

# Colombia's New Regulatory Framework for Beneficial Ownership: Analysis of Strengths and Weaknesses

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Countries around the world are increasingly recognizing the importance of establishing beneficial ownership (BO) registries as a means to promote transparency and combat financial crimes. As part of this international trend, Colombia passed beneficial ownership legislation in 2021 and emitted regulations for rollout of the registry in 2022. Global Financial Integrity analyzed Colombia's new legal and regulatory framework for BO and identified five strengths and five weaknesses, as are described in this legal review.

## COLOMBIAN CONTEXT

Although BO has been under discussion in Colombia for some time, it was finally passed at the national legislative level in 2021, first as part of a tax reform and then as part of an anti-corruption bill. Its passage draws heavily on recommendations from a number of international organizations and standards-setting bodies, including the International Financial Action Task Force (FATF), the Organization for Economic Co-operation and Development (OECD), the Global Tax Information Exchange Forum, the G-20 and the Extractive Industries Transparency Initiative (EITI).<sup>1</sup>

The Administration of Colombian President Duque, in coalition with various government agencies and entities, and under the leadership of the Vice Presidency of the Republic and the Secretariat of Transparency, introduced bill 341/2020 into the Colombian Senate towards the end of 2020. The bill is officially titled, "Through Which Measures Are Adopted for Transparency, Prevention and the Fight against Corruption". The bill addresses, among other things, due diligence procedures at the national level for natural and legal persons who must declare their beneficial owners. It also outlines the government agencies that would have access to and administer this information, in the form of a registry. The bill was signed into law in December 2021, strengthening not only the fight against corruption, but also the already approved national provisions around BO contained in the Colombian tax reform of 2021.<sup>2</sup>

The tax reform, officially called "The Law of Social Investment," aims to collect at least COP 15.2 trillion (approximately US\$3.8 billion) in fiscal revenues, of which at least COP 2.7 trillion (approximately US\$680 million) will be collected by addressing tax evasion, which is a significant problem for Colombia. Articles 631-5 and 531-6 of the law call for the creation of a beneficial ownership registry (in Spanish, Registro Único de Beneficiarios Finales or RUB) as a means to address tax evasion by the private sector.

1. Informe de ponencia para primer debate del Proyecto de ley No. 369 de 2021 Cámara - 341 de 2020 Senado - "Por medio de la cual se adoptan medidas en materia de transparencia, prevención y lucha contra la corrupción y se dictan otras disposiciones," Colombian House of Representatives, November 2021, available at [https://www.camara.gov.co/sites/default/files/2021-11/SIN%20COMENTARIOS\\_2021-11-22%20Ponencia%20para%203er%20debate%20de%20PL%20moralización%20\(v03\)\\_0.pdf](https://www.camara.gov.co/sites/default/files/2021-11/SIN%20COMENTARIOS_2021-11-22%20Ponencia%20para%203er%20debate%20de%20PL%20moralización%20(v03)_0.pdf)

2. Ibid.

The law also defines BO, something which did not previously exist in Colombia at a national legislative level. Moreover, the law lays out thresholds for reporting beneficial ownership based on corporate ownership and shares.<sup>3</sup>

Resolution 164 of 2021, which provides accompanying regulatory guidance for Articles 631-5 and 631-6 of the tax reform, is an important next step in implementing the registry. As the government agency in charge, Colombian Directorate of National Taxes and Customs (in Spanish, Dirección de Impuestos y Aduanas Nacionales or “DIAN”), responsible for the fiscal security of the State through the tax administration and enforcement, published the resolution. DIAN’s Resolution 164 provides more details on how BO will be implemented in Colombia, including identification of beneficial owners, reporting procedures and responsibilities, exceptions, as well as steps to protect this information.

All of these details are critically important. According to the Inter-American Development Bank (IDB) and the OECD, “anonymity enables many illegal activities to take place hidden from law enforcement authorities, such as tax evasion, corruption, money laundering, and financing of terrorism.”<sup>4</sup> Therefore, including BO in the new Colombian tax reform, which goes into effect in 2022, will strengthen the fight against tax evasion, corruption and money laundering.

In this legal review, GFI analyzes the strengths and weaknesses of the regulatory framework, with a focus on ways that Colombia can maximize the benefits of beneficial ownership.

