strike this balance, including the relative weight and power of primary and secondary legislation in a country. For example, given that it is typically more difficult to amend primary legislation than secondary legislation, including many details in primary legislation can protect reforms against future political changes. However, it will also require a higher level of technical knowledge among parliamentarians and for

the purposes of public consultation. As BOT is a relatively nascent policy area, and standards are still changing, some iteration will be expected and required.

Placing certain details in secondary legislation can enable an iterative approach, provided there is sufficient technical and legal knowledge in the executive to produce regulations. It can also allow for greater specialisation and expertise in drafting detailed rules tailored to specific areas of law. This is particularly useful for technical areas of law and policy like BOT. However, placing too many details in secondary legislation may avoid the parliamentary scrutiny and oversight necessary to produce good reforms that are broadly supported and understood. All these aspects should be considered when assessing which level should be placed in primary legislation versus secondary legislation.

Generally, the process of enacting primary legislation is more comprehensive and robust than the process for establishing secondary or delegated legislation. Primary legislation sets out the fundamental principles, obligations, rights, and powers of relevant stakeholders whilst secondary legislation provides more detailed rules and procedures to enable the implementation of the provisions in primary legislation. In the design of a legal framework for BOT, countries should at the bare minimum ensure that primary legislation sets out the *why* and the *what*. This includes the objectives for the legislation; definitions; obligations for providing, collecting, storing, and sharing BO data; and the requirement for the establishment of a central register. Secondary legislation could then be used to specify the *how*, including details on how to identify beneficial owners; how the information should be collected; specific mechanisms for verifying BOI; the exchange of information between authorities, reporting entities, and other potential users of data; specific information that should be provided; and specific sanctions for noncompliance, among others. Where certain details are not contained in primary legislation, these should be sufficiently covered in secondary legislation with relevant references to primary legislation. In all cases, globally accepted best practices on legislative drafting and regulatory policy should be applied.

It is crucial to acknowledge that jurisdictions have different levels of technical capacity and knowledge with respect to legislative drafting and regulatory management. Whilst this guide aims to help address part of the technical knowledge gap, this is not a replacement for comprehensive and longer-term technical and funding support that may be required for effective implementation of BOT reform. This type of support is provided by a range of international organisations, national development agencies, and multilateral agencies.

It is also worth noting that some countries may implement BOT within different legal systems, such as civil, common, customary law, or a combination, and different systems of government – for example, a presidential system where legislation can issue decrees that are enacted without parliamentary intervention. Whilst the specific drafting, codification, and implementation processes might vary according to each country's specific context, the core components of a robust legislative framework discussed in this guide apply in all cases.

Components of effective legislation

The following section highlights different components that should be found in BOT legislation, sequenced in the order these would usually be found in a law.

Policy objectives and purpose of the legislation

The purpose of a bill is its anchor, and it should be identified clearly at the beginning of proposed legislation or the preamble (the introductory part of a law that indicates its purpose and intent). Simply put, the purpose states the policy objectives that underpin the substantive provisions in the legislation.

The policy details should be established prior to drafting legislation. The policy process preceding legislative drafting can include the drafting of policy papers, commissioning impact assessments,[24] and conducting broad consultations. Consultations should include government departments – especially those that will collect the data (such as corporate registries); trust registries (such as tax authorities or the judiciary); and potential users of the data (such as procurement authorities, anti-corruption agencies, financial intelligence units (FIUs), and mining or extractive licensing agencies). Beyond government stakeholders and the private sector, any additional users of the data – such as civil society organisations (CSOs) and non-governmental organisations (NGOs) – and the general public should be consulted.[25]

Consultations can help define and broaden the policy goals for BOT reforms. These policy goals can then inform the drafting of certain elements of the legal framework, such as who will be given access to the information and what specifically they will have access to. For example, if a government's policy goals are to improve transparency and accountability in public procurement and to improve citizens' trust in the government, this would necessitate and justify providing access for the public to a subset of BOI. Conversely, a narrow purpose – such as pursuing the specific policy objective of fighting money laundering – would necessitate access to law enforcement agencies and competent authorities, as well as making it more difficult to justify broad access. There are a range of policy objectives to which BOT can contribute, and it is important for governments to identify all relevant objectives and to specify these in law.

The implementation of a BO register may face legal challenges, especially where access to personal data held by registers is provided to a broad range of users beyond government in order to maximise the impact of the reforms. This underscores the importance of balancing the need to safeguard individual privacy rights. In the case of legal challenges, courts will look at whether the measures are necessary and proportionate to achieving the stated objectives. Ideally, these should be anchored in broad terms in the public interest whilst covering specific voluntary commitments and binding obligations, such as those in the EITI Standard, Open Government Partnership action plans, the FATF Recommendations, and the UNCAC. Broadly, these can include:

- **providing transparency, accountability, and oversight**: for example, over natural resources or public spending;
- **deterring and tackling illicit activities**: including corruption, tax evasion, organised crime, money laundering, and terrorist and proliferation financing;
- **creating a well-functioning business environment**: for example, to regulate competition and improve public service delivery; encourage inward investment; and improve domestic resource mobilisation.

Box 5. Country examples: Kenya, Namibia, the United Kingdom, and the United States

In 2022, **Kenya** amended its legislation through the Companies (Beneficial Ownership) Regulations to include specific provisions on the use of BO data in public procurement.[26] This Regulation is accompanied by an explanatory memorandum that provides a background to the reforms, places them in the legislative context, and clearly states the policy objective for the amendment and what it intends to achieve. The memorandum also contains insights into the consultative process and various parties that were consulted. The memorandum states:

> The Government is committed towards the growth and transformation of Kenya through vision 2030 with the firm emphasis on **transparency, accountability and public participation and transformation of public procurement in Kenya**. [...] Transparency in [...] Public Procurement is vital and [...] the **public disclosure of information of the people behind** the entities that have been awarded tenders by the public procuring entities is **crucial because it aids in identifying and reducing cases of mismanagement, fraud and corruption**. This background necessitated the formation of the published Regulations entitled the Companies (Beneficial Ownership Information) Regulations, 2022 [emphasis added].[27]

The policy objective is to improve transparency and accountability in public procurement, and there is a recognition of the role of public participation in achieving this. There is also a clear indication that although the information in the BO register is not accessible to the public, public access to information about the beneficial owners behind the corporate vehicles that are awarded tenders is necessary for the government's broader objective to be achieved. This demonstrates how a clear set of objectives can inform specific elements of BO legislation, such as access.

The memorandum also articulates the government's intention for amending the legislation, which is "to make the public procurement process transparent as well as enable the government to publish important information about a company in matters of public interest [and] is to streamline some regulations to give better effect to the [Companies] Act[, 2015]".[28]

This is an example of a clear statement of purpose following a consultative process. This will serve as guidance for various government agencies tasked with implementing the regulation.

In **Namibia**, the government legislated for BOT through a series of acts. Because these provisions are part of a wider set of amendments, the preamble specifying the purpose and intent of the legislation is therefore broad, speaking to the overarching goal of regulating companies or trusts doing business in the relevant country, and it does not contain any specific information on the broader policy objectives for BOT reforms. The preamble in the Trust Administration Act of 2023 states its objectives are:

> To regulate the control and administration of trusts; regulate trustees and trust practitioners providing services relating to trusts; specify powers and functions of trustees in respect of trusts; to specify powers and functions of Master in respect of trusts; specify powers and functions of court in respect of trusts; to require Master and trustees to keep beneficial ownership registers and other registers relating to trusts; and to provide for incidental matters.[29]

It mentions the central BO register, held by the Master, but does not provide an indication of the policy objective that underpins the creation of a BO register for trusts, although the regulation and control of trusts should also extend to preventing their misuse.

The **UK** amended its Companies Act to include BOT provisions. The amending act – the Small Business, Enterprise and Employment (SBEE) Act 2015 – outlines its purpose broadly: "to make provision about the regulation of companies; to make provision about company filing requirements; to make provision about the disqualification from appointments relating to companies; to make provision about insolvency".[30]

The specific policy objectives are further detailed in multiple policy documents, including a post-implementation review: "The objective of the register is to enhance corporate transparency and, thereby, to facilitate economic growth and help tackle misuse of companies".[31]

For the **UK**'s ROE, the policy objectives are clearly stated in its impact assessment:

> The overarching objective is to create a publicly available register of ultimate ownership to enhance the transparency around the owners and controllers of relevant entities which own or buy UK property. In doing so the objective is to:
>
> – Deter and disrupt crime, by making it more difficult to use corporate vehicles in the pursuit of crime.

- Deter criminals from money laundering in the UK
- Preserve the integrity of the financial system
- Increase the efficiency of law enforcement investigations, particularly in relation to identifying and tracing the proceeds of crime
- Require the same transparency of the relevant overseas entities as of UK companies[32]

The legislative act for the ROE is more specific in its purpose than the SBEE Act, and does not reference broader policy objectives. It describes itself as: "An Act to set up a register of overseas entities and their beneficial owners and require overseas entities who own land to register in certain circumstances".[33]

The **United States** (US) Corporate Transparency Act firmly anchors the law in the policy objective of national security:

> beneficial ownership information collected under the amendments made by this title is sensitive information and will be directly available only to authorized government authorities, subject to effective safeguards and controls, to—
>
> (A) facilitate **important national security, intelligence, and law enforcement activities**; and
>
> (B) confirm beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law [emphasis added].[34]

Other documents – including a "Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest" – and secondary legislation clearly explain that in the US, national security is BOT's primary policy aim.[35]

Legislative placement

Where jurisdictions legislate for BOT by amending existing laws, at the minimum the amending laws – rather than the laws they amend – should include the overarching objectives of the reforms. A broad purpose will provide a better legal basis for broader access to BOI. Primary and secondary policy objectives should be identified prior to drafting legislation, and further detail should be made publicly available and easily accessible, such as in policy papers, explanatory memoranda, consultations, impact assessments, and parliamentary or legislative deliberations.

