Open Ownership

Coverage of corporate vehicles in beneficial ownership disclosure regimes

Policy Briefing

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Overview

Policymakers and agencies involved in designing and implementing beneficial ownership transparency (BOT) reforms must set out which corporate vehicles are covered by the disclosure requirements to report information on their beneficial ownership (BO) to a government register. The term corporate vehicles refers to entities and arrangements through which commercial activities are conducted and assets are held, including different types of corporations, limited liability companies (LLCs), partnerships, associations, foundations, trusts, and national variations of these.[1]

In any BO disclosure regime, its scope – or coverage – plays a central role in its potential impact. To implement BOT reforms effectively, the coverage of a regime must be broad enough to meet a jurisdiction's policy aims. Therefore, those designing reforms should first **establish which corporate vehicles are relevant to a jurisdiction's policy aims, and include these in the scope of disclosure requirements.** All corporate vehicles through or by which assets can be owned, benefitted from, and controlled can be used in ways that potentially undermine the achievement of policy aims associated with BOT, including combating money laundering.

To generate actionable and usable data across the widest set of policy aims, BO disclosure requirements should apply to all corporate vehicles, whilst allowing for reasonable and narrowly applied exemptions. Those implementing reforms should pay specific attention to:

- considering coverage jointly with the definition of beneficial ownership;
- corporate vehicles both with and without distinct legal personalities;
- potentially shifting risk to exempt corporate vehicles through the risk-based approach;
- foreign corporate vehicles, the risks they pose outside their home jurisdictions, and the disclosure requirements in and availability of information from their jurisdictions of incorporation;
- rarely-used and unique entity types that can be misused in a manner that undermines the achievement of policy aims; and
- specific challenges posed by state-owned enterprises and not-for-profit organisations.

After determining which corporate vehicles are in the scope of BO disclosures, policymakers designing BOT reforms should consider **creating limited and narrowly interpreted exemptions from disclosing beneficial ownership, which may be reasonable in cases where**:

- certain corporate vehicles are already disclosing adequate and up-to-date information on ownership and control to a third-party body that is regulated or subject to supervision, and that maintains and performs reporting and oversight;
- the information that is being disclosed to this third-party body is as easily accessible to all relevant data user groups as it would be through a government register; and
- complying with the disclosure requirements is impossible or excessively difficult for certain corporate vehicles.

A regime's coverage should be set out in law using primary and secondary legislation. Policymakers designing BOT reforms should consider:

- establishing a robust legal definition of beneficial ownership covering current and potential future ways in which ownership and control can be exercised over corporate vehicles;
- placing an unambiguous requirement using broad language on corporate vehicles to disclose beneficial ownership in primary legislation;
- future-proofing legislation for changes in the ways in which ownership and control can be exercised through corporate vehicles; and
- providing additional details and enabling an iterative approach through secondary legislation.

Any exemptions should be set out in law. The following are key considerations:

- making exemptions explicit and specific;
- creating a legal obligation on exempt corporate vehicles to declare the basis for their exemption and provide minimum information;
- balancing the level of detail to include in primary versus secondary legislation and regularly reassessing exemptions; and
- harmonising exemptions with any complementary policies to ensure clarity, legibility, and coherence of the BO disclosure regime.

Policymakers should consider developing **clear guidance based on legislation and regulations** to help those responsible for disclosing information understand the requirements and comply with reporting obligations, keeping in mind:

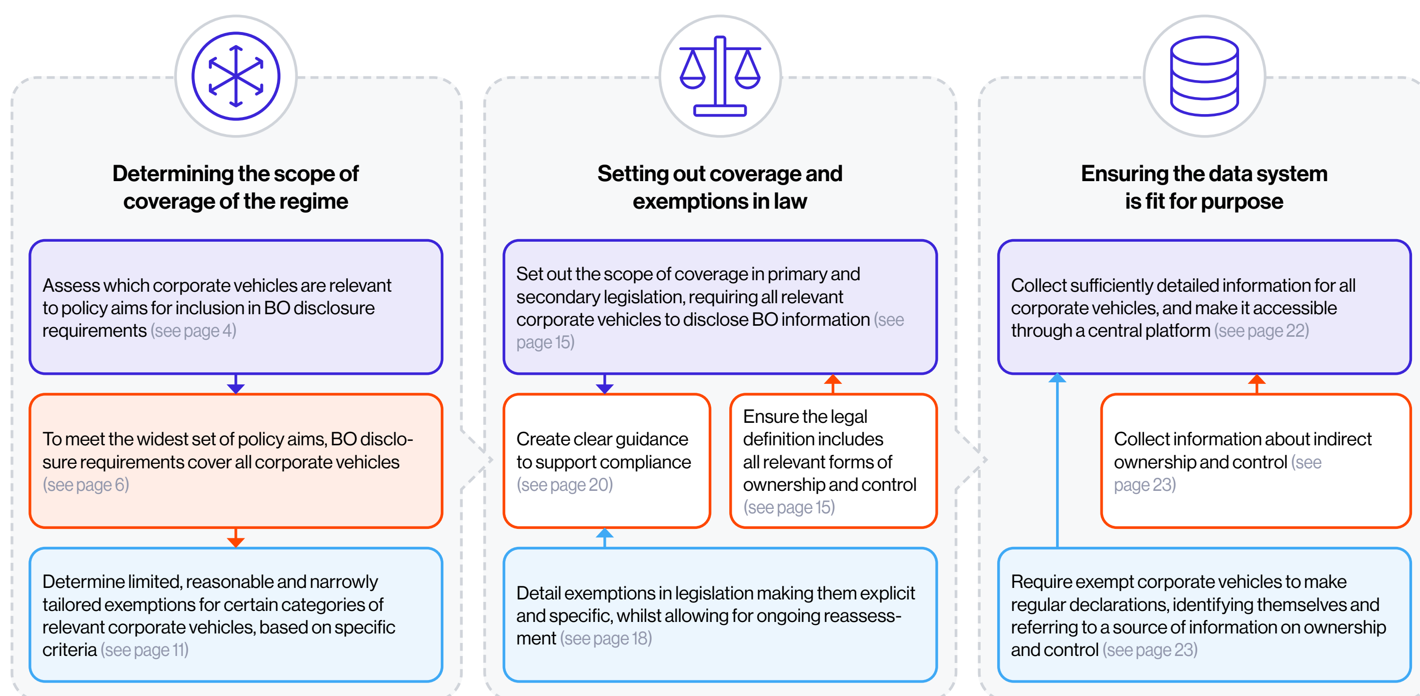
- separate guidance may be required for different categories of corporate vehicles, especially where the application of the definition of beneficial ownership is more complex or unique;
- differentiated reporting requirements may be needed for corporate vehicles with less common ownership and control mechanisms.

Finally, those implementing reforms can consider the following to **ensure the data system is fit for purpose**, meaning that it can completely and accurately capture and store BO information for all relevant corporate vehicles:

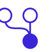
- making information interoperable and accessible through a central location and using a whole-of-government approach to verification;
- allowing for sufficient detail to be captured on corporate vehicles that are both covered by and exempt from reporting requirements; and
- collecting the minimum information necessary about exempt entities, both those operating in the country and where they are part of an ownership chain, to ensure they are identifiable and information on ownership and control held by a third party can be found.

The coverage of corporate vehicles is a core tenet of the Open Ownership Principles for effective beneficial ownership disclosure (OO Principles), as it ensures all relevant corporate vehicles are included within the scope of disclosure requirements.[2] The OO Principles are a framework for considering the elements that influence whether the implementation of reforms to improve the BOT of corporate vehicles will lead to effective BO disclosure by generating high-quality and reliable data, maximising usability.

