



**Ghana Integrity Initiative (GII)**

Local Chapter of Transparency International



— ASSESSMENT OF —  
**BENEFICIAL  
OWNERSHIP  
REGIME IN GHANA**

December 2024



# ASSESSMENT OF BENEFICIAL OWNERSHIP REGIME IN GHANA

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# FOREWORD

Illicit Financial Flows from Africa continue to thrive in an environment of secrecy with estimates from UNCTAD placing the losses at USD88.6 Billion annually. The opportunity cost of these losses continue to undermine domestic revenue mobilisation requisite for sustainable development, investment in oversight institutions and authorities, and, perpetuate systemic inequality. Secrecy is often the currency and offering for enablers of IFFs both in financial and non-financial sectors. Beneficial Ownership Transparency is a key tool in addressing IFFs on the continent as it delves into the roots of ultimate ownership, control and natural person(s) behind legal entities and arrangements.

According to Tax Justice Network , only 23 out of 54 African countries have laws that require beneficial owners of companies to be declared or registered with a government authority. This glaring gap demonstrates the need for an increase in establishment and strengthening on BOT registers across the continent. The AU High Level Panel on Illicit

Financial Flows identified high risk areas of IFFs as being from commercial transactions and especially those in the Extractives sector . It is therefore essential that periodic reviews of policy and legislative provisions for BOT are undertaken in a bid to reduce risks associated with IFFs.

Ghana has continued to present as an example for customised approaches to BOT legislation that is responsive to its local context, related to varying thresholds for different sectors. This information is even more valuable when addressing IFFs which are trans-jurisdictional in nature requiring interoperability based on ease of access for legitimate purposes, assessment and analysis. This review comes at an opportune time as other African countries seek to establish and strengthen their own systems with Ghana serving as a case study for lessons learned.

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# ACRONYMS

ABBREVIATION	MEANING
AML	Anti-Money Laundering
AU	African Union
BoG	The Bank of Ghana
BOT	Beneficial Ownership Transparency
CDD	Customer Due Diligence
CHRAJ	Commission on Human Rights and Administrative Justice
CR	Central Register
CTF	Counter-Terrorist Financing
DNFBPs	Designated Non -Financial Business and Professions
DNFBPs	Designated Non -Financial Business and Professions
ECOWAS	Economic Community of West African States
EITI	Extractive Industries Transparency Initiative
FAQ	Frequently Answered Questions
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
FIs	Financial Institutions
GFI	Global Financial Integrity
GHEITI	Ghana Extractive Industries Transparency Initiative
GIABA	The Inter-Governmental Action Group Against Money Laundering in West Africa
GII	Ghana Integrity Initiative
IFF	Illicit Financial Flow
NCB	National Centre Bureau
NIC	National Insurance Commission
NORAD	Norwegian Agency for Development Cooperation
OGP	Open Government Partnership
ORC	Office of the Registrar of Companies
OSP	Office of the Special Prosecutor
PEPs	Politically Exposed Persons
RO	Registration Officer
SEC	The Securities and Exchange Commission
TCSP	Trust and Company Service Providers
TCSPs	Trust and Company Service Providers
TIN	Tax Identification Number
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference of Trade and Development
UNCTOC	United Nations Convention on Transactional Organized Crime
UNODC	United Nations Office on Drugs and Crime
WAPIS	West African Police Information System

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**Ghana Integrity Initiative (GII)**  
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GLOBAL FINANCIAL INTEGRITY

## EXECUTIVE SUMMARY

This assessment report evaluates Beneficial Ownership Transparency (BOT) implementation in Ghana. BOT is considered one of the most potent measures for fighting corruption, controlling Illicit Financial Flows (IFFs), and combating organized crime, money laundering, drug trade, and trafficking in humans. Drug dealers, arms smugglers, human traffickers, and other criminals have used or abused opacity surrounding the true and ultimate ownership and control structure of businesses and other legal entities and arrangements (corporate vehicles) worldwide to conceal illicit wealth.

A report by the Financial Action Task Force (FATF) on the concealment of beneficial ownership reveals that Trust and Company Service Providers (TCSP) frequently play a role with ease in the formation and misuse of legal persons that are particularly vulnerable in building complex legal ownership structures often involving shell companies.

After almost a decade of creating a legal regime for the implementation of Beneficial Ownership Transparency in Ghana, the need to assess the implementation of the law against the global frameworks has arisen on many platforms and when the

assessment was carried out the following findings were documented;

1. Availability of Basic BO Information on Companies.
2. Ghana's legislation on Trusts does not obligate trustees to maintain or disclose beneficial ownership information
3. Effective, Proportionate and Dissuasive Sanctions

Despite the modest gains made since 2016 to have a robust BO regime in place, challenges remain. These include the following:

1. The requirement to make BO information available for free and the expectation of raising internally generated funds from the operations of the office of the Registrar of Companies undermines the primary objective of making the BO data freely and easily accessible to the public.
2. Lack of cooperation and coordination among agencies involved in the implementation of the BO regime
3. The delay in passing the regulation that would enable the Registrar to verify, and maintain the CR among other matters.
4. Funding, verification, software challenges and maintenance of systems.

The issue of beneficial ownership (BO) has been considered one of the most potent measures to address corruption, combat organized crime, money laundering, drug trade, trafficking in humans, and illicit financial flows, among other crimes.

Opacity around the true and ultimate ownership and control structure of companies and other legal entities and arrangements (corporate vehicles) around the world has been employed or exploited by the corrupt, drug dealers, arms smugglers, human traffickers, and other criminals to hide illicit wealth<sup>1</sup>. The Global Financial Integrity report on illicit financial flows shows that nearly US\$1 trillion leaves developing countries every year undetected into banks in the United States of America (US) and Europe, for instance, through phantom corporate vehicles whose ownership are hidden in a complex maze of secrecy<sup>2</sup>.

A report by the Financial Action Task Force (FATF) on the concealment of beneficial ownership reveals that Trust and Company Service Providers (TCSP) frequently play a role with ease in the formation and misuse of legal persons that are particularly vulnera-

ble in building complex legal ownership structures often involving shell companies<sup>3</sup>. These and many other such reports reveal that transparency of information on the true and ultimate ownership and control structure of companies, legal and other arrangements can prevent the misuse of those vehicles for criminal activity.

In this report on **“Assessment of Beneficial Ownership Regime in Ghana and Identification of Gaps in the Regime”**, we examine the beneficial ownership regime or framework in Ghana in order to set a baseline for monitoring the progress of implementation of the BO regime in the country. The report assesses the extent of Ghana's compliance with BO standards under international law and global initiatives that Ghana is a party.

The Assessment is a component of a project of the Ghana Integrity Initiative (GII), as a subgrantee of GFI, captioned, **“Increasing Domestic Revenue Mobilisation by Promoting Corporate, Natural Resource, and Professional Integrity”** funded by NORAD through Global Financial Integrity (GFI). The objectives of the project are that:

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1. GIABA Assessment Report (2022), Beneficial Ownership Information and Asset Recovery Framework in West Africa, GIABA, Dakar, Senegal.

2. The Global Financial Integrity report on Illicit Financial Flows to and from Developing Countries: 2005-2014 <http://www.gfintegrity.org/wp->

[content/uploads/2017/05/GFI-IFF-Report-2017\\_final](http://www.gfintegrity.org/wp-content/uploads/2017/05/GFI-IFF-Report-2017_final). Also see GIABA Assessment Report (2022), Beneficial Ownership Information and Asset Recovery Framework in West Africa, GIABA, Dakar, Senegal. p. 10

3. *ibid*





- The assessment was done mainly through a literature review of academic and non-academic literature on BOT, UNCAC, and UNODC provisions for BOT. GII hopes that this assessment will assist the country to strengthen the BOT regime in order to address corruption, combat illicit financial flows, and improve domestic resource mobilization.

Illicit Financial Flows (IFFs)<sup>4</sup>, have become a major challenge to good governance and anti-corruption efforts globally and are often expressed in corrupt practices such as bribery, tax evasion, and money laundering. Africa has remained the breeding ground for IFFs, which deprive her and other developing countries of resources that could be used to provide much-needed public services, such as health and education and other basic social services. These IFFs also weaken financial systems and the economic potential of developing countries in general and Africa in particular. Furthermore, the impact of IFFs is a reduction in domestic expenditure and investment, which means fewer hospitals and schools, fewer roads, and fewer jobs, among others.

The Report of the High-Level Panel on Illicit Financial Flows from Africa (Mbeki Report on Illicit Financial Flow, 2016) estimates that over the last 50 years, Africa lost in excess of US\$1 trillion in illicit financial flows which is almost equivalent to all of the official development assistance Africa received during the same period. This illustrates the scale of the problem

and the impact it has on development efforts in Africa. It is estimated to be losing more than \$50 billion annually in Illicit Financial flows<sup>5</sup>.

According to the FATF report on concealment of beneficial ownership, Trust and Company Service Providers frequently play a role with ease in the formation and misuse of legal persons, primarily limited liability companies in building complex legal ownership structures often involving shell companies. With technological advancement and financial globalisation, the new financial system of instant wire transfers, removes the constraint of weight and distance, whilst a network of shell companies facilitated by an array of willing lawyers and accountants conceal beneficial owners of companies and financial accounts. Furthermore, secrecy jurisdictions which also tend to be tax havens, provide a perfect hiding ground for illicit wealth. Tackling corruption linked to IFFs as well as other criminal activity, requires substituting transparency for secrecy, including transparency in the beneficial ownership of companies and the elimination of havens of secrecy.

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4. Illicit financial flows (IFFs) is money that is illegally earned, transferred or utilized. These funds typically originate from three sources: 1) commercial tax evasion, trade misinvoicing and abusive transfer pricing; 2) criminal activities, including the drug trade, human trafficking, illegal arms dealing, and smuggling of

contraband; and 3) bribery and theft by corrupt government officials.

5. United Nations. Economic Commission for Africa (2015). Illicit financial flows: report of the High-Level Panel on illicit financial flows from Africa. Addis Ababa. © UN.ECA. <https://hdl.handle.net/10855/22695> p.13

The misuse of legal persons and arrangements (corporate vehicles) could be significantly reduced if information regarding both the legal owner and the beneficial owner, the source of the corporate vehicle's assets, and its activities were readily available to authorities. The availability of beneficial ownership information would definitely assist law enforcement and other relevant authorities identify those natural persons who may be responsible for the underlying criminal conduct to further their investigation, thereby enabling recovery of ill-gotten/stolen wealth or assets held by the corporate vehicles<sup>6</sup>.

The Panama papers and more recently, the Luanda leaks constituted a shrewd reminder that it is time to deal decisively with corporate vehicles that are being used to perpetuate corruption, money laundering, and transfer of illicit funds. These "leaks" exposed a network of several high-profile politicians and business people in Africa who had used their positions to amass wealth and hide it offshore. These individuals may have amassed their wealth through bribery and embezzlement

and this further strengthens the call to developed countries, especially the secrecy jurisdictions, to show stronger political will in implementing measures to facilitate asset recovery, abolish safe-havens, and lift bank secrecy, among others.

Heads of State present at the Summit in London in May 2016 sought to end the misuse of companies and legal arrangements to hide the proceeds of corruption, lift the veil of secrecy over who ultimately owns and controls companies to expose wrongdoing and to disrupt illicit financial flows and ensure that accurate company beneficial ownership information is available and fully accessible to those who have a need for it and can prevent abuse. The Heads of State also committed to establishing public central registers, or by putting in place other means to ensure law enforcement agencies have full and effective access to accurate information<sup>7</sup>.

The various reports, the Panama Papers and the UK Anti-Corruption Summit (the Summit)<sup>8</sup> further highlight the importance of beneficial ownership disclosure and gave it more international focus.

6. FATF, 2014. Guidance on Transparency and Beneficial Ownership (Recommendations 24 & 25). p.3

7. Communique adopted at the end of the UK Prime Minister's Summit in London on Tackling Corruption.

8. The UK Ant-corruption Summit brought together heads of states from several countries across the globe in 2016 to deliberate on ways to deal, with corruption.

Ghana committed to preventing the misuse of companies and legal arrangements to hide the proceeds of corruption<sup>9</sup> and followed on her commitment and passed the Companies (Amendment) Act, 2016 (Act 920) which amended the Companies Act, 1963 (Act 179). It provided for beneficial ownership information and introduced the concept of a Central Beneficial Ownership Register in Ghana. Three years later, the new Companies Act, 2019 (Act 992), incorporated and elaborated on the provisions of Act 992. Thus, Act 992 constitutes the main BO framework in Ghana and is complemented by other legislation and policies on BO.

Noticeable progress has been made since the coming into force of Act 992 such as the operationalization of a beneficial ownership Central Register, filing of particulars of beneficial owners with the Registrar of Companies (Registrar), establishment of the Office of the Registrar of Companies (ORC) and constituting a BO Project Team at the ORC.

Even though it is early days yet since the start of the implementation of the BO regime in Ghana, it is important to begin tracking the progress being made in its implementation and establishing a baseline for doing so against a projected period is even more important.

