



TRANSPARENCY OF BENEFICIAL OWNERSHIP IN THE ASIA AND PACIFIC REGION: A DISCUSSION PAPER

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Table of Acronyms

ADB	Asian Development Bank
AEOI	Automatic Exchange of Information (AEOI)
AML/CFT	Anti-Money Laundering / Combating the Financing of Terrorism
APG	Asia Pacific Group on Money Laundering
BO	Beneficial Ownership
BODS	Beneficial Ownership Data Standard
CDD	Customer Due Diligence
CRS	Common Reporting Standard
DNFBPs	Designated Non-Financial Businesses and Professions
EAG	Eurasia Group on Money Laundering
EGSU	EITI Reporting Portal
EITI	Extractive Industries Transparency Initiative
EOIR	Exchange of Information on Request
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GAIPSR	General Authority for Intellectual Property and State Registration, Mongolia
IPA	Investment Promotion Authority, Papua New Guinea
LEAs	Law Enforcement Agencies
LLCs	Limited Liability Companies
MER	Mutual Evaluation Report
MIID	Ministry of Industry and Infrastructure Development, Kazakhstan
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MoU	Memorandum of Understanding
MSG	Multi-Stakeholder Group
MTAI	Ministry of Territorial Administration, Armenia
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
PEPs	Politically Exposed Persons
PNG	Papua New Guinea
ML	Money Laundering
SEC	Security and Exchange Commission, Philippines
SCIESU	State Committee on Industry, Energy and Subsoil Use, Kyrgyz Republic
TF	Terrorist Financing
UNCAC	United Nations Convention against Corruption

Executive Summary

Transparency of the beneficial ownership (BO) of corporate entities is increasingly regarded as an essential element in the fight against corruption, and as a tool for preventing money laundering, and for countering the financing of terrorism and tax evasion. Numerous case studies have shown that corporate vehicles, including companies, trusts, foundations, and fictitious entities, can be misused to conceal the identities of the people involved in large-scale corruption, and to hide and transfer the proceeds of crime. As a result, international efforts to prevent the misuse of corporate vehicles for financial crime have intensified. Countries are required by various international standards, including the Financial Action Task Force (FATF) Recommendations, the Extractive Industry Transparency Initiative (EITI), and the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum), to take measures to ensure the transparency of the BO of corporate entities in their jurisdictions.

This paper analyses the ongoing reforms, challenges, and opportunities to ensuring BO transparency in nine Asian and Pacific countries implementing the EITI Standard. These include Armenia, Indonesia, Kazakhstan, Kyrgyz Republic, Mongolia, Papua New Guinea, Philippines, Tajikistan, and Timor-Leste. The paper identifies that the BO transparency regime and systems in the region are unevenly developed, ranging from countries that are at the very beginning of introducing the necessary legal and regulatory BO reforms to countries that have made significant progress by establishing publicly accessible BO registers.

The paper identifies and analyses a range of common issues that need to be addressed by these countries, depending upon the levels of their progress, to achieve their stated objective of compliance with the EITI Standard and the relevant FATF Recommendations, and so to ensure the availability and accessibility of adequate, accurate, and up-to-date information on beneficial owners. Some of these issues include:

- a) a lack of an efficient and effective legal and regulatory framework that provides a strong legal basis for BO transparency;
- b) technical and practical challenges to developing and implementing the BO register, including data collection and data verification challenges;
- c) a lack of clarity on the interaction of the BO disclosure regime with individuals' right to privacy and the data protection regime; and
- d) a lack of effective enforcement mechanisms to ensure the accuracy of BO information.

The paper emphasises the importance of delivering access to reliable and up-to-date information on beneficial owners, although it is recognised that the challenges involved in achieving this objective are substantial. For establishing and improving the transparency of BO, the paper highlights a range of topics for consideration that these jurisdictions need to adequately address.

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1. Introduction

To prevent the misuse of corporate entities for corruption, money laundering (ML), terrorist financing (TF), tax evasion and other financial crimes, a number of international initiatives and standards require countries to put in place effective mechanisms to ensure the availability and accessibility to up-to-date information on the beneficial owners of corporate entities. While the Financial Action Task Force (FATF) Recommendations allow countries to choose from a range of methods to achieve the necessary access to the information on beneficial owners, the approach adopted by the Extractive Industry Transparency Initiative (EITI) and European Union (EU) includes the establishment of a public registry to collect and maintain up-to-date information on beneficial ownership (BO).

Many jurisdictions have taken steps in this direction by introducing and implementing various reforms in their BO regime, including the establishment of centralised BO register,¹ although approaches differ. Some countries, such as the UK, Indonesia, and Ukraine, for instance, have introduced the BO disclosure requirements simultaneously on all companies operating across the entire economy, while others, such as Armenia, Myanmar, and Slovakia, have initially prioritised BO disclosures for one sector (e.g. the extractive sector or companies participating in public procurement purposes), with the potential for later expanding this to all industry sectors.

This paper analyses the current legal and regulatory framework on BO and company registries in Asian and Pacific countries and highlights some of the challenges that are common to the region. The paper aims to identify and highlight the ongoing reforms in the Asian and Pacific countries relating to BO transparency, the challenges that they are facing, and the opportunities (or the next steps) that they should consider to enhance BO transparency in their respective jurisdictions. The Asian and Pacific countries that are covered within the scope of this paper are: Armenia, Indonesia, Kazakhstan, the Kyrgyz Republic, Mongolia, Papua New Guinea (PNG), Philippines, Tajikistan, and Timor-Leste.

2. Methodology and Structure

This paper is mainly based on a desk-based review of the relevant literature, both national and international, that relates to the establishment of BO registries and ensuring the transparency of BO of corporate entities in the selected countries. This includes, but is not limited to, the laws and bylaws related to transparency of BO of corporate entities in the selected countries, the Mutual Evaluation Reports by the Asia Pacific Group on Money Laundering (APG) or the Eurasia Group on Money Laundering (EAG) or the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the latest EITI Validation Reports, [the EITI Standard 2019](#) (especially Requirement 2.5), [the 2012 FATF Recommendation](#), [the 2013 FATF Methodology](#), [2014 FATF Guidance on Transparency of Beneficial Ownership](#), [2019 FATF Best Practices on Beneficial Ownership of Legal Persons](#), [2019 OECD Guidelines on Transparency of Beneficial Ownership](#), and any other relevant national and international literature, including regional civil society and media reports.

The paper has been further consolidated through consultation meetings with the identified [below](#) (including Indonesia, Kazakhstan, the Kyrgyz Republic, Mongolia, and PNG) who are, or have been,

¹ Some countries that have introduced centralised BO registers include, for instance, United Kingdom, Ukraine, Belgium, Ireland, Indonesia, Denmark, Australia etc.

involved in advancing BO transparency in their respective jurisdictions. The information obtained from these meetings and the subsequent remote and desk research have informed the contents of this discussion paper, which also serves as a basis for drafting the agenda for the upcoming regional workshop Advancing Beneficial Ownership Transparency in Asia and Pacific, to be held in February 2022.

3. Relevant International Standards on BO Transparency: Country Status and Compliance Rating

Several international bodies and organisations focus on issues related to BO, each with their own particular mission. An important development in the recent years has been the G20's call for more integrated cooperation between organisations on this issue, given the crucial role BO information plays in combating corruption, ML, TF, and tax evasion.² Accordingly, it has been seen that the FATF and the Global Forum in particular have started aligning their technical work on BO more closely in recent years.

Table 1 below provides an overview of the international framework covering BO in the selected Asian and Pacific countries. It later discusses some of these international standards in more detail, assessing the current status and compliance rating of these countries against the transparency of BO requirements within these standards.

Table 1: International Framework Covering BO in the Selected Asia and Pacific Countries (as of November 2021)

	FATF or FATF-style regional bodies (MONEYVAL, APG or EAG)	EITI	The Global Forum on Transparency and Exchange of Information for Tax Purposes	United Nations Convention against Corruption	Open Government Partnership	G20 Anti-Corruption Working Group
Armenia						
Indonesia						
Kazakhstan						
The Kyrgyz Republic						
Mongolia						
PNG						
The Philippines						
Tajikistan						
Timor-Leste						

² OECD and IDB (2019), *A Beneficial Ownership Implementation Toolkit* (March 2019), p. 6. Available at: <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf> (accessed 10 November 2021).

3.1. The FATF Standards

FATF is an intergovernmental body responsible for setting international standards and promoting the effective implementation of legal, regulatory, and operational measures to combat ML, TF, and other related threats to the integrity of the international financial system.

Enhancing the transparency of legal persons and legal arrangements has long been a part of the FATF's priorities,³ for they can be misused for illicit purposes by criminals trying to avoid anti-money laundering and combating financing of terrorism (AML/CFT) measures by hiding the identity of beneficial owners. This is particularly reflected in Recommendations 24 and 25 of the FATF Recommendations, as adopted in 2012.

