

TITLE: MATERIALS ON TRANSPARENCY OF BENEFICIAL OWNERSHIP IN ETHIOPIA

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MATERIALS TO SUPPORT MECHANISMS FOR DISCLOSURE OF AND ACCESS TO DATA ON BENEFICIAL OWNERSHIP OF LEGAL ENTITIES AND ARRANGEMENTS IN ETHIOPIA

Prepared by Tana Copenhagen

Disclaimer

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ACRONYMS

| | |
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| AML | Anti-Money Laundering |
| AROs | Asset Recovery Offices |
| BO | Beneficial Ownership |
| CDD | Customer Due Diligence |
| CFT | Countering the Financing of Terrorism |
| DNFBPs | Designated Non-Financial Businesses and Professions |
| ECOWAS | Economic Community of West African States |
| EITI | Extractive Industry Transparency Initiative |
| EU | European Union |
| FATF | Financial Action Task Force |
| FDRE | Federal Democratic Republic of Ethiopia |
| FIU | Financial Intelligence Unit |
| GDPR | General Data Protection Regulation |
| G8 | Group of Eight (Developed Economies) |
| LEAs | Law Enforcement Agencies |
| LLPs | Limited Liability Partnerships |
| ML | Money Laundering |
| NBE | National Bank of Ethiopia |
| NIST | National Institute of Statistics and Technology |
| OAS | Organisation of American States |
| OECD | Organisation for Economic Cooperation and Development |
| PEPs | Politically Exposed Persons |
| PSC | Persons with Significant Control |
| SOEs | State Owned Enterprises |
| TF | Terrorist Financing |
| UK | United Kingdom |
| UK – GDPR | United Kingdom General Data Protection Regulation |

1 PART 1: BENEFICIAL OWNERSHIP – WHAT ARE THE ISSUES AND CHALLENGES?

1.1 What is Beneficial Ownership?

A beneficial owner is an individual or a person who effectively or ultimately owns or controls a legal entity or arrangement, such as a company, a foundation, a trust or even a church. Beneficial ownership is the term used to describe the relationship between that person and the legal entity. The acronym BO is used to depict either the person or their relationship with the legal entity.

Effective or ultimate ownership exists in various ways, namely:

- holding the majority by percentage of the shareholding in a company or trust (e.g. 25% where no other single shareholder holds more).
- the control of a significant percentage of voting rights, or
- the ability to name or remove the members of an entity's ultimate control structure, such as a board of directors.

Beyond BO being expressed in such overt statistics, control by a BO can be exercised in other ways, such as:

- influence over or the capacity to reverse decisions that an entity makes, through agreements among shareholders or members, through family links or other types of connections with decision-makers, or
- holding negotiable shares or convertible stock from an entity

The Financial Action Task Force (FATF) defines a beneficial owner as:

....the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement

When assessed by reason of level of ownership or by reference to less formal indicators, it is conceivable for a legal entity to have more than one beneficial owner.

Apart from the FATF, the Extractive Industries Transparency Initiative (EITI) expects the countries that implements its standards on corporate transparency to maintain a publicly available register of the beneficial owners of legal entities that bid for, operate, or invest in extractive assets, including the identities of their beneficial owners, the level of ownership, and details of how ownership or control is exercised.

1.2 Why do we need to identify a BO?

Transparency of BO is important, not only to comply with FATF and EITI standards, but because of the scope for activities that are illegal or illicit to be committed by or through legal entities or inanimate arrangements. The concealment of activities such as fraud, corruption, tax evasion, money laundering, and financing of terrorism can be facilitated by the use of legal entities. Legal entities enable some illegal activities to be committed, to the extent that they create possibilities for complex manipulations of trading operations and transactions to make and transfer money between different countries. Cash intensive legal entities provide opportunities to mingle and thereby obscure proceeds of crime with lawful income.

Furthermore, the Beneficial Ownership can be obscured by the use of nominees, bearer shares or by dispersing the location of entities under a person's ownership or control.

The focus on transparency and identification of BO is motivated by the knowledge that legal entities and legal arrangements can conceal the illegal commercial activities of criminals or the illegal sources of funds that are deployed in the economy.

The infamous *Panama Papers* provided many examples of the use of offshore companies to conceal illicit funds and the people who created them and who benefited from their existence. Documents exposed by the International Consortium of Investigative Journalists revealed information about 214 000 such companies, created with the intermediary assistance of the Panamanian law firm Messrs Mossack Fonseca. The leaks confirmed that front companies and offshore structures are widely used to conceal beneficial ownership of assets and relationships with mainstream financial institutions.

A beneficial owner is a natural person.ⁱ A legal entity such as a company or organisation is not a beneficial owner, its beneficial ownership requires further analysis.

An interesting, but challenging issue relates to identifying the beneficial ownership of state owned enterprises. In developed and developing economies, the SOE has long been an integral player. As examples from around the world illustrate, SOEs can be abused by corrupt and criminal elements. According to the OECD, the beneficial owner of a SOE is the top government official tasked with representing the state as the principal shareholder. In all instances, this would be a minister. The discussion in these course materials, however, does not include the conduct of BOs of SOEs.

1.3 Who should identify Beneficial Ownership?

FATF Recommendation 24 specifically imposes the obligation to document and provide information on the beneficial ownership of legal entities on countries.

It stipulates that countries should ensure that:

‘there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.’

They should also:

‘consider measures to facilitate access to beneficial ownership and control information by financial institutions and Designated Non-Financial Businesses and Professions undertaking the requirements set out in Recommendations 10 and 22.’

Recommendations 10 and 22 relate to the obligation of all reporting entities (accountable institutions) to conduct due diligence on the customers with whom they do business – which is generally captured by the acronym CDD. CDD essentially involves documenting information by which to identify the customer as well as verifying the reliability of the information. Financial institutions and DNFBPs are the most common reporting entities.

Along similar lines, FATF Recommendation 25 obliges countries to prevent the misuse of legal arrangements for money laundering or terrorist financing. The primary method of doing so is to ensure that there is adequate and accurate information on the beneficial ownership of trusts, including ‘information on the settlor, trustee and beneficiaries...’ Such information should be accessible in real time to competent authorities and to reporting entities.

The FATF Recommendations imply that the principal obligation to develop profiles of beneficial owners of legal entities is with the national AML/CFT authorities. The obligation is two pronged, in that it extends to making the profiles of BO accessible to reporting entities. AML/CFT measures typically require the providers of intermediary professional services, especially those that assist entrepreneurs to create companies and trusts, and to invest in fixed property to establish the beneficial ownership of the entrepreneurs whose business activities they facilitate. The due diligence required of these intermediaries, such as lawyers, includes vigilance to transactions that may be funded by proceeds of crime or may be intended to provide financial support to terrorist activities.

Apart from being an obligation flowing from the FATF Recommendations, the duty to develop and give access to BO information is in the interests of AML/CFT law enforcement and regulatory agencies, especially the financial intelligence units. Improving the volume and quality of information submitted by reporting entities depends on the volume and quality of information available to reporting entities in the first place.

1.4 How should information on BO be ‘captured’?

The training materials presented this course are about the methods for extracting information on the BO of legal entities that are registered in Ethiopia. Although current law in Ethiopia does not seem to require that BO information for any legal entity be declared, there are data capture methods that can be utilised.

Article 5 of the AML/CFT Proclamation requires legal entities ‘established in Ethiopia’ to maintain ‘adequate, accurate and current information on their beneficial owners and control structure.’ They are also obliged to allow competent authorities to access such information.

It will be suggested in the course of this training that better structured methods of BO information be adopted. These should take account of restrictions that may be imposed in the interests of data protection. It may be necessary to expand the scope of the data that is required to be submitted on the registration of legal entities, as well as periodically when entities submit returns on taxable income.

Compliance supervision processes should include monitoring compliance with BO disclosure and updating measures. As mutual evaluation processes regularly point out, AML/CFT laws must be effectively implemented and enforced. Appropriate compliance, monitoring, and enforcement processes are critical to ensuring that laws and regulations on BO are observed. The assumes that the entities to declare/disclose BO are required to register or to submit tax returns. In the case of legal arrangements, some may not be registered or registrable, which appears to be the case with trusts.

It is difficult to identify the individual in beneficial ownership or control of a trust, where the trust is not registered. Nevertheless, there are several potential sources of information on the location of beneficial interests in a trust, namely the trustee, any financial institution/DNFBPs doing or facilitating business with the trust/trustee, and registries that capture information on rights to property that is held by the trust, or the tax authorities.

This may be easier where the law imposes a responsibility on the trustee to keep accurate and up-to-date BO information on the settlor and beneficiaries and to make it available, as required by FATF Recommendation 25.

Any financial institution and/or DNFBP doing business with a trust should obtain BO information on the trust as an essential part of complying with its CDD obligations. Where trust are not required to register,

competent authorities can only expect to access BO information on trust accounts from financial institutions and DNFBPs. It should be emphasized that this is the case irrespective of whether the jurisdiction concerned provides for the creation of trusts under its own laws. As with legal ownership information, financial institutions and DNFBPs must keep their BO information up-to-date by conducting ongoing due diligence over the course of the relationship.

The only trusts registrable in Ethiopia are charitable trusts, which are required to be registered in terms of the Civil Society Organizations Proclamation number 1113/2019. Charitable trusts are one of four forms of recognized charitable organisations, the others being charitable endowments, charitable institutions and charitable societies.

1.5 How much BO information is required?

If the underlying objective of accessing and documenting BO information is to stem the abuse of legal entities and legal arrangements to conceal proceeds of crime, it follows that the scope of coverage of the database on BO should extend to all legal entities involved in business transactions in Ethiopia. It cannot just be confined to locally incorporated legal entities.

