



Creating public beneficial ownership registers

An implementation guide for the
United Kingdom Overseas Territories



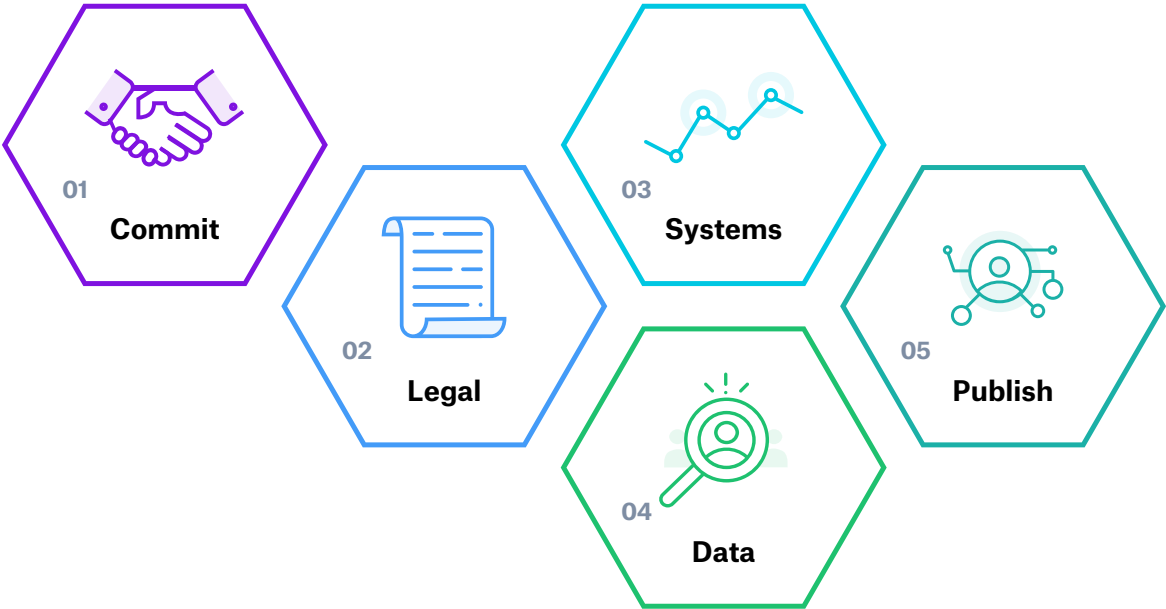


Introduction

The UK Overseas Territories (OTs) are within a growing group of jurisdictions, more than 100 worldwide, that have made commitments to beneficial ownership transparency (BOT).¹ Moving from these commitments to the creation and implementation of an effective public register of companies' beneficial owners requires a number of policy and technological reforms. International best practice is still emerging, and the implementation lessons gained

from countries with millions of registered companies may not be easy to import into those territories that have, for example, only a few hundred. This guide is designed to help bridge that gap by assisting public officials within the OTs as they identify and navigate the various issues that are likely to arise when creating an impactful and effective public beneficial ownership (BO) register.

Figure 1. Stages of implementation for a BO register



As illustrated in [Figure 1](#), the implementation journey for BOT reforms comprises several steps, and follows a pattern similar to other information disclosure initiatives.² At the first stage, jurisdictions commit to creating a public

register and draw up initial plans as to how this will be achieved. The plans for the BO disclosure regime will be outlined at the **legal** stage, which will likely include considerations of the **systems** and processes required to obtain

¹ <https://www.openownership.org/map/>

² To facilitate ease of navigation round the guide, these stages are presented as distinct areas for reform. In reality, as will be highlighted throughout, there will be significant crossover between these various categories, and reform areas need not necessarily be carried out sequentially.



the **data** outlined in the reforms. This latter stage will also involve deciding how to store and verify the BO information received, before finally discussing how to **publish** the data. Later, authorities will need to consider what further improvements can be made at any of the earlier stages to bolster the quality and effectiveness of the data, as well as to encourage larger numbers of stakeholders to use it.

Using this guide

The information contained in this guide is based on Open Ownership (OO)'s experience supporting implementation of BO registers in nearly 40 jurisdictions, as well as extensive desk research and conversations with a broad range of international stakeholders involved in BOT reform. From this diverse range of experiences, OO has distilled the emerging good practices in these jurisdictions and, as far as possible, tailored this guide to meet the highest priority, specific considerations for the OTs.

Clearly, there is great diversity between the various territories themselves, with some already nearing the end of the implementation journey, whilst others are still mapping out their reforms. It is the latter group of territories that are likely to benefit most from the content provided here. To reflect the diversity of implementation contexts within the various territories, differentiated recommendations are provided, for example, for those territories with international financial centres (where a more technically complex system will be needed) versus those with fewer registered companies.

In addition to this guide, the [Open Ownership Principles](#) (OO Principles) detail what the end product of implementation should ideally look like. The OO Principles often go beyond the minimum standards outlined in the UK's draft Order in Council regarding the creation of public BO registers. OTs that implement a disclosure regime that more closely approximates OO's policy gold standard will have a greater chance of delivering policy impact from their registers across areas such as anti-money laundering (AML), tackling corruption, and reducing national and international tax avoidance.

Additional support

Throughout this guide, there are links to a host of other policy documents, reports, research, and tools that provide greater detail on specific aspects of the implementation journey. In addition, for the duration of OO's UK-government funded support to the OTs, implementers in the territories are able to access the OO helpdesk facility (support@openownership.org) where further assistance on any aspect of implementation is available.



Commit

The implementation journey begins with making a specific, public commitment to creating a BO register and beginning to draw up initial plans as to how this may be achieved. At this stage, it is important to consider how to: identify which agencies will be involved in and leading implementation; outline programmes for involving stakeholders and data users in policy design; and decide how to sequence reforms and introduce future improvements.

Public registers in the Overseas Territories

Nine OTs have committed to making BO data publicly available, either by creating new registers or publishing data currently held by authorities. By publishing data on who really owns companies, the territories will be able to leverage important impacts on improving the business environment and reducing financial crime. On a practical note, for territories participating in the Exchange of Notes Arrangement with the UK for BO data, it is likely that a publicly available register will reduce the amount of resources required to service these requests.³

In December 2020, the UK government published a draft [Order in Council](#) “in accordance [with] Section 51 of the Sanctions and Anti-Money Laundering Act 2018... [that] sets out the Government’s expectations of how the Territories will adopt publicly accessible registers.”⁴ The draft Order sets the minimum requirements for these registers and will be referenced throughout this guide. At a high level, however, the draft Order states that a register shall be deemed compliant when:

- “it comprises, or is part of, a **single collection** of information concerning the beneficial ownership of companies incorporated in the Territory... is established and maintained such that, so far as reasonably practicable, the information contained in it is **accurate and complete**, and... is **publicly accessible**.... [BO information] of a company must include, as a minimum, such relevant information as that company can reasonably ascertain about any individual that exercises a significant degree of control over that company”;
- “**‘control’ may be either direct or indirect** and includes, but is not limited to, control exercised through **shareholdings, voting rights or the right to appoint or remove a majority of directors**... whether an individual exercises a significant degree of control over a company may be determined by reference to the maximum percentage of a particular interest that may be held without such holding amounting to a significant degree of control, such maximum percentage must be set at **no higher than 25%**”⁵ [emphasis added].

The above criteria are broadly in line with the underlying foundations of the UK’s own register, which, in 2016, was one of the world’s first to be made public. The ongoing improvements to the UK’s register are aimed at further increasing its utility and impact.⁶

³ In a UK review of the BO Exchange of Notes information sharing arrangement, published in June 2019, the UK found that all but four of 296 information requests were responded to within the agreed timeframe (usually 24 hours). UK Home Office. “Statutory Review of the Exchange of Notes Arrangement”. 2019. Available at: <https://www.gov.uk/government/publications/statutory-review-of-the-exchange-of-notes-arrangements/statutory-review-of-the-implementation-of-the-exchange-of-notes-on-beneficial-ownership-between-the-united-kingdom-crown-dependencies-and-overseas-te>.

⁴ UK Foreign Commonwealth and Development Office. “Written Statement on Publicly Accessible Beneficial Ownership Registers in the UK Overseas Territories”. 2020. Available at: <https://questions-statements.parliament.uk/written-statements/detail/2020-12-14/hcws643>

⁵ Draft Order in Council: Overseas Territories (Publicly Accessible Registers of Beneficial Ownership of Companies). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943307/SAMLA_s51_Draft_Order_in_Council.pdf

⁶ OO has conducted an assessment of the UK’s disclosure regime against the OO Principles for effective disclosure regimes and highlighted some specific areas where it could be strengthened. These recommendations are worth considering throughout the design process of disclosure regime reforms in individual territories.



Operationalising the commitment

Before embarking on the detailed technical and legal reforms to create a public register, there are a number of general points that territories (especially those which have yet to create a centralised register) will need to consider. These include:

1. Sequencing the introduction of disclosure requirements

Different countries have adopted various approaches to introducing requirements for companies to disclose their BO information to authorities. One approach, adopted in the UK and Ukraine, is to introduce requirements on companies operating across the whole economy, simultaneously. This is the most rapid way to obtain some BO data on all relevant firms registered in a given jurisdiction. Given the anticipated implementation timeline in the OTs, as well as the comparatively smaller numbers of companies operating in these jurisdictions than in the UK/Ukraine, this would seem the most sensible approach for introducing BO disclosure requirements throughout the territories. The alternative – staggering implementation by focusing first on one sector and then expanding across the rest of the economy – would, in the OTs, likely add complexity to the implementation process without yielding significant benefits. This second option tends to be preferred by larger economies, where a staggered introduction enables implementers to leverage the political will for pro-transparency reform in an area of economic activity associated with higher corruption risk. Jurisdictions with multiple millions of registered companies may, for example, initially opt to implement a single-sector disclosure regime (e.g. for the extractive industries or firms involved in public procurement) as a pilot programme that will test their systems and business processes prior to an economy-wide rollout.