The FATF Standards have provided for three distinct approaches by which countries can ensure the availability and accessibility to adequate, accurate, and current BO information to competent authorities. These are:

- a) **the company approach:** obliging corporate entities and trustees (or someone with an equivalent position in other legal arrangements) to obtain and maintain the BO information and make it available to competent authorities in a timely fashion;
- b) **the existing information approach:** requiring the reporting entities under the AML/CFT law of a country (such as banks, lawyers, accountants, trusts, and company service providers) to collect and maintain the BO information as a part of their customer due diligence obligations and make it available to the competent authorities in a timely manner; and
- c) **the registry approach:** establishing a central register to collect and maintain BO information on persons, legal persons, and legal arrangements.

As becomes clear from the above, countries are not obliged to establish a central BO register under the FATF Standards; this is just one of the three mechanisms to ensure that adequate, accurate, and up-to-date information on BO is available to the competent authorities in a timely manner in the country.

The FATF Standards, including these requirements under Recommendations 24 and 25, are applied by over 200 countries, through a global network of FATF-style regional bodies affiliated to the FATF. The FATF and its regional bodies conduct mutual evaluations, in accordance with the FATF's Methodology, to assess a country's technical compliance with the FATF Recommendations and the effectiveness of its AML/CFT systems.⁴ [Table 2](#) below provides the latest compliance ratings for the selected Asian and Pacific countries against Recommendations 24 and 25, as well as an assessment of the effectiveness of their AML/CFT systems in ensuring BO transparency against Immediate Outcome 5.

³ In 2003, the FATF became the first international body to set international standards on beneficial ownership. These standards were further strengthened in 2012 to provide more clarity about how countries should ensure information is available and to deal with the vulnerabilities such as bearer shares and nominees.

⁴ FATF (2013-2019) *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (FATF: Paris, November 2020) (hereinafter, "The 2013 FATF Methodology"), pp.65-70. Available at: <https://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf> (accessed 10 November 2021).

Table 2: Compliance with FATF Standards across Asia and Pacific (as of November 2021)⁵

	Technical Compliance – Recommendation 24	Technical Compliance – Recommendation 25	Immediate Outcome 5
Armenia	Largely Compliant	Largely Compliant	Substantial Effectiveness
Indonesia	Partially Compliant	Partially Compliant	Moderate Effectiveness
Kazakhstan ⁶	N/A	N/A	N/A
The Kyrgyz Republic	Largely Compliant	Largely Compliant	Moderate Effectiveness
Mongolia	Largely Compliant	Largely Compliant	Low Effectiveness
PNG ⁷	N/A	N/A	N/A
The Philippines	Largely Compliant	Partially Compliant	Low Effectiveness
Tajikistan	Largely Compliant	Partially Compliant	Moderate Effectiveness
Timor-Leste ⁸	N/A	N/A	N/A

Note: 'N/A' in Table 2 above implies that the respective country has not yet been assessed against the 2012 FATF Recommendations.

3.2. The EITI Standard

The EITI implements the global standard to promote the open and accountable management of oil, gas, and mineral resources. As of November 2021, there are 56 countries implementing the EITI Standard.

[Requirement 2.5](#) of the EITI Standard 2019 requires the EITI implementing countries to maintain a publicly available register of the beneficial owners of the corporate entity (entities) that apply for or hold a participating interest in an exploration or production oil, gas, or mining licence or contract, including the identity (identities) of their beneficial owner(s), the level of ownership, and details about how ownership or control is exerted. In addition, any Politically Exposed Persons (PEPs) who are beneficial owners are also required to identify themselves in the register. The EITI Standard 2019 gave

⁵ The 2013 FATF Methodology provided for four levels of ratings, as used in Table 2, to assess country's technical compliance with the FATF Recommendations: a) '**Compliant**', which means there are no shortcomings; b) '**Largely Compliant**', which means there are only minor shortcomings; c) '**Partially Compliant**', which means there are moderate shortcomings; and '**Non-Compliant**', which means there are major shortcomings. To assess the level of effectiveness of the FATF Recommendations, the 2013 FATF Methodology provided for four ratings: a) '**High level of effectiveness**', which implies that the Immediate Outcome is achieved to a very large extent and minor improvements needed; b) '**Substantial level of effectiveness**', which implies that the Immediate Outcome is achieved to a large extent, but moderate improvements needed; '**Moderate level of effectiveness**', which implies that the Immediate Outcome is achieved to some extent and major improvements needed; and d) '**Low level of effectiveness**', which implies that the Immediate Outcome is not achieved or achieved to a negligible extent and fundamental improvements needed.

⁶ Kazakhstan has not been evaluated against the 2012 FATF Recommendations. The last mutual evaluation of Kazakhstan was in 2011 against the previous 2003 FATF Recommendations and had its 4th Follow-Up Report published in 2016.

⁷ Papua New Guinea has not been evaluated against the 2012 FATF Recommendations. The last mutual evaluation of the country was against the previous 2003 FATF Recommendations and it was published in 2011.

⁸ Timor-Leste has not been evaluated against the 2012 FATF Recommendations. The last mutual evaluation of Timor-Leste was adopted in July 2012 and it was against the previous 2003 FATF Recommendations.

a deadline of 1 January 2020 to all EITI implementing countries to develop and publish a comprehensive BO register for the extractive sector.

The EITI has its own validation process, which is EITI's quality assurance mechanism, to assess the ability of each EITI implementing country to meet the provisions of [the EITI Standard](#), which broadly include country requirements relating to ensuring transparency of contracts and licences, production, revenue collection, revenue allocation, and social and economic spending. The EITI validation model was last revised in December 2020. Among all the countries that are a part of this paper, only Armenia has undergone its validation under the EITI's revised validation model to determine its progress in implementing the EITI Standard 2019. All other countries have been assessed so far only for their compliance with the 2016 Standard when the Requirement 2.5 on BO Transparency was only encouraged or recommended by the EITI. As a result, this requirement was not taken into account in assessing compliance; hence, no scorecard on their level of progress has been determined. [Table 3](#) below shows the recent validation results on the progress made by the selected Asia and Pacific countries to meet Requirement 2.5 of the EITI Standard.

Table 3: Progress Against Requirement 2.5 of the EITI Standard 2019 (as of November 2021)

	Latest validation report (publication date)	Progress against Requirement 2.5 of the 2019 EITI Standard
Armenia	June 2021	Satisfactory Progress
Indonesia	July 2019	Not assessed yet
Kazakhstan	April 2020	Not assessed yet
The Kyrgyz Republic	September 2020	Not assessed yet
Mongolia	February 2018	Not assessed yet
PNG	October 2018	Not assessed yet
The Philippines	May 2017	Not assessed yet
Tajikistan	November 2019	Not assessed yet
Timor-Leste	February 2018	Not assessed yet

3.3. The Global Forum on Transparency and Exchange of Information for Tax Purposes

The Global Forum has a mandate to ensure effective implementation of international tax transparency standards among its members and other relevant jurisdictions. It has adopted standards for tax transparency for both exchange of information on request (EOIR) and automatic exchange of information (AEOI). In 2015, the Global Forum took steps to enhance its EOIR tax transparency standard by including the availability of BO information, as required by the FATF 2012 Standards, as one of requirements in its revised Terms of Reference (2016). The [EOIR standard](#) has three key aspects that must be met by a jurisdiction: a) ensuring the availability of ownership, accounting, and banking information; b) ensuring authorities have powers to access the information; and c) providing a legal basis to exchange information in a timely manner with other interested jurisdictions. All Global Forum member countries have committed to implement the EOIR Standard and undergo a peer review process to assess its effective implementation.

The [AEOI Standard](#) and the EOIR Standard both include the concept of BO, which is defined in a similar way as in the FATF Standards, as a cornerstone in the reporting of financial accounts. Thus, reporting

financial institutions must identify the BOs of certain financial accounts and the country of tax residence, and when appropriate, to report this information to partner tax authorities. More than 100 countries are committed to exchanging this information on an annual basis, with more member countries preparing to participate in AEOI in the near future.

[Table 4](#) below provides the results of the recent peer review of the selected Asian and Pacific countries against the requirements of the EOIR Standard on the availability of legal and BO information. Similarly, to the FATF Standard, Element A.1 of the EOIR Standard requires that adequate, accurate, and up-to-date information on the identity of the legal and beneficial owners of legal persons and legal arrangements should be available to competent authorities in a timely manner. The Global Forum assesses countries' compliance with this element of the EOIR Standard during the peer review process.

