Beneficial Ownership and Corporate Governance in Ghana

Gertrude Amorkor Amarh[*]

Summary

One of Ghana's most recent innovations in corporate law is the introduction of a statutory beneficial ownership disclosure regime. This article explores the contribution of the regime to corporate governance in Ghana. The article examines whether the disclosure regime would in any way enhance the relationship among the various stakeholders in both listed and private companies. It is argued that while the newly introduced statutory disclosure regime is likely to contribute towards promoting good corporate governance of companies in Ghana, that alone may be insufficient to protect the interests of a company's stakeholders in the absence of other safeguards.

Keywords

Ghana, beneficial ownership disclosure, corporate governance, Act 992, Act 920, financial and economic crimes, central register, anti-money laundering, abuse of the corporate form

1 Introduction

The Companies (Amendment) Act, 2016[1] was passed in Ghana in 2016 to provide for the inclusion of the names and particulars of beneficial owners of companies in the register of members.[2] It also provided for the establishment of a Central Register to contain the information provided.[3] The passage of this legislation was largely influenced by efforts to fight the growing spate of financial and economic crimes in the country as well as the African continent, especially corruption.[4] The provisions of the Act have now been enshrined in the new Companies Act, 2019[5] which received Presidential assent and came into effect on 2 August 2019.

Inasmuch as the introduction of a beneficial ownership regime is likely to strengthen the country's fight against financial crimes, it is also necessary to examine the new regime's contribution to corporate governance. In essence, how does the statutory beneficial ownership regime promote effective corporate governance? This article seeks to investigate the benefits of a statutory disclosure regime to corporate governance. For instance, the statutory requirement of disclosure would mean that ultimate decision-making in a company, if hidden, can now be properly identified, and stakeholders like minority shareholders can take informed decisions in the exercise of their individual and collective rights.

Following this introduction, the next part of this article examines the role of ownership disclosure in corporate governance. An analysis of the contribution of the newly introduced statutory disclosure regime to corporate governance is made with the aim of investigating whether the new regime can resolve some challenges being experienced in the corporate governance of listed and private companies.

Next, the paper traces the various steps taken over the years in the country's fight against financial and economic crimes, with particular reference to the recent introduction of a statutory disclosure regime. The events leading to the introduction of this regime, as well as the rationale of the statutory regime, will be examined.

The paper then examines the expected contribution of the disclosure regime to corporate governance in Ghana and provides some limitations of the regime. Drawing on an assessment of the United Kingdom's beneficial ownership regime, some recommendations are made as to the lessons that Ghana can learn considering its social and economic context and how the country can attain the full benefits of the disclosure requirement.

2 Ownership disclosure and corporate governance

There is sufficient reason to question the link between ownership disclosure and effective corporate governance. Transparency and disclosure are key elements of effective corporate governance. That being the case, is the requirement for disclosure of beneficial owners a sure way of achieving transparency and by extension, enhancing the relationship between shareholders and other stakeholders of a company? In other words, does the requirement for disclosure serve a corporate governance purpose?

Disclosure has long been recognized as the dominant philosophy of most modern systems. It is a sine qua non of corporate accountability. It can be justified on the following main policy grounds; it leads to a better informed and consequently more efficient stock market, it minimizes the risk of fraud, it prevents excessive secrecy and the distrust which this engenders, and it facilitates equality of opportunity.[6]

Corporate law in many jurisdictions provides for various ways of regulating the tendency of opportunism by majority shareholders and by extension, protecting the rights of minority shareholders. An example of such a mechanism is the right of first refusal, or preemption rights, which gives existing shareholders the opportunity to purchase newly issued shares, in quantities proportionate to their existing shareholding before such opportunities are given to outsiders. Also, remedies against oppression affords minority shareholders the opportunity to seek various orders from the courts in the event they are treated in a manner that is harsh, burdensome and wrongful.

No matter how effective these mechanisms are, they are not by themselves a sufficient remedy for the legal and regulatory challenges raised by concentrated ownership and blockholders. Indeed, minority investors must have the means of monitoring and observing blockholders' behaviour in order to detect possible opportunism and expropriation at an early stage. Therefore, the existence of an accurate disclosure and reporting regime that provides transparency in the ownership

[*] LLM (LSE), LLB & BA (University of Ghana), Lecturer, UPSA Law School, Ghana. Email: gertrude.amarh@upsamail.edu.gh.

[1] Companies (Amendment) Act, 2016 (Act 920).

[2] *See* the long title of Act 920.

[3] *Ibid*.

[4] *See* the Memorandum to Companies (Amendment) Bill, 2016. Also the Memorandum to the Companies Bill, 2018.

[5] Companies Act, 2019 (Act 992).

[6] J. H. Farrar, N. E. Furey & B. M. Hannigan, *Farrar's Company Law* 11 (Butterworths 1991).

and control structures of publicly listed companies is considered as the linchpin of an effective corporate governance infrastructure. This conclusion is not new to policy makers and regulators.[7]

In essence, the presence of shareholders with large investments necessitates disclosure in order for minority shareholders to monitor the behaviour of these blockholders to enable early detection of inappropriate conduct by these blockholders. In any case, protection of the interests of minority shareholders must necessarily involve access to information, and in this context information on who owns the various interests in a company. Armed with such information, minority shareholders can track future changes in the ownership structure of the company in which they are investing, and make assessments based on their findings.

As Lakhani argues, transparency is essential to achieving good corporate governance because it provides the ability to monitor company performance through disclosure of finances, profits, losses, and other related reporting. Without transparency, it would be impossible for a country to support equity markets and ensure the stability of industry.[8]

Vermeulen also notes that a good corporate governance infrastructure should combine transparency, accountability and integrity and this requires knowledge of beneficial ownership. He finds that stakeholder rights cannot be properly exercised if ultimate decision-makers in a company's affairs cannot be identified. Also, the accountability of the Board may be seriously endangered if stakeholders and the general public are unaware of decision-making and ultimate control structures.[9] This would mean that a statutory beneficial ownership disclosure regime largely ensures transparency in the operations of the various stakeholders of a company. Knowing the ultimate owners of a company's shares would enable the Board, for example in setting the vision of the company, to take into consideration the effects of the ultimate owners' actions on the minority.

Professor Gilson also notes that a company's performance can suffer a controlling shareholder's divergence of earnings or opportunities to itself if disclosure is not present.[10] This form of opportunism by controlling shareholders is effectively avoided when disclosure is made a requirement.

