Adam Smith International

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Towards a Global Norm of Beneficial Ownership Transparency

A scoping study on a strategic approach to achieving a global norm

UKaid from the British people

engaged

MICHAEL BARRON Consulting

This report was prepared by a team of consultants – Justine Davila, Michael Barron and Tim Law - for Adam Smith International, who were commissioned by the UK Department for International Development to prepare this scoping study.

The views expressed are based on interviews conducted by the authors with a wide range of stakeholders between September and December 2018 (see Appendix 1 for list of stakeholders) and review of publicly available documents or sources provided by interviewees. This independent scoping report captures the range of views of these stakeholders and is not necessarily the position of the UK Government.

This paper aims to convey the issues in a way which is accessible to the more generalist reader as well as the technical specialist in beneficial ownership issues. As such, reference to further specific technical terms and guidance is included in the footnotes where a more general reference is made in the main text.

In terms of scope, this paper considers primarily beneficial ownership transparency (BOT) for corporate structures while noting emerging trends on other legal arrangements such as trusts. It considers the role of BOT in promoting anti-corruption, including through tackling money-laundering, and fostering a more open and competitive investment climate. It does not cover the role of BOT in tackling other challenges, such as tax evasion, in detail.

The scoping study is being conducted in phases:

- For Phase 1, the team completed a background discussion paper for a Panel Session "Towards a Global Norm of Beneficial Ownership Transparency" at the International Anti-Corruption Conference (IACC) October 2018. This comprised an initial rapid review of the current trends towards BOT, the state of the international architecture and provision of support to countries addressing the challenges of implementation.

- This Phase 2 paper is a more in-depth study following up on the initial findings of Phase 1 by: mapping the international and national architecture and commitments on BOT and the roles of different stakeholders; assessing the current level of evidence of the impact of BOT; consulting partners from governments, international organisations; private sector and civil society on their views on BOT; assessing what is needed to set up a national BO register and the technical assistance currently available. The paper assesses different approaches to harnessing international and national leadership to establish BOT as a global norm and makes recommendations for possible future approaches and sequencing.

Acronyms, abbreviations and glossary

AML	Anti-money laundering
AEOI	Automatic Exchange of Information
BO	Beneficial ownership
BOD	Beneficial ownership disclosure
BODS	Beneficial ownership data standard
BOT	Beneficial ownership transparency
BRIS	Business Registry Interconnection System (for EU registries)
CAC	Corporate Affairs Commission (Nigerian Register)
CD	Crown Dependency
CFT	Countering the Financing of Terrorism
DFID	UK Department for International Development
EGPS	Extractives Global Programmatic Support (World Bank Trust Fund)
EITI	Extractive Industries Transparency Initiative
EU MS	EU Member States
EU 4/5AMLD	EU Fourth or Fifth Anti Money Laundering Directive
FATF	Financial Action Task Force
FSRBs	FATF-style regional bodies
IACC	International Anti-Corruption Conference
IFIs	International Financial Institutions
OECD	Organisation for Economic Cooperation and Development
MAVC	Making all Voices Count
OGP	Open Government Partnership
OO	Open Ownership
OT	Overseas Territory
PSC	People with Significant Control (UK Register)
TJN	Tax Justice Network
VFM	Value for Money

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Executive summary

This paper was commissioned to consider the question "**what action is required to achieve a global norm of beneficial ownership transparency**?" Anonymously owned companies[1] facilitate grand corruption and laundering of the proceeds of corruption. They can also enable other harmful flows including tax evasion, organised crime and terrorist financing. These flows, and the corporate and other structures which facilitate them, are international, operating across borders, therefore policy makers are recognising that the action required to address them similarly **requires a global effort, to manage the risk that illicit flows are simply diverted.**

A growing **cohort of countries is already committing to publicly accessible registers of beneficial ownership** as one of a range of approaches to tackle these challenges. Some countries have already made significant progress with implementation, for example in Denmark, the UK and Ukraine. Eight countries (Afghanistan, France, Ghana, Kenya, the Netherlands, Nigeria, Tanzania, and Ukraine) made explicit commitments to public registers at the London Anti-Corruption Summit 2016, where others made related commitments to beneficial ownership transparency in public procurement, property and extractives. Thirteen countries had made commitments to implement or explore aspects of beneficial ownership transparency in their Open Government Partnership Action Plans by December 2018. By 2020, EU Member States subject to the Fifth Anti-Money Laundering Directive will also be required to legislate for publicly accessible registers of company beneficial ownership. The Extractive Industries Transparency Initiative (EITI) will also require its 51 implementing countries to collect and publish beneficial ownership information for companies bidding for and operating extractives licences. Thus, the **momentum on BOT has already moved beyond campaigning efforts** by international civil society such as Transparency International and Global Witness into adoption and implementation.

Beneficial ownership transparency (BOT) is emerging as a new norm as countries recognise that closed systems of beneficial ownership disclosure for law enforcement to share information are necessary but not sufficient for tackling money-laundering and corruption, as well as other illicit flows. However, BOT is not yet considered the usual way of operating everywhere, so that governments, businesses and citizens across the globe can share this information efficiently to maximise their impact on corruption.

Policy-makers are adopting beneficial ownership transparency (BOT) as a tool to **deliver a variety of objectives** although, since implementation is at an early stage, **work is just beginning on gathering evidence** of impact and effectiveness of these policy initiatives. Greater transparency allows independent oversight by national and international civil society, to **hold individuals and countries to account for action** on corruption, money -laundering and tax evasion. This can encourage more robust action, particularly where political will is weaker. It is also argued that BOT acts as a deterrent to corruption, and other illicit behaviour, increasing the risk of detection.

[1] In terms of **scope, this paper looks primarily at BOT for corporate structures** while recording emerging trends on other legal arrangements such as trusts.

Public registers also enable governments to **promote prosperity through a more open investment regime and value for money in public procurement.**

Information on beneficial ownership is also ***part of* the evidence gathered by law enforcement and other authorities to trace money-laundering, corruption or other illicit activity**, and by the private sector for due diligence – therefore these users can also achieve **efficiency gains** if such information is made more easily accessible and accurate through open publicly accessible registers. There is anecdotal evidence that BOT is affecting incentives, but **more systematic and concerted efforts to gather evidence on how BOT information is being used by these different groups and its impact would assist in making the case for BOT with others and support** design and implementation.

Countries looking to disclose beneficial ownership are aligning with a range of established and emerging norms (See Section 1.2) by making international commitments and/or observing existing guidance and formal Standards as they work to implement disclosures:

- The existing norms which encompass beneficial ownership and have a **broad geographical reach** are the **FATF Standards, which aim to tackle money laundering and counter the financing of terrorism (AML-CFT)** while recognising the important role that anti-money laundering systems play in tackling corruption, and the OECD Global Forum Standards on tax transparency. Given their wide country coverage the FATF and OECD Standards are considered the **existing global norms on beneficial ownership disclosure (BOD);** ensuring that "*information on their beneficial ownership is available to* ***competent authorities*** *without impediments*[2]*"*, but **they do not currently require countries to implement transparency (BOT)** i.e. publicly accessible beneficial ownership information.
- A range of other sectoral or regional norms are emerging which **do require beneficial ownership transparency**, notably the EITI Standard 2016 and the EU 5AMLD. Each has a different but overlapping geographical coverage.

Efforts are underway to **distil lessons on how countries are implementing BOD and BOT and** understand the **"use cases"**; why different users need this information and how they use it**.** For example, the IMF is conducting a review of countries' implementation of FATF Standards on BOD. The World Bank Doing Business team is exploring the impact of registry transparency for attracting investment. Meanwhile a cohort of countries at the vanguard of implementation of BOT and international civil society are sharing experience through the Open Government Partnership. Ensuring that publicly accessible registers are designed to **meet the needs of different users in each context** is critical to maximising impact on corruption, investment climate or other objectives. **Identifying the incentives** of different users of BO data and other stakeholders in each context can help to build and sustain coalitions more supportive of adopting this emerging norm or address opposition (See Ghana case study – Appendix 2). Several **areas of convergence and good practice are emerging from experience of implementation to date** (see Section 1.2), which could form the basis for codifying good practice in BOT into a set of **principles or "Disclosure Standard"** supported by guidance. This could be refined as experience of implementation grows

[2] FATF Intermediate Outcome 5.

among a wider group of countries and would enable countries to benchmark their progress.

Businesses, investors and financiers are showing a growing interest in BOT both to bolster their social licence to operate and to conduct **due diligence on their suppliers, markets and competitors to drive investment and trade**. The **private sector** is an important supplier and user of BO information, but a relatively limited amount of work has been conducted to date to understand the needs of different sub-sectors and how publicly accessible registers can meet these. The private sector's involvement in **advocacy for BOT** has also so far been limited, despite the **potential for governments to promote BOT to foster a more open and competitive investment climate**. Businesses, investors and financiers increasingly recognise its potential to boost confidence and trust in their operations, to create more open and competitive investment climates and to assist with managing risk. There are opportunities to work much more closely and extensively with the private sector to build this evidence base and deliver the ultimate cost savings for business of a large-scale shift to public, easily accessible accurate BO data.

Countries in the vanguard of implementation face a series of challenges (see Section 3). They often face a **political, technical and resourcing hurdles** to implement credible publicly accessible registers. Countries such as Ghana and Nigeria are playing a leading role in exploring and addressing the challenges around building political and intragovernmental consensus. These efforts are also generating **demand for technical support** in key areas such as legal drafting, outreach to reporting companies, data management and enforcement. As more countries adopt BOT, this demand is increasing, **existing providers of dedicated BOT support** such as the EITI Secretariat and Open Ownership**, are stretched**. Consideration needs to be given to how best to meet this growing need through existing and disparate sources of technical assistance (TA) or whether additional resourcing and coordination is necessary (Sections 4 and 6). Some stakeholders with deep experience of providing technical assistance to countries on AML-CFT or tax transparency are **cautious about the desired pace of reform and degree of investment in BOT**, where capacity and resources are scarce, and while the evidence base for effectiveness is still limited.

Meanwhile early implementers, such as the UK and Denmark, which now have operational registers, are testing approaches to meet challenges **at the frontier of implementation** – notably ensuring that BO information is not only publicly accessible but also **accurate and reliable**, by establishing and resourcing robust systems of **verification**. Some closed systems of beneficial ownership disclosure (BOD) have managed to achieve timely and accurate access. However, in contexts where governance and control of corruption is poorer – whether due to political or technical causes – there is an even stronger argument for publicly accessible registers bolstered by reliable data. This provides **an opportunity for civil society and others to further anti-corruption efforts by enhancing external detection and accountability for tackling corruption. It is also important for the credibility of BOT**.

Ensuring that data is provided and reported in **open data formats** is equally important so that information can be exchanged and scrutinised across borders reflecting the international nature of financial and other markets which are used to channel the proceeds of corruption. It also enables BO data to be **linked to other datasets such as public procurement or asset declarations**. For this reason, this report also includes some considerations of action needed to achieve a **global norm of *open***

publicly accessible BO using the tool provided by the Beneficial Ownership Data Standard (BODS) (Sections 1 and 5). Countries are also carefully considering how to continue to make data accessible while observing regulations and concerns about **data protection and privacy** and security.

International efforts are now underway to bring together governments already implementing or planning BOT measures into **a "Leadership Group" which commits to open and publicly accessible registers, works to encourage others and, with appropriate technical support, to distil best practice and guidance to encourage and benchmark others' progress on BOT.** Work towards a norm of BOT can build on and leverage existing architecture, such as the **Open Government Partnership**, which already has over 79 national members and 20 subnational members, at least in the initial stages. Experience of establishing other norms, such as Open Contracting, provide lessons on **incubating a new partnership in an existing institution** with backing from a leadership group of countries and transitioning to an independent and dynamic entity at a later stage, if necessary.

In parallel, as political commitment, new requirements and practice in specific sectors and countries are already starting to run ahead of the norms originally established by FATF in 2003 and 2012, some consensus on a need to **update the FATF Standards to incorporate BOT** is also starting to emerge. For example, this was noted among some core FATF members which are already adopting BOT and technical experts at FATF and the IMF. If there is sufficient political appetite, **this approach would have the potential to strengthen incentives to adopt BOT in a larger group of** countries (beyond OGP for example) **and mitigate risks that BOT shifts illicit flows** to less transparent countries by **levelling the playing field**, and also to open up further debate on BOT at **the G20**, as means to achieve a global norm.

Action to achieve a global norm will require sustained effort to attain a critical mass of countries actually implementing open publicly accessible BO registers with reliable data which is being actively used by a range of stakeholders – law enforcement, business, civil society etc. Based on the experience of other initiatives such as FATF and the OECD, EITI, or specific countries such as the UK PSC register, **this could take 10 to 20 years to consolidate momentum and establish a solid base of implementers** (see Sections 1 and 3). Meanwhile, some countries with significant financial centres, such as the US and Canada, are currently focusing on strengthening their systems of BOD, progress on this should also be **welcomed** as part of international efforts to tackle illicit flows, and seen as an important foundation for progress towards the emerging global norm of BOT.

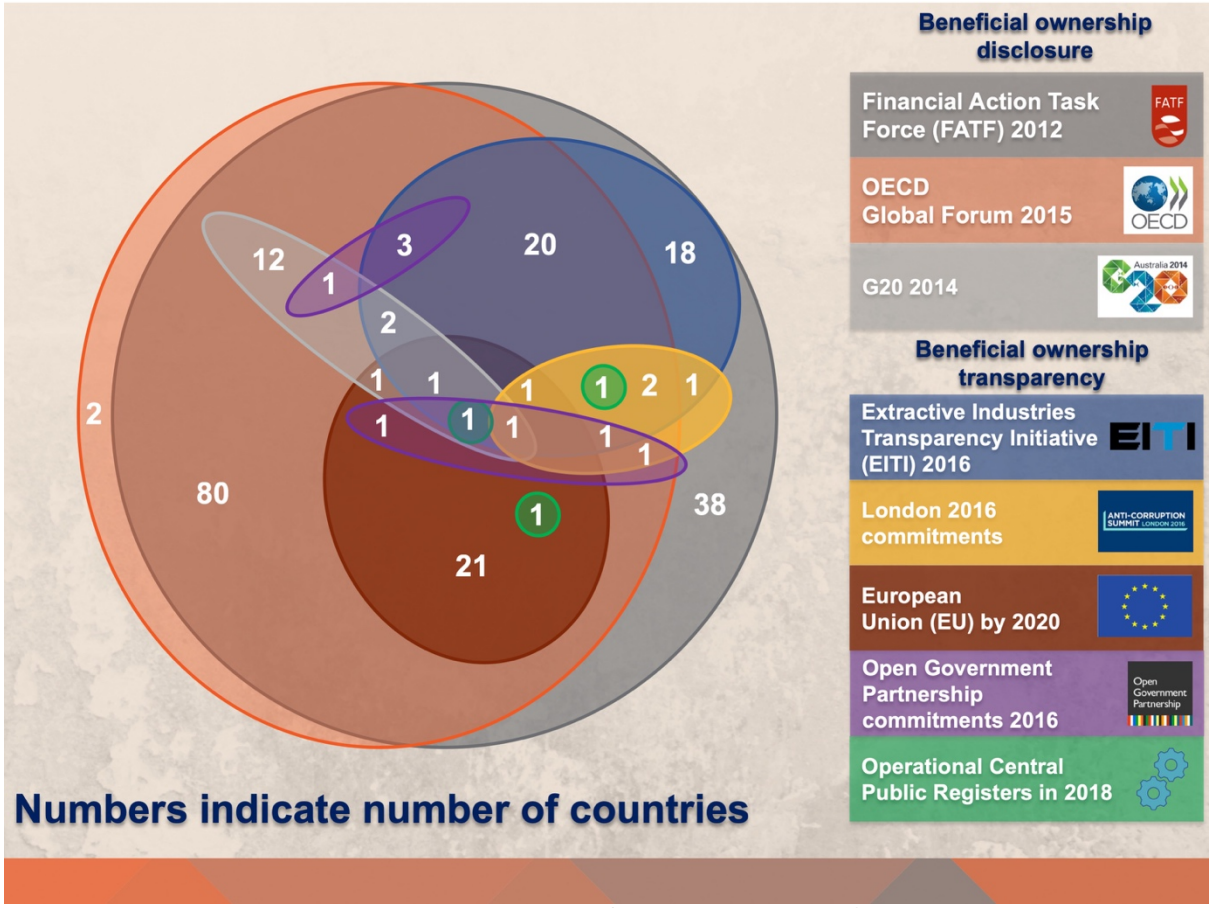
Given that implementation in many countries is at an early stage, many would argue that it is also too early to understand the effects and impact of BOT, and attribution is difficult. A summary of the current state of learning and expectations on impact, and the challenges with gathering evidence, is in Section 2. Systematically building a stronger **evidence base on the impact of BOT as part of systems for tackling corruption and money-laundering** and **fostering a more open and attractive investment climate** will be important parts of these **efforts to persuade** a broader range of governments that the benefits outweigh the costs of BOT. This also presents some questions of **sequencing**, given the timescale for implementation of publicly accessible registers, waiting to build this evidence base could represent a lost opportunity to take advantage of the current political momentum on BOT as an important contribution to the fight against corruption and promotion of prosperity.

Four options, including a menu of components, on how to make progress towards a global norm are set out in Sections 5 and 6 of this paper. Existing and planned initiatives to work towards **a global norm of open, publicly and freely accessible BO information** need to be complemented by multi-faceted action to:

- **Build a Leadership Group of countries implementing open, publicly accessible registers and providing peer support and encouragement to others, while spearheading alliances to enable reform of existing broader international standards**, so that over the medium-term open publicly accessible registers become the new **formal international standard subject to regular evaluation**;
- Launch a comprehensive and sustained **partnership with users of BO information in the private sector** – businesses from different sectors, investment funds, financial institutions, lawyers etc – to ensure that their needs for due diligence of customers, investees and business partners can be effectively and efficiently met through accurate publicly accessible registers and explore opportunities to work with the private sector for **advocacy with governments** on BOT;
- **Scale-up and better coordinate learning on good practice in BOT**, for example by ensuring there is **regular consultation** with the disparate experts in implementing governments, international organisations such as FATF and the IMF, if there is appetite, and with sectoral experts such as EITI, and civil society leaders in this field such as the coalitions involved in Open Ownership and OGP, to **codify good practice as the basis for a "Disclosure standard" or set of principles and good practice guidance**. These technical inputs could be coordinated through a **technical panel to advise the Leadership Group;**
- Fund a **step-change in technical assistance, programmatic funding and peer learning**, working with international providers in the international financial institutions (IFIs), civil society and the private sector, for **countries with weaker capacity and resources** to adapt, build and maintain open and accurate publicly accessible registers**. Investing up-front in understanding how to verify and validate data well and manage privacy concerns** will be an important element of this;
- Proactively **manage the risks** of extending publicly accessible registers by targeting stricter due diligence at jurisdictions with poor governance arrangements and weaker compliance with existing Standards of BOD to prevent them becoming the safe haven for the proceeds of corruption displaced from countries with publicly accessible registers;
- **Invest in understanding impact** from the outset by building a learning approach and feedback into programmatic support and technical assistance for BOT, establishing clear baselines and tracking impact on corruption and the business environment in a set of pilot countries.

1. Mapping of international and national architecture

1.1. International architecture



Source: FATF, OECD, G20, EITI, EU, OGP, gov.uk[3], Consultant research[4]

Figure 1. Coverage of existing norms of beneficial ownership transparency

A range of existing Standards and approaches provide frameworks for countries to make commitments and/or implement measures for the disclosure of beneficial ownership of companies and other legal arrangements. More recent and sectoral frameworks are going beyond disclosure of BO information to competent authorities (BOD), such as law enforcement, to require or encourage greater transparency through publicly accessible registers of company BO (BOT). This Section maps out these existing Standards and approaches and how momentum is developing towards

[3] https://www.gov.uk/government/publications/anti-corruption-summit-country-statements

[4] References to beneficial ownership transparency are commitments to implement or explore publicly accessible economy-wide registers, except for EITI numbers in this diagram. Some of these countries have also made narrower BOT commitments, for example on BOT in public contracting or registers of foreign property. These are not captured in this diagram.

beneficial ownership transparency, while country participation in the range of Standards and approaches is illustrated in Fig.1.

1.1.1.Norms with established global reach

The most established approaches for BOD with the widest country coverage are the FATF Standards focused on AML-CFT and the OECD Global Forum standards on tax transparency[5]. While they both have broad geographical reach, **neither requires public registers of beneficial ownership**. In 2015[6] the OECD Global Forum Standard for Exchange of Information on Request incorporated the FATF Standards with respect specifically to BO, which had been established in 2012. FATF, the FATF-style regional bodies (FSRBs), the IMF and World Bank conduct periodic Mutual Evaluations/assessments to determine compliance with the FATF standards. The OECD conducts peer reviews of performance against its standards. These assessments are also considered by other organisations which can provide further incentives for countries to act. For example, OECD Peer Review outcomes are taken into account by multilateral financing institutions and in the EU list of non-cooperative tax jurisdictions[7].

Financial Action Task Force (FATF) – the established global norm for disclosure of beneficial ownership

The existing global norm on BOD is contained in the FATF Standard (Recommendations 24[8] and 25 (2012) and Intermediate Outcome 5 (IO5)). The reach of the FATF standard is reflected in its geographical coverage (198 jurisdictions) and long establishment as the standard for AML-CFT. It has also been a reference point for the establishment of standards and approaches with other objectives, such as the OECD Global Forum standards for tax transparency, G20 High Level Principles on BOT and Requirement 2.5 in the EITI 2016 Standard.

FATF requires timely access for competent authorities to **adequate, accurate and current** BO information. It allows for this to be **achieved through a variety of ways** - to hold information in a corporate register, for companies to hold the information, or to use the information collected by "obliged entities"[9] through customer due diligence. This variety of approaches reflects different country contexts of FATF's wide geographical base and the fact that agreement on the Standards and any updates is reached by consensus in its core group of 37 members.

Although FATF's primary mandate is to tackle AML-CFT, it recognises the important **contribution that tackling money-laundering can make to address international corruption**, stating that:

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[5] OECD standards on corporate governance and the OECD Anti-Bribery Convention also cover BO (see below).

[6] See page 9 and 10 of the exchange of information peer review handbook - http://www.oecd.org/tax/transparency/global-forum-handbook-2016.pdf
'To ensure a level playing field and to respond to the G20's call to draw on the work of the FATF on beneficial ownership, the Global Forum strengthened its EOIR standard for its second round of review by introducing the FATF concept of beneficial ownership in its assessments, along with other positive changes. The Global Forum adopted the revised Terms of Reference (2016 Terms of Reference) at its annual meeting in Barbados on 28-29 October 2015.'

[7] https://ec.europa.eu/taxation_customs/tax-common-eu-list_en;
https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_02_10_2018_en.pdf

[8] FATF Recommendation 24. To ensure that "adequate, accurate and timely information on the beneficial ownership and control of legal persons... can be obtained or accessed in a timely fashion by competent authorities"

[9] http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf

"The G20 called upon the FATF to address the problem of corruption in the framework of its work on combating money laundering and terrorist financing. Corruption and money laundering are intrinsically linked. Corruption offences, such as bribery or theft of public funds, are generally committed for the purpose of obtaining private gain. Money laundering is the process of concealing illicit gains that were generated from criminal activity…The FATF Recommendations were designed to combat money laundering and terrorist financing, but when effectively implemented they can also help combat corruption, by:

- *safeguarding the integrity of the public sector*
- *protecting designated private sector institutions from abuse*
- *increasing transparency of the financial system*
- *facilitating the detection, investigation and prosecution of corruption and money laundering, and the recovery of stolen assets.[10]"*

FATF, the FSRBs, the IMF and World Bank conduct Mutual Evaluations/assessments to determine compliance with the FATF Standards. Since 2014, FATF's Mutual Evaluations have considered not only technical compliance[11] but also effectiveness in ensuring that:

"Legal persons and legal arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments." (FATF Intermediate Outcome 5)

Lessons emerging from FATF suggest that countries **can be technically compliant with the FATF Standards on BOD but this may not ensure that they are effective**. Specifically with respect to the effectiveness of measures to prevent misuse of legal structures and arrangements including BOD (IO5), as of January 2019, FATF records that of the 68 countries which have had 4th round Mutual Evaluations, only 8 countries have "substantial levels" of effectiveness, requiring moderate improvements, 32 have "moderate levels", requiring major improvements" and 28 "low levels" of effectiveness, requiring fundamental improvements. No country has recorded a "high" level yet.[12]

Officials recognise that standards in this area are not yet well observed in many countries and in some they are not observed at all. FATF is not **seeing the scale and speed of implementation needed** or significant transformation from the 3rd to 4th round of mutual evaluations. For example, in a recent horizontal review of BO concluded in 2017, FATF concluded that failure to conduct due diligence was a significant weakness in many jurisdictions[13]. FATF experience to date suggests that many countries face significant technical and/or political challenges and resourcing challenges in meeting the existing standards. Domestic constituencies which are calling for reform may often be lacking.

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[10] http://www.fatf-gafi.org/publications/corruption/?hf=10&b=0&s=desc(fatf_releasedate)

[11] FATF Mutual Evaluations rate countries' technical compliance with the Standards (such as Recommendations 24 and 25 on BOD) as compliant, largely compliant, partially compliant, or non-compliant. They rate countries' effectiveness in ensuring outcomes (such as IO5 on BOD) as high, substantial, moderate or low levels of effectiveness http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf

[12] http://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf. January 2019.

[13] (FATF 2017) http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf

Experience to date has, though, become a driver for **lesson-learning exercises on why progress is slow and how to improve FATF processes**, such as the current IMF scoping study (see below Section 1.1.8) and a forthcoming FATF review. Some argue that FATF resources should be prioritised towards addressing weaknesses in countries' existing AML-CFT systems to enable these to be assessed as effective, rather than seeking further amendments to the standards such as incorporating publicly accessible registers.

Limited progress on effectiveness has also been a **driver for efforts to go beyond FATF** Standards, for example on BOT, to achieve further AML-CFT success. The EU 5th Anti-Money Laundering Directive (5AMLD), for example, responded to terrorist attacks in Europe and the revelations of the Panama Papers by introducing a more rigorous requirement publicly accessible registers of BO. A growing number of FATF members are going beyond the existing recommendations. For example, of the 37 core FATF members, the 15 current EU member states are set to implement 5AMLD and at least six others are known to be exploring or consulting on publicly accessible registers[14]. Box 1 below sets out **the momentum towards more publicly accessible BO information**.

[14] Argentina, Australia, Brazil, Canada, Mexico, Norway

BOX 1: Momentum towards more *publicly accessible* beneficial ownership disclosures

Momentum towards more *publicly accessible* beneficial ownership disclosures has grown, with political commitment, new requirements and practice in specific sectors and countries starting to run ahead of the Standards originally established by FATF:

- In 2014, the G20 provided political impetus to BO disclosure by incorporating the FATF norms into a set of "High Level Principles on Beneficial Ownership Transparency", motivated by a drive to tackle international tax evasion and corruption to assist in reinvigorating global growth. A recent review of G20 progress found that the **number of G20 countries with weak or average legal frameworks for BOD had fallen from 15 to 11 between 2015 and 2018**. Yet the strongest drivers for action on BO **transparency** (rather than just disclosure) have been not the G20 but **regional pressures** such as the EU's Fourth Anti-Money Laundering Directive (4AMLD), leading France, Germany and Italy to establish central beneficial ownership registers, and national action on corruption, such as in Brazil. By contrast **the G20 does not have its own process for members to report and monitor progress on the 2014 commitments**. In October 2018, business leaders from the **B20** in Argentina called on the G20 to mandate **public registers** of beneficial ownership information.
- The **EITI** recommended a publicly available register of beneficial owners of corporate entities bidding for, operating and investing in extractive assets in its 2013 Standard, tightening these recommendations in the revised 2016 Standard. It is now required that by 1 January 2020, EITI implementing countries request companies bidding for and operating extractives licences to disclose BO information. The EITI Standard requires BO information to be available to the public. It is recommended that this is done through a central public register as part of broader efforts to mainstream EITI reporting into government systems.
- The revelations of the **Panama Papers** drove renewed political impetus to take action. At the **London Anti-Corruption Summit in 2016**, eight countries (Afghanistan, France, Ghana, Kenya, the Netherlands, Nigeria, Tanzania and Ukraine) made explicit commitments to establish public central BO registers. Commitments were also made to work towards BOT in public contracting, extractives and for owners of foreign property.
- Nine countries have made firm commitments on BOT in **Open Government Partnership Action Plans**, some to public registers and others to BOT in public contracting or extractives, a further four are exploring feasibility of public registers and others are considering better BOD.
- **Regional drivers of progress** have also become even stronger. In July 2018, the **EU's new Fifth AMLD** (5AMLD) came into force requiring member states by January 2020 to introduce legislation to establish publicly accessible BO registers for legal entities, and to expand the scope of access to national registers of trust beneficial ownership information to permit access to competent authorities, FIUs, professional sectors subject to AML rules (banks, lawyers etc) and to others with "legitimate interest". This also requires mechanisms for verification and regional interconnectivity. The EU is also taking steps to identify "High Risk Third Countries" and require enhanced due diligence for doing business with them (see below).