Table 4: Compliance with the BO Requirement of the EOIR Standard (as of November 2021)⁹

	Latest peer review report (year)	A1 – Ownership and identity information
Armenia	Not yet reviewed	n/a
Indonesia	2018	Partially Compliant
Kazakhstan	2018	Partially Compliant
The Kyrgyz Republic	Not a member of the Global Forum	n/a
Mongolia	Not yet reviewed	n/a
PNG	2020	Partially Compliant
The Philippines	2018	Partially Compliant
Tajikistan	Not a member of the Global Forum	n/a
Timor-Leste	Not a member of the Global Forum	n/a

4. Current State of Play on BO Transparency: An Overview

This section provides a brief overview of the current state of play in the selected Asian and Pacific countries on the transparency of BO, discussing the ongoing reforms, challenges, and opportunities to ensure and enhance BO transparency in each jurisdiction.

4.1. Armenia

Armenia has established a legal framework for BO disclosures and is currently developing an online register to improve the usability of its BO data. The Law “On State Registration of Legal Entities” requires all legal entities in Armenia to provide BO information to the State Unified Register of Legal Persons (the State Register), which is maintained by the Ministry of Justice. The State Register is consequently responsible for the public disclosure of BO information, except for personal information. The establishment of an open and public BO register was one of the commitments under the Open Government Partnership action plan for 2018–2020. Between 2018 and 2020, a number of

⁹ The Global Forum ratings, as provided in Table 4, have the following meanings: a) ‘**Compliant**’ means the EOIR standard is implemented. This rating can be granted even if a few recommendations were issued, to the extent that no material deficiencies were identified; b) ‘**Largely Compliant**’ means the EOIR standard is implemented to a large extent but improvements are needed. Some deficiencies identified are material but have limited impact on EOIR; c) ‘**Partially Compliant**’ means the EOIR standard is only partly implemented. At least one material deficiency which has had, or is likely to have, a significant effect on EOIR in practice has been identified; and d) ‘**Non-Compliant**’ which implies that fundamental deficiencies in the implementation of the EOIR standard have been identified

amendments have been made to the relevant laws in Armenia in order to define the term beneficial owner and to ensure a comprehensive sectoral regulatory framework for the disclosure of beneficial owners.¹⁰

The first round of BO disclosures was conducted in early 2020 in Armenia. With an initial focus on extractive industry companies, all companies applying for or holding mining rights were required and requested to submit their BO information to the State Register. In 2020, this information was submitted in paper format and disclosed in PDF format, while the online register was still being developed. The BO declaration form requires information on the identity (identities) of the respective beneficial owners(s), including nationality, full name, date of birth, serial number and date of issue of the ID document, registered address, place of residence, contact details, and identification of PEPs, as well as close affiliated persons, the level of ownership, and details about how ownership or control is exerted.¹¹ In addition, the declaration form includes a data field that allows for the provision of a name of the stock exchange and a link to the stock exchange filings for publicly listed companies.¹² Most of the information, except for such personal data as details of the ID document, registration and residential addresses information, and contact data, is publicly available free of charge.

Armenia has collaborated with Open Ownership to develop an online portal for BO disclosures. With an initial focus on extractive industry companies, Armenia began publishing BO data in line with the Beneficial Ownership Data Standard (BODS) via its company register in 2021.¹³ The BODS has some automated data verification functions; for example, the data of Armenian citizens will be automatically checked against the data of the passport database of citizens, etc. Since March 2021, legal entities have been required to submit electronic BO declarations to the online BO register.¹⁴

The accuracy of filling in the declaration forms is checked by the State Register, and in case of inconsistencies, this information is presented to the Ministry of Territorial Administration. The ministry has been given the power to impose sanctions or take remedial action against extractive industry companies in the case of any failures to comply with the requirement to provide BO information to the State Register or for submitting incomplete or false information. All stakeholders, including individuals, can inform the authorised body if they have a reasonable suspicion of false information.

In June 2021, Armenia adopted a package of laws that expands the scope of companies obliged to disclose their BO information to the register and reforms the process of BO disclosure. In particular, the legal entities operating in the regulated sector of public utilities and in the sector of audio-visual media are obliged to disclose BO data from 1 September 2021.¹⁵ The obligation will become effective

¹⁰ EITI (2021) *Validation of Requirement 2.5 – Armenia: Final Assessment by the EITI International Secretariat* (EITI: Oslo, 23 March 2021), p.3.

¹¹ Ibid, p. 3.

¹² Ibid, p. 3-4.

¹³ Open Ownership (2021), 'Armenia and Latvia become first countries to publish data in line with the Beneficial Ownership Data Standard' (September 2021). Available at: <https://www.openownership.org/blogs/armenia-and-latvia-become-first-countries-to-publish-data-in-line-with-the-beneficial-ownership-data-standard/> (accessed 27 November 2021).

¹⁴ EITI (2021), 'The 2021 EITI Armenia Annual Conference took place on 23 July'. Available at: <https://www.eiti.am/en/news/2021/07/23/2021-eiti-armenia-annual-conference-took-place-on-23-july/111/> (accessed 27 November 2021).

¹⁵ EITI (2021), 'Who is the Beneficial Owner? The National Assembly of RA adopted the Package of Laws on Disclosure of the Beneficial Owners in Armenia'. Available at: <https://www.eiti.am/en/news/2021/06/23/who-is-the-beneficial-owner-the-national-assembly-of-ra-adopted-the-package-of-laws-on-disclosure-o/108/> (accessed 27 November 2021).

for all other legal entities from 1 January 2022, except for Limited Liability Companies (LLCs) with only natural persons as participants.¹⁶ For LLCs with only natural persons as participants and non-commercial organisations, the obligation to disclose beneficial owners will become effective from 1 January 2023.¹⁷ Under the new regulations, exceptions have been established for the legal entities registered by the Central Bank.¹⁸

The expansion of the BO disclosure regime to all sectors beyond the mining sector might prove to be challenging for the country from various aspects, in terms of resource constraints (both technical and human), data collection, and verification. Capacity building activities on a wider scale with companies might also be needed to provide guidance on reporting BO data to the BO registry, and for improving the BO data use and analysis for the relevant stakeholders and authorities. There is also ongoing work to strengthen the verification procedures and data quality in the online register, including through the automation of the process and additional consultations with companies.

4.2. Indonesia

Indonesia has established a central registry of beneficial owners. The registry is hosted by the Ministry of Law and Human Rights, to which all types of corporations are required to report and regularly update information on their beneficial owners.

The Presidential Regulation No. 13/2018 defines a ‘corporation’ as any organised group of people or assets, whether or not established as a legal entity, including limited liability companies, foundations, associations, cooperatives, limited and unlimited partnerships, and any other forms of corporation. Information on beneficial owners that is required to be reported on the central registry includes their full name, passport/national ID registration number, place and date of birth, nationality, residential address, foreign residential address (if residing in a foreign country), tax identification number, and the relationship between the legal person and the beneficial owner(s).¹⁹ BO information is required to be updated annually, and any changes are required to be reported within three working days. As of 28 November 2021, the Ministry of Law and Human Rights noted that 584,790 out of 2,386,506 corporations (i.e., 24.5%) had disclosed BO information to the central registry.

In Indonesia, there are however lack of adequate verification mechanisms to ensure that the BO information disclosed by corporations and contained in the central registry is accurate and up to date. One control mechanism is a public notary that is required to incorporate a company in Indonesia; however, they are not required to update the BO information on the register. The effectiveness of this verification system is also questionable on the grounds of very formal and limited understanding of BO concept and identification by notaries when they perform their customer due diligence (CDD) checks on their customers. The Ministry of Law and Human Rights do not have a legal mandate and capacity to verify the BO data.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ UNODC (2020) *Beneficial Ownership Regulations and Company Registries in Southeast Asia: Analysis of Regulatory Deficiencies*. Available at: https://www.unodc.org/documents/southeastasiapacific/topics/anti-corruption/2020/200914_Beneficial_ownership_regulations_and_company_registries_in_Southeast_Asia.pdf (accessed 27 November 2021).

According to Regulation No. 21/2019, sanctions are applied for late submission or non-compliance; these range from removing access to the online registry portal to giving responsible ministries and public authorities a recommendation to pause or revoke the business licence. There is also a criminal penalty of up to seven years imprisonment for knowingly providing false information.²⁰ In principle, the BO information is accessible to the public; at least that is what is provided by law. However, access to the online registry is available only after registering with the portal and after paying a fee of approximately USD\$3.00 for each information request. During the consultation meetings, the authorities have informed that the information accessible to the public from the online registry is only the legal ownership information and not the BO information.

The Ministry of Energy and Mineral Resources as well as the Ministry of Agriculture in Indonesia also require corporations within their ambit to disclose their BO information as a part of their licensing process. In 2019, the Ministry of Energy and Mineral Resources has signed an agreement with the Ministry of Law and Human Rights to share and integrate their BO database systems, which is still a work in progress.

