



Beneficial Ownership Transparency in Mongolia

Tackling Complex Implementation Issues

A report of the **Leveraging Transparency to Reduce Corruption Project**

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Executive Summary

This report from the Leveraging Transparency to Reduce Corruption project (LTRC) examines some complex challenges that Mongolia faces in implementing beneficial ownership transparency (BOT). It follows the report titled *Beneficial Ownership in Mongolia: A Way Forward*, by some of the same authors.

For each of the following six topic areas, this report sets out current international best practice, describes the Mongolian context, and provides recommended actions.

- State-owned enterprises (SOEs)**
- Companies listed on a stock exchange**
- Foreign politically exposed persons (PEPs)**
- Verification measures**
- Definition of indirect control**
- Considerations specific to a public register**

The report also makes overarching recommendations related to technical assistance, reforms to the current beneficial ownership (BO) reporting regime, use of BO data in public procurement, and international development oversight.

The report includes four case studies that illustrate experiences with BOT in Papua New Guinea, the United Kingdom, Ghana, and the European Union (EU), respectively. The case studies highlight best practice and lessons learned that can help guide efforts in Mongolia.

The key overall findings of the report are:

A robust BO reporting regime (using a public register) can contribute to the achievement of key Mongolian government policy priorities, including creating a digital economy, improving the integrity of the business environment, attracting more foreign investment, and combating illicit financial flows. It can also contribute to addressing civil society concerns regarding corruption and conflicts of interest.

Political momentum behind initiatives in Mongolia has created opportunities for important transparency-related reforms such as the creation of a public BO register.

Mongolia has already made significant progress toward implementing a BO regime that meets Financial Action Task Force (FATF) requirements. However, the current system has weaknesses that undermine its technical compliance with those requirements, its effectiveness, and its alignment with international best practice.

Mongolia must make a series of strategic and tactical decisions on the matters discussed in this report to ensure that it implements a robust public BO register that aligns with international best practice.

The key recommendations in the six major topic areas are as follows:

SOEs. The draft SOE law should include provisions mandating that SOEs publish information on how control is exercised and who exercises it. This report sets out the categories of information that should be disclosed by all SOEs operating in Mongolia, including those owned by foreign governments. It also recommends that the Mongolia Extractive Industries Transparency Initiative (EITI) undertake a scoping study on meeting global EITI requirements on SOEs. Currently, companies that are 100% owned by the Mongolian government are exempt from reporting BO information to the General Authority for State Registration (GASR). For BOT, international best practice suggests that specific reporting requirements should be put in place for SOEs.

Companies listed on a stock exchange. For each listed company, the GASR should collect information on the proportion of shares listed, the names of the stock exchange(s), and a link to the relevant stock exchange website pages, with details of the company listing and other relevant details. The GASR should also develop a list of recognized stock exchanges that includes the Mongolian Stock Exchange, stock exchanges in Organisation for Economic Co-operation and Development (OECD) member countries, Hong Kong, and Shanghai. If a listed company has no reportable beneficial owners, such transparency has no benefit because listed company disclosure is primarily about ensuring good governance and compliance with regulations.

Foreign PEPs. The Mongolian government should adopt a separate definition and set a 10% threshold for foreign PEPs, create a legal obligation for companies to report foreign PEPs, and mandate that bidders for public contracts disclose relationships with foreign PEPs in any capacity. The challenge is in adequately defining foreign PEPs because the terminology used for public officials and their ranks can vary from country to country. An effective BO reporting regime therefore relies in part on companies and other legal persons accurately reporting any foreign PEPs in their ownership structure that meet the relevant reporting threshold.

Verification measures. The GASR should implement a comprehensive verification process, automate verification where possible, implement a process for identifying and investigating “red flags,” ensure that penalties are proportionate and dissuasive, and create a legal obligation for certain register users (e.g., banks and lawyers) to report discrepancies. A robust verification system is crucial to achieving an accurate and reliable BO register. But effective verification has proven to be the most challenging aspect of establishing and administering a BO register to date. None of the currently operating public BO registers have a fully effective verification regime. Verification is a continuous process, with different stages at which verification can take place. These stages are generally not sequential; they overlap or can happen simultaneously. Each stage includes verification activities to ensure the ongoing quality of the data held in the register.

Definition of indirect control. The GASR should enact regulations and provide guidance to ensure that the definition of indirect control covers all aspects recommended by FATF and includes catchall provisions that minimize the risk of loopholes. The GASR should also demand that companies submit complete details of their ownership and control structure. The definition of indirect control should be sufficiently broad and flexible to ensure that it captures novel ways to disguise beneficial ownership that may be developed in the future. At the same time, it must not allow for any loopholes and must cover all possible means of control of a company or other legal person. In practical terms, one solution is to back up the definition of indirect control with examples of situations that would constitute such control, without implying that the examples represent a comprehensive list.

Considerations specific to a public register. Mongolia should create a public BO register that is freely available online. The data that are made public should be a subset of the BO information disclosed by companies. Implementation of the public register should include a way for individuals to apply to make all their information exempt from disclosure to users of the register under very specific and exceptional circumstances that involve clear risks to personal safety. The global trend is toward promoting public BO registers as part of efforts to improve corporate transparency and combat corruption, tax evasion, money laundering, and other financial crimes. The benefits of public registers include contributing to due diligence processes for all businesses so they can understand who they are doing business with, facilitating international cooperation, and building trust in the integrity of the business environment.



