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UNDERSTANDING THE CONCEPT OF BENEFICIAL OWNERSHIP DISCLOSURE

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SUPPORTED BY:



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ACRONYMS AND ABBREVIATIONS

BO	Beneficial Ownership
BOD	Beneficial Ownership Disclosure
EITI	Extractives Industry Transparency Initiative
GHEITI	Ghana Extractives Industry Transparency Initiative
GRA	Ghana Revenue Authority
NPA	National Petroleum Authority
PEPs	Politically Exposed Persons
RATF	Financial Action Task Force
RGD	Registrar General's Department

1.0

Background

Beneficial ownership (BO) has become one of the major concerns of the extractives industry. What was once considered an intriguing academic concept is now regarded a major decision driver in tax planning. In the past, persons who exercised influence over and benefited from a company were of less interest to the public and policy makers. This means individuals could influence certain key decisions and actions in a company to their private benefit although they may not be visible representatives (such as directors, managers or employees) of such companies. This created an enabling structure for persons and companies to engage in improper activities such as tax evasion and money laundering among others which are usually made possible by shell companies

and companies with complex structures. In the 21st century, it is no longer enough to know just the name of a company or its key management, but it has become equally necessary to know the true owners of any company.

The concept of beneficial ownership identifies persons who have significant influence and control over a company and are the foremost recipients of company benefits. The lack of beneficial ownership disclosure impacts all the sectors of an economy, but most especially the extractives sector, which is already prone to rent seeking and corruption. Discretionary powers exercised by government officials and the high politicization of decision

making processes in the extractives sector already creates an enabling environment for corruption to thrive in the sector. Shell companies and opaque ownership structures make it difficult to detect companies that evade tax or have inappropriate relations with government officials. It is estimated that developing countries lose \$1 trillion each year due to corrupt or illegal cross-border deals, many of which involve companies with unclear ownership.¹

On a good note, global interest in ownership transparency is growing: the G8 is adopting principles on beneficial ownership; the United States, United Kingdom and European Union are taking steps towards making more beneficial ownership

information available, and eleven Extractive Industries Transparency Initiative (EITI) countries have participated in a beneficial ownership pilot.² By 2020, the EITI will require all EITI compliant countries to ensure that companies that apply for or hold a participating interest in an oil, gas or mining license or contract in those countries disclose their beneficial owners. The Financial Action Task Force (FATF) has taken a similar initiative as the EITI and has set out a number of comprehensive measures to ensure ownership transparency to prevent the misuse of companies, trusts and corporate vehicles. From the assessments of countries in implementing BO requirements, the FATF recognizes that the challenge to transparency ownership

¹ Natural Resource Governance Institute (2015). *Owning Up: Options for Disclosing the Identities of Beneficial Owners of Extractive Companies*. Available at <https://resourcegovernance.org/analysis-tools/publications/owning-options-disclosing-identities-beneficial-owners-extractive> Accessed 1st August, 2017.

² Ibid

is not the lack of international standards to improve transparency but the effective implementation of the standards.³

Ghana joined the league of countries promoting BO in 2016, when it passed the Companies (Amendment) Act, 2016 (Act 920), to provide for the inclusion of the names and particulars of beneficial owners of companies and to establish a Central Register. Although Ghana has taken this step towards promoting ownership transparency, the concept of beneficial ownership remains quite an enigma as there has been very little public education on the subject.⁴

It is therefore imperative to provide enlightenment on the concept of ownership disclosure to guide public understanding. As light is shed on these issues, it will help provide insight on the implications of complex and opaque ownership structures and the need for ownership transparency in Ghana. It will also help equip individuals and companies to embrace their roles in promoting beneficial ownership in Ghana.

³ The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 as the global standard-setter for measures to combat money laundering and terrorist financing, and other related threats to the integrity of the international financial system. The FATF has developed the 40 Recommendations, which are the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. As well as setting standards, the FATF is responsible for regular assessments of how well members are implementing the Recommendations, and takes action against countries which are non-compliant.

Source: <http://www.fatf-gafi.org/publications/mutualevaluations/documents/report-g20-beneficial-ownership-2016.html>

⁴ More work remains in sensitizing stakeholders and the public on beneficial ownership disclosure. The Ghana Extractives Industry Initiative, sponsored by the Ghana Oil and Gas for Inclusive Growth has rolled out a number of workshops to create awareness on BO.