3. Law 2155 of September 14, 2021, Presidencia de la República de Colombia, pg 13, available at: <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202155%20DEL%2014%20DE%20SEPTIEMBRE%20DE%202021.pdf>

4. A Beneficial Ownership Implementation Toolkit, IDB and the OECD, pg 4, available at [https://publications.iadb.org/publications/english/document/A\\_Beneficial\\_Ownership\\_Implementation\\_Toolkit\\_en\\_en.pdf](https://publications.iadb.org/publications/english/document/A_Beneficial_Ownership_Implementation_Toolkit_en_en.pdf)

# STRENGTHS OF THE REGULATORY FRAMEWORK

## 1. The registry will be anchored to the existing Unique Tax Registry (Registro Único Tributario, or "RUT")

Defining who will be responsible for collecting and administering beneficial ownership information is one of the first steps for any country that is implementing a registry. It is important to consider criteria such as the capacity of government agencies to collect information, the strength of their registries and databases, and their ability to monitor data for financial crimes such as tax evasion, money laundering or corruption. In addition, it is important to consider the use and protection of the data from a logistical, regulatory and technological perspective.

Internationally, countries have managed this matter in different ways. In some cases, the Companies Registry or Mercantile Registry may be the best entity.<sup>5</sup> In the case of the United Kingdom, for example, where the beneficial ownership registry has been public since 2016, having BO information housed within the Companies House places basic business information alongside beneficial ownership information in a single location, with easy public access. In other countries, such as Costa Rica, the Central Bank has assumed responsibility for managing the registry.

In other cases, the tax authority has been charged with administering the registry, as is the case with Colombia. The DIAN, the tax and customs authority, has proposed integrating the RUB into an existing registry, the Unique Tax Registry or "RUT." This aims to streamline administrative processes, save on implementation costs, and facilitate reporting by legal entities. According to analysis by the IDB and OECD, "tax reporting can be a useful process for acquiring information on beneficial ownership within a given jurisdiction."<sup>6</sup> In this regard, Colombia is on the right track in terms of linking beneficial ownership to existing tax registries, thereby ensuring greater efficiency in the information collection process.

Even so, challenges lie ahead. Generally, government agencies that handle the fiscal information of taxpayers must maintain confidentiality, so the possibility of having public or open beneficial ownership records is reduced. Other law enforcement agencies or financial entities seeking to access this information must go through a special process of requesting it.

5. Informe de prácticas y desafíos de los países en América Latina sobre los mecanismos de acopio de información básica y de beneficiarios finales, GAFILAT and GIZ, pg 62, available at: <https://www.gafilat.org/index.php/es/noticias/125-informe-de-practicas-y-desafios-de-los-paises-de-america-latina-sobre-los-mecanismos-de-acopio-de-informacion-basica-y-de-beneficiarios-finales>

6. A Beneficial Ownership Implementation Toolkit, IDB and the OECD, pg 28, available at: [https://publications.iadb.org/publications/english/document/A\\_Beneficial\\_Ownership\\_Implementation\\_Toolkit\\_en\\_en.pdf](https://publications.iadb.org/publications/english/document/A_Beneficial_Ownership_Implementation_Toolkit_en_en.pdf)

In the case of Colombia, beneficial ownership is framed as part of a tax reform, so it is understandable that the main focus is on combating tax evasion and that the government agency in charge is the DIAN.

According to the resolution, beneficial ownership declarations must be electronically submitted through the DIAN. Submissions must be completed prior to September 30, 2022 (for those who meet the requirements and have a RUT emitted prior to January 15, 2022) and within two months of creating a RUT, for those who have a RUT emitted after January 15, 2022.<sup>7</sup>

## **2. Mechanisms for Updating BO Information Are Efficient and Digitalized**

Very much in line with the previous point, it is important to note that the DIAN, the agency charged with collecting and managing beneficial ownership information, has made great strides to digitize its monitoring, registration and control processes in recent years. Procedures such as the creation and updating of the RUT, which years ago had to be done in person, can now be done electronically, with systems in place to protect personal information.

The information required to update beneficial ownership information (type of document, identification number and country of issue, tax ID, home address, percentage of participation in the capital of a legal person and percentage of benefit in the yields of a legal person, among others) will be submitted through the same electronic system used for the RUT. Those who enter the electronic system to update their RUT will be asked about beneficial ownership and provided a digital form to report it within the existing RUT system.

