# Why beneficial ownership frameworks aren't working

## - and what to do about it

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TAX JUSTICE NETWORK

# Executive Summary

Beneficial ownership transparency is considered a fundamental tool by many international standards which address illicit financial flows, including the Financial Action Task Force in charge of anti-money laundering and combatting the financing of terrorism, the OECD's Global Forum dealing with tax evasion and the Extractive Industries Transparency Initiative (EITI) tackling corruption. In recent years, close to 100 jurisdictions have approved laws and established central registries of beneficial ownership information for legal persons and trusts. However, financial crimes are still taking place, almost undeterred by these new beneficial ownership registries.

The lack of verification of registered data by beneficial ownership registries and the lack of public access to information are highly relevant in preventing all relevant stakeholders from obtaining beneficial ownership information, and ensuring that this information is accurate and up-to-date. However, an even more fundamental problem exists. Beneficial ownership frameworks suffer from loopholes and particularly from the imposition of thresholds, which prevent authorities and other stakeholders from obtaining all the necessary information.

While investigators and most authorities involved in fighting money laundering, corruption and tax evasion agree on the need for complete beneficial ownership information to tackle sophisticated financial criminals, policy makers establish frameworks that are considered easy and "affordable" to implement, with little concern for their effectiveness. Based on the Financial Action Task Force's recommendations, most countries establish frameworks based on a definition which considers as beneficial owners only those individuals who hold more than 25 per cent of the capital in a legal person, and where no one is identified, those with "control via other means". Based on the goal of saving costs for the private sector (eg firms as well as financial institutions that must undertake customer due diligence) or the hope that the catch-all phrase "control via other means" will cover all relevant individuals, countries take a "small" data approach (rather than the "right-data" approach), asking for little information, hoping to make it easy to collect and verify this little information.

This brief explains that a no-threshold approach (ie requiring the identification of any beneficial owner with at least one share or vote), coupled with more extensive details to be collected (eg those with a power of attorney or with exposure to a company's economic performance) is the only way to ensure that authorities will already hold all the beneficial ownership information that they need by the time they need it. This way, authorities could readily analyse the information they hold to reveal undisclosed relationships, properly conduct investigations into crimes, and detect crimes that might otherwise go unnoticed.

Instead, current beneficial ownership frameworks do not collect enough of the right information to be able to effectively unearth and investigate criminal activity. Most beneficial ownership frameworks today primarily collect information on large shareholders, allowing criminals and other individuals to use complex ownership structures and other sophisticated schemes to remain hidden from authorities and escape the rule of law.

Importantly, as this brief will show, implementing a no-threshold approach does not add costs: even a framework with a 25 per cent threshold presupposes that anyone holding directly or indirectly at least one share has been identified – this is the only way to aggregate all holdings and determine which of those passed the threshold. Switching to a no-threshold approach would require no additional work in identifying direct or indirect shareholders. In addition, a no-threshold approach does not necessarily affect privacy and data protection because it is necessary and proportionate to achieve the aims of combatting illicit financial flows. It mostly targets criminals and individuals with sophisticated financial structures, rather than vulnerable populations. There are also privacy-enhanced-technologies to address risks of hacks. As for under-resourced authorities already overwhelmed with data, new technologies can easily help analyse the additional data obtained through a no-threshold approach, coupled with a deterrent effect against criminals.

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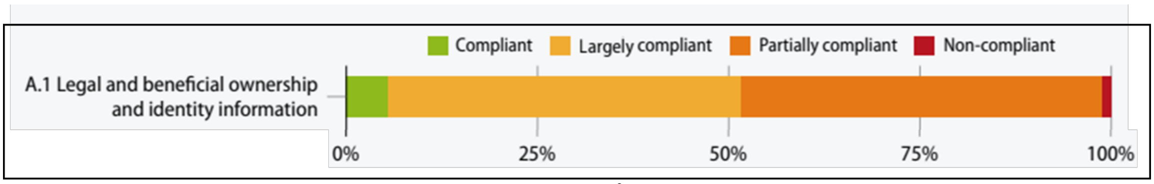
# 1. Introduction

Beneficial ownership transparency has become a mainstream policy. [Close to 100 jurisdictions][1] have laws requiring beneficial ownership registration, requiring disclosure of the identity of the natural persons who ultimately own or control companies and other legal vehicles, with a government authority. However, money laundering, corruption, tax evasion and other financial crimes continue to endure as if beneficial ownership registries didn't exist.

There are three reasons for this failure. The first one - the focus of this brief - is that international standards are currently so weak, they cannot possibly deliver effective transparency, even if countries fully complied with them and implemented all of the required measures. Second, most countries are not fully complying with international standards, as "weak" as they are, as reflected by ratings by international organisations like the Global Forum and the Financial Action Task Force. These ratings show that as of April 2023, 90 per cent of jurisdictions are only "partially" or "largely" compliant on ownership transparency - based on a standard that is very weak to begin with.[2]

**Figure 1. Global Forum ratings**




Source: 2023 Global Forum Annual Report (page 15)[3]

To make matters worse, these ratings usually refer to "formal" or technical compliance, eg by enacting laws that close loopholes identified in the standard. For instance, this is measured by the Financial Action Task Force Recommendations 24 and 25 on beneficial ownership transparency for legal persons and legal arrangements (eg trusts), respectively.

When it comes to effectiveness (eg establishing a register that secures resources that are sufficient in terms of technology, staff, budget and training for authorities to catch criminals), ratings are even worse. This is the third reason: countries are doing an even worse job when it comes to

[1] Andres Knobel and Florencia Lorenzo, *Beneficial Ownership Registration around the World 2022* (December 2022) <https://taxjustice.net/wp-content/uploads/2022/12/State-of-Play-of-Beneficial-Ownership-2022-Tax-Justice-Network.pdf> [accessed 16 December 2022].

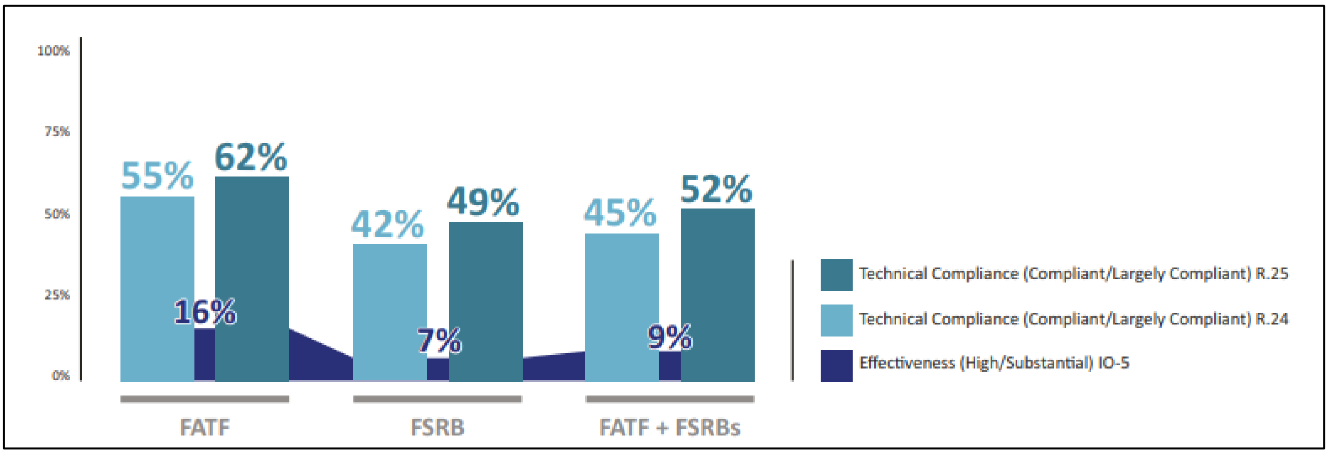
[2] Figures calculated by the author based on the list of ratings published by the Global Forum and the Financial Action Task Force. As of April 2023, out of 123 jurisdictions reviewed by the Global Forum with an available rating on section A1 ("availability ownership information"), 45 percent have a rating of partially compliant and 43 percent of largely compliant. Out of 143 jurisdictions reviewed by the FATF or regional bodies under the 4th round of evaluations, 42 percent have a rating of partially compliant and 48 percent a rating of largely compliant.

[3] Global Forum, "Pioneering Global Progress in Tax Transparency: A Journey of Transformation and Development 2023 GLOBAL FORUM ANNUAL REPORT", 2023, page 15, available in: https://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2023.pdf

the concrete action and resourcing needed to implement the "weak" frameworks they have partially embedded in law.