Source: B20, EITI, Open Government Partnership, Transparency International,[15]

The FATF Standards established in 2003 and updated in 2012, do not require public registers but FATF **officials acknowledge that "the debate has moved on".** FATF will begin an exercise on collating best practice on BOD in January 2019, following an IMF study. These insights will inform the next periodic update of the Standards by 2022. This would offer **an important opportunity to align the FATF Standards with emerging international practice on greater transparency.** Since FATF's mandate relates to AML-CFT, it has been argued that, in order to update the FATF recommendations, an effective case would need to be made that public registers would indeed enhance AML-CFT efforts. These issues are discussed in **Section 2 below on Impact and Effects of BOT**.

The FATF mutual evaluation process can provide an important **incentive** to some countries to improve their AML-CFT regimes. However, since BOD is only one element of a wide-ranging set of recommendations – reflecting the breadth of action needed to address AML-CFT issues - and a country is assessed across all of these, a poor score specifically on BOD may not represent a significant incentive alone for some countries to address weaknesses in this area[16]. In addition, the recorded **pace** of improvement may be slow, given the eight-year time lag between mutual evaluations, as FATF has to cover a large number of countries and indeed a certain lapse of time is necessary to judge whether country action has been effective in disrupting and prosecuting money-laundering. The incentive for a country to make a step-change in BOD to improve its FATF evaluation assessment may only happen every eight years, although other measures such as Action Plans and follow-up procedures can serve to maintain momentum.

The current Fourth Round of Mutual Evaluations runs from October 2014 to June 2022. Therefore, some are also arguing that a **reform of FATF processes** is required, for example to allow for rapid but more focused reviews, and horizontal reviews across all countries of a specific recommendation. If pursued, these reforms could be an opportunity to focus on BOD implementation to accelerate progress – since a significant number of jurisdictions currently demonstrate low to moderate compliance on BOD. Mutual evaluations are also a source of **knowledge and good practice** on how countries are approaching BOD and transparency, for other countries seeking to learn lessons. FATF has published a number of reviews which highlight good practice examples as well as areas of vulnerability.

[15] (B20 2018) B20 2018 Integrity and Compliance Policy Paper. October 2018; EITI: www.eiti.org. 2016 Standard requirement 2.5; As of December 2018, according to the latest OGP National Action Plans, 6 OGP members have actually committed to public registers of BO (Armenia, France, Kenya, Liberia, Nigeria, UK), 3 are considering the feasibility of public registers of BO (Ireland, Canada, Norway), 2 have committed to or are considering the feasibility of public registers for public contracting (Chile, Ghana). In addition, of this group, 2 countries have committed to public registers of foreign owners of property (UK, Kenya) and for public contracting (Kenya). Some of this group (Ghana) plus 2 others (Indonesia, Mongolia) have explicit commitments on BOT for extractives contracts/licences under EITI.; (TI Sept 2017) Amin, L. and Raymond, J. Promise to Practice. Monitoring Global Progress of the 2016 Anti-Corruption Summit Commitments. Transparency International. September 2017; (TI July 2018) Martini, M. and Murphy, M. G20 Leaders or Laggards? Reviewing G20 promises on ending anonymous companies. Transparency International. July 2018.

[16] Although both the US and Canada are currently deliberating reforms to their BOD systems in part to respond to FATF Mutual Evaluations.

Organisation for Economic Cooperation and Development (OECD) and the Global Forum

Overall, the **OECD views BOT as making a contribution to addressing at least four challenges**. These are tax transparency, anti-money laundering (and other illicit financial flows), development outcomes and corporate governance. **BO requirements form part of the Global Forum's Standard on exchange of tax information**. It is also viewed as making a contribution to development outcomes for example in contributing to transparency in areas such as the exploitation of natural resources and public procurement.

At the time of writing, 153 jurisdictions have committed to the Global Forum, of which 102 are implementing the AEOI Standard. The Global Forum uses the standard for two purposes: exchanges of information on request and automatic exchanges. In 2015[17] the OECD Global Forum Standard for Exchange of Information on Request incorporated the 2012 FATF Standards, with respect specifically to beneficial ownership, in its assessment methodology for its second round of reviews. The OECD's BO requirements mirror the FATF standards and the organisation uses the same criteria to judge compliance. So, **the OECD standard does not require public BO registers but that adequate, accurate and timely information is available to tax administrations**.

The OECD's evaluations of countries' implementation of its requirements act as an incentive for governments to take action to address weaknesses in their legislation and processes. A country's Global Forum rating is **taken into account by other international organisations and by international lenders in considering the level of risk**. The EU uses OECD peer review outcomes for placing jurisdictions on its list of non-cooperative tax jurisdictions[18]. In making its assessments, the OECD looks at all aspects of compliance with its standards, of which BOD is one aspect. Thus a poor assessment on BO may not lead to an overall poor evaluation but when combined with other identified weaknesses may signal more systemic issues in a country.

The G20/OECD Principles of Corporate Governance also contain provisions on BO that underline the importance of BOD for understanding who owns and controls companies in order **to safeguard the rights of minority shareholders**, including to help prevent abusive related party transactions. The Principles call for implementation of the International Organisation of Securities Commission Multilateral Memorandum of Understanding on exchange of information, which requires supervisory and enforcement authorities to share information on beneficial ownership for enforcement cases involving multiple jurisdictions. According to the OECD, to promote their implementation as one of the **Financial Stability Board's core standards**, the G20/OECD Principles are also used as the benchmark for the World Bank's Corporate Governance Reports on Observance of Standards and Codes (ROSC). The **World Bank ROSC reviews** and **OECD Corporate Governance Committee accession**

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[17] See page 9 and 10 of the exchange of information peer review handbook - http://www.oecd.org/tax/transparency/global-forum-handbook-2016.pdf
'To ensure a level playing field and to respond to the G20's call to draw on the work of the FATF on beneficial ownership, the Global Forum strengthened its EOIR standard for its second round of review by introducing the FATF concept of beneficial ownership in its assessments, along with other positive changes. The Global Forum adopted the revised Terms of Reference (2016 Terms of Reference) at its annual meeting in Barbados on 28-29 October 2015.'

[18] https://ec.europa.eu/taxation_customs/tax-common-eu-list_en;
https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_02_10_2018_en.pdf

reviews are also used to push for **implementation of better BO information for enforcement purposes**. The OECD also promotes public disclosure of beneficial ownership information with regard to significant shareholders of listed companies in its Asia and Latin American Corporate Governance Roundtables, including through assessment reports of jurisdictions in each region.

Forty-four countries have ratified the OECD Anti-Bribery Convention.[19] Pursuant to the Convention, Parties are required to criminalise the offering, promising and giving of bribes to foreign public officials (foreign bribery), and seriously investigate and prosecute complaints of foreign bribery.[20] One of the main **challenges to detecting and investigating foreign bribery** is inadequate access to the identity of the ultimate beneficial owners of legal arrangements.[21] Reviews of Parties' implementation of the OECD Anti-Bribery Convention provide recommendations and discussions on positive achievements, such as the detection, investigation and prosecution of foreign bribery cases, including through improved BOT.

1.1.2.Regional norm encompassing publicly accessible registers

European Union – an emerging regional norm for beneficial ownership transparency

An emerging regional norm on beneficial ownership transparency is the EU Fifth Anti-Money Laundering Directive[22]. This entered into force in July 2018 and EU Member States are required to incorporate this into their legislation by January 2020.

*"The beneficial ownership registers for legal entities, such as companies, **will be public**. This wider access to part of the beneficial ownership information will enhance public scrutiny and will contribute to preventing the misuse of legal entities for money laundering and terrorist financing purposes."*[23]

5AMLD will require[24]:

- **Publicly accessible BO registers** for corporate and other legal entities by January 2020;
- Registers for BO of **trusts** and similar legal arrangements by March 2020; Access to information on BO of trusts for competent authorities, FIUs, professional sectors subject to AML rules (banks, lawyers etc) and to other persons who can demonstrate a "**legitimate interest**";
- National registers of EU member states to be i**nterconnected** to facilitate exchange of information via the European Central Platform by March 2021. However, it is not yet known what approach or standard the EU will adopt for open data and interoperability;
- Member states to put in place verification mechanisms of BO information collected by registers to improve their accuracy and reliability.

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[19] The Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions can be found here: http://www.oecd.org/corruption/oecdantibriberyconvention.htm
[20] See also Commentary 27 to the Convention.
[21] See: The Detection of Foreign Bribery (OECD, 2017)
[22] 5AMLD https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L0843
[23] EC Factsheet on the Fifth Anti-Money Laundering Directive. July 9, 2018. Strengthened EU Rules to Prevent Money Laundering and Terrorism Financing
[24] EC Factsheet July 2018 op cit; 5AMLD;

While ambitious in many respects the EU approach might still be considered to fall short of establishing a comprehensive norm of BOT in some aspects. In particular, 5AMLD does not require open free public access to central registers[25] as:

- The Directive itself does not require information to be submitted and published in standardised **open data formats** which would facilitate exchange of information internationally and connections with other data, for example on procurement. However, work on establishing the interconnected platform for EU registers is due to begin in January 2019 and this offers a **potential opportunity to work with them on data standards, such as the BODS.**
- It allows member states to charge a **fee to access** BO information, at their discretion. Member states are approaching this differently. For example, Denmark and the UK do not charge an access fee and Luxembourg has already says it does not plan to. By contrast France and Austria, for example, are currently planning to charge. It has been argued that by not charging, there is likely to be a higher volume of usage and more independent scrutiny to correct data, for example by civil society. Use of the UK register increased markedly after fees were abolished.

Individual EU member states have discretion as to how they transpose these two issues and there is still an opportunity for them to demonstrate high standards of good practice. Commission officials indicate that member states are progressing at a variable pace on implementation. Some plan to legislate for publicly accessible and free registers, but domestic political circumstances can delay progress (for example, Luxembourg where parliamentary elections were only held in October 2018). These are potentially **an important area for the UK and others to work bilaterally with individual member states** as they move towards implementation in 2020.

On the other hand**, the EU has gone further** by introducing additional measures to ensure "adequate, accurate and current" information in the register by "*requiring obliged entities and …competent authorities to report any discrepancies they find*" between BO information in the central register and other BO information available to them[26]. Under 5AMLD, the EU is also taking steps to introduce new criteria by which to assess "*high-risk third countries*", with deficiencies in their AML-CFT regimes, including low levels of BOD. Officials suggest that improvements in BOD or BOT would become a factor in removing countries from such a list. The purpose of this list would be to protect the financial stability of the EU by ensuring that banks and other institutions which conduct business with these jurisdictions apply enhanced due diligence requirements. It is anticipated that this could affect their willingness to do business with such jurisdictions.

While the main purpose of 5AMLD is to "to create an environment less likely to be used for the purposes of money laundering and terrorist financing", it also refers to a series **of additional benefits.** For example:

- "Public access to beneficial ownership information allows greater scrutiny of information by civil society, including by the press or civil society organisations, and contributes to preserving trust in the integrity of business transactions and of the financial system";
- Protection of minority investors where ownership is concentrated;

[25] Although Open Ownership highlights that the new PSI directive could potentially address the issue of open data access to beneficial ownership, if it requires require Company Registers (including company ownership) to be open data.
[26] 5AMLD para 15 (b)

- "Enhanced public scrutiny will contribute to preventing the misuse of legal entities and legal arrangements, including tax avoidance".

1.1.3.Pioneering efforts to establish a norm in a sector

The Extractive Industries Transparency Initiative (EITI) – a sectoral norm for beneficial ownership transparency

EITI is seeking to make BOT **the norm in the extractive sector**. Implementing countries face a deadline of 1 January 2020 to introduce public BO for companies bidding for licences or holding a licence to explore or exploit oil, gas or minerals. Since its launch in 2003, the EITI has developed as a benchmark for transparency in the extractive sector and has contributed to tax transparency gaining importance on the international agenda. EITI's initial focus was on the reconciliation between the payments that companies make to government and the revenue that governments receive. It has developed to encompass other aspects of transparency including contracts and BO. The provisions on BO are contained in **Requirement 2.5 of the EITI Standard that came into force in 2016**.

Under these provisions, implementing countries were required to produce a roadmap by December 2016 on implementing BOT for the extractives sector. However, a significant number of the 51 EITI implementing countries are facing challenges and are at risk of not meeting the January 2020 deadline. These **challenges include the lack of legal obligation, capacity constraints, insufficient technical assistance and in some cases, weak political commitment**. In most EITI implementing countries, there is no legal obligation for companies within scope for reporting to comply with EITI requirements. Companies participate in EITI on a voluntary basis. Many EITI countries have faced a patchy response to efforts to collect BO information. In addition, EITI countries are implementing Requirement 2.5 alongside a wide range of other requirements in the EITI Standard, which have already proved challenging in many contexts. Finally, some countries have struggled to access sufficient technical assistance to implement the BO requirements **as demand for support to implement BOT within EITI far exceeds the supply of TA resourcing**. Demand is expected to intensify in 2019 as countries approach the January 2020 deadline (see Section 4).

1.1.4. Establishing BOT in public procurement

The **World Bank** has been considering the role of BOT from various perspectives. In terms of managing corruption risk to Bank operations, in 2017 it introduced a requirement for public disclosure of BO in high value contracts and required governments which are Bank clients to publish this information, starting in 2019. This pilot could also subsequently form the basis for discussion of **a norm and greater coordination among development banks**, so that their due diligence processes could be scrutinised externally and assist others in assessing suppliers' beneficial ownership.

There are **lessons** from other **WB** initiatives on establishing norms, notably the **Open Contracting Partnership** which was **incubated** in the World Bank and is now a separate entity. This is an example of transition from a civil society campaign, to a programme hosted on existing architecture to a vibrant separate initiative. This

included the establishment of a leading group of countries and a core standard for open data and a set of principles[27] for adoption and implementation.

Several countries (for example, Mexico, Ghana and Afghanistan) have made commitments specifically to **promote BOT in public procurement** processes, recognising the important role this can play in improving value for money and attracting a wider range of investors to more open and competitive processes.

1.1.5. Tools for open data and interoperability

Open Data Services, with support from Open Ownership, has developed the Beneficial Ownership Data Standard (BODS) as a technical tool to assist countries implementing BOT in a way that ensures that data is collected and published based on shared publication patterns and interoperable – so that registers can talk to each other and other data sets (such as procurement)." They have also worked to respond to the needs of academics and the private sector **to enable BO data to be linked across borders, with other data sets and to ensure it is higher quality**. Open Ownership (OO), the organisation which hosts the Standard, describes it as a *"practical framework for collecting and publishing beneficial ownership data, and enabling resulting data to be interoperable, more easily reused, and higher quality… Data published to the Standard is interoperable with other major international standards including the Open Contracting Data Standard and is compliant with the Common Reporting Standard set by the OECD. Finally, it is interoperable with beneficial ownership data published in the same format, permitting transnational linkages".*

Two countries, Ukraine and the Kyrgyz Republic, are already piloting the BODS, with other countries such as Armenia preparing to adopt this approach, although there are still challenges in gaining understanding and traction for open data principles for BO with a wide range of countries. OO is working to build this momentum through a network of implementing countries and civil society on the OGP platform. It also provides technical advice and a helpdesk for other countries considering how to manage and ensure interoperability of BO data. OO mentors countries to adopt shared publication patterns, so as to describe entities, people and corporate structures in the same way, which is a particular coordination challenge.

This approach recognises the international nature of corruption and illicit flows, as well as international business and financial operations. Users of BO data require access across multiple jurisdictions and registers of BO. OO argues that **building this approach into BO registers from the outset is an important investment** to deliver these objectives but also to ensure that these represent value for money and are sustainable so that they do not need to be reviewed and rebuilt to ensure interoperability in future.

1.1.6. Platforms fostering momentum on BOT

International civil society organisations have long played a critical role in pushing forward action on BOT, through campaigns, exposure of international corruption and systems for illicit flows and tax evasion, and increasingly as networks for sharing good practice and pushing for higher standards as experience of

[27] https://www.open-contracting.org/implement/global-principles/

implementation grows. The most active in this space include Global Witness, Transparency International and the Tax Justice Network. As work on BOT has matured beyond campaigning, their work has become increasingly networked – particularly with governments exploring implementation of BOT (as in the OGP, see below) and with other civil society organisations working on open data (as above in Open Ownership). They have **moved beyond advocacy – though still an important part of maintaining momentum - to becoming involved in implementation of solutions** to BOT and developing good practice guidance.

Open Government Partnership

The OGP is **not a standard-setting body but its model and platforms for collaboration between government and civil society** can help to coalesce demand for action on an issue leading to commitment, help maintain momentum on implementation of standards and for national actions to be more ambitious. It has around 100 members around the world, including national and local governments[28], in the Americas, Europe, West Africa, Western and South East Asia as well as Australia. Country priorities are determined and monitored through the process of national or subnational Action Plans and an Independent Reporting Mechanism. OGP processes can help to **maintain momentum on political commitments**, for example those made at the London Summit in 2016, by embedding these in Action Plans. However, the **accountability is more nationally based and lighter** than, say, FATF or EITI approaches. An overview of progress is planned for the next Summit in May 2019.

Public registers of BO are a thematic anti-corruption priority. 13 countries[29] have so far made commitments on BOT in **Open Government Partnership Action Plans**, some to implement or explore public registers and others to BOT in public contracting or extractives. Commitments are currently being made as 2018-20 Action Plans are completed. For example, Canada – the incoming chair of the OGP which will host the next Summit in May 2019 – has included in its 2018-20 Action Plan, work to explore the option of a public registry with provincial and territorial governments and other key stakeholders[30]. Armenia committed to establish an open and freely accessible register, piloting this in the metal mining industry and launching the full register by December 2020. Kenya has committed to establish and open, accessible and machine-readable BO register. Chile is also developing policy proposals for creation of a central register and evaluating transparency, especially in for companies involved in public contracting and receiving state subsidies.

OGP can also **foster cross-agency buy-in and alignment on BOT** in individual member countries, for example for EITI countries to implement their BO roadmaps. For example, Mongolia, Nigeria and Ukraine, among others, have used their OGP action plans to further implementation of the EITI Standard. Internationally, Open Ownership's network of countries interested in implementing BOT is already convened on the OGP platform. There is **potential to build on this approach to continue to convene governments and national and international civil society working on extending BOT** to share lessons and provide peer support for implementation going forward. While existing Standard-setters such as FATF focus on evaluating countries

[28] OGP had 79 national members and 20 local members as at November 2018

[29] https://www.opengovpartnership.org/sites/default/files/OGP_Fact-Sheet_Beneficial-Ownership_20180713.pdf

[30] See, for example: Canada OGP Action Plan 2018-20. https://www.opengovpartnership.org/sites/default/files/Canada_Action-Plan_2018-2020_EN.pdf#page=23

against established norms, OO is keen **to work closely with countries implementing BOT to develop, iterate and refine more ambitious norms** on transparency and open data.

1.1.7. Timescales for establishing global norms

Based on the experience of the initiatives above and others, **it could perhaps take 10 to 20 years to consolidate momentum and establish a solid base of implementers** of BOT, although **the pace is likely to accelerate** as new implementers learn from others' experience. There are multiple lessons from other processes, for example:

- Public political commitment to the UK PSC register was made 6 years ago in 2013 after a lengthy campaign (see Section 3). It became operational in 2016, in a context with high political commitment, capacity and an existing online company register. As one of only three operational publicly accessible registers, the UK is now at the cutting edge of testing approaches to bolster reliability of the data (see discussion of verification in Section 3), although it is already widely used. BOT implementation elsewhere might be expected to accelerate as learning is built from early implementers.
- EITI, a pioneering multi-stakeholder approach, reached 51 implementing countries on four continents, 15 years after it was founded in 2003. The EITI Standard and approaches to monitoring country progress, have been revised and expanded several times, building on learning and filling gaps in earlier disclosures and monitoring.
- By contrast the OECD Global Forum Automatic Exchange of Information approach was launched more quickly and now has 102 members who are actually implementing the exchange, though it does not foster transparency in BOT, and cooperation works better with some jurisdictions than others.
- The UN Guiding Principles on Business and Human Rights (UNGP), established in 2011 (see Section 2), offer lessons on a consultative process with effective leadership, working with business and a wide range of other stakeholders to establish a commonly accepted approach for due diligence and reporting.

1.1.8. Lesson learning on BOT

There is also momentum in recording experience and good practice on BOT, for example:

IMF research, due in 2019

The IMF is conducting a research project on BO registries (closed, and open; public and private) and developing a tool to help countries comply with FATF Standards. The information gathering phase for this project is expected to finish in the first quarter of 2019. The research project will have two main outputs. The first, due in the first half of 2019, is a short publication on the state of play of BO norms. The second, due by the end of 2019, is a set of tools to support implementation. The AML-CFT Thematic Trust Fund, which is supported by donors including the UK, Switzerland, Luxembourg, Netherlands, Japan, Norway, Qatar, France and Saudi Arabia is funding the project. This project arose as, although FATF Standards on BO are well established, it is considered that there are still limited tools to assist countries to implement them.

FATF

In the first quarter of 2019 FATF will also **launch a project to collate and assess best practice** in BO disclosure, including a comparison of countries and assessment of common challenges that they have faced. The project will take into account the IMF paper noted above and provide an input into FATF's next overall review of its Standards which is likely to take place between 2019 and 2022. **FATF has already conducted a horizontal review of BOD, which reached two major conclusions**[31]: 1) a lack of due diligence conducted on individuals setting up companies is a significant weakness in many countries; 2) supervision of professional intermediaries, such as company formation agents, is also a significant weakness in many countries. The review also concluded that offshore jurisdictions are often better at due diligence and supervision than onshore jurisdictions.

Doing Business Index

In 2017, the World Bank's Doing Business team collected preliminary data[32] on the information gathered and shared by business registries in 190 economies (see Section 2 also). Their 14-question survey on business registry transparency included, among other issues, questions relating to whether there is a central and digital business registry, whether it is publicly accessible for free and whether BO information is required and updated, and whether there are unique business identifiers. They are now considering incorporating best practices on BO transparency into their methodology for the overall Doing Business Index over the next two-five years. This could provide an **additional incentive for governments, concerned about their business environment to improve BOT**.

Other lesson-learning networks

As noted in Section 3 below on technical support, a range of **international civil society organisations** – including Transparency International, Global Witness, Open Ownership, the Tax Justice Network and the Natural Resource Governance Institute (NRGI), and multi-stakeholder approaches such as EITI are generating lessons and producing guidance from early experience of implementation of BOT working with governments in a range of different countries.

However, there is considerable **scope for more sharing of lessons between these organisations and groups of countries**. There appears to be a tendency for international standard setters and IFIs to work too separately on these issues from civil society lesson-learning approaches, and vice-versa. There is **potential to bring these groups together to codify good practice and understand effectiveness**.

1.2. National Architecture

A range of countries are actively dealing with the challenges of BOT implementation and there are some areas of **convergence of approach**. This section includes **case studies of how these approaches had evolved until 2018** and some examples of

[31] FATF 2017. Op cit.
[32] The dataset is available at http://www.doingbusiness.org/en/data/exploretopics/starting-a-business/other-resources

where they are converging[33]. It also **illustrates some of the practical challenges that countries face with implementation in specific contexts, rather than good practice in all instances.**

1.2.1. Denmark

Denmark has an operational open central public register but like other countries implementing such a register is still in the process of establishing verification procedures. The government adopted regulations in March 2016 and these came into force in May 2017 to implement the EU 4AMLD. In making its register public, Denmark has moved towards adopting 5AMLD ahead of the 2020 deadline. All Danish registered companies, foundations and certain associations are obliged to collect and submit BO information to the company register. This information is available to the public for free through the register's website. Implementation included providing extensive guidance to companies and undertaking information campaigns. Convincing companies of the rationale for this register proved one of the key challenges. For example, companies who already file information on their directors questioned the need for additional filing requirements. Attaining a balance between level of detail and user-friendliness was also a challenge. The register currently covers around 96% of eligible companies and around 99% disclosed beneficial owner data, although there are still 1-2% of companies which claim they cannot identify their beneficial owner, which remains a potential loophole. The threshold for reporting is 25% but some owners with a lower shareholding may have to disclose their information if they exercise other forms of control (e.g. higher voting rights). Disclosure of the precise level of ownership over the threshold is also required. The next stage is the implementation of a mechanism (as required by 5AMLD) to ensure the data provided is accurate and current. This was also a recommendation contained in the Global Forum's peer review which was conducted at the time that the register was being implemented but was not yet complete. The peer review also noted some ambiguities in the legislation establishing the register. Denmark has responded to FATF mutual evaluation findings by tightening its sanctions for certain companies which have not registered any BO information. These companies can be compulsorily dissolved by a court. The Danish Business Register is part of the Business Registers Interconnection System (BRIS). The 5AMLD requires interconnection of EU member state BO registers, which will become a part of BRIS (See above).

1.2.2. France

France is in the process of implementing a publicly accessible BO register as part of transposing 5AMLD into French law. The government has legislated for and established the register, including the collection of data. The register is currently not available to the public. The French Ministry of Finance and Economy, which is leading on implementation of 5AMLD, expects the register to become available to the public before the end of 2019. However, specifically on the further issue of trust (rather than corporate BO) transparency, the Constitutional Court has ruled against the government on the introduction of a public register of trusts which was deemed to be

[33] For a more complete review of how an extensive list of countries approach BO disclosure although from the perspective of tax transparency – see https://www.taxjustice.net/wp-content/uploads/2018/06/TJN2018-BeneficialOwnershipRegistration-StateOfPlay-FSI.pdf (TJN 2018)

a disproportionate infringement of privacy laws. There are also concerns from some parts of the business sector linked to the cost of submitting or updating information to the register (these costs range from €18 to €32,77). The government has focused on the need for BO to combat money laundering rather than any pro-business argument (See Section 2 below).

1.2.3. Ghana (See also more detailed case study of lessons from implementation at Appendix 2)

At the London 2016 Anti-Corruption Summit, Ghana's president committed to strengthening legislation to ensure a central public register. In 2017 the government renewed this commitment at the Concordia Summit highlighting the importance of BOT to foster an open and attractive investment climate in Ghana. Parliament is currently considering revisions to the Companies Bill which include creation of a central public register. Ghana is also facing tension between the desire to make information public and ensure sufficient resources to implement and maintain the register. Currently the Registrar-General's department already collects BO data from national companies, although a charge is made to access this "low-sensitive" data and some information is only available to law enforcement and courts, classified as "high sensitive" data. Some "normal" registry information with no BO information is available free of charge to the public. Discussions are underway to explore whether a greater degree of BO information can be included in the "normal" and in "less sensitive" information for which a charge of approximately $5 is currently made. Ghana is also an EITI implementing country and GhEITI has made some progress towards implementing the 2016 Standard; it collected and published BO information as part of its 2014 report and as part of its commodity trading transparency pilot in 2018. The government has also introduced a requirement for the oil and gas licence round, due to start in early 2019, that bidders will have to include BO details.

1.2.4. Nigeria

Nigeria has possessed a limited form of BOD since 1990 to tackle concentration of ownership of publicly listed companies. Shareholders in public companies already have an obligation to disclose their ownership to companies and the capacity in which they are holding the shares. Nigeria made an explicit commitment at the London Summit to introduce a public central register. The National Assembly is currently considering reforms to company law, including the introduction of a public central BO register. Engagement with civil society and OGP have played an important role in driving progress towards a public register. Nigeria has taken the UK register of PSC as its model but has introduced a lower reporting threshold (of 5%) and will require the disclosure of the precise level of ownership or control (rather than the bands used in the UK register). Nigeria will also require listed companies to disclose their shareholders (over the 5% threshold). Nigeria has faced challenges including resistance from some parliamentarians and resource constraints. The Corporate Affairs Commission (company register) has engaged closely with other government agencies, the National Assembly, business and civil society as part of the process of implementing a public central register.

1.2.5. UK

The UK committed to a public register of BO in 2014, as part of an ongoing drive for greater transparency and tackling international corruption and tax secrecy; and

legislated for it in 2015. Companies have been obliged to file BO information with the company register, Companies House, since April 2016. The threshold for reporting ownership or control is 25%. The level of ownership or control is then reported in three bands: more than 25%, 25-50% or more than 75%. This choice reflected the level of ownership or control through which significant changes to a UK company can be brought about; it typically takes 75% of shareholders to agree to change a company's constitution but most decisions may only require a simple majority. This push is part of a suite of measures, for example the UK is also planning to create a new register for foreign companies owning UK property. The UK Parliament also introduced legislation in 2018 to oblige its Overseas Territories (OTs) to introduce public BO registers, if they have not already done so, by 2020. The UK Government will now draft legislation by the end of 2020 to require OTs which have not done so to introduce public registers by the end of 2023. Like Denmark, now the UK has a functioning public register, it is focusing on the challenge of strengthening verification mechanisms to enhance the reliability of data. The PSC register is proving to have value beyond the UK - for example, some European police forces use the UK PSC register for their own investigations.