2. Identifying a lead agency to oversee implementation

Creating and publishing BO registers usually involves a number of different government agencies, including the finance, justice, and interior ministries, along with the registrar of companies, and others. This can lead to competing, overlapping, and conflicting mandates and areas of responsibility, unless carefully managed. To navigate around the challenge of overlapping functions, responsibilities, and inter-agency coordination, it is good practice to assign overall responsibility for coordination and delivery of implementation to a lead institution. Selecting the most appropriate institution for this will depend on the particular composition of agencies within a jurisdiction, as well as the policy aims territories wish to further via the publication of a BO register. Generally,

jurisdictions seek to publish BO data for a mixture of policy goals, but in broad terms, where countries have sought to create BO registers as a means of clamping down on tax evasion, they have placed the register within the remit of tax authorities. Where business transparency and investment promotion is the main aim, a company registry agency or the Finance/Economy Ministry may be more suitable. On the other hand, for countries that are mainly interested in improving AML approaches and tackling corruption risks, then responsibility for BO reform may be assigned to the Ministries of Justice or Interior. Other considerations that may influence this decision include an assessment of which agency has sufficient digital expertise, knowledge of business process reform, and/or domestic political influence to oversee a successful reform process. Whichever agency is appointed to lead the reforms, other departments should be consulted and involved to help ensure that the legal framework responds to the various policy needs across different parts of government.

3. Consultation on beneficial ownership reforms

It is not only the legal framework that can benefit from broad consultation; each stage of reforms outlined in this implementation guide should involve as many different groups as possible, including government officials, citizens, and businesses. Implemented effectively, streamlined data and information will help government officials, entrepreneurs, civil society, academics, and law enforcement more easily achieve their different goals. However, getting key details wrong can increase bureaucracy and limit impact. Consultation with these key stakeholder groups throughout the implementation process is an important part of any BOT journey. Without these consultations, the system of collection and publication may not work well among impacted people and groups. At the same time, highlighting the wider market efficiency and due diligence benefits of BO reform for all businesses can expand the types of stakeholders that are consulted. As reform takes place, this can also help to create the foundations for well used data that can deliver sustainable impact.

Resources

OO has outlined consultation methodologies and audiences for all steps of this implementation guide in a working paper on [effective consultation processes for BOT](#). This resource outlines a range of comprehensive techniques for consulting at each stage of implementation, though not all of these will be appropriate for smaller OTs.



4. Financing the register

In some contexts public bodies have decided to charge for register access in order to recoup implementation and running costs of the register. Whilst the levying of a small fee on users to access BO data is probably permissible within the terms of the draft Order in Council, such fee systems generally represent a false economy (whilst also adding to the technical complexity of implementation). Many of the benefits of BO registries accrue from enabling as broad a use of the data as possible, and fees are a clear barrier to this. A UK government review, for instance, found that the freely accessible data from the Persons with Significant Control (PSC) represented somewhere between 4% and 13% of the total annual value of Companies House data of GBP 1-3 billion per year. In effect, this means that public BO data in the UK is worth between GBP 40 million and GBP 390 million annually.⁷ This compares favourably with the approximate GBP 80,000 monthly server spend for Companies House to host all its company and BO data.⁸ Restricting access through the imposition of a paywall would significantly reduce the value generated by limiting the number of users consulting the data.⁹

⁷ BEIS / Companies House. "Valuing the user benefits of Companies House data". 2019. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/833764/valuing-benefits-companies-house-data-policy-summary.pdf

⁸ UK Companies House, Talk at OO Tech Showcase in September 2020. <https://www.openownership.org/events/open-ownership-tech-showcase-webinar-number-2/> Costs for BO registers with less data are significantly lower. Slovakia's register, for example, cost approximately GBP 330,000 to set up in 2017 and has annual running costs of around GBP 30,000. See: https://transparency.sk/wp-content/uploads/2017/06/Register-of-beneficial-ownership_study2017.pdf

⁹ Such shifts have been seen in reverse in the UK, where searches of the Companies House register increased from 6 million in 2014-2015 to 1.3 billion in 2015-2016, following the removal of a paywall on its legal ownership data (prior to the establishment of the PSC register). Global Witness Blog, "10 Lessons From the UL's Public Register of the Real Owners of Companies", 23 Oct 2017, <https://www.globalwitness.org/en-gb/blog/10-lessons-uks-public-register-real-owners-companies/>.



Legal

Creating a public BO register requires a range of legal reforms to define which entities and people will be subject to reporting requirements, as well as to mandate a range of data and systems-related considerations. Some of the most notable tasks for legislative attention will include, among others:

- creating a legal definition of what constitutes a beneficial owner;
- deciding on the coverage of disclosures, i.e. which entities should be required to make declarations and how much of their ownership chain will need to be included in their declarations;
- creating legal sanctions for individuals and firms that fail to meet reporting obligations;
- deciding what information will be collected in declaration forms (see [Data](#) section);
- deciding which information will be published and how this reconciles with data protection legislation (see [Publish](#) section);
- enabling legal reforms data sharing between government registries for verification purposes (see [Data](#) section).

This section draws on the [OO Principles](#) to provide a high-level overview of what the most effective legal reforms would look like in each case. The expert legal brief that accompanies this guide illustrates what legislation would need to be adjusted in practice (by way of examples from selected territories).

Creating a definition of beneficial ownership in law

For those OTs without a BO register, the first legislative tasks will likely comprise defining in law what constitutes BO; how this interacts with the concept of legal ownership (see [Figure 2](#)); and under what circumstances companies and individuals should have to make BO declarations. As the definition will constitute the foundation of the disclosure regime, it is important to ensure that no significant loopholes exist within it. For territories where a legal definition of BO already exists, meanwhile, the need to revisit legislation offers an ideal opportunity to ensure BO definitions remain in line with current best practice.

Resources

A detailed analysis of the strengths and shortcomings of BO definitions and thresholds implemented across the globe is available in OO's policy briefing: [Beneficial ownership in law: Definitions and Thresholds](#).

In accordance with the [OO Principles](#), beneficial ownership should be clearly and robustly defined in law, with low thresholds use to determine when ownership and control is disclosed. Specifically:

- definitions of BO should state that a beneficial owner is a **natural person**;¹⁰
- definitions should cover **all relevant forms of ownership and control**, specifying that ownership and control can be held both directly and indirectly;

¹⁰ In the UK, companies are allowed to submit a registrable relevant legal entity (RLE) rather than a person. A RLE is an entity that is the first relevant legal entity in the ownership chain and meets the conditions of "significant control" that is subject to its own disclosure requirements, for instance, a company that has to disclose BO in another country's register. Whilst a similar arrangement in the OTs would be compliant with the minimum standards in the draft Order in Council, it would fall short of the best practice principles detailed in the international guidelines referenced above.



- there should be a **single, unified definition** in law in primary legislation, with additional secondary legislation referring to this definition;
- there should be a **broad, catch-all definition** of what constitutes BO, coupled with a non-exhaustive **list of example ways** in which a BO relationship may manifest;
- **thresholds¹¹ should be set low** so that all relevant people with BO and control interests are included in declarations;
- a **risk-based approach** should be applied to set lower thresholds for particular sectors, industries, or people;
- particular consideration should be given to ownership thresholds that apply to **politically exposed persons (PEPs)**, with a clear definition used to determine what constitutes a PEP;
- **absolute values**, rather than ranges, should be used to define a person's beneficial ownership or control.

Legislative definitions that incorporate these various elements will provide for a stronger disclosure framework that will likely translate into the publication of more effective and impactful BO data.

When considering the level at which to set the minimum ownership threshold for triggering a requirement to declare a beneficial interest in a given entity, the UK's Order in Council states that the "maximum percentage must be set at no higher than 25%".¹² At the international level, there appears to be a general downward trend in threshold levels over recent years, as a 25% threshold level is comparatively easy to evade. To create a more robust disclosure regime, territories may wish to consider a threshold in the 5%-15% range, an approach which is already applied in practice across a variety of territories with pre-existing registers.¹³

Deciding which entities should be covered

As a general principle, all relevant legal entities and natural persons should be included in declarations (see also [Data](#) section). Any exemptions from disclosure requirements should be clearly defined, justified, and reassessed on an ongoing basis. This may occur, for example, where information on the ownership of such entities is collected via other means that benefit from comparable levels of quality

and access (e.g. for publicly listed companies (PLCs)).¹⁴ Where publication exemptions do exist, information on the basis for exemption should be collected.

Limited exemptions

For different reasons, other jurisdictions have considered BO data public exemptions for limited categories of firms, such as state owned enterprises (SOEs) and PLCs. Such exemptions create risk of loopholes. In reference to exemptions applied to PLCs, these risks may be reduced by taking into account the following recommendations:

- blanket exemptions from BO disclosure requirements to companies listed on any stock exchange should not be granted, as transparency and disclosure requirements differ widely between stock exchanges;
- listed companies should only be exempted from BO disclosure requirements if adequate and enforced BO disclosure requirements exist for the stock exchange(s) on which the declaring company is listed;
- all companies that are exempt from BO disclosure requirements due to their listed status should have to declare, and periodically confirm, that they are exempt due to their listed status; and
- in published BO data, listed companies should be identifiable as such; sufficient data should be collected to connect them to relevant stock exchange listings.