There is an ongoing debate in Indonesia on whether the BO information should be made available to the public and whether it should be accessible free of charge. It is argued that the current fee charged to access the registry significantly hinders the process of ensuring accountability and transparency, which is the entire purpose of establishing a BO register. The National Strategy for Corruption Prevention (Stranas PK) coordinated by the Indonesian Corruption Eradication Commission (KPK) has put a target for BO data disclosure by 2022. The country has also been facing challenges in relation to data verification and accuracy, ensuring the availability of complete, accurate, and up-to-date BO information, as well as the identification of PEPs as beneficial owners in the central registry.

As next steps, it has been identified that inter-agency collaboration on BO information, including establishment of integrated BO data management systems, needs to be improved to support the development of a robust verification system. Awareness-raising and capacity building activities with companies are also needed to provide guidance on reporting BO data. Indonesia is also currently working to promote the utilisation of the BO data for criminal case handling, licensing and public procurement.

4.3. Kazakhstan

Kazakhstan has adopted a new Code on Subsoil and Subsoil Use in December 2017. The Code requires mining companies to disclose their BO information to the Ministry of Industry and Infrastructure Development (MIID) as a part of the licensing process. Similarly, oil and gas companies are required, as a part of the licensing process, to disclose the BO information to the Ministry of Energy. The term beneficial owners has not been specifically defined in the Code, except for requiring the disclosure of individuals who “directly or indirectly control the applicant” for the licence.²¹ The Code does not clearly specify the information that should be collected on beneficial owners; however, it appears to be the same information as collected for individuals, including surname, first name and patronymic (if

²⁰ Section 241 of the Penal Code. See, OECD (2018) *Peer Review Report on the Exchange of Information on Request: Indonesia* (OECD: The Global Forum on Transparency and Exchange of Information for Tax purposes, Second Round, 2018), p. 44.

²¹ Article 40(3).

specified in the identity document), place of residence, citizenship, and information on the identity documents. If a state-owned enterprise is directly or indirectly controlling the subsoil user, it is required to disclose the name and location of the state body to which they are accountable.²² The disclosure of beneficial owners is already in effect in Kazakhstan for the mining sector, and the data is available in the Excel sheet from the MIID website. There is no information available on the collection and availability of the BO data for oil and gas companies by the Ministry of Energy.

In June 2019, the MIID disclosed BO data for the first time on its website. The data includes the names of beneficial owners and their level of ownership. The data only covers all licences awarded since October 2018 and is available in the Excel sheet.²³ There is also lack of clear information on the data verification mechanisms that are used by the MIID to ensure that the BO information reported by the entities is complete, accurate and updated on a timely basis.

The Code on Subsoil and Subsoil Use provides for sanctions in case the licence is obtained by deliberately submitting false information to the relevant authorities (i.e. MIID and Ministry of Energy) which influenced its decision to issue such licence;²⁴ however, it is not clear whether it is also applicable to submitting false BO information. The Code on Administrative Violations also contains penalties in the form of a fine (nearly USD\$7.00) in the event of the violation of terms and procedures for reporting by subsoil users,²⁵ which could also be interpreted to include violations of reporting BO information. Nonetheless, the sanctions and penalties imposed by the Code do not appear to be dissuasive and proportionate.

As a next step, it has been identified that intergovernmental collaboration on BO information needs to be improved to support the development of a robust verification system and to ensure comprehensive BO disclosures for the mining sector, and to develop a BO register for oil and gas companies that is accessible to the public. Capacity building activities with companies are also needed to provide guidance on reporting BO data.

4.4. Kyrgyz Republic

In May 2018, **the Kyrgyz Republic** adopted the Subsoil Law, which requires companies, excluding publicly listed companies, to disclose their beneficial owners when they apply for or hold an extractives licence. The State Committee on Industry, Energy and Subsoil Use (SCIESU) has been mandated under the Subsoil Law to collect and publicly publish the BO information. The law also incorporates sanctions and penalties for non-compliance with the BO disclosure requirements. In order to implement the BO register, in August 2018, the country signed a Memorandum of Understanding with Open Ownership to establish a publicly accessible register of BO linked to extractives licences that is freely accessible online and that produces high-quality BO data aligned with BODS.

In September 2019, the Kyrgyz Republic approved the BO bylaws, which were submitted to the government for approval by the SCIESU. The Regulations on Licensing of Subsoil Use Rights, as

²² Article 47(2).

²³ <https://eiti.org/kazakhstan#beneficial-ownership-disclosure> (accessed 8 November 2021). Updated information provided during consultation meetings.

²⁴ Article 34(1).

²⁵ Article 349.

amended in September 2020, incorporate further provisions on the BO information that must be disclosed to the SCIESU (including the disclosure of beneficial owners regarded as PEPs), the procedure for the disclosure of BO information, the public disclosure of the BO information on the SCIESU website, and the timescale (of 60 calendar days) to update the BO information in the event of any changes. The BO information has, however, not yet been made available to the public by the SCIESU.

The SCIESU is considering reforming its existing licence register to include BO information. Currently, SCIESU collects information on BO in hard copy as a part of licensing procedures. The information is maintained in the archive of the licence department of SCIESU. The Kyrgyz Republic is also currently developing the Mining Code, which also incorporates the BO disclosure provisions as provided in the Subsoil Law.

The Kyrgyz Republic also maintains a Unified State Register of Legal Entities. The register is maintained by the Ministry of Justice, which is responsible for registering all legal entities in the Kyrgyz Republic, and contains the basic ownership information for legal entities. To ensure the effective implementation of the AML/CFT law, in 2018, the Kyrgyz Republic approved regulations for the establishment of the electronic database containing information on beneficial owners (Annex 8 to Resolution No. 606).²⁶ There is no further information available on the establishment of such an electronic database of BO information. However, during the consultation meetings, it was mentioned that the BO information for approximately 30% of extractive sector companies is publicly available through the Unified State Register of Legal Entities. Nevertheless, there are no mechanisms in place to verify the accuracy and currency of the legal ownership or BO information submitted to the Ministry of Justice by the companies,²⁷ except that the Financial Intelligence Unit has been obliged to ensure that the information contained in the database is kept up to date.²⁸ There is no timeline provided on updating the BO information on the database.

The Kyrgyz Republic is still facing challenges to ensuring the completeness, accuracy, and availability of up-to-date BO information on legal entities and to have effective mechanisms in place to make that information available to the public. There are limited technical resources and digital infrastructure to electronically collect and process all the BO data collected in paper format from the extractive sector companies by the SCIESU. There is also a lack of clarity on the interaction and interoperability of the BO data between the BO database maintained by the SCIESU and the Ministry of Justice, respectively. As a next step, the country needs to amend its legal and/or regulatory framework to ensure that all required BO information is collected, including disclosure of PEP status, and is made available to the public. The country also needs to adopt and implement effective data collection and verification mechanisms to ensure the accuracy and availability of up-to-date BO information on the register. The intergovernmental collaboration on BO information needs to be improved to support the development of a robust verification system and to develop a BO register that is accessible to the public.

²⁶ EAG (2019) *Kyrgyz Republic: Second Enhanced Follow-Up Report* (29 November 2019), p. 11.

²⁷ EAG (2018) *Mutual Evaluation of Kyrgyz Republic* (2018), p. 109.

²⁸ EAG (2019) *Kyrgyz Republic: Second Enhanced Follow-Up Report* (29 November 2019), p. 11.

4.5. Mongolia

BO transparency is high on the government agenda in **Mongolia**. Information on the creation and types of legal persons in Mongolia is available through the General Authority for Intellectual Property and State Registration (GAIPSR). Under [the General Law on State Registration 2018](#), all legal entities in Mongolia are obliged to disclose the basic legal ownership information to the GAIPSR.²⁹ Under Article 10.1.14 of the General Law on State Registration 2018, legal entities holding a mining licence are required to disclose the BO information to the GAIPSR, including the share, interest, and voting right of the beneficial owner(s). There is, however, no specific reporting requirement for foreign PEP beneficial owners.³⁰ The GAIPSR maintains a database in both physical and electronic format for the information related to each legal person registered in Mongolia.³¹ Nonetheless, the BO information of legal entities is not yet accessible to the public, although the basic information on companies is publicly available. Draft amendments to the Right to Information Law are currently under consideration by the parliament to grant a legal public right to access BO information from the GAIPSR. The Parliament is also considering to enact a law on public information disclosure, where one of the data being sought to disclose related to BO, and the mechanism for disclosure is also deliberated.