Another strength is the requirement to update beneficial ownership information periodically, as triggered by changes in ownership, rather than yearly, as in the case in some other countries. If the beneficial owner moved, for example, or if changes in ownership levels occurred, this must be reported. Updates must be submitted within a month "if on the 1st day of the months of January, April, July and October of each year there were modifications with respect to the information provided in the RUB". If, on the other hand, no changes have occurred, no updates are required.

Finally, data will be managed in XML files in an encrypted database system, a positive step that may facilitate data analysis and financial crime investigations by the DIAN and other government agencies.

7. Resolución 164, DIAN, December 27, 2021, available at:

<https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000164%20de%2027-12-2021.pdf>

### 3. Penalties for Non-Compliance

Another positive aspect of the regulatory framework is that it clearly defines penalties for those who fail to comply with reporting responsibilities. While this does not guarantee that 100% of persons will meet their reporting obligations, it does set an important national precedent for compliance.

According to the tax reform, when BO information is not provided on time or is not updated, a penalty of 1 UVT will be imposed for each day that it is late. The UVT unit is equivalent to COP 38,004 (approximately US\$10) as of 2022. If the information is incorrect or incomplete, there is a flat penalty of 100 UVT, the equivalent of COP 3,800,400 (or approximately US\$100) for 2022.

In the event that the information is requested through a due diligence procedure, the penalty will be defined according to the Colombian Tax Statute, but in any case it may not exceed 15,000 UVT, or COP 570,060,000 (or approximately US\$143,000) as of 2022. For providing false information, if proven, the person could be subject to civil or criminal charges.

### 4. The 5% Threshold

Another strength of Colombia's beneficial ownership legal framework is the relatively low, robust ownership threshold.

For countries that are in the process of creating a beneficial ownership registry, one key consideration is the threshold at which ownership should be defined. For very small companies, there may be a single beneficial owner. However, for larger companies, or companies with more complex structures, there may be numerous shareholders who own parts of the company. Therefore, it becomes important to define who is a beneficial owner, and at which ownership threshold.

Yet, as Open Ownership has noted, these thresholds can become "contentious areas of debate."<sup>8</sup> Setting the threshold too high may result in important stakeholders with significant voting power and economic interests being excluded from the registry. This can defeat the purpose of the registry as an AML/CFT and anticorruption tool. Setting the threshold too low, however, may result in a very large registry with lots of information on people with little power.

For example, Starbucks, the coffee company, has over 1 billion shares of stock; a person who owns one share of stock in the company would have very little decision-making power or economic clout.<sup>9</sup>

When it comes to defining ownership, guidance from the FATF, an international standard-setting body, is critically important. The FATF defines the beneficial owner as “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted.” It also includes “those persons who exercise ultimate effective control over a legal person or arrangement.” The FATF definition “focuses on the natural (not legal) persons who actually own and take advantage of capital or assets of the legal person; as well as on those who really exert effective control over it (whether or not they occupy formal positions within that legal person), rather than just the (natural or legal) persons who are legally (on paper) entitled to do so.” While this guidance is helpful, the FATF does not establish a recommended ownership threshold.<sup>10</sup>

Countries have addressed ownership thresholds in different ways. Argentina, for example, recently set their beneficial ownership threshold at 10% ownership.<sup>11</sup> In other countries, it has been set as high as 25%.

According to Colombia’s Tax Reform and the accompanying regulations, beneficial owners are defined as the “natural person who, acting individually or jointly, is the owner, directly or indirectly, of five percent (5%) or more of the capital or voting rights of the legal person, and / or benefits from five percent (5%) or more of the assets, returns or profits of the legal entity.”<sup>12</sup> The 5% threshold is within international standards and towards the more robust side of the spectrum, providing greater transparency.