For SOEs, some jurisdictions have considered exemptions as these firms do not have the same kind of beneficial owners that private companies do. Citizens are technically the ultimate owners of SOEs, but have no direct control over their activities, which is usually vested in individuals that resemble typical management structures seen in the private sector. Given the substantial public resources owned or managed by SOEs, gathering information on those with significant influence or control over their activities is still highly advised. Citizens want assurances that SOEs are being well run and for public (not personal) benefit. In addition, private sector companies operating in the same market or environment also need to know the role, scope, and size of state involvement so that they can plan accordingly. Decisions on what information on SOEs

¹¹ The level of share ownership, voting rights, and/or rights to earnings which an individual may ultimately hold in an entity before triggering obligations to report this interest to authorities.

¹² Draft Order in Council: Overseas Territories (Publicly Accessible Registers of Beneficial Ownership of Companies). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943307/SAMLA_s51_Draft_Order_in_Council.pdf

¹³ See, for example, RUSI. "For whose benefit? Reframing Beneficial Ownership Disclosure Around Users' Needs". 2020. Available at: https://rusi.org/sites/default/files/243_ubo_web.pdf

¹⁴ The minimum standards outlined in the draft Order in Council allow for (though do not necessarily recommend) the creation of exemptions for PLCs registered in the UK/EU markets, and for firms subject to similar transparency requirements elsewhere.



and PLCs will need to be collected and the extent, if any, of exemptions granted will need to be reflected in a territory's BO disclosure legislation.

Resources

Best practice for assessing how to grant disclosure exemptions to PLCs without creating loopholes has yet to be consolidated. OO has provided its [contribution to the debate](#) with some initial thoughts on when an exemption should be granted and what information should be provided in any exemption declaration.

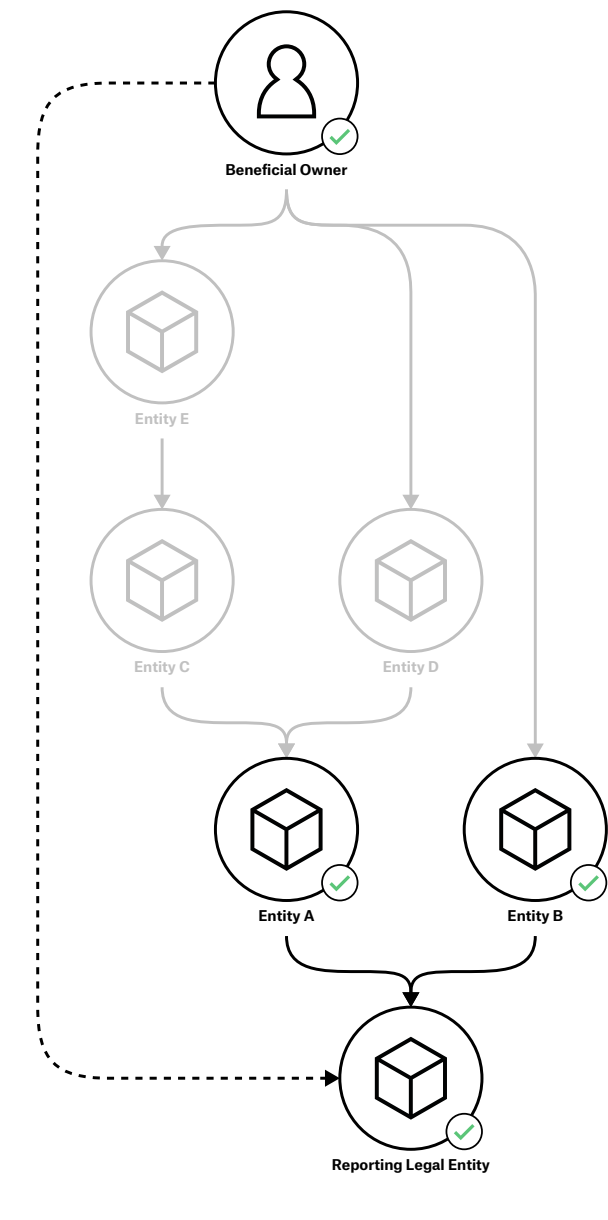
Reporting of intermediary entities

Another issue to consider at the legislative stage is how much information will be required to be disclosed about the intermediary companies and entities through which BO may be exerted. A “partial ownership chain” approach is the most common and is illustrated in [Figure 2](#). A moderated form of this is accepted as a minimum standard under the provisions of the draft Order in Council.¹⁵ An alternative option for territories committed to especially comprehensive disclosure would be the “full chain” approach, in which companies are required to disclose information on each intermediate company between the reporting entity and (a) each beneficial owner, and (b) each PLC with a stake (of above the threshold level) in the reporting entity.

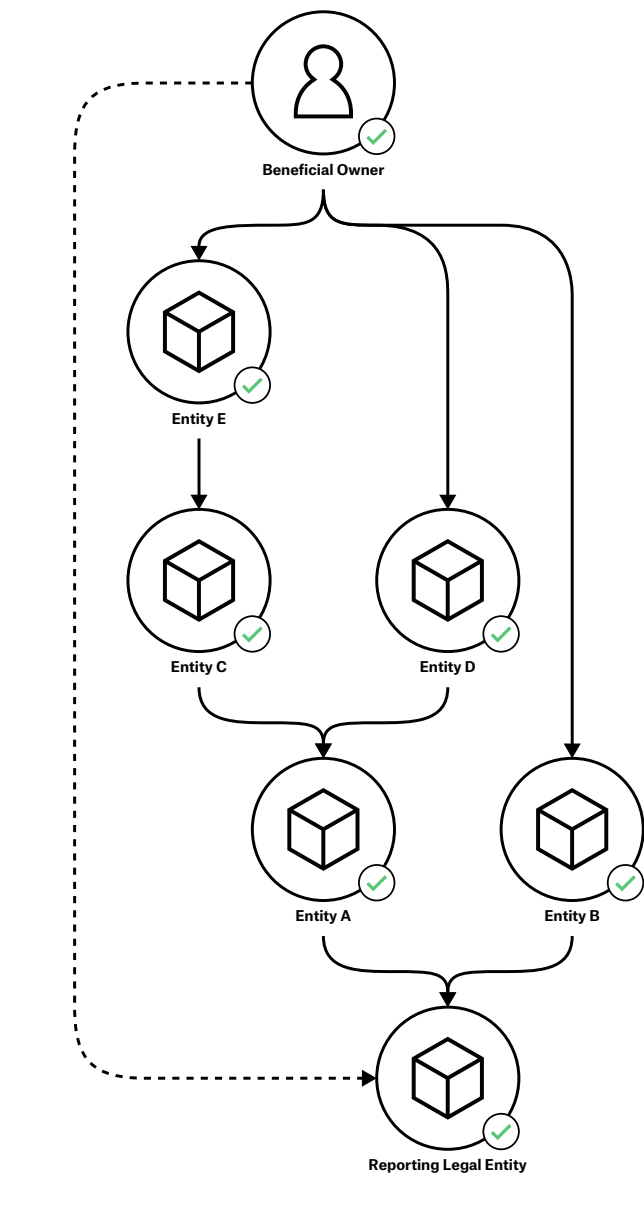
¹⁵ The Order in Council states that: “The ‘information concerning the beneficial ownership’ of a company need not include information about an individual that exercises a significant degree of control over that company if — (a) such control is exercised only indirectly through the exercise of a significant degree of control over a second company that would, if it were an individual, be considered to exercise a significant degree of control over the first company, (b) the information contained in the register concerning the beneficial ownership of the first company includes relevant information in relation to the second company, and ... (c) the second company is either one in respect of which information concerning its beneficial ownership is included in the register, or it is a company that is excluded from the register under paragraph (2).”

Figure 2. Full versus partial ownership chain reporting


Partial Chain Reporting





Full Chain Reporting



Key

 Collect data about this Party

 Collect data about this interest

 Data about this interest is not collected

The “full chain” approach provides valuable detail on intermediary entities. However, it is suited only to territories with advanced technology systems. This is because intermediate companies may be disclosed in multiple declarations, which brings the risk that information submitted by different entities, about the same intermediary, may not precisely tally. Whilst such discrepancies could eventually serve as a means to cross check and verify data submissions, this would require a sophisticated data verification system that would take some time to develop. For the

initial iteration of registers in the OTs, it is recommended to concentrate on gathering the higher quality data that would likely emerge from a more limited “partial-chain” reporting requirement. Once the first set of data has been gathered, the declarations can then be evaluated with a view to understanding whether a more comprehensive approach would be useful.



Reconciling privacy concerns with public interest

To maximise the policy impact and harness the additional verification potential of BO disclosures, OO recommends that laws concerning publication of BO data include provisions to publish in open data format (see also [Publish](#) section).