ABBREVIATIONS AND ACRONYMS

AML Law	Law on Combating Money Laundering and Terrorism Financing
AMLD4	Fourth Anti-Money Laundering Directive
AMLD5	Fifth Anti-Money Laundering Directive
BO	beneficial ownership
BOT	beneficial ownership transparency
EITI	Extractive Industries Transparency Initiative
FATF	Financial Action Task Force
GASR	General Authority for State Registration
GDP	gross domestic product
LTRC	Leveraging Transparency to Reduce Corruption project
OECD	Organisation for Economic Co-operation and Development
PEP	politically exposed person
PNG	Papua New Guinea
PSC	person with significant control
R24	FATF Recommendation 24
R25	FATF Recommendation 25
SOE	state-owned enterprise

1. Introduction

This report from the Leveraging Transparency to Reduce Corruption project (LTRC) examines some complex challenges that Mongolia faces in implementing beneficial ownership transparency (BOT). It follows the report titled *Beneficial Ownership in Mongolia: A Way Forward*, which identified six topics requiring further, in-depth analysis.

These topics, which are the focus of this report, are:

State-owned enterprises (SOEs)	Verification measures
Companies listed on a stock exchange	Definition of indirect control
Foreign politically exposed persons (PEPs)	Considerations specific to a public register

These are some of the most complex topics facing any country that is implementing a beneficial ownership (BO) disclosure regime. In all of these areas, international best practice is evolving and no consensus on solutions has yet emerged. This report cites examples and provides case studies from a range of countries to demonstrate how others are tackling these issues and to support decision-making processes in Mongolia.

1.1 OPPORTUNITIES FOR MONGOLIA

Mongolia has the opportunity to put in place a best-in-class BO regime that contributes to the government's policy priorities—especially the creation of a digital economy (Digital Nation), which would include digitized government services. A regime that makes BO information accessible to citizens and investors would also contribute to a more open and competitive economy and help combat corruption, money laundering, and other illicit financial flows.

To capture this opportunity, Mongolia will need to build on the progress it has made in establishing a BO register. The register, created under 2018 legislation, is currently available only to law enforcement and government agencies.* All legal entities are currently required to report details of their beneficial owners to the General Authority for State Registration (GASR). Legal entities had a deadline of 31 December 2020 to submit this BO information. By that deadline, approximately 30,000 legal entities had complied. BO data are currently submitted in hard-copy form and are subject to limited verification measures.

Policies based on international best practice to address the six topics listed earlier would allow Mongolia to demonstrate leadership in the area of BOT and capture the full range of benefits that BOT can bring to an economy. Mongolia has an opportunity to make further progress on BOT with the expected enactment of a new Public Information Law, which would create a legal right of access to BO information for all citizens.

* The need to comply with FATF requirements, which do not include a requirement for a public register, was a significant impetus for setting up the register. See *Beneficial Ownership in Mongolia: The Way Forward* at <https://tr4d.org/resources/beneficial-ownership-in-mongolia-a-way-forward/>.

Some stakeholders are concerned that a publicly accessible BO database would contain limited information and that beneficial owners would be unidentifiable due to regulations under the Personal Information Protection Law that is being considered along with the new Public Information Law (the upcoming sections discuss this in more detail). Nevertheless, the Public Information Law is part of the government's Digital Nation initiative. Making the current BO register publicly accessible would require a series of policy decisions and actions to ensure that the register is effective and to safeguard against genuine security and privacy concerns, as described later in this report.

1.2 THE IMPORTANCE OF BOT

BOT is important to building trust and confidence in the integrity of the whole economy among citizens, government, businesses, and providers of finance, both domestic and international. Demands for increased transparency from international investors, finance providers, and other stakeholders are growing. At the same time, global focus on the BO of companies is increasing as governments seek to build trust and clamp down on tax evasion, corruption, and money laundering. The global trend is toward disclosure of the beneficial owners of companies. As Mongolia continues to attract international investment and financing, it will want to meet the expectations of greater transparency, including about the beneficial owners of companies operating in the extractive industries sector. Mongolia has been and will be in competition with many other countries to attract such investment and financing, and countries that offer more transparency are likely to be more successful in doing so, especially in the post-COVID-19 environment.

BO refers to natural persons who directly or indirectly ultimately own and derive financial benefit from a company or commercial activity. There is no single global standard for BO disclosure. Our research considered various policy options for implementing BO reporting that would be relevant to Mongolia.

BO disclosure allows stakeholders to ascertain who really benefits from revenues generated by extractive industries or controls companies involved in the sector. It enhances governance and accountability.

BO disclosure and contract transparency prevent the true beneficiaries of extractive industry revenues from hiding behind opaque shell companies or using complex corporate or other legal structures to do any of the following:

Avoid reporting income

Evade tax obligations

Disguise conflicts of interest

Facilitate illicit enrichment and other forms of corruption

Engage in money laundering activities, conduct corrupt practices, or finance criminal practices or violent activities, including terrorism

BO disclosure also allows stakeholders to have a clear view of who is investing in the extractives sector and any links they might have to politically exposed persons (PEPs).