Figure 1. Setting out the coverage of corporate vehicles in a BO disclosure regime



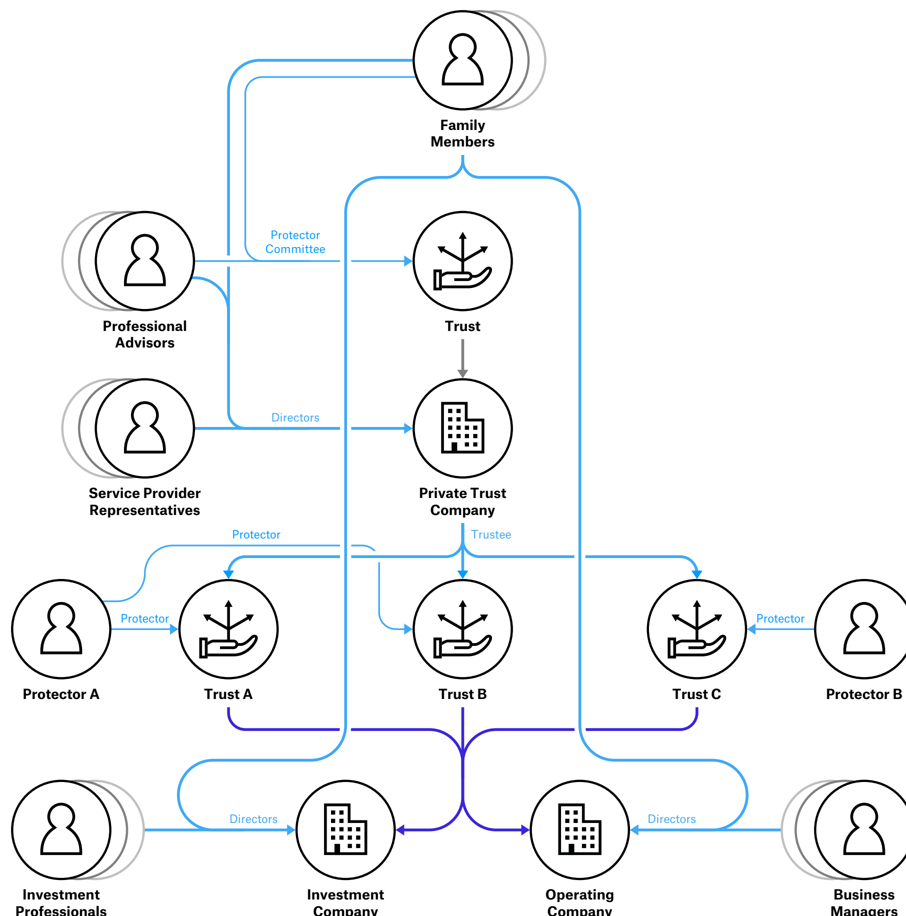
This diagram summarises the main stages involved in setting out the scope of coverage of a BO disclosure regime. It includes key elements that policymakers and agencies with implementation responsibilities should consider at each stage. This illustration focuses on implementing comprehensive coverage to generate actionable and usable data on beneficial ownership across the widest set of policy aims. Further considerations are detailed in this briefing.



Defining coverage according to a jurisdiction's policy aims

Throughout history, different types of corporate vehicles have emerged in various jurisdictions for a range of purposes, with specific rights and obligations. Corporate vehicles are central to modern society and fundamental to facilitating certain social and commercial activities (see, for example, Figure 2). To enable this, many corporate vehicles have distinct powers, including: the ability to own or control assets, such as bank accounts and other corporate vehicles; enter into contracts; confer the benefits of ownership from one individual to another; or offer natural persons limited liability.

Figure 2. Example of a structure using various corporate vehicles for asset planning and investment



Adapted from: Van der Does de Willebois et al.[3] The original illustration is based on material presented by a member of the Society of Trust and Estate Practitioners (STEP) at the STEP Caribbean Conference CC10 in Bridgetown, Barbados, 25 May, 2010. The information contained in this diagram is compiled on a best efforts basis and may not be not exhaustive or complete.

Whilst specific rights attached to corporate vehicles enable them to meet their purpose, these rights can also be misused, for example, to evade taxes or conceal a conflict of interest between a political figure and a company bidding for a government contract. Requiring corporate vehicles to disclose information about their ultimate beneficial owners helps ensure that jurisdictions collect the information they need in order to increase oversight and accountability.

The policy aims a jurisdiction is pursuing through BOT reforms should directly inform the scope of disclosure requirements. Whilst they benefit a wide range of potential aims, **all BOT reforms fundamentally relate to the acquisition, possession, and movement of assets, the ownership and control of which confers material benefits to individuals and creates opportunities to exercise influence**. The ability to privately benefit from assets is connected to various public interests and obligations, such as generating economic growth and tax revenue.

A key policy driver of BOT reforms in many jurisdictions is anti-money laundering and countering the financing of terrorism (AML/CFT). Many lessons from the effective implementation of BOT for AML/CFT are also relevant to other policy areas, including extractive industries governance;[4] improving public procurement;[5] protecting national security;[6] creating an enabling business environment;[7] and increasing domestic revenue collection.[8]

This briefing outlines the considerations for ensuring the coverage of corporate vehicles in a BO disclosure regime allows it to meet the widest range of policy aims. Effective implementation of BOT generates high-quality, reliable BO information that is actionable, auditable and usable, for instance for enforcing and complying with financial sanctions, investigating financial crime and onboarding suppliers as part of automated business processes. The briefing takes into account global standards, including the recommendations of the Extractive Industries Transparency Initiative (EITI) and the Financial Action Task Force (FATF).

Determining the corporate vehicles to be covered

A corporate vehicle being covered by BO disclosure requirements refers to the positive obligation in law for a corporate vehicle to disclose information about its beneficial owners to a responsible body, and to keep this information up to date. It does not refer to which information will be accessible to which parties. When determining the scope of their BO regime, those with responsibilities for policy design and implementation should start by forming a picture of the domestic and foreign corporate vehicles operating in their jurisdiction, taking into account that these may change over time, and then:

- **establish which corporate vehicles are relevant to a jurisdiction's policy aims**, and ensure they are included in disclosure requirements;
- consider that for the broadest set of policy aims – including AML/CFT – **all corporate vehicles are relevant**; and
- consider if there are any **categories of vehicles that meet the criteria but may be reasonably exempt from the full set of disclosure requirements**, and ensure the requirements placed on corporate vehicles are proportional to meeting policy aims.

A jurisdiction's definition of beneficial ownership sets out the forms of ownership and control that constitute an individual being a beneficial owner, and therefore may implicitly exclude certain corporate vehicles based on how assets can be owned or controlled through them. Some jurisdictions only consider the coverage of corporate vehicles after defining beneficial ownership in law, which may prove to be restrictive either at the point of initially determining the scope, or when revisiting it at a later point in time. **The definition should be considered jointly with the scope of disclosure requirements because it determines which corporate vehicles can be legally beneficially owned.**

Policymakers should primarily consider the relevance of different types of corporate vehicles. Rather than introducing blanket exclusions of categories of corporate vehicles, specific exemptions can help ensure that the requirements placed on individuals and corporate vehicles are reasonable and proportionate, as detailed below.

Establishing which corporate vehicles are relevant

Determining criteria to assess the relevance of corporate vehicles to the jurisdiction's policy aims is fundamental in defining its scope. AML/CFT is one of the main policy drivers for BOT, and all corporate vehicles are relevant to that aim, as detailed below. Evidence from AML/CFT also suggests that **all entities and arrangements will be relevant to most regimes**, and to achieving the widest set of policy aims (see Box 1). This includes all domestic corporate vehicles, and certain foreign corporate vehicles, provided that they are not subject to adequate disclosure requirements in their jurisdiction of incorporation or that this information is not readily accessible.

To explain why all corporate vehicles are relevant to the broadest set of policy aims, the following sections detail specific considerations and pitfalls when setting the scope for disclosure. These include commonly used criteria to inform the coverage of corporate vehicles that risk undermining a regime's effectiveness, and particular types of corporate vehicles that require specific attention.

Box 1: Legal entities and arrangements

Corporate vehicles refer to both **legal entities** and **arrangements**.

Legal entities are the most common corporate vehicle. This construct has a separate legal personality, meaning it can do many of the things a natural person can do in law in its own name, including: owning assets, such as bank accounts, shares in other corporate vehicles, or real estate; entering into contracts and acquiring debt; and suing and being sued.[9] The liability of parties participating in legal entities, such as shareholders, partners, and directors, is often limited to their investments in the entity. This means their personal assets are protected from creditors to the entity. Examples include corporations, foundations, limited companies, and limited liability partnerships (LLPs).

Parties can establish **legal arrangements** to govern their relationship in pursuit of a common purpose or to create rights and obligations with respect to specified assets. The arrangement formed by a trust is typical to common law systems and has uses including creating a fiduciary obligation and oversight when transferring assets, for example, for estate planning or charitable donations, or to avoid conflicts of interest.[10] Similar examples in civil law systems include *fiducia*, certain types of *Treuhand*, *fideicommissum*, private foundations, and *waqf*.[11] Whilst their forms and uses vary, in many jurisdictions arrangements can be involved in commercial activity.

In many jurisdictions, most arrangements do not have a distinct legal personality. In some jurisdictions, however, certain arrangements may be considered to operate as legal entities. For example, case law in South Africa sometimes treats trusts as legal entities.[12] Similarly, Austria's Beneficial Owners Register Act considers trusts and similar arrangements to be legal entities for the purposes of the Act.[13] The FATF limits the term legal arrangements to explicitly refer to "express trusts or other similar legal arrangements." However, in some jurisdictions arrangements can include other corporate vehicles (e.g. partnerships), particularly when they do not have a separate legal personality.[14]

Consider all corporate vehicles, with and without a legal personality

A distinct legal personality has to date been a primary criteria for BO reporting for entities where the policy aim is AML/CFT, and it is the implicit defining characteristic for BO disclosure under FATF Recommendation 24.[15] However, a single law may govern corporate vehicles both with and without a legal personality. The FATF applies divergent and less stringent requirements to legal arrangements under Recommendation 25, despite the fact that different types of corporate vehicles are often used within the same structures (see Figure 2).[16] Many countries place different requirements on and legislate separately for the disclosure of trusts and similar legal arrangements, which may limit the effectiveness of reforms. As detailed later, using the same technical standards for all corporate vehicles improves the interoperability and utility of BO information.