Moreover, the Board would be better positioned to promote accountability with their knowledge of the ultimate control structures of the company. Clearly, in the case of minority shareholders, knowing the ultimate owners of majority shares would provide them with sufficient information to guide their investment decisions. Disclosure therefore appears to provide relevant information for informed investment decision-making.

Clearly, the concept of beneficial ownership is not in itself a bad practice, as some shareholders would not want their affairs known to the general public for legitimate reasons. Ordinarily, the law should be able to provide an enabling environment for shareholders who would want to hide their interests legitimately in a given corporate body or bodies.

However, it is the potential for abuse of this opportunity and in fact the abuse of the concept that renders the need for disclosure. The presence of large controlling beneficial shareholders with significant investments is likely to boost business activity and increase profits. But the possibility of these unknown controlling shareholders diverting corporate profits into personal use, or even illegal activities to the detriment of other stakeholders, is what should not be countenanced. It is for this reason that many jurisdictions have sought to regulate the disclosure of beneficial ownership by statutory means, requiring that shareholders disclose the ultimate owners of shares held by them.

The benefits to be derived by stakeholders, like minority shareholders, creditors, employees and even customers, must be balanced against the non-requirement of disclosure. It does appear that the benefits of a disclosure regime outweigh the absence of one, especially considering the movement in recent years into a much more stakeholder-oriented view of the corporation.[11]

Disclosure is more likely than not to provide information to all stakeholders of a company, and by so doing empowering these stakeholders in their decision-making and related matters. Disclosure therefore has been hailed as serving a good corporate governance purpose. The World Bank Report on Observations of Standards and Codes[12] notes that requiring companies to disclose indirect and beneficial ownership allows shareholders to better understand who controls companies and facilitate implementing requirements on managing and disclosing related party transactions.

Further, the requirement of disclosure is likely to attract more investors into a corporate organization. Knowing the ultimate owners of interests in a company will allow potential investors to make detailed assessments of where to invest. This level of transparency gives power to potential investors as they can be assured of the safety or otherwise of their investments. Disclosure would also assist potential investors to plan their investment activities in a manner that would be profitable and beneficial to them, being armed with relevant information about ownership.

Considered broadly, disclosure of hidden owners of interests in companies also serves a public accountability purpose. It is increasingly being accepted that the aim of a company should not only be the maximization of profits for shareholders, but must also include the protection of the interests of other stakeholders external to the corporation, but who are affected directly or indirectly by its operations.

For a long time, the search for profit has defined business activity almost exclusively ('the business of business is business'),[13] and it was generally understood that corporations' responsibility to society did not go beyond the constraints imposed by law and that their duties to employees and other stakeholders were subordinated to the primary interests

[7] Erik P. M. Vermeulen, *Beneficial Ownership and Control: A Comparative Study-Disclosure, Information and Enforcement*, OECD Governance Working Papers No. 7 (2013).

[8] Dr Avnita Lakhani, *'Imposing Company Ownership Transparency Requirements: Opportunities for Effective Governance of Equity Capital Markets or Constraints on Corporate Performance,* 16(1) Chicago Kent J. Int'l & Comp. L. 122 (2016).

[9] Vermeulen, *supra* n. 7.

[10] Ronald J. Gilson, *'Transparency, Corporate Governance and Capital Markets,* Paper presented at the Latin American Corporate Governance Roundtable, Sao Paolo, Brazil 26–28 Apr. 2000 (2000).

[11] J.E. Post et al., '*Managing the Extended Enterprise: The New Stakeholder View*, 45 California Mgmt. Rev. 5 (2002). *See also* H. Jeff Smith, *The Shareholders v. Stakeholders Debate*, 44 MIT Sloan Mgmt. Rev. 85 (2003).

[12] National Anti-Corruption Action Plan (2012–2021) passed 20 Dec. 2011 <http://www.gaccgh.org/publications/National%20Anti-Corruption%20Action%20Plan%20.pdf > (accessed 7 Mar. 2019).

[13] Attributed to Milton Friedman. *See* Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits,* The New York Times Magazine (13 Sept. 1970).

of the company's owners or shareholders. However, due to their current strength and influence, corporations are able to contribute decisively to the development of the world and the improvement of the human condition.[14]

The intimate connection between business and society in today's world cannot be overemphasized, and is firmly entrenched and extends beyond economic criteria.[15] The power and influence of companies, globally, on government policies and other relevant operations leads to an interest in the identities of shareholders.

The operations of companies today, especially in the event of crisis, has far-reaching consequences on innocent members of the public who may have investments in the affected corporations. The aftermath of such crisis typically leads to a frantic search for hidden owners of companies in order to ascribe some liability to them, if possible. While courts may want to lift the corporate veil, regulators may want to conduct investigations into the activities of members which may have contributed to the crisis in question.

It therefore cannot be denied that ownership disclosure has a positive correlation with accountability to society at large, not only in the event of crisis, but even when there is no immediate sign of impending crisis.

3 Corporate governance and disclosure in Ghana

Ghana's beneficial ownership regime is closely linked to the country's efforts at fighting financial and economic crimes. Globally, the rise in financial crimes has become a major threat to social and economic development.[16] This has led to numerous interventions by governments, regional bodies and global organizations.[17] In Ghana, bribery and corruption remains the leading incidence of financial and economic crime.[18] Corruption has been identified to be a major bane to Ghana's socio-economic and political development since independence in 1957.[19] This has led to statutory and regulatory mechanisms aimed at mitigating or curbing the phenomenon. These include the adoption of numerous anti-corruption instruments,[20] criminalization of bribery and corruption[21] and confiscation of assets suspected or determined to have been acquired through corrupt means. Others are the establishment of specialized anti-corruption institutions, like the Economic and Organized Crime Office (EOCO), the Financial Intelligence Centre (FIC) and most recently the Office of the Special Prosecutor. The development also of a National Anti-Corruption Plan[22] to span a decade can be said to somewhat show the country's commitment to fighting corruption.