9. See, for example, Starbucks Corporation, Yahoo Finance, Accessed December 15, 2021, available at <https://finance.yahoo.com/quote/SBUX/key-statistics/>

10. FATF Guidance: Beneficial Ownership and Transparency, The Financial Action Task Force, October 2014, available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

11. Resolución 112/2021, Boletín Oficial de Argentina, October 19, 2021, available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/251522/20211021>

12. Ley 2155 del 14 de septiembre de 2021, Presidencia de la República de Colombia, pg 13, available at: <https://dapre.presidencia.gov.co/normativa/normativa/LEY%202155%20DEL%2014%20DE%20SEPTIEMBRE%20DE%202021.pdf>

## 5. Creating an Identification System for Structures that are Not Legal Entities

In addition, Resolution 164 includes the creation of an Identification System for Structures that are Not Legal Entities (in Spanish, Sistema de Identificación de Estructuras sin Personería Jurídica or "SIESPJ") which will be used to identify structures that are not legal persons and therefore do not have a RUT. These include autonomous assets constituted through commercial trust agreements, business collaboration agreements, private equity and collective investment funds, and pension and severance funds, among others.<sup>13</sup>

These complex structures, often used by high net worth individuals, have drawn international scrutiny in recent months due to risks of money laundering and other financial crimes. For example, a recent document by the U.S. Federal Bureau of Investigations (FBI) expressed concern over money laundering risks associated with pooled investment vehicles, including hedge funds and equity funds, particularly in light of very limited AML/CFT controls.<sup>14</sup>

In the case of the Colombian regulation, an effort to identify the beneficial owners of these incredibly complex structures is an important first step in ensuring that they do not become vehicles for illicit financial flows. This will help to ensure greater coverage, not only for those required to register in the RUT, but also of additional types of structures. These structures will follow a similar process to that required for legal persons, through digital information systems managed by the DIAN.

It should be noted that for these structures the reporting requirement falls to the legal representative or manager of the structure, or, if there is not one, by a person designated by the parties involved.

13. Resolución 164, DIAN, December 27, 2021, available at: <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000164%20de%2027-12-2021.pdf>

14. Timothy Lloyd, "FBI concerned over laundering risks in private equity, hedge funds - leaked document," Reuters, July 14, 2020, available at: <https://www.reuters.com/article/bc-finreg-fbi-laundering-private-equity-idUSKCN24FITP>

# WEAKNESSES OF THE REGULATORY FRAMEWORK

## 1. Limited information access, both inside and outside of government

According to Colombian laws and regulations, the country's beneficial ownership registry will be closed to the public. While this is not surprising given the nature of the legal debate and bills leading up to its passage, it is surprising – and disappointing – that the regulatory framework does not establish adequate pathways to share this information beyond a few select government agencies. Nor does it contemplate whether such information might be shared with international partners as part of law enforcement efforts. For example, could the Colombian authorities share beneficial ownership information with government authorities from the United Kingdom or the United States, as part of a transnational investigation of wildlife trafficking? The framework is not clear in this regard.

What is clear from the language of the regulation is that information will be held closely within the DIAN. Not only is the beneficial ownership registry considered “confidential” and marked as “of a reserved character,” but other governmental entities may only have access through an “inter-agency agreement” (*convenio interadministrativo*) and exclusively for reasons related to combating financial crimes (money laundering, terrorism financing, or transnational bribery).

Colombia's decision to establish a private (i.e., not public) beneficial ownership registry comes as countries around the world struggle to find the right balance between transparency and privacy.