Corporate vehicles without a legal personality can be and are used to derive benefit from assets whilst concealing an individual's link to the asset, and to build additional layers of complex ownership chains.[17] Moreover, corporate vehicles without legal personality have been observed to de facto operate as entities with separate legal personality outside of their jurisdictions. For example, leaked information on SWIFT messages in the United States (US) Financial Crimes Enforcement Network (FinCEN) Files showed English Limited Partnerships (ELPs), a type of corporate vehicle in the United Kingdom (UK) with no legal personality, successfully managed to open bank accounts outside the UK (see Box 2, below).[18]

Limitations of the risk-based approach

To comply with international AML/CFT standards, the FATF requires jurisdictions to understand the risks posed domestically by corporate vehicles by conducting national risk assessments (NRAs), and to subsequently mitigate these risks as part of the risk-based approach.[19] Each country's NRA should involve the creation and publication of a list that describes "the different types, forms, and basic features of legal persons in the country", giving AML authorities an overview of corporate vehicles and a description of their "relevant features".[20] This can assist with forming a picture of corporate vehicles in a jurisdiction. Under the FATF recommendations, risks identified through an NRA are used as criteria for excluding specific legal entities that are seen as low risk.

However, this approach has limitations, as excluding corporate vehicles from disclosure requirements can make them more attractive for misuse. This is especially

relevant given that **corporate vehicles formed in one jurisdiction may pose different risks in another jurisdiction**. Whilst every jurisdiction is meant to conduct risk assessments, variability in corporate vehicles can make it challenging for authorities and financial institutions to discern the characteristics and risks of foreign-registered entities. NRAs are valuable for gaining a picture of corporate vehicles operating in a jurisdiction; for the monitoring and verification of the efficacy of an AML/CFT regime; and to inform a risk-based approach to verification. It has demonstrably fallen short as the basis for setting the scope of disclosure requirements.

Moreover, **high levels of variation between corporate vehicles imply the need for broad criteria**. The International Monetary Fund (IMF) highlights the importance of accounting for national variations in how corporate vehicles are defined and used, noting that, "even if the names of different categories of legal persons are the same between jurisdictions, their characteristics and use in practice can vary significantly between jurisdictions".[21] Variations in the ways in which corporate vehicles operate and their ownership and control structures extend to those that have a similar name or description between and even within jurisdictions, as in the example of limited partnerships in the UK (see Box 2).

Therefore, broad criteria should be used as a starting point, and it is recommended that **all corporate vehicles with or without distinct legal personalities through or by which assets can be owned, benefitted from, and controlled should be required to make declarations about their beneficial ownership**, unless reasonably exempt.

Box 2: The exclusion and inclusion of limited partnerships in the scope of disclosure requirements in the United Kingdom

In the UK, a limited partnership (LP) is an arrangement between one or more general partners with unlimited liability, responsible for managing the partnership, and one or more limited partners only liable up to the amount of their investment. LPs are often used as investment vehicles in assets, such as real estate.[22] They are distinct from limited liability partnerships (LLPs) which always have a distinct legal personality, and in which all partners have limited liability protection and the ability to participate in management. LPs are attractive to investors because limited partners can be passive investors, and due to their flexibility in setting out rules on, for example, profit sharing.[23] The UK has three types of LPs: Scottish Limited Partnerships (SLPs), which have a separate legal personality, and ELPs and Northern Irish LPs (NILPs), which do not. Natural persons and domestic or foreign legal entities can be partners in an LP.

In 2013, the UK started consulting on the scope of its BO register.[24] Its discussion paper stated: "our starting point is that beneficial ownership information on all UK companies should be held in the registry", and recognised the "need to consider [...] other types of legal entit[ies]".[25] In response to the consultation, in 2014, the government recognised the potential consequences of excluding entities, focusing on LLPs: "We want to ensure that the LLP form does not become an attractive alternative to a company to facilitate crime [by excluding them]".[26] With respect to LPs, the government said that it was "also carefully considering the position in relation to [SLPs ...] because, unlike [ELPs] and [NILPs], [SLPs] have separate legal personality", and like LLPs, they are not created under the Companies Act 2006. The government proposed to "ensure that there are no loopholes or unintended consequences".[27] Nevertheless, whilst the BO regime's scope ended up being broader than just companies by including LLPs, **SLPs (with legal personality) along with ELPs and NILPs (without legal personality) were excluded**.

What followed is well documented and aligned with what the 2014 paper stated the government wanted to avoid. The **incorporation rates of SLPs doubled** between 2015 and 2016,[28] coinciding with the launch of the register. **The incorporation spike raised concerns that SLPs were being used to avoid transparency.**[29] Investigative journalists uncovered that SLPs were used to move at least GBP 4 billion out of the former Soviet Union as part of the Russian Laundromat money-laundering scheme over a four-year period. In addition, 70% of the SLPs that were incorporated between 2007 and 2016 were registered at 10 addresses, and in 2014, 20 SLPs were used to move over USD 1 billion from Moldovan banks.[30]

In 2016, the UK government consulted on its implementation of the European Union's fourth AML Directive (AMLD4).[31] In it, the UK government recognised the need for "access to information on the

ownership and control of a broad range of entities", but stated that not "all legal entities must be subject to the requirements of the [AMLD4], particularly where there will be no transparency gain".[32] To balance this, it outlined the rationale for the inclusion of certain types of entities and not others, including that "the entity must be incorporated, [meaning] the entity in question has 'legal personality'".[33]

Following this rationale, **the UK government brought SLPs within the scope** of its BOT regime in June 2017.[34] **Subsequently, rates of SLP incorporation dropped** in the last quarter of 2017 to levels 80% lower than at the end of 2015.[35] However, the rationale excluded ELPs and NILPs, as they did not have separate legal personalities. The media has since reported on similar patterns that point to the potential abuse of ELPs and NILPs. There is evidence of ELPs being set up and even advertised to obscure ownership, and of their repeated involvement with suspicious corporate structures.[36]

Following consultations in 2018[37] and 2019,[38] the UK again started legislating for reforms to its BO disclosure regime through the Economic Crime and Corporate Transparency Bill, and the question of the scope of the register and LPs featured. In a February 2022 white paper outlining its plans, the government acknowledges allegations that the FinCEN Files provide evidence that UK LPs have been set up for suspicious purposes, and proposes that general partners provide "at least one verified natural person", but fall short of including them within the scope of BO disclosures.[39] In a January 2023 factsheet, the government explains that "LPs registered in England and Wales or in Northern Ireland are not legally separate from their partners and so they can't be beneficially owned"; the government will require them to "submit fuller information about their partners and statements confirming the accuracy of the information".[40]

NILPs and ELPs' continued exclusion therefore stems in part from the UK definition of a beneficial owner (or "person with significant control" (PSC)), which focuses on the ownership of shares, voting rights, powers over board members, and the right to influence and control.[41] Following this narrower definition, an LP without a distinct legal personality cannot be beneficially owned. However, more **comprehensive definitions of beneficial ownership in other countries include being able to derive (economic) benefit or profits from a corporate vehicle**.[42] Under these definitions, LPs without a legal personality can be beneficially owned since both general and limited partners can derive significant profits through the arrangement. Additionally, LPs may operate in a very similar way as a trust in cases where the general partner holds assets for the partnership on trust. Some argue that most ELPs ought to register with the UK's Trust Registration Service.[43] International standards and the UK itself consider all parties to a trust to be its beneficial owners.

Another consideration is that the UK has a broader definition of beneficial ownership in its AML regulations for the purposes of obliged entities conducting Know Your Customer (KYC) checks as part of customer due diligence (CDD) and, such that an LP can be beneficially owned in the eyes of a bank conducting CDD.[44] This impacts the effectiveness of the UK's discrepancy reporting requirement, in which obliged entities are required to submit reports of discrepancies between the outcome of who they determine to be a beneficial owner of a corporate vehicle through KYC investigations and what is listed on the register. The requirement excludes LPs, presumably to avoid receiving extraneous reports.[45] Industry experts report that in many jurisdictions with similar requirements, discrepancy reports often stem from differences in definitions between AML regulations and those of the BO disclosure regime.[46] Applying the same definition to BO reporting as CDD requirements would facilitate compliance by being easier to understand, and would ensure discrepancy reporting has the potential to improve the quality of information on more corporate vehicles.