1.3 THE CURRENT SITUATION IN MONGOLIA

The current Mongolian government appears to be committed to improving the integrity of the country's business environment, although concerns remain about the protection of private property rights. The government has embarked on a series of legislative reforms and other initiatives, and Parliament approved the Public Information Law in December 2021. When enacted, the law will give Mongolia a type of freedom of information law. However, as noted earlier, some stakeholders, especially in civil society, have misgivings because this law does not appear to be based on international best practice principles. The law sets out the specific information to which the public will have access. International best practice on freedom of information laws calls for allowing access to all information held by government and public bodies but with specific exemptions, such as for personal medical details. Some civil society organizations are concerned that even after the Public Information Law is enacted, it will specify that only a limited amount of information can be made public. While the law requires that BO information be "open information" that is made public, the scope of disclosure is unclear. Also, the law has contradictory clauses that appear to prevent the disclosure of individuals' names.

At the same time, the government is also considering a Private Information Protection Law. This is intended to protect individuals' privacy and prevent their information from becoming public against their wishes. The law defines *personal information* as any information that can be used directly or indirectly to determine an individual's identity. According to the draft law, any open database published by the government, including the BO database, should maintain anonymity of persons (by prohibiting the publication of data containing information that could lead to the identification of a person or legal entity). Other jurisdictions have introduced similar legislation, such as the General Data Protection Regulation (GDPR) in the European Union (EU) and the Protection of Personal Information Act in South Africa. Individuals could use the provisions of the Private Information Protection Law to argue against the public disclosure of BO information. Jurisdictions have faced a challenge in achieving an appropriate balance between the right to privacy and the public good of BO transparency. The EU addressed this challenge by including provisions in its BO legislation that explicitly exempt such information from the GDPR.

The Mongolian government is also considering a new law on SOEs, a whistleblower protection law, and an Extractive Industry Transparency Law. The latter has been under consideration for some time, and is unlikely to be enacted soon, as discussed in *Beneficial Ownership in Mongolia: A Way Forward*. The SOE law in particular has the potential to improve governance and accountability. The government has also established an anti-corruption task force to produce recommendations on improving anti-corruption measures. The group recently hosted a forum to gain widespread support for governance measures such as a public BO register.



2. The Challenge of State-Owned Enterprises

SOEs present a specific challenge in terms of identifying natural persons as their beneficial owners. An SOE is usually owned by a government ministry or other government agency, with typically no identifiable natural persons who ultimately own the company. In theory, if a government owns a company or part of a company, the natural persons who own that interest are the citizens of the country represented by the government. In the case of a company owned by the Mongolian government, the natural persons who own the company would be, in theory, all Mongolian citizens.

In Mongolia, SOEs, particularly large ones, are some of the biggest buyers of goods, works, and services in the mining sector. They therefore play a significant role in the value chain of the country's mining industry. This creates the potential for conflicts of interest among senior politicians and government officials who participate in procurement and approving financial expenditures.

Although information on board membership and executives of SOEs is available on the websites of individual companies, those websites may not be up to date or may lack information on officials who are empowered to appoint executives or have related interests. Mongolia's newly passed Law on Public Information Transparency (Article 8.6.6) requires that information on board members, committee members, and executive management members of an SOE—including full name, contact details, salary, and fees—be disclosed, but it does not specify the agency responsible for disclosure. Transparency regarding who controls Mongolian SOEs is further constrained by exemptions in the country's BO regulations. The GASR requires SOEs only to report and register their BO information if 33% or more of the SOE is under private ownership. Then, if the state owns 67% or more of the SOE, the company is not "eligible" to register any BO information.

Politicians from both main parties have suggested minimizing state ownership of enterprises and undertaking privatization. However, both parties also include strong advocates for retaining state ownership. The current government policy is to maintain state ownership in strategic SOEs but offer up other enterprises for privatization. In any event, in cases where state ownership is maintained, SOEs should operate on a commercial basis in line with the legal environment for the private sector.

The SOEs that operate in Mongolia's mining sector are not just those owned solely or partially by the Mongolian government; they also include companies owned solely or partially by a foreign government. In the case of SOEs owned by a foreign government, the same issue arises with the natural persons who are the beneficial owners being all citizens of that country.

While it is not practical to identify all natural persons who are the owners of an SOE, it is possible to identify the natural persons who control the SOE and how they exercise that control. This is one situation where the “control” aspects of the BO definition are important. For SOEs (both Mongolian and foreign), control may be exercised through one or more of the following means:

- Appointment of the board of directors and senior management**
- Allocation of the government budget to the SOE**
- Approval of the SOE’s operating and investment budgets**
- Approval of the SOE’s business strategy**
- Creation and implementation of the legal and regulatory framework for SOEs**
- A charter or other governance framework that vests control in those holding a particular government position**

In Mongolia, at least four government agencies or ministries are owners of SOEs that are active in the mining sector. According to stakeholders interviewed for this report, information about which government agency owns an SOE is publicly available in theory but not readily accessible in a register. Some stakeholders are concerned about the level of transparency regarding how control over SOEs is exercised, how strategic business decisions are made, and other aspects of the relationship between SOEs and the government, including financial flows.