In order to support Ghana in this endeavour, the GII, as a subgrantee of the Global Financial Integrity (GFI), commissioned this **“assessment of Ghana's BOT framework against other BO regimes as well as various conventions and global instruments and establish gaps in Ghana's legislative, institutions and practices, so far”** (the Assignment). The outcome of the Assignment will serve as a baseline for future interventions on BOT implementation.

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9. UK Prime Minister's Summit in London On Tackling Corruption, 12 May 2016: Ghana Country Statement, May 12, 2016

# DEVELOPMENT OF THE CONCEPT OF BENEFICIAL OWNERSHIP

## 3.1. HISTORY

Beneficial Ownership (BO), considered one of the most potent measures to address corruption, combat organized crime, money laundering, drug trade, trafficking in humans, and illicit financial flows is not new. The concept can be traced to the development of the law of trust in the United Kingdom almost 1,000 years ago. At the time, trusts were created for the benefit of the families of soldiers and warriors who left the country to fight in religious wars. The trustees became the legal owners, while the men were the beneficial owners, and the families would be the beneficiaries of the trusts<sup>10</sup>. Thus, a distinction was made between two types of ownership, that is, “legal ownership” and “beneficial ownership, the first recorded instance of separation of legal ownership from beneficial ownership<sup>11</sup>.

These days, the concept has been broadened and used in international frameworks related to anti-corruption, illicit financial flows, taxation, and anti-money laundering<sup>12</sup> and applied in a wide variety of situations that do not necessarily

always involve trusts the way it was used 1000 years ago. However, the essence of the concept as referring to the person who ultimately controls an asset and can benefit from it, remains the same<sup>13</sup>.

The term “beneficial owner” was also a subject of concern during negotiations between the UK and Australia on the 1967 Taxation Treaty. The UK explained then that though it was not defined by statute law, the courts considered it from time to time, particularly with respect to the ownership of real property and shares in companies.

It is stated thus:<sup>14</sup>

**“...generally speaking, a beneficial owner of property may be said to be one who has the right to use and enjoyment of the property, including, on a sale, the right to the proceeds. A person who holds property for the use of another would not be the beneficial owner of it; and if a person so deals with his property that it ceases to be at his disposal, as by entering into a contract to sell it, he ceases to be its beneficial owner.”<sup>15</sup>**

10. UN Department of Economic and Social Affairs, 2023. Beneficial ownership information: Supporting fair taxation and financial integrity. Policy Brief No. 148, UN

11. The National Archives (UK) Public Record Office, File IR 40/16741, “Beneficial Ownership”, IN Richard Vann, 2012. Beneficial Ownership: What Does History (and maybe policy) Tell Us?, Sydney Law School Legal Studies Research Paper , No. 12/66

12. UN Department of Economic and Social Affairs, 2023. Beneficial ownership information: Supporting fair taxation and financial integrity. Policy Brief No. 148, UN

13. Emile van der Does de Willebois, Emily M. Halter, et al. 2011. The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It. The International Bank for Reconstruction and Development / The World Bank, 2011. Washington DC. p. 18

14. The National Archives (UK) Public Record Office, File IR 40/16741, “Beneficial Ownership”, IN Richard Vann, 2012. Beneficial Ownership: What Does History (and maybe policy) Tell Us?, Sydney Law School Legal Studies Research Paper , No. 12/66

15. Ibid

**The beneficial owner is not, therefore, necessarily the same person as the legal owner. The case of trusts, for example. The trustee is the mere repository of the trust property and is then often called a bare trustee. A common example is the nominee holder of shares who is no more than a “dummy” for the true owner. The nominee is the legal, but not the beneficial, owner. ...Another simple example of a trust is that of the man who in his will leaves his estate to trustees, requiring them to pay the income from it to his widow [beneficiary] for so long as she lives and on her death to distribute the property forming the estate to specified beneficiaries...”<sup>16</sup>.**

The explanation of what a beneficial owner is, vividly captures the essence of the concept as known currently: a beneficial owner of a property may be said to be one who has the right to the use and enjoyment of the property. If the owner disposes of the property, he/she is no longer the BO. The legal owner, such as a trustee in trusts, is not the BO, neither is a nominee a BO for she/he is a mere “dummy” for the BO.

Some authors posit that the idea of beneficial ownership was born when, **“in the 1990s, anti-money laundering efforts were about tackling criminal cash deriving from drugs, and was largely focused on the Americas. At that time, the priority was to identify the legal owners of entities and assets like bank accounts. This need was escalated following the 9/11 attacks when global measures to address abuses of the financial system underwent a step change, when measures to expose and prevent terrorism financing were assimilated with those that tackled money laundering, and as a result the whole agenda shifted up a gear”<sup>17</sup>.**

Other writers state that the issuance of the FATF recommendations in 2003, represented the birth of the concept of beneficial ownership and which **“...became the centre of anti-money laundering efforts going forward, though the initial set of standards were vague and ill-defined yet they set in motion a process of further learning and evolution in beneficial ownership transparency over the following decades.”<sup>18</sup>**

16. Ibid

17. A history in the making – Revelations and evolution in beneficial ownership Transparency, June 2022 (Unsplash – sharon-mccutcheon) <https://www.global-amlcft.eu/a-history-in-the-making-revelations-and-evolution-in-beneficial-ownership-transparency/>

18. Ibid

The FATF recommendations were revised and brought into legal effect around 2015 and this represented a milestone as it obliged member states for the first time to set up beneficial ownership registers.

Over the same period, in 2003, the international community adopted two conventions, the United Nations Convention on Transnational Organised Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC), under which corrupt officials would find fewer ways to hide their illicit gains in future<sup>20</sup>. Both Conventions then request states parties to undertake measures to identify the legal and natural persons involved in the establishment and management of corporate entities for purposes of preventing corruption, and to deter and detect all forms of money-laundering.

Be that as it may, as Alexandre Taymans said, **“The history of beneficial ownership transparency is neither linear, nor is the story finished. ...”**<sup>21</sup>. What remains important is that the concept of BO as developed has heightened international focus as a means to deal with IFFS, corruption,

money laundering, among others, and that the days where criminals use opaque legal structures to disguise or hide their criminal activity, must end.

### 3.2. Meaning, Scope, and Purpose

The Technical Guide to the UNCAC explains the term **“Beneficial Owner”** **“... as covering any person with a direct or indirect interest in or control over assets or transactions.”**<sup>22</sup> Article 12, para (c) of UNCAC stresses the need to enhance transparency with respect to the identities of persons who play important roles in the creation and management or operations of corporate entities<sup>23</sup> as risks of corruption and vulnerability relative to many kinds of illicit abuses are higher when transactions and the organizational structure of private entities are not transparent<sup>24</sup>.

The most widely accepted definition of “beneficial owner” is provided by the Financial Action Task Force (FATF) as follows:

**“ Beneficial owner refers to 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.”**<sup>25</sup>

19. A history in the making – Revelations and evolution in beneficial ownership Transparency, June 2022 (Unsplash – sharon-mccutcheon) <https://www.global-amlcft.eu/a-history-in-the-making-revelations-and-evolution-in-beneficial-ownership-transparency/>

20. United Nations Convention Against Corruption, United Nations, New York, 2003, pages iii & iv.

21. A history in the making – Revelations and evolution in beneficial ownership Transparency, June 2022 (Unsplash – sharon-mccutcheon)

22. UNODC, 2009. Technical Guide to the United Nations Convention Against Corruption, United Nations, New York, p. 69

23. UNODC, 2012. Legislative Guide to the United Nations Convention Against Corruption, United Nations. Second Revised Edition. New York, p. 39

24. Ibid

“ A beneficial owner is thus always a natural person who has a control ownership interest in a legal entity and/or has the ability to otherwise exercise control over it. Since a beneficial owner can only be a natural person, a legal entity or arrangement such as a company is not a beneficial owner. Therefore, such an entity will have to be examined in order to determine who its beneficial owner is.<sup>26</sup> ”

From the foregoing, it is evident that a beneficial owner is always a natural person and therefore different from a legal owner, which is a legal construct. The BO is the individual who ultimately owns, controls or benefits from corporate vehicles and other types of legal vehicles, and should be identified for transparency.

Beneficial ownership information on companies and other legal arrangements brings with it several benefits. The information helps:

- to disrupt the opacity on which criminals exploit for laundering

proceeds of corruption and crime, IFFs, tax evasion, and other crimes, thus a powerful preventive tool;

- to build trust in the integrity of business transactions and of the financial system by knowing with whom one is conducting business (and reducing associated due diligence costs);
- law enforcement investigations identify and recover assets that have been gained through theft or with the proceeds of other crimes.<sup>27</sup>

25. See FATF, 2014. Guidance on Transparency and Beneficial Ownership (Recommendations 24 & 25). Oct. 2014, p. 8.

26. IDB and OECD (2019), A Beneficial Ownership Implementation Toolkit, p. 7 available at <https://oe.cd/41V>.

27. Open Ownership, 2021. Guide to Implementing Beneficial Ownership Transparency.



#### 4.1. UN Instruments

Due to the upsurge in the use of legal entities or arrangements in preference for the use of anonymous bank accounts and the obvious role that beneficial ownership transparency plays in preventing the misuse of corporate vehicles for criminal activity, the United Nations and other international bodies have devoted much attention to the subject in recent times.

The UNCAC and several resolutions of the Conference of States Parties to UNCAC<sup>28</sup>, and the UNTOC as well as other international agreements and processes require States Parties or members of those international instruments to take measures, including legislative, to identify the legal and natural persons behind companies, for the prevention of corruption involving the private sector, for the prevention of money laundering, and prevention and detection of transfers of proceeds of crime.

In summary, the UN instruments require Ghana as a state party to undertake the following measures in relation to beneficial ownership transparency:

- to take measures including legislative to promote transparency including those regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;<sup>29</sup>
- to institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;<sup>30</sup>
- to take measures to prevent corruption, including the establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;<sup>31</sup>

28. Articles 12 (1) & (2) (c), 14(1)(a), 52(1) of UNCAC and art. 31(2)(d)(i) of UNTOC

29. Article 12 (1) & (2) (c) of UNCAC:

30. Article 14(1)(a) of UNCAC

31. Article 31(2)(d)(i) of UNTOC:

- In addition, Ghana shall take such measures to require financial institutions to:
  - verify the identity of customers;
  - determine the identity of beneficial owners of funds deposited into high-value account;
  - conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities;
  - ensure the collection and provision of beneficial ownership information is accessible to law enforcement agencies, and other relevant institutions;
  - to cooperate in order to implement the necessary measures to enable them to obtain reliable information on beneficial ownership of companies, legal structures or other complex legal mechanisms, including trusts and holdings, used to commit crimes of corruption or to hide and transfer proceeds<sup>33</sup>, and

- exchange best practices in the identification of beneficial owners of legal structures used to commit crimes of corruption or to transfer their proceeds<sup>34</sup>

Thus, the UN instruments emphasize beneficial ownership transparency for:

**i) preventing corruption involving the private sector, and ii) deterring and detecting all forms of money laundering.**

UNCAC does not define corruption. Rather, it requires states parties to introduce criminal and other offences to cover a wide range of acts considered corruption, such as bribery, misappropriation, embezzlement, illicit enrichment, as well as other acts carried out in support of corruption, (i.e., obstruction of justice, trading in influence and the concealment or laundering of the proceeds of corruption).

Similarly, what constitutes “money laundering” is not provided. However, it has been elaborated in the Legislative Guide to the UNCAC that, money laundering consists of the disguise of the illegal origin of the

32. Article 52 (1) of UNCAC;

33. Paragraph 23 of Resolution 5/3 of CoSP on Facilitating international cooperation in asset recovery.

34. Resolution 5/4 of CoSP on Follow up to the Marrakech Declaration on the Prevention of Corruption, para 24

proceeds of crime, which is done essentially in three stages: by introducing the proceeds into the financial system (“placement”), engaging in various transactions intended to obfuscate the origin of and path taken by the money (“layering”), and thereby integrating the money into the legitimate economy through apparently legitimate transactions (“integration”).<sup>35</sup>

#### 4.2. Financial Action Task Force & GIABA

Apart from the two UN instruments, beneficial ownership is addressed by Recommendations 24 and 25 of the Financial Action Task Force (FATF), an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

The Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA), a FATF-Style ECOWAS institution adopts the FATF standards on anti-money laundering (AML) and counter-terrorist financing

(CFT) for evaluating the AML/CFT systems of West African states including beneficial ownership information.

the company's name;

proof of incorporation of the company, its legal form, and status;

the address of the registered office of the company;

legal documents such as memorandum and articles of association, or constitution or regulations);

a list of directors, and

a register of their shareholders or members.

Under Recommendation 24 of the FATF, countries should ensure that:

- basic information on companies is obtained and recorded by the [central] company registry and be made publicly available.<sup>36</sup>

35. UNODC, 2012. Legislative Guide to the United Nations Convention Against Corruption, United Nations. Second Revised Edition. New York, p. 41

36. Interpretative Notes to Recommendation 24, para 13

The information should include:

In terms of the shareholders, the register should contain the number of shares held by each shareholder and categories of shares (including the nature of the voting rights associated with the shares). The company information may be recorded by the company itself or by a third person under the company's responsibility, and the information should be maintained within the country at a location notified to the [central] company registry.<sup>37</sup>

Furthermore, the natural persons should be considered as beneficial owners on the basis that they are the ultimate owners/controllers of the legal person, either through their ownership interests, through positions held within the legal person or through other means.