Whilst LPs remain excluded from BO disclosure requirements, the UK government is introducing reforms which will mean that although LPs can have a principal place of business abroad, they must maintain a registered office address in the UK. The legislation will also require more information on partners, such as their residential address, date of birth, nationality, and business occupation. There will also be a requirement for individuals to keep this information up to date. It is unclear, however, how this will apply in the numerous instances where both general and limited partners are offshore corporate vehicles.[47] There are also proposals to give the registrar the power to expand discrepancy reporting requirements, to query information, and ensure that documents received are accurate. LPs will be required to deliver certain documents via an Authorised Corporate Service Provider who will be subject to AML supervision.

Foreign and rarely-used corporate vehicles

In an AML/CFT policy context, the FATF requires jurisdictions to collect the BO information of foreign legal persons with a "sufficient link" to their country, as well as legal arrangements created under foreign legislation of which the trustees are resident in the jurisdiction.[48] **A comprehensive approach to coverage should also consider coverage of foreign corporate vehicles**, particularly where the jurisdiction of incorporation does not have disclosure requirements in place. This includes foreign trusts owning assets or carrying out business in, or being administered from a jurisdiction.

There are already examples of disclosure requirements for foreign corporate vehicles. Following Russia's invasion of Ukraine in 2022, the UK established the Register of Overseas Entities (ROE), requiring foreign companies that want to own, buy, sell, or transfer property in the UK to report their beneficial owners or managing officers.[49] At the time of writing, Japan is considering a similar measure for the purposes of sanctions compliance and national security,[50] though it has no commitment to establishing a central BO register for domestic corporate vehicles. Russia has a register for foreign legal entities and structures that are registered for tax purposes in Russia to annually disclose beneficial ownership.[51]

In addition, **jurisdictions may need to collect information on foreign corporate vehicles that appear in a reporting entity's ownership chain**. Disclosure regimes should collect sufficient detail to have a complete and auditable record, as discussed later.[52] Those implementing reforms will need to consider how and where to collect, store, and ensure the accuracy of this information, especially given the challenge around verifying foreign corporate vehicles. An increasing number of jurisdictions collect BO information on domestic corporate vehicles. Provided this is done to a certain standard, **efficient international exchange of information on domestic corporate vehicles may serve as a more reliable alternative to the collection of information on foreign corporate vehicles** in the longer term.

Furthermore, some **jurisdictions may have rarely used or unique forms of corporate vehicles**. For example, an *Anstalt* (establishment) is a corporate form unique to Liechtenstein and covered by its BO regime.[53] The *Anstalt* has been used for money laundering (e.g. in the Philippines),[54] and its misuse far outside its country of origin again highlights a limitation of the risk-based approach, as discussed above. This reinforces the importance of ensuring that the starting point for coverage is broad, and any exemptions are context specific and well justified.

Domestic authorities are in a better position to understand the ownership and control of corporate vehicles. Therefore, placing disclosure requirements on corporate vehicles in the country of origin may lead to more reliable BO information. From a global perspective, it is neither an effective nor logical solution for jurisdictions to have to impose disclosure requirements for foreign corporate vehicles that pose a risk in a situation where they are not subject to disclosure requirements in their own jurisdiction because their risk domestically is low. Rather, in the longer term, it will be easier for the jurisdiction under whose domestic laws the entity is created to collect and verify information, and to exchange this with other jurisdictions.

Challenges specific to state-owned enterprises and not-for-profit organisations

State-owned-enterprises (SOEs) and not-for-profit organisations (NPOs) are two categories of corporate vehicle that are sometimes given blanket exclusions from reporting requirements, despite being highly relevant to achieving BOT policy aims. They take a variety of legal forms, and often have a specific function of operating, at least in part, for public or social benefit. SOEs are defined as being "under the control of the state, either by the state being the ultimate beneficial owner of the majority of voting shares or otherwise exercising an equivalent degree of control".[55] Transparency about how SOEs are owned and controlled is essential in order to help avoid risks, including misuse of assets, unfair competition, skewed procurement, and corruption,[56] and it has received particular attention within extractive industries.[57] As such, international bodies, including the Organisation for Economic Co-operation and Development (OECD), stress that SOEs should observe high standards of transparency relating to information about how they are managed.[58]

Similarly, there is evidence of misuse of NPOs,[59] and the Egmont Group notes the abuse of NPOs for money laundering.[60] Civil society actors have raised concerns about the potential for BO disclosures and AML/CFT policies more broadly having unintended consequences.[61] These risks, as well as any existing transparency and reporting requirements for NPOs, should be accounted for to ensure BO disclosure requirements are proportionate and do not place an undue burden on NPOs compared with other categories of corporate vehicles. In a number of jurisdictions civil society has voiced concerns about, and opposed, disclosure requirements for NPOs. Further research is needed to fully understand the impact of BOT on NPOs.

While the purpose and structure of these corporate vehicles may make it more challenging to apply standard definitions of beneficial ownership, it is nevertheless important to capture ownership and control information about these corporate vehicles. Using such an approach supports the legibility of the regime by applying the same standards and requirements to all corporate vehicles. Albania, for example, requires "non-profit organizations, including foundations, associations, centers, as well as branches of foreign non-profit organizations" to disclose BO information to the country's central BO register.[62]

Determining reasonable exemptions

After determining which corporate vehicles to cover in the scope of BO disclosure, policymakers should provide clarity on which, if any, corporate vehicles that are relevant to the jurisdiction's policy aims should be provided an exemption from the full disclosure requirements. As discussed in more detail later, exemptions should not remove all requirements to make a filing to the BO register.[63]

The main criteria for reasonable, narrowly tailored exemptions are:

1. **certain corporate vehicles are already disclosing adequate and up-to-date information on ownership and control to a third-party body** that is regulated or subject to supervision, and that maintains and performs reporting and oversight;
2. **the information that is being disclosed to a third-party body is as easily accessible to all relevant data user groups** as it would be through a government register;[64] and
3. **complying with disclosure requirements is impossible or excessively difficult for certain corporate vehicles**; this is typically because ownership and control are highly distributed and undergo rapid changes, often facilitated by regulated intermediaries.

Consider the creation of exemptions over exclusions

The primary purpose of exemptions should be to help ensure that the requirements placed on individuals and corporate vehicles by laws and regulations setting out the scope of a regime are reasonable and proportionate to achieving a jurisdiction's policy aims. To facilitate compliance, it may be necessary to consider additional legislation (e.g. legislation governing CDD/KYC requirements for obliged entities) to ensure a harmonised approach in both coverage and definitions (see Box 3).

Exemption refers to placing specific, minimised disclosure requirements on corporate vehicles that meet the criteria for inclusion in the scope of disclosure. By contrast, corporate vehicles that do not meet these criteria or are not explicitly named may be completely excluded from requirements. **Excluding categories of corporate vehicles from a disclosure regime can introduce loopholes, and lawmakers should consider establishing a broad scope of coverage of all corporate vehicles and providing reasonable exemptions instead.**

Box 3: Exemptions in the Netherlands

The Netherlands implemented BOT to prevent money laundering and terrorism financing in line with the AMLD4. Included in the exemptions are a number of historical entities that have existed since before the introduction of the Civil Code in 1838, such as guilds. They therefore do not appear in the legislation that states which entities possess a distinct legal personality, which includes associations.[65] They are, however, covered by the 2007 company register legislation under "other legal entities under private law".[66] If the historical entity wants to engage in commercial activities, it has to register with the company registrar.[67]

As a justification for the exemption, the Dutch government published a statement that on 1 May 2018 there were 87 "other legal entities under private law" registered with the company registrar. Because there are very limited numbers and new legal entities of this kind can no longer be incorporated, the government stated there was reason to assume these legal entities posed a low risk for AML/CFT purposes.[68] As there was no further detail, and given the small number of entities involved, this perception of risk appears to be in relative terms rather than for each specific entity, for which the risk remains potentially higher as a result of their exemption.

An additional exemption is made for the *Vereniging van Eigenaren* (VvE), the apartment owners' associations. A VvE manages its apartment building and deals with communal interests and spaces. When buying an apartment, the deed holder automatically becomes a

member of a VvE, which cannot be rescinded until the property is sold. VvEs are bound by Dutch laws and regulations,[69] and they have a separate legal personality. Every VvE is required by law to be registered with the company registrar, which collects personal information about the director(s)[70] who execute the memberships' decisions.