The global trend is toward public disclosure of additional information on who controls SOEs and how they operate. For example, the 2019 Extractive Industries Transparency Initiative (EITI) Standard has five requirements that specifically relate to SOE transparency, including: 1) the legal framework for SOEs, 2) how control is exercised, 3) how SOEs participate in the extractive industries, 4) the financial relationship between the government and SOEs, and 5) details of quasi-fiscal expenditures (see the Papua New Guinea case study on the next page). The Mongolian government is proposing a new draft law on state property, which would place all state-owned mining companies under a single board.

For BOT, international best practice calls for setting specific reporting requirements for SOEs. These would include requiring companies and other legal persons for which the level of direct or indirect government ownership meets the reporting threshold (e.g., 25%) to report details about the natural person or persons who control the government ownership share, along with other relevant information. These could be natural persons who approve the appointment of board members or who control the SOE by one or more of the other means described above, per the definition of *control* applicable in that country.

For example, in Ghana, the BO reporting regulations require the reporting of the following information in relation to SOEs, including information on the government officials who exercise control:

- The percentage of ownership by each government agency** (and, if the total is less than 100%, details on other beneficial owners as well)
- The name and address of each government agency** that is a beneficial owner
- The nationality of each government agency** that is a beneficial owner
- The country of incorporation of the government-owned company**, if different from the nationality given above
- A notarized copy of proof of ownership**, such as an extract from the relevant corporate register

Details about each government official who exercises control, including:

- | | |
|--------------------------------------|---|
| Full name and any former name | Contact address, telephone number, and e-mail |
| Position and date appointed | Method by which the official exercises control |
| Nationality | |

Recommendations on SOEs can be found on page 25.

SOE CASE STUDY: PAPUA NEW GUINEA

Hydrocarbon production and mining are important economic sectors in Papua New Guinea. The extractive industries account for almost 30% of the country's gross domestic product (GDP) and nearly 90% of exports.¹ In 2014, Papua New Guinea joined EITI, and the country is currently assessed as having made meaningful progress toward meeting the 2019 EITI Standard. However, one area of weakness in the country's implementation of the standard has been SOE transparency.

At first glance, the role of SOEs in the extractive industries appears straightforward. One SOE has responsibility for the hydrocarbon sector, and a separate SOE has responsibility for the mining sector. Each is subject to a specific law regulating its activities as well as laws governing all companies active in the country. Also, each SOE is "owned" by the relevant ministry. However, the role of the state in the extractive industries is more complex. Landowners are granted rights to an interest in onshore hydrocarbon and mining projects, and these are held in trust by another, separate SOE. In addition, the government's share in one of the country's largest mines is held by yet a fourth SOE.

Transparency is lacking in how the government exercises control in all the SOEs described above. While each SOE is required by law to produce audited financial statements (and they all comply), these financial statements and SOE annual reports are not routinely published. The SOEs also undertake social investment projects in relevant local communities. Some of these investments are in line with the typical social investments conducted by private-sector companies, such as to support health and education projects. However, the government also uses the SOEs to undertake projects that would otherwise be supported by the government budget, such as rural electrification. Such payments may be termed quasi-fiscal expenditures, which are often not made transparent.

Papua New Guinea EITI has commissioned three scoping studies to support its efforts to improve transparency in the extractive industries. These scoping studies address BOT,² SOE transparency,³ and contract transparency,* respectively. The SOE report provides a series of recommendations on how to improve SOE transparency in the country. Some proposed legal reforms may also contribute to improving SOE transparency. A proposed freedom of information law may help Papua New Guinea EITI's efforts to enhance transparency. It is still in its early stages, but if enacted it would create specific legal rights to information in line with the country's constitutional provisions on transparency.

* This report is in draft form and not yet in the public domain.



3. The Challenge of Companies Listed on a Stock Exchange

Companies listed on a stock exchange present particular challenges for BO reporting. Most listed companies do not have any shareholders with large-percentage shareholdings, so considering thresholds (e.g., 33%), it is possible that a listed company could have no reportable beneficial owners. In addition, the daily trading of shares in a listed company could necessitate frequent updates to a BO register in order to comply with requirements on changes in ownership.

Therefore, a solution is needed that requires disclosure of some information on the ultimate owners of a listed company but is balanced with a realistic compliance burden.

Here are three key reasons why a special disclosure requirement for listed companies can be helpful:

Shares in many listed companies are traded on a second-by-second basis, so there is no stable reportable list of shareholders.

Small shareholdings in listed companies may be held as part of investment portfolios and managed investment funds, where the ultimate investor may have no visibility into the exact investments being held (and therefore no influence or control over the company).

Listed companies can have hundreds of thousands of shareholders.

EITI Requirement 2.5 states that tracing ownership back to a company listed on a recognized stock exchange is sufficient to establish BO. Both the EITI definition and United Kingdom (UK) and EU legislation mirror this for listed companies on the condition that they are listed on one of the stock exchanges specified in their respective legislation.

It is important to understand that requiring reporting companies to disclose owners that are listed companies is about governance and regulation. Stock exchanges such as London, New York, and Toronto place detailed and robust requirements on listed companies, and these regimes are considered some of the best in the world. These stock exchanges are not required to disclose the beneficial owners of those companies, however. Countries that require listed company disclosure deem the governance of the stock exchange to be a sufficient alternative to BO obligations.