Where countries legislate for BOT through a standalone law on beneficial ownership, policy objectives can more readily be included in the preamble. Regardless of what approach is taken, an effective legislative framework should be anchored in a clear set of policy goals that are communicated at the beginning of proposed legislation.

Defining the beneficial ownership of corporate vehicles in law

The purpose of establishing the legislative framework is usually followed by clearly defining what constitutes beneficial ownership. Definitions are a foundational element of any legislation, and they must be carefully considered and clearly drafted. Any ambiguity may lead to inconsistency in the information reported, making the reforms less effective. Beneficial ownership is a material, substantive concept – referring to de facto control over a corporate vehicle – and not a purely legal or quantitative definition. A key challenge in defining beneficial ownership in law is to capture its substantive nature.[36]

Fundamentally, the definition should state that a beneficial owner is a natural person, and should cover all relevant ways a natural person can exercise ownership or control over, or derive benefit from, any type of corporate vehicle, whether directly or indirectly. A good way to capture the substantive nature of beneficial ownership is to include a broad definition of what it constitutes, coupled with a non-exhaustive list of examples of ways in which beneficial ownership can be held, including a catch-all clause.

Any thresholds should be set sufficiently low so that all relevant individuals are included in declarations.[37] This should balance the need for more information with a higher compliance burden and the risk of collecting too much information, introducing noise[38] in the data and increasing the resources required to collect, store, and use it. All beneficial owners and all interest types should be disclosed. Legislation should be complemented by guidance on how to determine or calculate certain interests, including ownership and voting rights where such interests are indirectly held.

Often, a definition will also make reference to the corporate vehicles it will apply to. Defining which criteria constitute beneficial ownership will also determine whether a specific corporate vehicle can be beneficially owned. For a regime to be comprehensive, definitions should consider all forms of ownership and control in an economy, and all corporate vehicles with or without distinct legal personalities through or by which assets can be owned, benefitted from, and controlled. These corporate vehicles should be required to make declarations about their beneficial ownership.

BOT as a policy area has historically focused on private limited liability companies. Increasingly, countries are looking to include additional corporate vehicle types into the scope of disclosure. Whilst substantively the concept of beneficial ownership remains the same – the natural persons who ultimately own, control, or benefit from corporate vehicles – initial legal definitions have mostly been developed for ordinary limited liability companies. These definitions are not necessarily suited to apply the substantive notion of beneficial ownership to other corporate vehicles. For example, whilst employees are sometimes explicitly excluded from the definition of beneficial ownership for private limited liability companies, senior managing officials of state-owned enterprises (SOEs) may have powers or appointments mandated by law, and therefore have a high degree of control and, as such, should be considered beneficial owners of SOEs.[39]

Additionally, whilst the rights to control and economic benefits have historically been closely tied to ownership, these rights are increasingly being separated through legal instruments and arrangements. Therefore, it may be necessary to detail all of these interests separately in a legal definition. As BOT is being applied to an increasing number of types of corporate vehicles, there is a need to constantly reassess what beneficial ownership means as a substantive concept when applied to other entities and arrangements, such as trusts, SOEs, investment funds, and listed companies. Consequently, jurisdictions may be best served by including a single, unified, broad definition of beneficial ownership in primary legislation, in line with global standards. This definition should not be prescriptive to a level of detail that limits what constitutes beneficial ownership when applying the substantive concept of beneficial ownership to different corporate vehicles to certain interests that are specific to certain corporate vehicles. The latter can be detailed in secondary legislation.

In defining the beneficial ownership of corporate vehicles, it is also important to use guidance provided by international standards, such as those set by the FATF and the OECD. This can ensure consistency across jurisdictions, and adherence to these standards can enhance the interoperability of BO registers across BO-implementing countries, facilitating easier cross-border information sharing and cooperation. Legislators should be mindful that the objectives they are pursuing may be broader than those of certain international standards, which should therefore be considered as minimum standards to incorporate into reforms.

A unified definition helps to avoid confusion and facilitate compliance. In several countries, a beneficial owner is defined by several pieces of legislation, all of which may overlap and differ. For example in Zambia, the Banking and Financial Services Act, the Financial Intelligence Act, the Securities Act, the Public Procurement Regulations, and the Income Tax Act are some of the laws that define who a beneficial owner is.[40] Although the Public Procurement Regulations and the Income Tax Act refer to the definition in the Companies Act, the other laws provide varying definitions, and the threshold for ownership interest also differs.[41] A unified definition can be created by expressly adopting, consolidating, or amending definitions in existing legislation. Ideally, primary legislation will include a broad definition, with additional secondary legislation referring to this definition and specifying what the definition means when applied to certain corporate vehicles, such as companies, LLPs, or legal arrangements. This is to ensure coherence across legislation and enable compliance. It is also essential for any verification mechanisms that rely on AML-regulated parties to check entries on the register to function effectively, so that both the parties reporting information and those checking the information do so using the same definition.

Exemptions

Whilst some types of corporate vehicles, such as listed companies, may be exempt from the full disclosure requirements, excluding certain corporate vehicles from any type of disclosure can displace risk or create

loopholes. Entities and arrangements exempt from disclosing their beneficial ownership should still be required to make declarations, including the basis for their exemption. Any exemptions from full declaration requirements should be clearly defined and justified, and reassessed on an ongoing basis.[42] Exemptions from disclosing beneficial ownership may be granted when an entity or arrangement is already disclosing sufficient information and this information is readily accessible (e.g. when listed companies are subject to disclose sufficient relevant information to a regulator). State-owned vehicles often do not meet these criteria, yet are exempted by many countries. Any exemptions should mention specific criteria (e.g. a list of stock exchanges) rather than constitute blanket categories. All exemptions should be interpreted narrowly.

Box 6. Country examples: Ghana, Kenya, the Netherlands, South Africa, and the United States

In the **US**, the governing law for BO disclosures is the Corporate Transparency Act (CTA), which is supplemented regulations in the form of a number of Beneficial Ownership Rules put in place by the Financial Crimes Enforcement Network (FinCEN), the US FIU and the agency responsible for implementing the reforms.

In 2021, the CTA was amended to include provisions on beneficial ownership. It defines a beneficial owner as follows:

> (3) BENEFICIAL OWNER.—The term "beneficial owner"—
>
> (A) means, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise
>
> (i) exercises substantial control over the entity; or
>
> (ii) owns or controls not less than 25 percent of the ownership interests of the entity; and
>
> (B) does not include—
>
> (i) a minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section;
>
> (ii) an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
>
> (iii) an individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person;
>
> (iv) an individual whose only interest in a corporation, limited liability company, or other similar entity is through a right of inheritance; or
>
> (v) a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of subparagraph (A).[43]

This definition covers who a beneficial owner is and who a beneficial owner is not, which helps reporting entities understand which individuals are relevant. Building on the CTA, FinCen's Beneficial Ownership Information Reporting Requirements Rule defines the terms "substantial control" and "ownership interests", and also includes a catch-all provision to ensure other forms of substantial control beyond those listed are captured.[44] The Rule also expands on the five exemptions in the CTA, including, for example, "minor child[ren]" and "individual[s] acting as a nominee, intermediary, custodian, or agent on behalf of another individual."

During consultations on the regulations, it was argued that the CTA limits FinCEN to collecting BOI on a single person because the definition refers to "an" individual. For the avoidance of doubt, FinCEN clarified this in the Rules by indicating that the term "beneficial owner" refers to "any" person, and restricting a beneficial owner to one individual could not have been the intention of the legislature, seeing as their goal is to "prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity, while minimizing the burden on entities doing business in the United States".[45]

In the **Netherlands**, the Money Laundering and Terrorist Financing Prevention Act has a broad definition of beneficial ownership in Article 1, considering a beneficial owner as a "natural person who is the ultimate owner of or has control over a client, or the natural person on whose behalf a transaction or activity is carried out".[46] This definition is used throughout the

Act to cover the Know Your Customer (KYC) and Customer Due Diligence (CDD) obligations of entities. Article 10a of the Act covers information about beneficial owners and adopts a definition broader than the AML framing of "clients" and "transactions", specifying that in one paragraph the definition deviates from the earlier definition. It reads: "the natural person who ultimately owns or controls a company or other legal entity or a trust or similar legal arrangement".[47]

The same article specifies which legal entities are covered by the term "company or other legal entity". For the term "trust or other legal arrangements", the Act refers to secondary legislation for the registration of ultimate beneficial owners of trusts and similar legal structures. BO disclosure requirements for legal entities are covered in the Companies Act, which refers to the definition in the AML act in Article 15a:

> The company register records who the ultimate beneficial owner is or who are the ultimate beneficial owners of companies or other legal entities **as referred to in Article 10a, second paragraph, of the Money Laundering and Terrorist Financing Prevention Act** [emphasis added].[48]

Separately, the regulations for the register of the beneficial ownership of trusts also defines an "ultimate beneficial owner **as referred to in Section 10a(1) of the Money Laundering and Terrorist Financing Prevention Act**" (emphasis added).[49]

A detailed definition of what criteria constitutes the beneficial ownership of both legal entities and trusts as well as other legal arrangements are in AML regulations, and this definition is applicable to both disclosure of beneficial ownership to the register, as well as financial institutions and designated non-financial businesses and professions conducting KYC/CDD checks.[50] This includes a catch-all clause by including BO through "other means".[51]

As a result, the Netherlands has a harmonised definition of beneficial ownership. However, the specific criteria in the AML regulations are not comprehensive, and they follow the FATF's cascading test intended for KYC/CDD, which may risk not all beneficial owners, or their interests, being comprehensively identified.[52] So whilst unified, it is not a robust definition for BO disclosure. In addition, some legal entity types are excluded from disclosure requirements, although obliged entities are required to conduct KYC/CDD checks on those legal entities.