Ownership transparency can be achieved without seriously affecting the safety of individuals, but the risks and tensions between privacy and public interest in publication must be openly discussed and recognised. OO's research across a range of jurisdictions with open BO data registers has been unable to identify documented examples of harms that have arisen from publication. Low rates of kidnapping and other violent crime recorded across the OTs mean that any potential security concerns should be less pronounced there than in many other jurisdictions that have already published BO data. To minimise the risk of harm further, the territory may consider withholding certain personal information from public disclosures (for example, a beneficial owner's registered or business address should be published, but their personal email, phone number, home address, and any related documentation should be kept for official access only). In addition, the introduction of a "shielding regime" would allow narrowly defined exemptions for natural persons at serious risk (e.g. of domestic abuse or kidnapping) to restrict the publication of certain personal information.¹⁶ That said, their information would generally still be collected and made accessible to a limited number of authorities and criminal investigators, for example, via the Exchange of Notes arrangement.

Many OTs have to navigate the provisions of their individual data protection legislation (see the accompanying expert legal guide for more on how to do this), but even for those with minimal existing laws, there are key principles from the international context that can be drawn upon. As an overarching principle, governments should not collect and disclose more data than that necessary to achieve their aims. At the same time, however, it is important to disclose sufficient information to ensure that BOT can fulfil a government's policy intent. Placing excessive restrictions on fields for disclosure may, for example, make it difficult for registry users to confirm the identity of beneficial owners, or to confidently distinguish between the identities of beneficial owners with similar names or personal details. The UK's draft Order in Council recommends

disclosing, at a minimum, the beneficial owner's name, country of residence, nationality, month and year of birth, plus "the nature of his or her control over the company concerned".¹⁷ In the European context, the fifth EU Anti-Money Laundering Directive (AMLD5) makes near identical recommendations.

Resources

For further discussion on managing potential privacy and security concerns related to BO data publication, see the OO briefing: [Data Protection and Privacy in Beneficial Ownership Disclosure](#). For information on the types of specific fields that may be excluded from publication on security/privacy grounds, please refer to OO's example declaration form.

Sanctions and enforcement

To ensure that accurate and timely information on beneficial owners is provided to authorities, an effective sanctions regime will be needed. This involves ensuring that: 1) adequate sanctions exist in law; 2) agencies have a legal mandate to issue sanctions; and 3) the sanctioning body has sufficient capacity, resources, and will to verify disclosures and sanction non-compliance. Sanctions regimes work most effectively when combined with effective verification mechanisms that identify where incorrect, fraudulent, or incomplete information has been submitted (see [Data](#) section).

Introducing sanctions against the beneficial owner, registered officers of the company, and the company making the declaration helps to ensure that the deterrent effect of sanctions applies to all the key persons and entities involved in the declaration. In the UK, there are multiple sanctions against both companies and beneficial owners:¹⁸

- companies can be sanctioned for failure to request information from potential beneficial owners or failure to provide information on its beneficial owners to the central register;

¹⁶ The draft Order in Council recognises this and in Section 9(a) provides for the possibility of data publication exemptions "to the extent necessary for the protection of an individual who reasonably believes that the disclosure of that information would place himself or herself at serious risk of fraud, kidnapping, blackmail, extortion, harassment, violence, intimidation or other similar harm".

¹⁷ Ibid.

¹⁸ See, UK Companies Act 2006. Available at: <https://www.legislation.gov.uk/ukpga/2006/46/section/790R>.

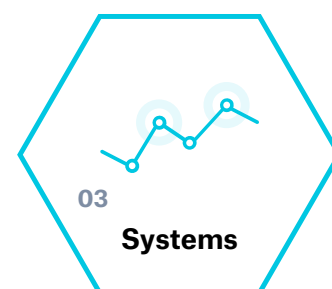


- beneficial owners can be sanctioned for failure to respond to requests for information from companies, or for knowingly or recklessly making a false statement, as well as for failure to notify a company that they are a beneficial owner;
- for all of these offences, both the company and every officer of the company that has failed to comply are considered to have committed the offence, and the penalties are imprisonment for up to 12 months, a fine, or both;
- Companies House has the ability to strike off any companies that default on their obligations to report to the register.

Selecting the appropriate agency to issue sanctions will depend largely on the political structures and preferences within a territory. Some jurisdictions select their state company registry, whilst others use the Ministry of Justice or linked bodies that have an established investigative function. Enforcement remains a challenge for many jurisdictions, but there are numerous successful cases of sanctions being applied against noncompliant firms. Latvia's Enterprise Register, for example, terminated 400 nonresident companies that failed to submit BO information in 2019.¹⁹ Dozens of court rulings in Slovakia have also dealt with cases of noncompliance with BO disclosure legislation, leading in some cases to the removal of companies from the state register, making them ineligible to bid for state contracts.²⁰

¹⁹ Latvia's report to Moneyval assessors. 2020. (Shared with OO by Latvia's Enterprise Registry)

²⁰ See, for instance, Ministerstvo Spravodlivosti Slovenskej Republiky, "Zverejňovanie súdnych rozhodnutí a ďalších informácií (InfoSúd)". November 2018. Available at: <https://obcan.justice.sk/infosud/-/infosud/i-detail/rozhodnutie/3b90ffbc-a519-4e53-9627-329d6708b85d%3A4744e659-e5a2-42b3-a069-06abc5302a19>.



Systems

Creating a legal framework for a BO disclosure regime is only one element of a broader reform process. Facilitating BOT also requires the collection, storage, and sharing of data. This section offers guidance on how to review existing company information systems and develop them to enable the publication of BO registers.

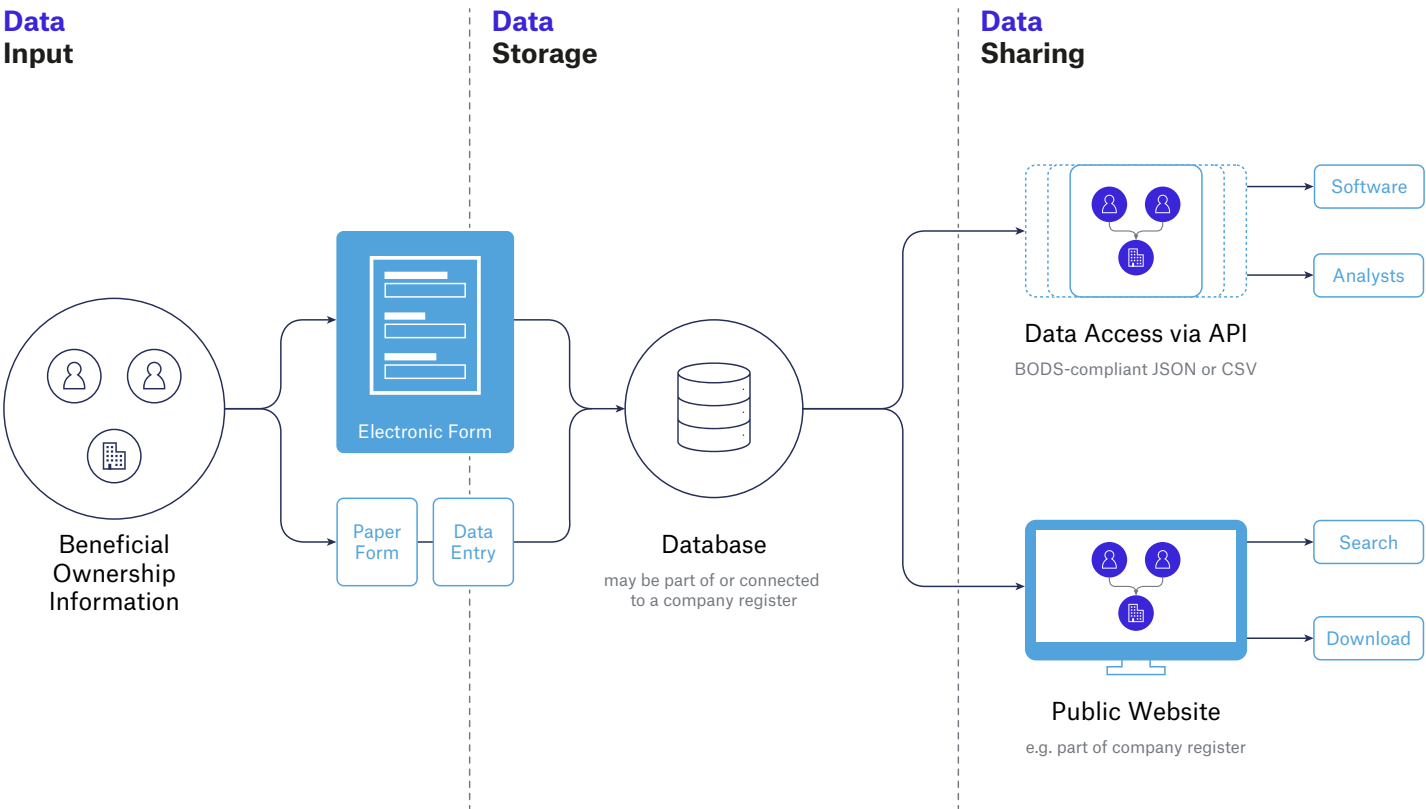
Processes, systems, and platforms

Digital systems and administrative processes need to fit together smoothly to enable BO information to be collected, stored, maintained, exchanged, and published. Some components of systems design will need to be considered as part of legal reforms, but it will also be important to carefully consider how information flows from companies, via the jurisdiction's systems and processes, to the people and agencies that need it. Consideration of the following questions should help to identify the starting point for work in this area, and to prompt thinking on the systems and processes that may eventually be required:

- How is the information about the companies registered in the jurisdiction currently collected and managed?
- Is information about legal ownership currently kept in the companies register? If so, how will legal ownership information be linked with BO information?
- Are there other government systems that currently collect and store company details (for example, a government procurement system)?
- How many companies will be required to submit BO declarations?
- How will companies submit their information (for example, via an online form, with a paper form, or via an authorised notary)?
- What department, or official body, will be responsible for the collection, management, and publishing of BO data?
- What manual administrative checks and operations will assist the collection and management of BO information?
- Does the jurisdiction currently publish company registration information? How will BO information be updated and made publicly available?
- How will government officials be able to access and make use of BO information? (For example, by checking whether there are BO “red flags” for companies bidding for government contracts.)
- What will trigger companies to submit their first BO declaration? What will trigger them to update it?