1.2.6. Ukraine[34]

Ukraine was a pioneer in this field as one of the first countries to legislate for a public register of BO as part of a series of anti-corruption laws introduced after the 2014 revolution. It is included as part of its existing company register. The Ukraine register applies to all companies registered in the country. Companies are obliged to submit information to the company register and it is made publicly available for free on a website. Ukraine has experienced challenges with compliance, for example, as of August 2017 only 16% of companies had submitted any BO information[35], according to a recent review by Open Ownership. This has been attributed to lack of clarity around sanctions for non-compliance. The information is only available in Ukrainian, so limiting the ability of non-Ukrainian speakers to access the information. The Ukraine definition of a beneficial owner uses a 25% threshold, although some other loopholes around definition remain to be addressed. As in other countries, Ukraine also faces challenges of establishing effective systems of verification, although there is potential for bulk comparison of data with other government datasets. Ukraine is also part of an Open Ownership pilot project to link national registers in an open data format to their global register.

[34] For further detail on how Ukraine is addressing the challenges of implementation see Sztykowski, Z. and Mayne, T. Improving Beneficial Ownership Transparency in Ukraine. Open Ownership March 2018 https://openownership.org/uploads/Improving%20beneficial%20ownership%20transparency%20in%20Ukraine.pdf.
[35] Ibid.

1.2.7. How approaches are converging

Commonalities in approach *illustrate* areas which are **emerging as a norm in terms of practices adopted by early implementers.** Lessons from their experience – both the **challenges and flaws as well as good practice** - serve to inform discussions on a possible "Disclosure Standard" or principles and guidance on BOT (See Section 5). Examples are given in the following set of tables:

Table 2: Approaches to Implementation

a. <u>By country</u>

	Scope	Report to government authority	Disclose to authorised agencies	Publicly available	Free to access
Denmark	All	🟢	🟢	🟢	🟢
France	All	🟢	🟢	🟡	🟡
Ghana	All	🟢	🟢	🟢	🔴
Nigeria	All	🟢	🟢	🟢	🔴
UK	All	🟢	🟢	🟢	🟢
Ukraine	All	🟢	🟢	🟢	🟢
Zambia	All	🟢	🟢	🟢	🔴

Key	
🟢	Yes
🟡	Decision pending
🔴	No

Source: Consultant Research

b. <u>International norms</u>

	Scope	Report to government authority	Disclose to authorised agencies	Publicly available	Free to access
EITI	Extractives	🔴	🔴	🟢	🟢
EU	All	🟢	🟢	🟢	🟢
FATF	All	🟡	🟢	🟡	🟡

Key	
●	Yes
●	Optional
●	No requirement

Source: EITI, EU, FATF, Consultant research

Table 3: Convergence of definitions

	Natural Person	Ownership & Control	Direct & Indirect Ownership	Threshold (%)	Stock Exchange Exemption	Government Exemption
Denmark	●	●	●	25	●	●
France	●	●	●	25	●	●
Ghana	●	●	●	0	●	●
Nigeria	●	●	●	5	●	●
UK	●	●	●	25	●	●
Ukraine	●	●	●	25	●	●
Zambia	●	●	●	25	●	●
EITI	●	●	●	5-25	●	●
EU	●	●	●	25	●	●
FATF	●	●	●	25	●	●

Key	
●	Included in definition
●	Not included in definition

Source: EITI, EU, FATF, Consultant research

Table 4: Level of disclosure and PEPs

	Disclosure details[36]								PEPs[1]
	Name	DOB	Address	Nationality	Nature/level of ownership/control	Effective date	ID number	Occupation	
Denmark	✓	✓	✓	✓	✓	✓	✓	✗	✓
France	✓	✓	✓	✓	✓	✓	✓	✗	✓
Ghana[2]	✓	✓	✓	✓	✗	✗	✓	✗	✓
Nigeria[2]	✓	✓	✓	✓	✗	✗	✓	✗	✓
UK	✓	✓	✓	✓	✓	✓	✗	✗	✓
Ukraine	✓	✓	✓	✓	✓	✗	✓	✗	✓
Zambia	✓	✓	✓	✓	✓	✗	✗	✗	✗
EITI	✓	✓	✓	✓	✗	✗	✓	✗	✓
EU	✓	✓	✓	✓	✓	✗	✗	✗	✓
FATF	✓	✗	✗	✗	✓	✗	✗	✗	✓

Notes

1. PEPs often considered under separate regime such as registers of interest for parliamentarians.
2. Ghana and Nigeria provisions based on EITI Requirements.

Source: EITI, EU, FATF, Consultant research

[36] Each aspect of disclosure has a series of challenges to ensure data is useful and minimise risks of gaming the system. For example, there is a huge difference between name and names (plural) when it comes to disambiguating individuals in published data. The first pattern allows BOs to disclose the value most advantageous to them (Open Ownership). On the other hand, other have concerns about granularity of data and privacy (see below) – this in the UK PSC, month and year but not day are included in DOB.

Table 5: Verification and penalties

	Centralized verification process	Onus on company to ensure accuracy	Penalties for failure to report or misreporting
Denmark	✗	✓	✓
France	✗	✓	✓
Ghana[1]	✗	✓	✗
Nigeria[1]	✗	✓	✗
UK	✗	✓	✓
Ukraine	✗	✓	✓
Zambia	✗	✓	✓
EITI	✓	✓	✗
EU	✗	✓	✓
FATF	✗	✓	✓

Notes

1. Ghana and Nigeria provisions based on EITI Requirements.

Source: EITI, EU, FATF, Consultant research

Looking across countries and at different initiatives and requirements, some areas of alignment on technical definition and scope of reporting are emerging although considerable divergence remains. **Areas of convergence** include the following examples. This is not intended to be a comprehensive list but **illustrative of areas of consensus emerging through standard-setting and practice**.

- Defining a beneficial owner as a natural person, (except where a company is 100% listed company (on a recognised stock exchange) or a 100% government-owned entity);
- A beneficial owner can exercise ownership either directly or indirectly through a series of corporate entities; and
- BO covers ownership, economic interest and control i.e. a person may not own any shares in a company but may have voting or other rights to exercise control such as appointing or removing the majority of directors.

There are **other areas of divergence[37] related to country context.** While existing standards in these areas are intended to allow **flexibility for countries to achieve objectives of AML-CFT/extractives transparency/anti-corruption** adapted to local context, they can enable loopholes and **limit incentives for countries to go further than the minimum**.

For example, **thresholds** vary from country to country. Generally, they fall in the range 5-25% (see examples in Table 3). The most common level is 25%. The UK requires disclosure of ownership bands (25-50%, 50-75%, 75-100%). Critics suggest that higher shareholding thresholds enable companies and shareholders to adopt structures to avoid disclosure by keeping holdings below the thresholds, although in some cases the requirement to consider 'control' can result in lower levels of ownership being disclosed. This implies that a zero threshold is the ideal situation although there is a trade-off with compliance costs and regulatory burden. When codifying emerging good practice going forward, one alternative might also be to have a lower threshold, with certain specific criteria that allow a country to adopt something higher.

There is also not comprehensive implementation of action internationally to abolish **bearer shares and nominee arrangements** – even if FATF Standards encourage this[38] - or to disclose legal arrangements other than companies, for example **trusts**[39]. Trusts do not have distinct legal personality and are often used for sensitive purposes, for example as vehicles used by families to hold assets for children or vulnerable adults. While around 20 jurisdictions require registration of trusts, only a small number of these require this to include the BO and none yet require BO information to be made publicly available as a matter of course[40]. However, due to concerns that they can also be used to disguise ultimate BO in the same way as complex corporate and partnership structures, **debate on greater transparency for trusts is also gaining a degree of momentum.** As noted above, 5AMLD will require EU member states to hold information on BO of trusts on a central register which is accessible to competent authorities and those with a "legitimate interest".

Countries are also converging on their implementation frameworks in certain ways, for example setting a clear **definition** in law, requiring BO **registration by companies**[41], making BO information available to law enforcement agencies and tax authorities as a minimum (driven by FATF and EU rules) and including sanctions for non-compliance. Countries are taking **a variety of approaches** to other aspects, for example responsibilities for collecting/reporting information, the **degree of free and**

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[37] Some organisations are working to systematise into a checklist the range of issues which countries could consider to minimise loopholes, see for example the work of the Tax Justice Network: https://www.taxjustice.net/wp-content/uploads/2017/04/TJN2017_BO-Registry-ChecklistGuidelines-Apr.pdf

[38] FATF Recommendation 24 states that "countries that have legal persons that are able to **issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors**, should take effective measures to ensure that they are not misused for money laundering or terrorist financing". However, a review by the Tax Justice Network of 112 jurisdictions considers that *in practice* bearer shares posed a risk as they were permitted and not immobilised by governments or cancelled in at least 44 countries (TJN 2018).

39 According to the Tax Justice Network "in the case of partnerships, trusts or private foundations, no country has comprehensive beneficial ownership registration where information is available online and for free". TJN 1 (op cit)

[40] TJN 2018

41 TJN 1 (op cit): In the last three years considerable progress has taken place, especially in Europe, a few countries in Latin America, and one African country: laws requiring beneficial ownership registration have been approved (or are required to be approved by 2020) in a total of 45 jurisdictions.

open access and standardisation of data to ensure interoperability, **the nature of sanctions[42] and enforcement for non-compliance and method of ensuring accuracy.**

[42] For example, FATF Standards require sanctions to be dissuasive, effective and proportionate allowing interpretation in individual country contexts.

2. Benefits and impact of BOT

2.1. Effects, consequences, impact and effectiveness of BOT

BOT is pursued for a variety of reasons. The **objectives** cited by different governments for adopting BOT include:

a) **Tackling corruption and other illicit flows including money laundering as a vehicle for the proceeds of corruption** and other illicit activity. The **risk of detection** is increased through better access to information by law enforcement and civil society, this acts as a **deterrent**[43]. It also enables competent authorities to conduct **more efficient and effective law enforcement** actions, in particular using BO information as part of the evidence which enables them to follow illicit financial flows, and to share this information through international legal assistance and cooperation. It **enables civil society to expose corruption and hold governments to account for action to tackle it**.
b) **Improving the business environment**, for example by creating trust, levelling the playing field and **promoting open competition, including in public procurement**, and improving **due diligence** for investors. It also helps provide **greater access to financing** from traditional lending institutions, as well as multilateral financial institutions and through loan agreements with national official development assistance (ODA) agencies, and official export credit support[44].
c) **Addressing tax evasion**. Tax authorities can understand more about the interests of corporate as well and individual taxpayers and ensure that company structures are used for **legitimate tax planning**. Information on BO can assist cooperation between countries to address the misuse of corporate structures and enable scrutiny by civil society.
d) **Enhancing action to address counter-terrorism financing.** For example, the main purpose of the EU's 5AMLD is to "to create an environment less likely to be used for the purposes of money laundering and terrorist financing".

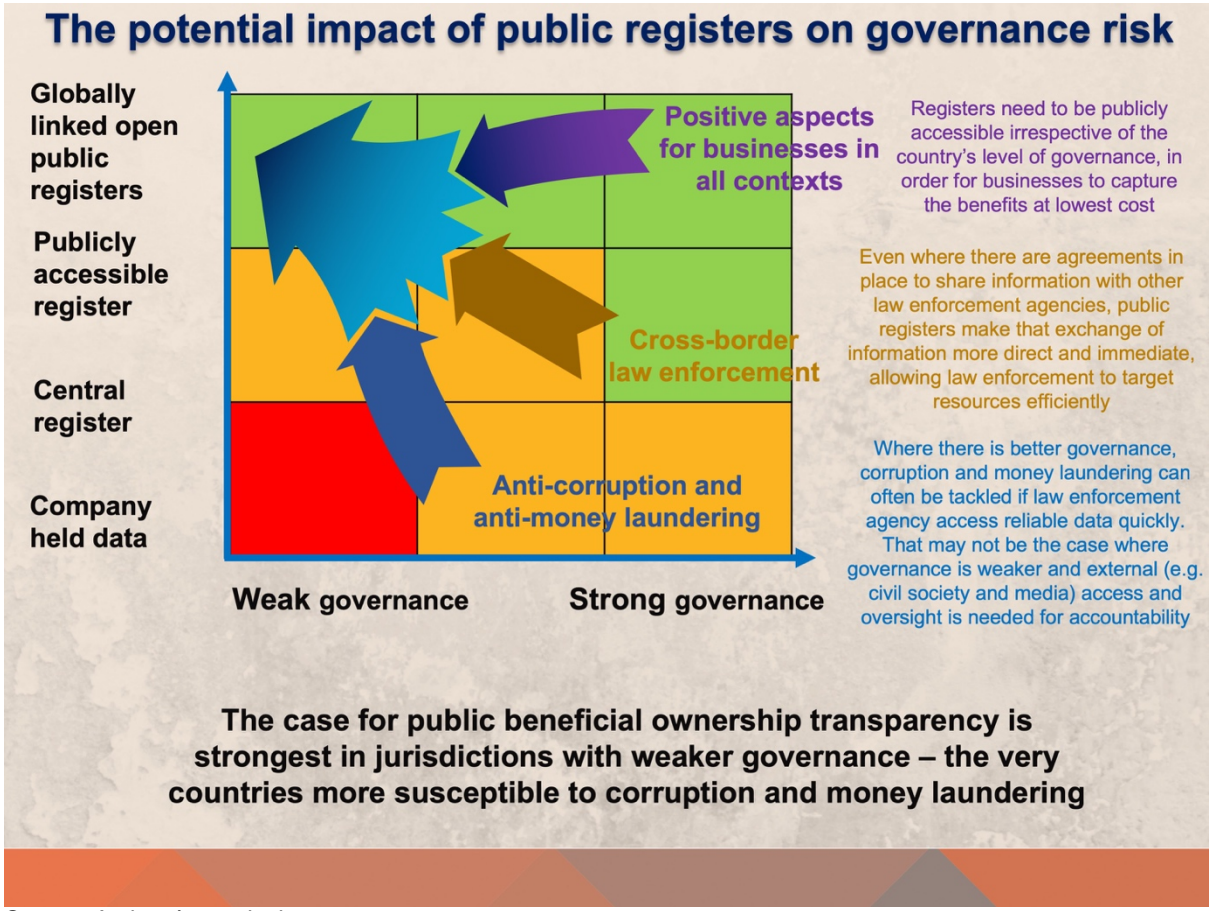
This **review will focus primarily on objectives a) and b)**. However, there are, for example, important parallels with discussions related to the effectiveness of BOT in improving revenue collection in low capacity contexts which are also summarised below.

The impact assessment for introduction of the UK PSC register (2014)[45] stated, for example that: "*Opacity of the control of corporate structures can firstly facilitate illicit activity, and secondly lead to a deficiency in corporate governance which can erode trust and damage the business environment. Both can ultimately hold back economic growth…. **We intend that enhanced transparency will deter illicit activity and improve enforcement outcomes where misuse does take place, and promote good corporate behaviour**."*

[43] For example, the FATF mutual evaluation of Ukraine in December 2017 noted that "Ukraine has made a number of positive legislative changes to promote the transparency of legal persons and make them less attractive instruments to obscure the proceeds of crime or to finance terrorism. The most fundamental changes in achieving this aim include publication of the central register of beneficial ownership (the USR) and the abolition of bearer shares."
[44] Information provided by the OECD to the authors.
45 Final Stage Impact Assessments to Part A of the Transparency and Trust Proposals (Companies Transparency). UK Department for Business Innovation and Skills. London. June 2014.

Stakeholders consulted concurred that it is **largely too early** in the implementation of BOT to measure its impact on most of these hoped-for benefits on a systematic comprehensive basis. There are only three operational central publicly accessible registers, and these have recently been established. Moreover, BOT is only one element of systems to address corruption or money-laundering, for example, which makes **attribution** more challenging. This section considers this issue from various angles.

The **potential impact** of effective BOT can be viewed as a potential reduction in the scale of corruption facilitated by the opacity of company structures, which is well documented (see below). Effectiveness assumes that **this information will be used** by a range of users – including law enforcement, civil society and business. There is already some scattered evidence on this and anecdotal evidence in the public domain on **how corrupt actors are responding**. In addition, there are lessons from earlier adoption of **transparency and accountability** approaches which can **inform design** of work on BOT with the aim of leveraging greater impact.



Source: Authors' own design

Figure 2: Potential impact of increasing degrees of BO disclosure and transparency

2.2. Potential impact of effective BOT

The UK Government recently published an impact assessment for establishment of the proposed UK Register of the beneficial owners of overseas companies *owning UK*

property (2018)[46].This highlighted the **risk posed by corporate structures in facilitating corruption and other illicit flows**. It summarised the evidence on this, cited in various studies, as follows:

"*there is a clear link between illicit financial flows and company structure. The Organisation for Economic Co-operation and Development (OECD; 2011) has observed that: "almost every economic crime involves the misuse of corporate vehicles."[47]. A World Bank review[48] reported that 150 of the 213 grand corruption cases investigated involved the use of at least one corporate vehicle to hide beneficial ownership and the true source of funds. In these 150 cases, the total proceeds of corruption were approximately $56.4bn. Meanwhile, the World Economic Forum (WEF; 2013) highlighted the increasing number of problematic cases confronting law enforcement agencies involving illegitimate business activity comingling with legal business activity, and illicit funds with licit funds."*

In the **extractives sector**, there is also evidence that hidden ownership information is a **risk factor for corruption.** NRGI reviewed 100 oil, gas and mining corruption cases from 49 countries, and over half involved companies with problematic hidden beneficial owners[49]. Although this does not demonstrate directly that BOT prevents corruption, it can reduce the risk, for example, through the inclusion of BOT in the regulatory framework for licensing rounds and other controls on conflict of interest for officials and politicians.

Therefore, one approach to assessing the impact of BOT is to **consider the extent to which these objectives are being realised** where publicly accessible registers are already operational.

In assessing anticipated benefits of the UK PSC Register, the Impact Assessment in 2014 stated that *"there is little quantified data about the benefits from this policy proposal. Benefits will be associated with: (1) reduction in crime and increased efficiency by law enforcement agencies, reduced due diligence costs for regulated entities and from these, efficiency and welfare gains to the economy; and (2) increased transparency which could potentially have an impact on economic growth…"*

2.2.1.Increased efficiency for law enforcement

There is some initial evidence that **law enforcement** is making greater use of the UK registry, Companies House, following introduction of the PSC register. Companies House stated in its 2017-18 Annual Report: *"We are working much more closely with banks, and the law enforcement community to ensure that the data on the register is as useful as possible.* ***Requests for help in law enforcement investigations have increased by 26% in the past year****."* European police forces have also reported that they are using the UK PSC Register[50], which suggests that the publicly accessible and online nature of the register is of additional value to the creation of a register of BO

[46]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727827/3._ROEBO_final_stage_impact_assessment.pdf

47 OECD (2011): Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes.

[48] World Bank Publications (2011): The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to do About It.

[49] Sayne, A., Gillies, A., Watkins, A. Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts. Natural Resource Governance Institute. April 2017.

[50] Interviews with UK Government officials.

per se, although this merits further gathering of empirical evidence in future. In general, usage has been intense, with Companies House recording that "there were 38.7m searches of the PSC register between the introduction of a search facility in September 2017 and March 2018"[51].

However, law enforcement caution that BO information, wherever sourced, is **just one element of evidence** gathered in an investigation. **Other conditions are also necessary to ensure it can be used effectively,** namely:

- **Speedy access to BO information;**
- **Information which is sufficiently accurate and reliable**.

For example, the Exchange of Notes (EON) between the UK Government, six British Overseas Territories and British Crown Dependencies[52] in 2016 sought to facilitate speed of access by requiring provision of BO information within 24 hours of submission of a request, and within one hour if a request is "urgent" [53]. This approach reflects the current FATF Standards, which require that "countries should ensure that there is **adequate, accurate and timely information on the BO and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities".**[54] According to a review of implementation of the EON regime reported by UK ministers[55] in May 2018 *"as of 9 February 2018, the EON arrangements [had] been used over 70 times to provide enhanced law enforcement access to beneficial ownership data. This information has been used to enhance intelligence leads and investigations on illicit finance."* Further statutory reviews are due to report in 2019 which should provide updated evidence on the use of this approach.

BOT has **the added benefit that third parties can review publicly accessible data and assist law enforcement (and company registries) in identifying anomalies in the data.** Users of registers could identify and report unusual or unexplained entries, and thereby assist in improving and maintaining the accuracy of the data. This was an explicit objective of EU measures to require Member States to introduce publicly accessible registers by 2020, under 5AMLD which states. *"Public access to beneficial ownership information allows greater scrutiny of information* ***by civil society, including by the press*** *or civil society organisations, and contributes to preserving trust in the integrity of business transactions and of the financial system".*

For example, Global Witness conducted a data dive on the UK PSC register that showed a number of companies in circular ownership (e.g. A is the BO of B who is the BO of C, who is the BO of A). In the UK, Companies House now uses this methodology for their own internal systems checks[56].

This provides an example of the **validation and verification that civil society can provide, where there is open access to data**, in order to improve the overall quality of disclosure and assist law enforcement. In response to these and other findings, the

[51] (Companies House 2018) Companies House Annual Report and Accounts 2017-18. July 2018.
[52] CDs:Guernsey and Alderney, Jersey and The Isle of Man; OTs: the British Virgin Islands, Cayman Islands, Bermuda, Gibraltar, Anguilla and Turks and Caicos Islands
[53] https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies
[54] FATF Recommendation 24.
[55] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2018-05-01/HLWS641/
[56] Information provided by UK Government stakeholders interviewed.

UK registry has been able to work on **testing and improving the quality and format of data** provided, although further improvements are still in progress. In July 2017, Companies House launched a 'report it now' facility as part of their online search service. "*The new functionality allows customers to tell [them] about anything that is wrong with the information on the register*" so that it can be corrected or flagged. In response to "*complaints about the misspelling of country names…[Companies House] also carried out a data cleansing exercise correcting addresses and nationalities right across the register [and introduced] drop down lists for nationality and country information, to ensure the data is clean, consistent and reusable*."[57]

2.2.2. More efficient due diligence processes for regulated entities leading to reduced costs

Under anti-money laundering regimes, as set out in the FATF Standards and domestic legislation or regulations, "regulated entities" such as banks, lawyers, accountants and other professional bodies are generally required to apply 'know your customer/client' (KYC) procedures before entering into a business relationship with a company. These **procedures** include identification of the beneficial owner(s). Failure to identify beneficial owners will usually prevent a regulated entity from undertaking business with that company. Users of beneficial ownership information for this purpose, such as banks and due diligence providers, stated during consultations for this report that if there were publicly accessible central beneficial ownership registers, with reliable information, this could **improve the efficiency of these procedures** and may reduce costs.

To realise any efficiency gains, publicly accessible beneficial ownership registers would have to contain **accurate** ie. complete, up-to-date and verified information (See Section 3). The registers could then be relied upon to ascertain beneficial owners if the regulatory environment permitted this. For example, currently, regulated entities in the UK, may use registers such as the UK's PSC Register as one source of information but have to undertake their own verification of the data before they can rely on it, using their own resources and engaging external "due diligence providers" to obtain and verify beneficial ownership information. A central publicly accessible register of verified information could therefore bring efficiency gains through reduced time obtaining beneficial ownership details and hence reduced costs, and potentially permitting resources to be reallocated to other purposes.

However, in some contexts there may not be **consensus on the preferred policy approach** to reaching this stage – as whether the onus for verification lies with the state or with regulated entities which use the information, or elsewhere, relates in part to the prevailing policy on incentivising regulated entities to conduct due diligence. Increased investment in verification by any party also has resourcing implications. Nonetheless, the EU's 5AMLD is already going further in requiring obliged entities and competent authorities to report discrepancies in central registers (see Section 1 above).

[57] Companies House 2018. Op cit.

It is **not yet possible to assess or isolate the extent of any cost savings** in this area as there is not any publicly accessible central beneficial ownership register on which such entities can rely solely for information. None of the three operational registers (UK, Denmark, Ukraine[58]) which are in the vanguard of implementing BOT have yet put in place full verification processes. However, the cost savings across the economy could be considerable as, for example the cost of obtaining verified beneficial ownership information from a due diligence provider for a company with only a simple structure can be several thousand pounds. **Online open access and interoperability of registers hold the potential** for further cost savings for registered entities, by making information required for due diligence more easily and cheaply accessible, however, this is subject to the policy considerations mentioned above.

2.2.3. Increased transparency improving the business environment and benefiting economic growth

There is emerging evidence that greater transparency in business registries, including BOT can promote an open, more competitive and efficient investment climate. In 2018, the World Bank's Doing Business team collected **preliminary data[59] on the information gathered and shared by business registries in 190 economies**. The study noted that:

- *"transparent information provided to the public by business registries can reduce transaction costs and facilitate investment decisions;*
- *There is a strong association between a transparent business registry and higher efficiency, as well as a lower incidence of bribery;"*

Such information can **broaden the pool of potential investors** by reducing barriers to entry. It can contribute to **levelling the playing field** for small and start-up businesses who may lack the necessary connections to formally launch his or her company. By **reducing the risk associated with an investment**, transparency can help investors determine the viability of a transaction[60].

The study also noted that "*providing public access to company information through business registries strengthens confidence in businesses and institutions, but it also helps to manage financial exposure and increase market stability, thereby reducing the risks associated with doing business.* ***Improving transparency necessitates the drafting of laws that expand public access to additional corporate data, such as the identities of the company directors, shareholders and beneficial owners****…By improving the predictability of transactions, transparency can also benefit financial institutions and company services providers as it becomes easier for them to obtain the information they need to comply effectively with* ***due diligence*** *requirements…Registries with* ***clearly-stipulated requirements*** *facilitate the process of registering and verifying information. There tends to be* ***a culture of greater***

[58] Ukraine has experienced challenges with compliance; as of August 2017 only 16% of companies had submitted any BO information according to a review by Open Ownership, which has been attributed to lack of clarity around sanctions for non-compliance. In July 2018, Denmark introduced a sanction of compulsory dissolution of a company by the court if a company fails to register its beneficial owners. The UK is also considering how to validate and verify data better and the resourcing implications of this for Companies House.

[59] The dataset is available at http://www.doingbusiness.org/en/data/exploretopics/starting-a-business/other-resources

[60] (Doing Business 2018) Coste, C., Meunier,F., Novik, N., Reeves, M. and Tjong, E. Starting a Business: Transparency of information at business registries. World Bank. http://www.doingbusiness.org/en/reports/case-studies/2018/sab

competition and economic growth *in economies where it is easier for companies to enter the market*".

2.3. Potential for further benefits to economic growth and investment

Some businesses have initially supported BOT for **reputational reasons**, to demonstrate greater commitment to responsible corporate behaviour. These businesses recognise the importance of building consumer trust and strengthening their social licence to operate and see BOT as an element of that approach. There is growing recognition of **the value to businesses of accessing and providing BO information.** However, there is untapped potential for this information to assist companies and investors with **due diligence and risk management.** Concerns about the risks such as of corruption and bribery can deter **investment in frontier markets**. Anything that mitigates corporate risk, could enable those countries to attract further FDI and foster growth. Making reliable BOT information public would make it easier for businesses to access this due diligence information, at lower cost, and has the potential to incentivise greater investment. These issues are explored in greater detail in Section 2.4 below.

If BOT is shown to reduce corruption, **the impact on the economy will depend on whether that reduced corruption enables faster growth**. Research on the relationship between corruption, growth and business performance, suggests that reduced corruption will benefit an economy overall. A recent survey of the relationship between business integrity and commercial success found that "*A sizeable and growing body of evidence has provided clear indication that at the aggregate level corruption is bad for business**. Aggregate growth and firm performance** is lower in highly corrupt settings, while markets perform poorly when corporate corruption becomes commonplace compared to markets in which firms typically refrain from corruption behaviour*"[61]. Although for individual firms, the evidence is more contested, in the longer term even at individual levels, corrupt behaviour can lower the overall competitiveness and growth of an economy, by distorting decision-making.

A DFID evidence paper[62] reviewed research on the macroeconomic effects of corruption. Overall this substantial body of research suggests that **corruption has a negative effect on economic growth**, though the size of the effect varies across research studies. Some research also suggests that corruption or "rent-seeking" need not always be detrimental to growth, as this depends on how rents are managed, allocated or distributed centrally and productively or to foster stability by policymakers. This review also found that corruption has a negative effect on FDI, but it is less clear if this is a direct effect of corruption or other institutional variables.