Kenya also has a broad definition of beneficial ownership, applying generally to all types of corporate vehicles. This is in primary legislation, the 2015 Companies Act, where "'beneficial owner' means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement".[53]

Kenya's multiple BO regulations – of 2020, 2022, and 2023 for companies, and 2023 for partnerships – provide additional detail, including defining concepts like "significant influence or control" and "ultimately own or control", and criteria and details on how beneficial ownership can be held, including specific thresholds.[54] It also includes a catch-all clause through the concept of "significant influence or control":

> (2) For the purpose of these Regulations, a beneficial owner of a company shall be a natural person who meets any of the following conditions in relation to the company—
>
> (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
>
> (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
>
> (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
>
> (d) **exercises significant influence or control**, directly or indirectly, over the company. [emphasis added][55]

Whilst this is good practice, the BO disclosure regulations are restricted to companies and partnerships rather than all corporate vehicles, although the phrasing in the primary legislation allows further regulations to be developed for other corporate vehicle types, without amendments to primary legislation.

Whilst most countries focus on the two prongs of ownership and control, **Ghana** has a more comprehensive definition in its 2019 Companies Act, also explicitly covering benefit. It states: "'beneficial owner' means an individual [...] **who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons**" (emphasis added).[56]

Also see the example of **South Africa** in the section *Approaches to legislative reform*.

Legislative placement

The core elements of a definition should be in primary legislation. These elements include stating that a beneficial owner should be a natural person, including foundational concepts such as ownership and (effective) control, and may include deriving substantial benefit from a corporate vehicle which can be held directly or indirectly. A clear prohibition of certain parties (e.g. agents, custodians, intermediaries, or nominees acting on behalf of another person qualifying as a beneficial owner) can be included in primary or secondary legislation. Primary legislation should specify to which corporate vehicles the definition applies and can make a provision for exemptions. Details on exemptions can be prescribed in secondary legislation to enable their periodic revision. Secondary legislation can specify that where no individual meets the definition of a beneficial owner, the name of a natural person in a senior role with managerial responsibility for the corporate vehicle in question is provided, making clear that this person is not a beneficial owner. This should be supported by guidance which can include graphics, case studies, and examples.

In defining a beneficial owner, different variations of phrases such as "significant influence and control", "ultimate control", and "substantial economic interest" are often used. These phrases are subject to different interpretations, and whilst it is helpful to use broad phrases like these to capture the substantive nature of beneficial ownership, it is equally important to define these phrases. This could be done in secondary legislation to allow for the relevant authority to regularly review the definition and modify it if necessary.

Reporting obligations

The legislation should create obligations for reporting BOI, establishing the legal basis for collecting BO data, and clearly indicating:

1. who has the responsibility to submit information;
2. when information should be submitted;
3. what information should be reported;
4. how the information should be reported; and
5. which authority the information should be reported to.

Who has the responsibility to submit information

The legislation should be very clear on the types of corporate vehicles the reporting obligations apply to and on whom the responsibility lies to submit the BOI. Generally, reporting obligations are placed on the corporate vehicle itself. As per international AML standards, many countries also require companies to hold and maintain registers of their own beneficial owners.[57] There may also be obligations on the beneficial owner to provide information to the company, as well as powers for the corporate vehicle to compel the beneficial owners to provide information on request and issue penalties for failures to comply.[58]

Box 7. Country examples: Denmark and the United Kingdom

The Companies Act in **Denmark** includes clear a obligation on the company to obtain information, and on beneficial owners to provide specific information to the company:

> § 58 a. The company must obtain information about the company's beneficial owners, including information about the beneficial owners' rights.
>
> PCS. 2. Anyone who directly or indirectly owns or controls the capital company must, at the company's request, provide the company with the information about the ownership relationship that is necessary for the company's identification of beneficial owners, including information about the beneficial owners' rights [emphasis added].[59]

In the **UK**, the Companies Act gives companies the power to give notice to individuals it has cause to believe are beneficial owners. It also places a duty on beneficial owners where "the person knows that to be the case or ought reasonably to do so" on supplying information.[60] It also provides powers to a company to issue a restrictions notice to an individual who fails to provide information and who holds a relevant interest. Following the issuing of such a notice, the individual cannot transfer the interest, nor exercisable rights in respect of the interest, among others.[61]

When information should be submitted

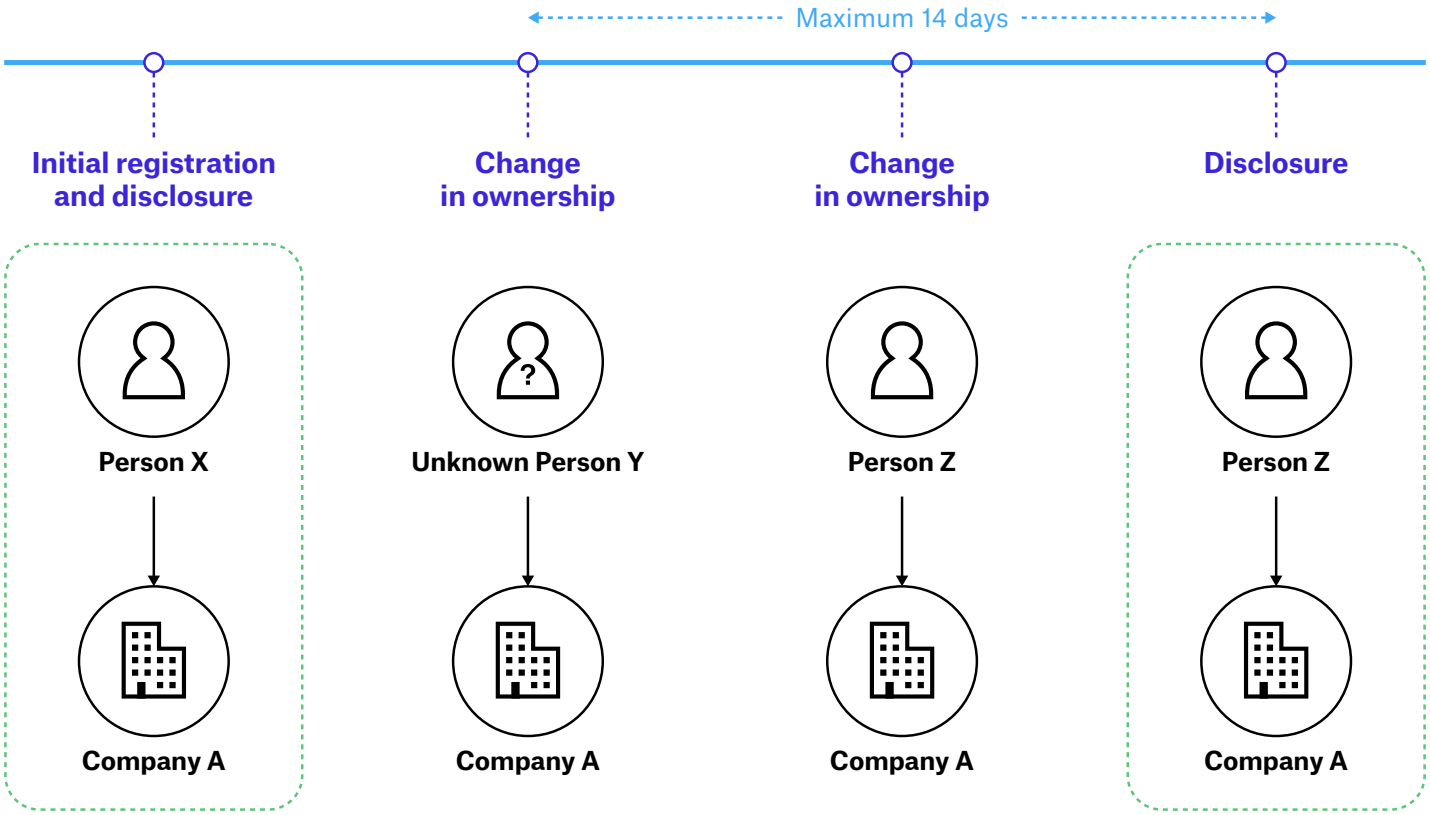
The legislation should specify which events should trigger the submission of information, or confirmation that the information held is correct, and specify a reasonably short, defined time period within which this needs to be done. These usually include:

- by a specific deadline for initial reporting in the legislation (e.g. six months from enactment) and, subsequently, as part of any new registration or incorporation;
- when there is any change in beneficial ownership, such as a change in the particulars of an existing beneficial owner, the cessation of beneficial ownership, or the addition of a new beneficial owner (jurisdictions have used time periods that range from as little as 7–14 days);
- upon the passing of 12 months, or together with annual statements.

In determining the appropriate reporting timelines, countries should consider their specific context and take into account their institutional setup and other domestic circumstances that may impact one's ability to comply. Generally, the shorter the time period, the more up-to-date the information, and the more useful it is.

Following initial disclosure, all changes in beneficial ownership should be legally required to be reported to the central register in order to close a loophole explained below in Figure 2. Where companies hold their own registers in addition to the submission of information centrally, legislation should also require companies to retain the information for a certain number of years.