The stock exchange listing does not provide the same BO information as required under Mongolia's BO regulations. It is primarily about placing trust in those recognized stock exchanges. It ensures that if a reporting entity is owned by one or more listed companies but has no separately reportable beneficial owners, company information is collected.

A limited number of companies in the Mongolian mining sector are listed on the Mongolian stock exchange, but some major investors, such as Rio Tinto, are listed on foreign stock exchanges. As Mongolia continues to attract foreign investment, more companies listed on foreign stock exchanges could enter the market. Some

of these companies might be listed on stock exchanges that do not operate to the same exacting standards as major markets such as London, New York, Australia, or Toronto.

Current Mongolian stock exchange legislation has a disclosure threshold of 5% ownership. Legal and natural persons who own 5% or more of the shares in a company are termed *influential owners*, and their information is disclosed. However, such a beneficial owner could split the shares among associates or family members to reduce the apparent shareholding to below the 5% threshold. In this case, no information would be available; this appears to be a common practice in Mongolia. Another issue relates to the governance of listed companies in which majority shareholders violate the rights of small shareholders, such as by withholding dividends. In any case, under Mongolian law, only the GASR has the power to undertake BO registration. As a result, the Mongolian stock exchange currently has no mandate to maintain a BO register.

Therefore, it is important to consider developing a list of “recognized” stock exchanges due to the variation in transparency and disclosure requirements as well as overall governance of stock exchanges. Selecting such a list involves practical and policy challenges. On the practical front, selection criteria are needed. On the policy front, omitting a stock exchange from the list could have consequences for relations with the host country—for example, if that country is a neighbor or a close ally. The criteria should therefore be clear and be relevant to Mongolia’s situation and needs.

The information collected about an owner that is a listed company should include:

The proportion of its shares listed on one or more “recognized” stock exchanges. If this is less than 100%, the other, nonlisted beneficial owners should supply their details in line with the BO definition and threshold.

The name of the stock exchange(s) where the company is listed. Some companies are listed on more than one exchange, and in such cases all stock exchanges should be reported. For example, Rio Tinto is a 100% listed company that is on both the London Stock Exchange and the Australian Securities Exchange.⁴

A link to the stock exchange webpages that gives details of the company’s listing.

Any other information that is relevant to Mongolia’s situation and addresses risks that the country faces.

Recommendations on companies listed on a stock exchange can be found on page 26.

LISTED COMPANY CASE STUDY: UNITED KINGDOM

The UK has demonstrated significant global leadership on BOT through FATF and was the first country to implement a public BO register and support the introduction of BO registers in other countries.

The UK government sees a vital role for BO in its effort to combat corruption both domestically and globally, as well as countering financial crime. It has commissioned research into achieving a global norm of BOT⁵ and has followed this with research into how the private sector can benefit from the availability of reliable BO information.^{*} BOT is a central part of the UK government’s anti-corruption strategy. In its national Economic Crime Plan, a whole chapter is devoted to BO.

In 2016, the UK launched a register of “persons with significant control”^{***} over companies and other relevant legal persons, which was the first freely accessible economy-wide public register of company

* This research has yet to be published.

** The term *beneficial owner* is not used in relation to the register, to avoid confusion with other UK legal terms.

BO worldwide. The BO requirements were introduced under regulations in 2016 that implemented amendments to company law. Obligations are placed on both the person with significant control (PSC) and the legal person. Companies are required to take "reasonable steps" to identify PSCs, and a person who is a PSC must inform the company, with sanctions (including criminal) for failure to comply.

The regulations require each company to maintain a register of its beneficial owners, to submit that information to Companies House (the UK company register), to report any changes within 14 days, and to provide annual confirmation that the information remains accurate (even if there is no change).

The UK regulations define a PSC as a natural person who directly or indirectly satisfies one of the following conditions:

- Owns at least 25% of the company's shares**
- Holds at least 25% of the voting rights**
- Has the right to appoint or remove most directors**

Even if an individual does not satisfy any of these conditions, that individual may still be considered a PSC if either of these conditions is satisfied:

- Otherwise has the right to exercise, or actually exercises, significant influence or control over the company**
- Has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm** that is not a legal entity but would itself satisfy any of the previous four conditions if it were an individual⁶

Criteria met by a PSC must be disclosed and published in the PSC register. The PSC requirements do not require disclosure of the precise level of shareholding or voting rights of PSCs; instead, they require identifying the ownership range: 25% to 50%, 50% to 75%, or more than 75%.

The regulations also require that companies provide the following information about their PSCs:

- Name, date of birth, nationality, service and residential address**
- Level of ownership and how it is exercised**
- Date the individual became a PSC** (if after 6 April 2016, when the register came into force; otherwise, the effective date is 6 April 2016)

The UK regulations also call for specific reporting requirements for listed companies. In situations where the ultimate ownership of a company or other legal person is a company listed on a "recognized stock exchange," the company only has to provide details of that listing.