Figure 3. BO information collection, storage and sharing pipeline



Information flow

It is useful to bring colleagues, departments, and agencies together to build a collective picture of how BO information will be handled. Among other things, this will highlight: where systems and processes need to be developed; gaps in knowledge; questions about responsibilities; and resourcing issues. Generating a diagram can be a focal point for collaboration and aid communication as work progresses. For the diagrams in this section, the Business Process Model and Notation ([BPMN](#)) was used.

Most countries have digitised central registers of companies that include, for example, information about companies’ directors/founders, registered address. etc. In this case, “adding” BO information to the existing company register may be the best choice. (This [primer](#) explains how BO differs from legal ownership, which is normally recorded in company registers.)



Figure 4. Example of information flow in a well-resourced implementation, using the standard BPMN format

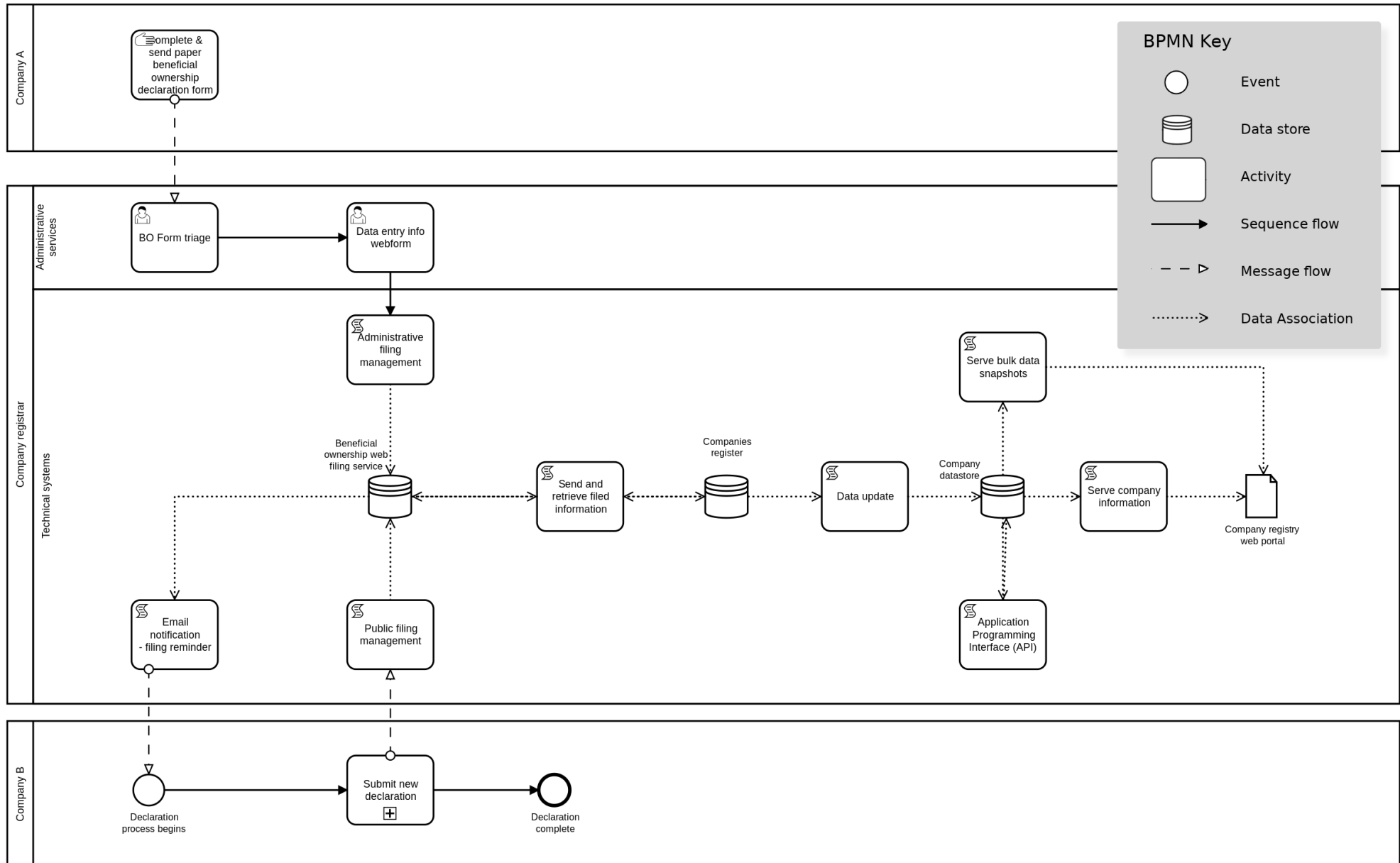


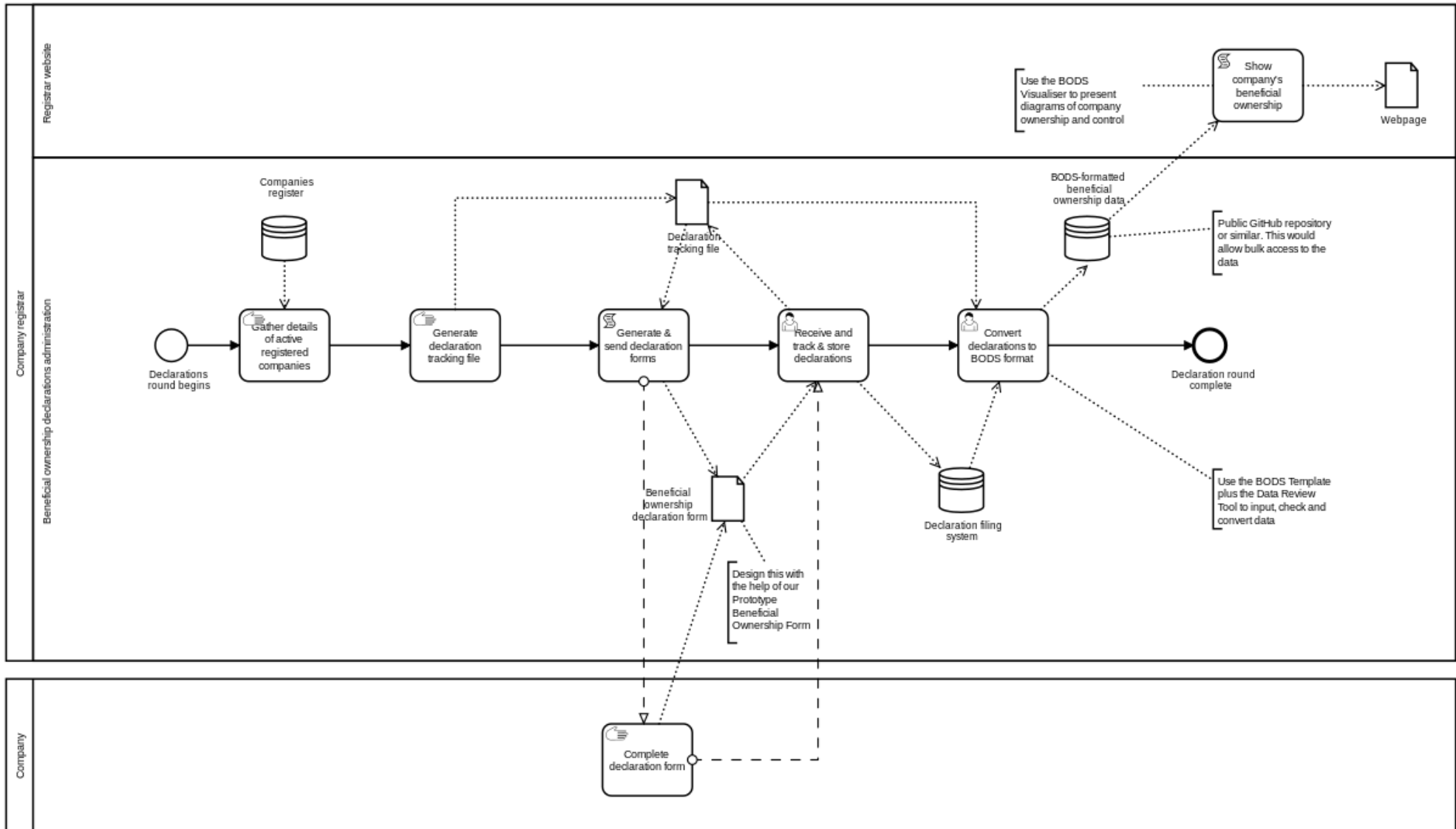


Figure 4 shows how a company register has been extended to capture and store BO information using a new “BO web filing services” module. In this example, the designers of the new system have incorporated the ability for companies to file their BO information online (like company B) or via paper forms (like company A). Some work on mapping out the manual systems necessary for handling paper forms has also been done. The company datastore and related components already serve company information to the company registry portal via an API²¹ and bulk download services, but those would need to be updated to handle the extra BO data.