Figure 2. Reporting requirements loophole for changes in beneficial ownership



In this example, Company A has disclosed Person X to be its beneficial owner at initial registration. Later, Person Y replaces Person X as the company's beneficial owner. The prescribed time period for reporting changes in this jurisdiction is 14 days. Within this time period, the beneficial owner of Company A changes again, from Person Y to Person Z. If there is no requirement to report all changes in BO, Person Y can legally avoid disclosure – and potentially exploit this for illicit purposes – provided that Person Z is disclosed as the beneficial owner within the prescribed time period of the first change in ownership. Source: Open Ownership.[62]

Box 8. Country examples: Denmark and Singapore

The Companies Act in **Denmark** specifies when companies need to submit information to the registrar, including reporting timeframes and which events should trigger reporting information:

> PCS. 3. The company must register the information about the company's beneficial owners, including information about the beneficial owners' rights, in the Danish Business Authority's IT system as soon as possible after the company has become aware that a person has become a beneficial owner. Any change to the information registered about the beneficial owners must be registered as soon as possible after the company has become aware of the change [emphasis added].[63]

The Act also provides a requirement for annual confirmations, and to retain information:

> PCS. 4. **The company must at least once a year examine whether there are changes to the registered information about the company's beneficial owners**. [...]
>
> PCS. 5. The company **must keep documentation for the information obtained about the company's beneficial owners for 5 years** after the beneficial ownership ceases. The company must also keep documentation for the information obtained about attempts to identify beneficial owners for 5 years after the completion of the identification attempt [emphasis added].[64]

Singapore legislated reporting requirements through its 1967 Companies Act.[65] It complements the legislation with accessible guidance on the register's website, stating clear timelines for keeping company BO registers, or Registers of Registrable Controllers (RORC), up to date:

> Entities maintaining RORC must update the changes within:
>
> – 2 business days after the particulars have been "confirmed"; or
>
> – 2 business days after the end of 30 days after the date on which the notice is sent by the company to the registrable controller.[66]

In addition, it specifies when these changes need to be reported to the registrar, the Accounting and Corporate Regulatory Authority (ACRA):

> **Lodging RORC information with ACRA**
>
> All companies, foreign companies and limited liability partnerships (LLPs), unless exempted, are required to lodge their RORC information with ACRA. The information must be lodged with ACRA within two business days after the RORC has been set up.
>
> **Updating RORC information with ACRA**
>
> If there are changes to the RORC information of your entity, you must first update the information on your [RORC] maintained at your registered office address or at the address of your appointed registered filing agent (RFA). Following which, you must lodge the updates with ACRA's Central Register of Controllers within two business days [emphasis in original].[67]

What information should be reported

Legislation should clearly and exhaustively specify what information should be included in a declaration, particularly where this pertains to personal data. This should generally include sufficient information to identify the beneficial owner, the corporate vehicle, and the relationship between them. Sufficient information should be collected to be able to identify the individuals and corporate vehicles, and to allow the information to be verified. Some countries may choose to collect information about the individual making the declaration on behalf of the corporate vehicle. Implementers should also factor in specific requirements to collect information by various international standards, including the FATF and the 2023 EITI Standard.[68]

In determining what information to collect, it is also important for countries to carefully consider the needs of those who will use the information. This should include all parties that are able to use the information to achieve the stated policy objective. Users should be engaged throughout the implementation process, starting with consultations. For example, law enforcement agencies may require visibility of the full ownership structure of a company to facilitate establishing relationships between individuals, corporate vehicles, and assets in investigations. By implication, information about intermediaries,

including other corporate vehicles and agreements, may need to be collected and mandated by law. Reliable identifiers should be collected for (or issued to) all individuals and corporate vehicles.[69]

It may be useful to include provisions for powers to amend the list of information. This is a way to future-proof legislation in light of the evolving nature of the BOT policy area and international standards, and the iterative approach to implementation to accommodate these changes.

Ultimately, the extent of information that a country chooses to collect should be driven by what is necessary to achieve their policy objectives and the needs of data users. Information required to be disclosed should be clearly and exhaustively enumerated in law and limited to what is necessary, in line with common requirements in privacy and data protection legislation.

Box 9. Country examples: Denmark and Zambia

The BO register in **Zambia** is run by PACRA. Sections 12(3)(e) and 30(1)(b) of Companies Act 2017 requires an intending company and existing companies to provide the following: "a statement of beneficial ownership which shall state, in respect of each beneficial owner—(i) the full names; (ii) the date of birth; (iii) the nationality or nationalities; (iv) the country of residence; (v) the residential address; and (vi) any other particulars as [may be] prescribed",[70] among others.

This list does not include the information about the relationship between the beneficial owner and the company. It does contain a provision for powers to prescribe "any other particulars", allowing this to be addressed in secondary legislation. The Companies (Prescribed Forms) and The Companies (General) Regulations in 2019 expand on this list to include: "(i) full names, (ii) date of birth; (iii) nationality; (iv) country of residence; (v) gender; (vi) residential address; (vii) **number of shares owned**; (viii) **class of shares owned**; and (ix) **nature of beneficial ownership**" (emphasis added).[71]

Therefore, primary and secondary legislation together include provisions to collect information about the beneficial owner and their relationship with the company.

In **Denmark**, secondary legislation clarifies which information should be reported through the executive order on registration and publication of information about owners in the Danish Business Authority:

> § 37. The registration of natural and legal persons associated with companies, foundations, associations as well as trusts or similar legal arrangements as owners must indicate **full name, function in the company, [Danish social security] number, citizenship at birth, address and country of residence for natural persons** or name, [Danish company] number and domicile of legal entities.
>
> PCS. 2. If the natural person does not have a [Danish social security] number or the legal person does not have a [Danish company] number, the following must be stated:
>
> 1) For persons without a [Danish social security] number, information on **date of birth**, **citizenship at birth**, **gender**, **passport number** or **number from a national identity card** that can be used when entering a Schengen country, and the **country of issue of the passport or the national identity card** must be entered in connection with the registration as well as **information about the relevant person's tax identification number in their home country**. A **photo of a valid passport or national identity card** that can be used when entering a Schengen country must be attached to the notification [emphasis added].[72]

How the information should be collected

Information should be collected, ideally through online forms with accompanying guidance that includes illustrative diagrams of different ways in which BO can be held, and how indirect interests should be determined and calculated. Forms should be designed as a service informed by user needs and tested with actual users to facilitate and enable compliance, and should therefore be periodically reviewed.[73] To enable this, legislation should not include the forms themselves, but should define the information to be collected, as specified above.

Effective reforms would see a whole-of-government approach to BOT, working collectively towards a central repository of information on corporate vehicles. In some countries, however, other authorities may be legally

required to collect BOI from certain corporate vehicles; for example, as part of procurement or licensing processes. In this case, it is imperative that the disclosure requirements are harmonised to the extent possible – including the forms used for collecting BOI to ensure uniformity in the information collected, and to lower the compliance burden. These types of requirements should be identified when other relevant legislation is considered, as previously discussed. Ideally, information collected should be checked against and consolidated with any existing BOI held in order to avoid a situation where a government may hold conflicting information on the beneficial ownership of a single corporate vehicle. As an alternative to various authorities collecting information and needing to consolidate it, corporate vehicles can be required to update their information held by the central register and provide an extract confirming this, including the BOI itself.

Which authority the information should be reported to

Reporting obligations should specify which authority the information should be reported to, i.e. the registrar. The following section provides more detail about this.

Legislative placement

Given that provisions on reporting obligations establish a legal basis for collecting information, such obligations should be in primary legislation. Specifically, the nature of the obligations, when information should be reported, and who is responsible for reporting should be in primary legislation. Given the fact that collecting BOI includes processing personal data, legislation should include an exhaustive list of details to collect, and these should be the minimum information required to meet the stated policy objectives; extraneous particulars should not be included. To enable an iterative approach, provisions delegating power to amend the list of particulars could be included. It is generally not recommended to include forms in legislation, as these may need to be amended, and the legislation should enable the design of the system, rather than inadvertently designing the system itself (see *Designing systems and services through legislation* in *Common pitfalls*). Reporting obligations should be clarified through guidance , ideally including example diagrams.

The registrar and the register

Legal basis for a central register

Legislation should form the basis for the establishment of a central register. Legislation should make it clear which authority should collect BOI in a central register, and provide the powers, mandate, and responsibility to this authority – the registrar – to establish and oversee a register. Different types of authorities can function as the registrar, such as corporate registries, tax authorities, FIUs, or regulatory authorities, such as securities commissions or central banks. Sometimes different authorities oversee registers for different types of corporate vehicles – e.g. legal arrangements such as trusts, or non-profit organisations – or for different administrative units in federated systems. In this event, the law should enable sufficient cooperation and exchange of information, ideally to allow the information to be centralised and integrated to create a comprehensive view of corporate vehicles.

It is not uncommon for different authorities or sector regulators to have a legal mandate to collect BOI for a specific purpose. For example, in Nigeria, apart from the Companies and Allied Matters Act, the Petroleum Industry Act requires the Nigeria Upstream Regulatory Commission to keep a BO register. Effective reforms require centralising information in order to work towards a single source of truth. Primary legislation can specify that other agencies, especially those that interact with or regulate companies, have a role in maintaining a central register.[74]

Information storage

The laws should specify how and for how long records should be kept, which should be a reasonable and specified number of years, including for dormant and dissolved corporate vehicles. International standards also include minimum information retention periods.[75] To ensure BOI can be effectively used, it should be collected, stored, and shared as structured and interoperable data as far as practically possible.[76] Primary legislation should not specify this in a great level of detail, but could place a responsibility on the registrar to ensure information is stored digitally in an organised, accessible, and usable way, and that both individuals and corporate vehicles can be uniquely identified via the collection and issuing of a reliable identifier.[77] Existing legislation, including data protection or laws governing public sector information, may have a bearing on these provisions.

Box 10. Country examples: Argentina, Ghana, and the United Kingdom

Ghana's 2019 Companies Act establishes a central register of beneficial owners and specifies which information should be entered into the register. In addition, the law provides certain obligations for the registrar:

> (3) The Registrar shall:
>
> (a) collaborate with other authorities for [the] purpose of maintaining, verifying and updating the Central Register;
>
> (b) on request and in a timely manner, make information entered in the Central Register available to the relevant authorities for inspection; and
>
> (c) in line with **open data best practices**, make an electronic format of the Central Register available to members of the public for inspection [emphasis added].[78]

The obligation in subsection 3(a) is useful for when information is collected by authorities other than the registrar. Arguably, this provision implies a mandate for the registrar to drive inter-agency coordination for the purpose of maintaining up-to-date and accurate information.