1.1. Objective of manual

This manual is prepared to serve as a guide to help government, citizens, industry players, private enterprises and all other relevant stakeholders grasp the concept of beneficial ownership in Ghana's extractive sector. With a user-friendly format, it attempts to address key questions bordering on ownership transparency and some of the myths that usually curtail the implementation of beneficial ownership.

1.2. Structure of manual

The manual is structured in a simplified manner that makes the concept of BO easy to grasp. It provides the necessary details on the concept of beneficial ownership, highlights of Ghana's legal intervention for the implementation of BO, the concerns and myths around BO disclosure and some useful recommendations for the successful implementation of BO in Ghana. It covers the following:

Chapter 2. Beneficial Ownership in the Extractives Industry

– this covers two main aspects. Firstly, it presents why beneficial ownership matters in the extractives sector highlighting the issues of tax evasion and how it impacts the economy negatively. Secondly, it addresses the ways in which extractive companies conceal their beneficial owners through complex ownership structures.

Chapter 3. Ghana's Beneficial Ownership Intervention

– this looks at the kind of interventions Ghana has adopted in promoting beneficial ownership in the country. The section further highlights the myths associated with beneficial ownership implementation and whether these myths are justified.

Chapter 4. Conclusion and Recommendations

– this section draws conclusion from the various points raised in

the previous sessions and recommends ways by which Ghana can effectively implement beneficial ownership.

2.0

Beneficial Ownership in the Extractives Industry

2.1. Why beneficial ownership matters in the extractives industry

The leak of the “Panama Papers”⁵ in 2016 revealed how complex ownership structures can allow for criminals and other unscrupulous individuals or entities to hide their business ownership and dealings, no matter how shady. Although this is not in itself illegal, it can be a leeway through which illegal activities such as tax evasion can be perpetrated.

The leaked documents showed the myriad ways in which the rich can exploit secretive offshore tax regimes. Twelve national leaders were among 143 politicians, their families and close associates from around the world known to have been using offshore tax havens.⁶ They further showed how damaging it can be for individuals and institutions to be linked, even unknowingly, with these kinds of activities.⁷ This raises serious concern for any kind of business entity or industry,

⁵ In 2016, there was an explosive leak of encrypted internal documents from Mossack Fonseca, a Panamanian law firm that sells anonymous offshore companies around the world. These shell companies enable their owners to cover up their business dealings, no matter how shady. The leak proved how a global industry led by major banks, legal firms, and asset management companies secretly manage the estates of the world’s rich and famous: from politicians, FIFA officials, fraudsters and drug smugglers, to celebrities and professional athletes. Read more at source: <http://panamapapers.sueddeutsche.de/articles/56febf0a1bb8d3c3495adf4/>

⁶ *ibid*

⁷ The Banker (2016). Ultimate beneficial ownership: where are we and what does the future look like? Available at <http://www.thebanker.com/Banking-Regulation-Risk/Regulation/Ulimate-beneficial-ownership-where-are-we-and-what-does-the-future-look-like>

as long as it remains a potential for tax evasion, the extractives sector not excluded.

The extractives sector plays a crucial role in revenue generation for countries, especially where tax collection is effective. Countries that have lax tax collection systems and regimes that tolerate opaque ownership structures facilitate the syphoning of public money and tax evasion. For example, Ghana's Revenue Authority (GRA) is constrained in capacity in detecting complex tax evasion schemes especially for its large informal sector. Out of 1.2 million tax payers, only 200,000 are recognized from the informal sector, whilst about 195,000 people remain outside the tax net.⁸

