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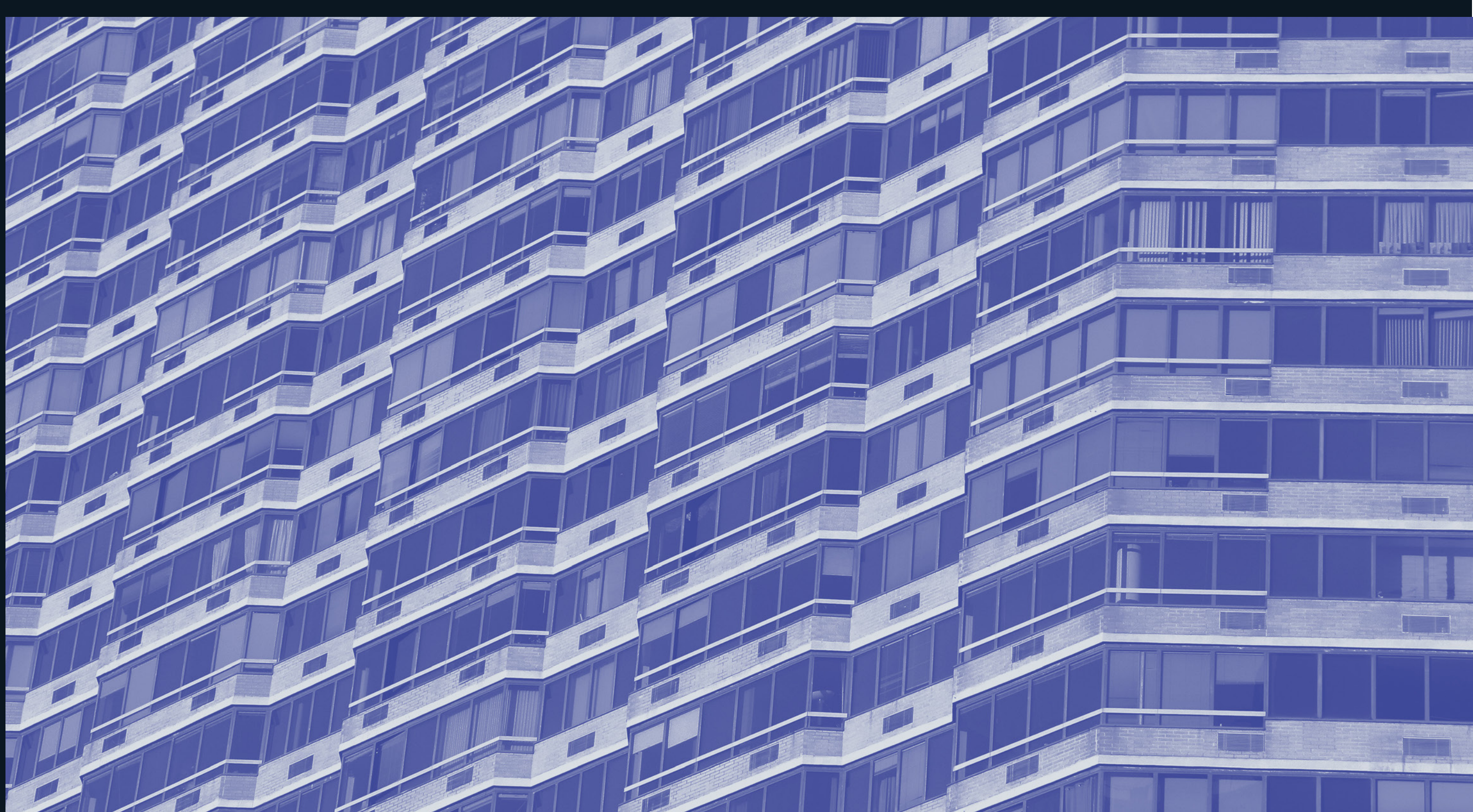
The Global Beneficial Ownership Register

Briefing:
The case for public beneficial ownership registers



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Many jurisdictions around the world are considering implementing public registers of beneficial ownership. Here, we answer some of the most frequently asked questions by policymakers and implementers about public beneficial ownership data.

What's important about having public beneficial ownership registers?

As the revelations of the Panama Papers have conclusively shown, anonymous company ownership bears an unacceptably high cost for:

- **Society,** allowing criminals and corrupt individuals to escape accountability or evade tax, and

- **Business,** costing companies and their investors millions of dollars when opacity leads to fraud or corruption, hobbling national economies by limiting healthy competition, and making it difficult for businesses to know what they are ultimately invested in.