The Financial Action Task Force assesses the effectiveness level of beneficial ownership transparency under Immediate Outcome 5. As of April 2023, out of 146 jurisdictions reviewed, no country had reached a high level of effectiveness (equivalent to "compliant"). Only 9 per cent had a rating of "substantial effectiveness" (equivalent to being largely compliant), while 44 per cent and 47 per cent had ratings of moderate (partially compliant) and low (non-compliant) respectively. Figure 2 illustrates the low levels of effectiveness across 120 jurisdictions, as published by the Financial Action Task Force in April 2022.

**Figure 2. Financial Action Task Force ratings on effectiveness (Immediate Outcome 5)**




*Source: FATF (2022), Report on the State of Effectiveness Compliance with FATF Standards, FATF, Paris,* [www.fatf-gafi.org/publications/documents/effectiveness-compliance-standards.html](www.fatf-gafi.org/publications/documents/effectiveness-compliance-standards.html)

This brief focuses only on the first point: making the standard good from the outset. Otherwise, no matter how many resources are allocated, results will be insufficient. The Tax Justice Network has published a [Roadmap to effective beneficial ownership transparency (REBOT)]() that proposes what a beneficial ownership framework should look like. So far, that roadmap remains the most comprehensive guidance available to countries in introducing an appropriate beneficial ownership framework.

This brief explains the ways in which the current standards are rendered ineffective by their shortcomings and how to improve them to make them effective. It is structured along the following lines:

- The importance of beneficial ownership compared to legal ownership information, describing what beneficial ownership offers and what it does not.
- The current standards suffer from three ills related to thresholds: the goal to save costs, wishful thinking and the small data approach.
- Responding to the privacy and data protection arguments against a no-threshold approach.

- Proposing what the “right” approach to a beneficial ownership framework looks like and how it compares to the current standard in practice.
- Explaining why a beneficial ownership definition without thresholds does not add costs compared to the current standard.
- Proposing a way forward in terms of the framework and operational considerations.

Some argue that before improving the standard (the focus of this brief), resources or advocacy should focus on compliance and enforcement of current weak standards. We disagree. While efforts to incentivise countries to comply with current standards are welcome, for instance through sanctions and tax haven lists, there is a need to concurrently fix or at least improve standards. Otherwise, it would be like building a house on sandy soil.

Making beneficial ownership work does not require overcoming any technical challenges. It is a purely political decision.

## 2. Understanding what beneficial ownership offers (compared to legal ownership) and what it doesn't

One could question the usefulness of beneficial ownership information. After all, many financial crimes have been solved without the benefit of beneficial ownership registries. Even worse, many countries have established beneficial ownership registries yet illicit financial crimes do not seem to have been curtailed. The next paragraphs explain what went wrong.

Beneficial ownership transparency is in itself not a solution against illicit financial flows like corruption, money laundering or tax evasion, but a tool to tackle them. Information on the real individuals who effectively own, control or benefit from companies, trusts and other legal vehicles does not stop financial crimes, but it helps authorities and other actors find and prosecute those responsible. Truly effective beneficial ownership transparency would allow investigators to speedily reveal ongoing schemes and detect those in the preparatory stages, so that financial crimes could be tackled. This could also discourage others from even trying. In other words, effective beneficial ownership transparency is part of the solution because it gives authorities and other actors all the information they need at the precise moment they need it for them to use it appropriately.

Anything less than "effective" beneficial ownership transparency (such as registering only beneficial owners who pass high thresholds or having only information on legal owners, ie shareholders) means that authorities and other stakeholders may only have some spurious data or nothing at all, so they need to spend considerable amounts of time completing and checking the data, before being able to use it. For instance, as reported in the UK [2014 Impact Assessment on Enhanced Transparency of Company Beneficial Ownership](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434546/bis-15-320-enhanced-transparency-of-company-beneficial-ownership-enactment-impact-assessment.pdf)[4], investigators described that (before the UK set up a public beneficial ownership register) "in cases where hidden beneficial ownership is an issue, 30-50 per cent of an investigation can be spent in identifying the beneficial owners through a chain of ownership 'layers'".

However, it is not just the time and resources that effective beneficial ownership transparency saves whenever a company is being investigated. The key advantage of effective beneficial ownership transparency is that it is complete and recorded before it is necessary - before an investigation is even launched. This way, authorities can start running checks to detect red-flags on seemingly legitimate companies. While running these checks and verifications, if a company is found to be incompliant with beneficial ownership requirements (eg because there is any missing or inaccurate information), authorities could take appropriate

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434546/bis-15-320-enhanced-transparency-of-company-beneficial-ownership-enactment-impact-assessment.pdf

actions before the company engages in criminal activities, by striking the company off the register or suspending its tax identification number.

By contrast, if beneficial ownership information is incomplete or is gathered only when it is needed, it may be near impossible to determine who the beneficial owners are. For instance, it may first depend on obtaining information on intermediary companies that may have been deregistered or changed their address, or on nominee shareholders who could have moved abroad. The older a paper trail is, the colder it is.

The question policymakers should ask themselves when setting up a beneficial ownership framework is: should competent authorities and other stakeholders have ready access to the complete beneficial ownership data they need to do their jobs, or should they have bits and pieces and try to figure it out themselves after things have gone bad? Unfortunately, most countries today are deliberately or inadvertently choosing the latter.

Beneficial ownership transparency can be compared to a Swiss army knife: ready to serve many different purposes and get you out of trouble. But it is not as useful if the pieces of the Swiss army knife are lying scattered around a forest, and you need to find and dig them up first – it beats the point of a Swiss army knife altogether.

This is the situation authorities find themselves in when legal ownership registries are in place but not beneficial ownership registries. To determine the beneficial owner in some cases, particularly more dubious ones, requires following an ownership chain that spans multiple countries, which means searching for legal ownership data in several countries' commercial registers. The data and tools an authority needs may (although not always) be out there, scattered around the world. The authority's staff will need to put time into finding that data, often without knowing where and how much of it is scattered about. In comparison, having an effective beneficial ownership register in place would make all those pieces ready at hand.

# 3. Thresholds – a common fallacy of beneficial ownership frameworks

Consider a case where policymakers want to establish a beneficial ownership register that saves time and resources for authorities. By having the data in advance, it can ensure that no information is missing when it eventually is needed.

Beneficial ownership transparency should make readily available to authorities and other stakeholders the identity of all the individuals who are or may be involved in, benefitting from or responsible for a legal vehicle, as well as sufficient data to confirm their details in advance. Instead, most beneficial ownership frameworks suffer from the outset from the absence of crucial elements because they insert thresholds in the beneficial ownership definition. The key excuses most often made for these fallacies can be grouped in three categories:

- Saving costs
- Wishful thinking
- The "small data" approach

Most of these flawed approaches stem from the Financial Action Task Force (FATF) recommendations[5] to determine who a beneficial owner is, which reference any individual with a controlling ownership of more than 25 per cent of the shares, or who otherwise has control via other means. If no one meets these criteria, beneficial ownership is attributed to a senior manager.

## 3.1 Excuse #1 for thresholds: Saving costs

The goal of saving costs usually applies to beneficial ownership frameworks designed by lawmakers, rather than authorities (eg the tax administration, prosecutors, the financial intelligence unit, etc) who actually understand the challenges and who ultimately need to use beneficial ownership data. Lawmakers, on the other hand, are perhaps swayed more by lobbying by the private sector about the cost of implementation or tight government budgets. In essence, because information on every individual should at some point be verified, the fewer individuals who are registered as beneficial owners, the lower the cost for the private sector and for registration authorities. The same applies to legal vehicles exempted from the scope of beneficial ownership registration. The more types of legal vehicles that are excluded from registration, the fewer beneficial owners have to be registered.

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[5] Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)* (Paris, March 2022) <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> [accessed 15 April 2022].

This is of course a very narrow view of costs, because it fails to take into account the inevitable long term costs of a weak regulatory framework. While trying to balance everyone's needs and concerns, lawmakers establish rules that may be easy to follow and implement, even though this affects the usefulness of the data that ends up getting registered.

The best example of this imbalance between saving costs and effectiveness refers to the first test of the beneficial ownership definition (which determines who is to be considered a beneficial owner). Requiring the identification of 'any individual with more than 25 per cent of the shares or voting rights' is very straightforward and easy to implement: a bank need only ask for the list of shareholders and check who has more than 25 per cent. The problem is that avoiding this requirement is even simpler. Even a 5 per cent threshold has been circumvented in many money laundering cases (this is discussed more in the section on thresholds below).