3.1 Disclosure of Interest Prior to the Statutory Disclosure Regime

Prior to the introduction of the beneficial ownership regime, Ghanaian corporate law had a number of mechanisms aimed at ensuring transparency. For example, the law recognized the legal owner of shares as the beneficial owner of same, in the absence of evidence to the contrary. The requirement then was for a company to keep a register of members and enter, in the register, the particulars of each member.[23] As such, only members, and not beneficial owners, were entitled to vote at company meetings. Also, recognition was given to 'shadow directors', those individuals upon whose directions duly appointed directors were accustomed to act, and thereby indirectly controlling the administration of an entity. These types of directors, albeit not duly appointed by law, were subject to the same duties and liabilities as if they had been validly appointed.[24] A company was also mandated to keep, in its registered offices, a register of its directors including substitute directors but excluding alternate directors, and the register was to contain detailed information about these individuals.[25] Under section 215 of Act 179, a company was required to keep a register containing information about the number of shares and debentures held by directors, or in which the director has a beneficial interest in the company, or in an associated company. The section explained that a director is beneficially interested in shares or debentures if a body corporate holds them, or has a right in or over them, and that body corporate or its directors are accustomed to act in accordance with that director's directions or instructions, or that a director is entitled to exercise or control the exercise of one-third or more of the voting power at a general meeting of that body corporate.

In relation to contracts, directors who are **beneficially interested**, directly or indirectly, in a contract or transaction are entitled to provide full disclosure of all material facts, including the nature and extent of the director's interest to obtain the company's consent.[26]

[14] Ramon Mullerat OBE, *Overview Given in Global Business and Human Rights: Jurisdictional Comparisons* (2011).

[15] L. Prandtl, *A Briefing Paper on CSR: Mandatory or Voluntary?,* My DD Democracy (20 Apr. 2008).

[16] S. Saddiq & A. Abu Bakar, *Impact of Economic and Financial Crimes on Economic Growth in Emerging and Developing Countries: A Systematic Review*, 26(3) J. Financial Crime 910–920 (2019), https://doi.org/10.1108/JFC-10-2018-0112 (accessed 8 July 2019). *See also* Global Financial Integrity, *Illicit Financial Flows to and From Developing Countries: 2005–2014* (2017), https://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017_final.pdf (accessed 9 July 2020).

[17] *See* the G8 action plan principles to prevent the misuse of companies and legal arrangements, https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements (accessed 7 Mar. 2019). Also, Financial Action Task Force (FATF), *Guidance on Transparency and Beneficial Ownership, 2014. G20 High Level Principles on Beneficial Ownership* (2014).

[18] National Anti-Corruption Action Plan (2012–2021) passed (20 Dec. 2011), http://www.gaccgh.org/publications/National%20Anti-Corruption%20Action%20Plan%20.pdf (accessed 7 Mar. 2019).

[19] *Ibid.,* at 6.

[20] United Nations Convention against Corruption, 2003, African Union Convention on Preventing and Combatting Corruption, 2003.

[21] The Criminal Offences (Amendment) Act, 2020 makes corruption as a felony with a term of imprisonment of not less than twelve years and not more than twenty-five years.

[22] National Anti-Corruption Action Plan (2012-2021) passed 20 Dec. 2011 <http://www.gaccgh.org/publications/National%20Anti-Corruption%20Action%20Plan%20.pdf > (accessed 7 Mar. 2019).

[23] Section 32 (1), Companies Act, 1963 (Act 179).

[24] Section 179(2)(b), Companies Act, 1963 (Act 179).

[25] Section 196, Companies Act, 1963 (Act 179).

[26] Sections 205, 206, 207, Companies Act, 1963 (Act 179).

Foreign companies and individuals were not exempt from providing detailed information, which they are required to disclose through technology transfer agreements.[27]

These measures can all be said to have been aimed at ensuring transparency through disclosure in the formation and administration of companies. The above measures, though extensive in scope, were totality insufficient in establishing an organized disclosure regime.

The journey towards the creation of a statutory disclosure regime therefore began with the 2016 Anti-Corruption Summit held in London.

3.1.1 The 2016 UK Anti-Corruption Summit

In August 2016, an anti-corruption summit was organized in the United Kingdom (UK) by the then UK Prime Minister, David Cameron, to step up global action to expose, punish and drive out corruption in all walks of life.[28] Ghana was one of the many African countries that participated in the summit.

After the summit, a five-member committee was established to work with the Acting Registrar General at the time to propose an amendment to the Companies Act of 1963,[29] to provide the legal framework for the provision of beneficial ownership disclosure in Ghana. The draft amendment was considered by Parliament and the law was passed in August 2016, culminating in the Companies (Amendment) Act, 2016 (Act 920).

3.1.2 The Companies (Amendment) Act, 2016 (Act 920)

The aim of the legislation, as gleaned from its long title, was to provide for the inclusion of the names and particulars of beneficial owners of companies in the register of members and to establish a Central Register.[30] These details of beneficial owners are to be provided at the point of the incorporation of the company and when annual returns of an existing company are to be filed.[31]

The Act provided for the provision of the details of the subscribers to the company's constitution and where a subscriber is not the beneficial owner of the interest, the details of the beneficial owner.[32]

A reference to the particulars of beneficial owner in the Act refers to the following: the full name and any former or other name, the date and place of birth, the telephone number, place of work and position held, nationality and proof of identity, residential and postal and email address and the nature of the interest held, including details of the legal arrangement in respect of the beneficial ownership.[33] In the submission of these details to the Registrar, the company is to indicate those members who are 'politically exposed persons'.[34]

3.2 Beneficial Ownership under the Companies Act, 2019 (Act 992)

Less than four years into the passage of Act 920, the much anticipated Companies Act, 2019 was passed, repealing the Companies Act, 1963 (Act 179) with all its amendments, including the Companies (Amendment) Act, 2016.

The disclosure regime that was introduced in Act 920 was therefore incorporated into Act 992, with some slight modifications.