With regard to determining BO on the basis of ownership interest, countries may opt for the threshold approach. Recommendation 24 suggests a 25%, i.e., any persons who own more than 25 percentage of the company should be a BO depending on the level of ML/TF risk identified for the various types of legal persons.<sup>38</sup> A country may opt for a minimum

ownership threshold for particular legal persons. Another option is to determine BO based on majority shareholding or interest approach (i.e., shareholders who exercise control alone or together with other shareholders, including through any contract, understanding, relationship, intermediary or tiered entity.<sup>39</sup>

On positions held, countries are to consider the natural person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person such as directors, chief financial officers, managers, and executive directors. If a country allows for nominee directors acting on behalf of unidentified interests, it should consider requiring disclosure of the identity of any natural persons who own or control the nominator, where the nominator is a legal person in order to prevent the misuse of the nominee director or shareholder.

For trusts and company service providers (TCSPs), who often serve as nominee directors and shareholders as a way to ensure that the names of the entity's beneficial owners are not recorded, countries should require them to be subject to

37. FATF, 2014. Guidance on Transparency and Beneficial Ownership (Recommendations 24 & 25). Oct. 2014;

38. FATF, 2014. Guidance on Transparency and Beneficial Ownership (Recommendations 24 & 25). Oct. 2014;

39. Ibid

AML/CFT obligations and should be supervised and be subject to customer due diligence (CDD) measures which include beneficial ownership information.

Other means to identify the BO include those natural persons who exert control of a legal person through other means such as personal connections to persons in positions described above or those who exert control without ownership by participating in the financing of the enterprise, or because of close and intimate family relationships, historical or contractual associations, or if a company defaults on certain payments.

Recommendation 24 also requires countries to implement the following fundamental requirements to enhance the transparency of legal persons: Keep information accurate and up to date, on a timely basis, basic and beneficial ownership information on all legal persons (including information provided to a company registry) and provide for effective, proportionate and dissuasive sanctions for any legal or natural person who fails to comply with the requirements of Recommendation 24.

Additionally, Recommendation 24 requires countries to implement measures to overcome specific obstacles to the transparency of companies such as misuse of bearer shares and bearer share warrants<sup>40</sup> by applying one or more of the following mechanisms:<sup>41</sup>

- **prohibiting them (bearer shares and bearer share warrants); or**
- **converting them into registered shares or share warrants (for example through dematerialisation), or**
- **immobilising them by requiring them to be held with a regulated financial institution or professional intermediary, and/or**
- **requiring shareholders with a controlling interest to notify the company, and**
- **the company to record their identity.**

On the other hand, Recommendation 25 of the FATF focuses broadly on beneficial ownership information of “legal arrangements” which include express trusts, that is “a trust clearly created by the settlor, usually in the form of a document (such as a written deed of trust).<sup>42</sup>

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40. Interpretive Note to Recommendation 24

41. Para 14

### Beneficial ownership information for legal arrangements should include:

- information on the identity of the settlor, trustee, beneficiaries or class of beneficiaries, protector (if any) and
- any other person exercising control over the trust.

Cognisant that not all countries have trust laws and may not recognise trusts, Recommendation 25 places specific requirements on all countries, irrespective of whether the country recognises trust law.

Therefore, all countries should implement the following measures:

- Require that trustees disclose their status to financial institutions and Designated Non-Financial Business and Professions (DNFBPs) when forming a business relationship or carrying out an occasional transaction above the threshold;
- Require professional and non-professional trustees to maintain the information they hold for at least five years after their involvement with the trust ceases;<sup>43</sup>

- Establishing a centralised registry of trusts to which disclosure must be made of the information pertaining to all trusts (optional), and
- In addition, countries should require financial institutions and DNFBPs to conduct ongoing CDD on the business relationship, and scrutinise transactions throughout the course of that relationship.

In terms of implementation of the CDD requirements in the context of legal arrangements (for example, a trust), the financial institution should: i) identify and verify the customer's identity, and ii) identify and verify the identity of any person acting on behalf of the customer, such as the trustee of the trust, and verify that any person purporting to act on behalf of the customer is so authorised.<sup>44</sup>

42. Glossary to the FATF Recommendations.

43. FATF Guidance - Transparency and Beneficial Ownership, 2014, page 31

44. Ibid, p. 37

### 4.3. Extractive Industries Transparency Initiative / GHEITI:

Beneficial ownership requirements also feature in industry and other private sector standards such as the Extractive Industries Transparency Initiative (EITI), an initiative that seeks to ensure transparency in the extractive sector and which the Ghana Extractive Industry Transparency Initiative (GHEITI) is a subset.<sup>45</sup>

One of the requirements of this EITI (Requirement 2.5) is to recommend publicly available beneficial ownership registers for corporate entities that apply for or hold an interest in the relevant industries.<sup>46</sup> According to the EITI, secret ownership structures enable some oil, gas, and mining companies, especially those with footprints in many countries, to use chains of legal ownership to avoid taxes in the jurisdictions where they actually produce, buy, or sell minerals or hydrocarbons.<sup>47</sup>

It, therefore, launched a pilot programme on beneficial ownership in relation to the extractive sector in 2016.<sup>48</sup> The pilot programme required all companies applying for or holding

a participating interest in an oil, gas, or mining license or contract in an EITI member country (Ghana is an EITI member) to disclose their beneficial owners. This information will then be made publicly available through EITI country reports and/or national registries. EITI member countries should ensure that this was done by 2020.<sup>49</sup>

The EITI requirement received legal backing when the Petroleum (Exploration and Production) Act, 2016 (Act 919) was enacted. This Act institutionalised competitive tendering in the oil and gas sector in section 10 (3). A petroleum agreement shall only be entered into after an open, transparent, and competitive public tender process. A person seeking to participate in a pre-qualification stage of a tender process shall submit an application for prequalification to the Minister stating, among others, the name, address, nationality and structure of ownership and beneficial ownerships of the person.<sup>50</sup>

Furthermore, r. 14 (3)(d) of LI 2359 states that bids to be submitted to the Minister shall include the identity of the owners including the name,

45. [https://www.gheiti.gov.gh/site/index.php?option=com\\_content&view=article&id=78&Itemid=55](https://www.gheiti.gov.gh/site/index.php?option=com_content&view=article&id=78&Itemid=55); About GHEITI

46. Extractive Industries Transparency Initiative (EITI). 2019. The EITI Standard 2019. Oslo: EITI International Secretariat.

[https://eiti.org/sites/default/files/attachments/eiti\\_standard2019\\_a4\\_en.pdf](https://eiti.org/sites/default/files/attachments/eiti_standard2019_a4_en.pdf).

47. <http://www.opengovpartnership.org/sites/default/files/FIN%20GP%20Issue%20Brief%20BO%20Disc.pdf>

48. EITI Beneficial Ownership Pilot Evaluation Report: Beneficial ownership: [https://eiti.org/sites/default/files/attachments/evaluation\\_report.pdf](https://eiti.org/sites/default/files/attachments/evaluation_report.pdf)

49. Ibid

50. Regulation 11(1)(a)(iv) of the Petroleum (Exploration and Production) (General) Regulations, 2018 (LI 2359)

nationality and country of residence, nature of the ownership and details of how ownership or control is exercised for each party constituting the bidder.

Thus, countries under the EITI, including Ghana, should maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s) and the level of ownership by 2020.

#### **4.4. Open Government Partnership**

Ghana is part of the Open Government Partnership (OGP), a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight

corruption, and harness new technologies to strengthen governance. Ghana's commitment in relation to BOT under the OGP, which builds on the OGP second action plan's commitment on Open Contracting is that, in order "To minimize corruption and tax evasion, the Government of Ghana commits to ensure the publication of information on the beneficial owners of entities winning public contracts. The government commits within the next two years to open up its contracting processes, publish contracts and provide information on the beneficial owners of the contract,<sup>51</sup> building on the existing infrastructure of the Office of the Registrar of Companies.<sup>52</sup>

51. OGP Ghana, BO (GH0022); <https://www.opengovpartnership.org/members/ghana/commitments/GHO022/>

52. Ibid



# STATE OF BENEFICIAL OWNERSHIP TRANSPARENCY IN GHANA

## 5.1. Precursor to the Establishment of BO Regime in Ghana

Ghana is a state party to both the UNCAC and the UNTOC, which require her to implement the provisions of both Conventions including those on beneficial ownership transparency. Ghana is also a member of the Economic Community of West African States (ECOWAS) and, therefore, under an obligation to implement FATF standards on anti-money laundering (AML) and counter-financing of terrorist (CFT) being undertaken by the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA), which includes examining compliance with beneficial ownership information requirements.

Mutual Evaluation Reports on Ghana by GIABA from 2009-2015 indicate that Ghana was not fully compliant with FATF Recommendations 24 & 25 on beneficial ownership information. Among other findings, Ghana had no central registration authority for the registration of Trusts. Lawyers in Ghana who provide trust services, were not regulated by any supervisor to ensure compliance with AML/CFT obligations. As a result, Ghana was blacklisted in 2009 (placed on enhanced scrutiny).<sup>53</sup>

The GIABA 24th Plenary Technical Commission/Plenary Meeting of Nov 2, 2015 (Seventh Follow-up Report on Ghana) states in part that

**“...As noted in the sixth follow-up report, the Companies (Amendment) Bill, which seeks to amend the Companies Act to require companies to provide details on Beneficial owners of shares to the Registrar-General, is still in the Attorney-General's Office. Ghana ought to ensure that it addresses this gap and ensure compliance with R, 33 and 34” (now 24 and 25)<sup>54</sup>**

There was therefore an urgent need for Ghana to ensure the passage of the Companies (Amendment) Bill in order to get out of the “blacklist” status with its attendant negative consequences.

Finally, Ghana committed to preventing the misuse of companies and legal arrangements by criminals to hide the proceeds of corruption, at the UK Prime Minister's Summit in London on Tackling Corruption in 2016. At the Summit, Ghana committed to the following:

- **strengthen further both the Companies Bill and the Petroleum (Exploration and**

53. The GIABA 24th Plenary Technical Commission/Plenary Meeting of Nov 2, 2015 (Seventh Follow Up Report on Ghana)

54. Ibid Pages 6-7

**Production) Bill that are currently before Parliament to ensure that we have public beneficial ownership information and central register for all sectors, including oil and gas sector, in line with UNCAC and FATF Recommendations as well as the Extractive Industries Transparency Initiative (EITI) standards that Ghana is implementing, and**

- **ensure that accurate and timely company beneficial ownership information, including in the extractives, is available and accessible to the public.<sup>55</sup>**

In furtherance of her obligations under international law and the commitments made regarding instituting measures to ensure disclosure of beneficial ownership information, Ghana, among other measures, passed the Companies (Amendment) Act 2016 (Act 920) (repealed) which provided for beneficial ownership information of companies and for the establishment of a Central Register of beneficial owners, among other matters.

The memorandum accompanying the Companies (Amendment) Bill 2016 was clear as to why the law was necessary.

It provides, in part, “...Over the past decades, a small minority of companies have hidden their business dealings behind a complicated web of shell companies.

**This cloak of secrecy has fuelled global corruption, money laundering, and the movement of other illicit flows.... The Panama Papers which are an unprecedented leak of about eleven point five million files from the database of the world's fourth biggest offshore law firm, have shown that Government needs to continue to take firm action on increasing beneficial ownership transparency. Critical to making beneficial ownership transparency a tool for fighting corruption and detecting inappropriate government conflicts of interest is the identification of beneficial owners who are politically exposed persons...**

55. UK Prime Minister's Summit On Tackling Corruption In London, 12 May 2016: Ghana Country Statement, May 12, 2016

**The benefits of requiring companies to keep registers include the fact that businesses can identify who really owns the companies they are trading with; countries will have easy access to the data entered in the register, so that they know who they are really going into business with; and civil society and citizens may use information entered in the register to fight corruption. Moreover, law enforcement agencies would have ease of access to critical information required to undertake their mandate..."**

Act 920 then made provisions requiring a subscriber of a company to provide the details of the subscriber as well as details of the beneficial owner in a situation where the subscriber is not the beneficial owner. The details of the beneficial owners required included name and address, the date and place of birth and proof of identity of the beneficial and the beneficial ownership is maintained.

Act 920 amended amends section 331 of the Companies Act, 1963 (Act 179) by establishing a Central Register, which was to be kept and maintained both in manual and electronic formats. The Registrar was

to co-operate with other relevant authorities for the purpose of maintaining, verifying and updating the Central register and on request and in a timely manner, make the register available to the relevant authorities for inspection.