Where there are limited resources and a limited number of companies needing to declare their beneficial owners, an online declaration system may not be possible or necessary. Here, the company register itself may be paper based. Much of the administration of the gathering and publication of BO data may be managed on paper or with simple computer files and spreadsheets, as illustrated in Figure 5.

²¹ An “application programming interface” - a mechanism that allows for interaction between separate software components.

Figure 5. Example of information flow in an implementation with limited resources, using the standard BPMN format



Whatever the scale and complexity of an OT's particular implementation, OO recommends that BO information is ultimately converted into a digital format: ideally, the de facto global standard, the Beneficial Ownership Data Standard (BODS). This makes it easier to share and aggregate with BO information from other jurisdictions (see the [Data](#) section for more on BODS).

Resources

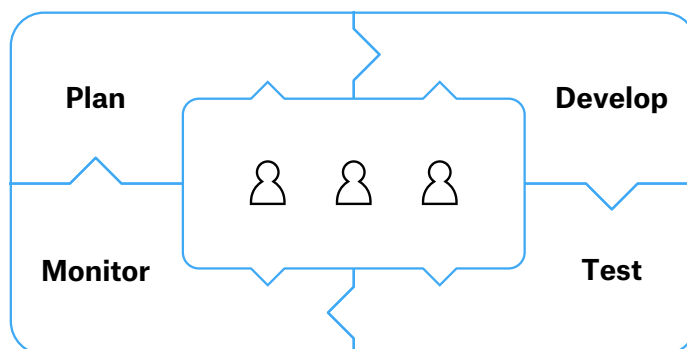
The [BODS template spreadsheet](#) can assist conversion of BO information in paper forms to a digital format. Used alongside the [data review tool](#), it might be a key tool where resources are limited. Where information is published in BODS format, the [BODS visualiser](#) can be embedded in websites to display company ownership and control structures.

Developing systems

As mentioned in the *Commit* section, consultation with key groups, staff, and audiences is crucial when developing a system for BOT. Every type of person – from both inside and outside of government – inputting, managing, or using BO information will have valuable insights and perspectives. They should be involved early and often during the systems' development.

It is also useful to adopt a relatively “agile” approach to development. Whilst it is appealing to imagine a linear, inception-to-completion process of development where there is a clear end point, this is rarely the reality. It is better to acknowledge that systems will need ongoing improvement and adjustment. Putting people at the centre of this cycle, as illustrated in [Figure 5](#), and securing resources for developing future versions of the systems, will prove advantageous over time. For example, focus groups or user-testing might reveal that people think beneficial owners are simply legal owners. That misunderstanding would lead to the collection of poor quality data. Revealing the problem early on allows definitions and guidance to be provided on BO forms to help people's understanding. Not all problems can be caught first time around, though, so securing resources for future development is crucial.

Figure 6. Putting people at the centre of systems development



Resources

See the working paper [Effective consultation processes for beneficial ownership transparency reform](#) for techniques that can be used at this stage of implementation. OO's Beneficial ownership declaration forms: a guide for regulators and designers offers advice on data collection and building usable forms.



Data

In this section, the following will be examined: how to scope out the information collected within declarations; how to build in verification of data; and the importance of well-structured, standardised data. OO has also developed a prototyping tool for a basic system for collecting BO data.

What information to collect

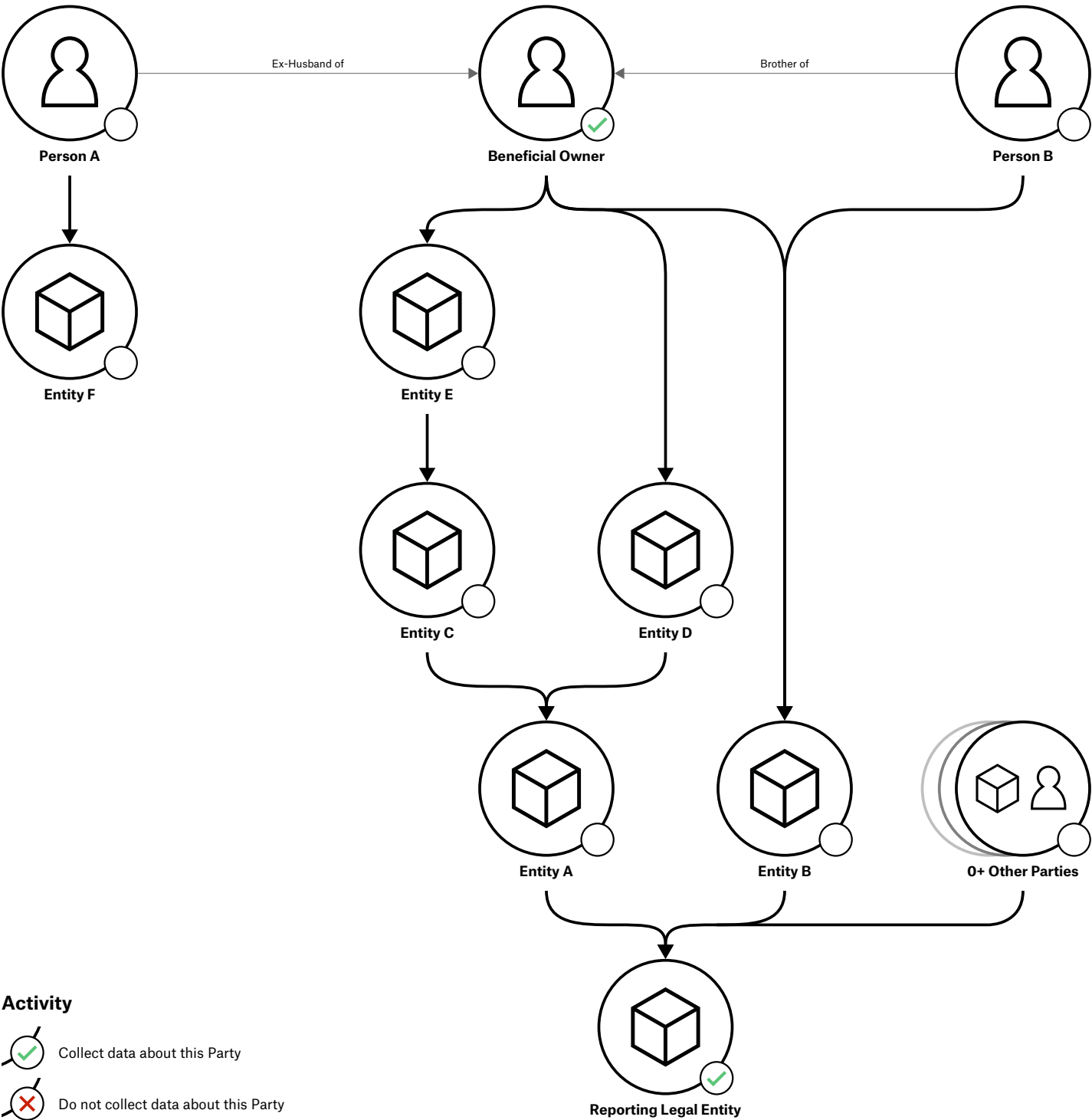
A territory's definitions and legislation, discussed in the *Legal* section of this guide, will lay the basis for assessing:

- which entities will be required to make BO declarations in the territory;
- which entities and people will be disclosed in those declarations (SOEs, PLCs, legal owners, trusts, nominees, intermediate companies, etc.);
- which details of those people and entities will be collected in declaration forms; and
- what information about the nature of ownership or control between entities-and-entities and people-and-entities will be collected.

Once there is clarity on each of these points, the information disclosed should be assessed to ensure that it will meet the overall policy objectives behind creating a public BO register. By looking at real-life (or artificial) examples of ownership and control structures, the effects of proposed regulations can be tested. An activity sheet like the one illustrated in [Figure 7](#) may help ensure there is a shared understanding of the declaration requirements and their implications between the various stakeholders involved in the process.



Figure 7. Example activity sheet for checking shared understanding of what is disclosed in a declaration





It is important to check that enough information is collected about how a company is owned and controlled, even where its declaration is looked at in isolation. Information about intermediate entities (those that sit between beneficial owners and declaring companies when ownership or control is exercised indirectly) should be collected. This means that a declaring company might also feature as an intermediary in other declarations. Therefore, it will need to be considered how information disclosed in different companies' declarations can be brought together to aid understanding and analysis. OO advises collection and verification of company identifiers to meet this and similar needs. That way, it will be apparent when the same company appears in two different declarations, even if the names do not exactly match (due to acronyms or misspellings.)

Similarly, it is worth considering how BO data will be used with other types of information; for example, legal ownership information from an existing company register. This involves checking the needs of the data users and considering information flow (see the [Systems](#) section). Any implications for data collection need to be flagged early in the implementation process.

Resources

The [OO Principles](#) provide more detail on the information needed to create an effective declaration system and, in particular, how to ensure [comprehensive coverage and sufficient detail](#).

Structuring and standardising data

In Ukraine, early publications of BO data contained all the information relating to the beneficial owner and their relationship with a company in a single text field in the company register ("unstructured data", as on the left hand side of [Figure 8](#)). Whilst this enabled the public to access the data, the impact and quality of BO data can be significantly greater where data is standardised and structured. Separating out information into different fields, as below, makes it easier to verify and analyse.