The even bigger problem is that information on who owns more than 25 per cent does not necessarily give authorities the information they need, even if no one is trying to avoid the threshold. Someone could be controlling the entity, or benefitting from its illegal income or assets even without any ownership as explained in a paper on cases of control unrelated to ownership[6]. Either way, if an individual was already found to hold more than 25 per cent, the Financial Action Task Force recommendations do not require anyone else to be identified.

### 3.1.1 The problem of thresholds in the beneficial ownership definition at a basic level

Even those with just a very basic knowledge of beneficial ownership transparency are probably familiar with the main argument. In a company with four equal shareholders, where each of them holds "just" 25 per cent of the shares, no one passes the threshold. Although a high threshold is worse than a low threshold, any threshold can be circumvented. For instance, Al Jazeera published an investigation[7] into an enabler who proposed a structure with at least 21 companies, intentionally structured to avoid the 5 per cent threshold of reporting that applied in that case. The same strategy was used in the Moldovan Laundromat, as reported by Kroll[8], where shareholding was divided between 4.5 and 4.99 per cent so that no one passed the 5 per cent threshold. By the same token, if the threshold were set at 1 per cent, one would simply need to create 101 companies, and so on.

[6] Knobel, Andres, 'Beneficial Ownership Definitions: Determining "Control" Unrelated to Ownership', 2020 <https://taxjustice.net/wp-content/uploads/2020/11/Beneficial-ownership-definitions-loopholes-regarding-control-unrelated-to-ownership-final.pdf> [accessed 18 April 2023].

[7] https://mobile.twitter.com/AJEnglish/status/1425023828124749825?s=19

[8] Kroll, *Project Tenor II. Summary Report Prepared for the National Bank of Moldova*, 2017 <https://bnm.md/files/Kroll_%20Summary%20Report.pdf> [accessed 14 September 2022].

### 3.1.2 The problem at an intermediate level: complex structures and indirect control

As already warned in 2019 in our blog post on more beneficial ownership loopholes to plug[9], thresholds may create secrecy by allowing individuals to escape reporting. For instance, consider a circular ownership structure where Company A is wholly owned by Company B, which in turn is owned 98 per cent by Company A and 2 per cent by "John". John may escape being identified as a beneficial owner (as he does not pass the 25 per cent threshold), despite being the only individual involved in the structure.

Another case described by our paper on complex ownership structures[10] refers to the combination of companies and trusts. Based on the Financial Action Task Force recommendations, most countries do not apply thresholds in the beneficial ownership definition of trusts, requiring every natural person being a party to the trust to be registered, even if they have as little as one per cent of rights to the trust assets or income. However, if one of the parties to the trust, say the trustee, is a company (ie a "corporate trustee"), thresholds are added in practice. In this case, if none of the shareholders of the corporate trustee have more than 25 per cent of the shares, none of them will need to be identified as beneficial owners of the trust. This is precisely what happened according to a BBC article[11] on sanction circumvention. In this case, however, it referred to the council members (similar to trustees) of a private interest foundation, that have very similar structures and functions as trusts: "*The ownership of Biniatta could be structured using a Seychelles foundation with five nominee councillors 'so as to not declare a controlling person'. This would give the appearance that no one person had control over 25% of the company, the threshold under UK law for the requirement to name a person of significant control.*"

### 3.1.3 The problem at an advanced level: protected cell companies, series LLCs and sub-funds

Secrecy jurisdictions tend to offer sophisticated types of legal vehicles that are somewhat unique and typically not available in many countries (for instance protected cell companies, series limited liability companies and sub-funds of investment funds.) As the next figure illustrates, these types of legal vehicles have in common that they include one core entity (the "mother" or "umbrella" entity) and then many cells, sub-limited liability companies (series) or sub-funds which most likely do not have

[9] Andres Knobel, 'More Beneficial Ownership Loopholes to Plug: Circular Ownership, Control with Little Ownership and Companies as Parties to the Trust', 2019 <https://taxjustice.net/2019/09/06/more-beneficial-ownership-loopholes-to-plug-circular-ownership-control-with-little-ownership-and-companies-as-parties-to-the-trust/> [accessed 9 November 2022].

[10] Andres Knobel, *Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency*, February 2022 <https://taxjustice.net/wp-content/uploads/2022/02/Complex-ownership-chains-Reduced-Andres-Knobel-MB-AK.pdf> [accessed 9 November 2022].

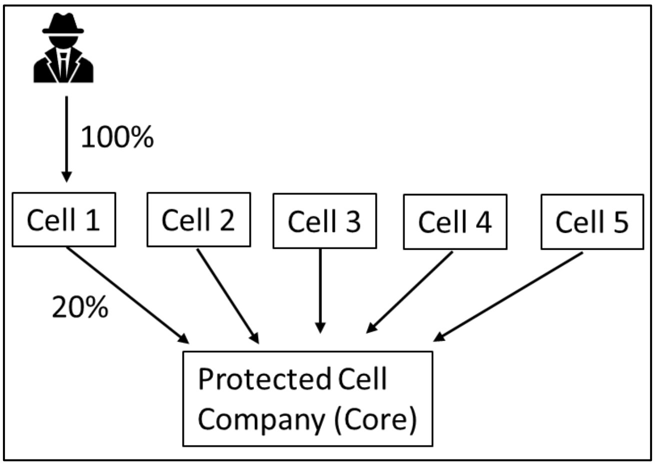
[11] https://www.bbc.com/news/uk-67276289

separate legal personality, but may still have their own assets, management and owners, which are different for each sub-entity. In other words, unlike a group of different companies, a core entity and its sub-cells are part of the same entity.

The main reason why these structures are promoted relates to asset protection, limited liability, and flexibility, allowing cells or series to isolate risks and assets from each other. Suppose "PCC A" had two cells, one running a real estate business and the other a restaurant. If the restaurant had debts or liabilities, these should not affect the real estate business, because its assets are held in a different cell.

At the same time, these legal vehicles could avoid beneficial ownership transparency. For instance, an oligarch trying to escape sanctions could own just one cell within a protected cell company. Through this sub-cell, the oligarch would hold houses, a yacht, art, etc. Given that it is a segregated cell, the oligarch's assets would be secured, regardless of the fate, assets, liabilities or owners of any of the other cells. If the protected cell company is large enough, eg it has 5 equal sub-cells, the oligarch would have 100 per cent of ownership and rights over one specific sub-cell, but only 20 per cent of the shares when considering the umbrella vehicle together (the core protected cell company). Without more than "25 per cent of ownership", the oligarch might be able to legally avoid being reported as a beneficial owner, while still enjoying full ownership and protection over the cell's assets. (In contrast, if each cell were a separate company, each of them would need to report their beneficial owners, ie the oligarch). One partial solution to the secrecy of protected cell companies, would be to consider any individual who passes the threshold in relation to one cell to be considered as a beneficial owner of the whole entity.

**Figure 3. Protection and secrecy with a protected cell company**




### 3.2 Excuse #2 for thresholds: The wishful thinking of "control via other means"

The second test in most beneficial ownership definitions refers to identifying those with "control via other means". Although it is important to find those who exercise control via other means, there are many challenges with this second test. The first problem of this "control via other means" test is that, based on the Financial Action Task Force recommendations, it only applies if no one passed the first test (the 25 per cent ownership threshold). This means that if someone holds, say, 30 per cent of the shares and another person exercises influence without owning any shares, based on the first test only the first individual will be identified as a beneficial owner[12]. A worse problem, however, is that even if the second test is applied, it can be very hard to find someone with control via other means in practice.

The fact that it might be difficult to find someone with control via other means doesn't mean that this test should be thrown out altogether. It offers a "belt and braces" type of assurance. But the test of "control via other means" on its own is not sufficient to find those beneficial owners who circumvent the ownership threshold (eg those who have ownership interests slightly below the threshold). As an analogy, one could think of asset declarations by members of parliament. It is important to ask for this information, but if there is no means to verify or enforce this measure, it is not an effective way to combat corruption (most members of parliament could simply not tell the truth). By the same token, it is important to ask for those with control via other means, but it is not an effective way on its own of finding beneficial owners who circumvent the ownership thresholds.