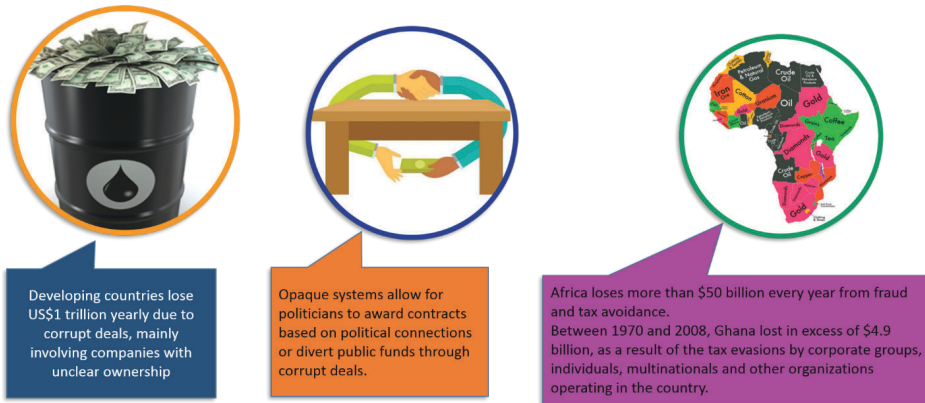
This is cause for alarm, as these unretrieved taxes could have been used to offset debts and support development in the country. Again, opaque systems allow for government authorities to award contracts based on political connections rather than unbiased processes which will ensure that the best deals are obtained. The participation of politically exposed persons (PEPs) in the extractives sector results in conflicts of interest and facilitates the diversion of public funds through corruption. PEPs are defined by Article 52 paragraph 2(b) as individuals entrusted with prominent public function together with their family members and close associates⁹,

⁸ The 2016 Regional Spatial Business Report of the Ghana Statistical Service indicates that 62% of commercial establishments in Ghana are in the informal sector. Source: Business & Financial Times, 2017. Available at <https://www.ghanaweb.com/GhanaHomePage/business/Economy-remains-largely-informal-GSS-report-confirms-509880> Read report at http://www.statsghana.gov.gh/docfiles/IBES_Questionnaires/IBES%201%20reports/REGIONAL%20SPATIAL%20BUSINESS%20REPORT.pdf

Some extractive companies use chains of legal ownership to avoid the payment of taxes in the jurisdictions where they actually produce, buy, or sell minerals or hydrocarbons. It is estimated that Africa loses more than \$50 billion every year from fraud and tax avoidance.¹⁰

In Ghana, it is estimated that nearly US\$2.1 billion dollars is lost to tax evasion annually. Between 1970 and 2008, Ghana lost in excess of \$4.9 billion, as a result of the tax evasions by corporate groups, individuals, multinationals and other organizations operating in the country.¹¹ According to the National Petroleum Authority (NPA), Ghana lost an estimated GHC 850 million in revenue in 2016 due to tax evasion as a result of illegal trade in petroleum products in the downstream petroleum sector.

Picture 1: The world without beneficial ownership disclosure



Source: Author, 2018

¹⁰ OGP Openness in Natural Resources Working Group | Issue Brief | February 2016. Available at <http://www.opengovpartnership.org/sites/default/files/FIN%20OGP%20Issue%20Brief%20BO%20Disc.pdf> Accessed

¹¹ A study by the Integrated Social Development Centre (ISODEC); reported by Ghana News Agency. Available at <https://www.newsghana.com.gh/ghana-loses-us2-1-billion-to-tax-evasion-annually/>

2.2. How extractive companies conceal their beneficial owners

Companies can have opaque and complex ownership structures, with ownership shares held, directly or indirectly, by other companies, private trusts or through private agreements allowing one person to hold shares on behalf of another.¹² Some of the common ways by which companies conceal details of their beneficial owners are highlighted below:

Shell companies: A shell company is a business entity created to hold funds and manage another entity's financial transactions. Unlike traditional companies, shell companies do not have employees, do not make money nor provide customers with products or services.

In most cases, shell companies are used as tax havens by companies or individuals who want to avoid taxes. Although in most parts of the world – like the United States of America - shell companies are considered perfectly legal entities, they are sometimes used as vehicles for illegal activities like tax evasion and money laundering.¹³

Trusts: A trust usually involves the transfer of assets to a trustee to hold and manage those assets in favour of some beneficiaries. A trust thus involves changing the title to assets, that will now be under the name of the trustee (or sometimes directly held by the trust, like some bank accounts).

¹² Natural Resource Governance Institute and Global Witness (2016). Beneficial Ownership: Tackling Hidden Company Ownership Through Myanmar's EITI Process.

¹³ Dixon (2018). What Is a Shell Company? Available at <https://smartasset.com/investing/what-is-a-shell-company> Accessed 3rd September, 2018.