The list of recognized stock exchanges is set out in a schedule to the regulations⁷ and lists specific stock exchanges in the following countries and areas:

- | | |
|-------------------------------|----------------------|
| UK | Japan |
| European Economic Area | Switzerland |
| Israel | United States |

The UK government considers these stock exchanges to be subject to a similar level of regulation and governance as its own stock exchanges.

The principal criticisms of the register relate to data quality. Data validation is limited because the data are not systematically verified. Companies House does take defined steps to contact companies and improve data quality, but it has limited legal power to undertake investigations. The UK government has proposed granting Companies House more powers, but the relevant bill has yet to be passed.

Some data quality measures have been put in place, however. A new requirement from January 2020 requires financial institutions and other obliged entities (e.g., lawyers and accountants) to report discrepancies. The register has been used effectively by companies (particularly financial institutions during onboarding), law enforcement, and civil society organizations.⁸ However, while this widespread use is positive, it raises questions about overreliance on poor-quality data, given the previously noted concerns in that regard. The UK's money laundering regulations state that financial institutions and other regulated entities are out of compliance with BO requirements if they rely solely on the PSC Register for BO information.

In 2019, the UK government held a public consultation on proposals to improve the accuracy of data in the register, including BO information. It published a response in early 2020 confirming that the UK will introduce identity verification for all PSCs, among other measures. The overall vision is to give Companies House a more proactive role in sharing data with law enforcement and trusted private-sector partners to improve data quality and better identify anomalies and money laundering risks. These measures are among the strategic objectives of the Economic Crime Plan. The UK is also introducing a register for foreign beneficial owners of real estate.



4. The Challenge of Foreign Politically Exposed Persons

Identification of PEPs is an important aspect of any BO reporting regime. Such information contributes to identifying potential conflicts of interest, undue influence, or involvement in financial crimes. While domestic PEPs (those who hold public office in the country concerned) are likely to be of most interest due to their potential direct influence on government policy and decisions, it is also important to include foreign PEPs in the BO regime. PEPs may also have influence due to their position, due to the nature of their relationship with the host country, and/or through the company in which they have an ownership or control stake. Mongolia's current BO registration system does not contain specific provisions for the reporting of PEPs in ownership and control structures. As noted in *Beneficial Ownership in Mongolia: A Way Forward*, the country does have a register of public officials' assets that captures business ownership information.

The identification of foreign PEPs and the enforcement of reporting requirements present challenges for an effective BO reporting regime. The first difficulty is in adequately defining foreign PEP because the terminology used for public officials and their ranks can vary from country to country. The definitions of *PEP* can differ in regard to whether they include family members and close associates and the timeframe for remaining a PEP after leaving office, which is typically linked to the country's electoral cycle. A PEP's influence is likely to wane as time passes, so considering a person a PEP for life is not always considered necessary. It also raises practical issues regarding enforcement, especially for foreign PEPs. A timeframe that encompasses at least two electoral cycles is reasonable for being considered a PEP after leaving office. For Mongolia, a reasonable timeframe could be eight years, representing two cycles of parliamentary elections.

A second challenge relates to accuracy. The vast majority of foreign PEPs have no public profile in Mongolia, so an effective BO reporting regime would need to rely in part on companies and other legal persons accurately reporting any foreign PEPs in their ownership structure who meet the relevant reporting threshold. If a company were to fail to identify and report a foreign PEP, it would be almost impossible for the Mongolian authorities to spot that omission.

A third challenge is identifying foreign PEPs that could have undue influence and setting an appropriate threshold to capture that information. Foreign PEPs could hold an interest in a company that operates in Mongolia's mining sector as part of their investment portfolio, but through their role and/or the size of the holding they could have little, if any, influence over decisions the company makes or over relations with Mongolia. Collecting information on foreign PEPs will depend on companies providing the information and, in the case of public registers, users reporting omissions or discrepancies.

Some countries have addressed the challenges presented by foreign PEPs by having a separate definition for them, including a different threshold for reporting ownership by a foreign PEP—often higher than for domestic PEPs (see the Ghana case study on the next page for an example). The definition of foreign PEP could include categories and types of public officials rather than specific ranks, and the categories could be the same as in the definition of domestic PEP. The definition should extend to high-ranking officials of

international institutions, including the UN and its affiliated agencies, the EU, and other regional organizations and international development banks (such as the Asian Development Bank).

Recommendations on foreign PEPs can be found on page 26.

FOREIGN PEP CASE STUDY: GHANA

Ghana was the first country in Africa to introduce an economy-wide public BO register. Hydrocarbon production and mining are important economic sectors in Ghana. The extractive industries account for around 14% of GDP and two-thirds of exports.⁹ Ghana joined EITI in 2007 and is currently assessed as having made meaningful progress toward meeting the 2019 EITI Standard.

One key impetus for Ghana to introduce a public BO register was the country's need to meet FATF requirements. Ghana legislated for BOT in 2019 through amendments to its Companies Act.¹⁰ Implementation of these amendments is the responsibility of the country's registrar general, who administers Ghana's corporate register. In 2020, the registrar general, with technical assistance funded by the British government, introduced regulations to implement the legislation and started implementing BO reporting by companies. The BO register is accessible to the public for a fee, which helps cover the registrar general's costs.