It is an established fact that companies that have a multi-national or global footprint invest and conduct business through subsidiaries and associated companies. The structures by which the relationship between the holding company and its subsidiaries, and among subsidiaries have increasingly become complex. The complexities may be deliberately crafted to create avenues for illicit transfers of income from one jurisdiction to another. The proliferation of these transfers is at the centre of the prevailing global concern about illicit financial transfers engineered through the use of trading transactions within global corporations.

In profiling legal entities and legal arrangements, therefore, it would be advisable for Ethiopian authorities to include foreign owned legal entities investing locally. As there is bound to be a vast pool of legal entities that fall into this category, some degree of prioritization is necessary. Moreover, the foreign arms of local subsidiary companies are beyond the reach/jurisdiction of local competent authorities, and cannot be expected to disclose BO information about themselves.

Ethiopia offers much scope for foreign direct investment, and has, since 2012, been ranked in the top five African countries in attracting FDI. Two areas in which there have been FDI inflows into the country are in resource (asset seeking) investment and market-seeking investment. In the former, the objective of the investing company is to access resources, usually extractive natural resource, raw materials, and labour that is cheaper than in their home country. A key objective of the investor in market-seeking FDI is to supply products to a market which offers scope for growth by reason of its size and under-utilization. The attractive features of the host jurisdiction are market size and high potential for growth.

In so far as the transparency of BO is concerned, an important strategic objective of the host jurisdiction is to ensure a balance of advantage/benefit between the investing companies and the host jurisdiction. This balance can be upset by the abuse of subsidiary entities of the investor, which are located in various geographical locations, to illegitimately diminish tax and other obligations to the host jurisdiction. As the current author has observed, 'many subsidiary corporations tasked with providing services or hosting

intellectual property rights are resident in low-tax jurisdictions. In many such instances, the intra-group distribution of responsibilities is influenced by low production costs, a favourable economic climate and low corporate tax rather than the extent of economic presence or business engagement.^{’ii}

There are numerous illustrations of strategies used by global corporations to distribute functions among associated enterprises or subsidiaries. The portfolio of services typically exchanged includes:

- Research and development,
- Management and human resources,
- Information and communication technology (ICT),
- Financing,
- Insurance,
- Marketing,
- Post-sale support, and
- Legal and corporate advisory services

Intellectual property rights are intangible assets. They may be registrable or non-registrable, as is the case with assets such as know-how, goodwill and reputation. Their existence and valuation arises in the income transfers that occur between associated enterprises, for which tax deductions or rebates may be claimed. In determining the legitimacy of the deductions or rebates claimed, it may become important to establish the BO of the different associated enterprises. A primary reason for this is to determine the jurisdiction in which the BOs are tax resident – which will be relevant to any bilateral or multilateral exchange of tax related information.

A positive development has been the increase in the number of countries that have created registries of BO information. Information from the registries is generally available only to foreign authorities in terms of bilateral or multi-lateral treaty arrangements. The Global Forum on Transparency and Exchange of Information for Tax Purposes, which was established in 2000, is a multilateral framework for tax transparency and information sharing, within which over 160 jurisdictions participate. An advantage of membership is the access to BO information from a broader range of jurisdictions. Ethiopia is not yet a member of the Global Forum, but most of its neighbours are. In the interim, there is scope to use BO information disclosure to reduce what has often been referred to as the information imbalance or asymmetry between global business and regulatory authorities in a capital importing country such as Ethiopia.

1.6 Verification of BO information

The competences required in verifying the truthfulness or accuracy of BO information will, in some respect, be similar those required to investigate corruption and other financial crime. These competences are particularly useful where concealment is suspected. The use of complex structures in the name of proxies and intermediaries is not unusual where PEPs are involved, or there is an element of financing of criminality.

The purposes of the verification inquiry are:

- To identify the assets of an individual/entity

- To directly and/or indirectly link any assets to that entity or individual
- To differentiate between the assets, liabilities, income and expenses of the individual in order to discover if some undeclared income accruing to him/her is attributable to the assets

Information to be used to verify BO disclosures, it has to be trustworthy, up to date and reliable. It may be sought from open sources, such as the registry of companies, or the registry of real estate.

1.7 Should BO databases be accessible to the public?

Views on this issue are conflicting. Later sessions in this training course will throw further light on the subject. Some sectors are opposed to making the identity of BOs public, on the basis that it violates privacy. They also contend that it could lead to higher risks of criminal victimisation, through kidnapping or extortion. Public registries, it is further argued, are like lists of PEPs or of terrorist organisations, in that they discourage reporting entities from conducting thorough independent checks to verify the identity of BOs of legal persons and arrangements. Instead of being used as one of a number of indicators, they become the only evidence. Although some jurisdictions are in favour of public registers, the FATF does not advocate for public BO registers. Civil society groups still hope to convince policymakers to make it a global standard.

REFERENCES:

On the Panama Papers expose: available at <https://www.icij.org/investigations/panama-papers/panama-papers-faq-all-you-need-to-know-about-the-2016-investigation/>

Ethiopia Investment Commission, Ethiopia Investment Report 2019; available at http://www.investethiopia.gov.et/images/Covid-19Response/Covid-19Resources/publications_May-20/EIC-Investment-Report-2019.pdf [accessed 25th October 2020]

Goredema C, Remedies to illicit financial flows from transfer pricing of services and hosting intellectual property in Africa (2017) Strathmore Law Journal pp. 113 – 130

Legese, H (2018) Determinants of FDI in Ethiopia: Systematic Review Journal of Business and Economic Development Volume 6 Number 3 pp. 38 – 47

OECD, (2018) Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices; available at <http://www.oecd.org/corporate/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices.pdf>

2 PART 2: DATA PROTECTION LAWS IN ETHIOPIA

2.1 Objectives

This part explains the current data protection laws in Ethiopia in relation to BO and how the regulations might restrict BO data disclosure. It explains how data protection regulation interacts with BO registers and how BO disclosures should respect individual privacy and still serve their purpose. To demonstrate how data protection and BO disclosures can be harmonized, we highlight two case studies from two countries. The case studies reflect a fundamentally different picture, and open up the possibility for Ethiopia to chart legislative changes on data availability, data protection and privacy that will allow the disclosure and access of BO information.

This part also evaluates Ethiopian data protection legislation against global standard AML and CFT regulations. It has two objectives:

1. To examine current Ethiopian BO data regulations and use the EU regulations as a possible guide for Ethiopia.
2. To provide case studies as a roadmap on merging data regulations with BO data disclosure

2.2 Data Protection Laws in Ethiopia and their relationship to Beneficial Ownership Disclosures

Ethiopia has several laws that are relevant to privacy and data security, namely the 1995 FDRE Constitution, the 1960 Civil Code, the 2005 FDRE Criminal Code, the Freedom of the Mass Media and Access to Information Proclamation No. 590/2008, the National Bank of Ethiopia Establishment Proclamation No. 591/2008, the Banking Business Proclamation No. 592/2008, the National Payment System Proclamation No. 718/2011 and the Computer Crime Proclamation No. 958/2016.

The Freedom of Mass Media and Access to Information Proclamation requires public agencies to reject requests to access records if the concerned records relate to the personal information¹ of third parties, including individuals who have passed away within 20 years of the time of the application.

A request for access to public records can be rejected if:

- it relates to information supplied by the third party in confidence and if it would potentially prejudice the supply of similar information in the future when public interest so demands; and
- the disclosure of the record would constitute an action for breach of duty of confidence owed to the third party in terms of an agreement and would likely result in legal action.

A third party whose information is requested for disclosure has the right to be notified and can protest the disclosure.

¹ Personal Information includes information relating to financial transactions in which the individual has been involved.

The 2005 FDRE Criminal Code criminalizes the violation of privacy safeguards guaranteed under the constitution. Particularly, Article 399 of the Criminal Code criminalizes breaches of professional secrecy. Professionals including advocates, legal advisors, attorneys, arbitrators, experts, jurors, employees of private companies, among others who disclose a secret obtained in the course of professional duties, are punishable by law unless disclosure is expressly ordered by law, by a court of justice or by the competent authority.

DNFBPs are generally not allowed to disclose information obtained in the course of their professional duties. The National Payment System Proclamation provides that any information obtained by the NBE from an operator, participant and an issuer of payment instruments must not be directly or indirectly disclosed to a third party unless the disclosure is:

- for the purposes of fulfilling the legal requirements under the National Payment System Proclamation;
- necessary to ensure financial integrity, effectiveness, and security of the system;
- to a recipient who is legally authorized to get such information or to a body to which the NBE is accountable;
- to a recipient who is legally authorized to get such information;
- ordered by a court of law; or
- for the purpose of meeting obligations under international agreements.

Both the National Bank of Ethiopia Establishment Proclamation and the Banking Business Proclamation oblige the NBE not to disclose the information including BO information it collected, whether within or outside Ethiopia unless the disclosure is;

- for the purpose of fulfilling the requirements of the Proclamation;
- in the interest of ensuring the financial soundness of banks, insurers and other financial institutions;
- to recipients who are legally authorized to obtain such information;
- to the body to which the National Bank is accountable; or
- ordered by a court.

The NBE Establishment Proclamation restricts financial institutions from disclosing any information relating to any person or business which comes into their possession or knowledge unless requested by the National Bank, legally authorized persons or by a court order.

Three legal bases, present in these data protection regulations, are potentially relevant to the collection and disclosure of BO information, namely: the consent of the person concerned; the necessity to perform a contract; and lawful authority. The legislation referred to adds a layer of complexity for law enforcement agencies seeking information for investigative purposes. The mentioned laws are not all associated with the same government departments, they are not centralised and the chain of command to access the information can be bureaucratic. But it is reassuring because there are no data secrecy laws and BO information can be accessed through legal channels.

Moreover, under the current state of the law, it would be illegal to have BO data in a publicly available BO database. BO disclosure in public registers is currently not lawful in Ethiopia.