This means that trustees may act on behalf of a beneficiary, appearing to have the ultimate control over an asset on paper, but does not in reality. Trust arrangements are used as corporate vehicles to conceal beneficial owners.¹⁴

Legal owners: Usually companies make use of legal ownership to hide persons who exercise ultimate control over an entity and enjoy from it, profits and other benefits. Although legal ownership is important, it may not necessarily show the natural persons who exercise ultimate influence and control over a business. To distinguish between legal ownership and beneficial ownership, the following sub-section discusses the major differences.

2.2.1 Difference between beneficial ownership and legal ownership

Beneficial ownership and legal ownership are not the same. Whereas legal ownership refers to the state where a person or company is listed in a company's corporate registration, licenses or contracts as direct owners, beneficial ownership refers to the state whereby a person who may not necessarily be a legal owner, exercises significant influence over and receive profits from a company.¹⁵ This means that, for example, if a company is legally owned by a second company, the beneficial owners are actually the natural persons who are behind that second company and exercise ultimate control over both companies¹⁶.

¹⁴ Knobel (2016). Beneficial Ownership and disclosure of trusts: challenging the privacy arguments. Tax Justice Network. Available at <https://www.taxjustice.net/2016/12/07/beneficial-ownership-disclosure-trusts-challenging-privacy-arguments/> Accessed 3rd September, 2018.

¹⁵ Natural Resource Governance Institute (2016). Beneficial Ownership: Tackling Hidden Company Ownership in Myanmar. Available at <https://resourcegovernance.org/sites/default/files/documents/beneficial-ownership-tackling-hidden-company-ownership-in-myanmar.pdf> Accessed 9th October, 2017.

¹⁶ FATF (2014). FATF Guidance Transparency and Beneficial Ownership. Available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> Accessed 9th October, 2017.

Table 1 highlights the major differences between legal ownership and beneficial ownership.

Table 1: Key differences between beneficial ownership and legal ownership

Beneficial ownership	Legal ownership
Beneficial owners may or may not occupy formal positions within the company but use someone else (legal owner) to exercise control over the company.	Legal owners are persons listed in the corporate registration information as holding influential positions within the company, but who are actually acting on behalf of someone else.
Beneficial owners exercise the ultimate and absolute control over a legal entity or company.	Legal owners can only take decisions for a company on the basis of their legal entitlement (on paper) to do so.
Beneficial owners have a right to the company profits.	Legal owners do not have a right to company profits.
A beneficial owner can only be a natural person. A company cannot be a beneficial owner.	A legal owner may be a natural person or a legal entity such as a company.

Source: Author with data adopted from FATF (2014)

A practical illustration of how beneficial ownership information is concealed

“The case of the Sphynx oil sale – A Congolese official used multiple tools to conceal his interests in three companies that purchased oil from the national oil company (NOC), including a professional nominee firm and chains of corporate ownership that led to a holding company in a secrecy jurisdiction. A 2005 U.K. court judgment explained, how one of the companies, Sphynx Bermuda, was wholly owned by a British Virgin Islands (BVI) holding company called Lockwood Enterprises Limited. In corporate filings, Lockwood initially listed a professional nominee firm as its sole shareholder. This firm told Lockwood’s Swiss bank that it held shares “in trust” for the official.

Later, the official substituted his own name for the nominee firm's in BVI records. The court further found that he held equity in Sphynx via a shell company in a secrecy jurisdiction because "he did not want his connection to be known."¹⁷

2.3 Success stories in the implementation of beneficial ownership disclosure around the globe **Beneficial ownership disclosure is gathering global momentum.**

Here are a few success stories:

The United Kingdom (UK) - Public register accessed two billion times a year

In 2016, the UK paved the way by setting up the world's first register of the beneficial

owners of companies which is accessible to the public at no fee. The UK register has demonstrated the feasibility of public registers and set new standards in making beneficial ownership data open data. The information on the register is made freely available by the UK's Companies House both as a searchable web interface or as a structured data such as a spreadsheet that can be used for any purpose. The data is such that it can be reused by other organisations and individuals without any restrictions.¹⁸ The register covers almost 4 million companies, partnerships and other corporate bodies registered in the UK. The information in the register is publicly accessible, free of charge, and currently being accessed over 2 billion times a year.

¹⁷ Extracted from Sayne et al, (2017). Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts. Natural Resource Governance Institute. Available at <https://resourcegovernance.org/sites/default/files/documents/corruption-risks-in-the-award-of-extractive-sector-licenses-and-contracts.pdf> Accessed 3rd September, 2018.