As a global community, we tackle these costs by building a new norm of corporate transparency that makes it significantly more difficult, more risky, and more expensive to use company structures for corrupt or criminal activity than it is now.

The only way to do this is to end the problem of anonymous companies by providing public, free access to beneficial ownership as open data. This ensures that business and civil society can make use of this data for due diligence or investigations. Making it available as open data (see our accompanying brief "The case for beneficial ownership as open data") also allows the data to be linked globally with other datasets, exposing the networks through which ill-gotten gains flow.

How will public beneficial ownership data improve the business environment in my country?

Businesses are key users of beneficial ownership data and are increasingly among the most vocal supporters of beneficial ownership transparency. This is because ethical businesses recognize that opacity distorts markets and hampers competition.

Transparency, on the other hand, provides the following benefits:[1]

- Increases competitiveness in business environments by ensuring that government and commercial contracts go to the company best suited for the job;
- Reduces fraud and corruption, which are drains on the economy and risks to business;
- Reduces the cost and complexity of due diligence and risk management;
- Increases the stability of financial markets; and
- Enables better allocation of capital by investors.

Without transparency on who they're doing business with, corporates are aware that they are exposing themselves to a variety of risks: Fiduciary risk, U.S. Foreign Corrupt Practices Act (FCPA)/UK Bribery Act risk, risk of breaching anti-money laundering or know your customer requirements, risk of sanctions breaches, and reputational risk.

Settlements under the FCPA alone have cost businesses billions of dollars, while the Panama Papers proved that there is a cost of association with the offshore economy -- 400 public companies lost $135 billion off their stock value by being named in the leak.[2] Studies have shown that fear of exposure to these costs has a chilling effect on investment in developing countries.[3]

Thus, the business community has rallied behind a broad-based demand for beneficial ownership information. EY's 2016 Global Fraud Survey found that 91% of senior executives believe it is important to know the ultimate beneficial ownership of the entities with which they do business.[4]

1 The B Team, "Ending Anonymous Companies: the Business Case." 2015. Available at: https://issuu.com/the-bteam/docs/bteam_business_case_report_final.we?e=15214291/11025500.
2 O'Donovan, James and Wagner, Hannes F. and Zeume, Stefan, The Value of Offshore Secrets – Evidence from the Panama Papers (April 19, 2016). Available at SSRN: https://ssrn.com/abstract=2771095.
3 Mohsin Habib and Leon Zurawicki, "Corruption and Foreign Direct Investment," Journal of International Business Studies 33 (2002): 291-307.
4 EY, "Corporate misconduct - individual consequences." 2016. Available at: http://www.ey.com/Publication/vwLUAssets/EY-corporate-misconduct-individual-consequences/$FILE/EY-corporate-misconduct-individual-consequences.pdf

How do I financially sustain a free, public register?

Virtually all countries already charge fees for companies to register. And, as described above, companies (or the third parties they employ) will be key users of beneficial ownership data, using it to supplement their due diligence processes. Charging for data not only inevitably restricts access and increases friction, it is also expensive, requiring expensive sales structures and staff.[5] By charging just those registering, you also simplify internal processes and reduce technology and staff costs, allowing them to be made more efficient over time. In the case of UK's Companies House, this efficiency has translated into a steady decrease in company registration fees.[6]

It may be, as is the UK's experience, that setting up and maintaining a public beneficial ownership register will incur some short-term costs that can be covered by registration fees in the medium term.[7] **It's expected the overall boost to the economy will pay back this investment in multiples.**

A cost-benefit analysis commissioned by the UK's Treasury Department in 2002 recommended implementing a public register because it estimated (conservatively) that it would result in at least £30 million of gains across other areas of the government, far outweighing any additional costs.[8] This is mostly due to an anticipated decline in rates of financial predation facilitated by credit reference agencies' access to the data. It also raised the potential cost associated with tipping corrupt individuals off to any investigations or due diligence into their activities, potentially caused by having to request access to closed information.

No matter how low, fees represent a barrier to access that impacts on whether the beneficial ownership register will meet the policy goals set for it. In Slovakia, the potential impact of such a barrier to the policy goal of stemming corruption through transparency meant that fees were a non-starter. Instead, some costs are recovered through the company registration process.[9]

See the accompanying brief ("The case for beneficial ownership as open data") for examples of how open access to and re-usability of beneficial ownership data is more productive for due diligence and anti-corruption purposes.