Identifying those with control via other means would require a close familiarity with a business, knowing who makes the decisions, who can influence others and make secret agreements, those with power of attorney, those who actually manage funds or can withdraw money from an entity's bank account, etc. Instead, most countries' beneficial ownership registries lack even basic verification mechanisms, so the expectation that any registry staff will have the time or resources to check who has "control via other means", or "effective control or influence" in every registered company is nothing short of wishful thinking. In the UK, for instance, through its publicly accessible beneficial ownership registry, companies have been widely analysed by civil society organisations[13], journalists, researchers and experts such as Graham Barrow. If UK companies can be created with their address listed as "Adolf Tooth Fairy Hitler, 513 Tong Street"[14], it is rather unlikely that authorities will be able to identify those beneficial owners who escape thresholds but still exercise effective control.

One could argue that banks, which in some countries are required to report discrepancies in beneficial ownership, would undertake more rigorous verification checks, given that they cannot simply rely on the

[12] Other countries and regions, eg the EU, have specific examples of "control via other means" and even apply both criteria indistinctively. One would have to be identified as a beneficial owner for having control via other means, even if others were identified for having more than a threshold of shares.
[13] Global Witness, *The Companies We Keep. What he UK's Open Data Register Actually Tells Us about Company Ownership*, 2018 <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/#chapter-0/section-0> [accessed 30 November 2018].
[14] https://find-and-update.company-information.service.gov.uk/officers/avPhCmagmdyHWLIjE9WW05VpBys/appointments

data available in the beneficial ownership register. While the bank can also check voting rights and the bylaws of the company to check if anyone has veto rights, it is unlikely they would do much more. First, it may be hard or impossible to know of secret influences or special powers, unless there is close contact with the day to day business of the client. Even then a bank may deliberately or negligently fail to discover other types of control, as shown in, for example, the 2023 report by the Senate Finance Committee on "Credit Suisse's role in US tax evasion schemes".[15] It described how the private banking division was able to hide from the compliance department of the same bank the fact that an account holder was a US taxpayer - despite having on record a US passport, status as a professor at a US university and having the US noted as their place of birth on their other foreign passports.

For this reason, a control via other means test should always be applicable (regardless if anyone passed the threshold test). To enforce this test, legal vehicles should also disclose their contracts and relationships, especially powers of attorney, as well as financial instruments that could give power to a third party (eg convertible stock, loans, or an individual who is the only supplier of a company, etc). It is also important to analyse facts, such as those who actually manage the entity's bank accounts. This test can be combined with a no-threshold approach, because by having information on all individuals with at least one share or vote, authorities would have more leads for where to start investigating.

There is one more benefit to having beneficial ownership frameworks that cover both those with any interest ownership (however small), and those with control via other means (if anyone is found). It negates the possibility of the "senior manager escape" (the last test). The Financial Action Task Force allows that when no individual is identified based on the first two tests, then a senior manager can be registered instead, even if they are a mere nominee director. Of course, the identity of a nominee director in lieu of a real beneficial owner is of very little value, and it could even confuse authorities and others into believing that the nominee director is a real beneficial owner. Instead, a no threshold approach would ensure that an individual would always be identified based on the first test, thus making the senior manager escape test redundant.

### 3.3 Excuse #3 for thresholds: "small" data is beautiful

The last flaw that applies to most beneficial ownership frameworks is to think "small," influenced by (flawed) short term thinking on costs for the private sector and the government (as explained in point 3.1 above) and personal data protection considerations. This "small approach" involves having high thresholds, many exemptions and exceptions, and requiring few details on each beneficial owner (rather than all the necessary ones,

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[15] *Credit Suisse's Role in U.S. Tax Evasion Schemes* (29 March 2023) <https://www.finance.senate.gov/imo/media/doc/SFC%20CREDIT%20SUISSE%20REPORT%20FINAL%20Mar%2028.pdf> [accessed 18 April 2023].

such as politically exposed person status, other tax residencies, etc). Less data means fewer tools for authorities, as explained in the next subsection.

To put this “small data” approach into perspective, most profitable internet companies collect as much data as they can on users and consumers: their name, contact details, exact location, relationships, likes, searches, purchases, etc. These major companies see and create *value* based on data, and sell it to others either for marketing or for more nefarious purposes like unduly influencing elections. Against this “big data” approach that sees the value in the data, beneficial ownership frameworks appear to endorse the opposite: the less data, the better.

As the next chapter will discuss in greater length, a no-threshold approach does not necessarily infringe on the fundamental human rights of privacy and data protection, especially when considering the balance of rights and the tests of legality, necessity and proportionality.

# 4. Privacy and data protection arguments: for and against "no thresholds"

In addition to arguments in favour of thresholds in the beneficial ownership definition mentioned above (eg to save costs, make compliance easier, etc), some organisations and individuals also endorse thresholds because they believe that a no-threshold approach would affect rights to privacy and data protection. Among others, arguments opposing a no-threshold approach refer to the lack of proportionality, violation of criminal law principles as well as risks of hacks. The next table offers a response to the most common arguments against a no-threshold approach.

**Table 1. Response to the most common arguments against a no-threshold approach**

| | Proportionality |
|---|---|
| **Argument against a no-threshold approach** | This argument suggests that measures must be "proportionate" and that requiring "all" individuals to be registered (because no thresholds are applied) is by definition disproportionate. |
| **Argument in favour of a no-threshold approach** | A measure should not be automatically considered "disproportionate" just because it applies to "all" people or companies rather than to specific ones. Collecting information about all individuals with a link to an entity (rather than only of those with more than 25 per cent of the shares) is not necessarily disproportionate.<br><br>The goal of beneficial ownership frameworks is to tackle illicit financial flows such as corruption, money laundering, the financing of terrorism, tax evasion, sanction evasion, etc. Collecting beneficial ownership information for all owners regardless of the value of their shares does not impose a burden on an individual that is excessive in relation to the objective sought to be achieved. In fact, a no-threshold approach already applies in the case of legal owners of companies (all persons must disclose their direct shareholdings to a commercial register) and to beneficial owners of trusts (all parties to the trust must be identified as beneficial owners regardless of their interest or rights to the trust assets and income). In fact, for most companies with simple structures where the beneficial owner directly holds the shares, beneficial owners are already identified with a no threshold approach – eg in the UK more than 80 per cent of companies have simple structures.<br><br>The only ones who would be affected by a no threshold approach are those who intentionally create complex offshore structures to remain below thresholds, as a way of avoiding transparency of their financial affairs. |

In addition, most administrative processes involve an "all" approach. In many countries, all individuals must obtain a national ID, which may include providing their date of birth, address, signature and fingerprints. This does not mean that all individuals are regarded as potential criminals. This is simply information that the state needs to fulfil its obligations, including the prevention of crime, ensuring economic fairness, planning and budgeting for social services, identifying missing persons, etc.

In many jurisdictions, all taxpayers must file tax returns, not because they are all considered tax evaders, but because it is how tax authorities ensure and verify compliance. In addition, having information on all taxpayers, both honest and not, allows authorities to compare them, to find patterns or red flags to ensure a level playing field where everyone pays their fair share. All customers must provide a financial institution information for the customer due diligence procedures, not because they are would-be money launderers but in order to apply proper checks.

A risk-based approach allows for additional measures to be taken, but for it to be effective in detecting anomalies and outliers it does require obtaining a minimum amount of information from all.

## Necessity

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|---|---|
| **Argument against a no-threshold approach** | This argument suggests that a definition without thresholds does not pass the necessity test because an individual with 1 per cent or less of the shares would not be in control of the company and would thus not be responsible for any crimes. |
| **Argument in favour of a no-threshold approach** | Criminals exploit loopholes, especially thresholds, to remain hidden from authorities.<br><br>Beneficial ownership transparency is about identifying the real owners and controllers of legal vehicles to prevent them from engaging in illicit financial flows such as corruption, money laundering, tax evasion, etc. Thresholds are deliberately exploited by criminals and those who want to remain hidden from authorities, undermining the whole purpose of beneficial ownership transparency. Thresholds allow individuals to remain hidden, either by distributing their interests so they are slightly below the threshold, or directly by not having any ownership interest but rather holding control through a power of attorney, financial instruments, etc. As visually illustrated in a publication on beneficial ownership and investment funds[16], a 0.01 per cent interest in Apple would give no control whatsoever over the design of the iPhone. However, that tiny percentage would be worth more than 200 million dollars. Identifying the beneficial owner of that 0.01 per cent would be relevant to determine whether taxes have been paid and more importantly how the beneficial owner afforded that interest to begin with, to dispose of cases of corruption or money laundering.<br><br>A no-threshold approach is the only way to ensure all relevant individuals are covered, no matter their circumvention attempts. |

[16] Knobel, *Beneficial Ownership in the Investment Industry. A Strategy to Roll Back Anonymous Capital.*

## Presumption of innocence

**Argument against a no-threshold approach**

An argument is sometimes made that the preventive collection of data and pattern-finding violate criminal law principles. This argument suggests that collection of information on individuals related to an entity violates the principle of innocence because they are all treated as suspects. In addition, looking for patterns to investigate specific individuals before suspicions exist are said to violate the principle that "the suspicion leads to the investigation" rather than the other way around.