2.3 Data Protection and Beneficial Ownership Registers

Jurisdictions worldwide take different approaches to balancing data protection and the disclosure of BO, which may be categorized as:

- Jurisdictions in which both data protection and the disclosure of beneficial ownership are statutory obligations;
- Jurisdictions in which data protection is a statutory obligation, but there is no obligation to disclose BO information, such that disclosure of BO information only occurs on a voluntary basis; and
- Jurisdictions in which neither data protection nor disclosure of BO information have any statutory basis.

In general, jurisdictions with both data protection and BO disclosure obligations require that :

1. Data protection laws only allow access to data where the party accessing the data has a proper legal basis for doing so.
2. Regarding consent, data protection regimes specify that such consent needs to be free and informed. Article 4(11) of the General Data Protection Regulation (GDPR) defines consent as ‘any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signified agreement to the processing of personal data relating to him or her.’ The Organisation of Economic Cooperation and Development (OECD) Principles, Convention 108, the Organisation of American States Principles, and the Economic Community of West African States (ECOWAS) Supplementary Act all refer to the consent of the data subject as providing a lawful basis for the processing of personal data.
3. Data protection law typically recognizes that contractual agreements to which the relevant data subject is party may be a lawful basis for the processing of personal data. For instance, if the processing of data is a condition of a contract between the data subject and a company processing data, or it is necessary for the company to process the data to perform its contractual obligations to the subject
4. Data processing may be lawful, even in the absence of the subject’s consent or agreement, if the company making the disclosure is specifically required to do so under a legal obligation. For European Union (EU) Member States, Article 6(3) of the GDPR provides that the legal obligation must be laid down in either domestic or EU law.
5. By statute, provided that the application of the rule is foreseeable for individuals whose data is subject to disclosure. There will be arguments regarding the foreseeability of certain obligations concerning the disclosure of BO information, but these do not arise in the countries (led by the United Kingdom (UK), and to be followed by all EU Member States as they implement the Fifth Anti-Money

Laundering Directive) where legislation expressly provides for the compulsory registration of information on BOs.

6. Accordingly, for jurisdictions in which both data protection and the disclosure of BO information are statutory obligations, compliance with the obligation to disclose is consistent with data protection law, as it falls within the 'lawful authority' exception. Once that lawful basis is satisfied, the relevant remaining issues to consider typically include whether the information disclosed through BO registration is limited to that which is relevant and necessary for the lawful purpose; and whether individual data subjects have recourse to access, challenge, and request amendments to, or erasure of, inaccurate or irrelevant information.
7. Statutory disclosure regimes, such as the UK public register and the public registers, incorporate design features that are compatible with these principles. First, the information required for registration is set out in statute, with the result that the information provided does not go beyond the scope of the lawful purpose. Second, each regime incorporates administrative means to access data and correct minor errors and allows recourse to the courts to raise more substantive challenges. Typically, however, statutory regimes requiring the collection and provision of BO data for registers will impose restrictions on the ability of data subjects to demand erasure or a 'right to be forgotten'.
8. Company information is typically retained for a minimum period: the UK, for instance, is currently reviewing its retention period for company information (currently 6 years of free availability, but up to 20 years with the payment of a fee). The reasons for retention of company information are persuasive, since issues arising from questionable company practices may take a long time to emerge, meaning that research into historic information is required. Indeed, as the Court of Justice of the EU noted in the Salvatore Manni case, questions requiring company data may arise many years after a company has ceased to exist.

2.4 Data Protection and Beneficial Ownership Case Studies

Below, we analyse the relationship between data protection laws and BO disclosure laws or policies in two countries: the United Kingdom and Ghana. The UK has a mandatory BO scheme and Ghana has a voluntary one (at least until 2020). Both countries have schemes that involve public registers and central registers. The case studies demonstrate two models for reconciling data protection and BO responsibilities.

2.4.1 United Kingdom

The United Kingdom provides a good insight into the relationship between regimes of BO information disclosure and data protection, given that in 2016 the UK was ahead of its Group of Eight (G8) and EU peers in implementing mandatory disclosure of BO information on UK registered companies.

The mandatory BO disclosure obligation was introduced in the UK as part of the Small Business, Enterprise and Employment Act 2015, modifying the Companies Act 2006. The Act established the Persons with

Significant Control ('PSC') register, to which UK-registered companies and Limited Liability Partnerships (LLPs) are obliged to disclose the identifying details of any person who comes within the relevant definition. That definition includes all persons who hold, directly or indirectly, more than 25% of the shares or voting rights in the company.

The information required under section 790K of the Companies Act 2006 includes: the person's name, address, country of usual residence, nationality, date of birth, usual residential address, and nature of their control over the company, but the information actually published on the PSC register is less extensive: birthdates are not full, and the size of shareholdings is not precisely specified. In addition, certain publicly-listed companies are exempted from the requirement to provide information for the PSC register if they fall into two categories: companies traded on the London Stock Exchange main market or companies traded on a regulated market in the European Economic Area or specified international markets with equivalent regulatory frameworks (including major markets in the United States of America, Japan, Switzerland, and Israel).

The rationale for those exceptions is that companies traded publicly on those markets are already required by market rules to provide detailed information and reporting on their ownership structures.

With respect to data protection, the UK is subject to the GDPR, and has also enacted the Data Protection Act 2018, which provides ancillary rules regarding the exemptions which apply to requests for access to personal data. There are rules for specific categories such as processing for research, journalism, fraud prevention and regulatory sanctions. After the transition period, the UK will no longer be regulated by the GDPR. Instead, the UK has passed its own version into law, known as the UK-GDPR.

In the UK, then, compliance with BO disclosure obligations of the PSC register is entirely consistent with data protection. The explicit statutory basis for disclosure satisfies the GDPR criterion of a lawful basis for processing. Where companies provide the specific list of information set out in section 790K of the Companies Act 2006, they can be sure that in doing so they have provided only the information which is relevant and necessary to their statutory obligation. In line with data protection rights, the PSC register can be accessed, and minor changes can be requested and effected through administrative processes, while more substantial matters are usually determined in court. Finally, while publicly - listed companies are exempted from the obligation to disclose information for the PSC register, such companies are required to provide a considerable amount of information on governance and ownership to the market as part of the processes for listing and periodic reporting. In light of this, the recommendation for Ethiopia is **to ensure that its data regulations are aligned to and consistent with its companies formation regulations.**

2.4.2 Ghana

In Ghana, data protection legislation imposes certain restrictions on the capacity of companies to provide public disclosure to their BO. The Data Protection Act 2012 stipulates that any entity which possesses personal data must ensure that the data is processed in a lawful and reasonable manner, and without infringing the privacy rights of the individual to whom the data relates. All entities processing data are obliged to take into account the privacy of the individual, by applying a series of principles including the lawfulness

of processing, the specification of purpose, and the security of handling of the data. The lawfulness of processing in turn depends upon either the consent of the subject or, in the absence of consent, a limited range of circumstances where the processing is: a) necessary for the purpose of a contract to which the data subject is a party b) to protect a legitimate interest of the data subject c) authorised or required by law d) necessary for the proper performance of a statutory duty; or e) necessary to pursue the legitimate interest of the data controller or a third party to whom the data is supplied.'

In all circumstances, the processing of personal data is subject to what the Data Protection Act 2012 calls the principle of minimality: namely that personal data may only be processed if the purpose for which it is to be processed is necessary, relevant, and not excessive. Individuals have rights to seek access to their data, and to seek amendments or deletions of data which is inaccurate, excessive, or out of date. The Act also established a Data Protection Commission, to which individuals can bring complaints regarding breaches of the Act by entities which hold and process their personal data unlawfully. Those domestic provisions are largely in line with the ECOWAS Supplementary Act on Personal Data Protection, to which Ghana is subject. In line with domestic and regional data protection rules, then, companies registered in Ghana would be entitled to disclose the names and other identifying personal data of their BOs, so long as they have the consent of those persons and complied at all times with the principle of minimality and bearing in mind the purpose of transparency as to ownership. Straightforward policies to avoid unlawful disclosure would include companies ensuring that they amend the information made available whenever the BO of the company changes so that personal data which is no longer necessary or relevant is not shared.

While consensual disclosure is available, the main impetus for disclosure of BO data on Ghanaian companies will be the pending introduction of a central register of BO that was mandated in 2016. At the UK Prime Minister's Summit on Tackling Corruption in May 2016, Ghana's then President John Dramani Mahama committed Ghana to 'preventing the misuse of companies and legal arrangements to hide the proceeds of corruption' by using amendments to companies legislation to ensure that central registers are compiled for the BO of companies operating in all sectors of the economy, and to ensure that the information is accessible to the public. That announcement was influenced by the concentration of opaque ownership structures in the Ghanaian mining and oil sectors. Accordingly, in August 2016, a statutory framework was created through the Companies Act 2016 requiring the Registrar General's Department to collect information on BOs of companies registered in Ghana. That data is to be collected at the time of registration for new companies and as part of the annual filing requirements for existing companies. While now placed on a statutory footing, the regime is not yet mandatory. President Nana Akufo-Addo has made a commitment that the BO reporting system will be implemented by 2020.

The information which will be collected in respect of each beneficial owner comprises:

- a) The full name and any former or other name
- b) The date and place of birth
- c) The telephone number
- d) The nationality
- e) Residential, postal, and email address, if any
- f) Place of work and position held
- g) The nature of the interest, including the details of the legal arrangement in respect of the BO.

One notable aspect of the Ghanaian legislation is that, unlike the UK PSC register or the register requirements of the EU Fifth Anti-Money Laundering Directive, **there is no specific threshold set for what amounts to ‘substantial control’ of a company.** Prior to the implementation of the register and the testing of the meaning of ‘substantial control’ in the Ghanaian courts, the scope of disclosure obligations is not certain.

That raises a potential challenge for compliance with data protection law: the absence of a minimum threshold is likely to encourage companies to provide information on all BOs, however marginal. Persons with negligible beneficial control of Ghanaian companies may plausibly argue that such disclosure goes beyond the statutory purpose of exposing the people with substantial control and so, in the absence of their consent, would constitute a disclosure of personal information without a lawful basis, contrary to data protection law.