¹⁸ Global Witness (2017). 10 lessons from the uk's public register of the real owners of companies. Available at <https://www.globalwitness.org/en/blog/10-lessons-uks-public-register-real-owners-companies/>

The register also provides an easily accessible single source of information about the ultimate owners and controllers of UK companies. The provision of this information helps to promote good corporate behaviour and increases trust in UK companies. Law enforcement agencies and civil society organizations use the register to support their investigations. Citizens and businesses are also able to access the register to identify who really owns and controls the companies they are doing business with.¹⁹

Ukraine – All state officials are required to submit electronic declarations of their ownership or shares in any business entity

Ukraine has made a legal commitment to identify the real beneficiaries of legal entities in the country.

Based on this, there is a mandatory inclusion of information on beneficial ownership in the Unified State Register of Legal Entities and Individual Entrepreneurs. The register is freely accessible online to all members of the public, and includes data on the final beneficiaries of all legal entities in Ukraine from all sectors. Ukraine has made a further commitment to provide all the registry's information to the global register of beneficial owners, and has passed legislation stating that all state officials must submit electronic declarations indicating any ownership or shares in any business entity.²⁰

United States (US) – All banks in the US are now required to collect and verify the identities of beneficial owners

In June 2013, the United States announced its full commitment to combat the criminal

¹⁹ Extractives Industries Transparency Initiative (2017). Beneficial ownership transparency. Milestones on the road to 2020. Highlights from EITI countries. Available at https://eiti.org/sites/default/files/documents/eiti_botmilestones_8.pdf Accessed 4th September, 2018.

²⁰ *ibid*

misuse of businesses, shell companies, and front companies. In May 2016, the U.S. government passed a new regulation regarding the beneficial ownership of legal entity customers. All banks in the United States are now required to collect and verify the identities of beneficial owners who own or control legal entity customers, including corporations, limited liability companies, partnerships, and other legal entities.²¹

The EITI - Twenty (20) implementing countries are in the process of setting up public registers of beneficial owners for companies in oil, gas and mining

EITI is also contributing to this success story. Twenty (20) implementing countries are in the process of setting up public registers of beneficial owners for companies in oil,

gas and mining in line with requirement 2.5 of the EITI Standard (2016). By 2020, all implementing countries are to ensure that all extractive companies that apply for, or hold a participating interest in an exploration or production oil, gas or mining license or contract in their countries publish the names of their real owners. The publication should include the particulars of the owner, including the name, nationality and country of residence. Any politically exposed persons holding ownership in oil, gas and mining projects must be publicly identified. The EITI recommends that beneficial ownership information is made available through public registers. At a minimum, the information must be published in the country's EITI Report. The EITI requirement has sparked significant

²¹ First Republic (2018). Beneficial ownership. Available at <https://www.firstrepublic.com/resource/beneficial-ownership>

reforms in EITI implementing countries. Implementing countries including Ghana, Democratic republic of Congo and Burkina Faso have began regulatory and legal reforms on ownership transparency.²²

²² EITI (2018). Beneficial ownership. Revealing who stands behind the companies. Available at <https://eiti.org/beneficial-ownership>

3.0

Ghana's beneficial ownership intervention

Ghana has demonstrated some amount of commitment towards implementing beneficial ownership. In the bid, a number of interventions have been rolled out. These interventions are not restricted to the extractives sector but are applicable to all the sectors of the economy. Key among them include the amendment of the Companies Act, 1963 (Act 179) and the establishment of a central beneficial ownership register.

A. Companies (Amendment) Act, 2016 (Act 920)

In 2016, Ghana amended her Companies Act, 1963 (Act 179) to the Companies (Amendment) Act, 2016 (Act 920) to provide for the inclusion of names and

particulars of beneficial owners of companies. Among other provisions, section 32 of Act 920 specifies that a company keeps a register of its members and beneficial owners. The register should provide the following in respect of its members:

- (a) (i) “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 nature of the interest of each member; and

(iv) the date at which a person ceased to be a member

(b) where a member is not the beneficial owner of the interest,

(i) the full name and any former name of the beneficial owner;

(ii) the date and place of birth;

(iii) the telephone number;

(iv) the nationality, and proof of identity;

(v) residential, postal and email address, if any;

(vi) place of work and position held; and

(vii) the nature of the interest including the details of the legal arrangement in respect of the beneficial ownership.