**"Beneficial Owner"** under Act 920 was defined as **"an individual who directly or indirectly (a) ultimately owns or exercises substantial control over a person or company; b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons; c) on whose behalf a transaction is conducted; or d) who exercises ultimate effective control over a legal person or legal arrangement."**

This bold step by Ghana to introduce beneficial ownership legislation and create a BO central register made her one of the first in Africa, with La Cote d'Ivoire, Senegal, Kenya, Botswana, Egypt, Mauritius, the Seychelles and Tunisia joining later.<sup>56</sup>

After three years in operation, Beneficial ownership transparency under Act 920 (repealed) received a

56. Will Fitzbbon, 2021. Cyprus, Ghana and Kenya join growing list of countries to create beneficial ownership registries. 13 April 2021, <https://www.icij.org/investigations/panama-papers/cyprus-ghana-and-kenya-join-growing-list-of-countries-to-create-beneficial-ownership-registries/> also see Rachel Etter-Phoya, Eva Danzi and Riva Jalipa, 2020. Beneficial ownership transparency in Africa: The state of play in 2020.. June 2020

further boost with the enactment of a new Companies Act, 2019 (Act 992), which incorporated the provisions of Act 920 on beneficial ownership and elaborated some provisions on the subject. Ghana also enacted the Anti-Money Laundering Act 2020 (Act 1044) and a new Insurance Act 2021 (Act 1061).

## 5.2. Legal and Regulatory Framework of BO

As of 2016, when Act 920 was in operation, the legal, regulatory and compliance framework consisted of the following, among others:

- Petroleum (Exploration and Production) Act, 2016 (Act 919), and its regulations
- Securities Industry Act, 2016 (Act 929);
- Bank of Ghana Act, 2002 (Act 612) (as amended)
- Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930);
- Anti-Money Laundering Act, 2007 (Act 749) as amended (repealed)
- Insurance Act 2006 (Act 724);
- Incorporated Partnerships Act 1962 (Act 152);
- Registration of Business Names Act, 1962 (Act 151);
- Public Trustees Act, 1952 (No. 24);
- Trustees (Incorporation) Act, 1962 (Act 106);
- Central Securities Depository Act, 2007 (Act 733)
- Bank of Ghana and FIC AML/CFT & P Guidelines for Banks and Non-Bank Financial Institutions in Ghana July, 2018;
- SEC/FIC AML/CFT Compliance Manual for CMOs, and
- NIC/FIC AML/CFT Guideline for Insurance Companies and Intermediaries (2018).

Thus, the legal, regulatory and compliance framework that guides the operations of the principal agencies responsible for beneficial ownership information of companies, financial institutions, trusts and legal arrangements/entities include those in operation in 2016 and the new legislation enacted thereafter, such as the Companies Act 2019 (Act 992), the Anti-Money Laundering Act, 2020 (Act 1044) and the Insurance Act 2021 (Act 1061).

Correspondingly, Ghana has multiple regulatory and supervisory institutions for companies, financial institutions and other specialised deposit taking institutions. They include the Registrar of Companies, the Bank of Ghana (BOG), the Securities and Exchange Commission (SEC) and the National Insurance Commission (NIC). Ghana also established the Financial Intelligence Centre (FIC), to, among other objects, assist in the identification of proceeds of unlawful activity, assist in the combat of money laundering and other related offences, and make information available to investigating authorities and other competent authorities to facilitate the administration and enforcement of the laws of the Republic of Ghana.<sup>57</sup>

### 5.3. Beneficial Ownership of Legal Persons

Ghana's beneficial ownership framework, established under the Companies Act 2019 (Act 992), provides a comprehensive definition encompassing both direct and indirect ownership. The Act defines beneficial owners as natural persons who ultimately own or exercise substantial control over a company, including those who receive significant economic benefits or exercise

control through formal or informal arrangements. The framework includes detailed provisions for Politically Exposed Persons (PEPs), covering both domestic and foreign officials along with their associates. The Act implements a risk-based approach to ownership thresholds, setting different levels based on sector risk and PEP status: 5% for high-risk sectors (such as extractives and financial institutions), no threshold for local PEPs, 5% for foreign PEPs, and 20% for other companies.

### 5.4. Types of Legal Persons subject to BO under Act 992

Under Act 992, the companies that may be incorporated in Ghana and which are subject to BO requirements are:

- a company limited by shares;
- a company limited by guarantee;
- an unlimited company<sup>58</sup>; or
- an external company,<sup>59</sup> and
- extractive sector companies

The Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930), provides that the Act applies to

57. See section 7 of Act 1044

58. S. 12 of Act 992

59. S. 329 of Act 992

banks, specialised deposit-taking institutions, financial holding companies, and their affiliates,<sup>60</sup> and that it shall be read together with the Companies Act, 1963 (Act 179) [now Act 992] and shall not, except as otherwise provided in the Act, derogate from the provisions of that Act.<sup>61</sup>

Under s. 4 of Act 930, a person shall not carry on a deposit-taking business in or from within the country unless that person is a body corporate formed under the laws of this country. Sections 1, 2, and 4 of Act 930 read together suggests that BO requirements under the Companies Act 992 would apply to Banks and deposit taking institutions as only a body corporate formed under the laws of this country [companies Act] is allowed to operate a bank, specialised deposit-taking institution, financial holding company, and their affiliates.

Apart from the above listed corporate entities, the requirement for BO information also extends to companies in the oil and gas sector pursuant to Reg. 11(1)(a)(iv) of the Petroleum (Exploration and Production) (General) Regulations, 2018 (LI 2359) which provides that a person seeking

to participate in a pre-qualification stage of a tender process shall submit an application for pre-qualification to the Minister stating, among others, the name, address, nationality and structure of ownership and beneficial ownerships of the person and r. 14 (3) that requires bids to be submitted to the Minister with information on the identity of the owners, nature of the ownership and details of how ownership or control is exercised for each party constituting the bidder. This extension is also in line with the GHEITI/EITI requirements.

Indeed, since October 2020, any person who registered a company in Ghana to operate in the extractive industry had to provide the data on who the beneficial owners of the company are through the Ghana Extractive Industries Initiative (GHEITI, subset of EITI) with the support of the Registrar-General/Registrar of Companies.<sup>62</sup>

The types of corporate vehicles usually subject to misuse by criminals, such as companies (national and those established outside the country) have been covered under the Act and complies with both the international standards already set out above.

60. Section 1(1) of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)

61. s.2. (1) of Act 930

62. Register-General to Deploy New Central Beneficial Ownership Register: GNA, 9 September 2020: <https://gna.org.gh/2020/09/registrar-general-to-deploy-new-central-beneficial-ownership-register/>

## 5.5. Definition and Scope

Act 992 defines “**beneficial owner**” as “... *an individual (a) who directly or indirectly ultimately owns or exercises substantial control over a person or company; (b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons; (c) on whose behalf a transaction is conducted; or (d) who exercises significant control or influence over a legal person or legal arrangement through a formal or informal agreement.*”<sup>63</sup>

Though Act 992 does not expressly provide the ownership threshold, the Registrar in an FAQ on the subject, stated that beneficial owners must be reported where the owner directly or indirectly ultimately holds an interest in the company of at least 5% or more ownership threshold for companies classified under high-risk sectors (mining, for example) and beneficial owners who are non-Ghanaian politically exposed persons. In terms of beneficial owners who are Ghanaian politically exposed persons, any amount of interest in the company, however small, shall be reported and 10% or more ownership threshold for all other cases.<sup>64</sup> Thus, the BO regime in Ghana introduces a

threshold of between 5-10% or more for the respective beneficial owners.

Nigeria adopts a 5% threshold for all persons of significant control. In contrast, Kenya has adopted a threshold of “10% of the issued shares in the company either directly or indirectly, or exercises at least 10% of the voting rights.”<sup>65</sup> In Tunisia, the threshold is “20% of the share capital or voting rights in the entity.”<sup>66</sup> There are no thresholds for BO in Botswana, as all beneficial owners are to be registered. Botswana, therefore, joins three other countries worldwide (Argentina, Ecuador, and Saudi Arabia) which require all beneficial owners with just one share to register since the definition of a beneficial ownership does not include control through other means separate from ownership.<sup>67</sup>

It is widely accepted that in order to ensure that ownership of the legal entity is not intentionally split up by individuals to avoid detection and disclosure, the lower the threshold the better. Ideally, therefore, beneficial owners should be registered for any individual who ultimately owns, directly or indirectly, at least one share or has the right to at least one vote.<sup>68</sup>

63. First Schedule of s. 383

64. See “Beneficial Ownership Help Desk-Frequently Asked Questions” issued by the Office of the Registrar of Companies, Ghana

65. Karabo Rajuili, 2020. Beneficial Ownership reform in Africa: analysing progress in Ghana, Kenya, and Nigeria

66. Ibid

67. Rachel Etter-Phoya, Eva Danzi and Riva Jalipa, 2020. Beneficial ownership transparency in Africa: The state of play in 2020.. June 2020

68. Rachel Etter-Phoya, Eva Danzi and Riva Jalipa, 2020. Beneficial ownership transparency in Africa: The state of play in 2020.. June 2020

**On this score, it is recognised that Ghana's 5% and “any amount however small”, is a good approach. Thus, the definition of BO under Act 992 is in accord with the internationally accepted definition of beneficial owner.**

However, a different definition of BO under the Anti-Money Laundering Act 2020 (Act 1044) has been provided. Act 1044 which constitutes part of the legislative framework for the BO regime in Ghana and meant to support the fight against money laundering, provides in section 63 thereof that:

**“beneficial owner” means: (a) a natural person who ultimately owns or controls the right to or a benefit from property, including the person on whose behalf a transaction is conducted; or (b) a natural person who exercises ultimate effective control over a legal person or legal arrangement”**

Act 1044, for instance, omits from the definition, **“who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons, or (d) who exercises significant ... through a formal or informal agreement” as provided in Act 920.**

**In our view, the same BO regime should not have a definition of BO under Act 992, which is different from the definition of BO under the anti-money-laundering legislation when indeed, the legislation seeks to prevent corruption, money laundering and other offences. It would therefore be important that the ORC and the FIC consider having the definition of BO in Act 1044 and Act 992 harmonised.**

## **5.6. Obtaining and Recording of BO Information by Company Registries**

Companies in Ghana provide beneficial ownership information on incorporation of the company, annually on submission of returns and within 30 days after changes have occurred in the BO information. Companies that existed before the coming into force of Act 992, were to provide the BO information on each BO to the Registrar for registration.<sup>69</sup> An external company which establishes a place of business in the country, shall, within one month of the establishment of the place of business, deliver BO information to the Registrar for registration,<sup>70</sup> and where an alteration occurs in the BO information, to deliver to the Registrar for registration notice giving details of the alteration within two months of the alteration.<sup>71</sup>

69. 35 (1) of Act 992

70. Section 330 (1) of Act 992

71. Section 331(2) of Act 992



### 5.6.1. Incorporation of a Company

BO information is provided to the Registrar on an application to incorporate a company in Ghana together with other particulars such as: the name of the company; the nature of the proposed business in the case of a company registered with an object; the address of the proposed registered office and principal place of business of the company in the Republic, the telephone number and the post office box, private mail bag or digital address of the registered office of the company, the electronic mail address and website of the company, if available.<sup>72</sup>

In addition, the law provides that the following particulars, among others, should be provided the Registrar: in respect of each **Beneficial Owner** (BO Information) of the proposed company,<sup>73</sup>

- (i) the full name(s) and any former or other name;
- (ii) the date and place of birth;
- (iii) the telephone number;
- (iv) the nationality, national identity number, passport number or other appropriate identification and proof of identity;

(v) the residential, postal or email address, if any;

(vi) place of work and position held;

(vii) the nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; amount of authorised shares of the company for each class, if the company has shares;

(viii) confirmation as to whether the beneficial owner is a **politically exposed person (PEP)**.

The following details in the case of a company that has shares:

- (i) the amount of proposed stated capital,<sup>74</sup> (ii) the number of authorised shares of the company for each class.

Politically Exposed Person is defined under the Act as “**a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organisation including, [Head of State or Head of Government], senior political party official, government, judicial or military official, a person who is or has been an executive of a State owned company, a senior political party official in a foreign**

72. S.13 (2) of Act 992

73. S.13(2)(m) of Act 992.

74. Stated Capital as defined in s. 68 includes the total proceeds of every issue of shares for cash, including the amounts paid on calls made on shares issued with an unpaid liability, less deductions for transactions

costs that are direct and incidental to share issue, and the total value of the consideration, as stated in the agreement, received for every issue of shares otherwise than for cash.

**country, and an immediate family member or close associate of...” the person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organisation.<sup>75</sup>**

The following particulars are required of each subscriber for a proposed company with shares:

- the full name and any former or other name;
- the date and place of birth;
- the telephone number;
- the nationality and proof of identity;
- the residential, postal or email address, if any; and
- place of work and position held.

Section 55 (1) of the Act further requires a company to, within two months after the issue of any of the shares of the company or after the registration of the transfer of a share, deliver to the registered holder of the share, a certificate certified by one director and the Company Secretary indicating (a) the number and class of shares held by that holder and the definitive numbers of the shares, (b) the amount of money paid on the shares and the amount remaining unpaid, and (c) the name and address of the registered holder.