2.3.1. Potential for risks to local economies

Some stakeholders argue, by contrast, that the local economy in some jurisdictions could be damaged by publicly accessible registers **unless all countries were to move** together to a global norm of BOT, levelling the playing field for all. For example,

[61] Jenkins, M. The Relationship Between Business Integrity and Commercial Success. U4 Helpdesk Answer 2017:14. U4 Anti-Corruption Resource Centre, Christian Michelsen Institute. Bergen. 2014.
[62] Rocha Menocal, A., Taxell, N. et al. Why Corruption Matters: Understanding Causes, Effects and How To Address Them. Evidence Paper on Corruption. DFID. London. 2015

the UK Crown Dependencies argue that they already have governance arrangements with well-functioning closed registers which can rapidly and effectively exchange information for AML-CFT or tax compliance purposes. They are concerned that the introduction of publicly accessible registers in the **CDs prior to this becoming a global norm** could lead to the loss of business to other financial centres to reduce compliance costs or due to concerns about privacy.[63]

The rationale for a global norm is to **level the playing field**, aiming to ensure that ultimately all competing jurisdictions have public registers so that these are a global public good, and that the economic benefits of privacy in compliant jurisdictions are not lost to less cooperative jurisdictions. Since the adoption of a global norm is likely to be on a piecemeal basis, without all jurisdictions moving together, it may be expected that there will be some adverse local economic impacts in some contexts in the shorter term. This leads to **a question of sequencing; where and how efforts to establish a global norm should be focused to minimise risks and maximise impact**.

2.4 Transparency in BO as a means to improve government accountability for taking action to tackle corruption and other illicit flows

A primary aim of civil society and some governments in introducing BOT is to drive accountability for how public resources are used and for tackling corruption and illicit flows. As BOT is at an early stage of implementation and approaches to ensure the data is accurate are still being tested and refined, it is **too early to assess the impact of using this information on accountability**. However, there are **important lessons from earlier work on transparency and accountability which can be built into the design** of programmes to support the use of BOT information to **maximise the prospects of impact**, from the perspective of different users.

There is already an extensive literature on the relationships between information, governance and accountability and an emerging literature of lessons on the role of technology in this. **In contrast to earlier international efforts on transparency, such as EITI[64], which focused initially and primarily on making information available, this is an opportunity to focus on the needs and objectives of all users from the outset**, rather than seeking to retrofit this into design at a later stage.

For example, a recent review of the Making All Voices Count[65] (MAVC) programme highlighted the **importance of careful design, ongoing evidence gathering and feedback loops from learning into implementation**. Among other issues, it highlighted that:

- **Transparency, information or open data are not sufficient to generate accountability**

[63] The Crown Dependencies' position on BOT is that that they will develop public registers of company beneficial ownership once it is established as a global norm, levelling the playing field.
[64] See for example the 2011 evaluation of EITI https://eiti.org/document/achievements-strategic-options-evaluation-of-extractive-industries-transparency-initiative
[65] (McGee et al 2018) McGee, R. with Edwards, D., Anderson, C., Hudson, H., Feruglio, F. 2018 Appropriating technology for accountability: Messages from Making All Voices Count. Making All Voices Count Research Report: Brighton. Institute for Development Studies (IDS)

In some contexts, data generated by citizens, for example as feedback, may not be trusted by government officials. It may not lead to governments responding to citizens' concerns and, as a result, this **may lead to users becoming disillusioned**. The MAVC review also found abundant evidence that supporters of transparency programmes may be over-optimistic about how provision of data would lead to decision-making and action and how much people would use or trust data, whereas citizens can be very sceptical. Supporters may also place too much emphasis on the data itself and the use of online portals and opening-up data, rather than the discussion and contestation around it and other sources of information or technologies. The role of "infomediaries" with the knowledge to interpret complex technical data (such as company structures or beneficial ownership information in this case) is important in bridging the gap between data and users. **Overall technology-enabled information succeeded best where there was political will to act and bureaucratic capacity to do so**.

Applying this to the roll-out of BOT, for example, there would be a negative impact if registrars did not take action to improve the quality of BO data where errors were reported by users, or if law enforcement agencies did not act on concerns about corruption originating in the data which were raised with them.

- **There can be an oversimplified view of accountability problems as information problems**

Information may be one area that needs to be addressed but governance is primarily an arena of contestation, for example between government agencies, between citizens, for example over the distribution of public resources. Governance problems, such as corruption are more intractable, deeper and complex than issues of information asymmetry. Many other aspects of power dynamics, capacity, attitudes, relationships and processes, for example, need to be taken into account. On the other hand, technology and information can help to build a critical mass of efforts and actors which can push for change where there is inertia in political will, even if there is capacity.

Again, applying these lessons to implementation of BOT, such dynamics may be **displayed differently in each context**. For example, law enforcement, ministries of finance and business may have different views on the value of BO information and transparency. It is a complex technical area where infomediaries are needed to interpret data, whether related to corruption and money-laundering or a specific sector, such as extractives. There are likely to be strong vested interests from different stakeholder groups. Some will have a strong interest in information being made available publicly, and others not. This could, for example, reflect internal delivery targets, protection of privileged positions or competition over resourcing.

Therefore, in working to establish a global norm of BOT, **these lessons point to** the **importance of identifying who the users of BO information would be in each context**. This should take into account the needs of these users in regime design and ensuring that the information itself is reliable to prevent disillusionment. This suggests a **need for careful testing of technology-based approaches and ensuring that users – or infomediaries who can interpret data for end-users - have capacity to access and use the information**. The use of this information as a tool to tackle corruption is also only one part of an overall approach. It requires capacity and political will from governments to respond to challenges, as well as for users to interpret the

data. All of this requires a **deep understanding of the incentives of different stakeholders.**

2.5 The impact of Beneficial Ownership Disclosure on addressing Tax Evasion

Although not the primary purpose of this study, it is also important to take into account parallel and related discussions on BOT, with respect to international efforts to tackle tax evasion, such as Automatic Exchange of Information (AEOI) as managed by the OECD Global Forum, which may hold lessons for this review.

For example, the International Centre for Tax and Development reviewed this issue in May 2018[66] and found **that several conditions needed to hold true in order for efforts to expand access to BO information to be effective** for the purposes of improving revenue collection in **developing countries.** The OECD AEOI system does not require publicly accessible registers, organisations which advocate for greater tax transparency face some similar considerations on the potential of BOD and BOT as those evaluating the potential to address corruption and illicit flows. For example, issues considered important to assist with effective BOD include[67]:

- **Reliability of data** – i.e. Ensuring that BO information is complete and accurate and the extent to which it is reliable enough to deter illicit behaviour.
- **Ensuring that jurisdictions participate** to avoid a small number of non-compliant jurisdictions undermining overall efforts.
- **Information sharing** – i.e. whether major jurisdictions will reliably share information with tax authorities in low-income countries, overcoming concerns on issues such as data security (although establishing open public registers which enable remote access and interoperability could assist with this).
- **Capacity and political will in each context** – i.e. Tax authorities in low-income countries will need to be technically able, and politically willing, to make use of that data to strengthen tax enforcement. This can be an issue where there are capacity constraints or individuals with undue influence.

This review points to a similar challenge to the field of corruption and money-laundering, ie. lack of empirical evidence on how and whether BO disclosure and information assists low-income countries in assessing tax evasion.

On the one hand, it highlights "***the potential role of public registries of beneficial ownership in overcoming several of the risks noted here****: public registries eliminate problems related to inadequate data sharing across countries; could serve to generate political pressure (via civil society) for expanded enforcement where that data reveals potential abuses; and may, in some cases, help to overcome technical challenges by allowing external actors to scrutinise available data in search of evidence of lost revenues*."

On the other, it makes a strong case for working to improve the evidence base on the impact of BOD and BOT, before investing significant further scarce resources in this area on the basis of assumptions. This points to the need to invest in evaluating the

[66] Prichard, W. When Does Beneficial Ownership Transparency Improve Revenue Collection -. Three Considerations for Developing Countries. Blog May 2018.
[67] Prichard W. Linking Beneficial Ownership Transparency to To Improved Tax Revenue Collection in Developing Countries. International Centre for Tax and Development. Summary Brief. May 2018.

impact of BOT on corruption, money-laundering and other illicit flows from the outset of implementation.

2.5 How those who want to hide their activities respond when there is BOT?

Inevitably, **corrupt actors and other criminals will try to stay one step ahead** of efforts on BOT. Registries and other systems will need to adapt to respond to this. For example, in the UK, Companies House has "developed systems to allow more types of business to file information about their People with Significant Control (PSC)". Requiring PSC information for Scottish Limited Partnerships (SLPs) "*has made SLPs much more transparent, helping law enforcement in their fight against economic crime*"[68].

In order to build a stronger evidence base on the impact of BOT on incentives for corruption and other illicit flows, it may also thus be useful to developing more **sophisticated techniques to map the origin and direction of investment and illicit flows** for different **locations as they implement BOT**.

2.4. The business case for BOT

2.4.1. Business risks

Scrutiny of the role of "anonymous" companies[69] and complex corporate structures is set to increase as international institutions, governments, parliamentarians, regulators, civil society campaigners, the media and ordinary citizens seek greater accountability for the important role that business plays. Pressure to end the role that anonymous companies play in corporate structures started in the extractive sector, now includes the financial sector and is spreading to the wider economy. This scrutiny from international institutions, governments, civil society and others results from concerns over a number of issues that have undermined trust in companies. These issues include not only corruption but also tax avoidance, conflicts of interest, governance weaknesses and transfer mispricing.

Anonymous company ownership poses **commercial, political and social risks to reputable firms in any sector**. These risks can reinforce each other to create the potential for significant adverse impacts on the ability of reputable firms to operate in or enter certain markets. As scrutiny increases, some governments, legislators and regulators are growing increasingly suspicious towards commercial transactions that involve jurisdictions which allow companies to hide their ownership and tax position. Overall, the suspicion over "anonymous" companies and the scrutiny that it engenders risk eroding trust in companies and causing considerable damage to their reputation and standing in society.

The commercial risk to companies goes beyond becoming entangled in unethical or illegal activities but could result in **exclusion from whole markets or classes of business**. As suspicion of transactions that involve "secrecy jurisdictions" increases,

[68] Companies House 2018.

[69] "Anonymous companies" is a term now widely used, especially by civil society, to describe companies where the ownership structure is opaque and it is difficult to identify beneficial owners and sometimes legal owners through publicly available information. As a less technical term than "ultimate beneficial owner" some stakeholders also fine this helpful to explain this concept to non-technical readers who are interesting in measures to tackle corruption or tax evasion.

governments could apply regulatory pressure to deter such transactions. At the same time financial institutions could apply a higher risk premium leading to a higher cost of capital. Many international banks have exited from Panama in recent years due to concerns over poor governance standards. Companies have remained reluctant to do business in Iran due to the need for extensive due diligence to identify the beneficial owners of local companies to avoid transacting with sanctioned entities and individuals. Some civil society organisations have called for companies to avoid transactions that involve “secrecy jurisdictions” altogether. Governance issues can also cause investment funds to place companies on exclusion lists.

Some governments are also concerned about the source of investment funds entering their economies and the distorting effect this can have, either on the market itself or on the political process, and are keen to identify these sources. Governments in both the developed and developing world are anxious not to become over reliant on investment from one particular source.

Some of this political pressure stems from changing **social expectations about the conduct of companies and their contribution to society**. Reports of the tax avoidance measures taken by some large technology companies, the Panama and Paradise Paper revelations (and other data leaks), corruption scandals (such as the Brazilian car wash) as well as increased awareness of issues such as modern slavery and human rights have all served to undermine popular trust and confidence in businesses and led to calls for government action. Many companies have responded by going beyond legal and regulatory requirements and voluntarily putting in place socially responsible policies and practices such as tax transparency policies, codes of conduct on modern slavery and undertaking human rights due diligence before embarking on projects.

2.4.2. BOT as part of the solution

BOT forms part of businesses’ mitigation for the risks noted above. Access to BO information allows companies to understand who the real owners are of their suppliers, joint venture partners and competitors. BOT contributes to mitigating commercial risks. It is part of levelling the field in competitive situations such as tender processes as it reveals any potential conflict of interest. Information on who really owns suppliers and potential partners contributes to reputable companies avoiding entanglement in unethical or illegal activities. For example, it can assist companies in due diligence to **ensure compliance with anti-bribery legislation** (UK Bribery Act, US Foreign Corrupt Practices Act) as well as sanctions. This information feeds into well informed business decision-making and helps prevent reputable companies becoming unwitting channels for corruption, money laundering, modern slavery or complicity in other human rights abuses.

Access to BO details also allows companies to demonstrate to regulators, governments, parliamentarians and ordinary citizens **that business is being transacted with reputable counterparts**. The outcome should be higher degrees of trust and confidence in business as there is more clarity on who is benefitting from economic activities, especially where these activities concern the exploitation of a country’s natural resources or projects of national importance such as infrastructure projects or essential services. So, reputable companies can mitigate the political and social risk of additional scrutiny or regulation from government or damage to their reputations resulting from becoming involved in controversial transactions.

Business has to have confidence in the collection, disclosure and verification of beneficial information. Where business can have confidence in the reliability of BO information, this can increase confidence in the openness and wider governance of the economy in which they are investing. This can reduce the cost and time devoted to undertaking due diligence. The need to use private sector providers to research and verify the beneficial owners of business partners can lead to substantial fees and increase the cost of transactions.

2.4.3. Business response to date

There is growing recognition amongst companies of the benefits provided by access to BO information. In some sectors, this recognition has come about due to regulation, in others, it is due to a desire to improve their reputation and respond to social expectations. Banks, other financial institutions and professionals such as lawyers and accountants have long been obliged to know their customers and clients. Banks use transparency criteria in assessing the risks associated with each transaction. Some banks have policies in place that prohibit transactions that involve companies with links to jurisdictions with low levels of transparency. Companies in other sectors increasingly recognise the benefits of knowing the real owners of their suppliers. BHP, the international mining company, announced at the International Anti-Corruption Conference (IACC) in Copenhagen in October 2018 that they will require their approximately 15,000 suppliers to provide BO data and the company is building its own private database of this information. The company views this as more than a risk mitigation measure, but making a positive contribution to its socio-economic impact and building trust. BHP is a proactive advocate of BOT.

The business response to BOT has included concern and reluctance in some cases to support the implementation of registers or provide ownership details. These **concerns revolve around two aspects, the impact on privacy and confidentiality as well as the reporting burden**. There are rational arguments for retaining a measure of privacy in certain circumstances, such as risk to personal safety and security. In countries where there is a high risk of kidnap or other crimes against individuals (especially those perceived as wealthy), there may be a need to keep some personal details confidential. However, such arguments need to be considered on a case-by-case basis and supported by compelling evidence. Information is more readily available due to social media and the internet and is easier to analyse and disseminate. The UK PSC regime requires the submission of some personal details such as residential address, but these are not part of the information made available to the public. Likewise, dates of birth are restricted to month and year. The UK register also allows individuals in pharmaceutical, animal-testing and defence industries to apply for an exemption which is considered on a case-by-case basis.

The other legitimate concern that companies have on confidentiality relates to their corporate structure. Companies have a concern that BOT will require them to reveal their entire corporate structure which could lead to other consequences, for example, this may compromise their ability to defend against an unsolicited takeover. BOT does not typically require companies to reveal all the intermediate stages to identifying the beneficial owners. They may have to collect the information internally to carry out this identification but there is rarely a need to disclose publicly. Where this information is required for verification, access can be restricted to competent authorities such as

those enforcing the reporting obligation. In any case, companies will in many cases have to collect this information for other purposes (see below).

Another concern is that BOT may put information into the public domain which could lead third parties to wrongly accuse companies of tax evasion, or highlight legal tax planning structures that some interpret as unacceptable avoidance. Some companies in the UK have already faced criticism having disclosed subsidiaries in 'tax havens', although it should be noted that these disclosures do not directly relate to the UK PSC register. However, for businesses carrying out legitimate activities in accordance with the law, this concern would appear to be addressed at a company level by better communication with stakeholders.

The **reporting burden is a less convincing argument** against BOT. In jurisdictions where there is not a well-developed culture of complying with corporate filing obligations, more effort is likely to be required in building such a culture and incentivising companies to comply with BO reporting requirements. The reporting burden argument is especially less convincing in jurisdictions where there is already a well-established corporate reporting system under which companies have to make regular filings. In some cases, companies argue that their complex structures make it difficult to collect BO information. This argument runs counter to the spirit of BO and begs the question of the reason for the complex structure. In any case, many companies will already have a need to collect this information to provide to their bank or professional advisors. Large companies are already likely to use software to store ownership information and produce organisation charts to meet ownership requests. Some companies have used the scrutiny on BO and the use of 'tax havens' to simplify their corporate structure and dissolve obsolete subsidiaries. However, it should be noted that in some cases companies end up with these complex structures as a result of acquiring a pre-existing business, and there can be significant tax and other costs associated with unwinding them or dissolving holding companies. One other aspect of the reporting burden is the **cost of submitting the information to the register.** In France, there has been some opposition to the public BO register from small businesses due to the proposed annual fee of €45 to submit information. This compares to the fee in the UK of £13.

Overall, **the cost in time and money of reporting BO information is very low compared to the potential benefits and risk costs**. Companies that become involved in corruption, accused of complicity in human rights abuses or controversy over their tax affairs can suffer large losses due to loss of business, fall in share price or substantial fines. The damage to reputation and efforts to rebuild trust can take many years to repair. Overall, **the costs and risks of complying with BOT are outweighed by the benefits that business can derive from greater transparency and from the risks of resistance to BOT**. The benefits range from greater insight into suppliers and business partners through to improved reputation, higher levels of trust and a stronger social licence to operate.

2.4.4. Lessons learned from other initiatives to engage business

Under the UN Guiding Principles on Business and Human Rights (UNGP), adopted in 2011, business has a duty to respect human rights and ensure they are not complicit in abuses. The UNGP have become the global norm for businesses' approach to human rights issues. As such, they may provide a comparison with advancing the

global norm on BOT for governments to tackle corruption and money-laundering and enable businesses to manage risk. Both have the following factors in common:

- Apply to businesses of all sizes and in all sectors,
- Government and business are both central stakeholders,
- Involve substantial government and business interaction,
- Are complex and do not lend themselves to simple solutions in all cases,
- Have potential significant impact on how business is conducted,
- Impose new obligations on business.

The process for developing the UNGP and the outcomes provide lessons for advancing a global norm of BOT. The need to develop the UNGP rose out of a widespread recognition that a framework was needed to provide clarity on the role of governments and the role of business in relation to protecting human rights. This recognition followed a series of controversies involving accusations of business complicity in human rights abuses. A highly respected Harvard University law professor, John Ruggie, under the aegis of the UN Office of the High Commissioner for Human Rights, led the work to develop the UNGP. Ruggie and his team **undertook extensive consultation with governments, businesses in all sectors, civil society organisations and other stakeholders**. The result was a clear framework which set out the roles of government and business: protect, respect and remedy, and a comprehensive set of guidelines for business to follow. After the Human Rights Council adopted the UNGP in 2011, Ruggie and his colleagues then embarked on a campaign to explain the UNGP and encourage adoption by business. The UNGP now form the benchmark against which business performance on human rights issues is measured.

The lessons that could be considered in establishing a global norm of BOT issue are:

- Ensure leadership under a credible figure, supported by a strong team and using a credible platform,
- Undertake **wide ranging consultation amongst all stakeholders**, especially governments and a diverse range of businesses,
- Create a clear framework that designates specific roles,
- Produce clear guidelines that set out the precise roles of government and business,
- Undertake **extensive communication with business to ensure understanding of the implications and make resources available to help implementation**.

2.4.5. Implementation: the role of business

Businesses are already playing an important role in the implementation of BOT but can play a more significant role. The finance and professional services sectors already have obligations to determine the real owners of their customers and to help their clients identify the real owners of their business partners. In the extractive sector, companies are collaborating in EITI implementing countries by providing BO information for inclusion in EITI reports and/or public registers, in many cases, where there is no legal obligation to do so. Some companies, such as BHP, are going further and requiring information from suppliers.

Given the benefits to companies flowing from BOT in terms of risk mitigation and providing a more open business environment, companies potentially have strong incentives to play a more active role in BOT implementation. The actions that companies could undertake include:

- **Proactive advocacy with governments**. Business calls for such transparency can have a positive impact on governments. Such business advocacy highlights the benefits to the commercial environment in a country from BOT and can support government efforts to provide a more attractive investment environment for both local and international investors. Business advocacy also helps governments overcome any concern they may have about imposing additional reporting burdens on companies.
- **Requiring information from suppliers and other business partners**, and working with them to make this public. Companies can require as part of the procurement process that suppliers and contractors provide BO information (and warrant its accuracy) as part of the qualification process. Companies that cannot or refuse to provide such information should be treated as high risk. Joint venture partners should also be obliged to provide (and attest to) BO as part of the contractual process. Again, the absence of such information should raise red flags.
- **Providing BO information**. In circumstances where BO is required, then business should co-operate by providing accurate and timely information. This should include evidence to support the information and/or attest to its accuracy. This could include circumstances where there is statutory duty to provide information to a register, as part of a procurement process, a demand from a bank or professional advisor or as part of a voluntary initiative (e.g. EITI).
- **Reviewing their corporate structures**. Companies can review their structures to simplify ownership structures where possible, eliminate obsolete subsidiaries and minimise use of 'tax havens' or 'secrecy jurisdictions'. Such measures can bring benefits in terms of facilitating compliance, building trust with key stakeholders such as regulators, customers, shareholders and civil society and reducing costs in the use of professional advisors.
- **Declining business opportunities where it is not possible to identify real owners**. Where a company cannot identify the real owners of a supplier, contractor or other business partner, then business should consider declining the business opportunity due to the heightened risk. For some businesses, particularly in the financial services sector, this is already a requirement. Regulators advise banks and other institutions to refuse business where the real owner cannot be identified. This assists in applying pressure to less compliant jurisdictions, the principle underpinning recent moves by the EU in 5AMLD to identify "high-risk" third countries and call on member states to apply enhanced due diligence.
- **Co-investing with the public sector and other users in systems of open reliable data**. Both governments and businesses have an interest in low-cost and efficient access to reliable BO information. There is an opportunity for a public-private partnership to make the shift from privileged access to information and turn this into a global public good. While this might be perceived to undermine the business model of some due diligence providers and will require careful thought to issues of data protection, it will generate new opportunities for data analytics which could open up markets.

3. Assessment of what is needed to set up an open publicly accessible BOT register

Where a country is politically committed to BOT, it will need to deal with **a series of political, legal, technical and resourcing challenges** to make this a reality. This requires **realism about the timescale for implementation** and for countries to be able to share lessons as they navigate these issues together. Countries which are pioneering these approaches **may need continued recognition, and political and technical support to maintain momentum**. The practical implementation of a BO regime goes beyond the garnering of political will and the decisions about what data to collect. Although a global norm may mean that there is alignment in the outputs at the end of implementation, the route to get there will vary from country to country. The needs of countries for technical support and current and potential sources of this support are explored in Sections 4 and 6. **Frameworks are emerging to guide countries through implementation**, for example:

EITI required all implementing countries to produce a roadmap on BO by the end of 2016. Each roadmap sets out the tasks, timeline, responsibilities and resources required for the country to achieve compliance with EITI Requirement 2.5 by 1 January 2020. The EITI International Secretariat produced guidance for countries on how to plan for BOT[70] and for country multi-stakeholder groups on oversight of BO reporting.[71] While all 51 implementing countries produced roadmaps, these were of varying quality. In some cases, EITI secured funds from donors to provide assistance to individual countries to address weaknesses in their roadmaps. These roadmaps provide useful insight on the extent, intensity and time commitment of actions that each individual country deems necessary to implement EITI BO requirements. The roadmaps also indicate the level of financial resources required, and can also give some indication of the political, legal and technical challenges.

Open Ownership have mapped out the steps required, not just legislative and regulatory, but also technical and administrative, in "The implementation journey".[72]

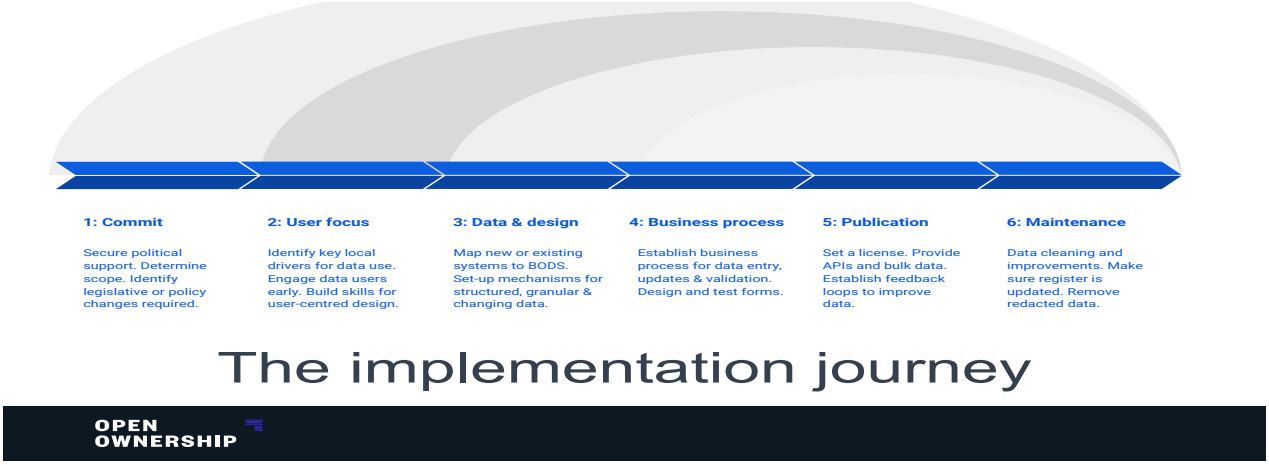
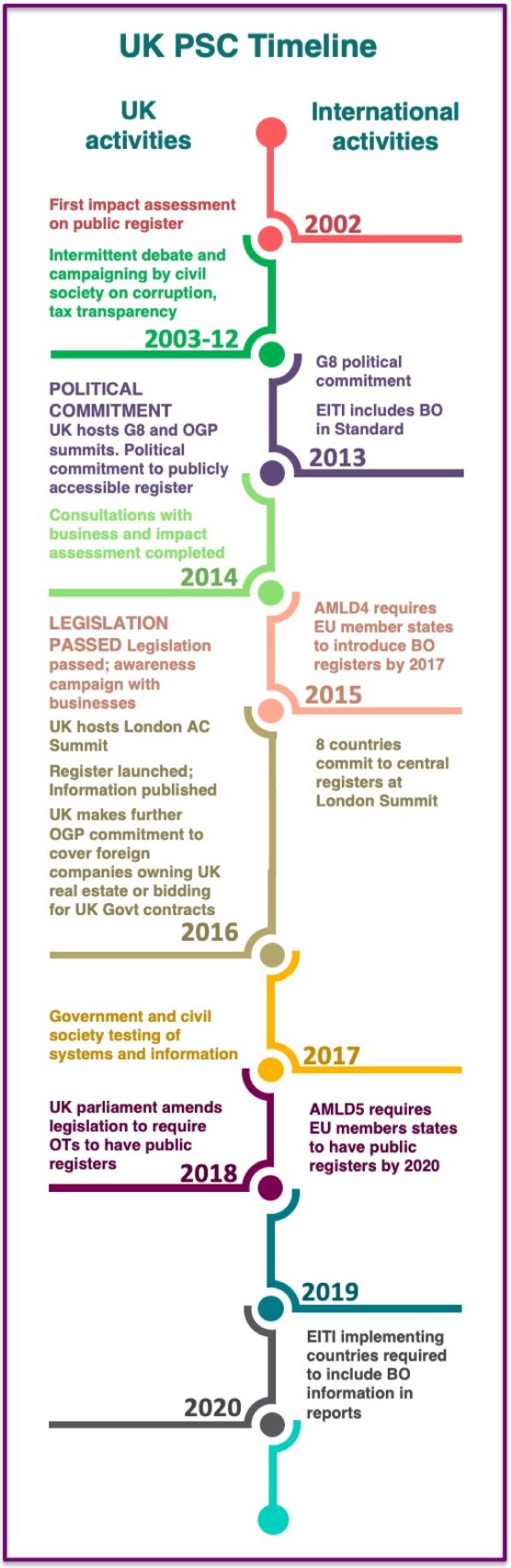


Figure 3: The Implementation Journey Source: Open Ownership

[70] https://eiti.org/document/guidance-on-how-to-plan-for-beneficial-ownership-disclosure-roadmap
[71] https://eiti.org/document/guidance-note-28-on-msg-oversight-of-beneficial-ownership-reporting
[72] See presentation to OGP Summit on the Implementation Journey July 2018. https://openownership.org/uploads/The%20Beneficial%20Ownership%20Transparency%20Network%20-%20slides%20from%20OGP%20Summit%202018.pdf



3.1. Timescales for implementation

The timescale for achieving an operational BOT system is likely to take several years and this will vary depending on the level and stability of political commitment and cross-government agreement, availability and consistency of resources, and the degree of transition needed from existing legal frameworks and systems.

For example, the UK undertook its first impact assessment on a public register in 2002, made a public commitment in 2013, after lengthy civil society campaigning and internal government debate, and implemented legislation in 2016 (see Figure 4), in a system with high political commitment and capacity and an existing online national register.

However, it should be noted that not all implementation processes will run for this length of time, and as more jurisdictions implement registers the process will become better understood, and some of the challenges will decrease.