The justification for their exemption is that VvEs "do not fit well with the scope of the [AMLD4]" and that "all owners with an apartment right are automatically members and the association's sole purpose is maintenance of the property".[71] There is no comment on the extent to which they pose a risk for AML/CFT. However, there appear to be few publicly documented cases of VvEs being used for money laundering. By contrast, there are numerous documented cases of VvEs and fraud, a predicate crime for money laundering.[72]

Although VvEs are exempt from the BO regime, obliged entities are not exempt from establishing their beneficial ownership as part of CDD/KYC obligations under Dutch AML regulations. Article 3 of the implementation order guides obliged entities on how to ascertain the beneficial owners of "other legal entities", which includes associations. This includes:

1. direct or indirect ownership of more than 25% of shares of the legal entity;
2. direct or indirect ability to exercise more than 25% of the votes with respect to changing the statutes of the legal entity; and
3. exercising effective control of the legal entity.[73]

If none of the criteria are satisfied, a person on whose behalf the transaction is conducted, or another senior manager, should be disclosed. For VvEs, this would be the director(s), whose information the registrar should already have.

The argument can be made that VvEs rarely have beneficial owners: the first two criteria are not applicable, as there is no ownership share and the VvE form of association does not have statutes. The third criteria on effective control is unlikely to be applicable in most cases, but is not impossible. Therefore, according to the AML regulations, VvEs can have a beneficial owner who is different from the director who already needs to provide their information upon registration. It now appears that banks and insurers are putting pressure on VvEs to supply information and documentation for establishing their beneficial ownership. Some banks, such as ING, have set up dedicated pages for VvEs[74] and forms which seem to define beneficial ownership of VvEs in a different way from the implementation order, for example by defining beneficial owners as those with more than 25% voting rights at VvE meetings.[75]

This unharmonised approach has led to reports of VvEs not being able to open bank accounts or having their accounts closed on the grounds of posing a money laundering risk.[76] **Whilst exemptions are often made to reduce the burden on specific entities and individuals, in this case they have led to an incoherent approach that has the opposite effect.** There is no legal requirement for individuals to cooperate and comply with KYC investigations, but a VvE not doing so would result in the closure of its bank account, to the disadvantage of its members.[77] Governments could shoulder some of this burden by collecting disclosures from VvEs, which would then allow them to benefit from verification and discrepancy reporting from obliged entities. From public information alone, it is unclear how this affects and potentially undermines the possible benefits of discrepancy reporting, which does not appear to make any exceptions for VvEs.[78]

Some could argue that AML-regulated entities should be relieved of the requirement to conduct CDD/KYC on VvEs. However, this would leave a loophole with potential unintended consequences. If VvEs were required to disclose their BO information, it would invite discussion about who has access to such information; limiting access to this BO information may be reasonable given the fact that individuals have no choice as to whether they join a VvE.

Consider whether exemptions for publicly listed companies and investment funds are reasonable

A listed company means any company that has equity publicly traded on a regulated market. Publicly listed companies (PLCs) are an example of a category of corporate vehicles that are often included in the scope of disclosure requirements because they are relevant to the regime's policy aims, but are exempt from full BO disclosure under certain conditions. For example, French companies with shares traded on a regulated market, defined as stock exchanges in the European Economic Area, are exempt from declarations to the French BO register. This is because they are subject to obligations to publish certain information in accordance with EU law and to international standards guaranteeing adequate transparency of information relating to the ownership of capital.[79]

Stock exchanges mediate the sale of securities, including shares in PLCs. Shares traded through exchanges are often held by intermediaries (e.g. stock brokers) and pooled investment vehicles (e.g. mutual funds), and their ownership can be highly distributed and subject to rapid change. It can therefore be **nearly impossible for many PLCs to maintain a clear, real-time picture of aggregate ownership by any one individual that would constitute beneficial ownership**.

As a result, **PLCs may be granted an exemption from standard BO disclosure requirements, provided they are listed on a stock exchange with disclosure requirements relating to the acquisition and disposal of significant shareholdings and voting rights**. The simplest and clearest approach to defining which listed companies are exempt is to create a list of stock exchanges that have adequate ownership disclosure policies and use this as a basis for PLC exemptions (see Box 4). Some information should be collected from exempt PLCs, including the basis for their exemption and a link to their exchange listing, as discussed below.[80] Other oversight and due diligence requirements may also be considered. For example, it is common for AML/CFT regimes to distribute some level of due diligence regarding public company ownership to brokers or other intermediaries, albeit often imperfectly.

Box 4: Establishing the basis for reasonable exemptions for publicly listed companies[81]

To establish exemptions for PLCs, policymakers should develop a list of stock exchanges that require the disclosure of sufficient information about the ownership and control of PLCs. These should include:

- timely notification on the acquisition and disposal of significant voting rights;
- notifications on the basis of aggregated holdings and interests used jointly via an agreement;
- notifications of ownership and control arrangements via financial instruments that have a similar effect to owning shares or controlling votes;
- notifications that contain information on the means through which major shareholding or voting rights are exercised (e.g. the chain of ownership); and
- notifications of interests held by company officers.

Policymakers should also give consideration as to whether this information is easily accessible and up to date, and in what format it is available.

Finally, policymakers should consider the accessibility and structure of information on a stock exchange and whether these vary between segments, as different requirements may apply.[82] For instance, Argentina's tax authority, which maintains a central BO register with access granted only to government users, has opted not to allow exemptions for PLCs in their BO register. This is because, in many cases, a special authentication process is required to use the stock exchange portal that publishes the material, and the information is in formats that are not compatible with those used by their databases.[83] This example illustrates the importance of **ensuring the information that is being disclosed to a qualifying third-party body is easily accessible to all relevant data users when determining whether this alternative mode of disclosure is a justifiable basis for a reasonable exemption**.

Investment funds are another category of corporate vehicle that has been exempt or excluded from the scope of BO disclosures in many jurisdictions. Investment funds refer to "any type of collective scheme that pools together money from different investors to invest in different types

of assets, as described in the prospectus or other fund documents".[84] **There are significant practical challenges to ensuring transparency in investment funds**, such as the high-speed trading of securities, which may be held for as little as a few seconds. Investment funds are also typically subject to AML/CFT regulations.[85]

However, the **increasingly documented use of investment funds for money laundering** undermines the case for their exemption, particularly for alternative investment funds or private investment funds, such as hedge funds and private equity funds, which are typically only accessible to high-net-worth individuals or professional investors (see Box 5). Civil society organisations have proposed means by which BOT may be strengthened in the investment industry.[86] Further research is needed to concretely establish whether and how BO disclosure requirements can effectively include investment funds to generate useful information.

Box 5: Money laundering risks in investment funds

The Netherlands' 2019 National Risk Assessment on Money Laundering identifies investment institutions/companies among the 15 greatest money laundering threats, along with legal entities, offshore companies, and structures created by trust service providers. The report describes money laundering via investment institutions/companies as having a "future" character. This is because, whilst experts believe that it is already occurring, there appears to be little knowledge or information about this money laundering method.[87]

The report noted that the greatest risk is expected to lie with investment institutions/companies that are unlicensed, foreign-based, or both. Of particular concern in the **Netherlands** are alternative investment funds, which can include hedge funds and private equity funds, and which are subject to lighter regulation than institutes for collective investments in securities.[88] Similarly, a leaked investigation bulletin prepared by the **US** Federal Bureau of Investigation highlights concerns that "threat actors", including "financially motivated criminals and foreign adversaries", are likely using private fund structures "… to launder money, circumventing traditional [AML] programs", and points to the limitations of AML compliance programs within the US private funds industry.[89]

The **US** Corporate Transparency Act (CTA) passed in January 2021 may partially curb this threat by requiring certain unregistered pooled investment vehicles which are not operated or advised by an investment adviser registered with the Securities and Exchange Commission (SEC), or otherwise subject to certain SEC reporting requirements, to report limited BO information to a central directory managed by FinCEN. This rule may even apply to certain pooled investment vehicles managed by investment advisers exempt from SEC registration.[90] Notably, however, those pooled investment vehicles that are private investment funds and managed by SEC registered investment advisers (or SEC reporting investment advisers) may not be subject to any form of BO reporting, and other exemptions under the CTA may limit BO disclosure for a variety of private pooled investment vehicles.[91]

Finally, there have been several documented cases of misuse of private investment funds established in **countries in Latin America**, often involving the **US** and **Canada** as destination countries for illicit financial flows.[92] For example, in **Brazil**, the region's largest private investment market, the use of a form of private fund called family office has grown significantly since the 1990s, particularly for investment abroad. Family offices are relatively unregulated, whether they are headquartered in Brazil or abroad, and have reportedly been used to hide the proceeds of corruption.

Setting out the coverage of a disclosure regime in law

A BO disclosure regime's coverage should be clearly set out in law. There are a number of different ways that jurisdictions can legislate for which corporate vehicles should be included in the scope of disclosure requirements. The best approach will heavily depend on the local context, such as which corporate vehicle categories are governed by different pieces of primary or secondary legislation.