Subsection (3)(c) makes reference to "open data best practices".[79] This places responsibilities on the registrar to ensure data is collected in a structured and standardised format, without prescribing in detail what that format should be.

Argentina passed Law 27.739 in March 2024. This law gives the federal tax administrator the authority and mandate to collect BOI, and ensure its accuracy, including specific functions and powers:

> Article 28. The Federal Administration of Public Revenues (AFIP), an autonomous agency within the Ministry of Economy, will centralise, as the authority in charge of applying and enforcing the law, in a Public Registry of Beneficial Owners, the "registry" here onwards, the adequate, precise and up-to-date information referred to those human persons that are beneficial owners in the terms defined of Article 4 bis of the Law 25.246.
>
> The Registry will comprise the information of the Information Reporting Regimes established by the AFIP for this purpose, as well as any other information that might be required by the authority of application to other public bodies. [...]
>
> Article 30. The authority will have the following functions and powers:
>
> a) Incorporate and keep updated the information regarding final beneficiaries;
>
> b) Receive information from the Financial Intelligence Unit (FIU) and other public organisations, for the identification, verification and incorporation of final beneficiaries into the registry;
>
> c) Issue the complementary regulations necessary for the operation of the registry and for the receipt of information referring to final beneficiaries of other public organisations;
>
> d) Sign agreements with other public organisations, in order to exchange information and carry out common actions linked to the purpose of the registry.[80]

In the **UK**, Part 35 of the 2006 Companies Act includes provisions about the functions and powers of the registrar.[81] The 2023 Economic Crime and Corporate Transparency Act extended the retention period for records about companies to 20 years after their dissolution.[82] This is also clearly explained in the registrar's personal information charter:

> Companies House retains all records of companies as long as they're active. Records of dissolved companies are retained for 20 years, before they're transferred to the Public Records Office at The National Archives (TNA). This includes all information relating to company directors or its officers.[83]

Legislative placement

Primary legislation should establish a central register and specify the authority responsible for creating, maintaining, and operating this register, including how long records should be kept. This should also place responsibilities on the authority to collect, collate, and store the information as structured and standardised data, without prescribing a specific format. Further details can be included in secondary legislation.

Verifying beneficial ownership information for accuracy

Verification is the combination of checks and processes that helps ensure that BOI is accurate and complete at a given point in time. Whilst the primary legal responsibility to ensure information is accurate lies on those reporting the information – who should be required to attest to its accuracy – the information should also be checked for accuracy. Checks can be conducted at different stages in the disclosure process with the aim of ensuring information is of high quality and reliable, maximising its utility and impact. Verifying the identity of beneficial owners and the means through which they hold beneficial ownership is a specific requirement of the FATF Recommendations.[84] There are many different approaches to verification, and there is no one-size-fits-all solution.[85] It is important to bear in mind that all of the components in this guide contribute to information being accurate, not just verification.

Mandate, obligation, and powers

Generally, primary legislation will not detail specific mechanisms for verification, but it should create an obligation for the responsible authority to ensure the accuracy of the information they collect and provide them with the mandate and sufficient powers to do so. Particularly for corporate registrars, historical mandates may prevent them from changing or removing information. Other relevant powers can include powers to require specific information, query information, and data sharing and processing powers. It is important that the legislation includes the powers and mandate to ensure the accuracy of the information.

Box 11. Country examples: Argentina, Ghana, Indonesia, Namibia, and the Philippines

Section 33(2) of **Namibia**'s Trust Administration Act states that "the [registrar] **may** take such necessary steps as prescribed to verify the information contained in the register referred to in subsection (1) to guarantee the accuracy of information in such register" (emphasis added).[86] The word "may" gives a mandate to the registrar, but does not place an obligation on it to ensure the accuracy of all information.

In **Indonesia**, the registrar has the powers to add more beneficial owners in addition to those identified by the company, based on results of audits; information from government or private institutions and professions that manage the data; and other reliable information.[87]

The **Philippines** has more extensive provisions on verification and includes a non-exhaustive list of ways the responsible authority can verify BOI – including specific checks such as onsite visits – and provides it with the powers to do so. Section 9 of the Securities and Exchange Commission (SEC) Memorandum Circular No. 15 states:

> The Commission **may**, at any reasonable time, verify the beneficial ownership [...] through an on-site inspection of the books and records of the corporation and/or through other means available which may include but not limited to information that may be obtained from other sources such as the books and records of other corporate entities and data gathered by law enforcement and other government agency and/or the Anti-Money Laundering Council (AMLC) in the exercise of their respective functions [emphasis added].[88]

Also see the examples of **Argentina** and **Ghana** in the section above.

Third parties and discrepancy reporting

Verification may involve third parties. For example, AML-regulated entities such as financial institutions or notaries may be required to report discrepancies between the outcomes of their KYC/CDD processes and information held on a central register.[89] In other jurisdictions, information may only be submitted to registrars by certain third parties who are also made responsible for conducting verification checks. Lawmakers should ensure suitable obligations, oversight, and access to facilitate third-party checks are in place, and that no existing legislation could prevent the reporting parties from doing so (e.g. lawyer/client confidentiality). For discrepancy reporting to be most effective, the definitions for BO disclosure and for KYC/CDD should be harmonised, and they should apply to the same corporate vehicle types. Discrepancy reporting can be used as a complementary measure to enhance the quality and accuracy of BOI. The FATF does not allow jurisdictions to solely rely on this approach for verification.

Registrars should have sufficient powers to be able to act on discrepancy reports – for example, to request additional information from the reporting company – to challenge, change, and remove information. A discrepancy reporting mechanism should be supported by clear guidance. This should cover when and how to submit discrepancies, and outline the process for reviewing and resolving discrepancy reports.

Discrepancy reports may contain personal data. Countries should take into account client confidentiality and other relevant issues to ensure discrepancy reporting mechanisms are not unduly inhibited. Relevant privacy and data protection laws should be considered and appropriate data security safeguards should be put in place. Requirements related to discrepancy reporting are likely part of AML legislation, and outside the scope of this guide.

Box 12. Country examples: Slovakia and the United Kingdom

Both **Slovakia** and the **UK** use third parties for verification.[90] In the UK, primary legislation for the ROE – the ECTEA – includes a requirement to create provisions for ensuring the accuracy of information in secondary legislation, and provides some further parameters:

> (1) The Secretary of State must by regulations make provision requiring the verification of information before an overseas entity—
>
> > (a) makes an application under section 4 for registration;
> >
> > (b) complies with the updating duty under section 7;
> >
> > (c) makes an application under section 9 for removal.
>
> (2) Regulations under this section may, among other things, make provision—
>
> > (a) about the information that must be verified;
> >
> > (b) about the person by whom the information must be verified;
> >
> > (c) requiring a statement, evidence or other information to be delivered to the registrar for the purposes of sections 4(1)(c), 7(1)(d) and 9(1)(e).
>
> (3) The first regulations under this section must be made so as to come into force before any applications may be made under section 4(1).[91]

The Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 provide further details on how verification is to be conducted by "regulated persons" under AML legislation (i.e. obliged entities), including specifying the time period for verification, which information should be verified, and defining what verification means:

> 6. — (1) An overseas entity **may only undertake a relevant activity after a regulated person has verified the relevant information**.
>
> (2) Where a relevant person verifies information under paragraph (1), the verification is valid for the period of three months beginning with the day on which the relevant person verifies the information.
>
> (3) Where a relevant person—
>
> > (a) has verified relevant information on behalf of an overseas entity; and
> >
> > (b) delivers the relevant information to the registrar themselves, they must deliver the statement referred to in paragraph (5) at the same time.
>
> (4) Where a relevant person—
>
> > (a) has verified relevant information on behalf of an overseas entity; and
> >
> > (b) does not deliver that relevant information to the registrar themselves, they must deliver the statement referred to in paragraph (5) to the registrar within 14 days of that information being delivered to the registrar.
>
> (5) The statement is a statement to the registrar providing—
>
> > (a) confirmation that—
> >
> > > (i) the relevant person has undertaken the verification of the relevant information; and
> > >
> > > (ii) that verification has complied with the requirements of these Regulations and the ECTEA;
> >
> > (b) the date on which the verification was undertaken;

(c) the names of the registrable beneficial owners, and as the case may be, the managing officers whose identity has been verified, but where it has not been possible to obtain full names, so much of that information as it has been possible to obtain;

(d) the relevant person's service address;

(e) the relevant person's email address;

(f) the name of the relevant person's supervisory authority;

(g) where available, the relevant person's registration number, or a copy of the certification details, given to the relevant person by their supervisory authority; and

(h) the name of the individual with overall responsibility for identity checks, where that is different to the name of the relevant person.

(6) For the purposes of this regulation—

[...]

(b) subject to sub-paragraph (ba), "verify" means verify on the basis of documents or information in either case obtained from a reliable source which is independent of the person whose identity is being verified, and "verified" and "verification" are to be interpreted accordingly;

(ba) a relevant person may verify the following on the basis of documents or information in either case obtained from a reliable source which is not independent of the person whose identity is being verified—

(i) which of the conditions in paragraph 6 of Schedule 2 to the ECTEA is met in relation to a registrable beneficial owner;

(ii) the required information in paragraphs 3(1)(d) and 5(1)(f) of Schedule 1 to the ECTEA;

(c) documents issued or made available by an official body are to be regarded as being independent of a person even if they are provided or made available to the relevant person by or on behalf of that person [emphasis added].[92]

The regulations also specify that the regulated person conducting the verification cannot be a family member or known associate. The government has separately published guidance on how to conduct verification, including an annex with examples of documents and information which can be considered from "a reliable source which is independent of the person whose identity is being verified".[93]

The AML regulations also place a requirement on obliged entities to check the outcome of their KYC/CDD investigations with the information held by the registrar, and to report any "material discrepancies" to the registrar.[94] This is also accompanied by guidance.[95] Whilst these legislative provisions are robust, there are still weaknesses in the approach to verification, as those verifying statements are not required to submit supporting evidence (i.e. the documents used to verify the information) or an explanation of how the information was verified, which assurances were sought to consider the information "verified", and which documents were used to do so.[96]

Other provisions

Additionally, countries may include requirements for the registrar to iteratively improve on its approaches to verification in legislation. Irrespective of the approaches taken, the onus of submitting accurate and complete information should be on those reporting the information. Some countries have taken the approach of reversing the burden of proving the accuracy of information by placing it on the reporting parties. This can disincentivise reporting parties from providing inaccurate information, as they could be required to prove its accuracy. This helps foster a culture of compliance among reporting parties, and it can strengthen the integrity of the information in a central register.