In view of this, the **recommendation for Ethiopia is that Companies registered there will need to consider carefully the appropriate balance to strike between transparency and privacy for negligible beneficial holdings.**²

2.5 Conclusions

Ethiopia does not have a single and comprehensive legal instrument regulating privacy and data protection, including the obligations of data controllers, processors as well as the rights of data subjects in general. This can create ambiguity in BO data collection and use; hence increasing money laundering and terrorist financing risks. Also, there is no comprehensive privacy and data protection legislation that is specific to the financial sector. Therefore, significant steps need to be taken to streamline the Ethiopian BO data privacy laws in general as their review will enhance the investigation of money laundering and terrorist financing activities.

² Companies Act 1963, First Schedule, as amended by Companies (Amendments) Act 2016. Data Protection Act 2012, section 18(1).

Data Protection Act 2012, section 17.

Data Protection Act 2012, section 20(1).

Data Protection Act 2012, section 19.

Data Protection Act 2012, section 35.

Data Protection Act 2012, section 33(1).

3 PART 3: BENEFICIAL OWNERSHIP DATA IDENTIFICATION AND VERIFICATION REQUIREMENTS

3.1 Executive Summary

BO data identification and verification management are at the heart of every successful AML/CFT program and can alleviate the onerous components of due diligence. Chapter 1 of this report will seek to guide in the development of data roadmaps, highlighting data issues that should be considered. Some of the data issues that will be explained will be BO data standards which include data accuracy, reliability and verifiability. It will detail FATF's three-pronged approach and best practice for BO information access and identification. The report provides a BO database creation model that serves as a toolbox of important components required for the creation of the database. It discusses fundamentals for effective BO data disclosures such as how BO data should be clearly defined in law, why BO disclosures should contain sufficient details, and some of the measures that can be taken to verify BO data. Additionally, the report will explain common BO data program weaknesses and provide a checklist for a BO database.

Chapter 2 explores the primary and potential BO data sources in Ethiopia and the current systems of record. How potential BO data is stored, and the elements of its composition will be presented. In this chapter, the report seeks to explain best practices for a data - driven BO database, such as building relationships within government and relevant organizations to support collaboration, making BO data accessible and trustworthy. The report also explains how the provision of BO data tooling to help in working with data and the utilisation of modern governance technologies and practices for BO data serve as best practice. The report provides effective BO data information technology recommendations such as BO data I.T infrastructure, the importance of having a standard for BO data visualization, and BO data migration and security systems. Finally, the report will explain the importance of a BO template/disclosure form and provide a BO data collection form that can be used to collect BO information.

3.2 CHAPTER 1

3.2.1 Aims

To understand global BO data requirements and to emphasize on the disclosure and collection of BO data at the institutional level, explanations of current global and FATF data standards will be undertaken. This beneficial ownership data report will provide a number of data tools and capabilities, in order to fulfil BO data disclosures and collection.

3.2.2 Objectives

The report has the following specific objectives:

1. To provide an understanding of BO data requirements and standards
2. To interpret the FATF best practices on BO data collection
3. To explain the fundamentals needed for effective BO data disclosures
4. Present common BO data program weaknesses

5. Describe the BO database creation model
6. Identify current BO data sources and systems of record in Ethiopia
7. Highlight best practices for a data - driven BO database
8. To elucidate on how to utilize modern governance technologies and practices for BO Data
9. To explain BO data information technology recommendations
10. To demonstrate the importance of a BO data collection form and provide one.

3.2.3 BO Data Standards

Definition of Beneficial Ownership Data

Fundamentally, beneficial ownership data is data that describes how companies are owned or controlled. It contains three basic elements:

1. People, as individual owners
2. Legal entities, such as owned companies, intermediate owners and ultimate owners
3. The ownership or control relationships and means of control – share percentages and details of voting rights and formal and informal contractual agreements

Common Data Standard

The core of having a BO data standard is that it has a clear set of fields for describing the three elements of data needed: persons, entities and ownerships. There needs to be an agreed data standard that will be used for all legal entities. Certain fields of data should be mandatory; while others may be flexible.

The BO data provided should include a) identifiers for individuals b) identifiers for companies c) level and percent of ownership d) historical chronology of ownership and e) placeholders where data can be redacted.

The concept here is to provide:

1. Ownership or control
2. Entities
3. Natural persons (who control the entities)

The common data standard makes it possible to track changes in BO information.

Data publishers and users can use the definitions of BO provided by the relevant law that they are operating under.

Below is a summary of core fields of the above BO data standard:

Persons

| Names | People can have multiple names, or several versions of their name |
|--------------------------------------|---|
| Identifiers | Allow for multiple identifiers |
| Nationalities / place of birth | Nationalities could be multiple |
| Birth date / death date | Allow for uncertainty in dates, |
| Place of Residence / tax residencies | Might have tax residencies in multiple jurisdictions |
| Addresses | City, sub-city and woreda |

Entities

| Names | |
|----------------------|--------------------------------|
| Jurisdiction | Allow for uncertainty |
| Identifiers | Allow for multiple identifiers |
| Founding date | |
| Dissolution date | |
| Ownership or Control | |

Ownership or Control

| Subject | What is owned |
|--------------------|--|
| Controlling Party | Who has the control or ownership |
| Type | Shareholding, board membership or contractual agreement. |
| Start Date | Allow for uncertainty |
| End Date | |
| Share Percentage | Include percent terms |
| Direct or Indirect | Essential to get the broad view instead of one small part. |

3.2.4 Data Accuracy and Verifiability

Very few countries have adequate mechanisms to ensure the accuracy of data provided by legal entities. Some reasons for this are a) inadequacy of legal frameworks b) level of development, and c) access to technology. BO Data accuracy and verifiability is important, so that data contained in the public databases and registers can be considered valid and reliable for use by competent authorities, the private sector and citizens generally.

Measures that can be taken to verify and ensure data accuracy are a) when the data is submitted, checks should be made to ensure values conform to known and expected patterns b) where possible, key information should be cross-checked against existing authoritative systems and other government registers c) supporting evidence should be required to enable details to be checked against original documents and d) whistle-blower protection.

Financial institutions should ask an entity if its BO has been changed in any of the following cases:

1. During investigations of suspicious or unusual transactions
2. During the periodic review of the account holder's documents

If a significant change is suspected to have occurred in the corporate ownership and/or the legal structure

3.2.5 Data Accessibility and Structure

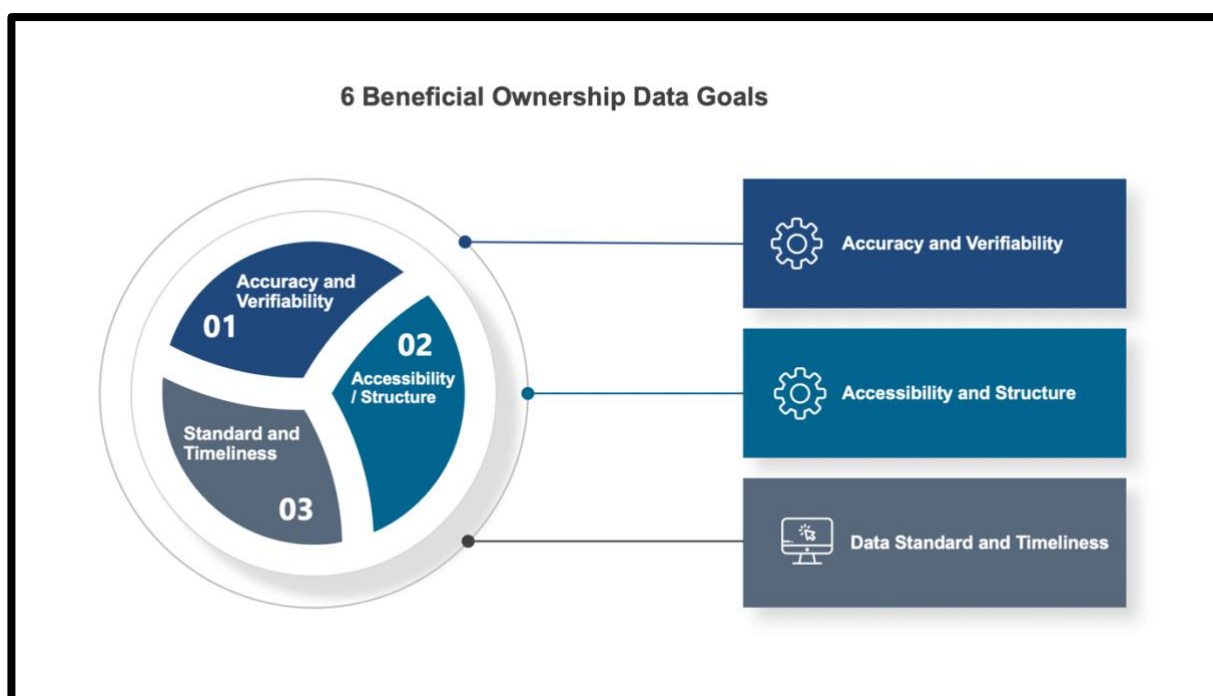
BO data must be shared and stored in a standard way and be available in a structured format. The value of BO data is when it can be explored and analysed which is best done when it is available in a structured format. The data should be available in a) a data collection form b) machine readable format c) in bulk and d) an open data format (xlsx or csv) for public availability. Pdf locked documents can be difficult to interpret where there are multiple layers of companies involved. BO data accessibility can be increased by publication of data in electronic or other open data formats.

When data is machine readable and available in bulk, multiple disclosures and application programming interface (API), it can be analysed together. This allows users to identify suspicious patterns of ownership or BOs that appear on other datasets.