Beneficial owner is explained as an ***individual*** who directly or indirectly ultimately owns or exercises substantial control over a person or a company, has substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons. It also includes an individual on whose behalf a transaction is conducted or who exercises significant control or influence over a legal person or legal arrangement through a formal or informal arrangement.[35]

The Act requires that a company includes in an application for incorporation particulars in respect of each beneficial owner of the proposed company.[36]

A company must also keep in the country a register of members, and enter in the register the nature of the interest of each member, including details of beneficial owners of the company.[37] Where a member of a company is not the beneficial owner of that company, the member must provide the company with the particulars of the beneficial owner at the time of becoming a member and update the company within twenty-eight days of any change in the submitted particulars.[38]

A company is required, within twenty-eight days of entering in its register of members the particulars of beneficial owners, to submit those particulars to the Registrar for registration and indicate the members or beneficial owners **who are politically exposed persons.**[39] The Act defines a 'politically exposed person' as a person who is or has been entrusted with a prominent public function in the country, a foreign country or an international organization, including a senior political party official, government, judicial or military officer, a person who is or has been an executive of a State-owned company, a senior political party official in a foreign country and includes any immediate family members or close associates of such person.[40]

The particulars of beneficial owners must also be included in the annual returns of a company that is delivered to the Registrar for registration at least once every year.[41]

By way of sanctions for non-compliance, a person who fails to provide the information required or provides false or misleading information commits an offence and is liable on summary conviction to a fine of between 150 and 250 penalty units, or to a term of imprisonment of between one and two years, or both a fine and imprisonment.[42]

[27] Section 37, GIPC Act, 2013 (Act 865).
[28] https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016/about (accessed 8 Nov. 2020).
[29] Companies Act, 1963 (Act 179) (now repealed).
[30] *See* the long title of Act 920.
[31] Section 1, Act 920.
[32] *Ibid*.
[33] Section 9, Act 920.
[34] Section 1, Act 920.
[35] First Schedule, Act 992.
[36] Section 13 (2) (m), Act 992.
[37] Section 35, Act 992.
[38] Section 35 (2), Act 992.
[39] Section 35 (6), Act 992.
[40] First Schedule, Act 992.
[41] Section 126 (1), Act 992.
[42] Section 35 (14), Act 992.

Where a company defaults in complying with the above requirements, the company and every officer of the company that is in default is liable to pay an administrative penalty.[43]

External companies are also to provide the details of the beneficial owners of their companies for registration within one month of the establishment of a place of business within the country.[44]

The Act also establishes a central register to capture beneficial ownership data of legal persons and arrangements. The Registrar of Companies is to keep and maintain the Central Register in both manual and electronic formats.[45]

The Registrar is to collaborate with other authorities to maintain, verify and update the Central Register.[46] Upon request and in a timely manner, the Registrar is to make information available in the Central Register available to the relevant authorities for inspection.[47]

Also, the Act provides that, in line with open data best practices, the Registrar is to make an electronic format of the Central Register available to members of the public for inspection.[48]

Competent authority is defined as a public authority with responsibilities for combating money laundering or terrorist financing, in particular the Financial Intelligence Center and the authorities that have the function of investigating or prosecuting money laundering and associated predicate offences and terrorist financing.[49]

The Central Register became operational in October, 2020.[50]

3.3 Corporate Governance in Ghana

Corporate Governance in Ghana is secured by a fairly effective legal and regulatory framework. The Companies Act, 2019,[51] the Securities Industry Law as amended[52] and the Membership and Listing Regulations, 1990 (L.I 1509) of the Ghana Stock Exchange (GSE) are all laws that regulate the country's corporate governance landscape, particularly for companies that issue publicly traded securities. The Corporate Governance Code of the Securities and Exchange Commission[53] is the code relied on by listed companies for their corporate governance. In addition to these, industry specific rules and requirements as that relating to the banking, insurance and deposit taking industries can be said to form part of the framework regulating corporate governance in Ghana.

Like most countries, Ghana also has a Corporate Governance Guidelines on Best Practices document prepared by the Securities and Exchange Commission. However, the practices embodied in the Code do not have the force of law and are only intended to be guidelines by which the standards of governance in bodies regulated by the Securities and Exchange Commission may be benchmarked. Despite this, it has been hailed as the most all-inclusive guideline currently in operation in Ghana.[54]

The regulatory framework for corporate governance in Ghana has seen massive reforms, particularly in the wake of the crises experienced in the banking sector in 2018.[55] The Companies Act, 1963 (Act 179), which lasted for over fifty years, has been replaced by a new Companies Act, 2019 (Act 992). The new Act seeks to reflect several novel concepts in company law pertinent to new trends in business practices. It is also intended to enhance significantly, the legal and regulatory framework for doing business in the country.[56] In response to the banking crisis, the Bank of Ghana released the Corporate Governance Directive 2018 for banks, savings and loans companies, finance houses and financial holding companies.[57] Also, corporate governance directives for banks and specialized deposit taking institutions[58] were issued to require regulated financial institutions to adopt sound corporate governance principles, and best practices to enable them to perform their role in enhancing economic growth in Ghana.

Generally, it appears companies in Ghana, both private and listed, make deliberate efforts to follow widely accepted corporate governance principles in their management. The World Bank, in its Report on the Observance of Standards and Codes (ROSC), identifies weaknesses that may contribute to a country's economic and financial vulnerability.[59] Each assessment of a country's corporate governance is benchmarked against the OECD's Principles of Corporate Governance.[60] The assessment carried out on Ghana notes that the country's scores in upholding principles of corporate governance have generally improved particularly in the implementation of shareholder rights and equitable treatment of shareholders. Nevertheless, a good number of the OECD Principles have still not been fully implemented, leading the country to lag behind some other countries in Sub-Saharan Africa.

Interestingly, the report also notes that Ghana performs well in terms of transparency and disclosure. This relates to disclosure standards, related-party transactions, government structures and policy, research conflict of interests, among others. On beneficial ownership disclosure, the report notes that while the concept is found in the law, in practice,

[43] Section 35 (15), Act 992.
[44] Section 330 (1) (c), Act 992.
[45] Section 373 (1) and (2), Act 992.
[46] Section 373 (3) (a), Act 992.
[47] Section 373 (3) (b), Act 992.
[48] Section 373 (3) (c), Act 992.
[49] Section 373 (7), Act 992.
[50] https://www.businessghana.com/site/news/Business/213254/Ghana-to-have-Beneficiary-Ownership-Register-by-October (accessed 7 Aug. 2020).
[51] *Ibid*.
[52] The Securities Industry Law 1993 (PNDCL 333) as amended by the Securities Industry Act 200 (Act 590).
[53] Securities and Exchange Commission Ghana, Corporate Governance, Guidelines on Best Practices (2010).
[54] Otuo Serebour Agyemang & Monica Castellini, *'The Guidelines of Corporate Governance of Ghana: Issues, Deficiencies and Suggestions,* 6(10) Int'l Bus. Res. (2013).
[55] *See* Etornam Nyalatorgbi, *Bank of Ghana Closes 7 Banks in Banking Crisis*, TWNAfrica, http://twnafrica.org/wp/2017/?p=546 (accessed 2 Jan. 2020).
[56] Memorandum to Act 992.
[57] Bank of Ghana, Corporate Governance Directives, https://www.bog.gov.gh/privatecontent/Public_Notices/CGD%20Corporate%20Governance%20Directive%202018-%20Final%20For%20Publication%20.pdf (accessed 8 June 2020).
[58] Banks and Specialised Deposit-Taking Institutions Corporate Governance Directive, 2018.
[59] World Bank, Report on Observance of Standards and Codes, Corporate Governance Country Assessment: Ghana (Dec. 2010).
[60] OECD Principles of Corporate Governance (2004).

companies tend to disclose direct shareholding and not indirect or controlling ownership. The introduction of the disclosure regime is therefore sure to increase Ghana's compliance ratings in the next review of the observations of standards and codes.