The PSC register is still testing and modifying approaches – especially related to ensuring reliability of data. The experience of the 51 EITI implementing countries also highlights the length of time taken and the challenges of trying to implement BOT in a short time scale in a range of contexts with differing degrees of commitment, resourcing and capacity. *As of June 2018, Ghana, Kazakhstan, Mongolia, Senegal, Ukraine, the United Kingdom and Zambia had made good progress, but at least 26 countries had made more limited progress due to issues including political instability, technical and financial resourcing.*[73]

Figure 4. Example of timeline – establishing the UK PSC register

[73] (EITI 2018) EITI Progress Report 2018. A Platform for Progress. Minutes of the 40th EITI Board Meeting, Berlin, 28-29 June 2018.

3.2. Key stages of establishing a registry

The table below sets out some **key steps and issues to consider for a country establishing a central publicly accessible BO registry**, which have emerged from experience to date.

Table 6: Key stages in establishing a registry

	Key decisions/issues to consider
Political commitment	What are the objectives of different users and how are they involved in design from the start? What is the narrative which persuades stakeholders e.g. business environment, anti-corruption, international profile, open government? Is national/and or subnational commitment needed (e.g. federal systems)?
Impact assessment	Resourcing for implementation and maintenance? Establishing baselines and systems to monitor impact.
Scoping	Should the register be bolted onto an existing corporate or other registry, or be a new standalone solution? Which government agency should have ownership of the register? Which government agency should have ownership of the implementation process and what inter-agency co-ordination/governance is required? Is legislation required to establish the register and enforce compliance? In what form and how should the data be collected so that design prepares for publication according to a particular data standard? How would the register be able to interconnect with the registers of other countries? How will data be validated/verified and which agencies will be responsible for investigating “red flags” or enforcement? Compliance with data protection and privacy requirements
Legislative drafting and passage	Is it better to introduce a new standalone piece of legislation, or amend existing laws? How to domesticate international requirements? Definitions Sanctions regime and enforcement
Regulation	What should be included in more detailed guidance and requirements to implement legislation –for example on thresholds, management of historical data, unique identifiers?
Awareness raising with businesses and other users	Who are the stakeholders and what is the mix of domestic and international businesses? What is the existing level of understanding and what is the best medium to reach them? Awareness raising should form part of the process throughout, not just about compliance.
Gathering data	How many companies are there? Can an existing online system be expanded to include BO? How is information provided and uploaded, how are errors dealt with, what discretion does the registrar have beyond inputting data?
Ensuring accuracy	What processes and systems need to be in place to ensure data is entered accurately? What certification or evidence do companies need to provide? What types of checks and investigations will the registry conduct? What resources does the registry are need for verification? What obligation or opportunity is there on users (e.g. regulated entities, civil society) to report errors, discrepancies or unusual information?

Publishing data	Will the information be available to all stakeholders? Will it be available for free? Does all the information that is collected from reporting companies get published, or only selected elements? Is there the ability to redact certain information if this would pose a personal safety risk? What is the most user-friendly way to present data and make it available to different users?
Sharing data	Is the information shared with other agencies within the domestic government? Is the information shared with law enforcement of other agencies within other governments? Is that information shared automatically, or on request? Which information is made public and which used internally?
Using data	Working with external users of data to ensure capacity/adequate access to use e.g. civil society, media, foreign investors
Testing and refining	Are there elements of the regime to be phased in, potentially after the initial regime has been run for some time?
Monitoring impact	How does one measure use and effects of the register? Are those measures capturing the location of the user and purpose of the use? Can a monetary impact be assessed? Is there a material compliance cost for businesses? Is there a material cost saving for business? How are these lessons built back into design and use?

3.2.1. Generating political commitment

Generation of a strong political commitment to implement a publicly accessible BO register is a crucial but challenging first step. Governments may face more immediate governance challenges such as enforcement of existing laws and encounter low levels of understanding of the role or importance of BOT in the bureaucracy, business community and other vital constituencies. Governments may also face capacity and resource constraints and make the calculation that there is little political benefit to introducing BOT. Despite the potential advantages, governments may calculate that there are less challenging investments of resources to demonstrate a commitment to enhanced transparency. Such reforms require considerable resources and may take many years to provide any benefit. These hurdles can represent genuine blockages or a smokescreen where political commitment to BOT weakens, for example with a change of government.

Overcoming hurdles to creating strong political commitment to a public register requires a combination of the following:

- Building a strong case for a public register aligned to the country's priorities in terms of economic reform and meeting international commitments on combatting money laundering and other illicit flows of funds. The circumstances of each country will differ but issues such as a desire to attract more inward investment, existing international commitments, more stringent due diligence by external business partners and high-profile cases of corruption can all play a role in making a compelling case for reform from the perspective of different users or advocates;
- Building an enduring coalition of support within the country amongst different users - including government, business, civil society and other stakeholders. Maintaining and adapting this coalition as perceived interests and the political context change will be important throughout the process of implementation.

3.2.2. Translating political commitments into implementation

A political leader may make a commitment to a central public register at an international conference, but at home a series of reforms will be required to make this happen, often involving working with parliament to secure legislation and across different government agencies. For example, for EITI BOT several countries have established inter-agency working groups to ensure national coherence in policy and reform[74]. The priority given to BOT reforms more broadly competes with other political, policy and resourcing needs.

Parliamentarians, civil servants and the private sector often need to build technical understanding of policy and new reporting requirements, for example on ownership structures and related risks for money-laundering, corruption and tax evasion. Sharing expertise with other implementing countries is very important to assist with this process.

Maintaining momentum can be a challenge – it may be difficult to make the case on a complex issue such as BOT in local media, where leakages and prosecutions make easier anti-corruption headlines. In Ghana, for example, the Joy FM radio programme has hosted a discussion on BO and its connection to asset declaration and government contracting (see Appendix 2). The discussions were centred around Ghana's commitments on BOT with reference to corporate reporting and company governance, public procurement, fiscal transparency and promoting integrity. Media may require assistance to build expertise in this field.

National and international civil society has an important role to play in maintaining momentum, by holding governments to account for commitments on BOT. For example, Transparency International country Chapters have tracked follow-up to the London Summit 2016 and the G20 Principles[75]. Civil society is also involved in the co-creation of OGP action plans and works with a range of government agencies to translate political commitments into concrete policy. The OGP Independent Reporting Mechanism (IRM) also provides an independent assessment - including with inputs from civil society - of the completion, relevance, transformative potential of OGP action plan commitments.

Practical help for turning a political commitment into action and sustaining momentum can include:

- Appointing a senior government minister to oversee implementation,
- Providing a mandate to a specific government agency to undertake implementation,
- Linking implementation with a wider reform process,
- Providing sufficient human and financial resources,
- Developing a robust action plan and monitoring progress,
- Continuing to nurture a coalition supporting reform which can adapt and respond to political opportunities to broker agreements across government on implementation and resourcing,
- International recognition from peers on progress.

[74] (EITI 2018) op cit.
[75] Raymond, J. Accountability in Action. Transparency International. October 2018; and TI July 2018.

In some countries, constitutional arrangements will require central governments to work with subnational governments to secure support and implement reforms. For example, Canada, which has a federal system, is working with provincial and territorial governments to strengthen beneficial ownership transparency. As a starting point, federal provincial and territorial governments are pursuing introducing requirements for corporations to hold and update BO information records. The federal government has included a commitment to explore the possibility of creating a public register in its 2018-20 OGP Action Plan. Continued federal provincial and territorial collaboration in exploring BOD options, including a public registry option will be important, as only 10% of companies are incorporated at federal level and there are thirteen different corporate registries across the country.

3.2.3. Legislative and regulatory frameworks

International good practice is moving in the direction of legislating for BOD or BOT, not just for anti-corruption and anti-money laundering purposes but also for wider economic benefit. This can also assist with navigating issues of data protection (see below). EITI implementing countries are moving from voluntary enforcement of the Standard to embedding the obligations in legislation, especially on BO. To date, the voluntary approach has failed to bring about an adequate level of BOT. One of the significant findings from EITI's pilot project that finished in 2015[76] was that lack of legal obligation was a significant factor in inhibiting companies complying with requests for information.

Legislative frameworks vary and may need updating. Conceptualising BO is more straightforward in some legal systems than others. Legal systems based on common law (such as the UK) have experienced less difficulty as the concept may already exist. It is a less familiar concept in legal systems based on a civil code. Nevertheless, many countries have introduced the concept as part of complying with FATF Standards on AML.

Some countries have introduced stand-alone laws to implement BOT, e.g. Ukraine, while others have amended existing laws. Both Zambia and the UK used amendments to existing company laws to introduce BO reporting requirements. A number of countries are in the process of legislating for a register. Parliaments in Ghana and Nigeria are both considering such reforms to their Companies Laws. Several EITI-implementing countries are legislating for a central public register. For example, the Kyrgyz Republic has also legislated for a public register applicable to the extractive industry only. Mongolia is currently in process of enacting EITI-specific legislation. Indonesia has introduced regulations on BOD by presidential decree.

BOT may become part of a much larger and more complex piece of legislation which can take a long period to be passed and secondary legislation will also be required. This requires work with parliamentary committees and legislators. In Nigeria, for example, the Corporate Affairs Commission (CAC) has worked to build technical understanding with parliamentary committees. Where there is opposition, MPs may have concerns on Politically Exposed Person disclosures, or lack technical understanding. EU member states are introducing public BO registers through the adoption of 5AMLD into domestic law.

[76] https://eiti.org/sites/default/files/documents/evaluation_report.pdf

3.2.4. Setting up the register

The extent to which a country has *an existing corporate* register can play a central role in meeting the challenge of setting up a public BO register. The UK has had a corporate register since 1844, and already had an effective web-based public register of companies before BOT was added. The challenge of adapting an existing register should not be underestimated, but where a country is adopting an economy-wide BO regime, and already has a robust public corporate registry, there is likely to be a strong case for using that existing register as the platform.

However, at the other end of the scale, many countries have less well-developed corporate registries, and in some cases are still paper-based. Some registries can be unreliable, and in some cases incomplete. In these cases, the challenges around the existing register are just as great as those around BO. An industry-specific regime (such as under EITI) can be effectively implemented as a standalone solution, but an economy-wide regime would probably need to be preceded by or encompass reform of the corporate registry.

Standalone solutions can also be appropriate where there is a robust existing corporate registry, but it is not publicly available.

Denmark, the UK and Ukraine added BOD requirements to their existing company registers. These countries already had the reporting systems in place (including the IT) and the institutional capacity to allow for additional reporting. In other countries, common challenges include:

- Some countries tackling BOD are starting from a lower base with manual company registers or little history of public disclosure of company information. For example, in Nigeria, the CAC has electronic records of company data only since 2013.
- Many existing company registries, if they exist, do not collect BO information and were traditionally established only to facilitate company formation and trade. In some countries it has historically been the responsibility of Ministries of Finance or Justice to collect information for tax or identity purposes. Some platforms, such as the notary system in Spain and Italy, may be better prepared to transition to BO data collection and verification.
- Where countries have existing corporate registers, they may require substantial modernisation to change their roles[77], for example to provide new responsibilities for data collection, manage the collection and/or publication of BO data, oversee any verification and sanctions regime and ensure compliance with legislation and international standards such as those set by FATF. These roles require specific technical expertise, human and financial resourcing.
- Resourcing is often a challenge for company registries which need both to establish/modify existing registers and then maintain them. Zambia, Ghana and some EU Member States are considering introducing a fee for users to access their new public registers of BO. There is a trade-off between resourcing registries and ensuring open access to users such as civil society and SMEs[78].

[77] See for example. FATF Guidance on Transparency and Beneficial Ownership. 2014.

[78] Global Witness records that "After paywalls were removed in June 2015, access to UK company data grew exponentially to over 2 billion data searches a year, compared with just over 6 million access requests for paid information during 2014-2015.

3.2.5. Resourcing requirements for establishing and maintaining a register

Human and financial resourcing for establishing and maintaining a publicly accessible BO register are important considerations. As this is a relatively new area of policy and implementation, governments may need to build their own technical expertise or seek external technical assistance, including learning from others on a similar implementation journey.

While we are still at an early stage of gathering evidence on the impact of BOT on tackling corruption, ensuring more efficient procurement or improving the business environment, governments may be reluctant to invest in or raise financing for BOT compared with other demands on public resources with more established or tangible benefits – such as health and education in developing countries, for example. External funding to developing countries may be available for technical assistance, for example for legal drafting or establishing data collection systems and awareness-raising with companies.

However, all governments are also likely to need to find budgets for ongoing maintenance of their registers (for example if they buy-in registry solutions). Registries may face trade-offs between these financing costs and the associated need to charge users with the need to maximise access to public registers, which require careful consideration.

There is little publicly available data on the **costs associated with establishing and operating a BO register**. Some EITI BO roadmaps included budgets but these were often for extractives-only and voluntary-based registers rather than those applicable to the whole economy and based on legislation. There is some data on the provision of technical assistance to countries where the award of contracts to provide assistance has been part of an open tender process. The size of these budgets varies considerably, even taking into account the difference in sizes of economies and starting point for each individual country. Based on the available data from one early implementer, it seems that the cost of designing and establishing a register is at least £770,000 and annual operating costs are around £150,000. However, our research indicates this budget can vary significantly depending on the context and pre-existing state of company records management and the level of pre-existing expertise in government and reporting entities. A further resource allocation is required annually to operate the register

In addition, a significant cost associated with establishing a register is likely to arise from legal fees. This can be at least 40% of the total budget. Legal support is required to produce a definition, review existing legislation and draft legislation to establish a public register. The extent of legal support required depends on factors including:

- The legal system in place as countries with a common law-based system can have greater familiarity with the concept of beneficial ownership;
- The scope of any beneficial ownership definition that already exists in the country's laws;
- The extent to which existing laws facilitate and inhibit the implementation of public register, for example, legal provisions on confidentiality and public accessibility of information; and

- The legislative path chosen to implement a register such as selecting a stand-alone solution or amending existing legislation.

The other areas requiring significant budget include:
- Designing the mechanisms for collecting, verifying and publishing the information, including the scope of information to be collected;
- Implementing the IT solutions necessary for the register, including software development, integration with other systems and hardware, as well as ongoing maintenance costs which may be contracted with external suppliers; and
- Conducting public consultation and awareness campaigns to both explain the benefits of a public beneficial ownership register and to make all companies aware of the obligations to collect, submit and keep up-to-date beneficial ownership information.

3.2.6. Governance arrangements

As noted above, ensuring ownership and cross-government coordination of BOT is an essential success factor. It is helpful if the entire register can be owned by a single government agency. However, it would also be possible for the BO element to be the responsibility of a different agency, feeding into a single technological solution. This might be appropriate where the BO information is restricted to a particular sector where the relevant line ministry might be better placed to own the BO information. Overall management and coordination of implementation of the register may sometimes be better situated with a part of government with expertise in large-scale project management, for example where there are capacity constraints in other agencies.

For example, in Azerbaijan, the sovereign wealth fund, under the Ministry of Finance, is overseeing the implementation of a beneficial ownership disclosure regime for the extractive sector. However, it is expected that the Ministry of Taxes will operate the register as it already hosts the company register

3.2.7. Managing data

Some of the benefits of both publicly accessible and closed BO regimes are best captured by the ability of those registers to connect to one another. For example, the interconnectivity of registers is a specific requirement in the EU under 5AMLD. Interconnectivity and interoperability of registers provide the opportunity for individual country public disclosure initiatives to coalesce into a global norm and enable data users to trace corporate ownership structures across multiple jurisdictions and over time more easily. In order to achieve that goal, it is important that registers have common aspects that allow them to “talk” to one another, or at least all talk to one common database. This means using the same data format and structure.

This is an area where work is already being done by Open Ownership, with their Beneficial Ownership Data Standard[79] (see Section 1.1.5 above). This defines specific fields of data that BO registers should collect and publish. It then puts that data in a

[79] https://standard.openownership.org/en/v0-1/

format that allows systems using that same standard to talk to one another. This is also a platform to enable BO data ultimately to be connected with other datasets, such as public procurement data formatted according to the Open Contracting Data Standard[80].

3.2.8. Ensuring data is accurate and reliable, including verification

Open Ownership suggests a three-stage approach: *authentication and authorisation* of the persons declaring BO, *validation* to ensure the data is a legitimate value, and *verification* that the data is correct, for example through raising red flags[81].

Ensuring the data is accurate and reliable is one of the biggest challenges facing the creation of a credible and useful publicly accessible register and a global norm on BOT. Many of the benefits and credibility of public registers are lost if data is not considered reliable by users, such as law enforcement, businesses, civil society and ordinary citizens. As few implementers of BOT have yet reached the stage of implementing and testing fully operational verified registers, there is not yet full agreement on good practice in this area. Countries at the vanguard of implementation of publicly accessible registers, which have demonstrated good practice in many elements of implementation, such as the UK and Denmark are now focusing on **honing their systems of verification to enhance reliability**[82] (See Section 2), although they may already be widely used (the UK PSC register has over 2.2bn visits per year). Making registers publicly accessible allows for **an additional level of scrutiny** of the accuracy of data beyond systems which only allow for BOD.

The OECD considers that there are three core elements to **verification** of a BO register:

- A system for both the register holders (e.g. the company registry) and users to raise red flags on information in the register. This should include a legal obligation on certain users to report unusual or unexplained information such as the EU proposes in 5AMLD (see Section 1);
- Oversight by an authority with the powers and resources to undertake compliance and verification checks (including spot checks and screening against other reliable information sources) and to investigate apparent instances of non-compliance;
- Enforcement through prosecution of non-compliance and the imposition of penalties.

A variety of approaches are being tested and have resourcing implications for those responsible for ensuring accuracy. Some of the challenges and approaches include:

- **Designating responsibility for accuracy.** Some countries place the obligation on companies to provide documentary evidence and for the company register or other government agency to conduct enquiries to verify company submissions. The appropriate system may be context-specific; FATF highlights elements of good practice in some systems of BOD such as notary-based systems in Spain.[83] Italy

[80] https://www.open-contracting.org/data-standard/
[81] https://openownership.org/news/what-we-really-mean-when-we-talk-about-verification-authentication-and-authorization-part-2-of-4/
[82] See the UK FATF Mutual Evaluation published in December 2018 for an up-to-date assessment, for example. www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018-Executive-Summary.pdf
[83] http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf

also has a notary system. However, the notary system is not easily transferable to another jurisdiction that does not have prior experience of it and indeed may have flaws if the notaries themselves do not act with integrity. Some countries place an onus on users of the information, such as law enforcement, civil society and members of the public to report errors or instances of apparent non-compliance. For example, the UK PSC registry has a button for anonymously reporting incorrect data. As mentioned above, the EU's 5AMLD seeks to ensure "adequate, accurate and current" information in Member States' registers from 2020 by "*requiring obliged entities and …competent authorities to report any discrepancies they find*" between BO information in the central register and other BO information available to them.

- **Ensuring compliance** with disclosure requirements. A legal obligation to provide information is the most effective means of ensuring compliance but is not a guarantee. It also requires an **effective sanctions regime**. EITI implementing countries that have introduced voluntary disclosure regimes have experienced low levels of compliance. While Denmark has achieved around 96% compliance and the UK 99%, in Ukraine only 16% of companies had submitted any BO information as of August 2017[84]. As well as putting in place reporting requirements and penalties for non-compliance, commercial pressures can also be brought to bear to provide an incentive for the provision of accurate beneficial ownership information. For example, the Kyrgyz Republic, in legislating for beneficial ownership transparency in its extractive sector has made it a condition of granting an exploration or development licence. So, if a company fails to comply, it risks losing its licence. This provides a strong incentive for management to ensure accurate information is submitted. The UK authorities are also in the process of launching the first prosecutions for non-compliance with reporting requirements.

- **Ensuring the information is input accurately and then remains accurate over time, once inputted to the register:** In the UK, Companies House has made amendments to the collection of data (e.g. introduction of drop-down menus) to reduce the scope for data entry errors. Data is subject to change as companies change owners, individual's ownership levels change or an owner changes address. So there is a need to ensure that companies update BO information sufficiently regularly and registers need to hold historical data to track changes, for example in ownership and company names.

Based on the challenges to verification, the guidance already available and the experience of countries to date, for any country considering how to ensure data is accurate and reliable for users, the **formal stages of ensuring accuracy could include**:

- Ensuring no data entry errors such as misspellings or data in the wrong format. Measures can include use of drop-down menus, for example for descriptions of countries, an opportunity for the submitter to confirm the data before hitting the submit button and an option for users to report errors,

[84] Open Ownership 2018. Op cit. In addition, the FATF mutual evaluation of Ukraine states that "certain deficiencies in parts of the application of … laws, in particular the lack of verification of beneficial ownership information held by the USR (the central register of beneficial ownership), appears to have a material impact in the effectiveness of their intent ". http://www.fatf-gafi.org/media/fatf/content/images/MER-MONEYVAL-Ukraine-Dec-2017.pdf

- Requiring the provision of documentation as evidence to support beneficial ownership details,
- Requiring accountability for the accuracy of information by a senior company executive. So, an executive has to attest that the information submitted is accurate and the identity of that executive must be verified by the provision of supporting documentation e.g. passport or identity card details,
- Screening information on beneficial owners against other information sources such as lists of sanctioned individuals and companies and disbarred directors,
- Requiring regular reconfirmation of the accuracy of information, preferably more frequently than annually. Also, a requirement to notify changes within a short time span of becoming effective,
- Using software solutions to identify potentially inaccurate information e.g. a mismatch with previous submissions or data entry errors not picked up in earlier stages,
- Using risk-based criteria to identify red flags and to conduct spot checks on information submitted. Such criteria could include circular ownership, complex corporate structures, involvement of jurisdictions with low levels of transparency and persistent delays or errors in reporting,
- Requiring users to report unusual or unexplained differences information where the user has information gained from its own research or investigations,
- Prosecution of cases of non-compliance with the potential to impose penalties that are likely to have a deterrent effect.

3.2.9. Data protection and privacy[85]

While considering whether and how to establish and maintain publicly accessible registers, governments and other stakeholders (particularly companies) have to consider issues of rights to privacy relative to the disclosures desired to achieve the aims of BOT and the requirements of data protection. This includes considering the prevailing legal regime and whether protections or exemptions may be required for certain groups in specific circumstances and country contexts in order to manage risks.

Rights to privacy originate in the Universal Declaration of Human Rights. This recognises the individual's (but not a company's) fundamental right to privacy. This is not an absolute right and under certain **circumstances it can be restricted or limited, if there is a clear legal basis, a legitimate aim and disclosure is proportionate to that aim**. The rights set out in the UN Convention are incorporated in regional conventions and national constitutions and laws, as well as Data Protection legislation. For example, in 2018 the EU introduced the General Data Protection Regulation (GDPR), ECOWAS has a Supplementary Act on Personal Data Protection.

Knowledge, good practice and guidance in this area is emerging. For example, the Engine Room suggests a three-stage process to assist in assessing these issues with respect to BOD and BOT as follows, by asking:

[85] The authors are grateful to The Engine Room which provided valuable insights into these issues at a workshop hosted by Open Ownership at the IACC in Copenhagen,October 2018. This presentation is now available at https://www.openownership.org/uploads/IACC-slides.pdf. Full report "Data Protection and Privacy and Beneficial Ownership Disclosure" forthcoming.

- Is it lawful to disclose the personal details of the beneficial owner, and if so
- Is disclosing BO data necessary to achieve a legitimate aim, and if so
- How can a register be structured so that benefits are balanced against potential harms?

The nature of data protection legislation in a specific country context is important in determining the approach. It may be lawful for a company to disclose BO data if there is a statutory obligation for this in the country where it is registered, for example in legislation requiring companies to collect and disclose BO data, such as in the UK. If such BO legislation is not yet in place it may be lawful where the beneficial owner provides consent to the company, such as in Ghana. Some countries have neither data protection legislation nor BO disclosure legal requirements and companies can still voluntarily disclose data by seeking consent from beneficial owners or as part of contractual arrangements with them. This suggests that introducing legislation requiring BOD and BOT can be an important step in managing data protection issues.

Arguments for BOT and BOD also rest on the argument that it is necessary to disclose this information for a legitimate aim (for example tackling financial crime, corruption, tax evasion etc), and in the case of BOT in a publicly accessible central register. Given that the evidence base for BOT is still being built, this is an area which may be most vulnerable to challenge in countries implementing BOT. There is an example of a legal challenge to BOT in the PSC register which has been included in a challenge primarily relating to BOD in the OECD Global Forum's Common Reporting Standard (established for tackling tax evasion)[86]. This argued that "publication of sensitive data concerning the internal governance and ownership of private companies by the Beneficial Ownership Registers is not necessary to achieve the stated objectives." The state of the evidence on how BOD and BOT contribute to the aims of anti-corruption and tackling money-laundering is set out in Section 2 above. Further work to continue **build this evidence base** will be important to support arguments that BO information is necessary in the context of data protection and to mitigate such concerns.

The final consideration for countries implementing BOT is how to structure publicly accessible registers to mitigate risks. For example, in some contexts, there are concerns about personal security, for example kidnapping in insecure contexts (see Section 2.4.3) or abuse if working in sensitive industries such as pharmaceuticals or defence. These risks can be mitigated by publishing only part of the data which is submitted by companies and designing exception regimes depending on the context. For example, the UK PSC Register allows individuals to apply for an exemption. These are considered on a case-by-case basis, in liaison with law enforcement agencies to consider the risk to personal safety. Other concerns raised by stakeholders, include data theft or misuse, not specific to BOT, due to hacking or the scope to link different public datasets. The UK PSC Register has also redacted certain information regarding dates of birth to mitigate risks to privacy.

These debates may resonate differently in each context and partly reflect prevailing social norms about openness and privacy. For example, some Nordic countries have

[86] See for example, https://academy.mishcon.com/legal-challenge-to-common-reporting-standard-crs-and-beneficial-ownership-bo-registers-posted-on-01-august-2018/

an established practice of publishing income and tax returns, others do not. Governments are navigating these issues at a time of heightened public concern about data breaches and privacy. However, there is emerging international good practice on designing publicly accessible registers which publish selected information and provide careful exemptions, which demonstrate how governments and companies can navigate these concerns.

Some jurisdictions have also based their business model on the ability to provide privacy to individuals who for personal reasons do not want to reveal their assets.

These issues are also likely to come to the fore as policy on trust transparency evolves, as many consider a blanket argument for transparency may be harder to make. For example, in the EU, whereas 5AMLD requires Member States to establish publicly accessible registers of company BO, by 2020 it will require access to information on BO of trusts for competent authorities, FIUs, professional sectors subject to AML rules (banks, lawyers etc) and to other persons who can demonstrate a "**legitimate interest**". Once again, this highlights the importance of building a strong evidence base of how and under what conditions trust arrangements are used for the purposes of financial crime, money-laundering and corruption.

3.3. BOT is just one part of a wider system for tackling corruption or improving the business environment

Greater BOT is just one important element of the armoury that countries may have to tackle corruption. Using information generated by BOT effectively requires **complementary strengthening of supervisory capacity** for government, the financial sector and company formation agents such as lawyers as well as **effective investigation and enforcement**.

Effectively using BOT information requires **cross-border collaboration** and **accessibility** for different users. To some extent this is a technology solution, for example, the EU is developing a Business Registers Interconnection System (BRIS) that provides infrastructure, which facilitates public access to information on EU companies. BRIS implies that the EU countries' BO registers will eventually be interconnected, as envisaged by 5AMLD. However, it also relates to the willingness of jurisdictions to collaborate on cross-border investigations, to a greater extent than the nature of the data. Concerns about data security or capacity weakness in counterpart FIUs for example can make some jurisdictions reluctant to share or rely on information from elsewhere. This highlights that complementary TA efforts are required, for example through the new international Egmont Centre for strengthening FIU capacity, as well as existing sources of technical assistance to FIUs, such as the AML-CFT trust funds, to improve the system as a whole and maximise the impact of BOT.

4. Demand for technical support and the assistance currently available

As explored in Section 3, countries seeking to implement publicly accessible registers of beneficial ownership face **a range of political and technical challenges.**

Overall technical needs emerging from the early experience of countries implementing BOT and providers of support include the following, some are common to countries simply seeking to improve their BOD system**:**

- Legal drafting and experience with BOT legal frameworks for inclusion in domestic laws e.g. Companies Laws,
- Guidance on definitions, thresholds, sanctions, verification approaches based on good practice and experience elsewhere,
- Communications and stakeholder management – both outreach to users (law enforcement, business, civil society) for consultations on needs and scope and awareness-raising about reporting requirements,
- Expertise in wider anti-money laundering systems, law enforcement and supervision arrangements,
- Registry reform solutions and packages including wider institutional and public sector reform and records management,
- Data engineers and data scientists, software development.

For example, the EITI Secretariat workplan for 2019[87] notes that the EITI Secretariat will need to:

"Support the EITI Board to oversee the implementation of the beneficial ownership requirements by providing support and guidance to implementing countries on how to implement the roadmaps, including legal approaches to beneficial ownership disclosure, developing company guidance and reporting templates, and verifying and publishing beneficial ownership information."