3.2.6 Data Timeliness

Global best practice emphasizes that BO data should be disclosed as soon as practically possible, this can be accomplished through online disclosures. It might be appropriate for companies to file such information upon incorporation or when signing a contract. The model BO data collection form tasks legal entities with disclosing the date a specific beneficial owner started holding a beneficial interest in the company. The date when ownership interest was acquired provides clarity on the validity of the BO information disclosed.

Diagram 1: BO Data Goals



3.3 FATF Best Practice for Beneficial Ownership Data Identification

FATF recommends three approaches to identifying BO data, the emphasis on these is because the different approaches complement each other.

3.3.1 Existing Information Approach

It is usually easier to obtain BO information from an existing source and incorporate it into a new or existing BO database. Using existing BO information mechanisms is very effective in collecting BO data.

Reliable existing sources of data are:

1. Data collected as part of CDD conducted by financial institutions
2. The tax authority
3. FIU
4. Financial regulators
5. Ministry of Trade/Commerce
6. Notaries
7. Company formation agents
8. Company service providers
9. Auditors
10. Credit reporting or a credit reference bureau

These are often key intermediaries linked to an entity's life cycle and can be sought to provide BO data. However, the AML legal framework needs to have provisions that oblige these institutions to obtain and provide BO information. Additionally, the AML legal framework needs to have provisions that allow competent authorities to have access to BO information from these repositories. .

3.3.2 Registry Approach

Most governments register all companies that are established in their jurisdictions therefore, the commercial registry is a useful to obtain accurate BO records.

In Argentina, for example, legal entities must provide information on BOs to the company registry in Buenos Aires. Commercial registries however need to take it upon themselves to verify and monitor BO information changes, which most commercial registries do not. This is important because the reliability of self-declared information is questionable. Within four weeks after completion of the annual review of the accuracy of the data in the register, each legal entity must register any necessary changes or expressly confirm that the current registered data is still correct.

3.3.3 Company Level Approach

Companies should have the best access to information on their BOs. Some jurisdictions require entities to maintain the information and make it available upon request. Restrictions should exist such as penalties on the companies to encourage them to hold and make available the BO information, as well as on the BOs should they not timeously and accurately provide the company with necessary information. Otherwise, the framework may not be effective if there is no enforcement mechanism to ensure that the company can obtain information on the entity's ownership structure and/or BOs. Potential negative effects of requiring entities to provide BO information include, but are not limited to the difficulties of ensuring observance and minimising delays in the submission of information.

Diagram 2: FATF Best Practice on BO Data Identification

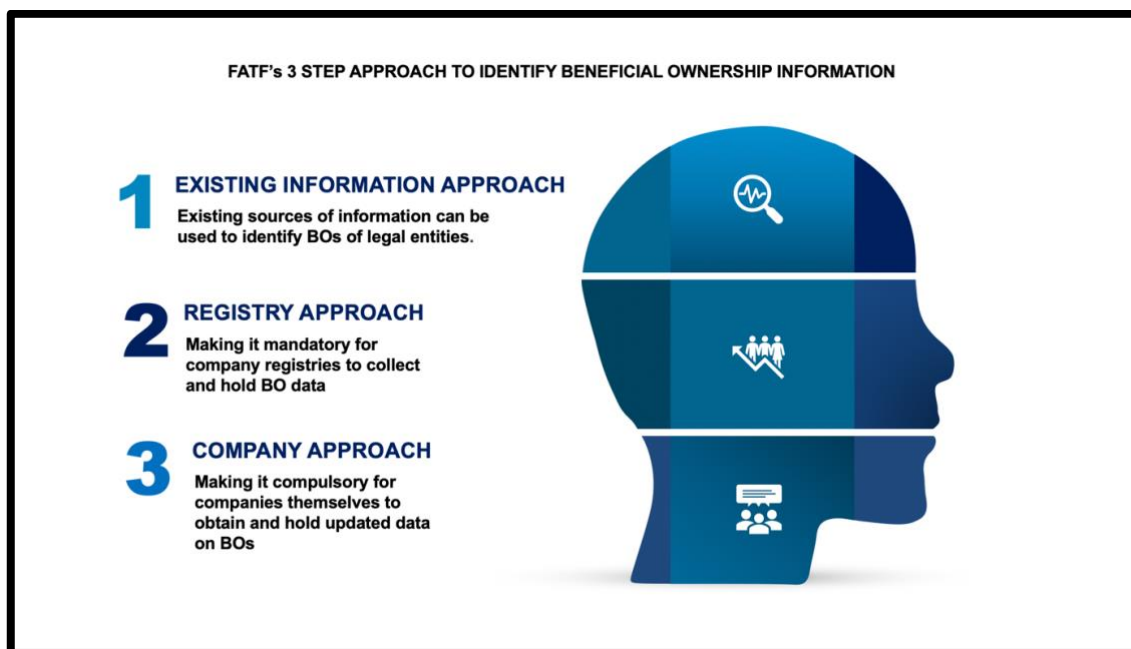
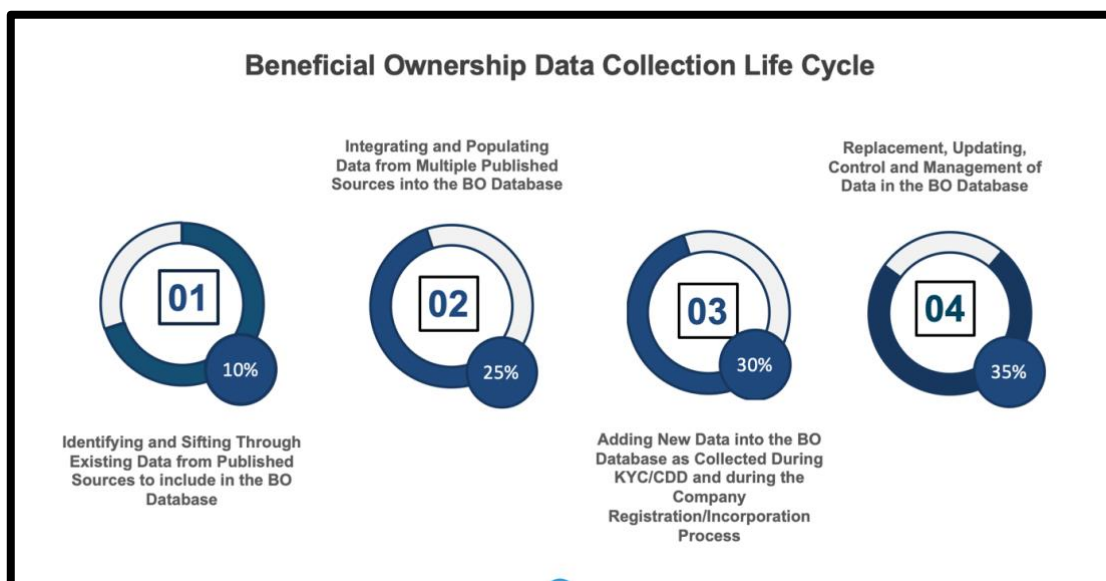


Diagram 3 : BO Data Collection Life Cycle

BO data is usually scattered across documents such as companies' annual reports, founding articles and filings to regulatory authorities. Therefore gathering it can be challenging but once collected, it provides a complete picture of a company's BO.



3.4 Fundamentals for Effective BO Data Disclosures

3.4.1 BO Should be Clearly Defined in Law

1. Robust and clear definitions of beneficial ownership should cover all relevant forms of ownership and control.
2. Low thresholds for triggering BO disclosure should be used so that most, or all, people with beneficial ownership and control interests are included in disclosures.
3. Absolute values, rather than ranges, should be used when reporting the percentage of ownership or control that a beneficial owner has.

3.4.2 BO Disclosure Should Cover all Type of Legal Entities and Natural Persons

1. All relevant legal entities and arrangements, and all relevant natural persons should be included in disclosures.
2. Particular attention should be given to the disclosure requirements relating to ownership by State Owned Enterprises.

3.4.3 BO Disclosures Should Contain Sufficient Details

1. Key information should be included about the BOs, the disclosing company, and the means through which ownership or control is held so as to allow for ease of understanding and use of the data.
2. Clear data identifiers should be used for people and companies.
3. Politically Exposed (or influential) Persons should be clearly identified within the data.
4. Where BO is held indirectly through multiple legal entities, sufficient information should be published to understand full ownership chains

3.4.4 BO Data should be Collated in a Central Database/Register

BO disclosures should be collated and held within a central database/ register.

3.5 Measures Should Be Taken to Verify the Data

1. When the BO data is submitted, checks should be made to ensure values conform to known and expected patterns.
2. Where possible, key information such as on names, addresses and nationality should be cross-checked against existing authoritative systems.
3. Measures should be taken to verify the identity of the person making the disclosure.
4. After data has been submitted, it should be checked to identify potential errors, inconsistencies, and outdated entries, using a risk-based approach where appropriate, and requiring updates to the data where necessary.
5. Mechanisms and systems should be in place to raise data red flags, report discrepancies and detect suspicious patterns.