Section 13 of Act 992 identifies the natural persons who could be considered as beneficial owners on the basis that they are the ultimate owners of the companies under the Act, either through their **ownership interests**, or through **positions** held within the company. Thus, section 13 covers those who directly or indirectly hold a minimum percentage of ownership interest of 5 -10, shareholders who exercise control alone or together with other shareholders. It covers directors, secretary and auditor, that is, those who are responsible for strategic decisions or the general direction of the company, and auditors. The law also makes provision for those beneficial owners who ultimately own companies through other means, such as those on whose behalf a transaction is conducted or through a formal or informal agreement. **This is in compliance with the required international standards on who may be a beneficial owner.**

**Company Register:** Each company is to keep BO information of its members and shareholders in the register of the company upon incorporation and keep the BO information updated.<sup>76</sup> The BO information to be entered into the company register include:

75. Section 383, First Schedule of Act 992

76. S. 35(1) of Act 992

(a) in respect of members of the company:

- the names and addresses of the members and, in the case of a company having shares, a **statement of the shares held by each member**, and of the amount paid, or agreed to be considered as paid, on the shares of each member, and of the amount remaining payable on the shares;
- (ii) the date at which a person was entered in the register as a member;
- (iii) the date at which a person ceased to be a member; and

(b) in respect of each beneficial owner of the company:

- the full name and any former or other name of the beneficial owner;
- (ii) the date and place of birth;
- (iii) the telephone number;
- (iv) the nationality, national identity number, passport number or other appropriate identification, and proof of identity;
- (v) residential, postal and email address, if any;

- (vi) place of work and position held; (vii) the nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and (
- viii) a confirmation as to whether the beneficial owner is a politically exposed person.

Section 35 (2) of the Act provides that where a member of a company is not the beneficial owner, that member shall provide the company with the particulars of the beneficial owner at the time of becoming a member and update the company within twenty-eight days of a change in the particulars so submitted, and the company shall enter the particulars the member provided within twenty-eight days of the conclusion of the agreement with the person to become a member.

**Bearer Shares and Nominees:** section 35 (2) of Act 992 helps to overcome specific obstacles to the transparency of companies such as misuse of bearer shares (shares to bearer) and bearer share warrants, by expressly requiring the filing of particulars for registration of the company, where a subscriber is not the beneficial owner

of the interest and the name, date and place of birth, telephone number, nationality and proof of identity, among other details, must be provided of the beneficial owner.

In terms of nominees, section 61(1) of Act 992, provides that **“a company may acquire its own shares by a voluntary transfer to the company to nominees for the company...”**

By operation of section 13(2) of Act 992, individuals or entities who may hold shares on behalf of other persons (i.e., beneficial owner), shall provide the particulars required under that section. Furthermore, under s.30 (10) of Act 1044, a nominee in relation to shares and debentures shall maintain relevant information on **beneficial ownership**<sup>77</sup> where the nominee acts as the legal owner on behalf of any other person.

**Thus, the Ghana BO regime does not prohibit bearer shares and nominees but beneficial owners of those shares and their particulars and nominees must be disclosed.** As the Registrar observed: **“Some people can assign a 'nominee' in relation to their shareholding or directorship position at the board and they would be at the**

**back end controlling affairs, they would have a legal arrangement with such persons that we would not be privy to...but things have changed now.”**<sup>78</sup>

**Therefore, Ghana is one of the countries where bearer shares pose no risk.**<sup>79</sup> As such, Ghana is in compliance with FATF Recommendation 24 which requires countries to take measures to overcome specific obstacles to the transparency of companies such as misuse of bearer shares.

Sanctions may be imposed on a member who fails to provide the company with the BO information or provides false or misleading information. The Act provides that such member or person commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units<sup>80</sup> and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or to both: s.35(14) of Act 992.

A company that has shares may, if so required by the constitution of the company, keep in a country outside

77. "beneficial owner" means (a) a natural person who ultimately owns or controls the right to or a benefit from property, including the person on whose behalf a transaction is conducted; or (b) a natural person who exercises ultimate effective control over a legal person or legal arrangement.

78. Register-General to Deploy New Central Beneficial Ownership Register: GNA, 9 September 2020: <https://gna.org.gh/2020/09/register-general-to-deploy-new-central-beneficial-ownership-register/>

The other countries are Botswana, Cameroon, Egypt, Gambia, Mauritius, Nigeria, Rwanda, Seychelles, Tunisia (see Rachel Etter-Phoya, et al, 2020).

79. The other countries are Botswana, Cameroon, Egypt, Gambia, Mauritius, Nigeria, Rwanda, Seychelles, Tunisia (see Rachel Etter-Phoya, et al, 2020).

80. One (1) penalty unit is equivalent to GHC12.00

Ghana, a branch register<sup>81</sup> of shareholders or debenture<sup>82</sup> holders or beneficial owners residing in that country or in any other country outside Ghana. Where the company has a branch register, it shall give to the Registrar, a notice of the location of the office where the branch register is kept and any time there is change in location and the discontinuance of the branch register, if it is discontinued. The notice of the opening of the branch office or of the change or discontinuance shall be provided the Registrar within twenty-eight days and in default, the company and every officer of the company who is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues: s. 106 of Act 992.

A company may arrange with any other person, to be known as the registration officer (RO), for the making up of the register to be undertaken on its behalf but where the RO defaults in complying with the requirement to make up the company register, the RO is liable to the same penalties as if the RO were an officer of the company (s. 35 (12) of Act 992).

### 5.6.2. Filing Annual Return:

Each company in Ghana<sup>83</sup> shall, at least once in every year, deliver to the Registrar for registration an annual return which shall include particulars of every beneficial owner of that company,<sup>84</sup> such as the following:

- (a) the full name and any other former or other name;
- (b) the date and place of birth;
- (c) the telephone number;
- (d) the nationality, national identity number, passport number or other appropriate identification, and proof of identity;
- (e) residential, postal and e-mail address, if any;
- (f) place of work and position held;
- (g) the nature of interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
- (h) confirmation as to whether the beneficial owner is a politically exposed person.

81. A branch register is a part of the principal register of members, debenture holders or beneficial owners of the company, and is subject to the same requirements regarding BO information as the principal company: s. 107 (1) of Act 992.

82. Debenture includes a bond or an obligation; (e) loan stock; (f) an unsecured note; or (g) any other instrument executed, authenticated,

issued or created in consideration of such a loan or existing indebtedness (s. 383 of Act 992)

83. section 126 (1) of Act 992

84. Fifth Schedule of section 126 of Act 992

A company and every officer of the company that defaults in filing an annual return may be liable to pay to the Registrar, an administrative penalty of twenty-five penalty units [i.e., GHC300] for each day during which the default continues.<sup>85</sup>

A company shall keep [at the registered office of the company or at any other place in Ghana that the directors consider fit] proper accounting records with respect to the financial position and changes in the accounting records, and with respect to the control of and accounting for assets acquired whether for resale or for use in the business of the company.<sup>86</sup>

### 5.6.3. Central Register of BO with Registrar.

The Registrar of Companies is required to maintain a central register and make basic and beneficial ownership information available to the public and to law enforcement authorities under s. 373 of Act 992. The Central Register (the Register) shall capture beneficial ownership data of legal persons/corporate entities established in the country.<sup>87</sup> Particulars required to be captured in the Register are elaborate and contain identification information of the beneficial owners required to be

submitted for registration of the company including those beneficial owners who are PEPs.

The Registrar shall keep and maintain the Central Register both in manual and electronic formats.<sup>88</sup> Companies are required to submit this information to the Registrar for registration within twenty-eight days of making an entry in respect of each BO.

In the case of an external company, it shall, within one month of the establishment of a place of business in Ghana, deliver to the Registrar for registration, a statement duly notarised in the jurisdiction of origin of the company giving the particulars regarding the beneficial owners of the company including the nationality and national identity number or passport number or any other appropriate identification of the BO and a confirmation as to whether the beneficial owner is a politically exposed person apart from other information similar to those of domestic companies.<sup>89</sup>

Under Act 992, though the Registrar is to collaborate with other authorities for the purpose of maintaining, verifying and updating the Central

85. Section 126(7) of Act 992

86. *Ibid.*, Section 127 (1)

87. *Ibid.*, Section 373

88. s. 373(2)(a) of Act 992

89. Section 330 (1) of Act 992

Register,<sup>90</sup> the Act does not give a hint as to who the **“other authorities”** may be. This is unlike the repealed Companies (Amendment) Act, 2016 (Act 920), which required the Registrar to collaborate with “other competent authorities” for the purpose of maintaining, verifying and updating the Central Register (s. 331A(3)(a) of Act 920) and defined **“competent authority”** to mean: *“a public authority with designated responsibilities for combating money laundering or terrorist financing, in particular, the Financial Intelligence Centre and any other authority that has the function of investigating or prosecuting money laundering and associated predicate offence and terrorist financing”* [see section 331A (4) of Act 920]

The law further provides that the Minister, shall by regulations provide for the procedure for collection, authentication, verification or rectification of information entered in the Central Register [s. 373(8)(b) of Act 992]. As at the time of this Report in 2023, the Minister was yet to make these regulations.

On authentication, verification of BO information provided the Registrar, it has been observed that the Registrar only ensures that the information provided to it is complete but the Registrar does not specifically verify the accuracy or currency of the information she/he receives or the authenticity of the documents submitted. That, the Registrar operates on the assumption that the information which has been provided to the ORC is accurate because documents submitted to the Registrar must be original documents or certified copies of the original and that the submission of false information to the Registrar is a criminal offence.<sup>91</sup>

Up-to-date beneficial ownership information is essential to ensuring that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons and arrangements and which competent authorities in the country can obtain or access in a timely fashion.

**The inadequate mechanism to specifically verify the accuracy or currency of the BO information at the outset, combined with the delay in passing the regulations envisaged under the law, may render the BO regime weaker.**

90. S. 373 (3) (a) of Act 992

91. GIABA (2018). Anti-money laundering and counter-terrorist financing measures- Ghana Mutual Evaluation Report, GIABA, Dakar, Senegal. para 277 @ page 96

#### 5.6.4. Access to Basic BO Information

Under the law, investigative and other competent authorities and the public shall have access to BO information of legal persons or companies in respect of each company registry and the Central Register.

In terms of access to BO Information in the individual **company registers**, the index of the names of the members of the company and the index of the names of beneficial owners of the company shall, during business hours, and subject to reasonable restrictions that the company may impose, **be open for the inspection of a member without charge, and any other person on payment of a reasonable fee prescribed by the company**, for each inspection for a period of not less than two hours each working day: s. 36 of Act 992. Copies of the company register or any part thereof may also be made on payment of a fee prescribed by the company and the company shall send the copy to that person who requires it within a period of ten days from the day the company receives the request from the person.

Every officer of the company that is in default of the requirement of inspec-

tion or to provide a copy, is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units [GHC300.00] for each day during which the default continues in respect of each default.

On access to BO Information in the Central Register, “relevant authorities” and the public shall have access to the CR to the extent that the law permits.<sup>92</sup> In order that these authorities may access the BO information, they have to make a request to the Registrar, who shall, “...in a timely manner, make information entered in the Central Register (CR) available to the **relevant authorities** for inspection”.<sup>93</sup>

The Registrar, in an FAQ paper, stated that **“if a lawful request comes from a Competent Authority of the Government of the Republic, all the particulars of beneficial owners contained in the Central Register named in the request will be shared with that Authority.”**<sup>94</sup>

This adds another dimension to the type of authorities that may have access to the central register at the ORC, namely, “relevant authorities” under s. 373 (3) (b) of Act 992 and “Competent Authority.”

92. GIABA (2018). Anti-money laundering and counter-terrorist financing measures- Ghana Mutual Evaluation Report, GIABA, Dakar, Senegal. para 277 @ page 96

93. Section 373 (3)(b) and ©

94. See Beneficial Ownership Help Desk-Frequently Asked Questions” issued by the Office of the Registrar of Companies, Ghana.



**This implies that no relevant authority can access the BO information in the CR without the knowledge and approval of the Registrar. The law does not define “relevant authorities.” It is, thus, left to the discretion of the Registrar to determine whether the authority making the request is a relevant authority.**

But it would appear that a “competent authority of the Government of the Republic,” could be a relevant authority from the FAQ issued by the Registrar.

On **access to the CR by the Public**, the Registrar shall, make an electronic format of the Central Register available to members of the public for inspection in line with open data best practices.<sup>95</sup> What is “open data best practices” under the Act is not stated. However, as currently being used worldwide, “open data” means data that is freely downloadable, searchable, and reusable by the public, without a fee, proprietary software, or the need for registration.<sup>96</sup> In other words, data is open if anyone is free to use, re-use or redistribute it, subject at most, to measures that preserve its origin or source and openness.<sup>97</sup>

According to the Registrar, the following information on each beneficial owner can be made available to the public from the CR:

**Full Name and any former Names; Month and year of birth; Place of birth; the percentage of the beneficial ownership interest; Declaration on whether the natural person meets the definition of Politically Exposed Person.**<sup>98</sup>

Here, it is not the electronic format of the Central register that is being made available to the public but some of the information in the CR as opposed to the dictates of section 373 (c) of the Act.