The regulations contain a specific reference to foreign PEPs and establish a different threshold for reporting their BO than for entities registered in Ghana. The foreign PEP threshold is 10%, whereas a domestic Ghanaian PEP must report any beneficial ownership, however small. The regulations require reporting entities to identify any foreign PEPs whose ownership meets the threshold and to disclose the position or role that makes them a PEP, including the date when they became a PEP. Failure to comply with these regulations leaves the reporting company liable for fines and ultimately deregistration.

The implementation of the public BO register contributed to Ghana demonstrating that it was making material progress in addressing deficiencies in its BO system during an FATF follow-up evaluation in Q3 2020. EITI has also highlighted Ghana as an example of good practice in implementing BOT.



5. The Challenge of Verification Measures

A robust verification system is central to achieving an accurate and reliable BO register. However, effective verification has proven to be the most challenging aspect of establishing and administering a BO register. None of the currently operating public BO registers have a fully effective verification regime.

The verification challenge arises from several factors, including:

Unfamiliarity with the BO concept. Many stakeholders, particularly smaller companies and some government representatives, are not familiar with the concept and confuse BO with legal ownership.

Complex corporate structures. In cases where the entity has multiple layers of ownership and indirect control, potentially involving several jurisdictions and different types of legal entities and/or legal arrangements, identifying the ultimate beneficial owners may prove difficult, costly, and time consuming.

Volume of information contained in BO registers. BO registers cover the whole economy and contain millions of records. For example, the UK PSC Register contains records on almost 4 million companies. For each owner of a company, several pieces of information are required, which multiplies by many times the total volume of data. This information is also frequently subject to change as companies acquire new owners or change their corporate structure or as owners simply change their address or level of ownership.

Multiple documentary sources. Rarely can a single data source be used to verify every type of information for each owner, such as nationality, date of birth, address, level of ownership, and effective date of ownership. In addition, the person submitting the information may be different from the beneficial owner, and the submitter's identity and right to provide such information will also require verification.

Need for continuous verification. Data verification is not a one-off activity, but rather a continuous process. Verifying information at the point of first submission is not enough. BO information is likely to change over time, so ongoing verification is needed to ensure that the information remains accurate.

5.1 STAGES OF DATA VERIFICATION

As a continuous process, verification happens at different stages. These stages are generally not sequential; they can overlap or happen simultaneously. Each stage includes verification activities to ensure the ongoing quality of the data in the register.

Here are the four stages, with the activities required in each one:

Data submission. This includes both the initial submission of BO details and notification of any changes. The verification elements in this stage include measures to ensure accurate data entry and to verify the identity and authority of the submitter.

Oversight of the BO register. This includes normal administration of the register. This stage includes verifying BO information against other sources (such as international sanctions lists) and ensuring that companies meet their obligation to report changes, provide annual confirmation of their BO data, and maintain records.

Enforcement. This stage includes sending reminders about late submissions, identifying red flags, conducting random checks, implementing an obligation to report unusual activity, investigating apparent noncompliance, and prosecuting suspected incidents of misconduct, including tax evasion or other financial crimes. This stage also includes linking the BO information to other commercial processes, such as the granting of licenses, as well as notifying qualifying legal entities of the potentially adverse consequences of noncompliance.

Public scrutiny. This stage of verification is provided by users of the public register, including civil society organizations, the media, citizens, professional advisors, and companies. It includes identifying discrepancies in the normal course of retrieving the publicly available information from the BO register for their own data analyses and investigations.

5.2 ELEMENTS OF DATA VERIFICATION

Given the need for accurate information and the factors that present a challenge to effective verification, we have identified the following relevant elements of a verification system:

Accurate data entry. The first challenge in recording reliable information is ensuring accurate data entry, at the time of first submission and each time changes are reported. When the UK PSC Register was launched, it included more than 500 misspellings and variations of *British* to describe an owner's nationality. Other inaccuracies included dates of birth in the year of submission (e.g., 2016) as well as potentially more serious inaccuracies, such as companies claiming listed status when they were clearly not listed on any recognized stock exchange. Transliteration of foreign names can introduce another level of misinterpretation because the same name may be transliterated in multiple ways.

Specific measures to ensure more accurate data entry include:

Pre-populated drop-down menus. Using such menus for relevant data, such as nationality, eliminates the risk of misspellings or using different terms to describe the same nationality. In addition, if the BO register is linked to other databases (e.g., corporate registers), fields such as company name and registration number can be completed automatically.

Mandatory data entry fields. Imposing mandatory data fields ensures that the submitter enters the minimum required information. While this does not eliminate the risk of inaccurate information, it facilitates all relevant fields being completed.

Standard transliteration method. This minimizes the risk of the same name being spelled in different ways, especially when transliterating from other alphabets (such as from Arabic to Latin), which can lead to misinterpretation and can hide the fact that the same person has multiple ownership interests.

Date range checks. These can be used to check information such as dates of birth to ensure that they are within expected ranges (e.g., that dates of birth show that beneficial owners are at least 18 years of age or that the information is in the right format).

Confirmation of identity and right to make submissions. This can serve as a preliminary level of verification to confirm that the submitter is both able and authorized to provide accurate and reliable BO information. The company should provide documents that support its BO information and that verify the identity and authority of the submitter. Such an individual can also be a point of contact if the authorities have queries. In Indonesia, the presidential decree creating an obligation to submit BO information specifically requires each company to appoint an authorized individual to submit information and to function as a point of contact for inquiries.