Corporate governance in Ghana mainly revolves around four broad principles namely the proper role of the board of directors, the board's relationship with shareholders, the place of stakeholders and financial affairs and auditing. The Guidelines of Best Practices[61] recognizes that the principles of corporate governance cover the following areas: the rights of shareholders, equitable treatment of shareholders, the role of stakeholders, disclosure and transparency as well as the responsibilities of the Board.

The practice and implementation of corporate governance in Ghana is largely in line with best practice globally. The regulatory framework as well as the practice encourages the separation of the roles of board chair and that of Chief Executive Officer (CEO), the provision of laid down responsibilities of the Board, independence of the Board, the vital role of the Board Chair and continuous training of the Board. Other requirements are the appointment of non-executive directors and independent directors, formation of committees particularly the audit and risk committees.

Disclosure, transparency and accountability are key tenets in the corporate governance landscape of Ghana. In furtherance of this, numerous provisions are made in the 2010 Corporate Governance Code[62] on the requirement of shareholders being provided with timely and continuous corporate information, including information on non-financial affairs. The highest level of disclosure is to be aspired to at all times. Consideration of the interest of external stakeholders are also germane, as well as the need for the highest standards of auditing.

It is however worth questioning the contribution of these rules to Ghanaian corporate governance in practice. Despite the presence of extensive rules to regulate the governance of companies, the country has witnessed its fair share of corporate malfeasances leading to loss of millions of cedis to stakeholders and the Ghanaian economy at large. The inability of these far-reaching regulatory mechanisms to nip corporate wrongdoing in the bud may be an indication of the poor levels of compliance.

The 2016 banking crisis[63] experienced in the country brought to bear some of the weaknesses inherent in having a myriad of legislation without attendant compliance. Particularly, the crisis demonstrated that the presence of institutions that perform oversight responsibilities in the enforcement of rules is absolutely necessary. It therefore goes without saying that legislation (and other rules) alone is never enough to ensure compliance.

It is in this light that the writer observes a weakness in the World Bank Report on the observance of Standards and Codes, referred to above.[64] The report, in the opinion of the writer, arrives at its findings mainly on the basis of the presence or otherwise of legal rules, without considering the practical application of these rules. This is typical of many other researches and evaluations, which fail to monitor and reach conclusions on the basis of whether or not rules are actually followed in practice.

This observation would form a major basis of the writer's discussion of the newly introduced beneficial ownership disclosure regime in Ghana in subsequent parts of this article.

4 The expected contribution of ownership disclosure to Ghanaian corporate governance

Prior to the statutory requirement for disclosure, shareholders could nominate others to be named as the owners of the shares they owned in companies, without the need to disclose their identities. This, obviously, had the tendency to create fertile grounds for unscrupulous business dealings.

In the banking crisis experienced in the country between 2016 and 2019, the Bank of Ghana specified poor corporate governance practices as a major contribution to the collapse of the banks involved in the crisis.[65] Related party transactions were at the heart of these corporate governance failures. It would not be far-fetched to posit that some of these related parties may have been unknown, with their shareholding hidden in elaborate schemes such as beneficial ownership. Despite the numerous prescriptions in the Banks and Specialized Deposit Taking Institutions Act[66] and other directives to regulate related party activities, the phenomena was still found to be a major cause of the collapse of affected banks.

With the establishment of a statutory disclosure regime for the country, it is expected that transparency in the corporate sector would be enhanced. The requirement to disclose beneficial owners is likely to minimize hidden and complex related party transactions. In the absence of statutory disclosure, companies can hide behind undisclosed ownership structures to pursue actions that are detrimental to corporate success.

Regulators such as the Bank of Ghana, the Securities and Exchange Commission and others can better monitor the activities of companies and timeously detect inappropriate conduct. In the wake of the banking crisis for example, the monitoring prowess of the Central Bank was questioned on a number of occasions leading to calls for the Bank to increase its monitoring activities. Knowledge of beneficial owners would mean that the Bank and other similar regulators can better monitor and observe the sectors they regulate.

Minority shareholder protection remains one of the areas that Ghanaian corporate governance is dedicated to. Minority shareholders are better able to make informed decisions when they are in the know about ownership details. Knowing those who ultimately have controlling rights over the entities they

[61] *Ibid*.

[62] *Ibid*.

[63] Kwame Owusu Banahene, *Ghana Banking System Failure: The Need for Restoration of Public Trust and Confidence*, 8(10) Int'l J. Bus. & Soc. Res. (2018). *See also* http://twnafrica.org/wp/2017/?p=546; https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Detailed-reasons-behind-BoG-closure-of-Ideal-Women-s-Bank-Midland-and-18-others-772739 (accessed 9 Mar. 2021).

[64] *Ibid*.

[65] Business and Financial Times, *Poor Corporate Governance and the Collapse of Banks* (B&FTonline 13 Aug. 2018), https://thebftonline.com/2018/features/poor-corporate-governance-and-the-collapse-of-banks/ (accessed 19 July 2020).

[66] Banks and Specialized Deposit Taking Institutions Act, 2016 (Act 930).

belong to would assist minority shareholders to make decisions on issues relevant to their shareholding.

Broadly, all stakeholders, both internal and external, can properly exercise their rights with beneficial ownership knowledge. As concluded in the literature referred to in other parts of this work, statutory disclosure strengthens stakeholders to exercise their respective rights.

It is worth noting that the benefits of a statutory disclosure of beneficial ownership regime transcends corporate governance. Ultimately, the requirement is expected to provide benefits in all sectors in which forms of corruption can emerge. Illicit financial flows, bribery and corruption and other forms of financial and economic crimes are all sectors that the disclosure regime would have a positive effect on.