Box 13. Country examples: Indonesia, Malaysia, Nigeria, and Slovakia

Nigeria's 2022 Persons with Significant Control (PSC) Regulations provide robust provisions for verification. Regulation 11 states:

> (1) The [Corporate Affairs] Commission shall put measures in place to ensure the accuracy and timeliness of [PSC] information held in the central register, which shall include the processes of –
>
> (a) ensuring timeliness and completeness of all required PSC data collected;
>
> (b) minimising data entry errors; and
>
> (c) learning from the operation of the PSC register and ensuring ongoing improvement of
>
> (i) data collection process, and
>
> (ii) the accuracy of data in the central register
>
> (2) A reporting company or limited liability company shall ensure that the information submitted to the Commission on PSC is accurate and complete.
>
> (3) Notwithstanding the provisions of sub-regulation (1) of this regulation, the burden of proving the accuracy of the PSC information submitted to the Commission shall rest on the reporting company or limited liability partnership.[97]

There is a clear obligation for the registrar to establish mechanisms to improve the accuracy of the information it collects. This also places an obligation on the registrar to take an iterative approach to ensuring information accuracy. The regulations also place the primary responsibility of ensuring the information is accurate on those submitting information.

Slovakia also reverses the burden of proof, and has set up a special procedure for dealing with complaints of inaccurate information. Law no. 315/2016 on the register of public sector partners and on amendments to certain laws states:

> (1) The registering body can verify on its own initiative or on the basis of a qualified initiative [...] the truthfulness and completeness of the data on the [beneficial owner] entered in the register; the legal status and factual circumstances at the time of initiation of the procedure are decisive for the registering body.
>
> (2) Anyone can file a qualified complaint. A qualified complaint must, in addition to the general filing requirements, contain a description of the facts justifying a reasonable doubt about the truth or completeness of the data on the [beneficial owner] entered in the register. The registering authority does not consider a submission that is not a qualified initiative; [if it does, it] informs the notifier about it.
>
> (3) The registering authority will deliver the decision on the initiation of the procedure to the public sector partner, the authorised person and the notifier of the qualified initiative. In the resolution on the initiation of proceedings, the registering body shall invite the public sector partner to state the facts and propose evidence that confirms the truthfulness and completeness of the entered data, and shall determine the deadline for the authorised person to submit the proposal pursuant to paragraph 4.
>
> (4) The public sector partner is a participant in the proceedings. An authorised person is also a participant in the procedure, if he proposed it within the period determined by the registering authority. The whistleblower of a qualified complaint is not a party to the proceedings, but he has the right to look into the court file, submit documents from which the facts claimed by him emerge, propose evidence and be notified of the date of the hearing.
>
> (5) The registering authority may order a hearing if it deems it necessary.
>
> (6) Public authorities and obliged persons according to special regulation 12 are obliged to cooperate with the registering authority at its request and within the period determined by it in verifying the truthfulness and completeness of the data on the end user of the benefits entered in the register.
>
> (7) **If the public sector partner does not reliably prove that the data on the end user of the benefits entered in the register are true and complete, the registering authority will decide on the deletion of the public sector partner from the register**; this does not apply if the seriousness of the breach of duty is insignificant in view of the manner of the breach of duty, its consequences, the circumstances under which the duty was breached and the degree of culpability. After the finality of this decision, the public sector partner will be deleted from the register and the procedure for imposing a fine will begin according to § 13 par. 1. Remedies are not admissible against the court's decision on erasure.
>
> (8) If during the procedure for verifying the truthfulness and completeness of the data on the end user of the benefits entered in the register, the public sector partner is deleted at the proposal of

> the authorised person, the registering authority will complete this procedure. If the public sector partner does not reliably prove that the data on the end user of the benefits entered in the register were true and complete, the registering authority proceeds according to paragraph 7, with the exception of the decision on deletion. After the finality of the decision according to the previous sentence, the registering authority will start the procedure for imposing a fine according to § 13 par. 1 [emphasis added].[98]

In both **Indonesia** and **Malaysia**, legislation places the burden on companies to conduct specific verification checks prior to submitting the information. In **Indonesia**, companies are required to check the conformity between the information submitted by the beneficial owner and supporting documents.[99]

Similarly, in **Malaysia**, the law states:

> [I]n ensuring the accuracy of beneficial ownership information, verification of beneficial ownership information at a company's level must be conducted. A company is obliged to conduct verification of the beneficial ownership information when any of the following situation[s occur]:
>
> (1) When an obligation arises to record the name of a beneficial owner in the register of beneficial owners;
>
> (2) When an obligation arises to record the changes to any particulars of the beneficial ownership information in the register of beneficial owners;
>
> (3) When an obligation arises to register a foreign company under the C[ompanies] A[ct] 2016; or
>
> (4) As and when instructed by the Registrar from time to time.[100]

Legislative placement

Whilst primary legislation should provide a legislative basis for verification and the obligation for the relevant authority to put in place measures to ensure the accuracy and adequacy of BO data, secondary legislation should provide more detailed guidance on what these mechanisms of ensuring data quality are. Where third parties are responsible for verification, governments should produce clear guidance.

Sharing of and access to beneficial ownership information

To maximise the impact of BO reforms, all actors who can use the relevant information to further a country's policy aims should have access to the information they need. Ideally, the government should have identified potential data users – inside and outside government – in the planning stage and detailed these in supporting policy documents. It should have involved these users in consultations and user research to identify what information they need and in what format. For government data users, this may also need to include systems and data flows mapping. These insights should inform the development and design of a system that meets these needs effectively. The legislation should then contain provisions that will enable the access to and sharing of relevant information for these identified data users. The FATF requires information to be accessible to competent authorities and encourages access for obliged entities.[101] In order for BOI to be effectively used, additional legislation and rules may be required. For example, AML legislation and supervisory rules may require the use of BOI from central registers for KYC/CDD processes, and specify in which circumstances the information can or cannot be relied upon. In addition, procurement legislation may need to change to be able to require and allow procuring entities to use BOI in due diligence and decision-making. These provisions may need to be made very clear and explicit in civil law jurisdictions to enable use. These types of legislative changes are not within the scope of this guidance.

BOI inherently comprises personal information and includes names, dates of birth, contact details, and nationalities. The collection, processing, and access to this information therefore have a bearing on privacy. Privacy and, increasingly, data protection, are human rights that are practically universally recognised and protected by law. Access to BOI should comply with domestic privacy and data protection laws, ensuring a balance between access and safeguarding individuals' rights to privacy and data protection. How this balance should be struck will be highly context specific. It will be determined by a country's policy aims, the domestic legal context, and societal norms regarding privacy. Considering privacy and data protection laws when looking at existing legislation in the preliminary phases of the legislative process is crucial (see *Considering other legislation* above).

Clearly specifying who has access to what

Generally, implementing governments should consider how to safeguard legally protected rights whilst trying to maintain access to sufficient information by relevant user groups that can help achieve stated policy aims.[102] To minimise the interference with the right to privacy, data users should only be provided with the information they require. Generally, this means that a user such as a law enforcement agency will have access to sensitive information such as an individual's ID numbers, whilst others may not. Different layers of access can be created for different users. For example, competent authorities, financial institutions, journalists, NGOs, and the general public may have varying access levels based on their respective needs and responsibilities. Where information is made available to the public, generally a subset of the data is provided, comprising the minimum number of fields to identify an individual. This often involves removing the individual's date of birth and residential address to lower the risk of identity theft. Other sensitive fields such as an individual's sex are often published unnecessarily.[103] It is important to exhaustively specify in legislation which fields will be made available to which user groups, based on user needs. Governments should carefully consider and design access provisions, as well as conduct an assessment of the potential privacy impact of their intended measures. As previously discussed, legislation will be more likely to withstand legal challenges if the purpose of access to information is to achieve broad public interest aims. Any access to information should be necessary to achieving the stated aims, and the infringement on the right to privacy proportional to achieving those aims.