**Argument in favour of a no-threshold approach**

Crime prevention is just as important as its prosecution. There is no need to wait until a criminal act or wrongdoing happens in order to act. Crime prevention does not affect the presumption of innocence. Most legal frameworks put a lot of emphasis on prevention, not because they consider all individuals to be future criminals or victimisers but to prevent them from becoming such.

All drivers need to obtain a licence to prove they know how to drive, where their sight and hearing is also tested. Seatbelts are compulsory. Drinking alcohol and the use of cell phones while driving is prohibited. Cars have licence plates so they can be identified. None of these rules can be interpreted as an infringement on the presumption of innocence, even though all of this information could be relevant in case of a car accident. In the same way, obtaining information on all beneficial owners related to an entity, checking that they are not related to any criminal or that there aren't other red-flags (similar to checking a driver's sight and hearing) cannot be considered an infringement of the presumption of their innocence, or as impugning their good faith or honesty.

This is somewhat similar to how airport security helps to prevent acts of terrorism, except in this case by preventing the economic and human cost of financial crimes. Both airport security and beneficial ownership transparency apply to individuals who are neither viewed as criminals nor terrorists. One of the arguments against public access and collection of beneficial ownership information on all individuals related to an entity is that it affects compliant and honest citizens who have done nothing wrong. The best counterargument is that the vast majority of airplane passengers are not terrorists, but everyone is still required to go through airport security. This comes at some cost in terms of the additional time spent by passengers as well as the staff and infrastructure required – but the cost is offset by the prevention of greater, even more costly harms.

One of the likely reasons why millions of people agree or at least accept the discomfort of airport security (which includes affecting their privacy as every item of their luggage can be checked) is the immediate relationship between terrorism and the loss of life. By contrast, beneficial ownership transparency is perhaps perceived as a less important, urgent or worthy "privacy-affecting" measure because it has a more indirect link to the violation of human rights. However, the fact that the link to beneficial ownership transparency is more indirect does not mean that it is irrelevant.

Although the link between beneficial ownership transparency and human rights violations is indirect, the consequences and effects can be much broader, when considering all the financial crimes and unfair situations caused by secrecy. In economic costs, the State of Tax Justice in 2023[17] estimated that countries will lose US$4.8 trillion in tax to tax havens over the next 10 years. The UN[18] estimated in 2018 that the global cost of corruption was at least US$2.6 trillion, or 5 per cent of the global gross domestic product. All of these resources are critical to pay for fundamental human rights - health food, education, housing, a fair trial, and many others.

Although harder to quantify, financial crimes such as corruption also have a human cost. Corruption led to the deaths of 52 people in 2012 in a factory fire[19] in Bangladesh, just as it did for almost 200 young people who were trapped at an illegally held music concert called "Cromañon"[20] in Argentina in 2004. More than 40,000 people died in the 2023 earthquake in Turkey[21] due to poor construction regulation and corruption, and Lebanon's port explosion[22] killed more than 200 people due to illegally stored chemicals.

## Trust in governments

**Argument against a no-threshold approach**

There are also arguments relating to distrusting the use of information by governments. This perspective, sometimes held by human rights organisations and activists, distrusts what they believe governments will *really* do with the collected information. Based on instances of governments violating the human rights of minorities, vulnerable populations (eg women, immigrants) or political opponents, there is an instinct to oppose more data gathering by government authorities

**Argument in favour of a no-threshold approach**

State authorities aren't necessarily the problem. Oligarchs, high net worth individuals and entities who are often more powerful than countries, pose a bigger risk to democracy, equality and the rule of law. A no-threshold approach is a way to protect minorities and vulnerable individuals by ensuring that powerful individuals won't be able to escape the rule of law by creating complex ownership structures.

Criminal law, constitutions or human rights conventions are a way to limit state power. In the past, an absolute monarch could dispose of anyone's life or property. Criminal law, or human rights law, limits absolute power. The former-king-now-democratic-state must now comply with a fair trial, equality before the law, prohibition of torture, access to information, etc.

From a historical perspective, the ruler had absolute power, while individuals who were vulnerable and powerless organised themselves to limit the King's or state's power.

The 21st century is complicated by the fact that there are high net worth individuals, oligarchs and multinational companies that have far more power than countries: they have more capital, more media power, armies

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[17] Tax Justice Network, *State of Tax Justice 2023* (2023) <https://taxjustice.net/wp-content/uploads/2023/08/State-of-Tax-Justice-2023-Tax-Justice-Network-English.pdf> [accessed 2 August 2023].
[18] https://press.un.org/en/2018/sc13493.doc.htm
[19] https://www.theguardian.com/world/2021/jul/09/bangladesh-factory-fire-kills-people-dhaka
[20] https://www.infobae.com/sociedad/2019/12/31/la-memoria-de-cromanon-a-15-anos-del-horror-y-un-mensaje-escrito-en-la-pared-la-corrupcion-mata/
[21] https://www.context.news/money-power-people/rotten-buildings-corruption-in-spotlight-after-turkey-quake
[22] https://lens.civicus.org/lebanon-corrupt-government-fails-victims-of-the-beirut-blast/

of enablers to escape paying taxes, can bankroll violent actors and bankrupt journalists investigating their affairs, and lobby or bribe legislatures to engage in rent-seeking.

Complete beneficial ownership information is about obtaining information about these powerful individuals who set up complex structures to escape the rule of law. It is a way to give more tools to authorities and to all other stakeholders with access to beneficial ownership information, in the process helping to protect minorities and vulnerable individuals.

Even if there is mistrust on how authorities will use the collected beneficial ownership information, the beneficial ownership data will mostly refer to the (more powerful) individuals who are able to afford setting up companies and trusts, not vulnerable and discriminated populations on low incomes.

Some argue that some states are corrupt, or are dictatorships or autocracies, and that a beneficial ownership definition without thresholds would give them even more power to be abused. Unfortunately, those states are most likely already (legally) allowed to collect beneficial ownership information without applying thresholds, or to use other ways to obtain confidential information or coerce their citizens.

Major financial centres where the rule of law is respected and where democracies *do* work, should start collecting complete beneficial ownership information. This way, democracies will be able to prevent oligarchs and dictators from creating entities and holding assets in these democratic financial centres, or will at least be aware of their interests and control, in case sanctions are to be enforced.

### Securing data against hacking

**Argument against a no-threshold approach**

There is a view that all databases can be hacked. This argument suggests that no matter how many data safeguards exist, hackers will eventually find a way to access the data. Therefore, collecting and centralising a trove of personal data on individuals related to legal vehicles creates a high hacking risk.

**Argument in favour of a no-threshold approach**

Although all systems could possibly be hacked, this has not stopped people from using banks, apps or password storage services. There are multiple privacy enhanced technologies that could be applied to reduce the risk of hacks or misuse, and to run analytics without sharing confidential information. For instance, the OECD report "Emerging Privacy Enhancing Technologies. Current regulatory and policy approaches"[23] describes the use of:

- Data obfuscation tools such as zero-knowledge proofs, differential privacy, synthetic data, and anonymisation and pseudonymisation tools which alter, create noise or remove identifying details

[23] *Emerging Privacy Enhancing Technologies. Current Regulatory and Policy Approaches* (March 2023) <https://www.oecd-ilibrary.org/docserver/bf121be4-en.pdf?expires=1689363928&id=id&accname=guest&checksum=B9F230F587F3018C656C1BF5E6BED166> [accessed 14 July 2023].

- Encrypted data processing tools, such as homomorphic encryption, multi-party computation, private set intersection and trusted execution environments, which allow data to remain encrypted while being used
- Federated and distributed analytics, which allow data to be pre-processed at the data source so that only the summary statistics or results are transferred
- Data accountability tools such as threshold secret sharing, and personal data stores.