Ecuador, Ireland and Estonia are shining examples. These countries provide free online access to beneficial ownership information.<sup>99</sup>

In terms of BO information of a listed company, the Registrar will also make available to the public the following: the percentage of shares listed on a recognised Stock Exchange; the name of each Stock Exchange on which the shares are listed; the web address of the page which gives details of the listing for each Exchange named.<sup>100</sup>

95. Section 373(3)(c) of Act 992

96. Enhancing Government Effectiveness and Transparency: The Fight against Corruption, p. 252

97. Ibid

98. Beneficial Ownership Help Desk-Frequently Asked Questions” issued by the Office of the Registrar of Companies, Ghana.

99. Harari and others, State of Play of Beneficial Ownership - Update 2020, 35.

100. Ibid

In respect of Government-owned companies, the public can be informed about: the percentage of ownership of each Government Agency; the name and address of each Government Agency that is a beneficial owner; the nationality of each Government Agency and the Country of incorporation of the Government-owned company, if different;<sup>101</sup> the following details of each Government official who exercises control: tax identification number (TIN), Full name and any former names, Position and date appointed, Nationality, Contact address and Method by which control is exercised.”<sup>102</sup>

Public access to extractive sector company data on BO held by the Registrar, will be made available through Ghana EITI reporting in accordance with the commitment made by government under the GHEITI/EITI and OGP.

The Act makes provision for **exemption** of disclosure of BO information to the public for security and personal safety reasons, among others, of the beneficial owner. The Registrar may withhold [exempt from public access] and not disclose BO information in the

Central Register on application by that person to the Registrar “...if they can provide evidence (police reports of threats, Police assessment of the level of threats, public statements by violent groups, among others) that as a result of that information being disclosed, there is an immediate threat of:

**i) Risk to their physical safety or the physical safety of family members especially the threat of serious injury or death, ii) attack against their home or normal place of work, iii) kidnap of them or their family members, iv) blackmail or extortion against them or their family members, v) significant Financial loss through criminal activity.**<sup>103</sup>

In such situations, the information usually exempted are the full dates of birth and residential addresses of beneficial owners, among others.<sup>104</sup> By the standards, the Registrar or similar body does not predetermine what information to exempt. The person who wants an exemption provides the reasons for requesting for exemption.

101. Ibid

102. Ibid

103. section 373(2)(a) of Act 992.

104. Ibid

Generally, the exemption policy of Ghana's BO regime is consistent with international best practice. Individuals who are concerned that public access to their beneficial ownership information could expose them to the risk of falling victim to criminal offences (e.g., fraud, robbery, kidnapping, hostage-taking, blackmail, extortion, coercion, threat, violence or intimidation), may apply to the Registrar or a similar body to have his/her beneficial ownership information with the CR exempted from public access.<sup>105</sup>

**However, the policy/decision to disclose some and not all BO information to the public, whether or not there is a request from a beneficial owner not to disclose the information seems to fall outside the law. The nature of access to BO information as currently stands, goes contrary to the open data principles and therefore falls short of international best practice on access to BO information.**

Despite this shortfall, Ghana's BO Regime in terms of public access is a lot better than some African counterparts. In Kenya, for instance, until the recent amendment of the BO law,<sup>106</sup> BO information may be accessed only

by competent authorities and the public can also access the information by order of a court of competent jurisdiction or with the consent of the beneficial owner concerned and persons who disclose BO without the requisite authority, may liable to pay criminal sanctions.<sup>107</sup>

Under s. 373 (8) of Act 992, the Minister responsible for Justice, may, by legislative instrument, make Regulations to prescribe, among others, the (a) mode and format for the submission of particulars required to be entered in the Central Register; (b) procedure for companies to maintain up to date and accurate records of beneficial ownership; (c) procedure for collection, authentication, verification or rectification of information entered in the Central Register. The Minister may also, on the advice of the Board, by legislative instrument, make Regulations prescribing the template for beneficial ownership data required to be submitted to the Registrar: s. 381(2) of the Act. **These regulations were yet to be made 3 years on.**

105. Approaches to Beneficial Ownership Transparency, p. 15

106. <https://www.businessdailyafrica.com/bd/corporate/companies/private-companies-beneficial-owners-search-fee-at-sh600-4486176>

107. Harari and others, State of Play of Beneficial Ownership - Update 202

## 5.7. Financial Institutions and Non-Bank Institutions

Apart from beneficial ownership information on legal persons at the registries of companies established in Ghana and the Central Register held by the Registrar of Companies, beneficial ownership information, by international standards, should also be obtained from financial institutions (FIs), Designated Non-Financial Business and Professions (DNFBPs) including trusts.

### 5.7.1. Verification of the identity of beneficial owners and CDD:

Ghana's Anti-Money Laundering Act, 2020 (Act 1044) provides for measures requiring financial institutions and DNFBPs among other entities, to identify and take reasonable measures to verify the identity of the beneficial owner as additional supplementary measures relating to BOT as well as effective monitoring and supervision of FIs and DNFBPs to ensure that they comply with customer due diligence (CDD) requirements.

Act 1044 defines "beneficial owner" as *(a) a natural person who ultimately owns or controls the right to or a*

*benefit from property, including the person on whose behalf a transaction is conducted; or (b) a natural person who exercises ultimate effective control over a legal person or legal arrangement: s. 63 of Act 1044*

Regulation 16 of the Anti-Money Laundering Regulations, 2011(L.I. 1987) provides for taking of beneficial ownership information under, **"verification of identity of beneficial owners"** that an accountable institution<sup>108</sup> or FI for that matter, shall:

- identify a beneficial owner
- take reasonable measures to verify the identity of a beneficial owner by obtaining from the beneficial owner, that beneficial owner's full name, date of birth, current permanent residential address, nature of business, National Identification Card number, valid passport number, valid driving licence number or current National Health Insurance Card number, spouse's name, address of spouse and relationship between the beneficial owner and the client.

108. By First Schedule to sections 28, 30(18) and (19), 62 and 63 of Act 1044, an accountable institution includes an entity or a person that conducts as a business, one or more of the following activities or operations for or on behalf of a customer: accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, bank draft, orders or by any other means; dealing in shares, stocks, bonds etc on behalf of other persons; any other business

activities that the Bank of Ghana or the Securities and Exchange Commission may prescribe or recognise as being part of banking or securities business, a lawyer, a notary or an accountant, a trust and company service provider, a nominee; and a virtual asset service provider.

Furthermore, FIs are required to put in place measures to (a) identify politically exposed persons and other persons whose activities may pose a high risk of (i) money laundering; (ii) terrorist financing; or (iii) financing of proliferation of weapons of mass destruction; and (iv) tax evasion; and (b) manage the risk associated with **politically exposed persons** and other persons. The measures include undertaking enhanced identification, verification and ongoing due diligence procedures with respect to PEPs: s. 30 (6) of Act 1044.

A "politically exposed person" is defined under section 63 of Act 1044 as *"(a) a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organisation including (i) a Head of State or Head of Government; (ii) a senior political party official, government, judicial or military official; (iii) a person who is or has been an executive of in a state-owned company of a foreign country; or (iv) a senior political party official in a foreign country; and (b) an immediate family member or close associates of a person referred to in paragraph (a)"*

(that is, the list of the four (4) persons who were or have been entrusted with a prominent public function in this country, a foreign country or an international organisation).

Para 1.11 (e) of the BOG/FIC AML/CFT Guidelines specify that FIs shall take reasonable measures to establish the source of wealth and the sources of funds of customers and beneficial-owners identified as PEPs and report all anomalies immediately to the FIC and other relevant authorities

**It has to be noted that the definition of PEPs under Act 1044 is slightly different from the definitions provided in Act 992 and the Petroleum (Exploration and Production (General) Regulations, 2019 (LI 2359), in that, while Act 1044 specifically mentions "Head of State or Head of Government" as one of the persons who are or who have been entrusted with a prominent public function in this country, a foreign country or an international organisation, whereas Act 992 and LI 2359 do not expressly mention "Head of State or Head of Government" as such persons. For consistency, the definition of PEPs under Act 992, reg. 80 of LI 2359 and 1044 should be harmonised.**

Under section 30 of Act 1044, FIs shall apply **customer due diligence** measures in a number of situations including when establishing business relations, in carrying out occasional transactions above designated threshold set by the supervisory authority, in carrying out occasional transactions that are wire transfers, where there is a suspicion of money laundering or terrorist financing and the financing of the proliferation of weapons of mass destruction, regardless of any exemptions or thresholds; or where the FI has doubts about the veracity or adequacy of previously obtained customer identification data.

FIs may appoint an intermediary or third party to perform some of the elements of the customer due diligence measures,<sup>109</sup> but that FI bears the ultimate responsibility for customer identification and verification.<sup>110</sup> (s. 30 (13) of Act 1044).

Furthermore, paragraphs 2.0.-2.1. of the Anti-Money Laundering Combating the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction AML/CFT & P Guidelines for Banks and Non-Bank Financial Institutions in Ghana, 2018, provide that FIs shall not establish a business relationship until all relevant

parties to the relationship have been identified and the nature of the business they intend to conduct ascertained. That, the first requirement of knowing your customer for money laundering purposes is for the accountable institution to be satisfied that a prospective customer is who he/she is or claims to be.

### 5.7.2. Correspondent Banking/Shell Banks

The law does not approve of corresponding banking. By section 30 of Act 1044, a bank shall not be established in this country if the bank does not maintain a physical presence within this country and the bank is not affiliated to a regulated financial group subject to effective consolidated supervision. Section 48 makes it an offence for a person to open an anonymous account or an account in a fictitious name for a customer. Such a person commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units [GHC1,200] and not more than ten thousand penalty units [12,000 GHC] or to a term of imprisonment of not less than twelve months and not more than five years or to both.

109. Section 30 (3) and (4) of Act 1044.

110. Section 30 (13) of Act 1044.

A dealer in precious metals and precious stones and a trust and company service provider (as accountable institutions) which, as a business, prepares for or carries out transactions on behalf of a customer in relation to acting as registration or management agent of a legal person, acting as, or arranging for another person to act as a trustee of an express trust or a similar arrangement, among other third-party business, shall not enter into or continue business relations with a bank in a jurisdiction where the bank is not physically present (Shell Bank<sup>111</sup>) and is not affiliated with a regulated financial group subject to effective consolidated supervision.

Similarly, the BOG/FIC guidelines in para 1. 21 on “SHELL BANKS” provide that Financial institutions are not allowed to establish correspondent relationships with high-risk foreign banks (e.g. shell banks) or with correspondent banks that permit their accounts to be used by such banks. FIs shall take all necessary measures to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. Similar provisions can be found in paragraph 10 of SEC AML/CFT Manual, 2011.

### 5.7.3. Suspicious Transaction Reports

“Suspicious transaction” means a transaction that appears to involve or to be connected to unlawful activity and FIs are expected to report such transactions to competent authorities/FIC within twenty-four hours after the knowledge or suspicion was formed: s. 38 of Act 1044.

Act 1044 defines “competent authority” to include.

- Financial Intelligence Centre;
- Narcotics Control Commission;
- Economic and Organised Crime Office;
- Police Service;
- National Security Council Secretariat;
- Office of the Registrar of Companies;
- the Office of the Attorney-General;
- National Intelligence Bureau (formerly Bureau of National Investigations);
- Bank of Ghana, and
- any other unit or institution concerned with combating money laundering, financing of terrorism and financing of the proliferation of weapons of

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111. Paragraph 1.21 of the BOG/FIC Guidelines on “SHELL BANKS” explains what it is.

mass destruction under this Act or under any other relevant enactment.

**It is the view that the definition of “competent authority” under Act 1044, leaves out other critical authorities such as the Office of the Special Prosecutor, an office responsible of investigating and prosecuting corruption and recovery of proceeds of crime, the Commission on Human Rights and Administrative Justice, which is responsible for investigating corruption and illegal acquisition of wealth. In fact, on illegal acquisition of property which is an offence / misconduct under chapter 24 of the 1992 Constitution, the law is that CHRAJ is the only institution amongst the listed competent authorities to investigate allegations related to illegal acquisition of property. Therefore, in order to close all potential loopholes in the BO regime and since corruption and illegal acquisition of wealth or property constitute “unlawful activity,” it is recommended that the CHRAJ and the OSP, be included as “competent authorities,” added which calls for the amendment of Act 1044 in that regard.**

#### **5.7.4. Record-keeping:**

Section 32 (1) of Act 1044 mandates FIs to keep books and records with respect to its customers and transac-

tions and ensure that the records and underlying information are available on a timely basis to the Centre and other competent authorities. The books and records to be kept by the accountable institution include account files, business correspondence and copies of documents evidencing the identities of customers and beneficial owners, records of transactions sufficient to reconstruct each individual domestic or international transaction, and copies of suspicious transaction reports.