As a growing number of countries adopt BOT, there are already signs of **growing demand for support for publicly accessible registers** which some **dedicated providers of TA support** are struggling to meet due to lack of funding or insufficient technical expertise internationally, given that BOT is still a new field. It is anticipated that **demand for this support will also increase**, especially in countries where capacity is weaker and existing registry systems are less developed.

The established providers of TA for beneficial ownership **disclosure** are the multi-donor trust funds (WB and IMF-managed) and the OECD Global Forum. While the WB and IMF provide limited TA for BOD for AML-CFT purposes, the OECD is particularly active in providing TA and training for BOD related to taxation. **Given the role of money-laundering in facilitating corruption, and the overlaps between strengthening systems of BOD and BOT, the existing WB and IMF-managed Trust Funds, are important potential sources of support** for publicly accessible registers as implementation increases, although they have not yet experienced a significant increase in demand specifically for this, relative to other work on AML-CFT

[87] https://eiti.org/sites/default/files/documents/international_secretariat_work_plan_2019.pdf

systems. **The pros and cons of providing additional TA** through these mechanisms are explored below and in Section 6.

However, **organisations which are known to have a more focused involvement in beneficial ownership transparency, by contrast, have already been struggling to meet demand** for advice and lessons on implementation, for example:

- *Bilateral knowledge sharing and support*: As an early implementer of BOT, in the UK, BEIS (the lead ministry for implementation of the PSC register) and Companies House (which hosts the register) have hosted a steady stream of bilateral missions seeking to understand the UK approach[88]. BEIS estimates that 20-25 jurisdictions may express interest in 1 year, 50% of these request an expert visit from the UK to discuss complexities, 2 or 3 of these may need a longer commitment of ongoing mentoring and TA over 3 to 5 years.

- *EITI*: The steps for establishing beneficial ownership transparency in the oil, gas and mining sectors were set out by the 51 EITI implementing countries in road maps completed by the end of 2016. Examples of support provided by the EITI International Secretariat include linking BOT to national reforms (Indonesia), building intragovernmental collaboration (Mongolia), establishing legal and institutional frameworks (DRC), data collection and reporting templates (Myanmar), company guidance and outreach (Zambia), establishing public register (Kyrgyz Republic) and capacity building to analyse data (Kazakhstan)[89]. However, in June 2018, the EITI Secretariat had cautioned that progress in EITI implementing countries would be too slow for its 51 implementing countries to meet the requirement for BOT by January 2020. Those countries which had made good progress had matched political commitment with substantial technical and financial support, for example from DFID, EBRD and NRGI. The International Secretariat had only just sufficient capacity to conduct the minimum level of outreach and stakeholder engagement required to support the national dialogue on beneficial ownership transparency but not the human resources, skills and expertise to undertake the more substantial technical assistance needed to support the building of institutional, legal and reporting frameworks for beneficial ownership transparency.

It is clear from the experience of countries implementing BOT as set out in Section 3, that these challenges are not only technical. A considerable and long-term investment is also required **in building and maintaining political momentum across government agencies and among other stakeholders for ownership and implementation of BOT, taking advantage of opportunities to move reform forward as they arise**. Appendix 2 includes a case study of experience in Ghana to date of work to maintain such momentum on BOT.

[88] Delegations have visited including from the EC, Norway, Ecuador, Taiwan, Georgia, Indonesia and EITI countries in Africa eg. Sierra Leone, Ghana.
[89] EITI Secretariat. "EITI and BOT. Presentation for staff retreat". September 2018.

4.1 International Financial Institutions

Several existing **World Bank managed multi-donor trust funds** provide a limited degree of support for countries to establish publicly accessible BO registers, particularly in developing countries. For example:

- The recently established Open Government Partnership Multi-Donor Trust Fund (funded by Canada, France and UK) is relatively small and will be focused on supporting 5 or 6 commitments across developing countries. It will showcase what can be done on open government and broker and connect partners. The first grants for the thematic window will be made in early 2019. This has the **potential to showcase a small amount of work on BOT**, which is a thematic priority for the OGP. There will be two additional windows – for technical assistance and research which **may provide some limited further opportunities**. However, this Trust Fund is **not currently seen by OGP as the vehicle for a big uplift in support**, specifically for BOT.
- The Extractives Global Programmatic Support (EGPS) Multi-Donor Trust Fund provides approximately 60% of its support to EITI implementing countries as one of four thematic priorities. There is **some scope to provide support to EITI-implementing countries on BOT** based on country demand and there is an **option for the Steering Committee to request this**. However, this **would not meet all demand** for guidance and technical assistance from EITI-implementing countries given the range of requests for EITI support.
- Some targeted support is also provided by the Stolen Asset Recovery Initiative (StAR) and the Financial Market Integrity Unit.

While an **emphasis on transparency** is an important part of development work supported by the Bank, officials have some **reservations** about prioritising investment in establishing effective BOT in low capacity contexts. They highlight the challenges with establishing and maintaining reliable registers where capacity and resources are limited, and the corresponding need to develop and make a stronger evidence-based case to governments for investing in this area in terms of impact on corruption or business environments.

This implies a **need for external funding to assist in building technical capacity to manage and maintain effective BOT systems,** for example through establishment of a dedicated WB-managed multi-donor trust fund or increased support to other existing TA mechanisms, coupled with efforts to **build and maintain coalitions of reform which can take advantage of political opportunities** to support BOT tailored to local context It also highlights the need to build a strong **evidence-based narrative on impact** to assist governments in assessing the value for money of investing in BOT and encourage their support, which would be necessary to deliver a global norm of BOT**.**

The IMF provides some TA for BOD under the AML-CFT Thematic Trust Fund (TTF), such as in relation to national risk assessments and legal drafting. There has not been a major demand traditionally specifically on BOD, with more emphasis on other areas. However, officials note that by approving the current IMF-led entity transparency research (see Section 1.1.8), the Steering Committee **demonstrated that it had concluded that BO registries deserve increased attention**.

As noted in Section 1.1.1 above, the FATF Standards do not currently require establishment of BO registers (whether public or not) but provide a range of means for countries to ensure that timely and accurate BO information is available to competent authorities only. In practice, some countries are opting to meet this standard by developing a central and publicly accessible register, and they would be able to seek support from the TTF to do this. As more countries adopt this approach, more demand is likely to emerge for support in this area which could be met in part through deployment of the TA tool which the IMF is currently developing, by refocusing or increasing TTF resources, subject to further discussion by the Steering Committee. **An opportunity for discussion of scope to increase resourcing to this area at the Steering Committee[90] may arise once the IMF completes its current scoping study.** Countries that will request BO TA from the TTF will also need additional types of support that will not be covered by the TTF, such as setting-up the databases to hold BO (and basic) information. TTF members could also be encouraged to provide this on a bilateral basis

Some **regional development banks** are already giving priority to advancing BOT particularly in the extractives sector, for example the **EBRD** has been supporting EITI-related work in Central Asia and the **Asian Development Bank** is supporting work with specific countries, such as Azerbaijan and will host the next EITI Asia regional BO conference in spring 2019 in Manila. The African Development Bank is not yet supporting work in this area but is interested to explore opportunities, including with the Africa Legal Support Facility, given the significant degree of legal support required by BOT implementing countries.

4.2 Existing standard-setters

FATF, the FATF-style regional bodies, as well as the IMF and World Bank conduct mutual evaluations/assessments which identify weaknesses in country AML-CFT programmes, and act as a conduit for sharing experience across countries though this is not their primary objective. TA to address these deficiencies in money-laundering systems, which can enable corruption, can be provided by the World Bank and IMF among others through the channels identified above, if requested by countries.

The **OECD Global Forum** offers considerable technical assistance to member countries on strengthening BOD for the purpose of tackling cross border tax evasion. This includes the conduct of regional workshops, technical assistance on implementing the requirements and legal drafting. As noted above in Section 1.1.1, the Global Forum has adopted the FATF Standard on BOD into its own standards and assessment methodology.

The EITI International Secretariat provides advice on extractives-related BOT in response to demand from its 51 implementing countries working towards the EITI Standard requirement for BOT by January 2020. The Secretariat convenes an informal network of implementing countries and experts, which also links to Open Ownership and NRGI networks on a platform provided by OGP. The Secretariat also produces guidance notes for EITI implementing countries, hosts workshops for countries to work

[90] Funding members include UK, Switzerland, Luxembourg, Netherlands, Japan, Norway, Qatar, France and Saudi Arabia

through reporting challenges and regional conferences between EITI implementing countries and other stakeholders working on BOT.

In contrast to the experience of the IMF TTF to date with respect to beneficial ownership **disclosure**, as set out above, the EITI Secretariat alone at the present time cannot service all demand it receives from its 51 EITI-implementing countries for support on beneficial ownership **transparency** and the breadth of requests for legal and reporting support, especially where this involves economy-wide BOT/a central register. It can also act as a conduit to other sources of TA e.g. Open Ownership, NRGI, the EGPS Trust Fund.

4.3 Providing TA through bilateral or multilateral programming

Support for BOT is not yet widely encouraged through bilateral or multilateral donor programming, other than by the ADB, EBRD and EC. There are opportunities to build it more systematically into both governance/anti-corruption and economic development programming. Making a stronger business case and developing evidence of impact on corruption and the investment climate would assist in convincing governments to request support for BOT among other priorities. Where programme delivery is contracted out to the private sector, this could become a more systematic part of terms of reference for programme delivery tenders.

For the EC, Devco has been receiving an uplift in requests for TA/programmatic support on BOT and is being encouraged to do more in this area by policy leads in the Commission, such as DGJust.

There are isolated examples of bilateral TA. For example, France provides some technical assistance on BO. The bulk of this is funded through its contribution to EU development assistance rather than through direct assistance. However, it also channels some technical assistance through the government agency Expertise France. The organisation has been particularly active in providing assistance on BOD to Francophone North African countries such as Tunisia. In addition, the UK has experienced a surge in demand to share the experience of implementing the PSC register, with a wide range of countries both through country and inward visits. Technical workshops will also be introduced from spring 2019 to provide support from the UK Government to the UK Overseas Territories in implementing public registers.

4.4 International civil society

Civil society organisations including Global Witness and Transparency International often identify technical assistance needs through advocacy work and pass requests on to providers such as Open Ownership. These organisations as well as NRGI also produce **guidance on good practice** through research and reviews of implementation of BO commitments – for example TI-Secretariat's review of implementation of G20 High-Level Principles, TI-Australia's[91] and NRGI's recent guidance on using BO data to screen for corruption in extractives licensing. The Tax Justice Network is producing a checklist to assist countries in identifying and considering how to reduce loopholes in BO regimes[92]. Open Ownership provides a light-touch dedicated helpdesk, online

[91] http://transparency.org.au/our-work/mining-for-sustainable-development/mining-for-sustainable-development-factsheets/. https://resourcegovernance.org/analysis-tools/publications/beneficial-ownership-screening-practical-measures-reduce-corruption

[92] https://www.taxjustice.net/wp-content/uploads/2017/04/TJN2017_BO-Registry-ChecklistGuidelines-Apr.pdf

guidance and coordinates a network of governments and civil society working on BOT, based on the OGP platform. It provides technical assistance to pilot countries working on open data approaches to BOT, which is also being used to develop implementation guidance.

4.5 Private sector and professions

This study did not systematically review technical assistance for BOT which is available, for example, from providers of company registry solutions – which may be involved in broader registry reforms - or professional bodies such as accountants or lawyers. However, this could be another area to explore. For example, the UK Law Society has an international programme of pro bono support and is in the process of designing an anti-corruption support programme which could represent an opportunity to scale up **support for legal frameworks**. The Africa Legal Support Facility has also expressed interest in working in this area.

4.6 Strengthening provision of TA and other support (see Section 6)

No existing vehicle alone could provide the volume and range of technical support needed, particularly for developing countries, to develop and maintain publicly accessible registries of BO, as an increasing number of countries adopt this approach. There is a need **to increase the resourcing and volume of TA available through existing providers mentioned above, to signpost TA more easily for countries requesting assistance. This could also include establishing a dedicated IFI-managed Trust Fund and/or private sector facility for BO technical assistance**.

Some stakeholders have also proposed that there may be greater scope to explore **joining up country review processes**, if this would reduce the burden for implementing countries and facilitate lesson-learning. At present, for example FATF (or FSRBs), OECD and EITI conduct reviews of BO disclosure with different teams and timescales. Meanwhile some countries are subject to separate assessments as part of scoping exercises for support (for example by civil society organisations such as Open Ownership or donors).

More joined up review processes would act as **a conduit to identify support needs** to address recommendations on improving BO disclosure and **reduce the burden of multiple missions** for implementing countries with weak capacity. Codifying lessons from implementation into a **commonly accepted disclosure standard or good practice principles** could facilitate such joined-up working, resourcing and coordination of TA.

There is also an opportunity to explore the extent to which **private registry solutions providers can develop BOT reporting and publication solutions**, while being mindful of funding needs to establish and maintain these packages for lower-income countries.

Work with professions such as lawyers and accountants could help to identify opportunities for collaboration, co funding and pro bono support. For example, as set out above at the beginning of Section 4, the key areas of support required by countries at an early stage of implementation of BOT, include developing appropriate legal frameworks and working with companies to raise awareness of reporting requirements.

5. Future approaches to harnessing national and international action to establish a global norm

Action to achieve a global norm will require **sustained effort** to reach a critical mass of countries **actually implementing open publicly accessible BO registers**. They will need to provide **reliable data which is being actively used efficiently and effectively** by a range of stakeholders, including law enforcement, business and civil society, to deliver results in terms of exposing and deterring corruption, tackling illicit financial flows and fostering a better business climate.

Efforts in individual countries to nurture coalitions of users and other stakeholders and take advantage of opportunities to further BOT will be **as important as international momentum to establish and maintain political leadership**. More effective **provision and coordination of technical guidance and support will be necessary to sustain these efforts over the next 5 to 15 years** and contribute to achieving the SDGs by 2030, recognising that countries are starting this journey with different registry systems, objectives and levels of capacity. In some cases, capacity and other constraints mean that existing registries are incomplete and/or paper based. Investing in aspects such as appropriate systems of verification will also be a priority.

The interests and **contribution of the private sector** to this campaign have so far lagged behind political and technical debate. Reliable and internationally accessible BOT data could help deliver a **step-change in business access to information** about frontier markets and investment opportunities, while enabling them to meet compliance requirements more efficiently and cheaply. A corresponding step-change in **partnerships with the private sector** will be needed to deliver this shift, help countries attract responsible investors and foster SME development.

A strategic, flexible and risk-based approach should underpin action toward a global norm. **The ultimate aim is a global norm which raises the floor for all in terms of BOT and squeezes out routes for the corrupt and other criminals**. But the path to achieving this is unlikely to be linear; shining a light on opaque practices in one location can provide incentives for the corrupt to seek refuge in more secretive or less well governed jurisdictions. Keeping ahead of this game will require an iterative and tactical approach, internationally and locally, regularly updating understanding of the political economy and taking account of local contexts and alliances as they emerge or decline with political cycles and investment opportunities.

In terms of **timing and sequencing**, some stakeholders argue that it is too early to invest significant resources in building publicly accessible registers, before there is a solid body of evidence that these can assist, along with other measures, in tackling corruption and money-laundering or improving the business environment. This may be of particular concern for developing countries where **capacity and resources** are stretched and the **trade-offs** between investing in BOT versus other priorities are most acute. On the other hand, it is only by **implementing and testing** this approach, coupled with a rigorous approach to monitoring the impact, that this **evidence can be gathered, and learning built into the roll-out** of other BOT approaches. Given the scale of resources lost internationally to corruption and other illicit flows, and the need to improve the investment climate in emerging and frontier markets, if BOT proves a successful contribution to addressing corruption and money laundering and promoting investment, these savings from funds recovered or corruption deterred would represent a return on the investment in BOT and demonstrate **value for money**.

Given the **current political momentum** behind BOT, failing to invest in this area would represent a significant lost **opportunity** to encourage more governments to adopt this approach and to take advantage of the forthcoming opportunity to update the FATF Standards, in order to incentivise more countries to adopt this approach to tackling money-laundering as the "getaway car" for corruption. Likewise, this political interest represents an opportunity to take advantage of the timing of the next round of updates to the FATF recommendations to add to the set of approaches that countries can take to address money-laundering and corruption. Updates to this existing global norm would **level the playing field** and encourage other countries to adopt BOT.

Efforts to improve BOT or squeeze out opportunities for corruption should be built around **a three-pronged approach** to:

- Work now with **vanguard group of countries** who are already showing leadership on BOT, to test approaches and hone good practice,
- Foster alliances and target efforts to adopt BOT in **further countries where transparency** is most needed to address poor governance locally, help attract investment and foster prosperity, and
- Make jurisdictions which are less compliant with current standards for BOD[93] less attractive for doing business by **requiring enhanced due diligence** screening before doing business in those jurisdictions and working to enhance existing global standards (such as FATF) to incorporate beneficial ownership transparency and level the playing field for all.

This section considers different approaches to harnessing international and national leadership to establish beneficial ownership transparency as a global norm, based on the mapping and analysis above, and makes recommendations for possible future approaches and sequencing.

5.1. Four options for working towards a global norm

We consider four options for working towards a global norm of BOT. Options 3 and 4 **comprise a number of complementary components which could be implemented as a selection from this menu or a package. We recommend implementing Option 4 as a package**. The options are:

1: Organic growth in BOT – continue as now;

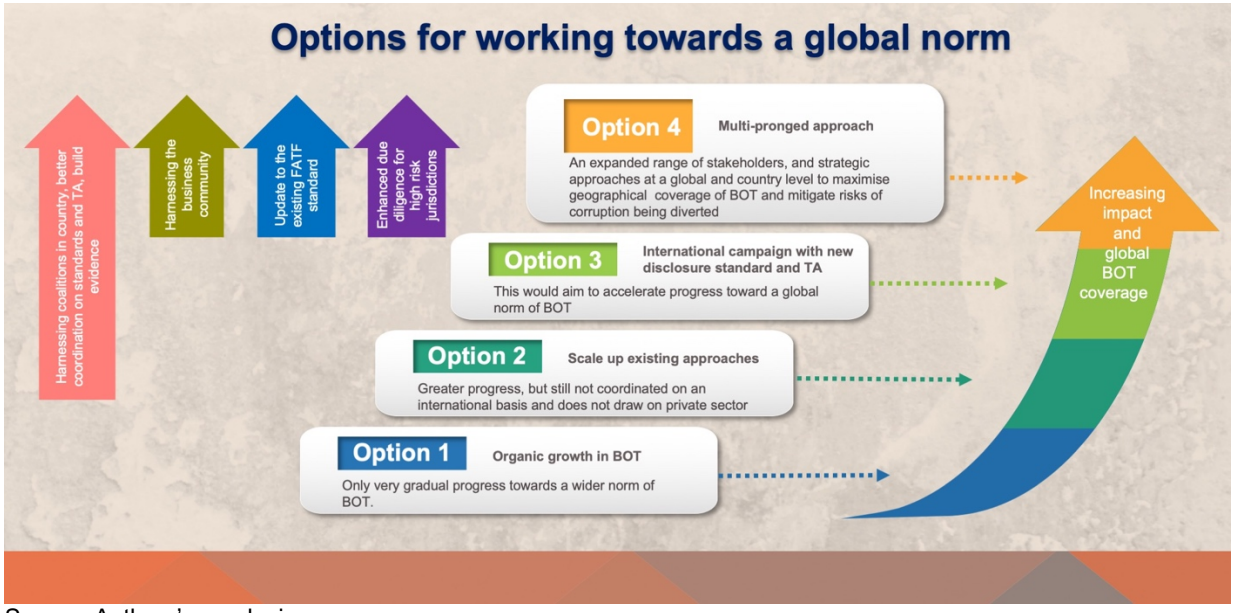
2. Scale-up existing approaches;

3: Option 2 plus an international political campaign. *This offers a range of components which could be adopted individually or as a package including*: a new technical disclosure standard or set of good practice guidance for BOT, and an uplift in technical assistance specifically for BOT, for example through a dedicated technical

[93] For example, FATF Mutual Evaluations rate countries' technical compliance with the Standards (such as Recommendations 24 and 25 on BOD) as compliant, largely compliant, partially compliant, or non-compliant. They rate countries' effectiveness in ensuring outcomes (such as IO5 on BOD) as high, substantial, moderate or low levels of effectiveness http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf

assistance fund. This approximates to the approach currently proposed by the UK Government to work towards a global norm of BOT.

4: Multi-pronged approach. *In addition to Option 3, this offers a range of components which could be adopted individually or as a package. It would involve* working at national levels to advocate for BOT and support implementation with a **broader coalition of providers and users of BO information, notably the private sector and at international levels to update existing global Standards**. This would involve altering strategy for different country contexts to minimise risk that corruption and other illicit flows are diverted to other jurisdictions. It would systematically build the evidence base on the impact of BOT for different users, to assist with making the case for this approach.



Source: Authors' own design

Figure 5: Options for working towards a global norm

5.1.1 Option 1: Organic growth in BOT – continue as now

This option assumes that current approaches continue with no additional investment in gathering political momentum, reforming existing standards, sharing experience or engaging business. We anticipate **the likely trajectory would be**:

- Gradual increase of more reformist countries implementing publicly accessible registers but few global leaders. Variegated geography – some countries have robust BOD, a few have BOT, and not necessarily where information about BO is needed most;
- International civil society continues to campaign for BOT and against "secrecy jurisdictions". Intermittent scandals drive surges in activity;
- Through the OGP, a network of implementing country officials, national and civil society provide peer support, co-create BO commitments through OGP Action Plans, and progress is monitored through the Independent Reporting Mechanism
- The formal international norm for BOD remains the existing FATF Standards. FATF and the FATF approach does not incentivise transparency of BO;

- Information of variable quality – law enforcement and business users cannot rely on it as one of their sources of evidence. Business face higher compliance costs for due diligence;
- Technical expertise on BOD and BOT is siloed and not shared. International organisations (FATF/IMF) collate information about how BOD and BOT is implemented and lessons on good practice, often in parallel channels to civil society campaigners and governments implementing BOT;
- Variable efforts to ensure public BO information is accurate through patchy implementation of verification approaches and sanctions;
- Concerns about privacy make governments cautious about adopting BOT;
- Implementing governments face competing demands for resources and lack a strong rationale for investment in BOT.

Pros	Cons
Gradual pace of implementation would allow time for testing and refining BOT approaches; Governments with scarce capacity or financial resources can invest in other priorities; Stakeholders are less concerned about data privacy or data security risk related to publicly accessible BOT; There is time to gather evidence on the effectiveness of BOT before investing significant financial resources or political capital in this approach.	Pace of progress towards adoption of BOT would be slow, unlikely to achieve a global norm in medium term; Geographical coverage of BOT would be limited with corruption and illicit flows likely to use other locations; Accuracy of BO information and scope to link it with data in other countries or fields (e.g. procurement, asset declarations) so that: - impact on tackling corruption would be patchy; - this would limit gains from economy, efficiency and effectiveness leading to the need to redesign registers in future, representing poor value for money (VFM); Businesses and governments do not reap the economic benefits of easy access to information about supply chains, competitors. Civil society and media would lack information on BO in contexts where governance and commitment to tackling corruption is poor, in order to expose it and hold governments to account for action against corruption.

5.1.2. Option 2: Scale up existing approaches

This would be a similar to Option 1 but with additional resourcing for existing approaches to BOT, including:

- Scaling-up and coordinating better efforts to advocate for BOT and encourage implementation, through existing architecture for garnering political support – such as the OGP and EITI, focusing on work with governments;
- Continued and more sustained international civil society campaign on BOT in different contexts;

- Continued outreach to countries, peer support, co-creation of commitments between government and civil society and monitoring through OGP;
- The formal international norm for BOD remains the existing FATF Standards.
- An ad hoc approach to increasing technical assistance to implementing countries through existing providers. For example, this could incorporate an increase in funding to existing WB- and IMF-managed multi-donor Trust Funds for AML-CFT and to leading TA providers such as Open Ownership and the EITI Secretariat (See Section 6);
- With additional resourcing, BO experts and implementing governments work to refine approaches to data accuracy and managing privacy concerns;
- Gradual learning on implementation with diverse stakeholders collating best practice and sharing within their groups (e.g. OGP platform for civil society and governments; Standard-setters and IFIs though FATF/OECD) but not sharing effectively.

Pros	Cons
Some improvement in scale of TA available to governments implementing BOT eg. through EITI Secretariat and Open Ownership. Gradual pace of implementation, but still allowing time for testing and refining BOT approaches in a wider range of countries as more resources and political advocacy available. More experience is built in selected countries of how to ensure accurate and interoperable data due to additional resourcing and rollout of BODS. A larger proportion of publicly accessible registers are well designed from the outset representing better VFM and enhancing the opportunities use of registers by domestic users and international law enforcement/civil society/investors/due diligence providers. This increases the probability of using reliable BO data in some locations to tackle corruption and ML.	Governments implementing BOT find it challenging to navigate different providers of TA to identify expertise which meets their needs. Existing FATF approach does not incentivise transparency of BO; WB and IMF-managed multi-donor Trust Funds are unlikely to prioritise BOT among oter AML needs, due to lack of earmarking and multiple donor priorities on steering committees. Pace of progress towards adoption of BOT **as the norm** would be patchy, still unlikely to achieve a global norm in medium term. Geographical coverage of BOT would be limited with corruption and illicit flows likely to use other locations. Private sector partners are still not engaged as users or advocates of BOT limiting the benefits and efficiency gains for investors and frontier markets.

This is unlikely to achieve the momentum and coalitions required to achieve open publicly accessible BO in a significant number of countries at higher risk of corruption in the medium term.

Options 3 and 4 represent a menu of components *to respond to the commission in this paper on action required to deliver a global norm of BOT. While supporters* ***could adopt individual components****, progress towards a global norm and* ***impact on corruption and money-laundering as well as improvements in the business climate are more likely to be achieved if these options are adopted as a package as the components are complementary.***

Table 7: Summary of options 3 and 4 (see detailed description below)

Approach	Option 3 Menu of components	Option 4 Menu of components
Political leadership and coalition of support for BOT	**Leadership group of governments** implementing and advocating BOT. Linked to the **Open Government Partnership** government and civil society political and BO platforms, including national OGP partnerships and international, for example OO and EITI	**Broader coalition** of providers and users of BO information implementing and advocating BOT in individual countries based on how it is useful to different stakeholders: • Leadership groups of governments • Leadership group of **private sector** and working groups. • OGP government and civil society platform
		Coalition supports **reform** of existing indices (eg. Doing Business Index) and **global norms** (e.g. FATF) to reflect momentum and build incentives for BOT.
Collating and benchmarking good practice in BOT and standard setting	New BOT "**disclosure standard" or commitment to principles of good practice** for open publicly accessible registers led by Open Ownership (OO) and OGP government and civil society working group. OO promotes and tests good practice through deep engagement on **open data approaches** (BODS) through small number of country pilots.	Small **technical advisory panel**: • provides guidance on good practice in BOT to advise leadership group of governments and other BOT implementers; • consults BO information providers and users from governments, international TA providers, standard-setters and private sector on good practice guidance on BOT; • collaborates with international standard-setters on lesson-learning and updates of Standards (e.g. FATF).
		Deeper identification of **range of users of BO information**, their needs and objectives through BOT, including through consulting: • private sector working groups; • consultation with law enforcement; • managers and bidders for public procurement; • users of BO information for purposes other than anti-corruption e.g. tax evasion

Approach	Option 3 Menu of components	Option 4 Menu of components
Support for country implementation	See Section 6 for TA options. Complement TA provision with bilateral work to **build and sustain coalitions of reformers** to take tactical advantage of opportunities for BOT to address local problems such as improving business environment and overcome resistance to reform.	
Risk management and evidence gathering to maximise impact and credibility	Build the empirical evidence base on the impact/effects of BOT through **case studies of impact** to assist in making case with implementing governments and other stakeholders.	*Additional* investment in **building the empirical evidence base on BOT** through **systematic** establishment of: • baselines to monitor impact/effects of BOT in implementing countries on corruption, money-laundering and investment climate; • collation of evidence on how different user groups e.g. law enforcement, civil society, businesses are using BO information.
		Mitigate risk that action on BOT by coalition of willing displaces corruption to other financial centres, for example by: • working with private sector to require enhanced due diligence before doing business in jurisdictions where compliance with BOD/BOT standards is weak; • building consensus for update of FATF Standards to include BOT and subsequent update of G20 High-Level principles;

The menus of components under each option and their pros and cons are set out below.

5.1.3. Option 3: International campaign with a new technical standard and scale-up of TA

This approach would build on the momentum of the BOT Panel at the International Anti-Corruption Conference (IACC) in Copenhagen in October 2018, where the UK Anti-Corruption Champion, John Penrose MP, launched a campaign to achieve a global norm. The components of this approach, which is similar to that currently proposed by the UK to facilitate this campaign, would comprise:

3a) A new political leadership group of countries supporting and working towards BOT as a global norm.

In **political** terms, this group could encompass a "coalition of the willing"; countries which are already implementing/have committed to open publicly accessible registers and others who could act as regional leaders and are prepared to make this commitment. The **OGP Summit** in Canada in May 2019 or other international meeting might be an opportunity to launch this group publicly and its proactive approach to increasing geographical coverage of BOT.