Figure 8. Unstructured (left) versus structured (right) BO data

Nature of ownership or control	Nature of ownership or control								
This beneficial owner indirectly herself, or through her children, owns 27% of the declaring legal entity’s shares through the following shareholders of the legal entity (1) “Angeruijtheit B.V.”, registration number in the Netherlands 64739564, registered office: Byterslaan 105, NL-4722GF Amsterdam, Netherlands; (2) “RigaTech Systems Ltd.”, registration number in the British Virgin Islands: 396654, registered office: P.O. Box 124, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands	<table><tr><td>% Aggregate share ownership</td><td>27</td></tr><tr><td>% Aggregate control via voting shares</td><td>27</td></tr><tr><td>Direct share ownership in declaring entity</td><td>0</td></tr><tr><td>Direct voting control over declaring entity</td><td>0</td></tr></table>	% Aggregate share ownership	27	% Aggregate control via voting shares	27	Direct share ownership in declaring entity	0	Direct voting control over declaring entity	0
% Aggregate share ownership	27								
% Aggregate control via voting shares	27								
Direct share ownership in declaring entity	0								
Direct voting control over declaring entity	0								
	1.1 Intermediate legal owner(s)								
	Legal owner 1								
	<table><tr><td>Name</td><td>Angeruijtheit B.V.</td></tr><tr><td>Registration authority</td><td>Commercial register of the Netherlands</td></tr><tr><td>Registration number</td><td>64739564</td></tr></table>	Name	Angeruijtheit B.V.	Registration authority	Commercial register of the Netherlands	Registration number	64739564		
Name	Angeruijtheit B.V.								
Registration authority	Commercial register of the Netherlands								
Registration number	64739564								
	Legal owner 2								
	<table><tr><td>Name</td><td>RigaTech Systems Ltd.</td></tr><tr><td>Registration authority</td><td>Registry of Corporate Affairs, BVI</td></tr><tr><td>Registration number</td><td>396654</td></tr></table>	Name	RigaTech Systems Ltd.	Registration authority	Registry of Corporate Affairs, BVI	Registration number	396654		
Name	RigaTech Systems Ltd.								
Registration authority	Registry of Corporate Affairs, BVI								
Registration number	396654								

There are multiple advantages to standardising the way that BO data is collected, stored, and published. In particular, structured data allows for automated checks on data (making sure it is in the right format, cross-referencing it with other government databases, etc.), which is a key part of the verification process.

Structuring BO information in a standard format also makes it easier to link with other jurisdictions’ data to reveal international BO chains. Such linking improves the utility and usability of BO data at the global level. It can reduce the need for, and resources dedicated to, international information exchange requests for investigative purposes. This helps accrue benefits both at the level of the territory and internationally.

Resources

OO has developed a prototype [global BO register](#) that shows how linking data between sources could work. The register enables declarations from several different countries to be joined to create international ownership diagrams, such as [this one](#), which uses data from declarations in the UK and Togo.

For both the standardisation and structuring of BO data, the BODS is a useful reference point and resource. The standard describes what data should be collected and the format to publish it in. The data schema describes how data about the beneficial owners of a legal entity can be organised. Reviewing this data schema can be a useful input to decisions that are made at the early, legislative stage of BOT.



Available tools

Territories that publish in BODS format will be able to:

- model data using OO's **BODS template**;
- check that data produced by systems is valid, using the **data review tool**; and
- create visualisations of company ownership and control structures that are intuitive and easily understood, with OO's **data visualisation tools**.

OO's technical team can provide assistance on how to implement BODS in any jurisdiction.

Resources

Developers may wish to consult OO's guide to the data model, schema, and system requirements for using the [BODS](#). To create BODS data, this [BODS template](#) can be followed.. The [data review tool](#) can be used to check that BODS data is valid, or to convert data in the BODS template into BODS JSON format. BO data can be easily transformed into visual representations of corporate structures through OO's [visualisation tool](#).

- Can the full range of BO structures, declarable by law, be disclosed via the form(s)?
- Can form submissions be linked to data in other official databases, so that companies do not have to submit the same information multiple times?

Testing the form with a representative sample of companies will help to re-draft and improve it. Involving state agencies which are potential users of BO information when reviewing tests of the form is also recommended.

Resources

[Beneficial ownership declaration forms: A guide for regulators and designers](#) presents in-depth advice on form development, plus an example BO form.

Collecting beneficial ownership information and creating data

Once a territory has decided what information will be collected, they will need to consider how companies will submit their declarations. At this stage, the focus should be on making the declaration system clear and user friendly.

Well-designed forms make it as easy as possible for users to provide accurate and unambiguous information. This reduces the number of accidental errors. Submitting more accurate information becomes easier, and disguising deliberately false information as mistakes becomes harder.

Broadly, once a declaration form is created, “yes” should be the answer to the following questions:

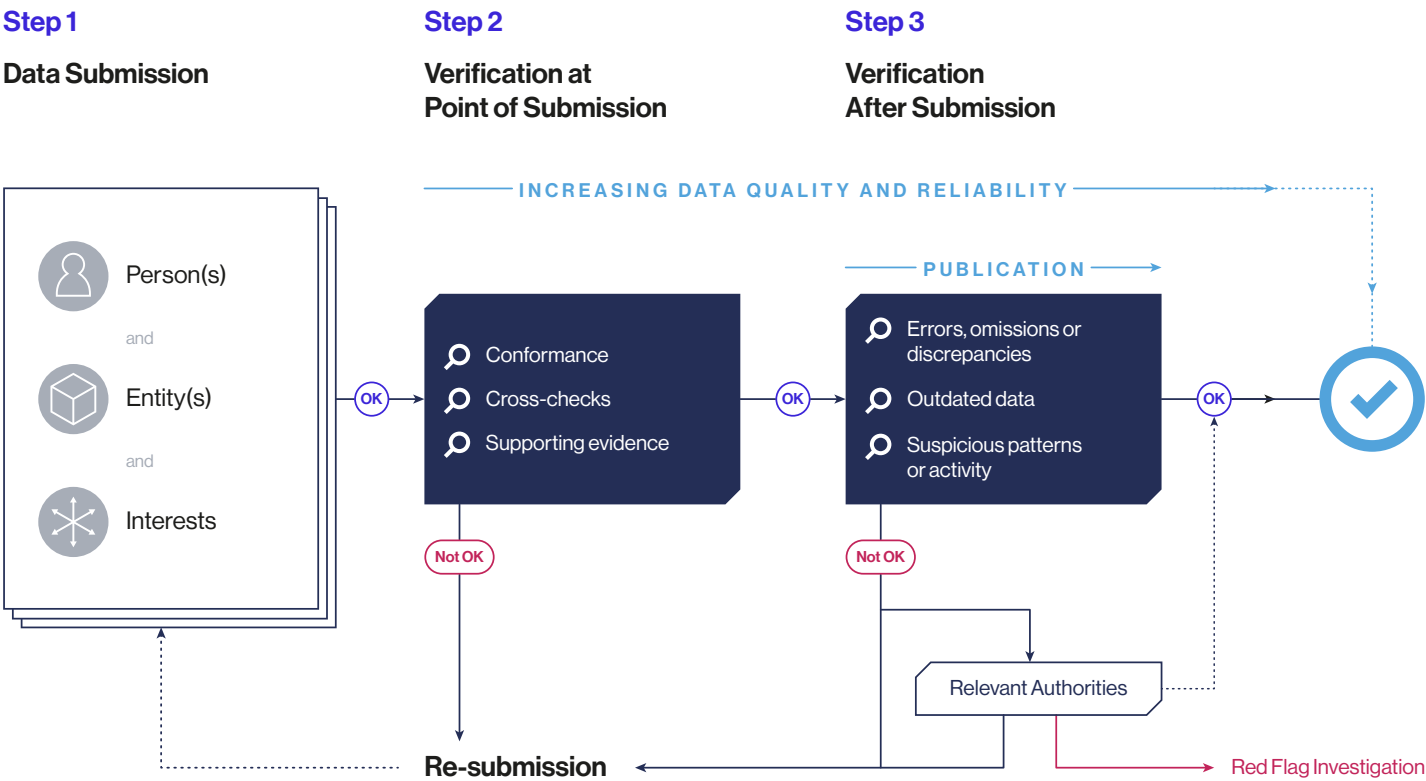
- Is it clear which people and companies will fall into the scope of the disclosure process?
- Is the form easy to understand and navigate?
- Is it easy for people to supply good quality data for each field?
- Is it easy for companies with very simple BO structures to make their declarations?

Verification of beneficial ownership data

Another consideration around BO data is how to verify the information submitted. Verification is the combination of checks and processes used to increase the likelihood that data is accurate, complete, and high quality at a given point in time. To maximise the impact of BO registers, users and authorities must be able to trust the data contained in a register. Verification systems help increase confidence that the true and current reality of who owns or controls a particular company is represented.



Figure 9. Designing verification systems



Data verification can take place either at the point BO data is submitted or after its publication. Many of the OTs already have some form of checks in place,²² which may range from the relatively straightforward (e.g. whether a birthdate field contains a date in a valid format) to the more technically complex (e.g. cross-checking information with other government systems).²³

Extensive “point of submission” checks may not be feasible in territories with small numbers of registered companies. Indeed, where systems are not fully digitised, few automated checks will be possible. Rather, authorities could use a risk-based approach to select a small sample of high risk entities to perform a series of manual verification checks. For territories with extensive digitisation, far more verification is possible. In these contexts, BO systems should, as a minimum, cross-check the details of domestically registered firms, such as the company number, with the State Registry. For foreign companies, it may not be feasible to check company numbers against foreign registries in all

cases. The legal and technical challenges associated with automatic data sharing between countries and the lack of digitally available information in some registries are contributing factors. However, foreign company numbers should still be collected and published as they enable a wide range of users, from law enforcement to civil society, to conduct their own additional checks when they suspect wrongdoing.