In order to ensure that the BO information provided to the GAIPSR is complete and accurate, provisions have been incorporated in the General Law on State Registration imposing an obligation on persons in charge of registering the legal entities or registering amendments to existing legal persons to disclose true and accurate information to the GAIPSR, including the required BO information.³² An obligation has also been imposed on the GAIPSR to examine and verify the truthfulness and accuracy of the information submitted for registration and register it in the database after verification,³³ although it is not clear how this is being done in practice by the GAIPSR.

The Law on Infringement provides for penalties for failure to disclose accurate and truthful information to GAIPSR when registering a legal person and for violating legal provisions in the AML/CFT law of Mongolia about identifying beneficial owners.

Despite these developments towards BO transparency, there are challenges that still remain for Mongolia to ensure the transparency of BO, including the lack of digitalisation of the BO information, the need to design and implement a public BO register, and the need to ensure efficient and effective collection and verification of BO information, and interaction between the BO register and other available registers (such as the public officials' asset declaration register). Based on available reports, it has been noted that GAIPSR has embarked on the digitalisation of the BO data and that more widely digitalisation of government services is a priority.

4.6. PNG

PNG has demonstrated its commitment to BO disclosure through its National Action Plan on Promotion of Open Governance in August 2018–August 2020; the EITI-PNG Work Plan (2019); the PNG Roadmap

²⁹ APG (2019) *2nd Follow-Up Report: Mutual Evaluation of Mongolia* (October 2019), p. 10.

³⁰ M. Barron et al. (2021) *Beneficial Ownership in Mongolia: A Way Forward* (LTRC, September 2021). p. 24.

³¹ APG (2017), *Anti-Money Laundering and Countering Terrorist Financing Measures: Mutual Evaluation of Mongolia* (September 2017), p. 126.

³² APG (2019) *2nd Follow-Up Report: Mutual Evaluation of Mongolia* (October 2019), p. 10.

³³ Ibid.

for BO Disclosure; the AML/CFT Act 2015 (No. 20 of 2015); and the National Policy for Transparency and Accountability in the Extractives Sector in Papua New Guinea.

PNG, under the EITI, has introduced the requirement for companies operating in the extractive industry sector to disclose their beneficial owners. All legal entities that apply for or hold a participating interest in exploration and production contracts or licences in the oil, gas, and mining sectors were invited to disclose their BO information using the BO disclosure template as approved by the PNG-Multi-Stakeholder Group. The Group has also recently approved new BO guidelines, which include a data assurance procedure. Nonetheless, it has been identified in one of the recent studies conducted on the BO regime in PNG that out of 145 extractive companies in PNG, only 21 have submitted their BO declarations.³⁴ Out of these 21 companies that submitted their declarations, 20 were more than 95% owned subsidiaries of publicly listed companies. None of the reported beneficial owners were identified as PEPs by the corporate entities.³⁵

Despite PNG's commitments to BO transparency under various pieces of legislation and international initiatives, PNG does not currently have a legal framework or a mandatory BO disclosure regime, which is one of the major hindrances in collecting and verifying the BO data. During the consultation meeting, it has been highlighted that the PNG's Investment Promotion Authority, the company regulator, is currently receiving technical assistance through the Asian Development Bank-funded project in developing the legal framework for BO disclosure by introducing the necessary reforms in the company law. It is anticipated that the PNG will implement the collection of BO data through the Investment Promotion Authority online system which is used for the existing company register.

As a next step, the PNG needs substantial institutional guidance and examples of emerging international good practices in developing and implementing the legal and regulatory framework for BO disclosure. Increased political commitment is needed to drive legislative and policy reforms on BO transparency. There are also anticipated resource and capacity constraints in maintaining the BO register and collecting data from multi-layered companies. PNG also needs capacity building support in raising awareness about the concept of BO in the country.³⁶

4.7. The Philippines

In 2018, the Philippines' Security and Exchange Commission (SEC) issued a [Memorandum Circular No. 17, series of 2018](#) requiring all SEC-registered stock and non-stock domestic corporations, including extractive industry companies, to report their BO information to the SEC through their annual filing of General Information Sheets with the SEC. The BO information has to be reported annually, within 30 calendar days of an annual stockholders' or members' meeting, or within seven working days of a change in the BO information. The information to be reported includes the beneficial owner's complete name, residential address, date of birth, nationality, tax identification number (or passport number in the absence of tax identification number), and the percentage of ownership. In 2020, the SEC issued another [Memorandum Circular No. 30, series of 2020](#), requiring all SEC-registered foreign

³⁴ BDO Consulting, 'Final Report: BO Study: Papua New Guinea' (December 2020), p.4. Available from: http://www.pngeiti.org.pg/wp-content/uploads/2020/12/BDO_PNG-EITI-BO-Report-Final-version-20-12-20.pdf (accessed 9 November 2021).

³⁵ Ibid.

³⁶ Ibid, p. 5.

corporations to disclose their beneficial owners to the SEC through annual General Information Sheets. In January 2021, the SEC also issued guidelines to the corporate entities on promoting BO transparency.³⁷

The SEC has the power to impose financial penalties on the corporation, directors, trustees, and other senior managing officials for the failure to disclose BO information. Law enforcement and other competent authorities have access to the BO information; the information is, however, not made publicly available. Due to data privacy concerns, information on beneficial owners is not yet even being reported under the EITI Standard.

As a next step, the Philippines has to consider introducing the necessary legal and regulatory reforms for providing public access to the BO information, incorporating effective verification mechanisms to ensure the accuracy and availability of up-to-date BO information on the register, and developing capacity building and awareness-raising on the topic of BO. The definition of beneficial owners also needs to be harmonised across the legal and regulatory framework of the Philippines.

4.8. Tajikistan

All legal persons operating in Tajikistan are required to be registered on the Unified State Register, which contains basic information on legal persons and is accessible, free of charge, via the website of the Tax Committee under the Government of the Republic of Tajikistan.³⁸ In 2019, Tajikistan has introduced amendments to the Law on State Registration of Legal Entities and Individual Entrepreneurs that requires the disclosure of BO information by legal entities when registering for business activities in Tajikistan. The BO information that is required to be disclosed by the legal entities include the legal name, surname, name and patronymic of the beneficial owner, and his/her location, to be accompanied by the identity document of each beneficial owner.³⁹ This information on BO is, however, not publicly available.

As a next step, Tajikistan should consider: a) introducing the necessary legal and regulatory reforms to ensure that all the relevant information on beneficial owners is collected (i.e. the granularity and scope of BO disclosures); b) ensuring that there are effective data collection and verification mechanisms in place to ensure the completeness, accuracy, and availability of up-to-date BO information on the register; c) making the BO information available to the public; and d) enhancing capacity building and awareness-raising on BO reporting.

4.9. Timor-Leste⁴⁰

In Timor-Leste, the lack of legislation and clear policies on BO poses a challenge in collecting BO data. In the extractive sector, companies operating in the country are mainly international oil companies

³⁷ SEC (2021) *Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership ("BO Transparency Guidelines")*. MC No. 01 s. 2021. Available at: <https://www.sec.gov.ph/mc-2021/mc-no-01-s-2021/> accessed 9 November 2021).

³⁸ EAG (2018), *Mutual Evaluation Report of the Republic of Tajikistan* (2018), p. 96.

³⁹ Article 11(1), Law on State Registration of Legal Entities and Individual Entrepreneurs, 2009.

⁴⁰ Please note that due to the lack of availability of up-to-date information on BO transparency in Timor-Leste, the information in this section has been summarised mainly from the EITI (2019) *Beneficial Ownership in Asia* (EITI: Oslo, February 2019), p. 6. Available at: https://eiti.org/files/documents/english_bo_in_asia.pdf (accessed 27 November 2021).

(IOCs), which are not registered in Timor-Leste. The country clearly needs a high-level commitment to drive the reforms in ensuring BO transparency, and more capacity building and technical assistance in developing the necessary legal and regulatory framework, including determining the granularity and scope of the BO disclosures.

5. Common Challenges Identified in Ensuring BO Transparency in Asia and Pacific Countries

On analysing the existing legal and regulatory framework, and the systems and mechanisms put in place in the selected countries relating to BO transparency, this section identifies and highlights some of the major issues or challenges these countries have been facing in ensuring the transparency of BO of corporate entities. The common themes (or topics) identified in this section will also serve as useful points to inform further discussions within these countries towards ensuring the availability of adequate, accurate, and up-to-date information on beneficial owners.

5.1. Legal and Policy Considerations for BO Transparency

To ensure the transparency of BO, in compliance with the international standards (including the FATF Recommendations, the EITI Standard, and other standards as identified above in Section 3 of this paper), countries may need to introduce necessary legislative and regulatory reforms. In a few countries, it will be possible to build on existing laws on combating corruption, ML, and TF which already require BO disclosures. In other countries new legislation may be necessary to provide the government with the authority to collect BO information. In this regard, the very first step for countries is to conduct a legal gap analysis of their current law and/or regulations to determine the necessary reforms and agree on the legislation and/or regulations that need to be amended or newly drafted. Since the concept of BO extends beyond the extractive sector, the countries need to consider and analyse laws not only specific to the extractive sector but also their company laws, AML/CFT laws, and anti-corruption laws to ensure that all the relevant legislation and related bylaws are harmonised in the long term.