Legislating for the scope of coverage involves the consideration of several factors, including:

- how the **definition of beneficial ownership** influences which corporate vehicles can be legally beneficially owned;
- how to **set out the scope of coverage** in primary and secondary legislation;
- how to **set out exemptions such that they only allow for narrow interpretation** and do not create an unnecessarily convoluted disclosure regime; and
- how to **create guidance** to facilitate compliance.

A general consideration for where to place provisions detailing coverage and exemptions in legislation is that it is typically more time consuming and laborious to amend primary legislation than secondary legislation. It may also require a higher level of technical knowledge among lawmakers. Additional considerations for using primary legislation include: the aim to future-proof reforms against potential political about-turns; the level of technical and legal knowledge in the executive to produce delegated legislation; and potential lack of parliamentary oversight. Conversely, placing certain details in secondary legislation can enable an iterative approach.

Defining ownership and control of corporate vehicles in law

The coverage of corporate vehicles closely relates to the definition of beneficial ownership set out in legislation, as discussed above. **For a BOT regime to be comprehensive, all categories of corporate vehicles that facilitate the ownership and control of assets should be covered, based on a robust and clear legal definition that includes all relevant forms of ownership (including benefitting from an entity, such as the enjoyment of an entity's assets) and control.** It should also specify that ownership and control can be held both directly and indirectly.[93]

To illustrate, a definition limiting beneficial ownership to the ownership and control of a corporate vehicle through shares would exclude corporate vehicles that do not issue shares. Whilst share ownership and voting rights are common means of determining beneficial ownership, benefits, influence, or control can also be granted directly or indirectly through more complex mechanisms. This is often the case for certain categories of corporate vehicles, such as SOEs, and certain forms of partnerships. For example, ownership and control can be held through rules or articles of the company, via a special class of share, or through an informal agreement that grants an individual control over the company, such as exercising control via a family member or associate without a legal contract. Different forms of ownership can consider legal concepts, such as bare and usufruct ownership, which separate ownership between those who have the right to use, enjoy, and derive income or other benefits from assets and those who do not.[94]

Policymakers should consider variations in the ways in which ownership and control can be exercised through different categories of corporate vehicles, and how this may change. A robust definition also ensures it can accommodate any new corporate vehicles or changes to existing corporate vehicles.

Detailing coverage using primary and secondary legislation

As is done by most jurisdictions, **setting out the coverage of a regime in primary legislation offers the strongest basis for clarity and consistency in how BOT is implemented** over time and, where relevant, by subnational bodies. Certain aspects of coverage can also be addressed in secondary legislation. Generally, jurisdictions should set out the broad principle in primary legislation that all categories of corporate vehicles through which ownership and control can be exercised must be covered. Further details on specific corporate vehicles – including about exemptions – can be detailed in secondary legislation.

When drafting legislation relating to the coverage of a disclosure regime, policy and lawmakers should consider:

- describing a **broad scope of coverage in primary legislation**;
- taking stock of the full **range of acts and regulations** that may need to be amended;
- **future-proofing a regime** in anticipation of changes to the ways in which ownership and control can be exercised through corporate vehicles; and
- balancing the level of detail to include in **primary versus secondary legislation**.

Describing coverage in broad terms through primary legislation

In several jurisdictions, the scope of coverage is defined in legislation on the basis of corporate vehicle category and registration requirements; for example, pointing to all companies or all entities created under a specific act, such as a Companies Act. This approach offers clarity, but can focus BO disclosure somewhat narrowly on registered legal entities. It is therefore unlikely to allow for the comprehensive capturing of information on all relevant categories of corporate vehicles.

A more comprehensive approach is to describe the scope in general, broad terms, anchoring the guiding principles and an unambiguous requirement to disclose BO information in primary legislation. For example, by referring to all legal entities and arrangements, or to all corporate vehicles that can confer beneficial ownership based on a robust BO definition that includes a substantive interpretation of ownership and control (see Box 6). This approach widens the scope of coverage beyond legal entities, helps avoid the creation of blanket exclusions, and future-proofs legislation.

Finally, **all legislation dealing with beneficial ownership should be considered and harmonised**. These may include laws relating to companies, partnerships, non-profits, AML/CFT, taxes, natural resource management, and public procurement. An argument for detailing coverage (and the legal definition) in primary AML legislation is that it may help facilitate harmonising legislation across corporate vehicles where different acts cover different types of corporate vehicles.

Box 6: Country examples of legislating for coverage using general, broad terms

Argentina's legal framework lists specific corporate vehicles ("a legal entity, a trust, an investment fund") followed by a generic catch-all that refers to "*any other legal structure*" (emphasis added).[95]

Similarly, **Austria**'s Beneficial Owners Register Act lists 19 types of domestic and foreign entities and arrangements, such as ordinary partnerships, LPs, stock companies, and savings banks. It also includes a catch-all clause: "*other legal entities, required to be entered into the Commercial Register*" (emphasis added) and "foundations and funds established on the basis of a provincial act".[96]

Liberia's Act to "Further Amend Part I (The Business Corporations Act) and Part III (The Partnerships and Limited Partnerships Acts) of the Associations Law, Title 5, Liberian Code of Law Revised"[97] sets out a robust definition of beneficial ownership. It then uses catch-all language and a non-exhaustive list of domestic and foreign corporate entities to which the Act may apply, although not covering legal arrangements:

"As used herein, the term 'beneficial owner' shall be *applicable to all forms of businesses incorporated and/or organized under the laws of Liberia or authorized to do business within the Republic of Liberia*, inclusive of resident and non-resident corporations, foreign corporations authorized to do business in Liberia, [LLCs],

partnerships, [LPs], trusts, foundations, and *other legal entities* organized under the laws of Liberia or authorized to do business in Liberia"[98] (emphasis added).

In the **Netherlands**, a broad scope covering all legal entities and arrangements is included in primary legislation (AML law) along with the definition: "the natural person who ultimately owns or controls *a company or other legal entity or a trust or similar legal arrangement*"[99] (emphasis added). It then provides a non-exhaustive but comprehensive list of legal entities and, separately, arrangements. Further specifications of what constitutes beneficial ownership when it is applied to different corporate vehicles is contained in secondary (AML) legislation.[100] Registration requirements for legal entities (stored in the business register) are contained in primary legislation (company law) which references the primary AML legislation, and states clear exemptions of two entity types.[101] Information on the beneficial ownership of legal arrangements is collected in a separate register and governed by different legislation.

Future-proofing legislation

Agencies and policymakers involved in BOT reforms cannot assume that the ways in which ownership and control are exercised in their economy through and over domestic or foreign corporate vehicles with significant ties to the jurisdiction will remain fixed over time (see Box 7). They should also preempt that new categories of domestic corporate vehicles may be introduced in future legislation, and lawmakers should consider whether legislative frameworks will ensure new categories of corporate vehicles will be covered automatically, whilst allowing for some degree of adaptation.

Therefore, jurisdictions should not include exhaustive lists of corporate vehicles in primary legislation. This will mean new legislation is required if the categories of corporate vehicles which can be formed or which operate in the jurisdiction change over time. When outlining details about specific corporate vehicles in secondary legislation, particularly when listing corporate vehicle types, **legislators can future-proof their legislation by including a catch-all clause**; for example, by referring to "all other types/categories" of corporate vehicles (see Box 6).

Box 7: Examples of shifts in the way ownership and control can be exercised through corporate vehicles

LPs and LLPs are relatively new entity types compared to many types of companies. They are already widely used in some jurisdictions, but are not yet recognised in others. In **Nigeria**, for example, LPs and LLPs were first introduced in the 2020 Companies and Allied Matters Act, just two years before the implementation of its public BO register. Similarly, trusts are a feature of common law and not of civil law, but foreign trusts may be or become relevant to a civil law regime due to their operations or use in ownership chains.

Certain **US** states have begun incorporating novel corporate vehicles, including series LLCs[102] and decentralised autonomous organisations.[103] Following a public consultation, the BO information reporting requirement under the US CTA "retains the catch-all provision of the 'substantial control' definition… *This provision recognizes that control exercised in novel and less conventional ways can still be substantial*. It also could apply to the existence or emergence of varying and flexible governance structures, such as series [LLCs] and decentralized autonomous organizations, for which different indicators of control may be more relevant"[104] (emphasis added). These examples also highlight the important interplay between how the definition of beneficial ownership captures ownership and control and the scope of a regime's coverage.

Providing further details and enabling an iterative approach through secondary legislation

The role of secondary legislation in setting out the scope of coverage can be to **provide the further details needed to guide effective implementation** and to govern the application of BOT for specific policy aims. Whilst many jurisdictions include lists of covered corporate vehicles in primary legislation, this can be more restrictive for subsequent changes compared to including these non-exhaustive lists in regulations.

