



Ghana Integrity Initiative (GII)

Local Chapter of Transparency International

Factsheet on Ghana's Beneficial Ownership Transparency Framework

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Introduction: Why Beneficial Ownership (BO) Matters

Beneficial Ownership Transparency (BOT) is a key tool in combating corporate secrecy, corruption, and illicit financial flows (IFFs). Ghana's BOT framework is designed to reveal the actual individuals behind legal entities, enhancing accountability and the prevention of crimes.

Who is a beneficial Owner?

Ghana's Companies Act, 2019 (Act 992) and Anti-Money Laundering Act, 2020 (Act 1044) provide various definitions of beneficial owners, albeit with some discrepancies. Act 992 defines "**beneficial owner**" as ... an individual:

- a) who directly or indirectly ultimately owns or exercises substantial control over a person or company;
- b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons;
- c) on whose behalf a transaction is conducted; or
- d) who exercises significant control or influence over a legal person or legal arrangement through a formal or informal agreement.

However, Act 1044 defines "**beneficial owner**" to mean:

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

Thus, Act 1044 omits from the definition the following: "(a) who has a substantial economic interest in or receives substantial economic benefits from a company, whether acting alone or together with other persons, or (b) who exercises significant influence through a formal or informal agreement," as provided for in the Act 920 (repealed)

Does Ghana have a Central Register of BO at the Registrar of Companies?

The Central Register (CR) of BO, established as per Section 373 of Act 992, is a comprehensive repository. It captures detailed information of the beneficial owners of companies incorporated in the country, as well as those of foreign-owned companies. The particulars of beneficial ownership (BO) information required also include identification information of politically exposed persons (PEPs) and details of share ownership in companies. This level of detail and thoroughness conforms with international standards, providing a robust system for transparency.

What legal persons are required to disclose BO under Act 992?

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

- ✓ a company limited by shares.
- ✓ a company limited by guarantee.
- ✓ an unlimited company.
- ✓ an external company.
- ✓ extractive sector companies.

What information is obtained and recorded in the beneficial ownership register?

Companies in Ghana are required to provide beneficial ownership information upon incorporation, annually during the submission of returns, and within 30 days of any changes to the beneficial ownership information.

- (i) the full name(s) and any former or other name
- (ii) the date and place of birth
- (iii) the telephone number.
- (iv) the nationality, national identity number, passport number, or other appropriate identification and proof of identity.
- (v) the residential, postal, or email address, if any.
- (vi) place of work and position held.
- (vii) the nature of the interest, including the details of the legal, financial, security, debenture, or informal arrangement giving rise to the beneficial ownership; the number of authorized shares of the company for each class, if the company has shares
- (viii) confirmation as to whether the beneficial owner is a politically exposed person (PEP).

Who is a Politically Exposed Person (PEP) under Act 992?

A Politically Exposed Person is defined under the Act as “a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organization including, senior political party official, government, judicial or military official, a person who is or has been an executive of a State owned company, a senior political party official in a foreign country, and an immediate family member or close associate of...” the person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organization.

Does Ghana BO regime have a risk-based thinking and a Threshold?

Ghana's BO regime adopts a risk-based approach to the ownership threshold for BO disclosure, which ranges from 5% to 10% for stricter transparency. This is significantly lower than the 25% internationally recommended threshold. Beneficial owners must be reported where the owner directly or indirectly holds an interest in the company of at least 5% or more, or where the company is classified under a high-risk sector (such as mining) and the beneficial owner is a non-Ghanaian politically exposed person. In terms of beneficial owners who are Ghanaian politically exposed persons, any amount of interest in the company, regardless of its size, shall be reported. A 10% or more ownership threshold applies to all other cases. Ghana's threshold is one of the lowest in Africa, among countries that have introduced thresholds.

Table 1: Category of Legal Person and Threshold for BO Disclosure

S/N	Category of Legal Person	Threshold %
1	High-risk companies (Mining, Real estate, and Finance services)	5%
2	Ghanaian PEPs	> 0
3	Foreign PEPs	5%
4	All other cases	10%

Are bearer shares and nominees required under the BO regime?

Ghana's BO regime does not prohibit bearer shares or nominees, but the beneficial owners of those shares, along with their particulars and nominees, must be disclosed. Section 35(2) of Act 992 helps overcome specific obstacles to the transparency of companies, such as the misuse of bearer shares (shares to bearer) and bearer share warrants, by expressly requiring the filing of particulars for the registration of the company where a subscriber is not the beneficial owner. Additionally, Section 13(2) of Act 992 states that individuals or entities may hold shares on behalf of other persons. Furthermore, under Section 30(10) of Act 1044, a nominee about shares and debentures shall maintain relevant information regarding beneficial ownership.

Therefore, Ghana is one of the countries where bearer shares pose no risk. As such, Ghana complies with FATF Recommendation 24, which requires countries to take measures to overcome specific obstacles to the transparency of companies, such as misuse of bearer shares.

Are Trusts and Company Service Providers (TCSPs) covered under the BO regime?

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

Are there sanctions for non-compliance with beneficial ownership requirements?

Deterrent sanctions are available under Ghana's BO Regime, which regulatory authorities and enforcement agencies may impose on companies and legal entities for non-compliance with their BOI obligations. The Act provides that such member or person commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or both: s.35(14) of Act 992.

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

Thus, under Ghana's BO Regime, the regulatory and enforcement authorities in the country have a wide range of administrative sanctions and remedial measures that can be imposed on legal persons and arrangements for non-compliance with their BOI obligations. Therefore, the regime meets the requirement to "provide for effective, proportionate and dissuasive sanctions for any legal or natural person who fails to comply with the BO requirements under Recommendation 24 of the FATF."

Who has access to the BO registers?

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

Additionally, access to BO information in the central register is available to "relevant authorities" and the public upon making a request to the Registrar of Companies by the relevant authority. This means that no relevant authority can access the BO information in the central register without the knowledge and approval of the Registrar. This falls short of international standards and best practices. A system that enables law enforcement and anti-corruption agencies to have access rights to the central register is recommended.

Therefore, the central register is not freely accessible, downloadable, searchable, or reusable by the public. This contradicts Act 992, which requires access to BO information in the central register in accordance with open data principles. It also falls short of international best practices on access to BO information.

Are there inconsistencies in the definitions of BO and Politically Exposed Persons under the BO regime in Ghana?

Ghana's Companies Act, 2019 (Act 992) and Anti-Money Laundering Act, 2020 (Act 1044) provide different definitions of beneficial owners for the same country. For consistency, the definition of BO under Act 992 and Act 1044 should be harmonized.

Also, there is an internal inconsistency in the definition of Politically Exposed Persons (PEP) under Act 992 and Act 1044. Whereas in Act 1044, the definition specifically mentions "Head of State or Head of Government" as one of the persons who are or who have been entrusted with a prominent public function in this country, a foreign

country, or an international organization, Act 992 does not. For consistency, the definition of PEPs under Act 992 and Act 1044 should be rectified.

What are the Challenges to the effective implementation of the BO Regime?

1. The requirement to make BO information available for free and the expectation of raising internally generated funds from the Registrar of Companies' operations undermine the primary objective of making the BO data freely and easily accessible to the public.
2. Limited cooperation and coordination among agencies involved in implementing the BO regime.
3. Inadequate mechanisms to precisely verify the accuracy or currency of the BO information at the outset, combined with the delay in passing the regulations envisaged under the law, may render the BO regime weaker.
4. Software and system maintenance challenges further hinder the realization of Ghana's BO regime's full potential.