Some of the common themes that countries need to analyse and consider at legal and policy level include the following.

A. *Incorporating Explicit Obligations on BO Disclosure*

Some of the countries selected for this study (for instance, PNG) have experienced difficulties in persuading companies to report and publicly disclose BO data, especially where there is no such legal obligation to disclose this information. In this regard, one very basic, yet significant, amendment to the relevant law and/or regulations is to incorporate provisions imposing a legal obligation on the companies to report and disclose BO data.

Discussion Questions:

- **In which existing law does the necessary amendment(s) to report and publicly disclose BO data have to be enacted?**
- **Would the enactment of a new standalone law on BO be a better approach?**

- **Which other legislation and/or regulations will be impacted by the amendment or the passing of new law on BO, and which therefore need to be amended accordingly to ensure certainty and uniformity?**

B. Establishing a Single, Unified, and Robust Definition of the Term Beneficial Owners

The FATF has defined the term beneficial owners to include “the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.”⁴¹ It further clarifies that the reference to “ultimately owns or control” and “ultimate effective control” in the FATF definition “refers to situations in which ownership/control is exercised through a chain or ownership or by means of control other than direct control.” In other words, the beneficial owner is the person or person who benefits from or exercises control, either directly or indirectly, over a legal person. The term beneficial owner in the FATF definition also includes beneficial owner(s) of a life or other investment-linked insurance policy.

The FATF Standards do not mandate a threshold to determine a controlling participation in legal persons. Countries have been given the discretion to set their own threshold, considering the level of ML/TF risks facing the legal persons in their jurisdiction. However, the FATF Interpretive Note to Recommendation 24,⁴² its 2014 guidance on the transparency of legal persons,⁴³ and its assessment process appears to have upheld a threshold of 25% to be acceptable.⁴⁴ As a result, a “25%” or “more than 25%” threshold has been adopted in many BO definitions, such as the Common Reporting Standard for AEOI and [the EU 5th AML Directive](#)⁴⁵. Many countries or initiatives, however, use lower thresholds to identify a BO or the person considered to have a controlling share. For example, Argentina, Dominican Republic, and the Philippines use a threshold of 20%; Uruguay, 15%; Barbados, Bahamas, Belize, and Jersey, 10%; and Colombia, 5%. Similarly, the EITI and Open Ownership strongly advocate for and promote the adoption of a lower threshold to identify beneficial owners.

The definitions of the term beneficial owner have usually been outlined in different legal instruments in a country, including, for instance, their AML/CFT law, the extractive sector-related law, tax law, or other law and regulations. The lack of a single, unified definition, with varying thresholds under different legal instruments, has usually been identified as a significant loophole in the legal and regulatory framework of jurisdictions, which might result in significant confusion and misunderstanding among the reporting entities, competent authorities, and the legal persons as to their BO disclosure requirements, and makes it difficult to produce corresponding forms for data collection.

⁴¹FATF (2012-2020), *International Standards on Combating Money Laundering and the Financing of Terrorism* (FATF: Paris, October 2020) (hereinafter, “The FATF Recommendations”), p. 113. Available at: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> (accessed 10 November 2021).

⁴² Ibid, p. 91.

⁴³ FATF (2014), *Transparency and Beneficial Ownership* (FATF: Paris, October 2014). Available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf> (accessed 10 November 2021).

⁴⁴ OECD and IDB (2019), *A Beneficial Ownership Implementation Toolkit* (March 2019), p. 14.

⁴⁵ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (hereafter ‘EU 5th AML Directive’).

Discussion Questions:

- **How is the term beneficial owner defined in your country's legislation? Is the definition robust and comprehensive and uniform across various pieces of legislation?**
- **What is, or should be, the appropriate threshold for BO disclosures? Can it be different for different sectors? What approach would be appropriate for your country and the related complexities?**
- **Would amendments to different pieces of legislation be required to effectively adopt international standards on BO transparency?**

C. Clarity on the Scope of Legal Entities To Be Covered for BO Disclosure

The legislation should clearly specify the entities that are responsible for the disclosure of their BO information and who, on behalf of an entity, is responsible to report such information. Typically, legal entities are obliged to disclose BO information, while some jurisdictions also require other entities and legal arrangements, such as partnerships, limited liability partnerships, trusts, non-profit organisations, etc., to disclose their BO information. A few jurisdictions, such as France, Indonesia, and Zambia, also distinguish between corporations incorporated in the country and those incorporated elsewhere when it comes to BO disclosure.

The individuals tasked with the obligation to report BO information typically include company directors (Afghanistan), holders or applicants for mining titles or concessions (Indonesia, Kazakhstan, and the Kyrgyz Republic), subcontractors (Cameroon), and company managers (Indonesia). Sometimes the duty is imposed on legal practitioners (Zambia) and public notaries (Indonesia). The EU 5th AML Directive requires corporate and other legal entities to keep records of their beneficial owners and for the beneficial owners themselves to provide such entities with the information necessary to comply with disclosure requirements.⁴⁶

Considering the level of risk, some countries have also provided exemptions for BO disclosure to certain legal entities. A few examples of exempt entities are companies listed on a regulated market already subject to adequate disclosure requirements (EU and the UK); publicly listed companies (France); and political parties, art unions, lawyers' associations, chambers of commerce/industry, and local self-government entities (Albania and Ukraine).

Discussion Questions:

- **Which legal entities should be covered within the BO regime? Would the level of detail for disclosure vary depending on the type of legal entity?**
- **Whether and on what grounds should exemptions be granted from BO disclosures?**
- **Who should be obliged to report and update the BO information?**

D. Designated Authority Responsible for Collecting and Maintaining Data

To ensure proper implementation and enforcement, legislation should clearly identify the agency (or agencies) in charge of collecting, maintaining, and verifying BO information. The EITI Standard

⁴⁶ Article 30(1), EU 5th AML Directive.

stipulates that, where possible, BO information should be incorporated into existing filings by companies to corporate regulators, stock exchanges, or agencies regulating extractive industry licensing.

In practice, the agencies responsible for maintaining BO data vary across jurisdictions depending on the type of legislation. For instance, in the UK, Afghanistan, and Zambia, corporate regulators are designated as competent authorities, as the BO provisions are embodied in company laws. For Indonesia and Ukraine, the responsibility falls on the Ministry of Law/Justice, which has authority to regulate corporations. Indonesia's Presidential Regulation on Beneficial Ownership, however, mentions other competent authorities, even if in practice the BO register is hosted by the Ministry of Law. In the case of sector-specific laws, the extractive sector's regulating ministry (for instance, in the Kyrgyz Republic) is considered as a competent authority. Other examples include the tax authorities (Brazil), the Ministry of Investment and Development (Kazakhstan), and central banks (Uruguay and Costa Rica).

It is important for countries to clearly identify in the legislation the agency responsible not only for the collection of BO information but also the agency responsible for the verification of information, and for enforcing sanctions and/or penalties for violations. Poor identification of the responsible agency and/or mixed responsibilities among multiple agencies may result in gaps in BO disclosure, verification, and enforcement of violations.

Discussion Questions:

- **Which agency or agencies should be made responsible in your country to collect, maintain, and verify BO data?**
- **Which agency should be given adequate powers for enforcing sanctions against violations?**

5.2. Data Collection

5.2.1. Policy Considerations

The set of information to be collected, maintained, and disclosed on beneficial owners is not defined in the 2012 FATF Recommendations. The EITI Standard, however, provides for the key information that should be collected on beneficial owners for effective BO disclosure. This includes the name of the beneficial owner, the nature and percentage of ownership, PEP status, nationality, and the country of residence. The EITI Standard also recommends that other additional information be disclosed, such as passport/citizenship number, date of birth, residential/service address, and means of contact.

The relevant law and/or regulations of jurisdictions should explicitly specify the minimum BO information that should be obtained, maintained, and updated by legal persons, and also submitted and updated in the BO register. Specifying such minimum BO information in the relevant law and/or regulations will help in the collection of consistent and adequate minimum data on BO. From the analysis of legal and regulatory framework in some jurisdictions, it appears to be a good practice to collect the following minimum data on beneficial owners:

- the official name of the beneficial owner (as it appears on the national identity card or passport);

- the issuance date and number of the national identity card or passport for domestic natural persons;
- passport number, issuance date, and issuance state for foreign natural persons;
- date and place of birth;
- nationality or citizenship;
- country of residence;
- residential address;
- correspondence or service address, where it differs from the residential address;
- tax identification number;
- form in which BO is held – ownership share (the exact percentage of shares, or percentage of share in capital, or the exact percentage of voting rights, or data on the percentage of indirect or direct share in the property/assets of the legal person or other foreign legal entity) or other type of control (determining influence in controlling the legal persons, whether the natural persons indirectly provide or has provided funds, or has a determining influence on decision making or a controls management);
- date when the natural persons has acquired such control;
- date of any change in BO information – becoming or ceasing to be the beneficial owner of a legal person;
- details of the authorised person or a Designated Non-Financial Business and Profession responsible for submitting the BO information on behalf of the legal entity; and
- the identification of PEPs, including their family members and known close associates.