The register and index of the names of the members and beneficial owners of the company shall, during business hours, subject to such reasonable restrictions as the company may impose, be open to inspection

of any member of the company without charge and of any other person on payment of a reasonable fee prescribed by the company, for each inspection. If a person fails to provide the required information of the beneficial owner as mandated under subsection 2 of section 32, or provides any misleading information, that person is liable to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or a term of imprisonment of not less than one year or both. Under subsection 6 of section 32, a company shall submit the particulars of its members and beneficial owner(s) to the Registrar for registration and indicate the members or beneficial owners who are politically exposed persons.

Table 2: Highlights of BO provisions in the Companies (Amendment) Act, 2016 (Act 920)

Section	Provision
<p>Insertion of paragraph (i) under Section 27 subsection 1</p>	<p>The particulars of a beneficial owner for whom a subscriber holds interest(s) for in a company. The particulars include name, date and place of birth, telephone number, nationality, proof of identity, residential, postal and email address, place of work and position held and the nature of the interest including the details of the legal arrangement in respect of the beneficial ownership.²³</p>
<p>Substitution for subsection 3 under Section 27</p>	<p>The financial return of a company shall: “(a) identify the members of the company or beneficial owners who are politically exposed persons ...”.</p>
<p>Substitution of Section 32, subsections 1 - 13</p>	<p>A company shall keep a register of the particulars of its members and beneficial owners and indicate the members or beneficial owners who are politically exposed persons.</p>
<p>Insertion of subsection 14 under section 32</p>	<p>A person who fails to provide the required information of the beneficial owner as mandated under subsection 2 of section 32, or provides any misleading information, is liable to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or a term of imprisonment of not less than one year or both.</p>

²³ These particulars are applicable to all sections of this table wherever particulars are mentioned.

Section	Provision
<p>Insertion of subsection 15 under Section 32</p>	<p>“Where a company who defaults in complying with Section 32, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty five units for each day during which the default continues.”</p>
<p>Substitution of subsection 1 under Section 33</p>	<p>During business hours, subject to such reasonable restrictions as the company may impose, a company shall keep its register, index of the names of its members and index of the names of its beneficial owners open to inspection of any member of the company without charge and of any other person on payment of a reasonable fee prescribed by the company, for each inspection.</p>
<p>Substitution of subsection 1 under Section 122</p>	<p>At least once in every year, a company shall deliver to the Registrar for registration, an annual return including particulars of every member of the company and every beneficial owner of the company.</p>
<p>Insertion after paragraph (b), of subsection 1 under Section 303</p>	<p>An external company shall submit to the Registrar for registration, a statement duly notarized in the jurisdiction of origin of the company, providing the particulars of beneficial owners of the company.</p>
<p>Insertion of subsection 331A under Section 3</p>	<p>There is established by ACT 920 a Central Register which will be kept and maintained both in manual and electronic forms. The particulars of the members and beneficial owners of a company as stipulated by Sections 27 and 32 will be entered into the Central Register.</p>

Section	Provision
Insertion of (a) under First Schedule	<p>Beneficial owner means an individual:</p> <ul style="list-style-type: none"> a. who directly or indirectly ultimately owns or exercises substantial control over a person or company; b. who has a substantial or economic interest in or receives substantial economic interest 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.
	<p>Politically exposed person includes</p> <ul style="list-style-type: none"> a. a person who is or has been entrusted with a prominent public function in this country, foreign country or an international organization, including <ul style="list-style-type: none"> i. Head of state or Head of government; ii. senior political, government, judicial or military official; iii. a person who is or has been an executive in a foreign country of a state owned company; and b. a person who is or has been a senior political party official in a foreign country and includes any immediate family members or close associates of that person.

Source: Author

B. Central Beneficial Ownership Register

Section 331 provides for the establishment of a Central Register containing the particulars of all beneficial owners of a company. The Central Register is to be maintained in both manual and electronic formats. Act 920, however, does not say that the Central Register should be made available to the general public. Section 331A of Act 920 states that “the Registrar shall collaborate with other competent authorities²⁴ for the purpose of maintaining, verifying and updating the register; and on request and in a timely manner, make the register available to the relevant authorities for inspection.”