Resourcing and **coordinating** this approach would require a **dedicated leadership and a coordinator in the run-up to the launch of the group, staffed from one of the governments involved**. The group could be **coordinated through the existing OGP platform**, which is used by Open Ownership, EITI, NRGI, TI and other **civil society organisations working with governments** on BOT. OGP could further disseminate the case for BOT through its broad membership (79 countries and 20 subnational governments[94]). It has a track record of brokering partnerships between governments, civil society and others for co-creation of open government commitments in member countries, which are then tracked through action plans and monitored in the Independent Reporting Mechanism.

Pros	Cons
Increase political momentum and accelerate action to encourage more countries to adopt BOT through the Leadership Group, over a shorter timescale. Recognise the efforts of governments implementing BOT to maintain momentum and enable governments to provide peer support. Through OGP Summit and platform reach 79+ countries and 20 subnational governments. This may encourage take up at country level beyond an international campaign.	Some key financial centres and countries which could show regional leadership on BO are not likely to be in the "coalition of the willing" which forms the leadership group and are not OGP members so this would not ensure global coverage. Therefore, still a risk that corruption and other illicit flows move to other jurisdictions. OGP accountability mechanisms for delivering robust BO commitments in Action Plans and monitoring delivery through the IRM may not incentivise rapid progress. Private sector is not closely engaged in OGP, or leadership/ support for working towards global norm, beyond the statement made by BHP at the IACC. This reduces the scope to build understanding of their needs into register design and work with private sector and governments to

[94] OGP membership as at December 2018.

	use publicly accessible BO information to promote open investment climates.

3b) New technical standards on open data and BO Disclosure

This would include continued development, testing and dissemination of the **Beneficial Ownership Data Standard[95] (BODS)** with pilots in the leadership group of countries. It would also involve development of and commitment to a **BO "disclosure standard" i.e. a set of principles on best practice in BOT** (including BODS) by the leadership group of countries working with international civil society. There would be a degree of additional investment in technical solutions to priority areas of accuracy of data, including verification, and management of privacy concerns.

This approach would require **urgent and immediate resourcing** for coordination of inputs from implementing countries and civil society to reach agreement on the Disclosure Standard and drafting, if the aim were to deliver a draft by the OGP Summit in May 2019. There would then be a need for **ongoing resourcing to the government and civil society network, based on the OGP platform, to test and refine the Standard and monitor progress with implementation**, although the OGP itself could not act as a standard-setter.

The development of the "Disclosure Standard" or good practice principles and network could be incubated in the OGP network and possibly migrate into a separate body at a later date, if there is continued momentum. If this approach flourishes and membership grows then*, over time*, there is likely to be a need to establish a more permanent governance structure which could also be a platform for coordinating learning on good practice in BOT, codifying this into guidance as the basis for a dedicated Standard, supporting and recognising countries as they make progress on BOT.

Pros	Cons
Countries can benchmark progress with implementation against disclosure standard. Countries are recognised for level of ambition and quality of implementation. Open and interoperable data approaches and best practice on ensuring accurate data, while managing data privacy is built into implementation by the leadership group, setting a norm for others to follow.	A further "Standard" may prove confusing/bureaucratic for countries already implementing related approaches – FATF/EITI, and they may be reluctant to adopt a further standard. A set of good practice guidance could initially achieve wider buy-in and be used to influence reform of existing standards, such as FATF. There may yet not be sufficient experience of implementation of BOT to codify a detailed set of principles ("Disclosure Standard") rather than good practice and guidance. OGP is not a Standard setter or home of specific projects, so this would not be a permanent solution to maintain work towards a global norm.

[95] https://openownership.org/the-beneficial-ownership-data-standard/

3c) A dedicated technical assistance fund See Section 6 below.

3d) Development of case studies of how beneficial ownership transparency implementation and use of data to demonstrate impact and make the case for implementation

This would start to **address the deficit in evidence** on impact and effects of BOT. International civil society would work with implementing governments to develop case studies of how countries are addressing the challenges of BOT and how this information is being used to trace corruption, money-laundering and other flows such as tax evasion. These case studies could be used for advocacy to persuade other countries and stakeholders to adopt and support BOT and work towards a global norm.

Pros	Cons
This would begin to build a stronger evidence base on BOT where there is currently limited and scattered data to inform implementation/reform of Standards/advocacy. It would be relatively low cost and quick to complete.	It would not represent a systematic gathering of empirical evidence across implementers of BOT and users of data.

5.1.4. Option 4 (Recommended): Multi-pronged approach responding to needs of different users of BOT information in country and internationally, managing risk in different jurisdictions

This option would deliver Option 3, but in addition work with an expanded range of stakeholders and alliances owning, driving and sustaining BOT efforts and more strategic iterative approaches adapted to different country contexts. This would:

4a) Complement the political leadership group in 3a) to encompass partnership with the private sector – businesses, investors, financial sector and service providers such as technology companies, for example to:

- Identify their data needs i.e. the "use cases" for compliance and due diligence on new business and risk management and develop public business registry solutions which meet these needs through more cost-effective online access to better quality data;
- Refine an evidence-based narrative which makes the business case for BOT with governments as a means to deliver higher-quality investment in frontier markets;
- Promote voluntary public disclosures of BO by business as the norm and disclosures of BO in their supply chains and business partnerships[96];
- Work with the private sector to advocate for BOT with governments to promote more open and competitive investment climates;
- Work with private sector service providers such as software companies to support developments in how businesses maintain BO records;

[96] For example, the Norwegian Oil Fund expects the companies it invests in to "make reasonable efforts to identify the beneficial ownership of their business partners." This expectation is mentioned in its broader expectation on anti-corruption: https://www.nbim.no/en/responsibility/risk-management/anti-corruption/ "

- Explore a significant uplift in investment in processes of verification through public-private partnerships;
- Explore opportunities to work with the private sector to require enhanced due diligence in higher risk, less compliant jurisdictions (see 4d below);
- Over the longer-term explore incorporation in reporting requirements such as Environmental, Social and Governance (ESG) guidance to level the playing field further if necessary.

Unlike other stakeholders (governments, international civil society, standard-setters) the private sector has largely been involved in BOT only where compliance is required. Some efforts have been made to understand and disaggregate users' needs for data and the potential benefits to business and governments, but this has not yet been translated into substantial concrete action to support further BOT.

Some leading investors or data managers consulted during this study have expressed initial interest in being part of **working groups** to consider developing and piloting these approaches. Investor or industry leaders who have already expressed interest in participating include, for example BHP, HSBC, CDC and some professional associations. The B-Team[97] is one of the organisations that would be open to playing a coordinating role for this approach. **Industry-specific groups** for sectors such as extractives, construction and the financial services sector would also be important convening points. **Subsequent work on developing and piloting approaches would require additional resourcing beyond the scope of this study**.

Business support for BOT and working groups could be launched at business-focused or sector events in 2019. It could be launched alongside the OGP Summit, although this is a less natural business platform. There may also be opportunities to align pilot work on BOT with countries engaged in the UK Government's Business Integrity Initiative pilots and where CDC invests, for example.

Pros	Cons
Companies are important users of BO data whose needs for due diligence or more open, competitive markets could partially be met through publicly accessible registers. Governments considering BOT could be persuaded by private sector arguments on doing business to attract FDI, or promote competition and SME growth. Efficiency gains and hence cost savings in due diligence from more online publicly accessible BO information.	May only attract engagement from companies that are already engaged on BOT and therefore serve to make the compliant, more compliant. This will require proactive efforts to reach out to different users and providers of BO information in the private sector.

[97] See https://issuu.com/the-bteam/docs/2018-bot-g20_report, which sets out the work already conducted by the B-Team, Deloittes and Thomson Reuters (now Refinitiv) to convene a series of business roundtables on these issues between 2016 and 2018.

4b) Expand and build wider ownership and reach for the technical work planned for 3b) by establishing a technical panel to support the Leadership Group of governments and working in a more coordinated way with international institutions, standard-setters and data-users to **improve existing standards and implementation** of BOT.

To ensure that the Leadership Group of countries continues to receive technical support, it could be supported by **a small technical advisory panel. This could include official-level representatives of governments with experience of BOT, civil society experts on BOT, and business**. The panel could be mandated by governments in the Leadership Group to **consult with a wide range of stakeholders, including international Standard-setters, IFIs and a range of data users** to:

- develop its understanding of best practice and areas of convergence in implementation of BOT across countries;
- hone the detailed guidance underpinning a "Disclosure Standard";
- gather evidence on the benefits of BOT; and
- identify new sources of technical assistance as required.

The panel would also ensure a wider range of stakeholders beyond the Leadership Group of countries and OGP countries were able to engage in development of the global norm. It would ensure that technical work, lesson-learning and exchange of experience between countries and other stakeholders could be sustained as the number of implementing countries grows.

Stakeholders who could form part of regular consultations by the technical panel could include representatives from:

a) The IMF, FATF, EITI, World Bank (including Doing Business Index team) Civil society TA providers/experts e.g. Open Ownership, Tax Justice Network
b) Implementing governments
c) Data users including law enforcement, procurement experts, corporate and compliance and due diligence teams from different sectors (eg. extractives, finance, construction, pharmaceuticals – linked to private sector work in 4a).

Pros	Cons
Bring together organisations documenting lessons and good practice on BOT which currently work separately as either governments and civil society on the OGP platform or IFIs and standard-setters (FATF, OECD, WB, IMF). Provide technical support and evidence to ensure robust implementation of BOT by the Leadership Group and governments from other countries. Provide information on BOT good practice and impact to inform governments engaging with other Standard-setting processes and reforms such as FATF, EITI. Ensure users can be engaged in shaping norms of BOT through stakeholder consultations.	Some of these roles on BOD are already performed by FATF and the OECD specifically for AML-CFT purposes. If BOT becomes part of the FATF Standards there may no longer be a need for additional resourcing for a technical BOT panel.

Provides a permanent mechanism to take on the role of information sharing, standard development from OGP over time.	

This broader approach would ensure that the full range of users and experts are consulted in the codification of good practice to ensure it meets their needs, the outputs are owned widely from the outset and links to existing international standard-setters are well-established.

This would require an **allocation of human resources and funding to coordinate the technical panel meetings, papers and consultations**. An initial push to convene this panel and a broader range of stakeholders would be required, perhaps led by an implementing government from the Leadership Group, and an IFI, with support from the B-Team (link to business) and Open Ownership (link to civil society).

4c) Mainstream as well as scaling up technical assistance for BOT

See Section 6 below.

4d) Proactively work to build support among users in different jurisdictions and mitigate risk of displacing corruption to less compliant ones

This would represent **a more problem-driven and iterative approach to build coalitions to address user needs internationally and in country to maximise the geographical reach of BOT in countries where it could make the most impact.** For example, it could comprise:

- **Work to** support and sustain coalitions of reformers with an interest in BOT in individual countries, to raise awareness and address opposition to reform. For example, in Nigeria, the CAC has worked with parliamentarians to build support for reforms to the Companies Act. In Ghana, a DFID-funded bilateral programme has worked with government agencies including the FIU and Registrar General as well as parliamentarians and media to progress BOT reforms (see case study in Appendix 2).
- A **proactive strategy to work with core FATF** members and establish BOT as part of the existing global norm on money-laundering:
  - to update the FATF Standards, as part of their next regular formal review to require publicly accessible registers, and
  - if FATF processes are amended to enable rapider reviews of specific recommendations, to ensure that BOT is prioritised as a topic for rapid review.
- **Work** with the Doing Business Index team at the World Bank to encourage ongoing work to incorporate BOT into their next review of methodology to provide further incentives to countries.

- Identifying and working with **users and providers of BO information** in a group **of international financial centres which already have relatively strong BOD systems**[98] as well as **countries with high risk of corruption:**

[98] For example, this could include exploration of these issues with financial centres such as Singapore, Hong Kong, Switzerland and others which are currently working to improve their BOD systems, eg. US.

- to build a better understanding of their incentives and opportunities to make the case for BOT,
- facilitate an alliance internationally and locally who would benefit from this shift, and
- support this with necessary technical assistance for implementation.

- Coordinated international action with governments, financiers and investors (and other entities) to require **enhanced due diligence of high-risk jurisdictions before doing business with them**.
- Collaboration with **multilateral and regional development banks** to widen adoption of BOT in their own procurement and foster information sharing between them and others on BO of suppliers.

Pros	Cons
Builds constituencies to incentivise reform in countries which need to lead BOT implementation. Maximise geographical reach of norms for BOT to level the playing field and assuage concerns of jurisdictions that resist BOT due to fears of losing business to places which do not adopt BOT. Incentivise countries to adopt BOT in order to meet FATF compliance ratings/prevent loss of business due to enhanced company due diligence. Ensures countries with weak governance and lack of commitment to tackle corruption, and the most significant financial centres, are covered by the norm of BOT. FATF is the most efficient way to introduce a global norm as it does not require resourcing or political investment in maintaining a new international architecture for standard-setting, best practice or evaluating country performance. Takes advantage of timing of next FATF review of Recommendations in 2019-22. Working with FATF/OECD and financial centres offers the opportunity to inform G20 decision making and update the High-Level Principles on BO towards a stronger commitment on BOT.	Not all FATF core members have yet adopted BOT, therefore this would require additional political dialogue and presentation of the evidence of BOT as contributing to money-laundering, to build further support for reform of FATF Standards. There is not yet an extensive evidence base on the contribution of BOT to tackling money-laundering (as the getaway car for corruption) which is the mandate of FATF. Some financial centres, which have built their business model on providing privacy, are concerned BOT may damage their economies.

4e Invest in systematic gathering of empirical evidence on the impact and effects of BOT

As well as the case studies in Option 3 (above), this would involve a greater investment in building the empirical evidence base on BOT through systematic establishment of:

- baselines to monitor impact/effects of BOT in implementing countries on corruption, money-laundering and investment climate;

- collation of evidence on how different user groups eg. law enforcement, civil society and business are using BO information.

Pros	Cons
Assist in making the case with governments for investing resources in BOT. Assist in making the case for reform of existing international standards with global reach e.g. FATF. Ensure governments can design and deliver publicly accessible registers which meet users' needs to maximise impact on corruption and improving the business environment.	As BOT is at an early stage of implementation there is not a large sample of publicly accessible registers to develop a robust evidence base for policy making and implementation yet. Methodological difficulties with attribution of changes in levels of corruption or other illicit flows specifically to BOT.

Proposed sequence for implementation of Option 4

Implementation of the components of Option 4 will require the completion of a number of tasks in parallel and the mobilisation of considerable resources including political will, time and money, with a need to nurture coalitions for reform and take advantage of political opportunities to make progress in countries and internationally. Overall, the process might evolve according to the following four stages:

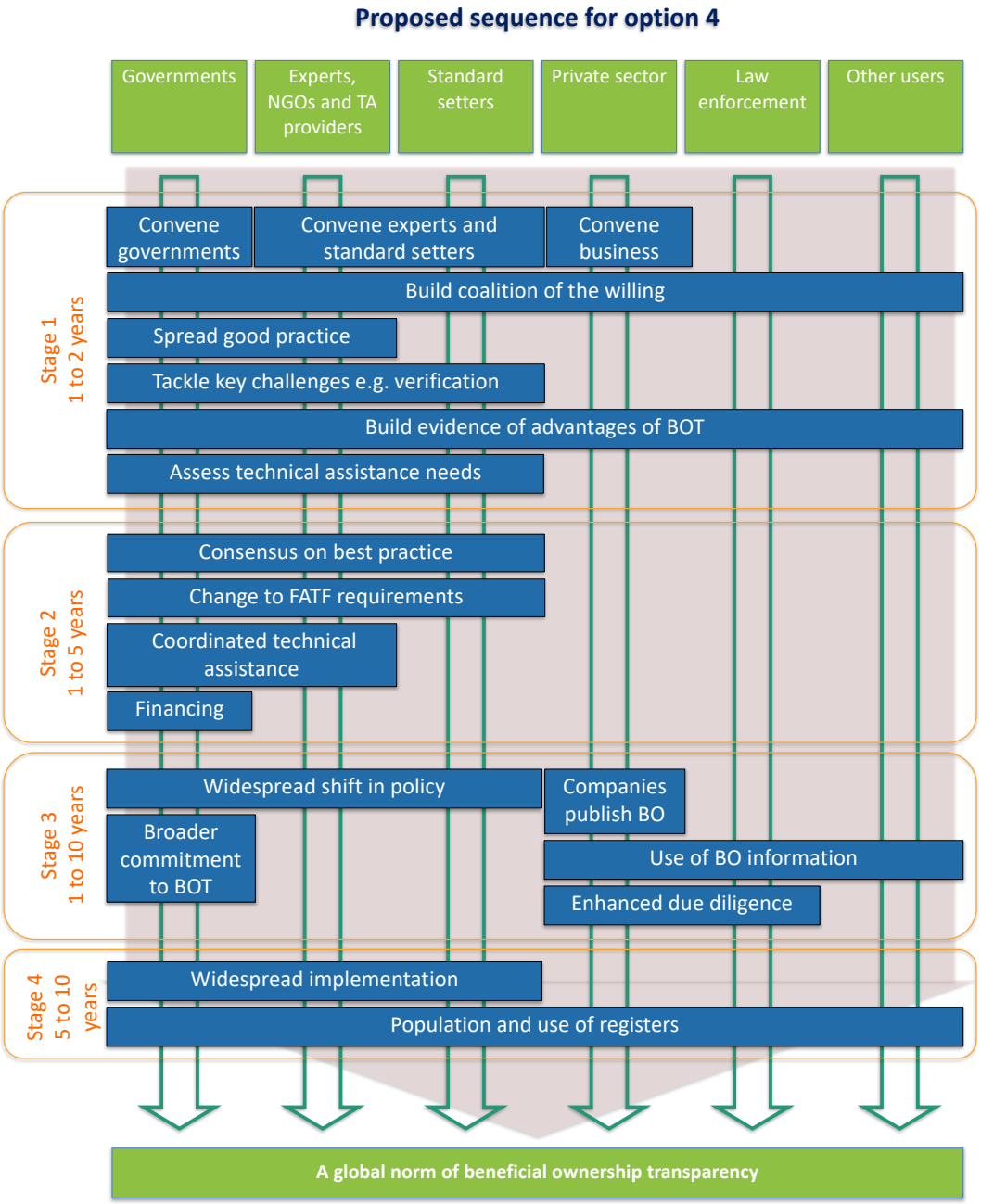
Stage 1 (1 to 2 years): continued creation of a coalition of the willing (governments, companies and civil society organisations) around a Leadership Group of countries which provide mutual support and test BOT approaches, the collection and dissemination of best practice and the gathering of further evidence on the impact and case for BOT. This will include more systematically and regularly convening business working groups, bringing together standard setters and technical experts in a more collaborative approach to support a technical panel, establishing baselines in implementing countries and conducting research both on best practice and the impact of enhanced BOT. More detailed scoping of the role of the private sector fosters increased momentum among business, service providers and governments toward BOT and opportunities for increased due diligence on non-compliant jurisdictions. In parallel, additional resourcing could be provided to existing TA providers while options for new providers are appraised (see Section 6 below) as demand for TA increases.

Stage 2 (1 to 5 years): the upgrade of existing global norms for BOT to reflect emerging good practice and a scale-up in dedicated technical assistance. This will include building a consensus among core FATF members on the update of FATF Standards on BO and completing this update, identifying the nature and extent of technical assistance required, as well sources of finance. This stage will also include developing a consensus on best practice in BOT and codifying this into existing and standalone standards, including identifying best practice in verification to increase data reliability and usage to tackle corruption by both law enforcement and civil society. Establishment of baselines and pilots to monitor impact, and a development of a robust evidence base which persuades governments to invest in BOT both to tackle corruption and promote growth and investment. The private sector could take on a more proactive role in advocacy with governments and as users of BO data seeking more cost-effective approaches to due diligence.

Stage 3 (1 to 10 years): developing a widespread shift in approach and policy towards BO in both government and companies including support for open and free publicly accessible BO registers including a presumption that reputable companies will disclose their BO details as a matter of course and exploration of inclusion of BOT in ESG guidelines. This will include commitments by a considerable number of governments to BOT, ideally incorporated in FATF and its mutual evaluation process by this point, and a widespread move amongst companies to publish their BO details. Enhanced technical assistance supports governments to accelerate implementation and funding for civil society enables effective use of BO information for accountability purposes. Longitudinal information on impact of BOT from early implementers is fed back into best practice and used to build the evidence case on impact.

Stage 4 (5 to 10 years): implementation of open and free publicly accessible BO registers across a large and diverse group of countries encouraged by access to

extensive technical assistance and technical solutions to interconnectivity. This is combined with increased intolerance of jurisdictions that are reluctant to introduce such a register. At later stages, the majority of countries will have embarked on introducing BOT and a considerable number of jurisdictions will have operational and interoperable publicly accessible BO registers, which are being used to track corruption through the misuse of corporate structures and hold governments to account for action against corruption.



Source: Authors' own design

Figure 6: Proposed sequence for Option 4

Across all four stages, there will be a requirement for monitoring progress, making available lessons learned, maintaining political momentum and honing best practice.

6. Assessment of additional technical support needs and recommendations for future approaches

In light of the needs of different users for BOT and the **key areas of technical support** expressed by implementing countries, it is clear that additional assistance is needed, particularly in the following areas (see Section 4):

- Legal drafting and experience with BOT legal frameworks for inclusion in domestic laws e.g. Companies Laws;
- Guidance on definitions, thresholds, sanctions, verification approaches based on good practice and experience elsewhere;
- Communications and stakeholder management – both outreach to users (law enforcement, business, civil society) for consultations on needs and scope and awareness-raising about reporting requirements;
- Expertise in wider anti-money laundering systems, law enforcement and supervision arrangements;
- Registry reform solutions and packages including wider institutional and public sector reform and records management; and
- Data engineers and data scientists, software development.

Continuing with current levels and dispersed provision of technical assistance (TA) and guidance will not meet these needs at the pace and volume required to meet emerging demand as additional countries adopt BOT. Attention would need to be given to ensuring expert technical assistance can be provided on a long-term basis in countries to support governments through implementation, as well as shorter-term TA inputs.

A range of **options to increase resourcing and volume of technical support** include any or a combination of the following:

1. Increase the resourcing and volume of TA available through existing sources.
2. Establish a dedicated multi-donor Trust Fund, for example managed by the World Bank, or a consortium or Regional Development Banks.
3. In the medium-term, consider establishing a new institution which could provide flexible and responsive technical assistance and coordinate technical work and stakeholder engagement.
4. Establish a private-sector facility.
5. Pro-bono support from professional organisations.
6. Public-private funding, particularly to fund a step change in robust verification processes and registry solutions which meet both private-sector needs for due diligence and government/public needs for access to reliable data on BO.

It is also important to:

7. Enhance **coordination** between Standard-setters and producers of guidance, for

    - **engagement with implementing countries**, where capacity to manage multiple stakeholders may be constrained; and to bring expertise working on lessons learnt, good practice guidance and codification of standards from different constituencies into a regular working group; and

- **signposting** Standards, guidance and sources of TA more easily to users **on one platform** (either an existing provider or new one).

8. Balance work on specific BOT priorities with an understanding of **wider systemic challenges** to improving anti-corruption and anti-money-laundering efforts and the business environment and users' needs in each implementing country. Each **context** for BOT is different. A careful analysis of the needs and incentives of different **users** should inform the design and coalition working towards BOT and the appropriate pace. Political cycles may interrupt progress. An awareness of the business benefits, government resourcing constraints and capacities of the wider AML or anti-corruption systems is necessary to make sustainable progress. For example, in some countries, weaknesses in other parts of the system – such as the FIU, may block progress either domestically or as law enforcement authorities elsewhere are less willing to collaborate.

9. Design support to enable gathering of **evidence** on effectiveness from the start, including:

    - Establishing **baselines** to measure the effects of BOT in a group of **pilot countries**;
    - Funding systematic **research** into methodologies to track the effect of BOT on the directions of proceeds of corruption and other illicit flows, both to track impact and mitigate risk of displacing these to less open and well-governed jurisdictions;
    - Building in mechanisms to **learn from and adapt approaches** as programmes of BOT implementation and support progress.

This paper briefly considers **the pros and cons of each option 1-5,** but a separate fuller **scoping study** would be required properly to inform the mixture of preferred options and funding sources, to ensure they also achieve objectives 6-9.

6.1. Brief summary of pros and cons of options

6.1.1. Option 1: Increase resourcing and volume of TA from existing sources

For example, this could include:

- Uplift in funding to existing WB and IMF-managed Trust funds for EITI and AML-CFT with a dedicated window for BO work;
- Increase resourcing to existing providers of expertise e.g. Open Ownership (see Box 2 below) and EITI Secretariat;
- Establish a consortium of regional development banks providing TA to work together to raise additional resources dedicated to BOT e.g. ADB, EBRD, AfDB (including the Africa Legal Support Facility); and
- Mainstream funding for BOT work more systematically into bilateral and multilateral programming.

An example of possible scale-up of support to existing organisations working on BOT is given in Box 2 below.

Box 2: ***For example: Scale up and diversify support to Open Ownership***

Open Ownership, which is governed by a consortium of international civil society organisations (Global Witness, Transparency International, Open Contracting Partnership, B-Team etc) is **finalising a strategy** to scale-up action on BOT aiming for 5-10 countries to adopt the BODS over the next 2 years. They will also focus on building the evidence base for the impact of BOT and ensuring political momentum is underpinned by technical support for the countries with which they work. They will focus in particular on addressing key challenges for BOT implementers and the credibility of BOT, such as verification and privacy. Whereas FATF's emphasis is on ensuring countries work towards existing standards, OO is planning to work with a group of governments implementing BOT to establish a more ambitious standard on transparency and open data for BO. However, OO's aspiration is to be more of a hub, working with others such as EITI and OGP, rather than a large organisation with a presence in multiple implementing countries.

OO was initially provided with seed-funding by DFID, but in order to meet the scale of this ambition and push the boundaries of norms on BOT, depending on the strength of the final strategy, it would need additional resourcing. Ideally in order to ensure the sustainability of OO, funding sources would be diversified beyond DFID, reflecting the growing international interest in BOT from other governments, bilateral and multilateral donors as well as the prospects for working with the private sector.

Pros:

- These are established mechanisms with relevant technical expertise which can scale-up support to countries relatively quickly with additional funding and in some cases are already expanding work on BOT (for example guidance from EITI and Open Ownership); and
- These mechanisms together have geographical reach into a broad range of countries (both directly, for example through EITI, or indirectly by hosting their networks on the OGP platform) currently or potentially implementing BOT.

Cons:

- Existing World Bank-managed Trust Funds (TFs) cannot earmark funding to specific purposes such as BOT, and existing multi-donor funds need to meet a range of priorities both in terms of their programme and the priorities of different funders. This would be likely to dilute efforts on BOT through additional funding to existing TFs in practice;
- Existing organisations currently have more specific mandates for their technical assistance (for example, EITI Secretariat support on extractives transparency or Open Ownership focus on data management, including open data) than is required to meet the full range of BOT needs for countries;
- There is a need to engage the full range of users of data to ensure BOT solutions meet their needs. Existing providers may not (yet) be able to work effectively with all, for example Open Ownership works primarily with governments and civil society, whereas an uplift in private sector engagement and ownership and with existing Standard Setters is also needed;
- Multiple providers require additional coordination to ensure TA provision is effective rather than burdensome for countries; and

- This approach would require significant coordination and investment in governance of the initiative by funders, for example to ensure that the range of organisations are working in a complementary fashion than now e.g. so that World Bank/IMF TA, B-Team and other private sector structures can work alongside civil society platforms such as Open Ownership. The technical panel proposed in Section 5 might be able to perform such a function, if appropriately resourced or a separate institution (see 6.1.3 below).

6.1.2. Option 2: Establish a dedicated Multi-Donor Trust Fund, managed by the World Bank or a consortium of other regional development banks to provide/fund technical assistance

Pros:

- A dedicated Trust Fund would have a clear mandate to focus on BOT so this would avoid challenges of earmarking/dilution in a Fund with multiple objectives;
- Such a Fund could be designed to cover a wide range of BOT implementation needs – including TA provision, programme design, lesson-learning and research/evaluation, with a single online platform as a portal to different organisations providing TA and guidance on BO; and
- Geographical reach allows for mainstreaming of BOT work into WB and other Regional Development Bank programming.

Cons:

- There would be a delay of perhaps two years in beginning support to countries, due to the time required to establish and raise funding from range of donors for the TF model;
- World-Bank managed Trust Funds can experience delays in responding to country needs which slows down implementation and, unless they can provide long-term TA, they may not be able to respond to changing political economy in a specific country to take advantage of opportunities or manage blockages to reform; and
- The World Bank still has some concerns about the relative importance of BOT as a priority for low-capacity countries which would require further exploration and discussion to secure backing. This could be offset if there is appetite for scale-up from other RDBs which are already working on BOT as are ADB, EBRD and potentially with AfDB, which has shown interest in doing so.