The records and books shall be kept for not less than five years, after the business relationship has ended or from the date of the transaction; or from the date the report was made to the FIC, as appropriate: **s. 32 (3) of Act 1044.**

An accountable institution may appoint a person to keep records on behalf of the accountable institution and shall, within seven days after the appointment, inform the Centre, in writing, of the appointment. However, the AI shall not be relieved of ultimate responsibility to comply with the requirements on keeping of books, records and transactions with respect to its customers: **s. 32 (6) of Act 1044.**



## 5.8. Trusts, Foundations, and Partnerships.

**Trusts** are generally regulated by the Public Trustees Act, 1952 (Act 24), the Trustees (Incorporation) Act, 1962 (Act 106) and in terms of BO information, by Act 1044 which defines "trust and company service providers" to mean, *professional companies or unpaid persons who hold assets in a trust fund separate from their own assets and any person in a professional capacity who administers a trust or acts as a trustee but does not include a person who provides trust services as a nominee.* (see s. 63 of Act 1044)

The Public Trustees Act, 1952 (Act 24) establishes the Office of Public Trustee as a corporation sole under that name, with perpetual succession and an official seal, and may sue and be sued in the corporate name like any other corporation sole: (s. 1). The public trustee may (a) act as an ordinary trustee, (b) act as a custodian trustee, or (c) be appointed trustee by the Court: (s. 4 (1)). The public trustee may act alone or jointly with any other person or body of persons in a capacity to which the public trustee is appointed in pursuance of this Act: s. 4 (2).

The Trustees (Incorporation) Act, 1962 (Act 106) is the law enabling trustees of voluntary associations and bodies established for religious, educational, literary, scientific, sports, social, or charitable purpose to be incorporated, to hold land and to have perpetual succession, among others. (see long title).

Act 106 requires trustees of specified voluntary associations to become incorporated to enable them hold property in trust on behalf of members, thus allowing for some type of registration.

That implies that trustees of a voluntary associations established for a religious, literary, and scientific, sports or charitable purpose are required to be registered by the Registrar of Companies and are subject to beneficial ownership information requirements under Act 992.

**Both Act 106 and Act 24 appear to be limited in scope. There is no direct obligation on trustees to maintain or disclose beneficial ownership information to competent authorities and financial institutions,<sup>112</sup> and the BO requirements under Act 920 does not also extend to trusts as legal arrangements.**

However, the obligation on Trustees and company service providers to maintain and disclose BO information of customers and to conduct CDD measures is provided for under the AML Act 1044, which designates them as accountable institutions and therefore, requires the details of a person who makes a deposit into, or withdrawal from, an account on behalf of another person, and maintain identity information on a settlor, a trustee and a beneficiary of a relevant trust (s. 30 (8) and (9)). The requirement to identify a beneficial owner and take reasonable measures to verify the identity of a beneficial owner, is further provided for under r. 16 of LI 1987. Other Guidelines such as BOG/FIC Guidelines of 2018, BOG/FIC Guidelines and the SEC AML/CFT Manual of 2011 also provides measures dealing with trusts.

**As already indicated, the BO Regime in Ghana is not only regulated by the Companies Act. The AML Act also does. Therefore, under the Ghana regime, Trustees as accountable institutions, have a legal obligation to maintain and disclose BO information of customers to FIs and to identify any persons acting on behalf of a customer in line with CDD requirements. However,**

**there is no centralised registry of trusts to which disclosure of information relating to all trusts must be made. But the point must be made that establishing a centralised registry of trusts is only optional by the standards but desirable.**

### 5.9. Sanctions

Apart from the sanctions under Act 992, various sanctions are provided under Act 1044 and the other legislation for non-compliance with requirements of the BO regime. For example, under s. 52 (4) of Act 1044, the supervisory body shall, further to an examination of an accountable institution, impose an administrative penalty for non-compliance.

There are other criminal sanctions in the form of a fine and a term of imprisonment of twelve months to five years or to both for non-compliance with the requirements to undertake CDD measures, submit STRs, provide 3rd party details on deposits, including trusts, and destroying records, among others (s. 48 of Act 1044). Where the offence is committed by a company or a body of persons, the penalty shall be a fine of not less than five thousand penalty units and not more than fifty thousand penalty units, and in the case of a

112. GIABA (2018). Anti-money laundering and counter-terrorist financing measures- Ghana Mutual Evaluation Report, GIABA, Dakar, Senegal.

body corporate, other than a partnership, each director or an officer of the body corporate is considered to have committed the offence; and in the case of a partnership, each partner or officer of that partnership is considered to have committed that offence.

In s. 53 (1) of the Act 1044, The Financial Intelligence Centre or a supervisory body has also been empowered to impose administrative penalties on an accountable institution or any other person to impose administrative penalties including a suspension/revocation of a licence; a fine of not less than five hundred penalty units and not more than one hundred thousand penalty units as the case may be. (s. 53 (1) of Act 1044.

Additionally, there are specific sanctions including administrative, for FIs and accountable institutions for contravening directives of the Bank of Ghana (s. 92 (8) (9) of the Banks and Specialised Deposit Taking Institutions Act 2016 (Act 930) and Guidelines of the BOG/FIC.

**Thus, under Ghana's BO Regime, the regulatory and enforcement authorities in the country have a wide range of administrative sanctions and remedial measures that can be imposed on legal persons and arrangements for non-**

**compliance with their BOI obligations. Therefore, the regime meets the requirement to “provide for effective, proportionate and dissuasive sanctions for any legal or natural person who fails to comply with the BO requirements under Recommendation 24 of the FATF”. However, there are concerns that the sanctions are rarely applied by the authorities.<sup>113</sup>**

### 5.10. International Cooperation/ Exchange of BO Information

Criminals who use corporate networks to hide the origin of proceeds of crime are often multi-jurisdictional and it takes effective inter-jurisdictional cooperation to overcome such schemes. On that score, authorities of various countries should have access to accurate information on beneficial owners in the context of an international ML/TF investigation not only when conducting an investigations.<sup>114</sup>

Under the FATF rules/criteria, countries should rapidly, constructively and effectively provide international cooperation in relation to basic and beneficial ownership information. This cooperation should include:

- facilitating access by foreign competent authorities to basic information held by company registries;

113. GIABA Assessment Report (2022), Beneficial Ownership Information and Asset Recovery Framework in West Africa, GIABA, Dakar, Senegal. para. 49

114. FATF (2023), Guidance on Beneficial Ownership for Legal Persons, FATF, Paris, <http://www.fatf-gafi.org/publications/FATFRecommendations/guidance-beneficial-ownership-legal-persons.html>

- making BO information available to foreign authorities;
- avoiding unduly restrictive conditions on exchange of information or assistance;
- designating and making publicly known the agency(ies) responsible for responding to international requests, and
- monitoring the quality of assistance received from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.<sup>115</sup>

Similarly, the 5th Session of the Conference of the States Parties to the UNCAC in Paragraph 23 of Resolution **5/3** on Facilitating international cooperation in asset recovery, encouraged States parties “to cooperate in order to implement the necessary measures to enable them to obtain reliable information on beneficial ownership of companies, legal structures or other complex legal mechanisms, including trusts and holdings, used to commit crimes of corruption or to hide and transfer proceeds.” In addition, Resolution 5/4

Follow up to the Marrakech Declaration on the Prevention of Corruption, urged States parties “to exchange best practices in the identification of beneficial owners of legal structures used to commit crimes of corruption or to transfer their proceeds”: paragraph 24.

According to the GIABA Mutual Evaluation Report of 2018, Ghana takes a collaborative approach to international cooperation generally. She provides in a timely manner, constructive and high-quality information and assistance, including mutual legal assistance, extradition and other forms of cooperation when requested. Ghana also utilizes informal channels of information exchange and the law enforcement agencies, Financial Intelligence Centre and financial supervisors are generally well engaged in making and receiving requests...”<sup>116</sup>

This collaborative approach is partly by virtue of Ghana being part of the ECOWAS Treaty on Cooperation on Mutual Legal Assistance and Extradition Matters; her relationship with the West African Police Information System (WAPIS), the

115. Interpretative Note, para 19, see also Guidance on Beneficial Ownership for Legal Persons, FATF, Paris, <http://www.fatf-gafi.org/publications/FATFRecommendations/guidance-beneficial-ownership-legal-persons.html>

116. GIABA (2018). Anti-money laundering and counter-terrorist financing measures- Ghana Mutual Evaluation Report, GIABA, Dakar, Senegal.

INTERPOL National Centre Bureau (NCB), among others.

However, it is yet to be seen to what extent the country's international cooperation efforts relate to obtaining reliable information on beneficial ownership of companies, legal structures including trusts used to commit crimes of corruption or to hide and transfer proceeds, among others, as required under the FATF standards and the UNCAC requirements.

As GIABA found, beneficial ownership information in Ghana is not typically available for foreign legal persons and competent authorities

have challenges obtaining such information during investigation,<sup>117</sup> and that **Ghana's Regime has an ineffective international cooperation with respect to responses to BOI disclosure requests from abroad. In the same vein, feedback or responses to the BOI disclosure requests made by Ghana to other countries are unfavourable because such requests often times do not meet the minimum standard.**<sup>118</sup>

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117. Ibid Para 45

118. GIABA Assessment Report (2022), Beneficial Ownership Information and Asset Recovery Framework in West Africa, GIABA, Dakar, Senegal, para. 50

## 6.1. Availability of Basic BO Information on Companies.

1) Following challenges Ghana encountered in its Anti-Money Laundering Mutual Evaluation conducted by GIABA, coupled with the need to comply with her international obligations, Ghana begun the journey to ensuring beneficial ownership transparency in 2016 with the passage of the Companies (Amendment) Act 2016 (Act 921). This Act 921 provided for beneficial ownership information of companies and for the establishment of a Central Register of beneficial owners, among other matters.

2) Ghana adopts the multiple prong approach to maintaining beneficial ownership transparency, ensuring that beneficial ownership information is maintained through the establishment of a central register, individual company registers, as well as FIs, DNFBPs and other institutions.

3) Under the BO regime, the definition and scope of “beneficial owner” are generally in accord with the internationally accepted definition of beneficial owner. However, there are internal inconsistencies in the definition under Act 992, and Act

1044, the two major legislation on BOT. It would, therefore, be important that the ORC and the FIC consider, taking steps to have the definition of BO under Act 1044 and Act 992 harmonised.

4) Companies and legal arrangements subject to BO regime are expansive and include companies limited by shares, companies limited by guarantee, unlimited companies, external companies, and extractive sector companies. FIs, DNFBPS, trusts, among many others, are also subject to BO requirements, which make the BO regime in Ghana compliant with international standards on the type of legal persons and arrangements that may be subject to beneficial ownership transparency.

5) Individual companies subject to the BO requirements maintain BO information in their individual company registries. The information maintained include elaborate identification information of the BO, politically exposed persons and details of ownership of shares of a company as the case may be. **This accords with international standards.**

6) Ghana's BO regime does not prohibit bearer shares and nominees but beneficial owners of those shares and their particulars and nominees must be disclosed. **Therefore, Ghana is one of the countries where bearer shares pose no risk, thereby removing key obstacles to the transparency of companies and misuse of bearer shares.**

7) The individual companies in Ghana provide BO information on 1) incorporation of the company, 2) annually on submission of returns and 3) where an alteration occurs in the BO information.

8) A Central Register (CR) of BO has been established, which capture elaborate and identification information of the beneficial owners of the companies that have been established in the country as well as external companies. The particulars of BO information required also include identification information of PEPs and details of ownership of shares of a company as the case may be. **This accords with international standards.**

9) Though under Act 992, companies are required to record beneficial ownership information with variance in the thresholds of 5-10 % interest in the company, or any amount of

interest, a person with significant control in a company, (as against the FATF non-binding recommendation of twenty-five per cent), is also identified as a beneficial owner. Ghana's threshold is one of the lowest in Africa where thresholds have been introduced. In Tunisia, the threshold is "20% of the share capital or voting rights in the entity. **Thus, Ghana's 5% and "any amount however small", is a good approach.**

## **6.2. Access of BO information:**

1) Access of BO Information in the individual company registers are open for the inspection of a member of the company without charge, and any other person on payment of a reasonable fee prescribed by the company, for each inspection for a period of not less than two hours each working day, and subject to reasonable restrictions that the company may impose.

2) BO Information in the Central Register, is available to "relevant authorities" and the public upon making a request to the Registrar by the relevant authority. Meaning that, no relevant authority can access the BO information in the CR without the knowledge and approval of the Registrar. This falls short of the

international standards/best practice. A system that enables law enforcement and anti-corruption agencies to have access rights to the CR register is recommended. Furthermore, Act 992 does not define “relevant authorities.”

It is, thus, left to the discretion of the Registrar to determine whether the authority making the request is a relevant authority. But it would appear that a “competent authority of the Government of the Republic,” could be a relevant authority from answers to the FAQ issued by the Registrar.

***For more clarity, it would be helpful to define relevant authority in Act 992 in the way that “competent authority” is defined in Act 1044.***

3) The CR is not freely accessible, downloadable, searchable, and reusable by the public. This goes contrary to Act 992 which requires access to BO information in the CR in accordance with open data principles. It also falls short of international best practices on access to BO information.

4) Despite this deficiency in the access of BO information as noted, Ghana’s BO Regime in terms of public access is a lot better than some African counterparts. In Kenya, for

instance, BO information may be accessed only by competent authorities and the public can also access the information by order of a court of competent jurisdiction or with the consent of the beneficial owner concerned. Persons who disclose BO without the requisite authority, may face criminal sanctions.