3.1. BO and its associated myths in Ghana

When the idea of adopting beneficial ownership disclosure was first introduced in Ghana, there were some concerns raised especially by company owners. Although these concerns are worth considering, they are not necessarily proven and can at best be considered as myths.

Myth 1. One major concern raised was that disclosure of the names and particulars of beneficial owners will pose a security risk to such individuals, making them prey to kidnapping, robbery and intimidation.

Myth 2. Some people have argued that such disclosure would negatively affect family relationships:

²⁴ Act 920 defines competent authority under this section 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 offences and terrorist financing.

on one hand, publication of financial data would subject such business owners to the financial demands and pressures of family members and other dependents, even when not favorable to them. On the other hand, the disclosure of data could lead to mistrust and ultimately divorce in some cases, as they might expose secret funds which spouses may have created without the knowledge of their partners.

Although it may be important to consider these concerns in order to make company owners feel at ease and be more co-operative with data disclosure, it is important to note that an individual's lifestyle is a far more significant signal concerning their wealth: the type of residence they live in, schools attended by their children, how they spend their vacations or holidays, etc. signals whether or not an individual is well off.²⁵

In the attempt to address the concerns of personal security posed by the disclosure of personal details of beneficial owners, it is important to balance such concerns, once proven as materialized, with the costs and implications of money laundering, tax evasion and other forms of corruption to the state. In demystifying the myth about beneficial ownership disclosure concerning security risks to beneficial owners, the following questions are resolved.

a. Why are public registers on beneficial ownership important?

Having public registers on beneficial ownership is constructive for both society and companies. For the society, access to beneficial ownership data, enables individuals and civil society to trace the loopholes through which companies

²⁵ Joseph E. Stiglitz and Mark Pieth, "Overcoming the Shadow Economy," Friedrich-Ebert-Stiftung, 2016. Available at <http://library.fes.de/pdf-files/iez/12922.pdf>

are likely to deploy in evading tax or engaging in other criminal acts. It also enables the government, to acquire the requisite knowledge needed to carry out due diligence on a company before awarding public contracts. This promotes competitiveness and ensures that commercial contracts are awarded to the company best suited for the job. Having public registers on beneficial ownership therefore poses significant risk for businesses to use company structures for corrupt or criminal activities.

Publicly available beneficial ownership data also benefits companies as it improves the business environment in a number of ways.

Firstly, it allows for companies to be transparent about which business entities they may be associated with. This reduces the reputational and business risks of being associated with corrupt business entities. For instance, it is reported that about 397 public firms lost \$135 billion in market capitalization by being named in the Panama Papers leak.²⁶ Secondly, it reduces company fraud and corruption, which boosts investor's confidence in companies that are transparent in their operations. Finally, it promotes an environment where businesses are conducted in an ethical manner thereby increasing the stability of financial markets which are otherwise distorted where opacity thrives.

²⁶ O'Donovan, J, Wagner, HF and Zeume, S (2016). The Value of Offshore Secrets – Evidence from the Panama Papers. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2771095

b. Does public access to beneficial ownership data pose a security risk to company owners?

It can be expected that the family tradition, cultural and security environment in Ghana would typically conflict with the publication of financial data of company owners. However, this is debatable unless otherwise proven to be materialized. A study by ReSPA²⁷ (2013) has confirmed that, after three years since the publication of income and asset declarations of public officials in Balkan countries, no initial concerns raised on the grounds of security and cultural risks prior to the publication have actually materialized.²⁸

Cases of genuine, provable risk as a result of beneficial ownership disclosure of a company can be managed, as is the case of the UK by the UK Companies House where, on a case-by-case basis, people who are at potential risk can apply to the registrar to have information removed from the public register. In view of this, to date, only about 30 beneficial owners out of nearly 2 million companies that have reported in the UK have been successfully granted the right to keep their names off the register.²⁹

²⁷ ReSPA means Regional School of Public Administration. It is an international organisation which has been entrusted with the mission of boosting regional cooperation in the field of public administration in the Western Balkans.