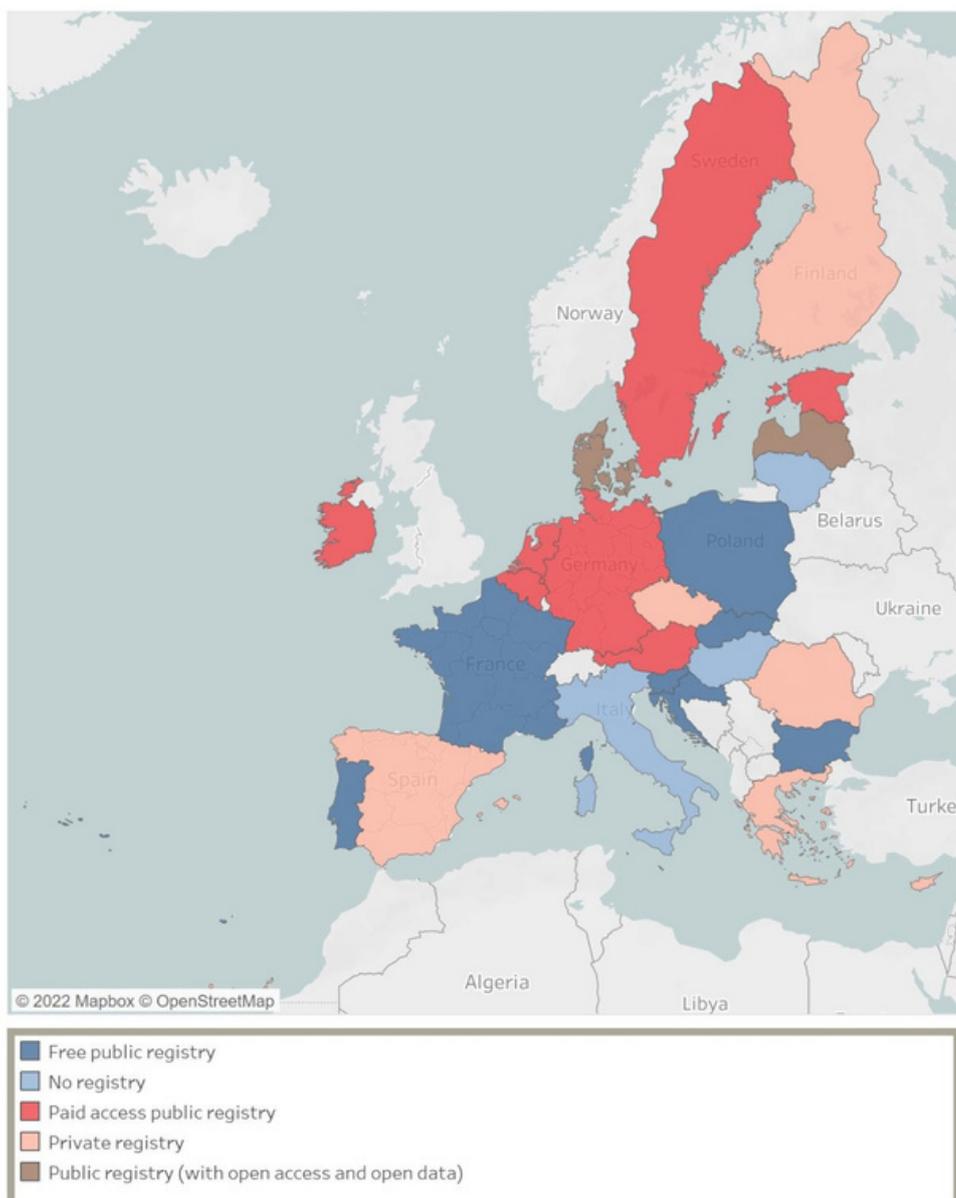
For example, according to the most recent AML directive (194/2021)<sup>15</sup> by the European Union (EU) regarding beneficial ownership for trusts and other complex corporate structure, member countries should agree to establish public registries as means to strengthen the fight against corruption, tax evasion, and other financial crimes.<sup>16</sup> However, in practice there is a great deal of variation from country to country: public registries with free data access, public registries with paid data access, or private databases. In Latin America, it is harder to implement public registries due to heightened concerns with security and data usage, compared with the transparency benefits of open information.<sup>17</sup>

15. S.I. No. 194/2021 - European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021, available at: <https://www.irishstatutebook.ie/eli/2021/si/194/made/en/print>

16. “Out in the Open: How Public Beneficial Ownership Registries Advance Anti-Corruption,” Transparency International, September 10, 2021, available at: <https://www.transparency.org/en/news/how-public-beneficial-ownership-registers-advance-anti-corruption#>

17. “404 Beneficial Owner Not Found: Are EU Public Registers In Place & Really Public?” Transparency International, May 26, 2021, available at: <https://www.transparency.org/en/news/eu-beneficial-ownership-registers-public-access-data-availability-progress-2021>

## Beneficial Ownership in Europe



**Source:** GFI visualization using data from Adriana Fraiha Granjo and Maíra Martini, *Access Denied? Availability and Accessibility of Beneficial Ownership Data in the European Union*, Transparency International, May 2021, available at <https://images.transparency.org/images/2021-Report-Access-denied-Availability-and-accessibility-of-beneficial-ownership-data-in-the-European-Union.pdf>

In Latin America and the Caribbean, currently only Ecuador, Cuba, Jamaica and St. Lucia have public beneficial ownership registries, and only seven countries have private registries. The remaining countries, which comprise the majority of the region, do not have registries, or are in the process of creating and regulating registries, as in the case of Colombia.<sup>18</sup> Within many countries in the region, there is a perception that a public registry would pose security threats for those with reporting obligations, and that within countries with security problems and armed conflicts, disclosing assets and linking them to natural persons could contribute to greater insecurity.