The Bank for International Settlements Innovation Hub's Nordic Centre in 2023 published a report on Project Aurora[24], a proof of concept that explored new ways of combating money laundering with a combination of payments data, privacy-enhancing technologies, artificial intelligence and enhanced cooperation across institutions and borders.

| Ability to process data | |
|---|---|
| **Argument against a no-threshold approach** | Some argue that authorities are already overwhelmed with data and often unable to process it effectively Authorities are already receiving suspicious transaction reports filed by financial institutions to the financial intelligence unit, and data pursuant to automatic exchange of bank account information or transfer pricing documents. Therefore, some argue, there is no point to file even more data with authorities because they won't be able to use it. |
| **Argument in favour of a no-threshold approach** | Some authorities may indeed be overwhelmed with data. It is true that most authorities in charge of combatting money laundering or tax evasion are understaffed, lack time and resources and may be overwhelmed with responsibilities. However, the complete collection of beneficial ownership data is supposed to be handled by technology, algorithms, big data analysis, etc, and not necessarily by manual analysis.<br><br>Complete data creates a deterrent effect. Just as happened with the implementation of automatic exchange of bank account information, the potential availability of complete data on all foreign bank accounts led to more tax revenues in many countries through voluntary disclosure programs (taxpayers voluntarily declared their foreign accounts and paid reduced fines, before the information was exchanged). Apart from the deterrent effect, even if data isn't processed immediately, it could also be used in the future - many financial crimes have a statute of limitations of 5 or perhaps even 10 years, giving enough time for authorities to make use of it.<br><br>At the same time, there is an exponential growth in technological capabilities around data storage, data matching and mining, and the processing of big data – all the while often becoming more cost-efficient. Just because an authority cannot afford data management functionalities today, does not mean they won't be able to do it tomorrow. |

[24] Bank for International Settlements (BIS), *Project Aurora: The Power of Data, Technology and Collaboration to Combat Money Laundering.*, May 2023 <https://www.bis.org/publ/othp66.pdf>.

The prevalence of under-resourced authorities is not necessarily an argument against the collection of beneficial ownership information without thresholds, but rather an argument in favour of giving public access to information so that other stakeholders, including financial institutions, journalists, civil society organisations, researchers and foreign authorities can also use and process the data.

# 5. The “right data” approach to beneficial ownership

## 5.1 Our REBOT approach

The Tax Justice Network’s Roadmap to effective beneficial ownership transparency (REBOT)[25] sets out a series of steps governments can take to reach a robust beneficial ownership framework that meaningfully delivers transparency. The roadmap categorises these steps into to three levels of transparency that can be achieved: minimum transparency (the minimum legal framework that should be applied), benchmarked transparency (more robust legal frameworks that are already being used in at least one country), and effective transparency (iron-clad legal frameworks that deliver the level of transparency needed to effectively prevent and prosecute illicit financial activity, to ensure the rule of law and to eliminate secrecy loopholes and workarounds).

When it comes to adopting a beneficial ownership definition and the criteria to determine who should be considered a beneficial owner, the roadmaps advises governments that an effective level of transparency requires identifying as a beneficial owner any individual with ownership, control or benefit over a legal vehicle that arises from having, either directly or indirectly, at least one share, vote or any benefit (including exposure through financial instruments such convertible stock, call options, etc), or from having a power of attorney to manage the vehicle or its assets.

The roadmap further advises that to reach an effective level of transparency, the following detail should be collected for each beneficial owner:

- Their full name
- Residential address
- Place and date of birth
- Nationalities and tax residencies
- Passport number(s)
- Tax identification number(s)
- Nature of their beneficial ownership (including the full ownership chain)
- Source of their beneficial ownership (eg transfer of shares, appointment as trust beneficiary, etc)
- Politically exposed person (PEP) status
- Details of their close family relations (spouse, parents, children)
- Declared income

[25] Andrés Knobel, *Roadmap to Effective Beneficial Ownership Transparency (REBOT)* (2 July 2023) <https://taxjustice.net/wp-content/uploads/2023/02/Roadmap-to-Effective-Beneficial-Ownership-Transparency-Version-1-2023.pdf> [accessed 8 February 2023].

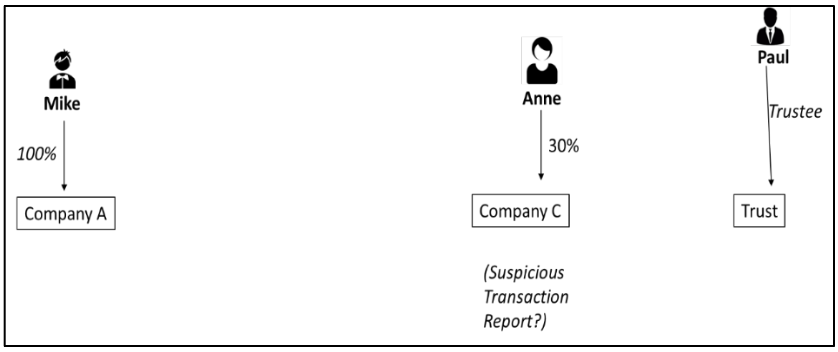
- Declared wealth

In addition, the roadmap advises, declared information should be verified, by cross-checking the data as well as applying advanced analytics to find red flags based on the declared income or assets of an individual, their residential address, etc.

## 5.2. The current FATF approach vs the effective approach: a concrete example

To understand the difference between the current approach based on the Financial Action Task Force's recommendations and an effective approach, consider figure 3 depicting the kind of information that is currently collected.

**Figure 4. An incomplete picture of ownership, control and relationships**



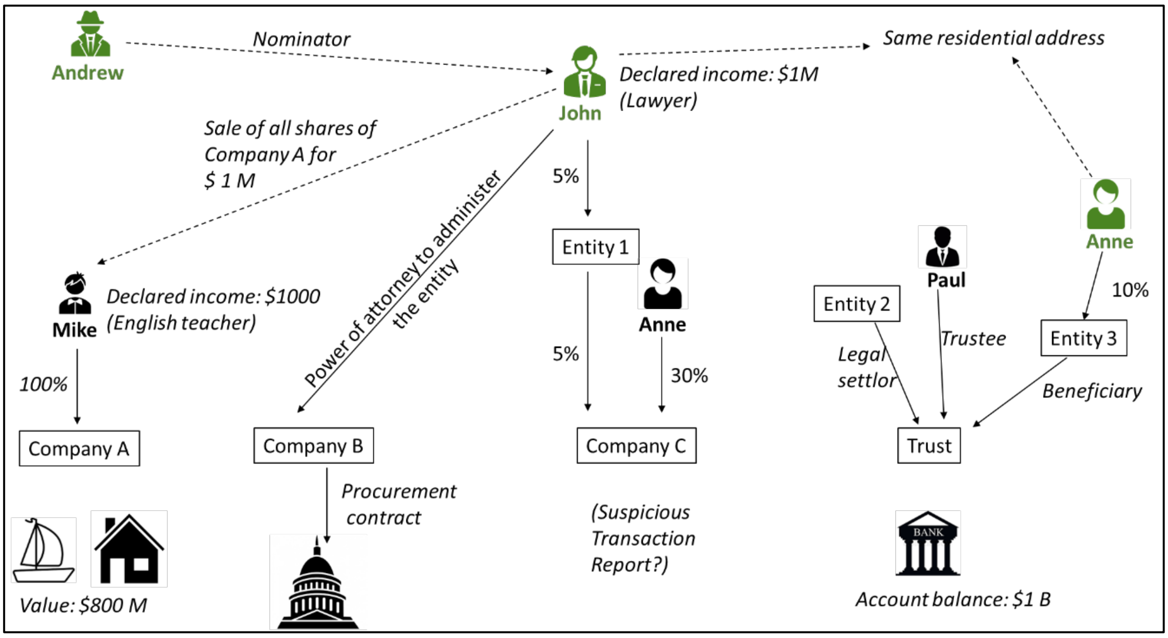

Let's assume that Company C has been the subject of a suspicious transaction report. The only information authorities would have is that Anne is the beneficial owner of Company C. Somewhere else, somebody might know that Mike owns 100 per cent of company A, or that Paul is the trustee of the trust (assuming that trusts have to register their beneficial owners to begin with as the Financial Action Task Force does not require trusts to be registered). For any of this to be insightful, one would need far more context.

A country following the Financial Action Task Force recommendations would be unlikely to discover anything. This is how money laundering schemes and other financial crimes go undetected, even if we assume that all the companies technically complied and filed the required beneficial ownership information.

Based on the lack of information, authorities may end up never discovering the true picture (depicted in figure 5) and may very well decide not to pursue the suspicious transaction report any further.