3.6 BO Data Should be Kept Up To Date

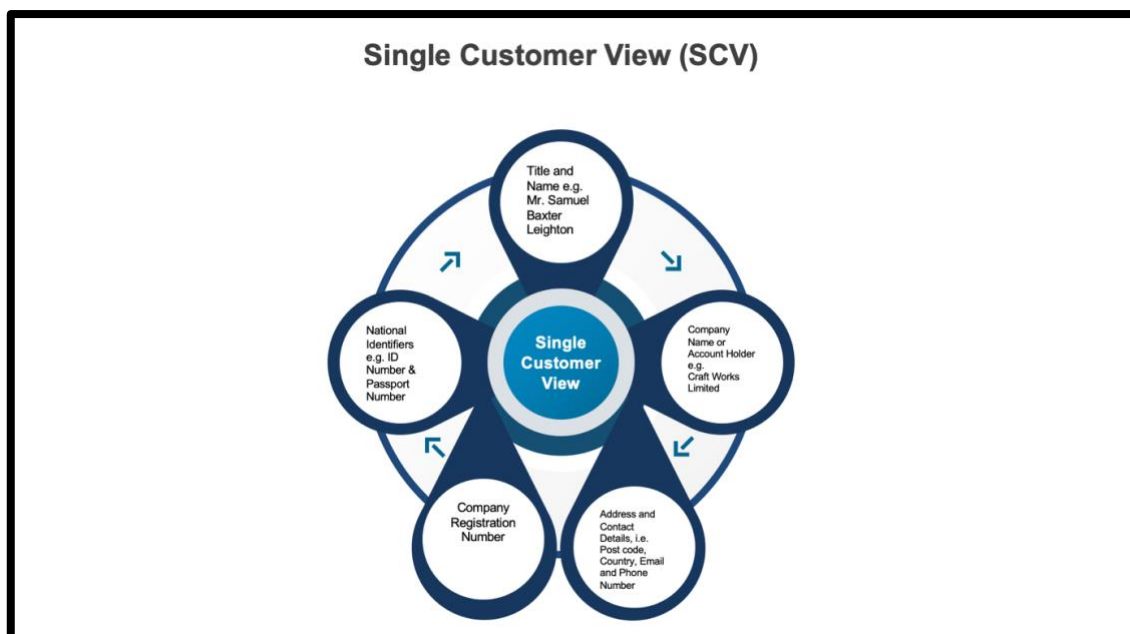
1. Consequent changes to BO should be submitted in a timely manner, with information updated within a short, defined time period after changes occur.
2. BO Data should be confirmed as correct on at least an annual basis.
3. All changes in BO data should be reported.
4. An auditable record of the BO of companies should be created using historical records.

3.7 Common Beneficial Ownership Data Program Weaknesses

To strengthen their in-house data collection capabilities, governments and financial institutions need to take advantage of data analytics tools and information-management best practice to migrate away from traditional 'siloed' compliance testing toward a more analytical, integrated approach that ensures 'end-to-end' data efficiency, accuracy and validation. Ultimately, just how BO information is internally collected, verified, maintained and shared is a decision for leaders and stakeholders.

But the importance of having a single customer view (SCV) fed by reliable, accurate and timely data cannot be underestimated in ensuring compliance and achieving operational efficiencies. An SCV is an aggregated, consistent and holistic representation of data that is viewed in one place or on one page. There should be a risk assessment to identify gaps in existing data controls, policies, procedures and processes. reliable data gives organizations the confidence they require to make the right compliance decisions.

Diagram 4: Single Customer View



Some of the common BO data program weaknesses are:

1. Reliance on manual input
2. Inadequate AML risk rating
3. Poor staff training
4. Burdensome remediation cycle

5. Ineffectual policies and procedures
6. Poor communication between staff

4 PART 4: CREATING BENEFICIAL OWNERSHIP DATABASE

4.1 Beneficial Ownership Database Creation Model

Establishing a public or private BO database register can be done by integrating existing BO data into existing or a new government database or new registers.

4.1.1 Checklist for the Creation of a Beneficial Ownership Database

The benefits of using a central database include: a single contact point for queries by competent authorities; ease of access by requesting competent authorities (often simultaneous access); and greater ability to identify particular ownership holdings by a specific individual and/or overall ownership trends. The following steps can be useful to follow in its creation:

Step 1

Determine where the central database will be housed

Common placement includes a central bank or FIU. The United Arab Emirates, for example, has two databases for BO information, one is at the commercial registry, being the first point at which a company is registered, and the other is at the financial intelligence unit. The practice in France is to house the registry with the Trade and Companies department, with the FIU having access to it. On the other hand, corporations registered at the federal level in Canada need only maintain the register of individuals with significant control of the corporation at the head office of the corporation, but hold it accessible to Corporations Canada, which is the regulatory authority.

Step 2

Determine how BO information will be provided to the central database

The holder(s) of BO information can transmit the data to the central database. Common methods of information submission include the requirement to file an annual return and to provide interim updates as necessary.

Step 3

Determine the information technology requirements required to create the database and make the information held accessible to the data specialists creating the database.

Step 4

Determine who will supervise the record holders (that is ministries and organisations that hold potential BO data) that will provide the BO information to the database and engage in a robust supervision programme.

4.1.2 Steps for BO Database Creation

Phase 1

1. Initialization and Conception of the BO Database

This initial step serves to launch the database creation process and to decide what kind of visual design the BO database will be. A decision should be made on the overall design of the database during this stage.

2. Defining the Scope, Assigning Responsibilities and Planning for Execution

This step involves defining the full scope of the database creation process, what subject matter expertise will be required, features and functions of the database and specific assessments of the confines of the entire process.

3. Organising and Preparing the Data for Uploading and Transfer from the Various Sources to the Database

This step involves getting the BO data ready for uploading to the database from all the potential BO data sources that have been identified. Ministries that house potential BO data should collaborate with the host of the BO database, in the case of ET, the Ministry of Trade and Commerce during this process.

Phase 2

1. Task and Resource Allocation

In this stage, a team should be created and each team member's role defined. When allocating tasks and responsibilities it will be important to:

- Identify all the tasks that will be needed to complete the project.
- Ensure agreement from team members to taking on specified tasks.
- Re-allocate roles and responsibilities after assessment and agreement with all team members based on the evolution of roles.

2. Implementation and Database Modelling by IT

This step will involve the actual start of the creation of the database, it will involve data uploading, data cleaning and the creation of the type of data model and logical data structure agreed upon.

3. Designing the Database and Testing it for User Friendliness

This step will involve creating visual and design aspects of the database. Such as creating relationships between entities, adding indexes and views and other user friendly extended properties. After designing, the next step would be to test the user interphase and the functions and performance of the database itself.

Phase 3

1. Objective Assessments for Performance and Internal Control Systems Audit

This step will test and assess internal controls related to performance and the database goals and objectives.

2. Conducting Enhancements and Further Database Testing

This stage will involve crosschecking data specifications, looking at data sets and deciding how one data set is related to another. Then analyse the design for errors and refine it.

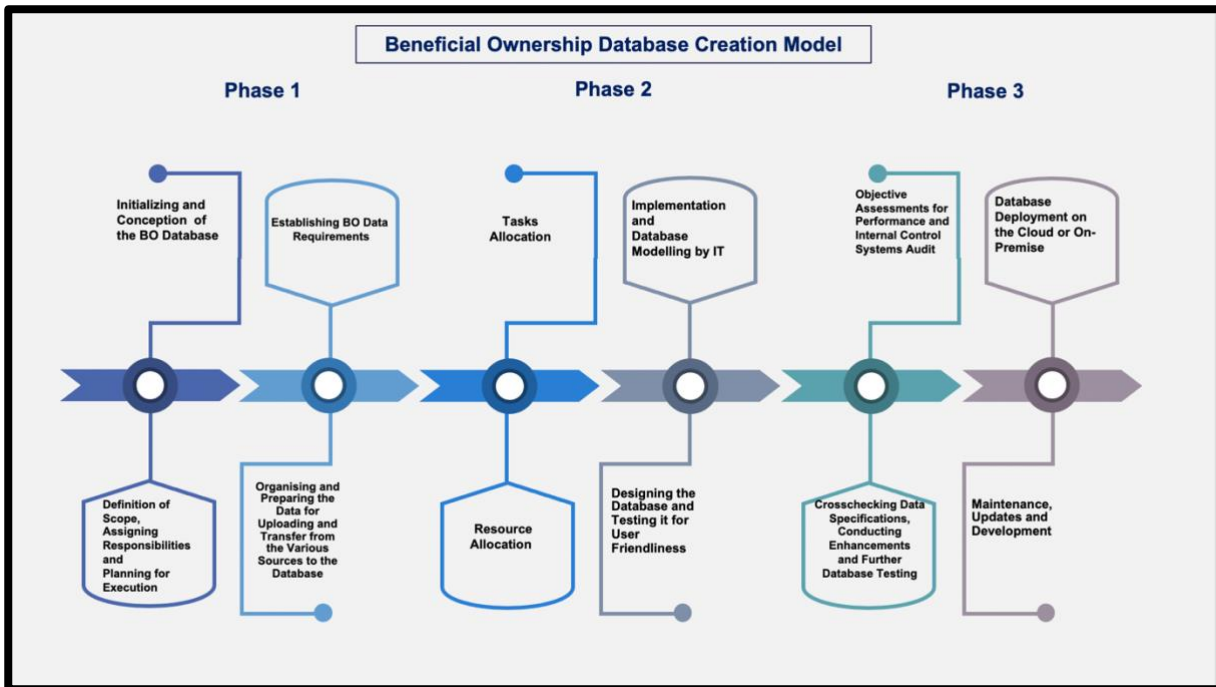
3. Database Deployment on the Cloud or On the Premises

In this final stage, the database is ready and a decision will need to be made on where it will be deployed. If on the premises the ministry will need to purchase, deploy, and maintain all hardware and software. Whereas for hosting on the cloud, a cloud data warehouse has no physical hardware. It provides software as a service. Whichever decision is reached, data security should be paramount.

4. Maintenance, Updates and Developments of the Database

For its sustenance and enhanced performance, maintenance, performing system updates, deleting and updating BO data and developments on the database, will need to be ongoing functions.

Diagram 4: BO Database Creation Model



4.2 CHAPTER 2

4.2.1 Primary BO Data Sources & Systems of Record

A system of record is a retrieval system that can serve as a source of data or a particular data element in a system containing multiple sources of the same element.

A system of record can be on-premises installation or on the cloud. It is considered a system of record if:

1. It stores proprietary business data
2. Large portions of the employee population interact with it daily or weekly
3. Its outputs form the foundation for important decisions
4. It learns and improves over time

4.2.2 Existing and Potential Sources of BO Data

There are multiple Ethiopian organizations collecting and handling potential BO data. This data can be incorporated into the BO database.

