



What should be included in Corporate Registries? A Data Checklist

Part 1: Beneficial Ownership information

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Foreword. This Beneficial Ownership (BO) checklist is a preliminary attempt to provide policymakers currently working on establishing BO registries in many countries with all the relevant issues that should be considered and addressed. The checklist does not in any way replace the development of a full standard yet to be completed and adopted. Part 2 of this series will include relevant accounting and financial information that we believe every corporate or commercial registry should provide. We welcome your feedback, additions and suggestions for improvement by contacting us at andres@taxjustice.net

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1. Introduction

1. The world is moving towards the registration of beneficial owners (BOs) who are the natural persons who ultimately own, control or benefit from legal persons (e.g. companies) and legal arrangements (e.g. trusts). If made public, these registries would increase financial transparency. Public registers of BOs are the only way to prevent criminals from hiding behind opaque structures and nominees from engaging in tax evasion, money laundering, fraud, and other forms of corruption including the financing of terrorism. They are also a prerequisite for the smooth functioning of markets by providing basic information for market participants and regulators so they know who is doing business where, as well as for the wider understanding of patterns of national and international economic activity.

2. In 2014 the G20 published its High Level Principles on Beneficial Ownership Transparency (G20 2014). In 2015 the European Union approved the 4th AML Directive (EU 2015) establishing central registries of beneficial ownership for companies and for some trusts. After the Panama Papers, the [European Commission¹ has proposed](#) to amend the EU Directive and enlarge the scope of trusts that would be covered by this legislation. It also proposes public access to beneficial ownership information for most types of entities. In 2016 the UK made available a [free online registry of BOs of companies²](#) in open data format. Ukraine has also created a public registry of beneficial ownership, and Afghanistan, France, Ghana, Kenya, Nigeria, the Netherlands and South Africa have committed to introducing one (Global Witness/Global Financial Integrity 2016: 14,22). In relation to global monitoring of this process, the OECD's Global Forum on Exchange of Information together with the Financial Action Task Force (FATF) started to assess countries' availability of BO information in 2016 (OECD 2016). The World Bank and the Extractives Industry Transparency Initiative (EITI) are also working on this issue (EITI 2016).

3. Crucially, BO data should be incorporated into existing corporate registries instead of creating new and separate repositories of data, and must be matched with information on the financial position, annual accounts and substance of economic activity of the registrants. Knowing of the existence of a joint venture between a natural resource company and a Minister in charge of mining raises questions, but only company accounts can answer them. And it is a different type of problem if a multinational company has a hundred dormant subsidiaries in 'tax havens', or if it has a single haven subsidiary which accounts for 90% of its global profits. A trust that gives out undocumented loans without them ever being paid back and without technically making a distribution may have all BOs duly registered, but only looking at the accounts can reveal those loans. Therefore, *measuring the number and existence of beneficially owned structures is not enough* because a key feature of progress on BO data is that it can be linked to data on *activity*.

¹ http://europa.eu/rapid/press-release_IP-16-2380_en.htm; 3.1.2017.

² <https://www.gov.uk/get-information-about-a-company>; 3.1.2017.

4. For the Tax Justice Network, BO data has been a focus since our original policy platform was created in 2003-05 (see e.g. Tax Justice Network 2005). However, we have never pursued it in isolation. At the broadest level, our assessment of jurisdictions' financial secrecy encompasses more than forty components, summarised in the [15 indicators](#) which make up the [Financial Secrecy Index](#) (FSI). Policymakers and activists wishing to consider priority areas for their jurisdiction can examine the detailed country reports published every two years since 2009. In 2012, TJN published a report that summarised some experiences of the work around the FSI and established relevant benchmarks for the design of trust and foundation registries (Meinzer 2012: 46-49)

5. Jointly with interested researchers, international organisations and civil society organisations, TJN will continue to develop a full Global Corporate Registry Standard, laying out a model for jurisdictions to ensure comprehensive corporate transparency. That standard will go far beyond beneficial ownership and include, among other things, details about financial information on the registered legal entities and arrangements.

6. In the specific context of the current push to register BO data however, there is a need for additional material, which this current paper seeks to address. In it, we aim to provide policymakers and civil society organisations with more focused and immediate, less formal guidance. In particular, we offer here a checklist with which to assess and improve upon countries' current and/or proposed legal frameworks for BO registration, as these are moving forward rapidly in many places.

7. The reasoning in favour of public registries of beneficial ownership has been laid out in great detail and through many case studies³ (Global Witness/Global Financial Integrity 2016; Global Witness 2014; The B Team 2015; Global Witness 2015; Transparency International EU et al. 2016; Knobel/Meinzer 2016a, 2016b). The principles underpinning the checklist below have been drawn from the aforementioned reports, case studies and the work relating to the Financial Secrecy Index. They are summarised in Annex A. Some widespread fallacies with respect to beneficial ownership registration, and how to avoid them, are summarised in Annex B.

³ See also these websites: <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/>; <https://www.globalwitness.org/en-gb/blog/what-does-uk-beneficial-ownership-data-show-us/>; <https://blog.opencorporates.com/2017/02/28/germany-do-not-let-personal-security-be-the-bait-and-switch-for-public-accountability/>; 23.2.2017.

2. Checklist for Beneficial Owner Registration

8. The following table offers a checklist that those creating and/or assessing a BO registration system should consider. You can download the stand-alone template in [Excel](#) or [Word](#). The second column describes the necessary features of the BO registry, while the fourth column lists hard-to-spot loopholes which should be avoided because they prevent compliance with an effective BO registry. The third column is to be filled out by anyone wanting to evaluate a country's BO register.

2.1 Basics for the registration of beneficial owners

#	THE REGISTER IS:	CHECKLIST (to be filled by user)	WARNING: LOOPHOLES THAT PREVENT COMPLIANCE
1	Held/supervised by a public authority (e.g. company register, tax authority, central bank, customs office)		<i>Only the entity/service provider keeps the information but authorities may request the information.</i>
2	Central (one for the whole country)		<i>Each State/Province has its own register.</i>
3	Accessible online without any pre-registration requirement (e.g. making this equivalent to searching on Google)		<i>Access only in person. In addition, registration is required and the entity can find out who was searching for their information.</i>
4	Free		<i>Access has a cost of \$...</i>
5	In open data format (machine-readable data freely available under an open licence)		<i>Information not stored in machine-readable format, only in paper or as scanned images.</i>
6	Public		<i>Access is restricted to authorities, and/or obliged entities (e.g. banks), and/or persons with a legitimate interest.</i>
7	Updated frequently: any transfer, loss or acquisition of ownership (e.g. transfer of shares, guarantee, appointment of beneficiary, etc.) has to be notified within a reasonable timeframe (e.g. 15 days)		<i>Update of information is voluntary and/or is required only once a year.</i>
8	Historical changes: it is possible to access information on all past BOs, with their corresponding start and end date as BOs.		<i>It is only possible to access current BOs, but not past ones.</i>

9	Searchable: free (online) search by all categories (entity name, date of incorporation, name of owner, director, residence of owners or directors, etc.)		<i>Search limited to company name, and/or user needs to know entity name, or entity incorporation number or any other pre-obtained information.</i>
10	Required for the entity/arrangement to be legally valid and/or allowed to operate in the country		<i>Registration is only required if the entity/arrangement has taxable income or has a local owner or local assets (etc.).</i>
11	All confidential BO information (See Section 2.3.3 e.g. BO's personal address, day of birthdate or TIN) is accessible by all relevant authorities (e.g. law enforcement, tax authorities, financial intelligence unit, etc.)		<i>Only tax authorities have access to this information</i>

2.2 Entities and Arrangements subject to registration

	REGISTRATION IS REQUIRED BY ALL:	CHECKLIST (to be filled by user)	WARNING: LOOPHOLES THAT PREVENT COMPLIANCE
<i>Domestically incorporated/created or governed by domestic laws:</i>			
12	Companies (e.g. corporation, LLC, SA, SRL, SCA, Seca, AG, GmbH, etc.)		<i>Only companies with limited liability, or companies limited by shares, or only some types of companies.</i>
13	Partnerships (e.g. LP, LLP, Asociación, etc.)		<i>Only partnerships with limited liability, or some types of partnerships.</i>
14	Trusts (e.g. fideicomiso, Treuhand, fiducie, waqf, etc.), if domestic laws allow their creation		<i>Only trusts with taxable income or with a resident trustee, etc.</i>
15	Foundations (e.g. fundación, Anstalt, STAK, Stiftung, etc.)		<i>Only if foundation is private or if foundation is for charitable purposes, etc.</i>
16	Any other entity or arrangement (different from an individual) allowed to hold assets (e.g. bank account, real estate) or engage in commercial transactions (e.g. buy or sell goods or services)		<i>Domestic laws do not have a residual provision requiring any other entity or arrangement to register.</i>

<i>Incorporated outside the jurisdiction but with local operations (e.g. with local bank account, holding / owning local assets or engaging in commercial transactions in the country):</i>		
17	Foreign companies (e.g. corporation, LLC, SA, SRL, SCA, Seca, AG, GmbH, etc.)	<i>Only foreign companies undertaking more than one single transaction, etc.</i>
18	Foreign partnerships (e.g. LP, LLP, Asociación, etc.)	<i>Only foreign partnerships undertaking more than one single transaction, etc.</i>
19	Foreign trusts (e.g. fideicomiso, Treuhand, fiducie, waqf, etc.)	<i>Only trusts with taxable income or with a resident trustee, or resident beneficiary or settlor, etc.</i>
20	Foreign foundations (e.g. fundación, Anstalt, STAK, Stiftung, etc.)	<i>Only if foundation is private or if foundation is for charitable purposes, etc.</i>
21	Any other foreign entity or arrangement (different from an individual) allowed to hold assets (e.g. bank account, real estate) or engage in commercial transactions (e.g. buy or sell goods or services)	<i>Domestic laws do not have a residual provision requiring any other entity or arrangement to register.</i>
<i>Special cases</i>		
22	Entities listed in a stock exchange. However, a direct link to the listed entity's public data may be provided instead, if such data complies with all the requirements of the BO registry (e.g. open-data format, free, open license, etc.).	<i>All listed entities are exempt and/or a mere reference to a potential source of information is provided (e.g. check the SEC website).</i>
23	Regional Entities or arrangement (e.g. Societas Europaea). However, a direct link to the listed entity's public data may be provided instead, if such data complies with all the requirements of the BO registry (e.g. open-data format, free, open licence, etc.).	<i>No, all listed entities are exempt and/or a mere reference to a potential source of information is provided (e.g. check the registry of X country).</i>

2.3 Information to be registered

2.3.1 Defining Ownership Information

	THE COUNTRY'S LEGAL FRAMEWORK CONSIDERS/REQUIRES:	CHECKLIST (to be filled by user)	WARNING: LOOPHOLES THAT PREVENT COMPLIANCE
24	Bearer shares to be registered with a public authority and unregistered bearer shares are considered invalid. (This means that the law must prohibit issuing bearer shares after the law's cut-off date, and that pre-existing bearer shares must be registered with a public authority. Any outstanding unregistered bearer share becomes void and invalid after due date).		<i>Bearer shares may be registered/immobilized by a <u>private custodian</u>, and unregistered bearer shares are not void, but merely lose their voting rights or rights to dividends until they are registered.</i>
25	All BOs to be registered		<i>Only some BOs and/or all or some Legal owners (e.g. nominees) have to be registered</i>
<i>For companies, partnerships and similar entities</i>			
26	The BO definitions include any individual passing <u>any</u> of the "BO tests or thresholds" (see below). (This means that a BO would be any individual passing any of the BO tests or thresholds (ownership, voting, board of directors and residual)).		<i>Only the ownership test is applied</i>
27	Ownership test. The BO is any individual, directly or indirectly, holding at least 1 share. Provisory higher thresholds until the "1- share" threshold is in place should not be higher than 10%: any individual holding at least 1%, or 5% or 10% of shareholdings or interest in the entity. For high-value industries (e.g. extractives), the threshold should be as low as possible.		<i>Any individual holding more than 10% of shareholdings or interest in an entity (such as FATF "more than 25%"). The automatic application of this threshold (without any risk assessment) cannot be challenged at court</i>

28	Voting test. The BO is any individual, with a direct or indirect right to at least one vote. Provisionary higher thresholds until the “1-vote” threshold is in place should not be higher than 10%: any individual holding directly or indirectly at least 1%, or 5% or 10% of voting rights. For high-value industries (e.g. extractives), the threshold should be as low as possible.		<i>Any individual holding more than 10% (or a larger voting right). The automatic application of this threshold (without any risk assessment) cannot be challenged at court</i>
29	Influence test. The BO is any individual with the direct or indirect right to appoint or remove at least one Director or Manager.		<i>Any individual, directly or indirectly, with the right to appoint or remove the <u>majority</u> of Directors or managers.</i>
30	Control test. The BO is any individual with other direct or indirect means of control over the entity		<i>There is no residual test</i>
<i>Situations (if applicable) where no individual passes any of the BO tests</i>			
31	Top 10 owners. If no individual passes the BO test, then at least the top 10 owners ⁴ (e.g. members, shareholders, etc.) have to be identified as BOs.		<i>Only the senior manager is identified as a BO</i>
32	Senior manager. If no individual passes the BO test and there is no requirement to identify the top 10 owners (e.g. members, shareholders, etc.), then the senior manager is registered as such, but not as a BO. This creates a red flag (to alert the public that this legal structure has no identified BO).		<i>The senior manager is registered as a BO, or worse, the entity does not need to register anyone.</i>
<i>For trusts or foundations or similar arrangements</i>			
33	The BO is any party to the trust (e.g. all settlors, founders, protectors, trustees, members of the foundation council, beneficiaries, and any person with		<i>Only the trustee and/or the Foundation council, etc.</i>

⁴ The “top 10 owners” provision requires that if no individual passes the applicable ownership test (e.g. no one has more than X% of shareholdings) then at least the top 10 owners have to be identified as BOs. The number 10 supposes an ownership threshold of 10% of shareholdings or interests, although a lower threshold and thus higher number of owners could be applicable. The objective of this provision is that even if no individual passes the applicable ownership test, at least some owners will still be identified as BOs, instead of identifying “no one” or the senior manager as the BO.

	direct or indirect control over the trust or foundation).		
34	Minors and/or vulnerable people who are BOs still have to be registered (in addition to their legal representatives), but access to their information may be limited after a judge confirms on a case by case basis the need for such exclusion from public access to their information.		<i>Minors and vulnerable people are automatically considered non registrable</i>

2.3.2 Defining Management Information

	THE COUNTRY’S LEGAL FRAMEWORK CONSIDERS/REQUIRES:	CHECKLIST (to be filled by user)	WARNING: LOOPHOLES THAT PREVENT COMPLIANCE
35	All Directors/Senior Managers to be registered. If any of them are corporate entities, the BOs of those corporate directors must also be disclosed.		<i>Only some Directors/Senior Managers</i>
36	Shadow ⁵ directors, including anyone with a power of attorney or general administration powers over the entity or arrangement, to be registered.		<i>No registration of individuals with power of attorney or administration</i>

2.3.3 Ownership and Management data to be registered?

	FOR EVERY BO, LEGAL OWNER, DIRECTOR AND SENIOR MANAGER	CHECKLIST (to be filled by user)	WARNING: LOOPHOLES THAT PREVENT COMPLIANCE
37	Name (public access)		<i>No or not made public</i>
38	Address (not necessarily public)		<i>No</i>

⁵ A shadow director is not an appointed director but a person in accordance with whose directions or instructions the directors of a company are accustomed to act. Ideally, a shadow director would be covered by a comprehensive BO definition that includes any individual with effective control over an entity. Enforcement of this may be difficult, but penalties for not disclosing shadow directors could help. Also, if one person appears as the director of thousands of companies, it is likely that those companies will have shadow directors, while the appointed one is a mere nominee following instructions.

39	Date of Birth (month and year is public)		<i>No, or not made public</i>
40	Nationality (public access)		<i>No or not made public</i>
41	Country of Residence (public access)		<i>No or not made public</i>
42	All of the above is documented and verified by an official ID document (passport, personal ID, etc.), of which copies need to be registered (not public).		<i>No, copies do not need to be registered.</i>
43	Local Tax Identification Number (TIN) (not necessarily public)		<i>No</i>
44	Foreign TIN? (not necessarily public)		<i>No</i>
45	If applicable, status as Politically Exposed Person (PEP) or related to a PEP (public access), detailing at least: position, role and date in office. Submit also relationship to the PEP (if the BO is not a PEP him/herself, but a relative or associate of a PEP).		<i>No or not made public</i>
<i>For BOs</i>			
46	Start-date and end-date since (and until) the individual was a BO		
47	Type of beneficial ownership (e.g. ownership, voting rights, right to appoint Director, other means of control, settlor, trustee, etc.) (public access)		<i>No or not made public</i>
48	Percentage of beneficial ownership, if applicable (e.g. 20% of shareholdings, 10% of voting right) (public access)		<i>No or not made public</i>
49	Means through which BO is exercised (e.g. nominee, legal entity, etc.) (public access)		<i>No or not made public</i>
<i>For Legal Owners</i>			
50	All legal structures or nominees in the chain of ownership including both: all those legal structures and nominees "owning" the target entity and all those "owned" by the target entity (public access to all this information)		<i>No or not made public</i>
<i>For Directors and Senior Managers</i>			
51	Executive role? (e.g. Chairman) (public access)		<i>No or not made public</i>
52	Full-time / part-time employee (public access)		<i>No or not made public</i>

53	Non-Executive Director (public access)		<i>No or not made public</i>
54	Nominee acting on behalf of others, specifying for whom (public access)		<i>No or not made public</i>
55	List of all other legal entities and arrangements where each Director or Senior Manager has an equivalent position		<i>No or not made public</i>

2.3.4 Other Documents⁶

	THE COUNTRY'S LEGAL FRAMEWORK CONSIDERS/REQUIRES FOR ALL ENTITIES OR ARRANGEMENTS REGISTRATION OF:	CHECKLIST (to be filled by user)	WARNING: LOOPHOLES THAT PREVENT COMPLIANCE
56	Legal Entity Identifier (LEI) if one exists (public access)		<i>No</i>
57	Legal address (public access)		<i>No</i>
58	Operating/Trading address (public access)		<i>No</i>
59	All founding documents (as applicable, such as constitution, bylaws, deeds) that identify or name an individual who falls under the definition of a BO (e.g. a settlor or shareholder or protector), should be registered and made public, for them to be legally valid. Any additional instructive or suggestive documents (such as letters of wishes, letters of intent, protocols, appendices, etc.) need to be registered, but not made public, for them to be legally valid.		<i>No, some documents such as bylaws or letters of wishes can be enforced and are valid without registration and/or disclosure.</i>

⁶ This paper does not refer to financial information because that will be specified in another paper containing the whole standard.

2.4 Process, Effectiveness and Enforcement

	THE COUNTRY'S LEGAL FRAMEWORK CONSIDERS/REQUIRES:	CHECKLIST (to be filled by user)	WARNING: LOOPHOLES THAT PREVENT COMPLIANCE
<i>Process of Registration</i>			
60	All domestic and foreign entities and arrangements must appoint a local publicly certified and supervised professional natural person who will be the responsible party (with personal liability) for the accuracy of the registered BO information and the provided ID documents (see 2.3.3 above).		<i>No local responsible party, or the local responsible party does not need to be a professional, or is not supervised.</i>
61	The registration of an entity's/arrangement's beneficial owners requires at least one face-to-face meeting of (i) a publicly certified and supervised professional, who has an explicit mandate to operate independently and impartially (notary, company secretary, etc.), or (ii) a public official of a government agency; with at least (a) one beneficial owner, or (b) the responsible party. During the face-to-face meeting the ID documents of all BOs and the responsible party need to be vetted (in original for those present, and in copies, for those absent).		<i>Registration is possible at distance with a face-to-face meeting required only between liable representatives of the legal entity/arrangement, and a local commercial service provider.</i>
62	Third party introducers of BOs are not allowed, or only if liability for potential errors is explicitly and in writing assumed by the (local) responsible party, and if copies of all ID documents of all BOs and the responsible party are stored and updated at the registry.		<i>Even non-resident company service providers can act as third party introducers of BOs, waiving the requirement of vetting, or of verifying, BO identities and documents.</i>
63	The registry contains "data validation" formulas, preventing missing and inaccurate information		<i>No data validation, any information may be filed, e.g. writing</i>

	(e.g. a TIN or passport number of only one digit, etc.).		<i>the name of a country with errors.</i>
<i>Effects of Registration</i>			
64	An entity or arrangement is considered to legally exist only after comprehensive registration (see all points above). Registration has a constitutive effect. The entity or arrangement does not exist until properly registered.		<i>Registration is voluntary or merely "declarative". The entity or arrangement will still be valid, although some restrictions may apply (e.g. no limited liability).</i>
65	No entity or arrangement may be binding on third parties unless it has been properly registered and basic information is publicly accessible.		<i>Public access is not required to be binding on third parties.</i>
<i>Specific consequences in case an entity's or arrangement's registration is incomplete (no BO was identified), inaccurate (false information) or not updated (e.g. annual return not filed)</i>			
66	The entity is struck off the BO registry, not being allowed to operate any more (but all of its existing data is stored and not erased). Domestic laws could determine what happens to any of the entity's assets (e.g. all assets are frozen, all assets are considered belonging to any shareholder or identified senior manager, or all assets are confiscated by the State, etc.).		<i>The company is struck off/liquidated and all the data is erased and removed from the registry</i>
67	Financial institutions banned from starting or engaging in business with them.		<i>No</i>
68	Other registries (e.g. real estate) banned from registering any new transaction related to assets held by such entity/arrangement.		<i>No</i>
69	Entity/arrangement and all of their owners and directors are blacklisted (in a public list, to prevent or at least alert authorities and the public whenever these entities or owners or directors are involved in any other entity or transaction, e.g. attempt to open a bank account).		<i>No</i>
70	Penalties against owners and/or Directors for lack of registration or update of existing entity or		<i>No</i>

	arrangement, or for providing inaccurate information.		
71	Penalties and/or prison sentence against owners and/or Directors for deliberately providing false or inaccurate information.		No
72	Inactivate TIN of Entity and/or owners and/or directors.		No
<i>Cross-checking of information to identify inaccuracies</i>			
73	The Registry allows online and anonymous reporting or denouncing of inaccurate or missing information about any information held in the Registry, and those reports are made public (for example, in case a user looking at the BO registry is aware that any entity's registered data is inaccurate or wrong). The registry will have to assess the claim and then report its decision, with any evidence that justifies that decision (for example, in case the claim is dismissed for being false).		<i>No, or the reports are not made public after a week.</i>
74	Government level data: Information is automatically cross-checked (by computers and algorithms, not humans) with records and registries of tax authorities, central bank, financial intelligence unit, immigration, etc. This prevents the registration of a person with the wrong TIN or an address that does not match that registered by authorities.		<i>Automatic cross checking does not take place or only after registration has taken place.</i>
75	Private data: Information is cross-checked (by computers and algorithms, not humans) against credit card records, banking records, etc. to determine the profile of BOs. There is a risk profile of each BO and authorities are alerted, for example if an individual without tax returns or banking records appears as the BO of a company involved in procurement contracts, etc.		<i>Automatic cross-checking does not take place, or only manually.</i>
76	Registry is connected to other BO registries from abroad, and with PEP registries, real estate registries, etc.		<i>No connection</i>

<i>Statistics</i>			
77	Number of: registered entities and arrangements, new ones, liquidated ones, "flagged" ones (e.g. inaccurate information, no annual return filed), sanctioned entities and persons, complaints received.		<i>No statistics</i>

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Annex A: Principles to effective public BO registries

These are guiding principles that should be considered for BO registration. Existing corporate registries should be adapted by becoming digital (information subject to be filed and searchable/usable online) and by widening their scope to include comprehensive BO information.

No exceptions

All types of entities and arrangements (companies, partnerships, trusts, foundations, etc.) and all of their types of members, shareholders, partners, related parties (e.g. settlor, trustee, beneficiaries), etc. should be subject to BO registration under all circumstances. In other words, there should be no exceptions for particular types of companies or for particular types of owners (e.g. unlimited partners). Registration should not be limited to specific cases, such as only if the company has taxable income or engages in business.

Incorporation as pre-requisite for legal existence/validity

Anything other than an individual (e.g. company, trust, partnership, foundation, or other type of entity, legal person, legal arrangement or similar) that intends to "operate" in a country's territory (e.g. open a bank account, hold assets, engage in commercial transactions, etc.) should first be required to incorporate with a domestic government agency and its beneficial ownership information registered. Temporary endeavours, such as joint ventures, would not need to register as long as they do not expect to "operate" as such. For instance if it is the companies party to the joint venture who are the ones holding assets, bank accounts or billing invoices and paying taxes. Any foreign entity or arrangement attempting to have "operations" in one country should equally register before it is allowed to operate, regardless of whether or not it is classified as a permanent establishment (which is relevant for tax purposes, but not for transparency ones).

Public disclosure as a pre-requisite to be binding on third persons

Anything other than an individual (e.g. entity, legal person, legal arrangement or similar) that intends its "operations" in a country's territory (e.g. title or ownership of bank account or any assets, or rights and obligations within a commercial transaction, etc.) to be binding on third persons, should first publicly disclose its basic information (e.g. identity of beneficial owners, accounts and assets/value held). If there is no BO information (and accounts) accessible by the public, no entity or arrangement should be able to affect or be binding on third persons.

Unique identifiers to compare and cross-check data

Information, to be useful, must be comparable, match-able and automatically checkable. It is essential to provide unique identifiers such as legal entity identifiers (LEIs) or tax identification numbers (TIN) that do not depend on the phonetic and potential different spelling (e.g. a name or address). This allows data to be compared across registries and linked to other sources of information, e.g. automatic exchange of information. It is ideal to have information in open data format (machine-readable

data freely available under an open licence), to allow for easy interfacing with other programmes and users. If global identifiers are available, they should be favoured against national identifiers, or both should be used. In addition, given the high risk of corruption, BO information should be cross-checked at the very least with registries of Politically Exposed Persons (PEPs) to ensure that PEPs have reported their interests in companies and trusts, and there is no conflict of interest, e.g. in procurement contracts or extractives licences.

Annex B: Loopholes to avoid

During the research process for the FSI, we have come across important common loopholes that prevent BO registries from being effective.

Definition of BO: more than 25% of ownership (for companies) and trustees (for trusts)

As regards the definition of BO, the FATF suggests as an example for a company, anyone holding more than 25% of the shareholdings. However, this allows any entity owned by at least four persons to avoid BO identification. Thresholds for legal persons should be lowered to at least 1%, 5% or 10% of ownership, or ideally to anyone holding one share or equivalent (Knobel / Meinzer 2016a). With respect to trusts, some countries consider only the trustee and/or anyone with effective control over the trust to be a BO. In practice, however, trusts are often too complex and trust documents may remain hidden to determine who is really in control. Countries should apply the OECD's CRS definitions that consider all related parties to the trust as BOs, including all settlors, protectors, trustees, beneficiaries, etc. (Knobel / Meinzer 2016b). In any case, the definition of BO should not encompass only an ownership test but also other tests such as percentage of voting rights, right to appoint or remove Directors or a residual "other ways to directly or indirectly control or influence the entity or arrangement".

Requesting BO information from the entity or a service provider

The OECD's Global Forum and the FATF considers it enough if authorities may request ownership information directly from the entity (e.g. company) or from a service provider (e.g. trustee). However, a company or service provider may easily refuse to provide information, erase or modify data, or allege that information is held abroad. In either case, information will not be available when necessary. BO information can only be trusted if a government agency holds it (e.g. company register, tax authority, central bank, customs office, etc.) and if this information is publicly accessible, to prevent corrupted public officers from changing the official registry.

Suspending rights of pre-existing bearer shares and immobilization by private custodians

While there is consensus that availability of bearer shares is inconsistent with transparency and BO registries (because the owner would be anyone holding the physical papers at any given time), some countries consider that prohibition of bearer shares and/or their immobilization by a private custodian is enough. Immobilization by a private custodian suffers from the same problem as the previous point: it depends on a private party or service provider to betray its client and actually send unaltered information to authorities when requested. Opposite to this, holders of bearer shares should be registered and immobilized by a government agency. As for pre-existing bearer shares, the only solution is to determine that they will be void and invalid after a reasonable timeframe allowed for their immobilization or registration with a government agency. Alternative sanctions for pre-existing bearer

shares, such as no rights to dividends nor to vote, are mere “suspensions” of rights, but do not ensure that the holder of the bearer share will be identified.

No registration of corporations listed in a stock exchange to avoid duplication

BO registration requirements should not be waived for corporations listed in a stock exchange or regional companies (e.g. *societas europaea*) on the basis that some other institution (e.g. the Securities Exchange Commission or a foreign corporate registry) holds the relevant BO information. Waivers should take place only if the required BO information is already publicly available complying with the same standards (thresholds, open-data format, etc.) and a direct link to such source of information is provided. Unless BO information from listed companies is subject to all the same conditions of BO registry data, waivers should not be available at all. For example, if a country decides that the threshold to be considered a BO is 5% of ownership, then listed companies should be waived only if information on the individuals holding 5% of them is already publicly available in an open data format. If a country decides to have the one share threshold, there could be special provisions⁷ for listed corporations only for those BOs holding between 1 share and 5% of the corporation (which is a usual threshold for reporting to securities regulators).

Limit registration to “limited liability” entities

Countries usually impose more requirements on entities that limit their owners’ liability because they entail a higher risk for society (e.g. in case of damages, the owners will in principle not respond with all of their personal assets but only with their share or interests in the entity). However, from a transparency perspective, an entity that allows an individual to remain hidden is a risk, regardless if the individuals’ liability is limited or unlimited. For someone committing a crime, limitation of liability against legitimate creditors is clearly irrelevant. Therefore, all types of entities and arrangements, and not only those that enjoy limited liability, should have to register their BOs.

BO information is only relevant for tax purposes

While much of the progress on BO is related to tax issues, BO data may be relevant for money laundering, corruption, fraud and finance of terrorism, all of which may take place regardless of any taxes being owed. That is why BO registration should not be limited to entities that are subject to tax, but should apply to any entity or arrangement created under the laws of the jurisdiction or intending to operate in a territory.

⁷ This would depend, for example, on whether a global registry of financial assets is already available. In such case, there could already be information on any individual holding at least one share of a listed corporation.