By contrast, having a more complete picture of ownership, control and relationships would be far more effective at revealing the real picture.

Figure 5. The complete picture of ownership, control and relationships




If authorities followed the Tax Justice Network's roadmap approach, with information on all beneficial owners without thresholds, by the time authorities received the suspicious transaction report, they would easily be able to identify all the undeclared relationships of nominee John, determine that the oligarch Andrew may be avoiding sanctions and even identify the assets to eventually confiscate them.

Even better, under a truly effective beneficial ownership framework, authorities would have been able to discover the scheme without a suspicious transaction report needing to be filed:

- Mike would be identified as the beneficial owner of Company A. This would have triggered multiple red flags. First, Mike appears to own a company worth $800 million, even though his declared income as an English teacher is only $1000 per month. The second red flag would be that Mike, with such a low declared income was able to purchase shares for $1 million from someone called John. Unless Mike inherited considerable wealth, he would need to explain to authorities how he was able to afford such a purchase (or why anyone would have loaned him the money to purchase it). This may lead to asking questions about the seller, John.
- Company C declares Anne as a beneficial owner with 30 per cent of the shares, and John with 0.25 per cent of the shares (indirectly). Authorities would discover that Anne, who is a co-shareholder with John in Company C, is also involved in a trust. What becomes even more suspicious is that John and Anne appear to have the same residential address.
- John (connected now to three apparently unrelated legal vehicles), has $1 million in declared income. This could justify some of his assets and his residence in a high-end neighborhood. Still, $1 million does not seem high enough to be holding assets worth almost $2 billion (the $800 million in Company A and the $1 billion in the trust) so he is further investigated. After digging more into his past relationships,

employment, travels, etc, authorities realise that John is a nominee for an oligarch (Andrew) and that he also controls through a power of attorney Company B, which is involved in procurement.

Having sufficient information on all of the individuals who are somehow related to a legal vehicle either as shareholders, directors, beneficial owners, creditors, etc, (rather than only those who pass the 25 per cent threshold) enables authorities to use their time and resources, not on obtaining information, but on investigating and prosecuting criminals and confiscating their assets, and on detecting other red flags to prevent money laundering or other illegal schemes – before suspicions have even arisen.

Going back to the Swiss army knife, the two figures above showing an incomplete and complete picture illustrate the situation authorities face when beneficial ownership is not in place or not effective. They have some but not all of the pieces they need to tackle the challenge at hand.

### 5.3 The future: no need to "ask" for beneficial owners' details

As noted above, privacy and data protection arguments do not necessarily restrict the collection of beneficial ownership information by a beneficial ownership registry.

Once government databases are connected (also for verification[26] purposes), it wouldn't be necessary to ask beneficial owners for the bulk of their data. For instance, a tax authority should already have information on a person's full name, address, date of birth, tax identification number, declared income and wealth. Family relationships could come from the civil or natural person registry. Status as a politically exposed person could come from the government's organogram. The full ownership chain, the nature of beneficial ownership (at least in relation to ownership and voting rights) and sources (eg transfer of shares) could come from interconnected commercial registries that disclose and confirm the full ownership chain and all historic transfers of shares, capital increases, mergers, etc.

[26] Andres Knobel, 'Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information', *SSRN Electronic Journal*, 2019 <https://www.ssrn.com/abstract=3320600> [accessed 3 September 2019].

# 6. Why international standards already require applying no thresholds in practice

The Financial Action Task Force already explicitly applies a no-threshold approach for money laundering suspicions[27] and to the beneficial owners of trusts[28]. More importantly, this section will show that even the 25 per cent threshold test in the definition of the beneficial owner for companies already demands from financial institutions and companies to first apply a no-threshold approach to identify anyone with at least one share before then narrowing down to those whose shares make up 25 per cent or more of the total. Therefore, any company or financial institution who opposes a no-threshold approach by claiming that it would add more costs or effort, either misunderstands current beneficial ownership requirements or is deliberately not complying with beneficial ownership requirements.

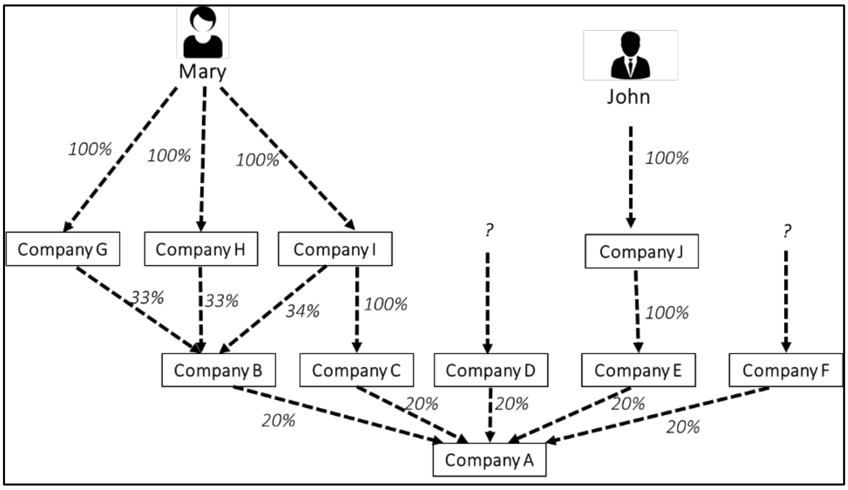
All shareholdings, however small, must be aggregated to see if someone passes the threshold or not. Even under current regulations, obliged entities must already verify and collect beneficial ownership information for every individual with any direct or indirect share in the company (not just with more than 25 per cent). This is because beneficial ownership definitions care about direct and indirect control. If definitions only cared about direct ownership, any company owned by another entity would automatically lack beneficial owners. To determine the individuals who may have, directly or indirectly, more than a 25 per cent stake in an entity (in order to register them as beneficial owners), one first needs to know exactly how much of a stake each individual has.

As figure 6 illustrates, even if Company A is owned by five different companies (each with 20 per cent ownership), one cannot conclude that no individual has more than 25 per cent (this would entail non-compliance, either deliberate or by misunderstanding requirements). On the contrary, the full ownership chain has to be registered up to each natural person shareholder to confirm whether, on aggregate, any of them holds more than 25 per cent.

[27] *"If, during the establishment or course of the customer relationship, or when conducting occasional transactions, a financial institution suspects that transactions relate to money laundering or terrorist financing, then the institution should: (a) normally seek to identify and verify the identity of the customer and the beneficial owner, whether permanent or occasional, and* ***irrespective of any exemption or any designated threshold that might otherwise apply****;"* (emphasis added, FATF Recommendations, page 64).

[28] According to the FATF Recommendations, all parties to a trust (eg settlors, trustees, protectors, beneficiaries and anyone else with effective control over the trust) must be identified without applying thresholds.

**Figure 6. The need to identify the full ownership chain up to anyone holding at least one share**




Source: Hexner, A., Knobel, A., Taymans, A., "NEBOT Paper 4- The Beneficial Ownership Definition for Companies – Challenges and Opportunities", Network of Experts on Beneficial Ownership Transparency, 2022.

In the example, one could start from the bottom up. This is what bank staff see when a company director approaches them with a request to open a bank account. Mary can already be considered a beneficial owner for owning, indirectly, two of the corporate shareholders (Companies B and C), so she already holds 40 per cent of the shares of Company A. However, it is not enough to register Mary. Beneficial ownership regulations require the beneficial owner to be identified with the precise nature of beneficial ownership, meaning how many shares or voting rights they hold. It is not enough to say, "Mary owns at least 40 per cent." Her precise ownership has to be determined by also identifying who owns Companies D and F.

By the same token, the question is whether we can conclude that John is not a beneficial owner of Company A. We only know that he indirectly holds 20 per cent of the shares of another corporate shareholder (Company J). It is impossible to conclude that John is not a beneficial owner unless we know who owns the other two corporate shareholders (Companies D and F) because John may end up also owning at least one of them and hence may be a beneficial owner of Company A. In other words, the full ownership chain - up to every natural person shareholder - must be identified.

If it turns out that Paul and Zoe are the owners of Companies D and F, then only Mary will be registered as a beneficial owner with only 40 per cent. However, until everyone's shares are determined and added up, there is no way to "save costs" eg by identifying only those who directly hold more than 25 per cent of the shares and of those who explicitly claim to be beneficial owners.