18. Julia Yansura, Channing Mavrellis, Lakshmi Kumar and Claudia Helms, *Financial Crime in Latin America and the Caribbean: Understanding Country Challenges and Designing Effective Technical Responses*, Global Financial Integrity, October 2021, available at: <https://gfiintegrity.org/report/financial-crime-in-latin-america-and-the-caribbean/>

As mentioned, Colombia's beneficial ownership registry will be private. Another major reason for this has to do with the FATF recommendations, and specifically, the guidance on transparency and beneficial ownership.<sup>19</sup> It notes that the FATF standards do not indicate, as a mandatory recommendation, having beneficial ownership registries be open and public. At a minimum, countries must have closed registries that can be accessed by relevant authorities (such as supervision and enforcement agencies) and even financial institutions or designated non-financial organizations and professions (DNFBPs). In addition, it mentions that it may be optional for countries to open their registries, if this does not directly compete with private and government interests around monitoring.

In light of all this, what type of registry is best? While each country is different, in general terms, more transparency is better. Publicly-available beneficial ownership information allows greater transparency regarding ownership and control of any company, trust, or corporate structure, providing great benefits not only for national authorities, but also for anyone wanting to know the real owners, interests and connections behind it. Regulatory frameworks should ensure that relevant stakeholders can access information.

Similarly, although many registries appear to be open and public, they have a number of restrictions that may prevent access. The truth is that each country can, following the FATF regulations, define what information would be available while addressing myths surrounding safety. For example, public registries could limit access to personal home addresses, or could require requests for information to be made on demand, demonstrating legitimate interest. They could also offer a mechanism to apply for an exemption based on personal safety, as the UK has done.<sup>20</sup>

For private registries, such as Colombia's, it is important to consider which government agencies will have access. Colombia's regulatory framework only permits access following an inter-agency agreement, a process which is likely to be somewhat complex and lengthy, and it is unclear which agencies will have access in the end. According to GFI's analysis, the following are Colombian government agencies that could benefit from access to this information:

19. FATF Guidance: Beneficial Ownership and Transparency, The Financial Action Task Force, October 2014, available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

20. Learning the Lessons from the UK's Public Beneficial Ownership Register, Open Ownership and Global Witness, October 2017, available at: <https://www.openownership.org/uploads/oo-case-study-learning-the-lessons-from-the-uks-public-beneficial-ownership-register-2017-11.pdf>

Stakeholder	Reason
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**Could currently access via an MOU**

Financial Intelligence Unit	Investigate financial crimes, identify shell or front companies being used in illicit activity
Superintendence of Societies	Verify that information used to register companies is correct; help to prevent the use of shell or front companies in illicit activity
Comptroller Authority (Contraloría)	Ensure that government contracts are not going to companies linked to politically exposed persons
Personnel Management Authority (Procuraduría)	Ensure that government employees do not have conflicts of interests via anonymous companies
Attorney General's Office (Fiscalía)	Assist with building and prosecuting cases related to financial crimes and types of crimes
Superintendence of Finance	Help ensure that the proceeds of crime do not enter the Colombian financial system via anonymous companies or other legal entities

**Cannot currently access, but would potentially benefit from access to information**

Ministry of Mines, Ministry of Environment	Verify the information reported by companies involved in mining, logging, and other activities
Transportation Authority	Help to ensure that ships and aircraft registered in a given jurisdiction are not being held by criminal groups
Chambers of commerce or company registration sites	Ensure that companies registered in that jurisdiction are involved in legal and legitimate business

Financial Sector – Risk and Due Diligence teams	While financial sector companies generally already collect BO information for clients, access to a national BO registry can help to corroborate information
Law enforcement or security agencies (DJIN, Ejército, among others)	Ensure the integrity of high-value purchases made for national security, including aircraft, weapons, and other items.