4.1 The Beneficial Ownership Regime in the United Kingdom

The purpose of this part is to briefly analyse the beneficial ownership disclosure regime in the United Kingdom, with the aim of finding out if Ghana can learn some lessons from the framework used in that country.

The United Kingdom has played a key role in enhancing corporate transparency in the European Union. From the G8 Summit in Lough Erne where G8 leaders agreed on principles to ensure beneficial ownership transparency to the London International Anti-Corruption summit, the UK has remained relentless in its quest to promote corporate transparency. This has resulted in a rather commendable framework for beneficial ownership disclosure in the UK.

The UK has Registers of beneficial ownership for different types of assets: companies, properties and lands, as well as trusts.[67]

Information on the beneficial ownership of companies is publicly available in a central register held at Companies House. For properties owned by overseas companies and legal entities, the government plans to launch a public beneficial ownership register in 2021. The register for Trusts is not public.[68]

The UK Government introduced provisions to establish a register of beneficial ownership as part of the Small Business, Enterprise and Employment Act 2015. Part 7 of the Act inter alia provided for a Register of Persons with significant control to disclose names of both legal and beneficial owners of shareholders of companies. The register was launched in 2016 and is known as the People with Significant Control (PSC) register. The Register includes information about the individuals who own or control companies. They are expected to disclose their names, month and year of birth, nationality and details of their interest in the company. An exception however is made for persons who can show to the satisfaction of the Registrar that publishing their personal particulars would put them, or those that live with them, at serious risk of violence or intimidation.

A person of significant control is someone who holds more than 25% of shares or voting rights in a company, has the right to appoint or remove the majority of the board of directors or otherwise exercises significant influence or control in the company. According to the Act, X is a person of significant control if any of the following conditions are met:

Condition 1 – X holds directly or indirectly, more than 25% of the shares in company Y

Condition 2 – X holds, directly or indirectly, more than 25% of the voting rights in company Y

Condition 3 – X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of company Y

Condition 4 – X has the right to exercise, or actually exercises, significant influence or control over company Y.[69]

The UK has been hailed as the first country in the world to have a public register of this kind.[70] The UK Government has intimated that it was actually the first in the G20 to have such a public register.[71]

Despite what appears to be a rather robust framework for beneficial ownership in the UK, the framework has been criticized for a number of deficiencies. One of such is the unreliability of the information supplied at the point of incorporation. Admittedly, most companies are now formed using the electronic incorporation platform of the UK Government, which is not subject to the UK Anti-Money Laundering Regulations. This has led to concerns about the veracity of the information provided. The purpose of this legislative framework could well be defeated if the information gathered in the Register is not accurate as there is no sure way of verifying that information. As would be observed in subsequent parts of this article, this concern is one that is present in almost all jurisdictions that make provision for a Central Register for beneficial ownership disclosure.

Also, concerns have been raised over the implications of public disclosure of information on the Central Register. The policy behind this arrangement has been questioned on grounds that persons legitimately conducting business have the right to keep their identity private. Although other European jurisdictions limit the information on their register to competent persons such as tax authorities and intelligence units, this is currently not the case in the United Kingdom, leading to calls for changes in the policy.

These concerns however must be considered in the context of the requirements of the European Union Anti-Money Laundering Directives, particularly the Fifth Anti-Money Laundering Directive[72] which replaced the Fourth Anti-Money Laundering Directive[73] in 2018. This latest directive is aimed at establishing a centralized register of the ultimate beneficial owners of companies.

These changes are in the process of being extended to include the creation of a new register to contain details of beneficial owners of overseas companies that own interests in, or want to buy properties in, the UK. Also, overseas companies that are involved in UK central government contracts.

[67] https://commonslibrary.parliament.uk/research-briefings/cbp-8259/ (accessed 13 Aug. 2020).

[68] *Ibid.*

[69] Paragraphs 2–5, Part 1, Sch. 1A of the Small Business, Enterprise and Employment Act 2015.

[70] Global Witness, 10 lessons from the UK's public register of the real owners of companies, 23 Oct. 2017, https://www.gov.uk/government/news/people-with-significant-control-companies-house-register-goes-live (accessed 13 May 2020).

[71] Alan Duncan (FCO), *Sanctions and Anti-Money Laundering Bill [Lords] Debate*, 20 Feb. 2018, Volume 636.

[72] *See* EU Fifth Anti-Money Laundering Directive (EU) 2018/843 ('5AMLD').

[73] EU Fourth Anti-Money Laundering Directive (EU) 2015/849 ('4AMLD').

The expectation is for this register to be operational in the year 2021.[74]

In the case of Trusts, the UK, in 2017, introduced a non-public Register of Trusts. Trustees can now register their trusts online and give information on the beneficial owners of the trust. Such information is only available to law enforcement agencies and the UK Financial Intelligence Unit. As a result of the Fifth Anti-Money Laundering Directive of Europe, members of the public will be able to access trust data if they can demonstrate a legitimate interest.[75]

Inasmuch as the beneficial ownership disclosure regime in the UK may not be pristine, the writer is of the view that the regime is quite robust and appears to have balanced all relevant interests in the creation of the current framework. For instance, making information on the register public, is to the writer a sign of dedication to the highest levels of transparency. Transparency being at the heart of disclosure, the UK seems to send across a strong message that it would not compromise on its quest to have a disclosure regime that is effective. Although information on the Central Register for companies is made public, information on the Register of Trusts has limited access. This may be an indication of the subtle attempt of the UK to permit access to disclosed information on the basis of the particular interest involved.

What may be lacking in the UK regime, similar to the situation in many other jurisdictions, is the presence of some sort of regulator to exercise oversight responsibility over the disclosure requirements companies are to follow. The current framework in the UK may not be as effective as is expected, in the absence of a body tasked with ensuring compliance of companies in disclosing beneficial ownership arrangements.

Notwithstanding these, the United Kingdom has led the way and would continue to lead the way for Europe and many other parts of the world with its disclosure regime. The writer expresses this belief having observed the UK's commendable resolve to have a robust disclosure regime.

5 Limitations of the Ghanaian beneficial ownership disclosure regime and recommendations

Luckily for Ghana, its attempt at providing a legal regime for beneficial ownership disclosure comes at a time when extensive work has been done and continues to be done in other jurisdictions in the area. It therefore can be said that the country can learn some lessons from these already taken strides to fashion out a robust regime that can stand the test of time.

Though rather new, the framework lends itself to some forms of criticisms, begging an enquiry into whether the regime is possibly dead upon arrival. Moreover, some jurisdictions that have had in place a beneficial ownership regime for some time now have been forced to re-examine their expectations of the regime after years of its implementation. To wit, are the expectations regarding this regime unrealistic, to the extent that it has not been able to achieve its intended purpose?

Based on the above, Ghana obviously should have foresight in order to avoid the pitfalls encountered by other jurisdictions, and to fashion out a regime that is tailored to its peculiar circumstances but which, at the same time, meets universally accepted standards.

Having set this premise, it is essential that the country takes a second look at its beneficial ownership disclosure regime based on the following observations and accompanying recommendations made by the writer.

Firstly, the challenge of enforcement. A major challenge of corporate law policies in the country in the past years has been poor enforcement of these policies. A well-designed policy which is not properly enforced using appropriate structures is more likely to fail than succeed. Vermeulen notes that in order to have practical relevance, the disclosure and reporting requirements of a country should be complemented with investigation and enforcement mechanisms. A major manifestation of this concern, particularly in the context of investigation, lies with the accuracy of the disclosed information to be provided by companies, and which would eventually end up in the Central Register. Principle 3 of the G20 High Level Principles on Beneficial Ownership Transparency[76] requires that countries should ensure that legal persons maintain beneficial ownership information onshore and that information is *adequate, accurate and current*.

In the absence of efficient structures to verify the accuracy of beneficial ownership information provided, there is a further risk of the Central Register ending up with false information hence defeating the very purpose for which the regime was introduced. One way of solving this is by requiring companies to establish ways of independently verifying the beneficial ownership information provided to them by their members before submitting same to the Registrar of Companies. This way, a supervisory role is placed on companies to avoid the practice of merely 'box-ticking' to fulfil regulatory requirements.

In the alternative, the Central Registry which ultimately receives and compiles the information supplied may be tasked with an additional duty of verifying the information supplied to it. Questions have however been asked in other jurisdictions about the role of the Central Registry in this regard, considering that it is only a regulatory body and not an investigation body. Requiring the Central Registry to independently verify information provided to it does not appear to be the best of options since its core function of being a registry of beneficial ownership information may be overtaken by an arduous role of investigating and establishing the accuracy of information received.

As a solution, the services of a licensed service provider can be engaged to consistently verify information supplied to the Central Register. This way, the Registrar of Companies is assured of considerable exactitude of information in the Central Register, and is at the same time able to focus exclusively on performing its core mandate. Allied institutions which have also been established to fight economic crimes can take up the additional duty of verifying information supplied to the Central Registry.

Under the Ghanaian regime, the Registrar of Companies is to collaborate with other authorities for the purpose of maintaining, verifying and updating the register. The Registrar of

[74] Lord Henley (BEIS), UK Public Register of Overseas Entity Beneficial Ownership: Written statement HLWS417, 24 Jan. 2018.

[75] House of Commons library briefing paper Mar. 2019.

[76] *Ibid*.

Companies is also to put in place accurate measures to ensure accuracy of information including the development of a system that can verify and confirm the information provided.

Of course, the law provides penalties for persons who intentionally provide false information but this sanction, typical of most others in corporate law enforcement, are *ex-post facto* and do not play a preventive role. The focus should rather be on encouraging or even ensuring that accurate information ends up on the Central Register, and not accumulating inaccurate information only to subsequently punish the providers of such information. Some writers, however, believe that the most reliable way to assure the credibility of information disclosed includes imposing significant penalties on those who publish inaccurate information.[77] Inasmuch as this option is the most widely used, it is the writer's opinion that such measures are counterproductive and rather increase the cost of compliance.

Clearly, the success of any beneficial ownership disclosure regime would largely lie with the accuracy of the information provided. In line with this, the verification of information obtained through self-reporting by a licensed service provider would be a step in the right direction. A de jure enforcement mechanism without a de facto one does not lead to desired results.

Enforcement must also require the listing regulations of the Ghana Stock Exchange providing additional sanctions for listed companies that fail to comply with the laws on disclosure. Though this may sound overly stringent at first glance, the far-reaching effects of public companies evading laws on disclosure should necessitate such intervention. Providing additional sanctions to listed companies who fail to comply with the disclosure requirement, or even provide inaccurate information, would ensure to some extent, the protection of investors and other stakeholders.

To top it off, private enforcement must also be encouraged. Public enforcement alone is unlikely to be sufficient.[78] In order to reap the full effects of the regime, private persons must be willing to proceed to the law courts to seek the assistance of the courts in getting companies to comply with the regime. Stakeholders of companies, whose interests are likely to be affected by the failure of a company to comply with disclosure rules, must be willing to engage in litigation to protect their interests.

Enforcement should of necessity also mean the presence of an institution that is tasked with ensuring compliance with the regime. Such oversight responsibility is likely to ensure that entities in fact comply with the disclosure regime and sanctions are meted out to those who fail to do so. The presence of an institution with such oversight responsibility would not be totally effective, in the absence of mechanisms that promote transparency. Whichever institution is tasked with this responsibility must have in place reporting systems on compliance that are made available to the public, to allow for scrutiny by civil society and the general public. Such a system would provide for a public evaluation of the effectiveness or otherwise of the disclosure regime.

Another challenge with statutory beneficial ownership disclosure globally is the issue of access. Considering the depth and possible sensitivity of information to be provided by shareholders, should this information be made publicly available or should access be limited to 'competent authorities' only? A second leg of this challenge is whether or not an exception must be created for persons whose information, if provided, may genuinely lead them to being exposed to some harm.

There appears to be no question on the need for relevant authorities (law enforcement and regulatory agencies, tax authorities and financial intelligence units etc.) being given timely access to information on the Central Register to aid them in their various mandates. The issue however is whether private individuals, whether or not they have demonstrated some legitimate interest, should be given unhindered access to beneficial ownership information? This concern flows from the possibility of allowing private access to the Register infringing upon privacy laws.

The Companies Act of Ghana mandates a company registered under the Act to open its register of members to both members of that company and other individuals for inspection.[79] This is, however, made subject to reasonable restrictions that the company may impose. Taking into consideration the fact that the law allows companies to make reasonable restrictions on the inspection of their register of members, and that these restrictions may possibly include restricting access to certain sensitive information of members, it stands to reason that access to beneficial ownership information can also be regulated.