5 For example, the UK's public mapping service, the Ordnance Survey, has fully 15% of its staff involved in sales—a high proportion, given how labour-intensive mapping is, and the fact that government is the Ordnance Survey's biggest customer by a long way, accounting for over 60% of revenue (see https://www.ordnancesurvey.co.uk/docs/annual-reports/os-annual-report-accounts-2015-16.pdf).
6 Companies House, "Annual Report and Accounts 2015/16." 2016. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/540443/AnnualReport_201516.pdf
7 Ibid
8 HM Treasury and DTI, "Regulatory Impact Analysis: Disclosure of Beneficial Ownership of Unlisted Companies." 2002. Available at: http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/media/9/9/ownership_long.pdf
9 Interview with a representative of Fair-Play Slovakia, 26 April 2017.

Does public access to beneficial ownership data pose a security risk to company owners?

Leading economists have weighed in on this question, noting that "an individual's lifestyle is a far more significant signal concerning their wealth: living in a multimillion dollar home signals that an individual is very well off."[10] In other cases, such as income and asset declarations of public officials in Balkan countries, research has confirmed that no security risks materialised following implementation.[11]

It is also important to note that, in many countries, companies are required to disclose their shareholders and directors in annual reports. Beneficial ownership information is needed for the cases in which this information doesn't show the true picture of company ownership -- typically, when there is a complex overlapping structure designed to obscure the true beneficiary, as in money laundering cases.

Genuine, provable risk that is directly linked to ownership of a company can be managed, as UK Companies House has done, on a **case-by-case basis**, by allowing at-risk people to apply to the registrar to have information removed from the public register.[12] To date, out of nearly 2 million companies that have reported only about 30 beneficial owners in the UK have been successfully granted the right to keep their names off the register.[13]

10 Joseph E. Stiglitz and Mark Pieth, "Overcoming the Shadow Economy." Friedrich-Ebert-Stiftung, 2016. Available at http://library.fes.de/pdf-files/iez/12922.pdf.

11 ReSPA, "Comparative study: Income and Asset Declarations in Practice." 2013. Available at http://www.respaweb.eu/download/doc/Comparative+study+-+Income+and+asset+declarations+in+practice+-+web.pdf/485ce800f0a3f55719e51002d0f75b5e.pdf

12 Companies House, "Restricting the Disclosure of Your Information." 2016. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/514416/Protection_regime_company_guidance.pdf

13 Robert Palmer and Sam Leon, "What does the UK beneficial ownership data show us?" Global Witness, 2016. Available at https://www.globalwitness.org/en-gb/blog/what-does-uk-beneficial-ownership-data-show-us/

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How do I square public beneficial ownership data with my country's data protection laws?

In many countries, the right to privacy is balanced against broader public policy and human rights concerns. For instance, analysis of this balance in legal cases in Chile, Romania, the United States, and Germany, showed that "the courts have ruled that constitutionally protected privacy rights are not infringed by financial disclosure legislation." [14]

The European Union requires disclosure of company directors and shareholders in annual reports, despite the EU having what are generally considered to be the most stringent data protection in the world. There are generally no reasons why beneficial ownership should cause data protection problems, where these other datasets have not. Indeed, the UK and Slovakia are both subject to these data protection regulations and have instituted public beneficial ownership registers.

In a recent ruling, the European Court of Justice stated that there is no "right to be forgotten" for personal data in company records. The court explicitly balanced personal rights to privacy and data protection against the right of third parties to know who they're doing business with, ruling that the disclosure of personal data related to company ownership is not disproportionate.[15]

As a general principle, it is important that it is made clear to users that the information they submit will be part of the public record, and by entering the information they are effectively consenting to that.

14 Richard Messick, "Income and assets declarations: Issues to consider in developing a disclosure regime," U4 Issue 2009.6m, U4 Anti-Corruption Resource Centre, Chr Michelsen Institute (2009).

15 Court of Justice of the European Union, "Press Release No 27/17." 2017. Available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/cp170027en.pdf

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The Global Beneficial Ownership Register is an initiative to create a free and open beneficial ownership for the public benefit to tackle corruption, money laundering and the use of companies for criminal purposes. It is led by the following organisations:

Funded by: