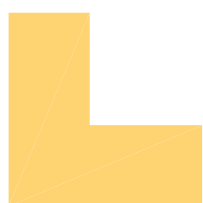



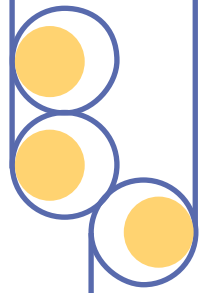
Uses and purposes of **beneficial ownership data**

Andres Knobel

14 November 2023

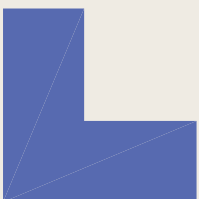


Uses and purposes of beneficial ownership data



The EU Anti-Money Laundering Directive (AMLD) amended in 2018, known as AMLD 5, required EU members to establish public access to beneficial ownership information for legal persons incorporated in the EU. However, on 22 November 2022 the European Court of Justice invalidated public access to beneficial ownership information of local legal persons. The court ruled it was not proven that any member of the public needs access to information for the purposes of combatting money laundering.

While the requirement for public access was established by Directive dealing with anti-money laundering, beneficial ownership information serves several purposes, as recognised by some EU countries that decided to keep their registries open. This brief explores these “other uses and purposes”.





Exposing corruption

Conflict of interest among high-risk companies

#1

Companies involved in high-risk sectors such as procurement, extractive industries and companies receiving subsidies may be involved in a conflict of interest. Beneficial ownership transparency could reveal cases where a company that directly contracted with the State, or one that is awarded licenses or receives subsidies, is owned by the public officer involved or responsible for awarding the contract or license. In more sophisticated cases, the conflict of interest may refer to a friend or family of the public official.

For example, the Slovak public register helped reveal a conflict of interest where [the Czech Prime Minister was the beneficial owner of a company receiving EU subsidies](#).



Conflict of interest among local or foreign suppliers of high-risk companies

#2

Same as above, but in this case the procurement company is not ultimately owned or controlled by a public official with a conflict of interest, but rather the supplier (or the supplier of the supplier) of the procurement company, to hide the conflict of interest through the value chain.

For instance, in Argentina [companies involved in procurement for roads and highways were required to contract with a specific supplier controlled by a public official who was in charge of supervising road concessions and awards](#).



STAKEHOLDERS



Authorities



Investors and firms



Academia



Civil society orgs



Citizens and Activists



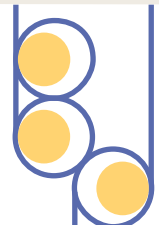
Obligated entities



Media



Local and foreign authorities



Insider trading or conflict of interest through interests in investment funds or listed companies

#3

A public official interested in benefitting from their privileged information could benefit from investing in companies that will be awarded a government contract, or short-selling interests in a company that will receive a non-favourable judgement, or will be subject to a government agency's fines, etc. Beneficial ownership information over financial instruments, transactions and interests in investment funds or listed companies could reveal that the public official acquired or disposed of interests at a strategically crucial time.

For instance, [the Economic Minister of Argentina suspected that people with insider information traded bonds before the government made an announcement that would impact on the price of the bonds.](#)



Payment of bribes

#4

In cases where public officials receive bribes in exchange for approving or accelerating processes, unless the bribe is paid in cash, the public official as well as the company paying the bribe might set up an offshore company to channel the funds. Beneficial ownership information on the offshore company and an analysis of the sender of funds could reveal the payment of bribes.

For instance, [Odebrecht channeled funds to a web of offshore entities to pay for bribes.](#)



Unjustified or illegal enrichment

#5

Cases where an individual, especially if they are a public official, is holding a large amount of wealth that cannot be justified based on their declared income may be a sign of unjustified or illegal enrichment. While some public officials may have to disclose some information under compulsory asset declarations, beneficial ownership information on the individual's assets or transactions (eg purchases) is more effective at revealing any potential case of unjustified enrichment.

For instance, [the UK started issuing "Unexplained Wealth Orders" against foreign senior officials.](#)



Protecting democracy, rule of law and national assets



Evasion of sanctions by individuals

#6

Countries sometimes impose sanctions against individuals involved in major human right violations or as a form of political pressure, as seen with Russian oligarchs following the 2022 Russian invasion of Ukraine. Beneficial ownership transparency could reveal the entities and assets owned by sanctioned individuals (to enable their sanctioning), as well as the schemes to evade sanctions, such as changes of ownership or control before or upon the imposition of sanctions.

For instance, [one Russian oligarch was suspected of changing ownership and control of his trusts before the imposition of sanctions.](#)



Evasion of sanctions by countries

#7

Countries sometimes impose sanctions against other countries. Beneficial ownership transparency could reveal the entities the sanctioned country ultimately owns or benefits from in the sanctioning country, to make sure the imposed sanctions are not being circumvented.

For instance, the [Central Bank of Iran was able to evade US sanctions by investing into billions of US Treasury bonds with the help of a Luxembourg financial institution.](#)



Evasion of restriction on national strategic assets

#8

Many countries have national strategic assets, technologies and industries whose ownership and control may be restricted to only local citizens, to make sure the imposed sanctions are not being circumvented. Beneficial ownership transparency can reveal cases where non-permitted individuals or governments own shares or have control in national strategic assets.

For instance, the [US government accountability office \(GAO\) has warned that government agencies including the FBI and DEA were leasing high-security space from foreign owners including China.](#)



Illegal financing of political parties

#9

Criminals and other individuals could be illegally and secretly financing political parties or their political campaigns in exchange for favours, benefits, or legal amendments after they get elected. Beneficial ownership transparency can reveal details about any entities or nominees used to illegally fund political parties.

For instance, [Politico published an article about how “Unincorporated Associations” have been donating millions of pounds to British political parties without needing to register with authorities.](#)



Fake news and fake ads that undermine democracies

#10

Fake news, fake advertising, trolls and other means of disinformation can undermine democracies, erode trust in public institutions and influence elections. Beneficial ownership transparency can help reveal the individuals behind companies selling or paying for certain disinformation campaigns.

For instance, [Facebook removed a network of fake accounts that originated in Iran and targeted Instagram users in Scotland with content supporting Scottish independence.](#)

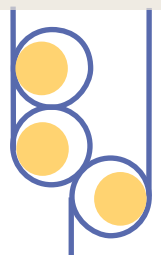


Asset recovery

#11

When an individual is prosecuted for a financial crime, eg money laundering, the consequence may involve a prison sentence. However, just as important is to recover the illicit assets, especially to compensate the victims of the crime. Beneficial ownership transparency on legal vehicles and the assets they hold can help identify assets that should be seized, confiscated or embargoed to make sure that criminals are not able to benefit from their ill-gotten funds and wealth.

For instance, [beneficial ownership transparency made it possible to recover a super-yacht and return it to Malaysia in relation to the 1MDB.](#)



Exposing tax abuse



Personal income tax evasion

#12

Most countries levy income tax on individuals. Tax abusers can setup offshore entities to conceal the income they receive. Beneficial ownership transparency on the entity and its assets and payments can expose any income concealed by use of offshore arrangements.

The automatic exchange of bank account information is based on revealing these tax evasion schemes, after several cases were discovered (eg the [US investigations on UBS, LGT and Credit Suisse](#)) where individuals set up foreign bank accounts and offshore entities to evade tax.



Corporate income tax fraud

#13

An individual may set up one or many companies to issue fake invoices to allow other companies to reduce their tax base based on payments for fictitious services. Beneficial ownership transparency can reveal that the real owner could have never provided those services. Alternatively, if authorities discover that a company is issuing fake invoices, it would need to identify the responsible beneficial owner engaging in the tax fraud.

For instance, [Argentina's tax authority has a special unit investigating fake invoicing companies which detected a web of companies owned by insolvent nominees that were issuing fake invoices worth billions.](#)



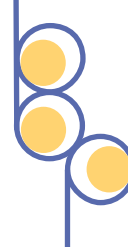
Wealth tax abuse

#14

Some countries levy wealth tax (during the life of a person), where the individual must pay a tax based on the value of their wealth. By hiding their ownership of assets or putting their assets into a legal vehicle, eg a trust, an individual could underpay wealth tax. Beneficial ownership transparency on assets and legal vehicles can reveal that the individual, continues to own, control or benefit from their assets and so should pay the correct amount of wealth tax.

For instance, [one billionaire attempted to underpay Argentine wealth tax by putting most of his wealth into a trust in order to claim that he no longer owned his wealth.](#)





Capital gains tax abuse

#15

Many countries levy capital gains tax, whenever an asset (eg a house) or share is sold. One way to escape capital gains tax is to sell the asset via indirect transfer, rather than a direct sale. The legal owner of the asset would remain the same. For instance, company A owns a house. Instead of selling the house to company B (which would trigger capital gains tax), company X (which owns company A) is sold to company B. The house effectively changes owners, but no one finds out because the legal owner of the asset (company A) remains the same. Beneficial ownership transparency could reveal that an indirect sale took place in an offshore country, whereby the beneficial owner of the asset has effectively changed.

For instance, [India accused Vodafone of engaging in an indirect transfer of shares to Indian capital gains tax.](#)



Inheritance tax abuse

#16

Some countries levy inheritance tax, a type of wealth tax upon death. One way to avoid inheritance tax is if authorities are not aware of the assets that will be inherited. Another way is if the assets are put into a legal vehicle, like a trust, that allows the assets to be used and enjoyed by the inheritors without the assets officially being distributed (ie inherited). For example, a mansion held in a trust can be lived in by its inheritors without ownership of the mansion being transferred to the inheritors. Since a distribution or transfer is not officially made, no tax is paid. Beneficial ownership transparency could reveal the assets and legal vehicles owned by an individual that should become subject to inheritance tax.

For instance, there was outrage in the UK after the media reported that [the new Duke of Westminster would avoid billions in inheritance tax due to the inherited estate being held in a trust.](#)



Dividend tax abuse

#17

Some countries levy tax on dividend payments, targeting for instance non-resident taxpayers who receive a dividend. One tax abuse scheme involves lending shares to a party not subject to tax or which receives a tax credit (eg a resident taxpayer). Typically, the shares are lent right before the dividend is paid, and then given back after the dividend was paid out and the tax was avoided or the illegitimate tax credit was obtained. Beneficial ownership transparency on the shares would reveal that these abusive transactions took place only to escape the dividend tax. A scandal involving this kind of tax abuse scheme, [called Cum-Cum, was discovered in Europe.](#)



Dividend tax fraud

#18

A way to engage in dividend tax fraud involves cases where taxpayers are entitled to a refund for the dividend tax that was unnecessarily paid (because the party shouldn't have been subject to such tax). However, by engaging in short-selling and other transactions, many parties can pretend to be holding a share and obtain a refund assuming that they have paid the dividend tax, even though none of them actually paid the dividend tax. Beneficial ownership transparency would easily prevent this fraud by determining who the real beneficial owner of the share is, preventing many parties from claiming ownership over the same share. [The Cum-Ex scandal, which involved this kind of dividend fraud, cost EU treasuries €55 billion.](#)



Round-tripping

#19

Countries sometimes seek to encourage foreign investment by establishing tax incentives for non-resident investors. A local taxpayer could fraudulently benefit from these incentives by setting up a foreign company and pretending to be a foreign investor. Beneficial ownership transparency would reveal in this scenario that the real owner of the foreign company is a resident taxpayer who shouldn't have benefited from the incentive for non-residents.

For instance, [India has suspected taxpayers of potentially engaging in round-tripping, particularly by using entities in Mauritius.](#)



Transfer pricing abuse

#20

Most countries have transfer pricing regulations to prevent abuses where multinationals engage in intra-group transactions to underpay taxes. Beneficial ownership transparency, especially disclosure of the full ownership chain of a company and its subsidiaries and parents could help disclose abuses.

For instance, [Chile's tax administration was able to challenge a US company's claims that it was paying interests to a third-party \(a bank\) after a leak revealed that the bank loan had come from the same multinational group and the bank was used to simulate a transaction with an independent third-party.](#)

Exposing fraud and administrative violations



Bid rigging

#21

As part of public procurement processes, governments need to ensure that public tenders are fair and transparent to ensure competitive processes. In addition to the risk of cartelisation, one type of fraud consists of cases where all companies competing for a license or contract are actually owned by the same individual. Beneficial ownership transparency would reveal that the process is invalid because no competition is actually taking place.

For instance, [a report by the US government accountability office \(GAO\) found cases where a contractor engaged in bid rigging by submitting bids from fake businesses to give the appearance of competition while being able to inflate prices.](#)



Market concentration affecting anti-trust provisions

#22

Most governments prevent monopolies, oligopolies and market concentration that could affect competition and the free market economy. Beneficial ownership transparency could reveal the true ownership or interests of major economic actors, triggering the need for anti-trust provisions to require spin-offs or sales.

For instance, [the Economist reported that the three top asset managers \(BlackRock, Vanguard and State Street\) taken together as a single unit would serve as the largest shareholder in 40% of listed American firms, accounting for 80% of the market.](#)



Fraud against the State

#23

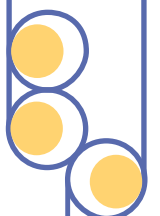
State revenues can be subject to fraud, for instance when individuals illegally obtain subsidies or state aid. Beneficial ownership transparency can help reveal the responsible individuals hiding behind shell companies engaging in fraud.