5) In terms of extractive sector companies, public access to BO information relating to extractive sector company held by the Registrar, is to be made available through Ghana EITI reporting in accordance with the commitment made by government under the GHEITI/EITI and OGP.

### **6.3. Keeping BO Information Accurate, up to date, and on a Timely Basis.**

The Registrar is to maintain, verify and update the CR, in collaboration with other authorities. Regulations are also to be made to facilitate the role of the Registrar in maintaining, verifying and updating the CR, among other matters. **The specific requirement of Act 992 on this core conforms with international best practice/standards.** However, in practice, apart from ensuring that the information provided to the Registrar by the companies is complete, the Registrar does not specifically verify the accuracy or



currency of the information she/he receives or the authenticity of the documents submitted. The Registrar operates on the assumption that the information that has been provided to the ORC is accurate because documents submitted to the Registrar must be original documents or certified copies of the original.

The assumption is also premised on the fact that and that the submission of false information to the Registrar is a criminal offence. Furthermore, regulations to provide for the procedure for collection, authentication, verification or rectification of information entered in the Central Register, among other matters, are yet to be made by the Minister. The inadequate mechanism to specifically verify the accuracy or currency of the BO information at the outset, combined with the delay in passing the regulations envisaged under the law, may render the BO regime weaker.

**6.4. Institution of a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, emphasizing requirements for customer, beneficial owner identification, record-keeping and the reporting of suspicious transactions.**

1) Ghana has a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions which deals with BO, customer identification, record keeping and reporting of suspicious transaction reports. The legal, regulatory and compliance framework includes the Companies Act 2019 (Act 992), the Anti-Money Laundering Act, 2020 (Act 1044), the Petroleum (Exploration and Production) Act 2016 (Act 919), and the Insurance Act 2021 (Act 1061). Correspondingly, the regulatory and supervisory institutions for companies, financial institutions and other specialised deposit taking institutions include the Registrar of Companies, the Bank of Ghana (BOG), the Securities and Exchange Commission (SEC) and the National Insurance Commission (NIC) and the Financial Intelligence Centre (FIC).

2) Customer & BO Identification: FIs and DNFBPs verify the identity of BOs by applying customer due diligence in several ways including: when establishing business relations; in carrying out occasional transactions above the designated threshold set by the supervisory authority; in carrying out occasional transactions that are wire transfers; or where the FI has doubts about the veracity or adequacy of previously obtained customer identification data.

3) FIs may appoint an intermediary or third party to perform some of the elements of the customer due diligence measures, but that FI bears the ultimate responsibility for customer identification and verification.

4) FIs are also required to put in place measures to (a) identify politically exposed persons and other persons whose activities may pose a high risk of (i) money laundering; (ii) terrorist financing; or (iii) financing of proliferation of weapons of mass destruction; and (iv) tax evasion; and (b) manage the risk associated with politically exposed persons and other persons. The measures include undertaking enhanced identification, verification and ongoing due diligence procedures with respect to the PEPs.

Who is a PEP conforms with international standards. **However, there are internal inconsistencies in the definition in the Act 992 and Act 1044. Whereas in Act 1044 the definition specifically mentions “Head of State or Head of Government” as one of the persons who are or who have been entrusted with a prominent public function in this country, a foreign country or an international organisation, Act 992 does not. For consistency, the definition of PEPs under Act 992, reg. 80 of LI 2359 and 1044 should be harmonised.**

5) Reporting STRs: FIs are expected to report transactions that appear to involve or to be connected to unlawful activity to competent authorities and the FIC within twenty-four hours after the knowledge or suspicion was formed. The definition of “competent authority” under Act 1044, leaves out the Office of the Special Prosecutor, and the Commission on Human Rights and Administrative Justice, critical institutions in relation to investigating corruption, illegal acquisition of wealth and recovery of proceeds of crime. In order to close all potential loopholes in the BO regime and since corruption and illegal acquisition of wealth or property constitute “unlawful activity,” it is recommended that the CHRAJ and the OSP, be included as “competent authorities,” added which calls for the amendment of Act 1044 in that regard.

6) Record Keeping: FIs, either by themselves or through agents, keep books and records with respect to customers and transactions and ensure that the records and underlying information are available on a timely basis to the FIC and other competent authorities. The records and books are to be kept for not less than five years, after the business relationship has ended or from the date of the transaction; or from the

date a report was made to the FIC, as appropriate. It has been suggested that since Ghana has no statute of limitation for crimes, it is advisable to require FIs to retain records beyond five years in that if a crime were to be pursued after 20 years, relevant records that may prove useful in future investigations and prosecutions would be lost.<sup>119</sup>

### 6.5. Trusts and company service providers (TCSPs)

Ghana's legislation on Trusts does not obligate trustees to maintain or disclose beneficial ownership information to competent authorities and financial institutions. Despite that, Trusts and company service providers are required by virtue of Act 1044 to identify a beneficial owner as well as to take reasonable measures to verify the identity of a beneficial owner. This requirement is further provided for by regulations as well as under Guidelines of regulatory and supervisory institutions. Therefore, under the Ghana regime, Trustees have a legal obligation to maintain and disclose BO information of customers to FIs and to identify any persons acting on their behalf in line with CDD requirements. Establishing a centralised registry of trusts is only optional by the standards.

### 6.6. Effective, Proportionate and Deterrent Sanctions

Deterrent sanctions are available under Ghana's BO Regime that regulatory authorities and enforcement agencies may impose on companies and legal arrangements for non-compliance with their BO obligations, including suspension and revocation of licence, fines of up to 150, 000 penalty units (i.e., GHC1,800,000.00) and imprisonment of up to 5 years. Though the sanctions available to regulatory authorities by law appear deterrent enough and meet the international standards, there are concerns that these sanctions are rarely applied in practice. Thus, making the sanctions regime weak.

### 6.7. Exchange Best Practices and International Cooperation

1) Ghana takes a collaborative approach to international cooperation generally and provides in a timely manner, constructive and high-quality information and assistance, including mutual legal assistance, extradition and other forms of cooperation when requested. Ghana also utilizes informal channels of information exchange and the law enforcement agencies, Financial Intelligence Centre and financial supervisory institutions are generally well engaged

119. UNODC, 2022. State of implementation of the United Nations Convention against Corruption: Executive Summary-Ghana. CAC/COSP/IRG/2020/CRP.13. 26 August 2020

in making and receiving requests for assistance.

2) Beneficial ownership information in Ghana is not typically available for foreign legal persons and competent authorities abroad have challenges obtaining such information during investigation. Furthermore, international cooperation with respect to responses to BOI disclosure requests from abroad is ineffective. In the same vein, feedback or responses to the BOI disclosure requests made by Ghana to other countries are unfavourable because such requests often times do not meet the minimum standard.

Thus, the extent of Ghana's international cooperation efforts relating to obtaining reliable information on beneficial ownership of companies, legal structures including trusts used to commit crimes of corruption or to hide and transfer proceeds, among others, as required under the standards, is yet to be seen.

## 6.8. Implementation

1) The Central Register has been operationalised. The ORC upgraded its electronic register to enable

companies file their respective beneficial ownership data to the Registrar online,<sup>120</sup> and a 15-minute documentary on beneficial ownership transparency, developed by the ORC and stakeholders was aired on the major television stations in the country in 2019. In addition, a number of public education initiatives have been undertaken, as a result of which public awareness of BO increased in the country.<sup>121</sup>

2) Companies were directed to comply with their beneficial ownership information requirements by the end of 2022, after which non-compliant firms or their beneficial owners were to face sanctions.<sup>122</sup> As of February 27, 2023, 74,316 companies and businesses, representing 25.8 percent out of the 287,189 had disclosed BO information to the Registrar. Those companies that failed to comply with the 2022 deadline, were to have their names struck off.<sup>123</sup> Meaning that, those companies whose names would be struck off would not be able to operate in the country legally.

120. Beneficial Ownership Implementation Begins:

[www.goldstreetbusiness.com](http://www.goldstreetbusiness.com), Wednesday, 29 January 2020.

121. Ministry of Finance/GHEITI, 2020. Report on the Oil and Gas Sector 2020.

122. <https://www.ghanabusinessnews.com/2021/02/03/ghana-companies-given-ultimatum-to-provide-beneficial-ownership-information/>

123. Only 25.8% of companies declare BO data//

<https://thebftonline.com/2023/03/16/only-25-8-of-companies-declare-bo-data/> accessed 16 Nov, 2023.

- 3) BOT was extended to the extractive sector and by January 1, 2020, beneficial ownership information of, at least, 12 mining and 5 oil and gas companies had been published,<sup>124</sup> thereby making Ghana one of the EITI pilot countries to meet her BO obligations the 2020 deadline.<sup>125</sup>
- b. Lack of cooperation and coordination among agencies involved in the implementation of the BO regime,<sup>127</sup> and,
  - c. The delay in passing the regulation that would enable the Registrar verify, and maintain the CR among other matters.

### **6.9. Challenges to Effective Implementation of the BO Regime.**

1) Despite the modest gains made since 2016 to have a robust BO regime in place, challenges remain. These include the following:

- a. The requirement to make BO information available for free and the expectation of raising internally generated funds from the operations of the office of the Registrar of Companies undermines the primary objective of making the BO data freely and easily accessible to the public.<sup>126</sup>

- d. Funding, verification, software challenges and maintenance of systems.

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124. King Carl Tornam Duho, Daniel Ninsin Quansah, 2022. Beneficial Ownership as a Tool for Transparency in Corporate Ghana: An Introductory Piece. Dataking Policy Brief 003

125. Ministry of Finance/GHEITI, 2020. Report on Oil and Gas Sector 2020

126. King Carl Tornam Duho, Daniel Ninsin Quansah, 2022. Beneficial Ownership as a Tool for Transparency in Corporate Ghana: An Introductory Piece. Dataking Policy Brief 003

127. *Ibid.*, p. 21

The assessment of the beneficial ownership regime of the country thus far, shows that Ghana is, to a large extent, in compliance with the beneficial ownership transparency standards and requirements provided under the United Nations Conventions on corruption and transnational organised crimes, the Financial Action Task Force Recommendations, the Extractive Industries Transparency Initiative and the Open Government Partnership, among others.

Ghana has taken measures, including putting in place robust legal, regulatory and supervisory measures to identify the legal and natural persons behind companies, including those in the extractive sector, for the prevention of corruption involving the private sector, for the prevention of money laundering, and prevention and detection of transfers of proceeds of crime.

Ghana's efforts at maintain a robust beneficial ownership transparency and the introduction of a central register that will be available to the public, law enforcement agencies and other competent authorities, was

considered a good practice by the UNCAC evaluators in 2019. Ghana was therefore encouraged to continue "...to roll out and ensure the implementation of the beneficial ownership register".

In the extractive sector, Ghana also maintains a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s) and the level of ownership, which was achieved by 2020.

In terms of anti-money laundering (AML) and counter-terrorist financing (CFT) and proliferation of weapons of mass destruction measures, apart from basic information on companies, FIs, and DNFBPs conduct ongoing CDD on the business relationship, and scrutinise transactions throughout the course of that relationship to identify and verify the customer's identity, and identify and verify the identity of any person acting on behalf of the customer, such as the trustee of the trust, and verify that any person purporting to act on behalf of the customer is so authorised.

Nevertheless, deficiencies and gaps remain to be tackled. In order to address the few deficiencies and gaps in the BO the regime, the following recommendations are made:

- 1) Work towards making the CR available to the public free in accordance with open data principles. For that reason, the state should therefore resource the ORC and free it from the requirement to raise internally generated funds for government from the management of the CR. A system that enables law enforcement and anti-corruption agencies to have access rights to the CR register is also recommended.
- 2) For more clarity, it would be helpful to define relevant authority in Act 992 in the way that “competent authority” is defined in Act 1044.
- 3) The ORC and the FIC should consider taking steps to have the definition of BO as the definition of PEPs under Act 1044 and Act 992 in order to address internal inconsistencies in those definitions.
- 4) The CR is not freely accessible, downloadable, searchable, and reusable by the public. This goes contrary to Act 992 which requires access of BO information in the CR in accordance with open data principles. It also falls short of international best practice on access to BO information.
- 5) The Attorney-General and Minister of Justice is encouraged to make the regulations envisaged under Act 992 to facilitate the verification and updating of BO information submitted to the Registrar and the implementation of the Act.
- 6) The definition of “competent authority” under Act 1044, leaves out the Office of the Special Prosecutor, and the Commission on Human Rights and Administrative Justice, critical institutions in relation to investigating corruption, illegal acquisition of wealth and recovery of proceeds of crime. In order to close all potential loopholes in the BO regime and since corruption and illegal acquisition of wealth or property constitute “unlawful activity,” it is recommended that the CHRAJ and the OSP, be

included as “competent authorities,” added which calls for the amendment of Act 1044 in that regard.

- 7) Extend the period of 5 years that FIs are required to keep records and books. Since Ghana has no statute of limitation for crimes, if a

crime were to be pursued after 20 years, relevant records that may prove useful in future investigations and prosecutions, would have been lost, and the investigations may be impracticable therefore.



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