In the case of competent authorities, information on the Central Register must be made readily available to them without fail, which is what the current regime provides for. In the case of private persons, however, the Registrar is mandated to make an electronic format of the Register available to members of the public for inspection, in line with open data best practices.[80]

It can however be argued that access to information on a Central Register must be limited to persons who can demonstrate a legitimate interest in the information being sought. The demonstration of ample interest can span a number of scenarios; the underlying theme being that the person in question needs the information from the Register in order to avert some loss or be able to obtain some remedy for a wrong resulting from an infraction by the company in question.

Utilizing this approach ensures that while competent authorities have access to information without restrictions, members of the public can have the same level of access once they have succeeded in demonstrating a legitimate interest in the information they seek. This approach strikes a fair balance between access to beneficial ownership information and respecting the privacy rights of those whose information has been compiled.

In the case of Ghana's regime, however, information on the Central Register is made publicly available. It is not immediately clear that the open data best practices would be put in place with the operationalization of the Register.

On the issue of providing exemptions for persons who demonstrate successfully that having their information in the Register may cause some form of harm to them, the United Kingdom provides for such limited exclusions. Because infor-

[77] *Ibid*., Gilson, *supra* n. 10.
[78] *Ibid*.
[79] Section 36, Act 992.
[80] Section 373 (3)(c), Act 992.

mation in the Register is made public, there are some special cases whereby a person is granted an exemption from providing his details in the Register. In such cases, there is a demonstrated likelihood of the individual being subjected to serious harm or intimidation should his or her details be put in a public register.

Similar exemptions also appear in the Ghanaian legislative framework, which, in the opinion of the writer, is worth providing for. Since the current regime allows for information on the Central Register to be made publicly available, an opportunity must be given for genuine cases of exclusion of information from the Register.

As intimated earlier in this work, there are genuine reasons why a shareholder may want to make arrangements to hide his interest in a company. Sometimes, such anonymity may be required for the protection of that person's very existence. It is in cases such as these that the law must provide limited exemptions to providing one's name in the Register. Limited exemptions will ensure that the opportunity provided is not abused to the detriment of the regime. In order to avoid the possibility of abuse of such an opportunity, the limited exemptions can be made subject to court determination and scrutiny. The provision of an exemption to some persons can be done upon the acquisition of a court order to that effect. If a person seeks to have his information omitted from the register, he must be made to secure an order of a court to that effect.

It is also the observation of the writer that for this disclosure regime to be beneficial, there must be coordination and cooperation among the various competent authorities, centralizing their operations in order to benefit from the information at the Central Registry. In the past years, the Government of Ghana has embarked on various projects to digitalize records of citizens and their activities, all in a bid to fight illicit financial flows and under declaration of revenue. Such projects would benefit the law enforcement and regulatory agencies as a well-linked and centralized information registry would provide them with the necessary information. In the context of beneficial ownership disclosure, it is particularly important that tax authorities, financial intelligence agencies and other competent authorities liaise and exchange information in a manner that fosters co-operation in the fight against financial and economic crimes. Without synchronization in the operations of authorities concerned with beneficial ownership information, the purpose for the establishment of the regime may be defeated.

Also, since the fight against white collar crimes has become so sophisticated and widespread, global action is necessary to ensure any significant victories. It is necessary for countries to cooperate and exchange information in order to nip this phenomena in the bud.

In the case of countries on the African continent, regional cooperation is a good start in the attempt to broaden the fight. Regional cooperation in this context would require that competent authorities in the African region share information and strategies on the way forward in the battle against economic crimes. Fortunately, there have been some attempts by some African countries to lead such regional collaboration. At the London Anti-Corruption Summit in London, Ghana, Kenya and Nigeria committed to establish beneficial ownership registers that would collect and share information on beneficial owners. Ghana has for one translated this commitment to action with the legislative framework for beneficial ownership disclosure. However such collaboration as was envisaged at the summit is yet to materialize on the African continent. In recognition of the threat posed by illicit financial flows in Africa, the African Union has accomplished some commendable strides in the fight against the canker. Compared with the strides made in the European Region and the Americas, Africa is clearly lagging behind in this regard.

Another topical issue is the specification of a threshold for disclosure. While some countries[81] specify the level of ownership or control rights a person must have in order to qualify to disclose his interest, other countries[82] do not provide a threshold. The justification for specifying a threshold may be that failure to do so is likely to result in disclosure by members who have insignificant control. Under the Ghanaian regime, a person who directly or indirectly holds 5% or more ownership in companies classified as high-risk (extractive, real estate, used car dealership, financial and gambling sectors) must be registered as a beneficial owner. In the case of foreign politically exposed persons, an ownership percentage of at least 5% is required but all Ghanaian politically exposed persons must be reported regardless of their level of ownership. In all other cases, a reporting threshold of 20% is required.

The writer holds the view that the specification of thresholds is not the best option for the country, considering the novelty of the regime. Providing thresholds for reporting beneficial ownership may provide fertile grounds for some ultimate owners to go unnoticed. It is the writer's position that beneficial ownership aims to reveal persons who have ownership in a legal entity or exercise control in same. As a result, disclosure should not be hinged on how substantial one's level of ownership or control is.[83]

6 Conclusion

This article has attempted to examine the benefits of beneficial ownership disclosure to corporate governance in Ghana. The genesis of beneficial ownership disclosure in the country has been recounted, with the aim of establishing what necessitated the need for the regime in the country. The framework of the regime has also been evaluated and possible shortfalls identified. The writer concludes that disclosure is likely to play a key role in the management of the relationship between a corporate body's organs and other stakeholders. However, to enjoy the full benefits of disclosure, more stringent enforcement of the disclosure regime is recommended as well as coordination, corporation and collaboration between relevant institutions, among other recommendations. For the benefits of disclosure to be felt in the governance of institutions, the company itself also has a significant role to play by ensuring the accuracy of information submitted to the Central Register and avoiding actions and inactions that are likely to undermine the effectiveness of disclosure. However, since this cannot be guaranteed, an institution to exercise oversight responsibility to ensure compliance with the regime is advocated. Such an oversight institution ought to be transparent in its operations by making its reports on its activities available for scrutiny by civil society and the general public.

[81] The United Kingdom e.g.

[82] Botswana, Argentina, Saudi Arabia.

[83] *See* Andres Knobel, *Beneficial Ownership Definitions: Determining 'Control' Unrelated to Ownership*, https://taxjustice.net/2020/07/23/beneficial-ownership-definitions-determining-control-unrelated-to-ownership/ (accessed 30 Sept. 2020).