For instance, [Covid-19 state aid fraud in the US resulted in criminal charges against over 1,500 defendants with alleged losses exceeding \\$1.1 billion; the seizure of over \\$1.2 billion in relief funds; and civil investigations into more than 1,800 individuals and entities for alleged misconduct in connection with pandemic relief loans totaling more than \\$6 billion.](#)



There are unlimited examples of fraud: impersonating or pretending to be a legitimate company, fake charities, impersonating people to obtain loans and endless other examples. Beneficial ownership transparency can help detect these cases (eg a fake company with a name similar to a known company such as “Facebok” instead of “Facebook”, where the beneficial owner is not who one would expect). Alternatively, beneficial ownership transparency could reveal that a known fraudster is behind a company offering a new endeavor, or help determine responsibility after a company is found to be engaging in fraud.

In the US, [a man got seven years in prison for his role in a romance scam which involved about 25 bank accounts in his own name, a fake name, and a shell company through which he transferred about \\$3.4 million in fraudulently-obtained money.](#)





Protecting the environment and mitigating climate change

Illegal fishing

#25

Illegal fishing, sometimes referred to as illegal, unreported, unregulated fishing (IUU fishing) is putting the world's oceans and food security in danger. For instance, articles 39 and 40 of EU Council Regulation No 1005/2008 prohibit EU nationals from engaging in IUU fishing. However, without proper beneficial ownership transparency of the companies owning vessels involved in illegal fishing, it becomes impossible to enforce this regulation. Transparency could also help prosecute the responsible individuals after a vessel is found to be engaging in illegal fishing (rather than only prosecute the captain and the crew) and could determine when foreign countries and individuals are violating quotas for locals.

For instance, OCCRP described [nearly a quarter of the vessels involved in IUU fishing, for which beneficial ownership information was available, were owned by 10 companies. Of these, eight were Chinese, one Spanish and one Colombian.](#)



Information on investments in industries affecting climate change

#26

Based on the risks of global warming, many companies and investors are pledging to divest from fossil fuel industries and to address climate change. However, it is possible that these companies and institutional investors will keep their interests in fossil fuels. Beneficial ownership transparency would reveal the real owners of fossil fuel and other heavy-carbon industries, allowing citizens and investors to hold companies and investments funds to account.

For instance, [Dario Kenner's "Polluter Elite Database" attempted to identify the individuals and investors behind some of the largest oil companies, but for some companies public information only covered at most 10% of the shares, most of which were held by big investment funds.](#)



Ethical consumerism

#27

Beneficial ownership transparency can help consumers exercise their right to make informed decisions about purchasing goods and services produced in a way that minimizes social and/or environmental damage, while avoiding products and services that have a negative impact. Making informed decisions requires full transparency of ownership of the provider of goods and services.

For instance, [an art collector refused to pay for an art work acquired during an auction, after failing to obtain information regarding the previous owner to ensure that the art work hadn't been stolen.](#)



Ensuring fair market conditions



Due diligence regarding supply chains

#28

As part of an analysis of their supply value chain, firms need to ensure they have information on their suppliers to comply with new regulations, eg environmental protection, prohibition of slavery conditions, etc.

For instance, [Germany approved a law requiring some companies to comply with due diligence obligations in their supply chains.](#)



Due diligence regarding insolvency and reputation

#29

Before engaging with a business partner, firms and investors need to know who they are doing business with to prevent reputational damage as well as to ensure the solvency and good standing of their partners. Beneficial ownership transparency provides essential information to run these checks.



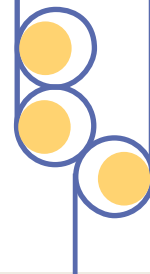
Insider trading

#30

Financial markets depend on the transparency and fairness and the expectation that prices represent the fair and widely known information by all stakeholders. That's why countries prohibit certain transactions by individuals with insider information. For instance, individuals who hold confidential information on profit or loss to be reported in the near future by a listed company, should refrain from using this confidential information to profit themselves against the public (who is unaware of the confidential information). However, individuals with insider information could operate in the market through proxies or through offshore entities (so that it's not obvious that they are behind the prohibited transaction). Beneficial ownership transparency could help identify cases where an individual with insider information was behind the illegal transaction (eg if the individual is the beneficial owner of the company ordering the transaction based on insider information).