This approach facilitates ease of future amendments that are deemed necessary to provide clarity to those with implementation and compliance responsibilities, whilst ensuring that the legal scope of disclosure requirements and broad principles for disclosure are anchored in primary legislation. **This can help facilitate an iterative approach to implementation**, and allows for revisiting details, such as requirements placed on specific corporate vehicles, to ensure the disclosure regime remains effective.

It is also important that any secondary legislation governing a specific policy aim – such as regulations on the use of BO information for public procurement or AML legislation governing CDD/KYC requirements – avoids inconsistencies that create ambiguity and potential legal challenges (see Box 8).

Box 8: Country examples of inconsistencies in the scope of disclosure requirements in legislation

Indonesia's Presidential Decree No.13/2018 is the primary legislation governing BO disclosure in the country and provides obligations for "[LLCs], foundations, associations, cooperatives, [LPs], firm partnerships and other types of corporations" to disclose BO information to a central register.[105] However, the last category of "other types of corporations" is not included in subsequent regulations, which could include a range of entities, including PLCs, municipally owned entities, SOEs, and joint ventures.[106]

Similarly, **Kenya**'s definition of beneficial ownership in primary legislation (Companies Act 2015) includes a reference to ownership or control over "a legal person or arrangement", but subsequent regulations only cover companies, and not partnerships.[107]

Whilst both these cases illustrate inconsistencies, the formulation in primary legislation does allow for creating further regulations for additional corporate vehicle categories.

Legislating for reasonable exemptions

Any exemptions should be clearly defined, justified, and left open to only narrow interpretation. Exemptions are an important means of achieving proportionality, but their use also introduces complexity into a BOT regime. This complexity can have the effect of creating confusion and contradictions, and can therefore inadvertently increase the burden of compliance on corporate vehicles and beneficial owners.

When creating exemptions in law, policymakers should consider:

- **making exemptions explicit and specific**;
- creating a **legal obligation** on exempt corporate vehicles to declare the basis for their exemption and provide minimum information;
- balancing the level of detail to include in primary versus secondary legislation and **regularly reassessing exemptions**;
- **harmonising exemptions** with any complementary policies, such as CDD/KYC requirements, to support the ease of understanding and complying with a disclosure regime; and
- creating **separate exemptions for domestic and foreign corporate vehicles** of the same or a similar category.

Making exemptions explicit and specific in law

The two primary bases for reasonable exemptions are the existence of adequate information on ownership and control through a reliable and accessible source, and third-party intermediaries being best placed to perform reporting and oversight of certain corporate vehicles due to their practical realities, as previously discussed. **Any exemption that a jurisdiction deems reasonable should be made explicit and specific enough to allow for only narrow interpretation.**

To ensure a complete record, **exempt corporate vehicles should have a legal obligation to declare the basis for their exemption**; provide a minimum amount of information to identify them and where ownership and control information about them can be found; and keep this information up to date, as discussed below.

It is particularly important that jurisdictions ensure there are **only exemptions in cases where there are robust and ongoing oversight mechanisms in place for the exempt corporate vehicles**, to avoid creating loopholes. Where jurisdictions create exemptions informed by risk assessments, they may allow corporate vehicles to not

have to report any ownership and control information. As discussed earlier, a risk assessment lacks strength as a basis for exemptions.

Rather than creating blanket exemptions for a category of corporate vehicle, regulations can reference or list specific categories of corporate vehicles that are exempt on the basis of meeting additional criteria. These should not be open to interpretation. Governments should publish specific detail and guidance on the justification and bases for exemptions (see Box 9). This is an important means of ensuring they can be only narrowly interpreted, and that the burden of oversight for the designated authority is manageable.

In Brazil, for example, there is an exemption on the basis of the regulation and supervision by a competent authority in the country of origin (see Box 10). This exemption is broad and open to interpretation, and it places a monitoring burden on a government body to ensure a corporate vehicle is in fact supervised or regulated in a home jurisdiction. To ensure the exemption can be only narrowly applied, the government could instead publish an exhaustive list of countries and their regulatory bodies, along with guidance on any evidence they may need to provide, to meet the criteria for the exemption. To illustrate, this is done in the UK with PLCs, which are exempt if their shares are traded on an exhaustive list of stock exchanges.[108] This could be complemented by a clear and published rationale.

Box 9: Example of listing exemptions on the basis of adequate information and risk in the United States

The US CTA lists a total of 23 categories of corporate vehicles that are excluded from the reporting requirement to FinCEN based on their regulatory category or activities, though it does not explicitly address arrangements and associations, leaving questions about the coverage of trusts and partnerships. In the US CTA, many exemptions are on the basis of adequate information being available elsewhere, i.e. for "entities that are otherwise subject to significant regulatory regimes—e.g., banks—where Congress presumably expected primary regulators to have visibility into the identities of the owners and ownership structures of the entities", for example, through the bank licensing process.[109]

However, it also excludes companies with over 20 employees, a physical office, and a turnover of more than USD 5 million because large businesses are not deemed to be a risk for money laundering, the Act's policy aim. It remains to be seen whether this assumption about low risks for such "large operating companies" bears out in practice,[110] but active money-laundering cases involving large companies exist in other jurisdictions, and exemptions with similar justifications in other places have shifted abuse to these corporate vehicles.[111]

Listing the categories of corporate vehicles that are exempt, after justifying the basis for their exemption, encourages policymakers to consider their full range and impact. By whichever basis exemptions are set, it is recommended that the list of exempt corporate vehicles is reassessed regularly. Additional exemptions may need to be created where there is a strong case that disclosure requirements are not proportionate, or revoked if warranted by a change in circumstances. Including details on exemptions in secondary legislation enables an iterative approach. A designated body, such as one with a responsibility for routine reviews and recommendations to the legislature based on AML/CFT risks, could support this process.[112]

Ensuring clarity, legibility, and coherence of disclosure requirements

There is the potential that creating exemptions can reduce the legibility of a regime, or the extent to which requirements set out in legislation and regulations can be easily understood by those who are affected by them. The risk of this is even greater where there are blanket exclusions. For example, in the case of AML/CFT obligations, applying disclosure requirements to a different set of corporate vehicles than those obliged entities have to conduct CDD/KYC on can lead to a disclosure regime that is incoherent and difficult to understand and comply with. **Whilst exemptions are often made to reduce the burden on specific entities and individuals, an unharmonised and incoherent approach may have the opposite effect** (see Box 3).

Finally, **exemptions may not apply equally to domestic and foreign entities**, and differences should be made clear (see Box 10). For example, foreign corporate vehicles subject to a disclosure regime in their home country that meet certain standards in terms of their BO information being accurate, up to date, and readily accessible could constitute grounds for an exemption.

Box 10: Example of separate exemptions on the basis of tax domicile in Brazil

Brazil's primary legislation includes two separate sets of exemptions, one for those who are tax domiciled in Brazil, and another for those tax domiciled abroad but with sufficient links to Brazil. Exemptions for domestic entities include: sole traders and sole proprietorships of lawyers, where the natural person listed is the beneficial owner; companies made up exclusively of individual partners, provided that at least one of them owns more than 25% of the entity's share capital; and pension entities, pension funds, and similar institutions, "provided that they are regulated and supervised by a competent governmental authority in the country".[113] Some exemptions that do not exist for domestic entities are relevant for listed companies whose shares are traded on a regulated market recognised by the Securities Commission in countries that "require public disclosure of shareholders considered relevant, according to the criteria adopted in the respective jurisdiction".[114]

Creating guidance to support understanding and compliance

Clear guidance on the ownership and control criteria for corporate vehicles and their reporting obligations facilitates compliance by helping the individuals filing disclosures on behalf of covered corporate vehicles, as well as those corporate vehicles' managers and beneficial owners, understand the requirements. **Separate guidance may be required for different categories of corporate vehicles.** This may be especially relevant in cases where the application of these concepts is more complex or unique based on a corporate vehicle's purpose or mode of operation. Jurisdictions may need to develop differentiated reporting requirements for corporate vehicles, such as SOEs with less common ownership and control mechanisms (see Box 11). They may also need guidance setting out the application of reasonable exemptions, such as any reporting requirements that are in place for exempt corporate vehicles.

Box 11: Example guidance of applying definitions of ownership and control to specific corporate vehicles

Limited partnerships

Denmark's guidance offers specific advice on the beneficial ownership of LPs,[115] noting that "it is important to be aware of the special structure of the business form". The guidance notes that, as a rule, the general partner is not the beneficial owner of the company, and "limited partners will in all cases have to be assessed in relation to the definition of [beneficial] owners, as their participation in the company is necessarily characterised as ownership". However, situations may arise where the general partner can also be considered a beneficial owner, namely:

"If the day-to-day management is handled by the general partner and if this is a legal person (company), the [LP] must register the natural person or persons who handle the actual management of the company. It is the Danish Business Authority's assessment that it will be the day-to-day management of the complementary business. If the general partner is [an LP], it will thus be the day-to-day management of this LP."