Another policy consideration on data collection is whether to add the BO information to an existing system or to create a standalone system; this depends largely upon the level of sophistication of the company register already in place, as well as the available resources.

The countries also need to ensure that the data on the register is kept up to date and the designated authority/agency has the necessary legal mandate, means, and resources to confirm and verify the currency of BO data. In this regard, a provision is usually incorporated into the relevant law or regulations that provides a clearly specified timeframe for the companies to update their BO information on the register after the occurrence of any changes in their BO. In the UK and Ireland, for instance, companies are required to update their internal BO records within 14 days of any change in BO, and to notify such changes in their BO information to the central BO register within a further 14 days (i.e. a total of 28 days). Similarly, Belgium gives a period of one month to send any changes in the data of BO to its central BO register. Some jurisdictions give, however, a much shorter timeframe to legal persons for updating their BO information on the register. These include, for instance, Indonesia (three working days), the Philippines (seven days), Montenegro (eight days), North Macedonia (eight days), Serbia (15 days), and Malaysia (14 days to report BO changes to the Registrar, although the BO register has not yet been established in Malaysia).

To ensure the accuracy of available data on BO, a few countries, such as Austria, Belgium, and Denmark, also require the legal entities to confirm the accuracy of the current information on an

annual basis.⁴⁷ Regarding any updates on BO information to the Internal Revenue Department of the jurisdiction, it could be a part of the annual returns submitted to the department. The EU 5th AML Directive also requires, for instance, reporting entities under the AML/CFT law and, to the maximum extent possible, competent authorities to identify and report any discrepancies in the BO register to the designated authority/agency.

5.2.2. *Technical Considerations*

An important technical consideration for authorities relating the collection of BO data is: how is the BO data to be collected and stored? The data collection mechanisms vary across countries. The BO data can be collected using a range of different tools, from PDF or Excel templates and questionnaires to fully integrated web portals and bespoke databases. However, it is important to note that the scale of the solution should match the scale of the information being collected and should facilitate making the information publicly available.

The countries researched for the purposes of this paper have reported many technical barriers with respect to data collection and verification. These include the collection of BO data in paper format or electronically (as scanned PDFs) through emails, a lack of technical and human resources to process the applications, and the conversion of the submitted data into a structured format that could later be made available to the public or could be easily linkable to other datasets. It is therefore important for authorities to ensure, at technical level, that the required BO data is collected in a structured format so that it could be easily linkable to other datasets and also made available to the public. Digitalised submission would also improve the data quality. In this regard, Open Ownership's BODS, for instance, has been endorsed by organisations such as EITI and Open Contracting Partnership to collect high-quality data electronically. The EITI has also developed two BO model declaration forms for basic data collection and high-quality data collection (the latter is compatible with the BODS) to support the implementation of Requirement 2.5 of the EITI Standard.

At technical level, the relevant authorities also need to consider that the BO data is not only stored in a structured format, but also that the database makes it possible to store historical data on beneficial owners which is non-destructive, i.e. the system allows the data to be replaced rather than updated. There should be a proper legal basis for the treatment of historical data in the relevant laws and regulations which must conform with the domestic and international data protection laws and allow for the removal or alteration of inaccurate information or of information likely to create harm.

Discussion Questions:

- (i) What information/data, at a minimum, should be collected, maintained, and updated on beneficial owners?**
- (ii) How can governments ensure that the BO data is kept up to date on the register? What should be the timeframe for reporting BO data – for existing companies, newly established companies, and companies with changes to the reported BO information?**
- (iii) Should there be any minimum period for which the BO data should be maintained after the dissolution of a company?**

⁴⁷ Andreas Knobel (2019) *Beneficial ownership verification: Ensuring the truthfulness and accuracy of registered ownership information* (Tax Justice Network, 22 January 2019) p. 33

(iv) How should the BO data be collected and stored?

5.3. Verification Procedures

Effective verification is essential for a BO register to be a reliable tool to enhance transparency and to combat financial crime. A key challenge for any BO register is ensuring the completeness and accuracy of the initial data collected, and its integrity over time by ensuring that data is periodically updated. This is achieved through a robust verification process and periodic requests for updates from registered entities.

Most of the existing operational BO regimes are based on a reporting system where the onus is on companies to record BO details and to maintain supporting documentation. The EITI Standard suggests that companies attest to the BO declaration form through sign-off by a member of the senior management team or senior legal counsel, or by submitting supporting documentation. Some of the jurisdictions have incorporated these mechanisms, at least in their legislative and regulatory framework, to verify the authenticity of the BO information, but it is difficult to assess their effectiveness in practice. A very few existing operational BO regimes (e.g. Belgium and Austria) have put in place the data verification processes, including the submission of supporting documentation online.

Ensuring the accuracy of the BO information submitted and available is one of the major challenges that countries face. Mistaken or fraudulent submissions remain a key challenge for BO databases in majority of the countries, including the UK,⁴⁸ and due to various resource constraints (both technical and human), the information submitted is often not actively verified, tested, or monitored by the designated authorities. In the majority of jurisdictions, no authority has in fact been designated or given the responsibility to verify the BO data submitted. A lack of sufficient capacity on the part of the relevant authorities has often been reported as one of the major hindrances in ensuring the accuracy and adequacy of the BO information on the register.⁴⁹

The verification challenge arises from various factors, including:

- unfamiliarity with the BO concept, especially for smaller companies;
- complex corporate structures, especially where there are multiple layers of ownership involving several jurisdictions and different types of legal entities and/or legally binding arrangements;
- multiples documentary sources of BO data; and
- continuous verification, since BO information is likely to change continuously over time.

Despite these challenges, it is important to ensure that the BO register should not play a passive role, simply acting as a repository of information or documents; there should be proper mechanisms in

⁴⁸ In the United Kingdom, the initial analysis of the BO information submitted to its BO register has found a lot of discrepancies and breaches of law. For details, see, Open Ownership (2017) *Learning the lessons from the UK's public beneficial ownership register* (October 2017)

⁴⁹ UNODC, *Beneficial Ownership Regulations and Company Registries in Southeast Asia* (29 September 2020). Available at: https://www.unodc.org/documents/southeastasiaandpacific//topics/anti-corruption/2020/200914_Beneficial_ownership_regulations_and_company_registries_in_Southeast_Asia.pdf (accessed 10 November 2021).

place to verify and monitor the quality and accuracy of the information received and held on the register. A number of solutions have emerged in the recent few years, including BODS, cross-checking of data with other databases held nationally and internationally, and the role of civil society in undertaking verification independently, provided that the BO data is available publicly. Countries need to discuss and explore various BO data verification mechanisms that work best for their respective situations.

Discussion Questions:

- **When should the BO data be verified?**
- **Which authority should be held responsible to verify the BO information?**
- **What mechanisms should be put into place, both at policy and technical level, to verify the BO data?**

5.4. BO Registers and Public Disclosure

The advantages of public access to BO information cannot be discounted. It not only improves the overall transparency of the business environment, but also constitutes a vital element in BO data verification. It allows scrutiny by a wide range of interested stakeholders, and any reporting of unusual aspects or information that appears to be incomplete or inaccurate.

Nonetheless, the discussions on providing access to potentially sensitive information on the BO register has proven contentious internationally. The FATF Standards do not contain any requirement to make this information public. It simply requires countries to put in place mechanisms that ensure that the BO information on legal persons is available and accessible to competent authorities in a timely manner. A similar provision can also be found in the United Nations Convention against Corruption, which requires, under its Article 12, that the State parties should take measures to “safeguard the integrity of private entities, [...] by inter alia [...] establishing measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities”. However, the EITI Standard⁵⁰ and the EU 5th AML Directive⁵¹ require their member countries establish a BO register (which is limited to the extractive sector in case of EITI Standard) and make this information freely accessible to the public. The EU 5th AML Directive requires, for instance, the following information, at a minimum, to be accessible to public on beneficial owners: the name; the month and year of birth; the country of residence and nationality of the beneficial owner; and the nature and extent of the beneficial interest held.