This chart also refutes the argument that while banks do collect the full ownership chain of their customers, they would still suffer from increased verification costs if more individuals must be identified following a no-threshold approach. It is not enough for a bank or beneficial ownership registry to require disclosure of the full ownership chain, but then only to verify the identity of the "beneficial owners" at the top (eg Mary). The intermediate entities should also be verified. Either way, given that false or misleading information could be given, the full ownership chain has to be verified, to ensure that every corporate layer or shareholder actually exists and that they are not nominees.

For instance, a corporate customer of a bank could claim that its shareholders are Mike with 50 per cent of the shares (and thus a beneficial owner), while each of the other five shareholders has just 10 per cent of the shares and are thus not beneficial owners. In this case, the bank would only verify Mike's identity and a few other details about him but not spend any resources on anyone else. This approach is wrong, because it blindly believes that all the other shareholders are real shareholders instead of nominees acting on behalf of someone else. Proper verification is needed of every stakeholder related to a company, starting with all direct and indirect shareholders.

If banks are not verifying every layer of the chain, the full ownership chain could easily be completely fake.

At the same time, banks cannot do all the verification themselves – it would be an inefficient use of their time and resources. Instead, all of this data should already be available in the beneficial ownership register, and verified by government agencies against other databases, already cross-checked and red-flagged. This way, the bank need only undertake the additional verification steps which are not available from the beneficial ownership register, such as checking who has a power of attorney over the bank account, who withdraws money from an ATM, from which IP address home banking transactions are requested or where money is transferred to.

Until banks are able to obtain (more) verified data from beneficial ownership registries they should be allowed to transfer the verification cost to their customer, charging a set amount per beneficial owner or layer that has to be verified as part of the customer due diligence process. This way, the more complex the structure, the more a customer would have to pay for having created such a complex structure – and with little to no extra cost for simple structures. This measure, which is already implemented by Dutch banks[29] in relation to enhanced due diligence, would discourage complex ownership structures with many layers, until countries decide to restrict or regulate them[30].

Second, a no threshold approach would ensure proper transparency for investment funds[31] or companies listed on the stock exchange[32]. By

[29] https://www.tookitaki.com/blog/dutch-banks-introduces-new-fees-as-aml/cft-compliance-costs-increase

[30] Knobel, *Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency*.

[31] Andres Knobel, *Beneficial Ownership in the Investment Industry. A Strategy to Roll Back Anonymous Capital*, 2019 <https://www.taxjustice.net/wp-content/uploads/2019/10/The-transparency-risks-of-investment-entities-working-paper-Tax-Justice-Network-Oct-2019.pdf> [accessed 3 May 2022].

[32] Andres Knobel, *Beneficial Ownership Transparency for Companies Listed on the Stock Exchange* (11 May 2020) <https://taxjustice.net/wp-content/uploads/2020/12/Listed-companies-BO-requirements-Final.pdf> [accessed 18 April 2023].

contrast, investors can currently escape identification despite having millions of dollars invested in an investment fund, purely because they do not pass the threshold of 5 or 25 per cent. Countries like Argentina and Ecuador have found a good solution: they do not apply percentage thresholds for investment funds and listed companies but rather thresholds based on the value of their investment, eg US$10,000.

In 2023 billionaire Joseph Lewis was indicted for insider trading and for deliberately hiding his true ownership of a company from the US Securities Exchange Commission. He falsely declared having a lower shareholding (under the infamous "section 13D form – beneficial owner") because he indirectly held some of the shares through an offshore company and trust held by nominees. According to the indictment, the billionaire also deliberately avoided having any direct ownership of more than 5 per cent, to avoid other reporting obligations. As the indictment[33] described:

> *"Mirati... is limited by Canadian law from having any shareholder who owns more than 19.99 percent of the company's stock... Lewis was required to file schedules of share ownership with the SEC pursuant to Section 13 (d) of the Securities Exchange Act and SEC Regulation 13D, as well as reports of transactions purchasing or selling the company's stock...*
>
> *In order to own more Mirati stock, while simultaneously circumventing Canadian share ownership rules and the legal requirements that he report his share ownership to the SEC, Lewis caused Mirati shares to be purchased in the names of offshore shell entities that he ultimately controlled. Specifically Lewis asked one of his employees to serve as the reported owner of an offshore entity....*
>
> *Additionally, Lewis, caused the creation of an offshore trust called Newton Trust, purportedly for the benefit of his granddaughter, for purposes of purchasing Mirati shares. Although Lewis was not the named beneficiary of the trust, he considered himself as the beneficial owner of the shares. As part of the creation of Newton Trust, Lewis adopted a "letter of wishes," which required that the trust use its funds to purchase Mirati stock, and stipulated that Lewis would be consulted about decisions about the Mirati stock...*
>
> *In a further act of concealment, Lewis and his co-conspirators deliberately avoided owning more than 4.95 percent of Mirati's stock in either Jasara Investments or Newton Trust in order to avoid the SEC reporting requirements...*
>
> *On multiple instances, a Tavistock finance executive working for Lewis provided Lewis with a spreadsheet disclosing Lewis' true ownership of Mirati shares by including the share totals associated with Jasara Investments and Newton Trust. Nonetheless, while the secret spreadsheet provided to Lewis*

[33] https://www.justice.gov/media/1307591/dl?inline

*stated that he owned between 24 and 29 percent of Mirati stock, Lewis publicly stated in his SEC filings that he owned less than 20 percent."* (pages 14-16)

Unless governments already hold information on each end-investor up to the beneficial owner, they are reliant on investors telling the truth when they self-declare their holdings.

# 7. Conclusion and policy recommendations

Most money laundering schemes and other financial crimes keep taking place unnoticed, despite the establishment of beneficial ownership registries. While more verification and resources for authorities are needed, the first step starts by fixing the legal framework. Currently, to save costs and make compliance easy, beneficial ownership frameworks are requiring information that is either too easy to circumvent or that does not allow for proper checks to be done. A comprehensive legal framework would secure sufficient information to identify all individuals who may turn out to be relevant, after running advanced analytics to detect undeclared relationships and other red flags.

The crucial change needed is to require all beneficial owners who may have control, ownership or benefits to be registered - without applying thresholds. Importantly, the burden of obtaining this information already exists: to know who has more than 25 per cent directly or indirectly, one must first know who has at least one share and then add up all those indirect shareholdings. This crucial change could be the necessary first step to tip the balance on the currently losing battle against illicit financial flows.

Most of the proposals of this brief originate from the Tax Justice Network's Roadmap to Effective Beneficial Ownership Transparency. This report has explained why these proposals are necessary.

We provide here a summary of these proposals:

1. **All legal vehicles should fall within the scope of registration - without exceptions**. All types of legal vehicles should be subject to beneficial ownership registration whenever they have a connection to the country (eg incorporated locally, with local operations or assets, or with local participants). This way, no legal vehicle will escape the scrutiny of authorities.

2. **Apply a "necessary" data approach, rather than a "small" data approach.** The beneficial ownership definition and criteria to determine the beneficial owner should apply a "necessary data" approach rather than a "small data" approach, so that all individuals who are related to a legal vehicle are identified whenever they:

   a) Have control, ownership or derive benefits from a legal vehicle
   b) Have at least one share, vote, right to benefits, interests or exposure through financial instruments (ie without applying thresholds); or
   c) Have control via other means based on a non-exhaustive list such as power of attorney over the entity or its assets.

3. **"Necessary" details.** In addition to basic identity details (name, address, nationality, date of birth), more details should be collected, such as:

   a) Politically exposed person (PEP) status
   b) Tax residencies and nationalities (eg based on golden visas)
   c) Identity of direct family members
   d) Price or value or reason for becoming a beneficial owner (eg price of transfer of shares)
   e) Source of beneficial ownership (eg transfer of shares, apportionment as trust beneficiary)

4. **Obtain and verify the full ownership chain,** up to each individual with at least one share.

5. **Charge for verification.** As a way to discourage complex ownership structures with too many layers and shareholders (which may increase costs for those collecting beneficial ownership information), financial institutions and beneficial ownership registries should be allowed to charge fees per layer and per shareholder for any entity that wishes to be incorporated or open a bank account.

6. **Proper verification responsibilities.** Countries should take an active role in beneficial ownership registration and verification by having the beneficial ownership register collect information on the full ownership chain down to each beneficial owner with at least one share, as well as cross-checking data and applying advanced analytics to detect red-flags (eg based on individuals' declared income, neighborhood, etc). This would reduce costs for financial institutions, which should be required to conduct additional verification (not generally available to authorities) such as checking who administers the bank account, withdraws money from an ATM or from whom and to whom bank transfers are made.

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