Box 14. Country examples: Armenia, European Union member states, Kenya, Namibia, and the Philippines

Laws should clearly state what information will be made available to whom. Although the **Philippines** does not have a digital central BO register, the SEC does collect BOI. The legislation clearly states which parties it will and will not be made available to. Section 1 of the SEC's Circular No. 10 on Beneficial Ownership provides a list of information that is supposed to be submitted by all SEC registered corporations. This includes the name, residential address, nationality, and percentage of ownership interest. It also states that:

> Such information, however, shall not be uploaded to the [Securities and Exchange] Commission's publicly accessible electronic database. Said information shall, nonetheless be made accessible or available in a timely manner to competent authorities for law enforcement and other lawful purposes.[104]

Namibia's Companies Act, Section 6 states:

> The information of the beneficial owner and other information regarding a company held by the Registrar are public information and upon request must be made available by the Registrar for inspection by a member of the public, whether electronically or physically, but **the information of the beneficial owner is limited to the full name of the beneficial owner and the nature and extent of beneficial ownership** [emphasis added].[105]

Armenia has a central register which is freely accessible to the public. Article 61 of Armenia's BO law clearly spells out which information is made available, and that this should be accessible for free:

> 2. The following information of the unified state register on legal entities, individual entrepreneurs and state bodies is available from the agency's official website **without paying a state fee** through the information system:
>
> 1) name, surname or title and organisational legal form;
>
> 2) date of registration;
>
> 3) registration number;
>
> 4) taxpayer's registration number;
>
> 5) enterprise code classifier;
>
> 6) location or business address;
>
> 7) the name, surname, citizenship of the beneficial owner of the legal entity, the date of becoming the beneficial owner, the grounds for becoming the beneficial owner of the legal entity;
>
> 8) information about being in the liquidation process or being deregistered [emphasis added].[106]

Article 6 also clearly specifies which information is not made publicly available, and makes provisions for the public to access extracts:

> 1. The information stored in the unified state register is public, except for information about individuals' passport data, social card number (CSS), their residence and registration addresses and means of communication.
>
> 2. Information, as well as extracts from the register, are provided in accordance with the procedure provided by this law [emphasis added].[107]

Finally, **Kenya**'s Companies Beneficial Ownership Amendment Regulations indicate clearly which information will be made available and which will not: "The publication or disclosure of the beneficial ownership information under these Regulations shall not include protected personal identifiable information, except where such disclosure is made to a competent authority or pursuant to a court order".[108]

> "Protected personal identifiable information" is defined as including:
>
> (a) birth certificate number, national identity card number or passport number;
>
> (b) personal identification number;
>
> (c) date of birth;
>
> (d) residential address;
>
> (e) telephone number; and
>
> (f) email address [...][109]

The **EU's 2018 fifth anti-money laundering directive (AMLD5)**, included the following clause:

> 5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:
>
> (a) competent authorities and FIUs, without any restriction;
>
> (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II;
>
> (c) **any member of the general public**.
>
> The persons referred to in point (c) shall be permitted to access **at least** the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.
>
> Member States may, under conditions to be determined in national law, **provide for access to additional information** enabling the identification of the beneficial owner. That additional information shall include **at least** the date of birth or contact details in accordance with data protection rules [emphasis added].[110]

In November 2022, the Court of Justice of the European Union ruled that the AMLD5 provision making BOI accessible to the public was legally invalid. Part of the reason, as stated in paragraph 82 of the judgement, was because it did not exhaustively specify which information should be made available:

> However, it is apparent from the use of the expression **"at least"** that those provisions allow for data to be made available to the public which are not sufficiently defined and identifiable. Consequently, the substantive rules governing interference with the rights guaranteed in Articles 7 and 8 of the [EU] Charter [of Fundamental Rights] do not meet the requirement of clarity and precision recalled in paragraph 65 above [emphasis added].[111]

Paragraph 65 details that the provision does not meet the proportionality requirement:

> [T]he legislation in question entailing the interference must also lay down clear and precise rules governing the scope and application of the measures provided for and imposing minimum safeguards, so that the data subjects have sufficient guarantees to protect effectively their personal data against the risk of abuse. It must, in particular, indicate in what circumstances and under which conditions a measure providing for the processing of such data may be adopted, thereby ensuring that the interference is limited to what is strictly necessary.[112]

Protection regimes

Governments should provide for a mechanism by which individuals with disproportionate risk to personal safety can apply to suppress the publication of certain or all data on a case-by-case basis, sometimes called a protection regime. Provisions for this may be included in legislation. The grounds for withholding the publication of any data should be clearly defined, proportionate, fairly applied, and published. The process for this should be provided for in secondary legislation.

Box 15. Country example: United Kingdom

The **UK** has provisions for a protection regime in Part 7 of its secondary legislation, specifying that "[t]he registrar must omit secured information from the material on the register that is available for public inspection" if an application has been made and granted under the protection regime.[113] It also specifies the conditions for this:

> (1) An individual may make an application to the registrar requiring the registrar to refrain from using or disclosing secured information relating to that individual if that individual—
>
> (a) is a registrable person in relation to a company;
>
> (b) proposes to become a registrable person in relation to a company; or
>
> (c) used to be a registrable person in relation to a company.
>
> (2) The grounds on which an application may be made are that the applicant reasonably believes that if that secured information is disclosed by the registrar—
>
> (a) the activities of that company; or
>
> (b) one or more characteristics or personal attributes of the applicant when associated with that company, will put the applicant or a person living with the applicant **at serious risk of being subjected to violence or intimidation** [emphasis added].[114]

The registrar also provides detailed guidance for this on its website.[115]

Additional safeguards

Generally, the risk to privacy arises from information not being used for the purposes it is intended. Various approaches can be taken and safeguards put in place by governments to prevent and detect misuse. The more information is required and made available, and the higher the flexibility in how this information can be searched and used, the more safeguards should be put in place. These safeguards can include only providing certain information to users with a legitimate interest; requiring registration and attestations to use the data in line with specific purposes; and requiring data licences. Collecting information on those accessing information, verifying their identity, and sanctions for misuse may need to be legislated for. To strengthen these safeguards, countries may also choose to monitor access and usage by competent authorities and obliged entities. Under no circumstances should information on the identities of those accessing data be provided to the reporting entities themselves.

Box 16. Country example: Belgium

Following the November 2022 Court of Justice of the European Union ruling,[116] **Belgium** legislated for access to those who could demonstrate a legitimate interest in accessing the information to fight money laundering. The Law of 8 February 2023 amending the Law of 18 September 2017 on the prevention of money laundering and the financing of terrorism and restricting the use of cash, along with the Royal Decree of 8 February 2023 amending the Royal Decree of 30 July 2018 on the operating modalities of the UBO register, govern access to the BO register. The amending law introduces a list of categories of parties with access to the BO register, including competent authorities, AML-regulated entities (e.g. financial institutions), and those with a legitimate interest, and specifies access is free:

§ 2. The information in the [BO] register is accessible in accordance with this law and other legal provisions and in accordance with the further rules regarding access for:

(1) the **competent authorities** defined in Article 4, 17° /1, in a timely manner and without any restrictions;

(2) the authorities competent for the application and control of the obligations regarding embargoes, asset freezes and other restrictive measures referred to in the resolutions adopted by the United Nations Security Council in the context of Chapter VII of the Charter of the United Nations, referred to in European regulations, directives and decisions and referred to in other legal provisions, in a timely manner and without any restrictions;

(3) authorities emanating from the federal government or the Communities and Regions charged with detecting or controlling ultimate beneficiaries, as defined in European regulations, in Article 4, 27° of this law or in other legal provisions, in order to comply with the obligations incumbent on them under these regulations and legal provisions, in a timely manner and without any restrictions;

(4) the **obliged entities** referred to in Article 5, §§ 1 and 2, in a timely manner and in the context of the fulfilment of their **client due diligence obligations**;

(5) **any natural or legal person who can demonstrate a legitimate interest in the data** determined by the King in accordance with paragraph 1, fourth paragraph;

[...]

Consultation of the UBO register is free of charge [emphasis added].[117]

The decree details that a "request for access may be granted under one of the following conditions considered to be a legitimate interest":

(1) the applicant has a purpose or carries out activities in a sustained and effective manner related to the fight against money laundering, the financing of terrorism and the related underlying criminal activities as defined in Article 4, 23° of the Law of 18 September 2017;

(2) the applicant takes legal action in the context of the purpose or activities referred to in 1°, with a view to defending an interest related to that purpose or activities;

(3) the applicant will enter into an economic relationship or carry out transactions with a reporting agent and the applicant is involved in activities relevant to the prevention of or the fight against money laundering, the financing of terrorism and the associated underlying criminal activities as defined in Article 4, 23° of the law of 18 September 2017 and [the applicant] does not yet have access to the register pursuant to Articles 6, 1° to 2° or 7, 1° to 2°.[118]

The decree therefore institutes assessment of legitimate interest on a case-by-case basis. Belgium is expected to update its legislation to transpose the EU's sixth AMLD, which will – among other things – ensure certain parties like journalists and CSOs are deemed to have a legitimate interest, in addition to provisions to allow other parties to demonstrate having a legitimate interest on a case-by-case basis.[119]

Legislative placement

Primary legislation should clearly specify which user groups have access to which information. As BOI inherently contains personal data, it is important to exhaustively specify to which information various parties have access in primary legislation. More detailed provisions on the access to BOI, including the procedures to access BOI, could be contained in secondary legislation. Secondary legislation should further detail the specific safeguards in place to ensure that any infringement on the right to privacy is limited to what is necessary and proportional.

Primary legislation should establish a protection regime including the grounds on which one can apply for certain information to be withheld from being shared with certain users. This may be more relevant in countries that enable access by a broad range of users or the general public. The procedures for application, review, and decision-making, including any appeals processes, should be provided for in secondary legislation.

Sanctions for noncompliance

Finally, the legislation should include sanctions to ensure compliance. A law will usually contain a general provision for sanctions for noncompliance, which can be administrative, criminal, or both. If a country amends existing legislation, the existing laws may already contain a general sanction provision. In the case of legislation-regulating companies, there may already be sanctions for providing false information or for failing to maintain records as required in accordance with the law, which

would extend to noncompliance with the new BOT provisions. Whilst leveraging the existing sanctions regime is useful, it is important to also create specific sanctions for noncompliance with BO obligations.

Legislation should include the different types of noncompliance; the parties that the sanctions apply to; and the enforcing authority. The types of noncompliance to cover should include: non-submission; late submission; incomplete submission; incorrect submission, distinguishing between accidental errors and deliberately false submission; and persistent noncompliance. Sanctions should also cover other obligations related to BO disclosure (e.g. for third parties). The registrar should be given powers to at least issue administrative sanctions, which can be automated where possible.[120] These should be proportionate, dissuasive, and enforceable in order to be effective. Whilst sanctions should exist for all forms of noncompliance, they should also cover all the persons involved in declarations – the beneficial owner(s); declaring person; company officers; the declaring corporate vehicle; and key persons of the corporate vehicle.