**Source:** Global Financial Integrity, 2022.

As can be seen from the table above, a number of government agencies have a vested interest in the integrity of legal entities. Of course, beyond simply identifying such agencies, it is important to consider which personnel within each agency would need access, and what safeguards would be in place to ensure that information was used only for its intended purpose.

## 2. Identifying the Beneficial Owner

Another weakness with regards to the Colombian BO law and regulatory framework is Point 3 of the definition. The Colombian BO framework defines BO based on three points, as summarized below:

1. The natural person or persons owning 5% or more of the capital, voting rights, assets or earnings.
2. The natural person who exerts control over the legal entity in any ways other than those defined in Point 1.
3. When no natural person can be identified using the first two parameters, the natural person who serves as legal representative is to be identified, unless there exists a natural person with greater control over the management and direction of the legal entity.

Whereas Point 1 and Point 2 are clear, Point 3 is problematic and opens legal loopholes that may be taken advantage of by those who have something to hide. To begin with, it is difficult to understand why Point 3 is needed. It is difficult to think of a company or another type of legal entity for which no one person owns more than 5% of any capital, voting rights, or shares, nor is there any one person who controls, benefits from or manages the legal entity.

In addition, the phrasing “can be identified” is problematic since it implies that if the task is overly difficult, a legal representative could be named instead. It would be better to say, “must identify” the beneficial owner “unless such a person does not exist meeting criteria 1 or 2.”

## 2. Reporting Responsibilities of Foreign-Owned Companies

Current regulations apply to foreign companies operating in Colombia only in a very narrow sense, which limits the usefulness of the registry as a tool to prevent tax evasion, corruption, or other financial crimes, which are very often cross-border crimes.

To briefly summarize the new regulations, the following legal entities are required to declare their beneficial ownership:

1. Those created or administered in Colombia
2. Those that are governed by the rules of Colombia
3. Those whose trustee (in Spanish, fiduciario) is a Colombian legal entity or a natural person who resides in Colombia for tax purposes
4. Foreign legal entities and other structures that have more than 50% of their assets in Colombia.

With regards to Point 4, more robust language could provide greater benefits for anti-corruption and anti-money laundering. The 50% threshold is set very high. A large, foreign-owned corporation could launder millions of dollars in Colombia without having to declare who really owns it, so long as only 49% of its assets were located in Colombia. Moreover, this sort of policy could put Colombian-owned, Colombian-registered businesses at a disadvantage, or could potentially disincentivize business registration in Colombia.

Greater transparency over foreign-owned companies could offer many benefits. For example, BO information could potentially be required for foreign companies in sectors that require additional scrutiny, such as foreign companies participating in public procurement with the Government of Colombia. It could also extend to economic sectors of greater sensitivity, such as security and defense. Moreover, BO information could be required of foreign companies operating in higher-risk sectors, such as extractives, to provide greater transparency. Finally, a more robust framework might extend beneficial ownership requirements to cross-border activities such as trade and transportation, including ships, yachts, and aircraft. Illicit actors use these cross-border activities for a variety of criminal activities, including drug trafficking and mineral trafficking, often hiding behind anonymous companies or other legal entities.<sup>21</sup>

21. Lakshmi Kumar and Julia Yansura, *The Future of Beneficial Ownership in the United States: Trade, Transportation and National Security Implications*, Global Financial Integrity, December 2020, available at: <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2020/12/Policy-Insight-Final-1.pdf?time=1642015436>

## 4. Lack of Clarity Surrounding Verification

Another potential weakness in the Colombian regulation is the lack of clarity surrounding the verification process. It is important for authorities at the DIAN to define how beneficial ownership information will be checked, with what frequency, and by whom.

To put it more simply, how long would it take for Colombian authorities to realize if a legal entity submitted a beneficial ownership declaration listing Mickey Mouse as the beneficial owner? This is a serious question; it was an issue that the UK's beneficial ownership registry faced in its early days.<sup>22</sup>

This topic is particularly important to consider given high levels of tax evasion in Colombia currently, which suggests that information verification is an ongoing challenge for the DIAN and other government authorities.