Current sources of existing potential BO data in Ethiopia are:

1. The Ministry of Trade and Industry

2. The Ethiopian Investment Commission
3. The Document Authentication and Registration Agency
4. The National Bank of Ethiopia
5. The Federal Anti-Corruption Commission
6. The EITI Committee
7. Financial Institutions

It is important to note that all the above institutions do not permanently house the data but collect it and forward it to the Ministry of Trade and Industry at the time of company or personal registration. It also appears that there is no government institution which keeps actual BO information other than the EITI committee. All the other institutions mainly have basic personal information. The Ministry of Trade and Industry, The Ethiopian Investment Commission and the Document Authentication and Registration Agency have some elements of BO data because they collect a company's memorandum of association and articles of association but the BO information in these documents is incomplete.

Important Observation

Section 2.1 will serve as a useful starting point for the Ethiopian IT/Data Engineering people who will start to do the substantive and precursive logical and physical data modelling that allows the BO database to be built eventually. They will need to interact directly with the SOR sources identified, and to drill down and generate definitive BO data characterizations for initial ERD modelling.

4.2.3 Type of Data, its Composition and Storage

The Ministry of Trade and Industry has the following type of data: :

1. Tax Identification Number (TIN) of the Business
2. Date of Registration
3. Trade License Number
4. Business Name
5. Legal Status (Sole proprietor, Partnership or Company)
6. Full Names of the Company Manager
7. Nationality
8. Full Address of the Business
9. Capital
10. Description of the Business
11. Subgroup Code
12. Date of Company Cancellation, if applicable

4.2.4 How the Data is Used

Company registration data and its analysis in Ethiopia is used for:

1. Strengthening the overall government operational intelligence for taxation
2. Planning, preparedness and mapping of available resources
3. Identity and identification management; which is the organizational process for identifying, authenticating and authorizing individuals or groups of people to have access to applications and systems by associating user rights and restrictions with established identities.

4.3 Best Practices for a Data - Driven BO Database

There is power in data and its analysis to drive insight. There is a difference between using data to glean insights and analysing data to drive decisions and actions—that is, to becoming data-driven. There are organizational and technology components critical for becoming data - driven. On the organizational side, a key component to succeeding with data and analytics is to create a culture that supports these efforts. Organisations that succeed are typically goal-driven, transparent, empowering, and collaborative. They have strong leadership that believes in data and they are governance oriented. On the technology side, the organization takes steps to ensure sound data quality and to operationalize analytics to take action. Data-driven organizations often have an integrated analytics and data management strategy that spans the entire analytics life cycle from problem identification to data access and manipulation through analytics development, deployment, and monitoring.

Ethiopia can achieve a data - driven BO database by implementing the best practices below:

4.3.1 Building Relationships to Support Collaboration

Team composition and collaboration between groups, departments and ministries will be important for success in having and maintaining a data driven BO database. The key is for these groups to appreciate each other's perspective in order to move forward effectively. Having senior management support can help because executives set the tone and vision. However, it is important for other BO data leaders to come together as well. That means sitting down and communicating. Once everyone understands what is intended, it becomes easier to work together. Defining roles and responsibilities is important, when the roles of individual team members are clearly defined and understood, collaboration improves. Role definitions can include:

4.3.2 IT/Architecture that owns the BO data strategy

Research has indicated that in a data analytical mature organization, IT owns data management. That includes creating the data management strategy, increasing data sharing, and owning data quality. In this way, IT can help ensure data integrity to support compliance decisions.

a) Roles within these functions:

There are numerous roles within the business and IT functional areas. These include BO database publishers and analysts.

4.3.3 Making Data Accessible and Trustworthy

The different ministries that hold and collect BO data need to break departmental barriers and make BO data an asset as data accessibility and quality are critical. A best practice is to unify the data in some way and to integrate and access BO data across a multiplatform environment for analysis. This should become a norm, as new forms of BO data will need to be analysed. Tools that enable BO data to be accessed across the different ministries and have the ability to join the same data across sources for analysis can be important so that users don't have to physically move the data to analyse it. Additionally, as the use of disparate kinds of BO data from multiple sources is inevitable, Ethiopia can benefit from tools that utilize a point-and-click interface to build a complex workflow for processing BO data from source systems to target systems. Vendors now provide visual design tools that support advanced specifications.

a) BO Metadata Management Capabilities.

Metadata management is also critical. Metadata is data about data. It includes information such as file size, author, creation date, database column structure, table definitions, and security levels. It also includes information about data usage and interpretation. As data increases in size and scope, it is important to understand what is included in that data. Existing information about data should be reused. Metadata should be captured and coordinated and governed across where data is interpreted and consumed.

b) BO Data Quality Tools.

Data quality tools can profile data to identify features such as data accuracy, completeness, and ambiguity. Some tools have built-in advanced analytics capabilities to meet data quality objectives. For example, some tools use machine learning to automatically determine whether data looks reasonable or to perform tasks such as BOs address mapping by teaching the software what addresses' or BOs/people are the same.

4.3.4 Provide BO Data Tooling to Help in Working with the Data

a) Automation.

BO data publishers will want to analyse the data and take several actions on it. Important principles and tools include automation and explainability. There are tools that automate the BO data model building process. Some automation solutions have machine learning smarts built into them. For example, a BO data publisher/user simply specifies the target or outcome of interest and the software creates the best model using the attributes provided. Ethiopia needs to utilize machine learning tools to understand semantics and accelerate BO data matching.

b) Explainability.

As IT tools become easier to use, those using the tools must understand what they are doing. For example, a user building a predictive model with an automated tool must understand what the result/output means. To this end, tools often include explanations of what they have done. For instance, a BO data analytics tool using neural network technology can include with the results an explanation of how the results were derived or arrived at.

4.3.5 Utilize Modern Governance Technologies and Practices for BO Data

Governance rules and policies will set out how Ethiopia protects and manages its data and analytics. This will involve a number of factors including security, quality/accountability, access, and processes. It is important to certify and manage relevant input data sets and govern information outputs to ensure accountability, consistent understanding, and interpretation as well as to derive value from information assets. While it is good to focus on BO data security and privacy rules, building more robust data governance practices is also critical. Yet, data governance is of high priority for data to be trusted and to become data - driven. Decisions based on poor data analytics can have a negative impact.

Governance is an evolving practice. As more people become involved in analysis and as we deal with BO data, the cloud, and other new technologies, practices need to evolve. For instance, as more people start analysing BO data, there will be a greater need for consistent vocabularies and flexible access to the data. Similarly, as new kinds of BO data come in, Ethiopia will need to determine how to deal with it. Newer governance models that move beyond the traditional governance model include:

a) Agile Governance.

In this structure, governance begins with the planning and development team. These stakeholders—functional, operational and subject matter experts understand governance needs and share them as constraints, expectations, and requirements to the data development team. The development team is then responsible for including governance needs in the development process and communicating with stakeholders for them to fully understand governance goals.

b) Crowdsourced Governance.

Crowdsourcing is the practice of engaging a large number of people via the Internet for a common goal. The idea is to engage a number of people (e.g. the data community) to report data quality problems, propose metrics, and provide input or even vote on standardized terms. Whether or not Ethiopia decides to go this route depends on its governance culture. An operating model is however still needed for this to work.

4.4 BO Data Information Technology Recommendations

4.4.1 BO Data I.T Infrastructure

Ethiopia needs to modernise its I.T Infrastructure and grow its use of data management services. It needs to carry out an economic, cost benefit analysis for on-premises and cloud migration to identify which one would be more suitable for hosting the BO database.

4.4.2 A Standard for BO Data Visualization

Ethiopia needs to develop a standard for data visualization and reporting. The data lakes can be set up on Amazon AWS, Microsoft Azure, Google Cloud services and Palantir Foundry using Hadoop or non – Hadoop formalism. Additionally, complex visualization and reporting systems, for enhanced organizational visual analytics will need to be developed and data should be browsable via interactive graph visualisations, to show an entire network at a glance.

4.4.3 BO Data Migration

BO data from existing sources needs to be migrated to either on-premises or to the cloud. The Data migration process will involve selecting, preparing, extracting, and transforming data and permanently transferring it from one computer storage system to another. Therefore information management services will be required for the task, as for the cloud appropriate services will need to be used e.g. IaaS or PaaS and deployment e.g. private or hybrid cloud models.

4.4.4 BO Data Security Systems

A secure database is the ideal, therefore Ethiopia needs to develop cyber security and digital information security systems to be used on the database and its supporting infrastructure. The database would be security-hardened to improve robustness and access control. Additionally, effective Security Risk Management (SRM) strategies and operational schemes need to be crafted using the US NIST framework.

4.4.5 Advanced BO Data Analysis

Advanced analytics from big data assets (active or dark) held by the database will need to be generated, to allow enhanced shareholder and BO identification insights and intelligence.

4.4.6 BO Data Privacy

Privacy and data protection engines, with associated workflows, compliant with local Ethiopian and international regulations will need to be developed.

4.4.7 BO Database Troubleshooting

Troubleshooting and the optimization of existing BO data lakes and BO data management ecosystems will need to be developed.

4.5 Conclusions

Reliable, continually updated data sources are vital in achieving BO identification and verification. An overarching beneficial ownership data management shift is needed.

It is also crucial that BO data management obligations and controls are not considered as a separate compliance factor or viewed as isolated components, but merged in overall compliance risk assessments. Having a data integration approach can help Ethiopia become more agile and proactive in preventing, detecting and reporting of ML and TF due to the enhanced scrutiny the use of such data will provide.