State-owned enterprises

There are critical differences between ownership and control by states and ownership and control by natural persons. BO disclosure regimes should capture information about the state or state-agency involvement in companies as part of BO declarations. A state can be a minority owner and still exercise significant influence and control over a company or SOE. When establishing which control mechanisms to record, consideration should be given to a number of positions which allow individuals to exercise significant control in SOEs but are positions which often do not explicitly meet the definition of beneficial ownership in ordinary companies, such as board members and senior managing officials.[116]

Ensuring the data system is fit for purpose

After developing a sound legal framework, agencies involved in BOT implementation should ensure that the data system put in place can completely and accurately capture and store BO information for all corporate vehicles. The OO Principles set out a framework for the collection, storage, and quality of data on beneficial ownership.[117] Important considerations include:

- **where and in what format BO information is collected and stored** in a jurisdiction;
- whether the data collection system allows for **sufficient detail to be captured** on corporate vehicles that are both covered and exempt from reporting BO information; and
- how the regime's coverage interacts with **obligations to disclose information about indirect ownership and control**, which may be held by various forms of intermediaries.

Structuring the data that is collected and centralising its access

Registers dedicated to collecting information on ownership and control of legal entities have been a main focus during the initial years of BOT reforms. However, a comprehensive regime should cover entities and arrangements in a harmonised way. This may include multiple points of data collection and storage for different categories of corporate vehicles, with different agencies or authorities responsible for their management. **Whether there is one or multiple registers, information should be interoperable and accessible through one central platform** to ensure the information offers a comprehensive overview of ownership and control, and that it is usable and actionable.[118] Specific considerations and best practices for centralising information is outside the scope of this briefing.

Some jurisdictions already have or plan to establish registers with separate but complementary mandates that are relevant to gaining a full picture of beneficial ownership (see Box 12). Where there are multiple points of BO data collection, the same standards should be applied. For example, there should be a harmonised definition of beneficial ownership and similar regulations ensuring information is kept up to date. Registers should use a data standard to ensure the data is interoperable. The data standard used should be able to accommodate sufficiently detailed information on all categories of corporate vehicles that are covered and to reflect changes over time, for example, in cases where a corporate vehicle being used by the same beneficial owners changes its legal form.

Box 12: Examples of where beneficial ownership data on different categories of corporate vehicles can be held

In **Namibia** and **South Africa**, the Office of the Master of the High Courts (Master's Office) has historically been responsible for the registration of trusts, whilst the corporate registrar was responsible for the registration of companies. Therefore, when BOT legislation was introduced these bodies were logical points for BO data collection and storage for the corporate vehicles they respectively dealt with.

In the **UK**, the ROE contains information on specific types of foreign corporate vehicles. The ROE is set out in separate legislation to the UK's PSC register, the Economic Crime (Transparency and Enforcement) Act, and the Companies Act, respectively, and it has a different scope and set of disclosure requirements. The ROE is nevertheless made publicly available through the same portal as PSC data, which facilitates ease of access to both sources of BO information.

Finally, there may be some jurisdictions looking to expand the scope of their disclosure requirements to all categories of corporate vehicles after having previously implemented a BO disclosure regime with a narrower scope. For example, dozens of countries have implemented BO registers for the extractive industries to meet their requirements as EITI members. Such registers will hold BO information about a particular subset of companies. Those designing and implementing BO reforms face the decision of whether these registers will continue to operate separately or be integrated into wider reforms.

Centralising data allows for a whole-of-government approach to verify the accuracy of the information being disclosed. This ensures the BO data held serves as an authoritative source of information that users inside and outside of government can draw from and use as a point of reference. Separate government institutions collecting BO information for their own purposes and using their own definitions and standards creates an unnecessary compliance burden and severely undermines the information's quality, interoperability, and usefulness.

Collecting information on exempt corporate vehicles

Where a corporate vehicle is exempt from disclosing its beneficial owners, it should still have a legal obligation to make regular declarations. A declaration should include the basis on which the corporate vehicle qualifies for exemption. **The design of the form and the data fields that capture BO information in a structured format should therefore allow for the declaration of an exemption to the register**, including the basis for exemption.

Disclosure requirements for exempt corporate vehicles should be aligned with the purpose of existing requirements for covered entities and proportional to policy aims. They should include sufficient detail to be able to unambiguously identify the corporate vehicle. For auditability, it should be possible to connect the declaring vehicle to existing filings of information about its ownership and control, for instance on a stock exchange, using information available from the BO declaration or a related entry in a register. **Where a third party is carrying out oversight outside a BO register and publishes relevant information on ownership and control, a clear reference to this information should be included** in a declaration to ensure that it is easily accessible to any data user (see Box 13).

Box 13: Collecting data for exempt publicly listed companies[119]

PLCs that are granted an exemption from disclosing beneficial ownership to a register should be required to declare minimum information to ensure a complete data record, and they should routinely confirm their exemption status (e.g. annually).

It is recommended that PLCs be required to provide:

1. information about the stock exchanges in which the company has equity listed;
2. identifying information for the listed equity securities;
3. information about the PLC itself; and
4. confirmation on whether or not (1) makes the company eligible for exemptions from BO disclosure requirements.

The agency responsible for maintaining the BO register should have the capacity to:

1. check and, if necessary, reject claims for exemptions based on the stock exchanges on which the company is listed; and
2. record the fact that an exemption has been granted on the basis that the declaring entity is a PLC on an exchange with adequate ownership disclosure requirements.

Accounting for indirect ownership and control of all corporate vehicles

A final consideration is the relationship between the scope of coverage and the level of detail that companies need to report about their ownership and control. **Gaining the full picture of a corporate vehicle's beneficial ownership requires collecting information about corporate vehicles through which indirect ownership or control is exercised, which may be in foreign jurisdictions** (see Box 14). Data systems will need to accommodate categories of corporate vehicles, and ways of exercising ownership and control, that may not exist in or are not known by the implementing jurisdiction.[120] For example, when legislating for the BOT of trusts, both Namibia and South Africa need to accommodate the roles of "protector" and "enforcer", which do not exist in domestic trust law.

Any number of corporate vehicles may appear in an ownership chain, and those with an obligation to disclose their beneficial owners will benefit from guidance on how to determine what information should be included on each category of corporate vehicle in their chain. This guidance should take into account whether they are covered by the home or a foreign jurisdiction's BO regime. In order to collect information on full ownership chains, it may not be necessary or desirable to collect information on all intermediary entities in an ownership chain. For example, if all entities in a chain are in the same jurisdiction, then only reporting their beneficial and legal owners will be sufficient, and requiring each entity to report details of its full chain will lead to redundancy. Which information should be collected is outside the scope of this briefing.

Box 14: Country examples of full ownership chain reporting requirements

Some jurisdictions, including **Armenia**, **Denmark**, and **Ukraine**, require full ownership chain reporting. For example, Ukraine's legislation calls for a "schematic representation of the ownership structure", indicating all persons with independently or jointly held direct or indirect ownership or those with significant influence on a covered corporate vehicle, as well as information about the level of participation of individuals and corporate vehicles in the chain. Further information is collected about each actor, such as identification information about domestic and foreign beneficial owners; names of domestic and foreign legal entities and registration information; and description of beneficial owners' influence.[121]

Denmark's guidance includes example schematics to illustrate how companies should report indirect ownership by clarifying "the entire ownership structure (ownership chain) in the company and the group, if several companies are involved."[122] However, it provides exemptions for PLCs and SOEs that appear without requiring any information about where adequate ownership and control information can be found, which leaves the record incomplete.

Conclusion

Corporate vehicles of different kinds are fundamental to facilitating certain social and commercial activities, but the unique rights they are granted also present the potential of their misuse. Requiring corporate vehicles to disclose BO information helps ensure appropriate oversight and accountability to meet specific policy aims. To meet the broadest set of policy aims, including AML/CFT, all corporate vehicles through or by which assets can be owned, benefitted from, and controlled should be covered by BO disclosure requirements.

Therefore, the coverage of a disclosure regime should be set out in broad and general terms in law, with catch-all clauses accounting for potential future changes. Explicit and narrow exemptions for certain categories of corporate vehicles can be used to ensure the requirements placed on those with an obligation to disclose are appropriate and proportional to meeting policy aims. The data system a jurisdiction designs to support BO disclosures should completely and accurately capture BO information for all corporate vehicles, and this should be easily accessible to a broad range of users. In taking these steps, jurisdictions can ensure a comprehensive approach to coverage. Comprehensive coverage can more effectively enable government agencies, businesses, and citizens to access and use accurate, complete, and high-quality information on the true owners of companies to achieve accountability in ownership.

Endnotes

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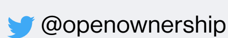

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