Although the FATF Standards does not require the BO information to be made public, international good practice appears to be moving in the direction of public access to BO registers. To effectively combat the misuse of corporate entities for ML, TF, and corruption, it is now widely accepted that best practice is to make this information on BO accessible to the public. Many jurisdictions (such as the UK, Belgium, Ukraine, Denmark, Ireland, and Indonesia) have established centralised and public BO registries that are available and accessible to the general public. Some jurisdictions, however, charge a small fee to access the BO register to recover the costs (for example, Belgium and Ireland).

⁵⁰ EITI 2019 Standard, Requirement 2.5(a).

⁵¹ Article 30(5), EU 5th AML Directive.

Another data publication issue that has been identified in the selected jurisdictions relate to balancing and/or resolving any potential conflict between the BO disclosures and data protection or privacy concerns. For instance, the current BO register on extractive industries in Myanmar discloses some personal information, such as phone numbers and email addresses, of what appears to be of beneficial owners or authorised natural persons, which might raise security concerns and has the potential to be abused for criminal purposes, such as fraud.

A decision has to be taken at the policy level on the level of access to be provided, ensuring that the BO register is available publicly, but with safeguards to protect privacy and avoid security threats. The authorities have to decide on the details of the BO data that could be disclosed to the public, whether access needs to be monitored, how to monitor that access, and if a fee should be charged for accessing the BO information. (Any such fee should be reasonable so that it does not undermine the overall objective of establishing a public BO register.)

Discussion Questions:

- **Should the information on BO be made available to the public? What are the benefits of the public disclosure of BO data? What is the major argument(s) against publicly available BO information?**
- **Are concerns over privacy and security risks well founded? How can governments balance BO information disclosure with data protection and privacy laws?**
- **To what extent should the BO information be made available to the public? Should any exemptions be allowed against the public disclosure of BO information?**
- **Should a fee be charged for accessing BO information? If so, what amounts to a reasonable fee?**

5.5. Reporting Obligations of PEPs

The FATF Standards requires that the reporting entities, which are subject to AML/CFT obligations under their domestic legislation, should be required to identify and verify the identity of PEPs, who could either be their customers or beneficial owners, and to apply enhanced due diligence measures to PEPs. However, there has been no specific obligation placed on PEPs to disclose their status as a beneficial owner in a central BO register established by countries, since the establishment of a BO register is not a mandatory requirement under the FATF Standards.

Nonetheless, a more stringent system of disclosure requirements has been applied to PEPs by the EITI Standard, for PEPs are deemed to be at higher risk because of their potential involvement in bribery and corruption by virtue of their position and the potential conflict of interest that might ensue in government contracting and licensing. The EITI Standard specifically requires that if a PEP is a beneficial owner of a legal entity in the extractive sector, his/her status as a PEP must be declared and published in the BO register. Nonetheless, the EITI requires the Multi-Stakeholder Group of each implementing country to consider and determine, based on the national context and nature of the extractive sector, whether disclosure of all PEPs who are beneficial owners, regardless of any threshold, should be required, or whether would be appropriate to set a specific ownership threshold for PEPs.

In line with the EITI Standard, it is widely recognised that the BO disclosure threshold requirements for PEPs should be kept extremely low, or at 0%, which is justified considering the influence and power PEPs derive from their positions that can be abused for the purpose of corruption, bribery, and ML. For instance, the threshold for PEPs in Armenia was set at 0% in its 2020 extractive industry disclosures, which implies that PEP status of beneficial owner(s) must be disclosed irrespective of threshold. A similar approach has also been taken by the Kyrgyz Republic, which also requires that if the beneficial owner(s) is a PEP, his/her status must be disclosed regardless of the size of their ownership stake in the legal entity.

Discussion Questions:

- **Who should be included within the scope of the definition of PEPs? How can governments define “family members” and “known close associates of PEPs”?**
- **What are the challenges faced in the identification of PEPs as beneficial owners?**
- **How can governments determine a threshold that works for their respective countries, with respect to PEP disclosures?**
- **How does the BO disclosure requirement for PEPs in the extractive sector interact with the non-extractive sector? What are the approaches taken by other jurisdictions?**

5.6. Sanctions and Penalties

A jurisdiction must have effective enforcement provisions in place, including adequate monitoring, and compulsory powers to ensure the effective implementation of the BO disclosure regime. The Interpretative Note to Recommendations 24 clearly requires “effective, proportionate and dissuasive sanctions” to be imposed on legal or natural persons if they fail to properly comply with their BO requirements.⁵²

Some jurisdictions do not provide penalties specific to violations of BO requirements; instead, they have general penalty provisions that could be applicable to violations of such requirements (e.g. Kazakhstan and Mongolia). A few jurisdictions, on the other hand, provide for specific penalties related to violations of BO requirements and have penalised typical conduct in this regard, including failing to provide the required information, submitting false, fraudulent, or misleading information, providing inaccurate, incomplete, or inconsistent information, general default or failing to comply with requirements, failing to respond to information requests, or failing to update information.

The type of sanctions that are enforced also varies across jurisdictions, and includes administrative, civil, and criminal sanctions. Administrative sanctions include denial of licence, revocation or termination of licence or concession (Indonesia, Kazakhstan, the Kyrgyz Republic, and the Philippines), and the refusal to grant a renewal of licence. Civil sanctions include fines, ranging from a low end of approximately USD\$7.00 (Kazakhstan) and USD\$12.00 to USD\$140 (Malaysia), to a mid-range of USD\$2,500 to USD\$4,500 (Albania) or USD\$4,000 to USD\$23,000 (Montenegro), up to a high end of USD\$55,000 (Belgium). Ukraine and the UK also impose mid-range fines. Certain countries differentiate the penalties for individuals and companies (France and the UK). Criminal sanctions include imprisonment; this for example, is up to two years in the UK. Some laws do not contain specific

⁵² See, INR 24, The FATF Recommendations (as amended in October 2020), para 18

sanctions for violations of BO requirements and instead refer to penal codes outside legislation on BO (Indonesia and Mongolia).

Another important consideration in relation to sanctions and penalties is on whom to impose them. In almost all laws, liability is imposed on the declarant, who may be an individual or company, depending on the law. Some laws, however, extend liability to the head of the legal entity (Ukraine), to the officers of the company (the UK and Belgium), or to the beneficial owner (the UK).

Discussion Questions:

- **What type of sanctions should be incorporated into the legislation for the violation of BO requirements that are “dissuasive, proportionate, and effective”?**
- **Which acts should be sanctioned?**
- **Who should be liable for breach of BO requirements?**

6. Summary

This discussion paper highlights the ongoing reforms, challenges, and opportunities in the selected Asia and Pacific countries on ensuring the transparency of BO. As is evident from the paper, the BO transparency landscape has developed unevenly across the region. PNG, for instance, does not yet impose any legal obligation on legal entities to disclose BO information. A few jurisdictions, such as Tajikistan and Timor-Leste, have taken some initial steps in this regard, yet the law and regulations are unclear and not fully developed for effective BO disclosure. Kazakhstan and the Kyrgyz Republic have started collecting the BO information, yet the information appears to be incomplete, inaccurate, and not available to the public. Indonesia has taken a significant step by establishing a centralised BO registry, but is currently facing a challenge in ensuring the accuracy and currency of the BO data and whether the BO information should be freely accessible to the public. Armenia has taken significant steps in ensuring the transparency of BO by establishing an online BO register, which has recently been expanded to include all sectors beyond extractive industries, and is currently working on strengthening the verification procedures and data quality in the online register, as well as in improving the use and analysis of the BO information by the relevant authorities/stakeholders.

The paper emphasises the importance of delivering access to reliable and up-to-date information on beneficial owners, although the challenges involved in achieving that objective are substantial. For establishing and improving the transparency of BO, the paper has highlighted a range of topics for discussion, in the form of common challenges, that these jurisdictions need to address to achieve effective compliance with the EITI Standard and other international AML/CFT standards, such as the FATF Recommendations. These include establishing a sound and efficient BO disclosure regime encompassing a clear, robust, and unified definition of beneficial owner set out in law, mechanisms for the collection and verification of BO information, oversight of the BO register, public access to BO registers, and effective enforcement mechanisms.

The topics identified in this paper will serve as a basis for drafting the agenda for the upcoming Regional Workshop on Advancing Beneficial Ownership Transparency in Asia and Pacific, which is tentatively scheduled for February 2022. The purpose is to ensure a more in-depth and focused discussion on key issues during the workshop so as to enable these countries to learn from other

countries' experiences, as well as identify best practices (as emerged from different jurisdictions) to address the challenges in establishing an effective BO regime. The paper will also serve as a useful resource in developing the final knowledge product after the workshop containing recommendations and sharing best practices on the types of provisions and processes that should be incorporated to enhance BO transparency.

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Appendix I: List of stakeholders consulted

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