Bibliography

1. Corporateriskwatch.com. 2008. Beneficial Ownership and Offshore Structures — A Liechtenstein Case Study. [online] Available at: <http://www.corporateriskwatch.com/publications/P_f_2008_mayLow.pdf>
2. Extractive Industries Transparency Initiative. 2015. Beneficial Ownership Pilot Evaluation Report. [online] Available at: <<https://eiti.org/document/beneficial-ownership-pilot-evaluation-report>>
3. Extractive Industries Transparency Initiative. 2016. Guidance Note 22 On How to Plan for Beneficial Ownership Disclosure (Roadmap). [online] Available at: <<https://eiti.org/GN22>> [Accessed 30 September 2020].
4. Fatf-gafi.org. 2019. Best Practices on Beneficial Ownership for Legal Persons. [online] Available at: <<https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>>.
5. Fatf-gafi.org. 2015. Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism. [online] Available at: <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb-WB-ESAAMLG-Mutual-Evaluation-Report-Ethiopia-2015.pdf>>.
6. Oecd.org. 2019. A Beneficial Ownership Implementation Toolkit. [online] Available at: <<https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>>.
7. Openownership.org. 2020. Data Protection and Privacy in Beneficial Ownership Disclosure. [online] Available at: <<https://www.openownership.org/uploads/oo-data-protection-and-privacy.pdf>>.

8. Thiess, W., 2020. Amendments to The Rules for Registering Ultimate Beneficial Owners in Austria. [online] Lexology.com. Available at: <<https://www.lexology.com/library/detail.aspx?g=e0ac75c5-d226-47c8-922f-5170460bea74>>

5 PART 5: BENEFICIAL OWNERSHIP DATA CAPTURE FORM

BO Data Collection Form

For the successful implementation of beneficial ownership requirements, a well-designed BO data form is necessary. The form should have information on BOs, controlling persons and certifying Persons. The BO information must be provided before a new service is provided or as required or in order to fulfil a request for such.

The purpose of this form is to obtain, verify, and record information about BOs. Consultation activities aimed at identifying companies that will be required to participate in beneficial ownership reporting and at identifying the most efficient and sustainable data collection approach should be conducted. A data collection approach of distributing the beneficial ownership data collection form to all eligible companies can be feasible. The form must be completed and signed by authorized persons or persons acting on behalf of a legal entity. A sample BO data collection form has been provided in annexure 1, to illustrate what is needed.

Important Observation

Data collection forms are usually best designed once the data modelling is done, and there is clarity as to what data is to be collected, where it is coming from (provenance), its structure, composition (ontology), lineage and how it will be integrated for analysis and reporting. At best, the data collection proforma that has been generated for now, will act as a rough guide for the data and reporting analysts working on the next stages.

GENERAL INSTRUCTIONS

Purpose of the Form

To help the government fight financial crime, federal regulation requires financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in, money laundering, terrorist financing, corruption, and other financial crimes. Requiring the disclosure of the identity of key individuals who ultimately own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

Persons to Complete this Form

This form must be completed by the Certifying Person - the person fulfilling the financial institution's request to provide beneficial ownership related information - on behalf of a legal entity with any Ethiopian financial institution. For the purposes of this form, a legal entity includes the six forms of business organizations under the Ethiopian Commercial Code. These are;

- 1) Ordinary Partnership
- 2) Joint Venture
- 3) General Partnership
- 4) Limited Partnership
- 5) Share Company
- 6) Private Limited Company

How to Use the Form

This template should be adapted to fit the intended purpose and policy context. Adaptations may be necessary to match local legislation and conventions for recording fields such as date and address, as well as

to cater for the different situations in which companies are required to submit beneficial ownership information.

Information to be provided

This form requires you to provide the name, address, date of birth, ID number, passport number or other similar information for the following individuals:

- i. Beneficial Owner - Each individual who owns, directly or indirectly, through any contract, arrangement, understanding relationship or otherwise, 25 percent or more of the interests of the legal entity customer; and
- ii. Controlling Person - An individual with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer)

In certifying the information below, the Certifying Person also agrees to ensure that the legal entity for which it provides this information notifies us of any changes in such information.

CERTIFICATION OF BENEFICIAL OWNER(S) & CONTROLLING PERSONS.

Person certifying this form on behalf of a legal entity must provide the following information:

A. PERSON CERTIFYING THE FORM:

| | | | |
|---------------|--|--------------------------------|--|
| Full Name | | | |
| Date of Birth | | Official Designation and Title | |

B. LEGAL ENTITY INFORMATION:

| | | | |
|---|------|-------|------|
| Name of Entity | | | |
| Alternative Names of Entity | | | |
| Jurisdiction of registration | | | |
| Physical Address | | | |
| Founding Date | Date | Month | Year |
| Date of Submission of Beneficial Ownership Data | Date | Month | Year |

Entity Type (select one):

| | |
|----------------------|--|
| Ordinary Partnership | |
|----------------------|--|

| | |
|-------------------------|--|
| Joint Venture | |
| General Partnership | |
| Limited Partnership | |
| Share Company | |
| Private Limited Company | |

C. BENEFICIAL OWNERS:

I. Beneficial Owner 1 Information:

The following information is required for each beneficial owner (as defined on page 1).

| | | | | | |
|---|---------------|------------------------|--|---------------------------|--|
| Full Name | | | | | |
| Family Name | | | | | |
| Other Given Names | | | | | |
| Nationalit(ies) | | | | | |
| Date of Birth | | | | | |
| Country/Place of Residence / Tax Residencies | | | | | |
| Physical Address/es | Post Code | | | | |
| | City | | | | |
| | Sub-city | | | | |
| | Woreda: | | | | |
| | House Number: | | | | |
| | Building Name | | | | |
| | Street | | | | |
| | Region | | | | |
| | Country | | | | |
| Identification | | Primary ID Type | | ID Number | |
| Issued by State/Country/Province | | | | | |
| ID Details | | ID Issue Date | | ID Expiration Date | |
| Percent of Ownership | | | | | |
| Direct or Indirect Ownership | | | | | |

| | |
|--|--|
| Percentage of Direct Ownership | |
| Percentage of Indirect Ownership | |
| Type of Ownership or Control – Shareholding, Board Membership or Contractual Agreement (if any) | |
| Specific Date Beneficial Owner Started Holding a Beneficial Interest in the Company Start and End Dates | |
| Email Address | |
| Phone Number/s | |
| State if Beneficial Owner is a Politically Exposed Person | |
| State/ Region/ Place where Beneficial Owner is a Politically Exposed Person | |

II. Beneficial Owner 2 Information:

| | |
|--|---|
| Full Name | |
| Family Name | |
| Other Given Names | |
| Nationalit(ies) | |
| Date of Birth | |
| Country/Place of Residence / Tax Residencies | |
| Physical Address/es | Post Code City Sub-city Woreda: House Number: Building Name Street Region Country |

| | | | | |
|---|-----------------|--|--------------------|--|
| Identification | Primary ID Type | | ID Number | |
| Issued by State/Country/Province | | | | |
| ID Details | ID Issue Date | | ID Expiration Date | |
| Percent of Ownership | | | | |
| Direct or Indirect Ownership | | | | |
| Percentage of Direct Ownership | | | | |
| Percentage of Indirect Ownership | | | | |
| Type of Ownership or Control – Shareholding, Board Membership or Contractual Agreement (if any) | | | | |
| Specific Date Beneficial Owner Started Holding a Beneficial Interest in the Company Start and End Dates | | | | |
| Email Address | | | | |
| Phone Number/s | | | | |
| State if Beneficial Owner is a Politically Exposed Person | | | | |
| State/ Region/ Place where Beneficial Owner is a Politically Exposed Person | | | | |

III. Beneficial Owner 3 Information:

| | |
|--|---|
| Full Name | |
| Family Name | |
| Other Given Names | |
| Nationalit(ies) | |
| Date of Birth | |
| Country/Place of Residence / Tax Residencies | |
| Physical Address/es | Post Code City Sub-city Woreda: House Number: |

| | | | | |
|---|---------------|-----------------|--|--------------------|
| | Building Name | | | |
| | Street | | | |
| | Region | | | |
| | Country | | | |
| Identification | | Primary ID Type | | ID Number |
| Issued by State/Country/Province | | | | |
| ID Details | | ID Issue Date | | ID Expiration Date |
| Percent of Ownership | | | | |
| Direct or Indirect Ownership | | | | |
| Percentage of Direct Ownership | | | | |
| Percentage of Indirect Ownership | | | | |
| Type of Ownership or Control – Shareholding, Board Membership or Contractual Agreement (if any) | | | | |
| Specific Date Beneficial Owner Started Holding a Beneficial Interest in the Company | | | | |
| Start and End Dates | | | | |
| Email Address | | | | |
| Phone Number/s | | | | |
| State if Beneficial Owner is a Politically Exposed Person | | | | |
| State/ Region/ Place where Beneficial Owner is a Politically Exposed Person | | | | |

E. CONTROLLING PERSON:

The following information for one individual with significant responsibility for managing the legal entity listed above, such as:

1. An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
2. Any other individual who regularly performs similar functions.

| | | | | |
|------------------|-----------------|--|-----------|--|
| Full Name | | | | |
| Date of Birth | | | | |
| Physical Address | | | | |
| Identification | Primary ID Type | | ID Number | |

| | | | |
|------------------------|---------------|--|--------------------|
| Issued by | | | |
| State/Country/Province | | | |
| ID Details | ID Issue Date | | ID Expiration Date |
| | | | |

F. CERTIFICATION

I, _____ (name of person signing this form),
 hereby certify, to the best of my knowledge, that the information provided above is complete and correct
 and that I will promptly notify this institution of any changes to this information.

| | |
|------------------------------------|--|
| Signature | |
| Date | |
| Phone Number | |
| Legal Entity Identifier (Optional) | |

ⁱ Article 2 sub article 18 of Ethiopia's AML/CFT Proclamation defines a beneficial owner as 'any natural person who ultimately owns or controls a customer or an account, the person on whose behalf a transaction is being conducted, or the person who ultimately exercises effective control over a legal person or arrangement.'

ⁱⁱ Goredema C, Remedies to illicit financial flows from transfer pricing of services and hosting intellectual property in Africa (2017) Strathmore Law Journal pp. 113 – 130, at p.114