For instance, [the US Department of Justice charged a CEO of a health care company for engaging in insider trading \(selling shares\) after becoming aware that the company's largest customer would terminate its contract.](#)





Reorganisation plan fraud

#31

In order to prevent a company from going bankrupt (given the loss of jobs and unpaid debts that bankruptcies result in), many countries offer companies an opportunity to agree a reorganisation plan with its creditors that allows the company to remain active and eventually pay back its debts. One type of fraud involves cases where an individual, eg the CEO of the troubled company, pretends to be the creditor with which the company seeks a reorganisation plan with, or illegally acquires ownership of the creditor involved in the plan to exert control over the plan. Beneficial ownership transparency would reveal the fraud.

For instance, [in Argentina the father of a former President was accused of acquiring interest in some creditors of its troubled company, only to vote and approve the plan he had proposed.](#)



Bankruptcy fraud

#32

Similar to the case above, most countries have bankruptcy proceedings whenever a company has insufficient funds to pay its debts and must close down. While in principle a company owner would want to avoid bankruptcy and save their business, one type of fraud involves creating fake creditors and debts only to deliberately bankrupt a company and thus avoid paying its debts. Beneficial ownership transparency would reveal that the (fake) creditors were actually owned by the same beneficial owner who owns the bankrupt company.

For instance, in [Canada an individual created offshore companies to bankrupt his own company and escape paying its tax debts.](#)

Creating fairer societies: gender inequality, wealth equality and general fairness



Civil indemnification

#33

After an individual is found guilty of a private crime or illegal activity (eg theft, murder, sexual abuse, car accident, etc), the victim may sue the guilty individual for monetary compensation. If the individual doesn't disclose their assets, the victim may not be able to obtain any monetary compensation in practice. Beneficial ownership transparency could reveal the assets (eg bank accounts, real estate, financial assets, etc) that the guilty individual holds through secretive entities in order to secure the payment of their indemnification.

For instance, family members of victims of [sexual abuse](#) and [murder](#) have been trying to recover assets from guilty individuals who held interests in trusts.



Protection of women in divorce proceedings

#34

Shell companies and financial secrecy arrangements have been used to deny divorced spouses the share of marital assets or alimony payments they are entitled to. Trusts can be especially problematic in these cases. Beneficial ownership transparency could help spouses (especially women) before divorce proceedings start to identify all the assets owned by the other spouse to ensure all of them will be part of the separation of assets.

For instance, there are several cases of billionaires creating a complex web of shell companies and trusts to hide their assets and wealth from their former wives, as described [here](#) and [here](#).



Measuring (wealth) equality

#35

Although lots of research is done on income equality, there isn't enough wealth information to completely capture and directly measure the full extent of the inequality level. This information could be useful to allow countries to address this inequality, for instance with a wealth tax. Beneficial ownership transparency over legal vehicles and the assets they hold would allow researchers and authorities to more fully and accurately determine inequality levels. This is the idea behind [ICRICT's call for a Global Asset Registry](#).

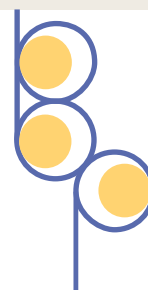


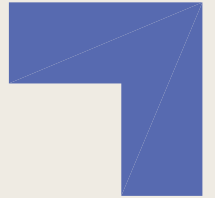
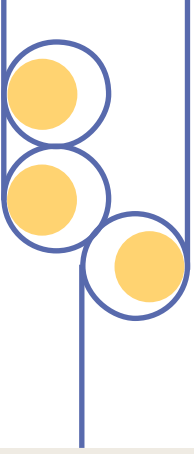
Understanding gender inequality and abuses against women for financial crimes

#36

Beneficial ownership transparency could help better understand gender inequality by making it possible to analyse the gender of beneficial owners of firms and the gender of the beneficial owners of the underlying assets held by shell companies. The first application would enable policies to tackle inequality in terms of positions held in companies to increase the share of positions held by women. The second application would allow more comprehensive measuring of wealth inequality (eg how many of the villas and yachts held by offshore entities belong to women). In addition, a gender analysis could also reveal cases where women are exploited as nominees to obscure beneficial ownership by men.

In relation to this, [Transcrime published a report showing that women were exploited as nominees for mafia-infiltrated companies](#)





Recommendations for beneficial ownership data

Following Tax Justice Network's [Roadmap to Effective Beneficial Owner Registration](#), all countries should establish beneficial ownership registries for all types of legal vehicles (companies, trusts, etc) ensuring verification and especially public access to information in online free registries available in open data format.

Only when all relevant stakeholders are able to access beneficial ownership data, can real progress in the fight against illicit financial flows and fairer societies be achieved.



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The Tax Justice Network believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone.

Every day, we inspire and equip people and governments everywhere to reprogramme their tax systems to work for everyone.