²⁸ ReSPA (2013). Comparative study: Income and Asset Declarations in Practice. Available at <http://www.respaweb.eu/download/doc/Comparative+study+-+Income+and+asset+declarations+in+practice+-+web.pdf/485ce800f0a3f55719e51002d0f75b5e.pdf>

²⁹ Open Ownership The Global Beneficial Ownership Register (2016). Briefing: The case for public beneficial ownership registers. Available at <https://openownership.org/uploads/The%20case%20for%20public%20beneficial%20ownership.pdf>

3.2. Beneficial Ownership Disclosure (BOD) in practice in Ghana

Ahead of 2020 when Ghana is expected to begin BOD implementation under the EITI requirement, GHEITI facilitated a number of consultative meetings with government, civil society organizations, the Registrar General's Department (RGD) and other key stakeholders. The consultative meetings focused on getting stakeholders' buy-in into the EITI requirement and also the strategies needed to secure political commitment at the highest level of government. They also served as platforms to keep other relevant stakeholders well-informed about the process. Through these meetings, consensus was reached to amend the Companies Act, 1963 (Act 179) to lay a firm legal basis for collecting and maintaining a national database on beneficial owners in Ghana.

Although the above efforts have been made, a lot more work remains prior to the BOD implementation in 2020. Key among this includes the amendment to some definitions in the Companies Act per the consensus of all stakeholders. There are also calls by civil society organizations for the Central BO Register to be made publicly available. In line with this, a new draft Companies Act is before the Parliament of Ghana. Once the new law is passed, the public can have access to the particulars of beneficial owners of a company. However, one major challenge remains where the RGD is financially constrained in making the Central Register publicly available at no cost. This is primarily because fees paid for such data is a major source of revenue for the RGD. To ensure that BOD implementation in Ghana has its full course, the necessary legal and institutional reforms should be put in place.

4.0

Conclusion and Recommendations

Beneficial ownership information is needed to tackle issues of tax evasion, money laundering and the different forms of corruption that is usually made possible by the complex ownership structures of some companies. Typically, if the disclosure of BO is not effectively implemented, it would result in loss of huge sums of money and other investment costs to the state. To enable a successful implementation of BO disclosure in Ghana, the following are recommended:

Develop beneficial ownership implementation framework. The Registrar General's Department should in collaboration with the Ghana Extractives Industry Transparency Initiative (GHEITI),

supported by development partners (Ghana Oil for Gas Inclusive Growth, Strengthening Action Against Corruption, etc.) should develop a framework that clearly spells out the implementation of beneficial ownership in Ghana. The framework should also outline the roles and responsibilities of the stakeholders relevant for BO implementation.

Support the Registrar General to make Central Register publicly available at no fee.

Payment of a fee to access BOD data will be a major barrier to BOD implementation in Ghana. The RGD should therefore be supported by stakeholders, including the government, GHEITI,

civil society organizations and development partners, to explore ways to obtain financial support for BO implementation, especially in making the Central Register publicly available at no cost.

Pass separate BO regulations. There are currently no regulations for beneficial ownership in the country. Although the government in 2017 indicated its intentions to include provisions for beneficial ownership disclosure in the regulations for the implementation of the Petroleum (Exploration and Production) Act 2016, Act 919,³⁰ it is more prudent to have separate BO regulations. Having separate BO Regulations, which is not only limited to the petroleum sector, will cater for the entire extractives sector which includes solid minerals.

Provide limited case-by-case exemptions for individuals at provable risks. The Registrar General must provide clear-cut criteria for the exemption of individuals who are proven beyond reasonable doubt to be at risk of being adversely impacted as a result of beneficial ownership disclosure. However, such exemptions should be done on a case-by case basis, where such proven risks are assessed on their unique characteristics and specificities rather than blanket exemptions.

Assign unique identifiers to individuals. To reduce the incidence of difficulty in identifying individuals who may bear the same name and similar particulars, it is important to assign unique identifiers (such as alphabetical and/or numerical codes) to such individuals.

³⁰ Ghana News Agency (2017). Ghana to have beneficial ownership register by end of year. Available at <http://www.reportingoilandgas.org/ghana-to-have-beneficial-ownership-register-by-end-of-year/> Accessed 1st June, 2018.

Again, assigning unique identifiers to such individuals will make it easier to link their records and match with other data sets if need be, especially for the purposes of monitoring and investigation.

Apply sanctions to defaulters. There is the need to apply sanctions to ensure effective compliance. Individuals who fail to provide the required or accurate information must be sanctioned duly in accordance with Section 32 (15) of the Companies (Amendment) Act, 2016 (Act 920).

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