Additionally, informal verification by the public is made possible when BO information is published as open data (see [Publish](#) section). Wide public scrutiny drives up the likelihood of identifying inconsistencies or potential wrongdoing. Harnessing this as an effective verification measure would require the territories to create a feedback or reporting mechanism to allow private sector actors, the public, and CSOs to report inaccuracies in data published in the BO software. Such a mechanism exists within the UK’s register, for example, and enabled over 77,000 suspected discrepancies in BO data to be brought to official

²² UK Home Office. “Statutory Review of the Exchange of Notes Arrangement”. 2019. Available at: <https://www.gov.uk/government/publications/statutory-review-of-the-exchange-of-notes-arrangements/statutory-review-of-the-implementation-of-the-exchange-of-notes-on-beneficial-ownership-between-the-united-kingdom-crown-dependencies-and-overseas-ter>.

²³ The precise nature of checks and the point in the process at which they occur will need to be incorporated into the information flow diagrams, outlined in the Systems section.



attention during 2018 and 2019.²⁴ Adopting a risk-based approach to investigating the discrepancies reported (for example, by prioritising firms in sectors associated with high corruption risks or those that have been the subject of multiple user error reports) would help limit the amount of resources required for subsequent investigations.

Resources

OO's policy briefing on the [verification of BO data](#) explains the overarching principles that underpin effective systems and procedures that help increase confidence over the accuracy of BO declarations.

²⁴ Companies House, "Annual Report and Accounts 2018/19". Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822078/Companies_House_Annual_Report_2019_web_.pdf.



Publish

The OTs have all committed to making BO data public, in line with the provisions of the UK’s Sanctions and Anti-Money Laundering Act (see [Commit](#) section). This section examines how to publish BO data whilst still complying with local data protection legislation or, in its absence, international standards on data and privacy.

Best practices for data publication

The *Data* section looked at how the BODS can help with structuring BO data effectively, either for private and central use or for publication, in a way that is machine- and human-readable, as well as interoperable with data publications from other jurisdictions.

The UK’s draft Order in Council calls for BO data to be made “publicly accessible”, and though some stipulations are provided as to what this means,²⁵ implementation

elsewhere has shown that what constitutes “public” may vary.²⁶ The usage and impact of BO data is likely to be highest where it is made available in open data format, i.e. where it is made freely available online; it should be searchable, downloadable in bulk, and reusable by the public (without a fee, proprietary software, or the need for registration). All these measures increase the number of people using the data, increasing its impact and facilitating independent scrutiny that will help identify potentially suspicious activity and/or inaccurate data submissions. Open data publication would also allow BO data from the OTs to be pieced together with the international data already available in the Global Open Ownership Register (GOOR). This, in turn, would help increase the impact of publications by facilitating investigator efforts to trace financial flows through complex international ownership chains.

Figure 10. Differences between closed, shared, and open data

Closed: restricted access	Shared: public	Open: accessible to all
Access may be limited to law enforcement and other authorised bodies	Payment, registration, password, or authentication may be required to access	Free (no cost)
Access may be limited to those demonstrating “legitimate interest”	Data may be unstructured (e.g. paper forms, PDFs)	Structured data
	Licence may limit use	Open licence

²⁵ The draft Order in Council states: “a register is ‘publicly accessible’ if, and only if— (a) subject to paragraph (9), the information contained in it may be accessed by any member of the general public, (b) the means by which such information may be accessed include through a request submitted through the Internet, (c) any delay in accessing such information is no more than is necessary for the transmission of that information, and (d) any conditions to which access to such information is made subject are limited only to those reasonably justifiable in order to ensure the efficient management and maintenance of the register.”

²⁶ For example, in one jurisdiction all data could be made freely available without registration, whilst in another it might only be available for a substantial fee levied per individual record access. Though both would technically count as “public”, the ease of public access to the data in practice would be significantly different.



Enabling bulk downloads of the data (that is, allowing the easy download of all BO data within a register, rather than one record at a time), would potentially be easiest for territories with small numbers of registered companies that are likely to adopt a less technically complex publication system. Publishing, and periodically updating, a downloadable spreadsheet or .csv file on a government website would accomplish this. Territories with bespoke company registry software would instead need to build bulk download functionality into their systems. Further economic value could be gained by making BO data available via an API, which would allow direct access to machine-readable data which could then be used as an input for other tools and products.²⁷ Creating an API for BO data would involve programming and development costs that may not represent particular value for money for small territories with few registered companies. However, for territories with several thousand companies or more, an API for BO data could increase use of BO data and allow innovative applications of the data to create additional economic value.

Finally, it is important to highlight that historical BO data should also be kept and made available to the public. Keeping historical records prevents an entity from obscuring its identity by changing its name, and allows for investigations in complex legal cases. Making available supporting information, such as the date when a BO declaration was made, can further help users judge whether they trust the information and provide evidence of “who knew what when” in cases such as investigating whether due diligence was undertaken effectively at a particular point in time. Though historical data access has not always been available in some territories,²⁸ the investigative impact of public BO registers will be substantially improved if new/reformed registers incorporate this functionality. With the exception of privacy redactions, BO data should be kept and published for at least the lifetime of a company, and ideally for several decades after its dissolution.

is consistent with data protection law, as it falls within a “lawful authority” exception (see the accompanying expert legal brief for more on reconciling publication with the provisions of territories’ data protection legislation).

At the same time, publication of any data source can potentially have security implications, and it is worth assessing how much of a consideration this will be for a given jurisdiction. One way to guard against the risks to individuals is to create narrowly defined exemptions that allow those who can demonstrate a serious risk of harm to be exempted from the disclosure requirements. The EU’s 5th Anti Money-Laundering Directive, for example, allows for exemptions to be granted in cases where access to the data would expose the beneficial owner to risks such as fraud or kidnapping. The UK exempts individuals who can demonstrate a “serious risk of violence or intimidation”. That exemption is tightly controlled: according to a Freedom of Information request by Global Witness in 2017, of more than one million companies that provided BO information in the six months following the UK PSC register’s initiation, only 270 individuals applied to have their information withheld on the basis that it would put them at risk, and of these only five were granted.²⁹

Resources

For further discussion on managing potential privacy and security concerns related to BO data publication see the briefing: [Data Protection and Privacy in Beneficial Ownership Disclosure](#).

Data protection and privacy

Data protection laws invariably only allow the processing of data where the party processing it has a proper legal basis for doing so. For jurisdictions in which both data protection and the disclosure of BO information are statutory obligations, compliance with the obligation of disclosure

²⁷ In Ukraine, YouControl uses BO data from the State Enterprise Registry as a key data source for the innovative commercial due diligence tool it has developed. Sqwyre in the UK, on the other hand, combines bulk data from the UK register along with other data sources to advise firms on how location selection of their business may affect earnings.

²⁸ UK Home Office. “Statutory Review of the Exchange of Notes Arrangement”. 2019. Available at: <https://www.gov.uk/government/publications/statutory-review-of-the-exchange-of-notes-arrangements/statutory-review-of-the-implementation-of-the-exchange-of-notes-on-beneficial-ownership-between-the-united-kingdom-crown-dependencies-and-overseas-territories>.

²⁹ Palstra, N. 2018. “10 lessons from the UK’s public register of the real owners of companies”. Global Witness. Available at: <https://www.globalwitness.org/en/blog/10-lessons-uks-public-register-real-owners-companies/>



Future steps for beneficial ownership registers

The content outlined over the previous pages has been intended to offer an understanding of all the issues and areas that will need to be tackled to deliver an effective public register of beneficial owners. Making the first BO data available to the public will be a major milestone, but publication is, of course, not an end in itself. For the data to have impact in the real world, it must be used by a wide variety of groups and users. To design effective systems, it is important to understand the different ways in which government departments, businesses, and civil society will want to access and use the BO register to drive policy impact. Some people will want to search for a particular record, whilst others will want to analyse many records at once. This means publishing the data in ways that both humans and computers can read, understand, and use. Encouraging users to interact with the data and the register is crucial for increasing its impact and sustainability.

In addition, the disclosure regime and system should be updated regularly to ensure its continuing impact. Feedback from users and analysis on the data received and published will help to gradually identify the strengths and weaknesses of the data. To make further improvements to the disclosure regime and register, it may be necessary to revisit earlier steps of the implementation journey and make tweaks to the underlying legislation or regulations. This could be done by adjusting the definition to remove loopholes; lowering the disclosure threshold; expanding the range of entities to which disclosure requirements apply; altering the way the data is structured; or developing or enhancing verification procedures to improve its accuracy. By engaging in such periodic reviews and improvements of the disclosure regime, the data will gradually become more reliable. The data will also be useful for various policy reasons, such as improving business transparency for investors; clamping down on money laundering, corruption, or tax evasion; and meeting international standards.

To discuss any aspect of the disclosure regime, implementers in the OTs are encouraged to access OO's special helpdesk facility (support@openownership.org) where further assistance on any aspect of implementation is available.

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