6.1.3. Option 3: In the medium term, consider establishing a new institution focused on BOT over time with a technical assistance facility

Section 5 on Future Approaches includes a proposal under Options 3 and 4 for the platform which supports a “Leadership Group” of countries, technical discussions on good practice and development of Standards and networking, to be incubated initially within the architecture of the Open Government Partnership, with support from Open Ownership and other civil society organisations.

However, if this approach flourishes and membership grows then, over time and depending on the progress of existing initiatives in 6.1.1 and 6.1.2 above, there is likely to be a need to establish a more permanent governance structure which could also be a platform for coordinating learning on good practice in BOT, codifying this into

guidance as the basis for a dedicated Standard, supporting and recognising countries as they make progress on BOT. This could then house the technical panel outlined in Section 5 to support the Leadership Group. While a larger dedicated fund could be established for example through the World Bank or RDBs (as in Option 2 above), it is likely that there would also be a need for this unit to coordinate some provision of more flexible and responsive technical assistance in response to country demand and/or establish its own roster of experts to provide TA, complementary to the larger fund.

Pros:

- Maximum flexibility and scope to respond to the needs of countries implementing BOT reforms;
- Clear mandate and commitment to work on BOT;
- This institution could be designed to work with the full range of users of BOT information and stakeholders from the outset, including the private sector and standard-setters as well as implementing countries and civil society;
- It could also be designed as a coordination unit for the full range of support and engagement required to deliver a global norm – TA, private sector engagement, platform for technical guidance on good practice and signposting to resources from the Trust Funds or other sources;
- It could be co-funded by private and public sources with an interest in publicly accessible BO information;
- Management could be outsourced to a non-governmental organisation or private sector provider to reduce any coordination burden for funders; and
- This would represent a clear single point of contact for implementing countries and other stakeholders.

Cons:

- Time would be required to establish a new institution, tender for providers and raise funding. Wide consultation would be needed to establish buy-in for governance arrangements among range of stakeholders; and
- The role would need to be clearly set out for users to ensure it is complementary to existing platforms with a more limited/broader mandate and forward strategy. e.g. Open Ownership; EITI; Standard-setters including FATF.

These issues **could be managed** by providing a shorter-term uplift in resources Option 1 could to existing institutions eg. Open Ownership, EITI, existing World Bank/IMF TFs. The OGP platform and B-Team could act as a basis for outreach to all stakeholders to incubate this work and then transition to a new institution. A core group of donors and private sector could then provide seed funding to the new institution.

6.1.4. Options 4 and 5: Private sector facility and pro-bono support from professions

Given the overall shortage of technical expertise on BOT to meet current and potential demand from countries, it is important to develop and scale-up a range of sources of support for governments seeking to introduce publicly accessible registers and for users of this information. Some private sector providers of technical assistance are already supporting governments on BOT – for example through the DFID-funded Strengthening Action Against Corruption (STAAC) in Ghana, or USAID-funded support through accountancy firms in Indonesia.

In addition, professional organisations have valuable expertise in working with private sector users of BO information on legal drafting, company formation and ownership and accounting structures and the potential to provide support to governments in these areas – for example, the UK Law Society is in the process of developing an Anti-Corruption programme which could represent an opportunity for such pro-bono support and outreach on BOT. Further scoping would be required to develop this concept.

Pros:

- This would bring additional expertise to meet country demand;
- It would bring the perspective of private sector ***users*** of BO data more deeply into TA provision;
- It would build understanding and capacity for BOT support across a broader range of TA suppliers to assist with mainstreaming into development programming; and
- It could take advantage of initial signs of appetite for engagement and collaboration e.g. Law Society, ALSF.

Cons:

- This approach would **not be sufficient to meet TA demands alone and would need to be combined** with other options.

6.1.5. Option 6: Public-private funding to achieve a step-change in achieving widespread publicly accessible and reliable registers which meet needs of private sector as well as governments

There is a shared interest for private sector users of BO data and others in reliable, easily accessible information. Banks, investors and corporates currently pay due diligence providers to access this information for compliance, risk assessment and investment appraisal purposes. This represents a business opportunity to shift from current closed data systems to open, remotely accessible and reliable information which could also encourage investment in frontier markets. It may be possible to raise public-private funding to achieve this public good and leapfrog current funding and capacity constraints on BO information. Further scoping would be required to develop this concept.

Pros:

- This partnership could achieve the required leap from currently dispersed users without access to reliable data to accurate, timely and remote access to data in multiple jurisdictions at lower cost for companies, financial institutions, investors, law enforcement etc as a public good;
- There would be cost and efficiency savings for private sector users of data for compliance and investment-risk assessment; and
- It would represent an opportunity to embed open data standards across registers.

Cons:

- A further coalition of private sector support for this approach would need to be built as the current business models of due diligence providers depend on restricted access to data reducing incentives to make this shift to open access; and

- Correspondingly time will be required to achieve a significant uplift in engagement with private sector e.g. financial institutions, investors, sectors needed to achieve buy-in and investment in this area, as some already face significant compliance demands, e.g. on AML-CFT.

In summary:

- In the short term, it will be necessary to increase resourcing to existing providers as under Option 1. This would both enable a scale-up of TA provision and allow time for detailed appraisal, scoping and design for establishment of a new multi-donor Trust Fund (Option 2), and separate institution to manage international efforts on BOT (Option 3) including a flexible TA facility as a longer-term alternative to 1. Appraisal of Option 3 could incorporate Options 4 and 5 as sources of TA or they could be the subject of further scoping on the role of the private sector in BOT.

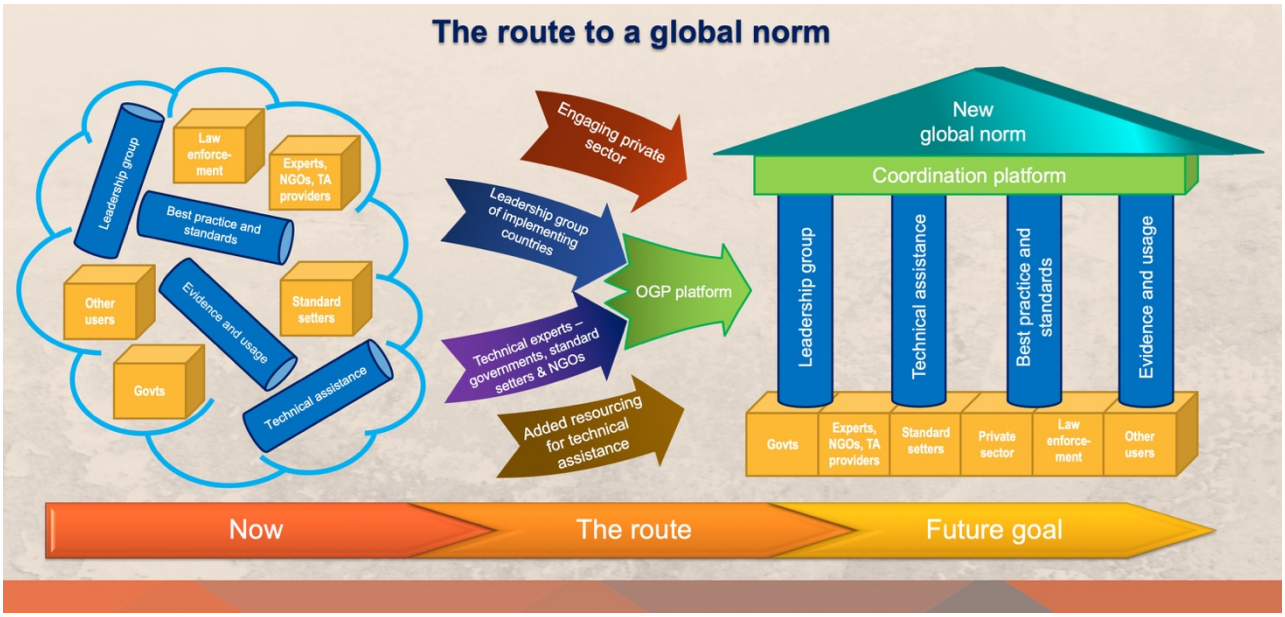
A possible sequencing to scale up provision of TA is as follows:

Table 8. Possible sequencing of uplift in technical assistance for BOT

	2019 H1	2019 H2	2020 H1	2020 H2
Option 1: *Scale up support to existing multiple sources of TA*	Scale up	Maintain scaled-up funding	Maintain scaled-up funding	Maintain selected scaled-up funding for specific approaches eg, OO
Option 2: *Establish a dedicated World Bank or RDB multi-donor Trust Fund*	Appraisal	Decision on new WB TF and/or other RDBs	Provide funding	Operational
Option 3: *Establish a new institution for BOT incorporating provision of TA complementary to Option 1 and 2*	Incubate in existing initiatives and detailed design/tender	Tender or grant awarded	Inception	Operational
Option 4: *Private sector TA facility*	Possibly include in appraisal of Option 3			
Option 5: *Professional services and pro-bono support*	Consider existing platforms to work with pro-bono providers and inclusion in Options 3 and 4			

	2019 H1	2019 H2	2020 H1	2020 H2
Option 6: *Public-private partnership to invest in step change in open remotely accessible and reliable BOT information*	Build constituencies	Consider financing options	Detailed design	Operational

7. Next steps



Source: Authors' own design

Figure 7: The route to a global norm

The next steps in achieving a global norm of BOT include:

- Creating a dialogue between the different organisations, initiatives, governments, companies and other technical experts working on BOT. The aim of this dialogue is to engender a more collaborative effort on BOT, learn lessons of experience to date, agree best practice, drive higher BOT standards and ultimately lead to widespread implementation of open and free registers. This dialogue should be launched on the platform of an existing international initiative such as OGP.
- Convening a business working group, including sectoral sub-groups. This group's aims would include providing private sector leadership on BOT, reinforcing private sector support for BOT, advocacy of BOT with governments and other companies and demonstrating best practice. It would include learning from private sector experience on due diligence and testing approaches to public-private partnerships to support a shift to BOT as a global public good. It could incorporate high-level commitments and advocacy at international platforms and national dialogues.

- Based on these dialogue processes, set out a timebound action plan for establishment of the Leadership Group, technical panel, private sector working groups and a political influencing strategy for FATF. While initially incubated in the OGP and existing providers such as Open Ownership, depending on the momentum for reform and complexity of the architecture, it may be necessary to establish a more permanent and separate coordination platform in the medium term.
- Establish resourcing needs and fund-raising approaches for the chosen menu of options including TA routes to deliver a global norm.
- Commissioning research on the evidence for the positive impact of BOT. This would include positive economic impact for governments, the ability of companies to do business, the mitigation of business risks and combatting corruption, money laundering and other illicit financial flows and establishing an approach to pilot measurement of effects and impact.
- Investing in verification and privacy management. Reinforcing existing public BOD regimes with robust verification systems. This will include facilitating countries that are in the process of introducing BOT to embed verification systems from the start. This should allow users of the registers to enjoy a higher degree of confidence in the reliability of the information disclosed and adequate regards to privacy concerns.
- Promoting awareness and understanding of BOT in international fora and business organisations. This should contribute to building support in international institutions, governments, regulators, trade associations, professional supervisory bodies and individual companies for the implementation of a global norm on BOT. This could include identifying one or more high profile champions of BOT who put forward a compelling case and garner support.
- Exploration of new mechanisms to support delivery of BOT, for example blockchain technology to future proof the current investment. Work with registry solutions providers to embed BOT in core commercial models.

Appendix 1: List of stakeholders

HM Government

Department for Business, Energy & Industrial Strategy (BEIS)
Department for International Development (DFID)
Foreign & Commonwealth Office (FCO)
HM Treasury (HMT)
Joint Anti-Corruption Unit (JACU)
National Crime Agency (NCA)

International organisations

EU Commission DG Justice (DGJust)
EU Commission DG Tax (DGTax)
Extractive Industry Transparency Initiative (EITI)
Financial Action Task Force (FATF)
Global Forum on Transparency and Exchange of Information for Tax Purposes (GF)
International Monetary Fund (IMF)
Open Government Partnership (OGP)
Organisation for Economic Co-operation and Development. (OECD)
World Bank (WB)

Other governments

Canada: Department of Finance (DOF)
Cyprus: Ministry of Finance (CMF)
Denmark: Business Authority (DBA)
France: Ministry of Economy & Finance (MEF)
France: Ministry of Foreign Affairs (MFA)
Guernsey: Division of Financial Crime Policy (DFCP)
Indonesia: Ministry of Law and Human Rights
Isle of Man: Cabinet Office, External Relations (IOM)
Netherlands: Ministry of Foreign Affairs (NMFA)
Nigeria: Corporate Affairs Commission (CAC)

Civil society organisations

The B-Team
Fairplay Slovakia (FS)
FAST US coalition (FAST)
Ghana Oil & Gas for Inclusive Growth (GOGIG)
Global Witness (GW)
Open Contracting Partnership (OCP)
Open Ownership (OO)
Transparency and Accountability Initiative (TAI)
Transparency International (TI)
Transparency International UK (TIUK)

Private sector

Accountancy Europe (AE)
BHP (BHP)
BP
CDC
HSBC
Institute of Chartered Accountants of England & Wales (ICAEW)
Law Society
Norges Bank Investment Management
Refinitiv/Thomson Reuters (TR)
UK Finance (UKF)

A number of academics from the UK and internationally were also consulted.

Appendix 2: Case Study

Beneficial Ownership Transparency in Ghana – *lessons from early efforts of working to understand national interests in implementation beyond international commitments*[99]

Context

In 2012, Ghana was grey-listed by the Financial Action Task Force (FATF) due to strategic deficiencies in its anti-money laundering measures. Since then however, the country has intensified its efforts at developing safeguards against illicit financial flows, money laundering, corruption, financing of terrorism and organised crime, under the direction and support of intergovernmental organisations. Nonetheless, despite some provisions made by the Government of Ghana to enforce the safeguards against money laundering and terrorist financing, enforcement remains superficial and resulted in Ghana failing to meet key performance targets, including the establishment of a beneficial ownership disclosure (BOD) regime, during a GIABA (FATF) peer review in 2017.

Effective progress toward beneficial ownership transparency (BOT) began to be made in 2016 when Ghana's Extractive Industries Transparency Initiative (GHEITI) built momentum for the beneficial ownership transparency agenda by working with a wide array of relevant stakeholders to identify the required amendments that needed to be made to existing laws and to harmonise conflicting legal issues. After extensive consultation, stakeholders agreed to amend the Companies Act 1963 (Act 179) to include a provision on beneficial ownership rather than wait for a new Companies Bill to be passed. This resulted in the passing of Companies (Amendment) Act 2016 (Act 920). Act 920 did not commit Ghana to a fully open and publicly accessible BOT register, but rather only made BO information available to certain "competent authorities", in line with the FATF Standard.

It was evident from early dialogue between stakeholders that the political will to implement a beneficial ownership regime was more evident in international fora in response to a degree of international pressure. Despite international commitments made at the London Anti-Corruption Summit (2016) and the Concordia Summit in New York (2017), referencing the value of transparency to the business environment, at that point the details of how such a register would be operationalised or funded were not discussed within the government between key stakeholders who would ultimately be in charge of the register. Additionally, the Registrar General's Department (RGD), which is the office in charge of receiving and managing companies' and BO data, was provided with minimal funds to start work on the development of a BO register.

As such, the UK government's agenda about establishing an *open and publicly accessible register* versus *Ghana's interpretation* of what *this* constituted to meet FATF requirements, diverged, and for some stakeholders this was still seen as a foreign imposition on Ghana. Whilst upward pressure from both civil society organisations (CSOs) and international partners culminated in the laying and eventual

[99] This case study was provided by the Strengthening Action Against Corruption (STAAC) programme, Ghana.

passage of the Companies Amendment Act, there was little incentive to implement the Act by developing the required legislative instrument to operationalise the law.

In September 2018 the Government of Ghana met the International Cooperation Review Group (ICRG), the FATF review committee that assesses jurisdictions with strategic AML/CFT deficiencies that present a risk to the international financial system. Ghana had not demonstrated significant progress especially on the effectiveness of laws and policy dealing with AML, placing Ghana at a substantially higher risk of being grey-listed - an international decision that would impede the current government's plans for improving the business sector and making Ghana an investment hub. Concerns about the prospect of grey-listing galvanised further action by the government, the Financial Intelligence Centre, and Registrar General by December 2018. This provided an opportunity to work closely with government agencies and for them to collaborate with each other much more closely to steer Ghana through the FATF process and improve BOD processes, although the impetus to BOT continues to come from GHEITI and civil society.

Change Space and Approach

It is within this complex operational environment that the anti-corruption programme, Strengthening Action Against Corruption (STAAC) was operating, resulting in the review of our approach. STAAC is a programme supported by DFID to work with reformers in government, civil society and the private sector in a politically savvy and iterative way to support action against corruption.

The objectives of STAAC's collaboration with the Registrar-General and others on BOT have been three-fold:

1. **To bring the Beneficial Ownership clauses contained in the 2018 Companies Bill into law**

There was the need to work with the Registrar General towards Ghana having a revised Companies Act with credible provisions on BO that met emerging international standards aimed at delivering an enhanced BOT platform. For example, in addition to the public commitments on BOT made internationally, Ghana is an EITI implementing country working towards a publicly accessible register for licensees by 2020 in line with the EITI Standard 2016. STAAC put together a team of both local and international experts in addition to civil society actors to review and align the Act with best practice whilst being mindful of the constraints that the Registrar General (RG) had articulated, for example with respect to resourcing. With support from civil society, GHEITI and STAAC, this resulted in the majority of recommendations being included into the 2018 Companies Bill currently before Parliament, particularly the expanded definition of politically exposed persons and the data to be captured in open data format.

2. **Bringing together and sustaining the steering committee and using the media to raise awareness on BOT**

In addition, agreement among key stakeholders on the need for Ghana to have a national publicly accessible register before linking that information to international platforms such as the Open Ownership global database was necessary to make this a fully open register. Due to the sensitive nature of the subject, STAAC identified the importance of having the support of some key CSOs, Ghana EITI and government agencies, which led to the setting up of a BO steering committee that met to review progress and assess areas that needed public attention. It was also a forum to

coordinate various strands of work through media outlets and CSO training. One such platform is Corruption Watch, a STAAC-funded project which brings together civil society, media and government actors dedicated to addressing the problem of the lack of sustained action by the media against public corruption. It is a radio programme that is run on JOY FM, one of Ghana's premier radio stations with a nationwide listenership base.

Corruption Watch (CW) seeks to tackle the widespread public sector corruption in Ghana through the strategic implementation of the 5Ps; persistence, punishment, payback, policy and prevention. The premise of CW is that if the media, in particular, sustains its action on corruption it will activate the responsiveness and accountability of all other actors in the anti-corruption space. Institutions and politicians will be incentivised to act on corruption allegations in order to demonstrate to the public they are working to fight corruption. In addition, CSOs and citizens will have a sustained platform to demand action by duty bearers. One of the radio sessions was on beneficial ownership and its connection to asset declaration and government contracting. The discussions were centred around Ghana's commitments on Beneficial Ownership with reference to corporate reporting and company governance; Public Procurement and Fiscal Transparency; and Promoting Integrity in Ghana's Public Institutions. This experience highlighted the need to humanise the concept of BOT beyond abstract technicalities, for example with an investigation on ownership of companies in the sanitation sector. One lesson was that sustained effort may be required to created wider understanding of BOT through the media and other fora.

3. **Strengthen the technical expertise of the Registrar-General's office to collect and verify information as well as maintain the register**

The third pillar has been on bridging the divide between the UK and international expectations of good practice in BOT and local contextual realities based on our understanding of the sector. That is the need for Ghana to have a credible database of BO information that aligned with emerging international good practice of what comprises an open, *publicly accessible and free* register. To meet these objectives, STAAC re-engaged with the RG by investing time to understand her constraints and contextualise this global challenge.

The RG made clear that a significant challenge in implementation would be that she has financial obligations to provide internally generated funds (IGF) to the central government, meaning that the Registry needs to charge a fee for access to the data on the RGD website. In addition, STAAC has worked closely with the RG and her staff beyond the law on technical issues to support her office on key areas that could be used to demonstrate progress such as developing a template for the collection of BO information.

In parallel, STAAC continued to engage with a wide coalition of stakeholders on the more systemic challenges of improving AML-CFT and anti-corruption systems, including the Financial Intelligence Centre (FIC) to ensure compliance with GIABA (FATF) Recommendations in keys areas, both from a regulatory and effectiveness perspective. This complemented the work on BOT, as Ghana is required to put in place oversight mechanisms to ensure that basic and beneficial ownership information maintained by a legal entity or the RGD is adequate, accurate and current, to meet FATF requirements. In September 2018, when the risk of possible grey-listing due to limited progress, became a more urgent issue, this provided an opportunity for STAAC

to work closely with the FIC and RGD but also an incentive for these agencies to collaborate more closely to improve BOD systems.

Challenges:

1. **Lack of technical capacity and resources:** An initial interaction with the RG and her staff revealed a dearth of capacity in terms of technical capacity and the availability of IT infrastructure. In general, the RGD is under-resourced, both on technical project management and in working with data to ensure a verified and complete data set. In addition to that, the RGD needs to ensure greater financial sustainability through breaking the perception that central government depends on internally generated funds (IGF) from the RGD, and that access to company data is a key source of that revenue. The current legal arrangement between the RGD and GoG requires the department to keep approximately 15% of its IGF which is also capped to prevent the RGD from keeping excess funds it generates, making it dependent on charging fees for access to data in order to keep up with this demand. STAAC explored with DFID Ghana and the British High Commission whether there might also be opportunities to raise this issue with the Ministry of Finance and the Presidency in order to resolve the resourcing constraints and allow the RGD to retain 100% of its IGF which could enable free access to the data and sustain operations including adoption of the open data approaches advocated by Open Ownership.

2. **High level government commitment at the global level without adequate or initial consultation with implementing agencies.** Ghana, like many developing countries, in a bid to appear compliant with donor demands of transparency and good governance, tends to make far-reaching promises at international platforms, committing the country to several initiatives that are mostly binding. Most of these are done without the prior knowledge and inputs of the government agencies that are to implement the commitments leading to a disconnect in both priorities and an appreciation of these transparency commitments.

3. **Lack of clear understanding and mapping of legal and contractual obligations with private service providers.** Currently in Ghana, the drive to streamline government services and encourage private sector investment has led to the development of e-government platforms - one of which is the company registry that houses the RGD's data. It appears that these contracts between international service providers and governments with limited technical know-how can be skewed to the detriment of the country with high costs of services and additional charges for amending parts of the platform. For example, in Ghana, these high financial obligations often do not encourage the RGD and other government agencies to commit to initiatives that encourage the provision of free data to users and the public. Connected to that is the lack of technical know-how within the RGD to discern this challenge before any contracts are signed, thereby binding them to long term financial costs.

What we have learned so far

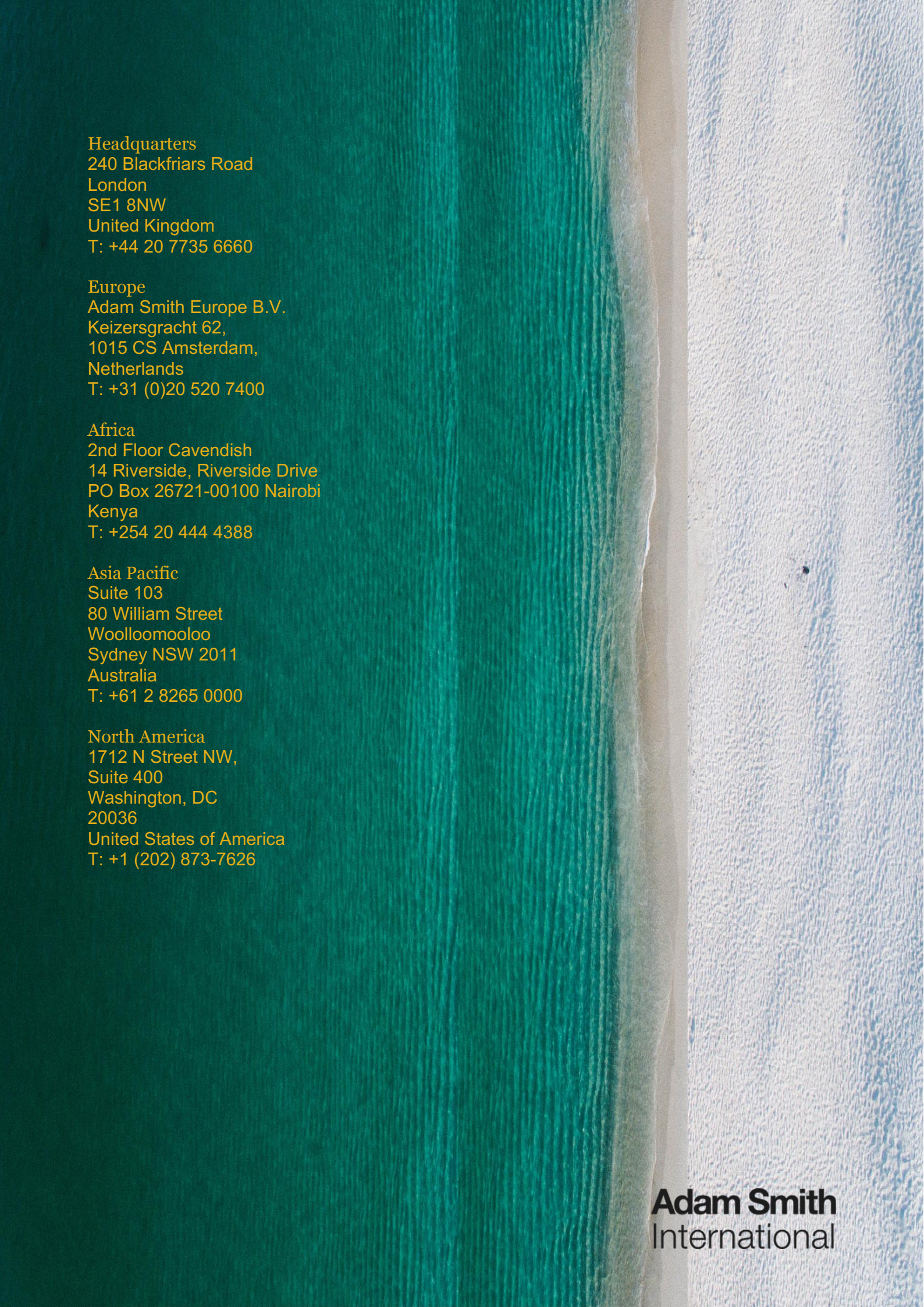
In spite of these challenges, Ghana's BOT reform appears to have made relatively faster progress compared with some other contexts, partly due to a locally-driven and collaborative approach adopted by key actors from both demand and supply side and the combined impetus of FATF, GHEITI and international pressure, as well as growing domestic understanding of the concept of BOT. For example, beyond the Companies Amendment Act, Ghana's Petroleum Exploration and Production Act and its

accompanying LI mandates the collection of BO data from companies. This is being implemented and the Petroleum Commission is to collect BO information from companies that are submitting bids in the license rounds currently ongoing. On BOT, Ghana is now moving from consultation to legislation and now implementation.

STAAC has adopted a problem-driven, iterative and adaptive approach to support this process - first understanding the local context and then adapting the international commitment to the drivers of change by identifying and using key reformers to champion the cause. STAAC had to alter its approach several times after the initial discussions did not lead to concrete progress with the RGD. This change in tactic was appreciated and this resulted in more open and frank discussions enabling implementation of a plan that reconciles UK's concerns to promote BOT with Ghanaian revenue generation requirements. The immense improvement in the BOT provisions contained in the draft 2018 Companies Bill are a testament to the evolving relationship and the RGD's gradual appreciation and understanding of the BOT agenda. This has changed the narrative from a one-sided requirement to a partnership between STAAC (UK) and the RGD.

There can be no BOT register without the staff of the RGD understanding the concept, its uses and applicability to their work. This need for technical capacity, which STAAC is currently supporting, needs to be provided before responsible staff can be in the position to interact with and collect data from the companies that operate in Ghana. The assumption that only the IT side will have to be trained does not augur well for staff who engage with the companies to receive the relevant data.

In most government agencies, support from outside the government is provided by donors through technical assistance projects and with the main aim of enhancing and building internal systems. In the case of Ghana, initial conversations with the RGD were focused on technical issues around open data and the potential to link this to the Open Ownership Global Register, rather than taking time to understand the challenge and perspectives of the RGD. This led to the RGD viewing the UK's request to merge Ghana's company data with international platforms with suspicion. This lack of understanding of the wider implications of a BO regime and the RGD's role within it, prevented her from engaging more openly with DFID and STAAC initially. However, STAAC's approach to link the RGD's work with the FIC has resulted in her appreciating the need for collective action on these issues and has resulted in her bringing in the Ghana Revenue Authority and others whose inputs are necessary for the implementation and use of the BO register. The RGD now understands 'how it all fits together' with the work of the FIC; the main objective of generating usable data for analysis and intelligence beyond just having a BO register.



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