## 5. Lack of Clarity Regarding Anti-Corruption and Anti-Money Laundering Applications

Finally, while the Colombian regulations make clear how the RUB will be used to prevent, detect or investigate tax issues, it is not clear how this information will be utilized for anti-corruption or anti-money laundering purposes, either by the DIAN or by another government agency.

Issues with anonymous companies go well beyond tax evasion. Shell companies, front companies, and other legal entities with opaque ownership are regularly used in a variety of financial crimes ranging from money laundering to corruption. In one case, friends and family members of the mayor of Bucaramanga, Colombia created anonymous companies that were subsequently used to receive numerous contracts with the municipality, in some cases up to 30% overpriced, according to Transparencia por Colombia.<sup>23</sup> In another case, drawing on a U.S. example, the Government Accountability Office identified 32 cases in which shell companies had been used to commit fraud within defense contracting totalling over US\$900 million in value. In one such case, a company sold defective military parts to the Department of Defense; when the company was discovered and banned from doing business with the government, the owner formed anonymous companies and continued

22. See for example, George Monbiot, "If you think the UK isn't corrupt, you haven't looked hard enough," *The Guardian*, September 10, 2020, available at: <https://www.theguardian.com/commentisfree/2020/sep/10/uk-corrupt-nation-earth-brexit-money-laundering>; See also Oliver Bullough, "How Britain Can Help You Get Away with Stealing Millions: A Five-Step Guide," *The Guardian*, July 5, 2019, available at: <https://www.theguardian.com/world/2019/jul/05/how-britain-can-help-you-get-away-with-stealing-millions-a-five-step-guide>

23. Así se mueve la corrupción: Radiografía de los hechos de corrupción en Colombia 2016-2018, Transparencia por Colombia, May 2019, available at: <https://transparenciacolombia.org.co/Documentos/2019/Informe-Monitor-Ciudadano-Corrupcion-18.pdf>

selling defective parts for U.S. military aircraft.<sup>24</sup> In a third case, an investigation by the Natural Resources Governance Institute looked at 100 corruption cases in the extractives sector, and found that the majority (55%) involved a secret company.<sup>25</sup>

There are many international examples of how BO information can be leveraged for anti-corruption and AML, and Colombia would do well to take note. For example, knowing who owns and benefits from companies that receive State contracts is important for preventing corruption.<sup>26</sup> The UK government, a leader in beneficial ownership transparency, is currently considering measures that would automatically disqualify any companies failing to disclose beneficial ownership from bidding on government contracts.<sup>27</sup>

As another example, beneficial ownership requirements can aid law enforcement and other authorities in investigating crimes including drug trafficking, mineral trafficking, and even human trafficking.<sup>28</sup> In cases where beneficial ownership registries are open to the public, they have also been used to help journalists investigate corruption cases and provide the private sector with reliable information that can be used in their compliance and due diligence efforts.

## Conclusions

While the regulatory framework for Colombia's beneficial ownership registry has certain weaknesses and areas that could be strengthened, it nonetheless represents a tremendously positive step forward for the country in terms of transparency and the fight against financial crimes. The creation of a single registry that serves as a tool for government authorities will undoubtedly help in the fight against money laundering, terrorism financing, and other financial crimes. We hope that its rollout, which is taking place in record time compared to other countries, also includes efforts to raise awareness and educate the private sector, as well as other government agencies, ensuring adequate access, timely registration and, above all, the effectiveness of the mechanism for the purposes for which it has been created.

24. Defense Procurement: Ongoing DOD Fraud Risk Assessment Efforts Should Include Contractor Beneficial Ownership, United States Government Accountability Office, November 2019, available at <https://www.gao.gov/assets/gao-20-106.pdf>

25. Alexandra Gillies, "US Policy on Shell Companies Enables Corruption & Congress Can Change That," Natural Resources Governance Institute, July 12, 2017, available at <https://resourcegovernance.org/blog/us-policy-shell-companies-enables-corruption-congress-can-change>

26. Tymon Kiepe, "Beneficial Ownership Data in Procurement: Beyond Transparency and Accountability," Open Ownership, March 2021, available at <https://www.openownership.org/blogs/beneficial-ownership-data-in-procurement-beyond-transparency-and-accountability/>

27. Ibid.

28. For more discussion, see Concealment of Beneficial Ownership, the Financial Action Task Force and the Egmont Group, July 2018, available at <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>

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