Both administrative and criminal sanctions should be included. In order to be dissuasive, financial sanctions should be set sufficiently high. So they are not seen as merely the cost of doing business, they should be complemented by non-financial sanctions. Non-financial sanctions can be more effective than financial sanctions.[121] For example, preventing financial institutions from doing business with corporate vehicles that have not met their reporting requirements is a highly effective approach to ensuring compliance. Non-financial sanctions could focus on specific policy objectives. For example, sanctions could debar noncompliant individuals or companies from bidding for public contracts.

Certain sanctions should be graduated. Graduated sanctions are a systematic approach to enforcing compliance, where the severity of sanctions escalates with repeated instances of noncompliance. This concept is designed to encourage adherence to rules and regulations by progressively intensifying the consequences for violations. However, this requires clear guidelines and consistent application in order to be effective. Such guidance can be prescribed through secondary legislation, and authorities must ensure that the escalation process is transparent and that individuals are aware of the consequences of repeated or persistent noncompliance.

Sanctions are not the only way to achieve compliance. Many aspects covered above, e.g. public consultations and education, accessible guidance, and easy-to-use forms can all contribute to compliance.

Box 17. Country examples: Liberia, Nigeria, Philippines, Seychelles, and the United States

Type of provision	Type of noncompliance	Country	Provision
Financial sanction	All types of noncompliance, applied to all persons involved in declarations	Seychelles (Beneficial Ownership (Amendment) Act 2022)	"(8) In case of contravention of the provisions of this section — (a) every legal person or legal arrangement; (b) every former director, general partner, trustee or councilor of the legal person or legal arrangement; (c) every resident agent; (d) every former resident agent or former director of the resident agent, shall be liable to a penalty not exceeding SCR150,000 for each contravention."[122]
	Non-submission Persistent noncompliance	Philippines SEC MC 15 (2019), as amended by SEC MC 10 (2022)	"For failure to disclose beneficial ownership information, the SEC imposes graduated sanctions: penalties of PHP 50,000, PHP 100,000, PHP 250,000 and PHP 500,000 for first, second, third and fourth, and subsequent violations, respectively."[123]
	Non-submission Deliberately false submission	United States of America (Corporate Transparency Act)	"It shall be unlawful for any person to [...] willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document [... or] willfully fail to report complete or updated beneficial ownership. [...] Any person that violates [these provisions ...] shall be liable to the United States for a civil penalty of not more than [USD] 500 for each day that the violation continues or has not been remedied; and (ii) may be fined not more than [USD] 10,000, imprisoned for not more than 2 years, or both."[124]

Type of provision	Type of noncompliance	Country	Provision
Non-financial sanction	Non-submission	Nigeria (Persons with Significant Control Regulations, 2022)	"The Commission shall not approve an application – (a) for registration of a company or limited liability partnership, unless PSC information is provided; and (b) to file annual return of a company or limited liability partnership, unless PSC information is provided. (14) The Commission shall not issue a Letter of Good Standing to any company or limited liability partnership who failed to comply with their PSC reporting obligations to the Commission."[125]
	False declaration	Philippines SEC MC 15 (2019), as amended by SEC MC 10 (2022)	Dissolution for the reporting corporation (and a fine of up to PhP 2,000,000). For a director, officer, or trustee, disqualification of holding these positions for any corporation for a period of up to five years (and fines of up to Php 200,000).[126]
Power to enforce		Liberia (Beneficial Ownership Disclosure Regulations for Domestic Entities)	"The Registrar or a Court, as the case may be, shall be responsible for the enforcement of the sanctions described in this section 4, and shall reserve the right to impose any other sanctions necessary for the enforcement of the requirements of this Regulation or the Primary Legislation."[127]

Legislative placement

Primary legislation should delegate powers to the relevant agency to develop a sanctions regime. It should stipulate the authority or authorities responsible and authorised to enforce sanctions, and it should empower the registrar to, at the bare minimum, enforce administrative sanctions. Criminal sanctions should be enforced by the relevant judicial authority. Primary legislation should also provide the legal mandate and powers to all authorities involved in sanctions to enforce them.

Primary legislation should be used to detail the different types of noncompliance and specific financial and non-financial sanctions for each type of noncompliance. Secondary legislation can then be used to detail the procedure for enforcement.

Common pitfalls

There are common pitfalls that can undermine the clarity, coherence, and effectiveness of legal provisions for BOT. This section aims to highlight these pitfalls and suggest ways to avoid them. By understanding and addressing these pitfalls, legislators can enhance the quality of their legal drafting, resulting in more effective legislation that better advances the policy objectives for implementing BOT.

Rushing the process

Legislative reforms are a time-intensive process, requiring informed policy analysis and decision-making, stakeholder consultations, and consensus-building. This is particularly the case for a relatively new, evolving, and technical policy area like BOT. Drafting effective legislation for BOT requires careful consideration of different perspectives through consultations, rigorous scrutiny of legal frameworks, and deliberative decision-making processes. A diverse range of stakeholders throughout the legislative process should be consulted, and this not only includes government departments and regulatory agencies, but also CSOs, industry associations, legal experts, and other relevant stakeholders. It is therefore important to factor in sufficient time for the process, and not rush through certain stages. Legislation should be context-specific, and legislative drafters should avoid copying provisions from other contexts verbatim, without adapting this to the domestic legal context.

Planning inadequately for a transition period

The technical nature of BO legislation means that it may take time for reporting entities to digest and understand what the law requires of them. To secure and maintain the buy-in of those who need to comply with the requirements, there should be a grace period to allow reporting entities and their agents to understand the new framework and prepare to comply before sanctions are enforced. Countries can build in a moratorium period for awareness-raising and sensitisation efforts. This could be phased over a period of time in a staggered approach and therefore not put unnecessary administrative burdens on the registrar. In addition to providing a grace period for noncompliance, countries should organise robust public awareness campaigns to ensure that reporting entities and stakeholders understand their obligations under the new legislative framework. Public education efforts can help demystify new legal requirements, increase awareness of compliance deadlines, and foster a culture of transparency and accountability. Such targeted and sustained engagement with all relevant role-players, stakeholders, and end-users could facilitate the transition phase to implementation phase.

Drafting legislation that is inaccessible and difficult to comprehend

Legislation may be difficult to understand, and this can be a barrier to compliance, particularly for smaller businesses that may rely less on service providers. It is therefore important to explain the legislative framework by developing accompanying guidance that can help those reporting understand their obligations and how to comply with them, tailored to different corporate vehicles and scenarios. Countries such as Denmark and Kenya have designed and published guidance that explains in detail, with the use of diagrams, how to identify a beneficial owner in a variety of cases.[128] Additional information, such as answers to frequently asked questions, can be useful in giving the public a succinct overview of what the law prescribes. Many countries also provide an overview of and shortcuts to all relevant legislation on the register website.[129]

Designing systems and services through legislation

Implementing BOT involves the development or transformation of services provided by government, usually including digital services. These are best designed and managed when they centralise user needs – both those users who need to comply with requirements and users of the information – through an agile rather than a linear or sequential approach to delivery.[130] Legislators should avoid inadvertently designing systems and services through the legislative drafting process. A typical example of this is including forms or other specific technical requirements in legislation, or prescribing specific wording, or wording that is not technology neutral, where this is not necessary. For example, language that is not technology neutral may recommend specific software to use, while technology neutral language may specify the minimum functionality the software should have.[131] This may lead to unnecessarily legalistic language being used, making services less user friendly. Instead, governments should draft legislation in a way that enables a user-led approach to systems design. For example, by defining policy intentions rather than legal requirements where possible, or only setting minimum requirements for data collection and including clauses that allow the registrar to collect additional information if necessary, provided this is not personal data.

Taking a siloed approach

Effective BOT reforms must adopt a whole-of-government approach. Governments should recognise the need for interagency collaboration and coordination in implementing BOT reforms, particularly where multiple government agencies are involved in collecting, verifying, and sharing BOI. Governments should establish clear lines of communication and cooperation mechanisms to streamline processes; minimise duplication of efforts; and enhance the efficiency of regulatory oversight.

Approaching BOT as a one-off reform process

BOT is a relatively nascent and dynamic policy area, and international standards relating to BOT are still evolving, reflecting the changing nature of the risks that corporate vehicles pose. Governments should not approach BOT as a one-off reform process. Rather, it should be approached as an iterative process that may need subsequent amendments. Countries should build in processes to assess the effectiveness of BOT legislation, gather evidence, and learn lessons from implementation, including through feedback from those covered in the scope of disclosure requirements and data users, and apply those to improve BOT's legal framework.

Conclusion

A legislative framework is the foundation of any BOT regime. This should be rooted in a well-informed policy framework and developed through comprehensive consultations with relevant stakeholders throughout the process of proposing, drafting, and debating legal provisions. The framework should lay a solid legal basis for disclosure by clearly articulating policy goals, defining key concepts, and ensuring that all ensuing provisions concerning the obligations, rights, and responsibilities of individuals and corporate entities, as well as the powers, mandates, and duties of government agencies, align with the government's policy objectives.

Well-drafted legislation ensures clarity, enables compliance, and helps guarantee the sustainability of reforms by making them able to withstand potential legal challenges. Designing legislation for BOT requires careful consideration of the various stages, components, and how these are best legislated for when applied to a domestic legal context, as there is no one-size-fits-all approach. Those drafting, reviewing, or familiarising themselves with legislation should consult other parties and resources in conjunction with this guidance. Given the significant work and the involvement of multiple agencies necessary to achieve compliance, jurisdictions should adopt a whole-of-government approach. This ensures engagement with relevant stakeholders in establishing a BO regime that achieves domestic policy objectives whilst meeting international standards.

Notes

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