Annual declaration. Each legal entity should be required to submit an annual declaration to confirm the accuracy of its BO information. This should not be the only opportunity for a company to report changes in its beneficial owners (see the next item).

Obligation to report changes. To ensure the integrity of the BO register at any point in time, reporting companies and other legal entities should be required to report any changes to their BO information within a brief time period. This helps ensure that the information remains as accurate as possible. The UK PSC Register requires reporting of changes within 14 days. The GASR currently requires companies to report changes within 15 days or face a penalty of MNT 500,000 (approximately US\$180).

Obligation to maintain records. This obligation is typical for BO disclosure systems and usually includes a requirement to make information available upon request from a law enforcement agency. This obligation provides another verification element because the potential for inspection by law enforcement gives companies an incentive to ensure that their records remain accurate. It also provides an opportunity for law enforcement and members of the public to cross-check company-held information against other sources, such as foreign BO registers, and to identify any discrepancies.

Red flag identification. This is a central element of effective verification for the agency that administers the BO register. The administrator should develop institutional criteria and skills to help identify and investigate red flags. Criteria could include inclusion on a sanctions list, apparent circular ownership,* complex ownership structures, persistent delays in providing accurate or complete data, failure to provide data, or clear discrepancies compared with other publicly available data.

Random checks. This is the responsibility of the administrator who is responsible for data verification in the BO register. The administrator should also develop a set of institutional criteria and skills to conduct random checks (e.g., to help identify a representative sample of submissions for checks). These checks are different from those for red flags because the information submitted may not, at first glance, appear to contain any errors or unusual features.

Obligation to report discrepancies. This is another central element of any effective verification regime. It places a professional obligation on specific categories of register users (e.g., law and accounting firms and financial institutions and advisors) to report knowledge of any discrepancies in the information held in the BO register. Such discrepancies may range from simple data entry errors to significant differences between the information held in the BO register and other information about the company or beneficial owner that may be publicly available through legitimate means or channels. One example would be if a bank gains client BO details through the latter's loan application or through the bank's own inquiries that differ from the details in the BO register. The legislation establishing the UK's PSC Register contains a provision for imposing such an obligation on banks and professional advisors, which came into force in January 2020. The UK register also contains a feature that allows any user to voluntarily report errors or concerns.

Enforcement of reporting obligations. This is another important element of verification and includes activities ranging from sending initial reminders to companies that miss submission deadlines to investigating and prosecuting serious noncompliance, such as a persistent failure to report. Enforcement should also include activities to create awareness among companies of the potential penalties for noncompliance. An

* For example, where company A lists company B as its owner and company B lists company A as its owner. Such circular ownership is illegal in many jurisdictions.

effective enforcement system should provide a strong incentive for companies to comply fully with reporting requirements and, therefore, contribute to ensuring accurate and reliable information. Noncompliance should also raise red flags with law enforcement that further investigation may be necessary. FATF recommendations include a requirement that sanctions and penalties be dissuasive.

Public scrutiny of the BO register. Scrutiny of BO registers by civil society organizations, the media, citizens, companies, and other stakeholders can also play a role in BO data verification and expand capacity for scrutiny of the registers. These users can highlight unusual activity, anomalies, or other leads for investigation by law enforcement. Awareness of the capacity for stakeholder scrutiny gives companies further incentive to ensure that the information they submit is accurate and up to date. The stakeholders are unlikely to have any legal obligation to report discrepancies or unusual features because enforcement of such an obligation would be difficult. However, civil society organizations and the investigative media are typically motivated to hold businesses and people of influence (including PEPs) accountable for their responsibilities to society and the public interest by publishing the results of their investigations. Private citizens may also want to draw attention to any adverse impacts on their personal interests.

Commercial pressures. Commercial pressures can present further incentives for companies to provide accurate and reliable BO information. The provision of accurate BO information could be made a precondition of applying for licenses, permits, loans, and other approvals. Failure to do so could lead to the denial of an application or the revoking of an existing license. For example, the Kyrgyz Republic’s BO regime for the extractives sector contains a provision stating that a company could lose an exploration or development license if it is found to be in breach of BO reporting requirements. The risk of losing a license gives a company a strong incentive to ensure that it complies fully.

Figure 1 shows the various stages of data verification and the elements associated with each of them.

FIGURE 1. *Verification Stages and Elements*

	Data Submission	Oversight	Enforcement	Public Scrutiny
Data Entry				
Confirm ID				
Annual Declaration				
Report Changes				
Maintain Records				
Red Flags				
Random Checks				
Discrepancy Reporting				
Commercial Pressure				

Recommendations on verification measures can be found on page 26.



6. The Challenge of Defining Indirect Control

International best practice calls for the definition of *BO* to include the concept of “indirect ownership or control” of a company or other legal person.

Indirect ownership is a relatively well-understood and well-defined concept, whereby the ownership of a company is held through one or more intermediate holding companies or other structures or legal arrangements. The indirect ownership is ultimately rooted in a chain of legal ownership leading to a natural person.

Indirect control is a more complex concept and is thus frequently less well defined in legislation. Indeed, that complexity is sometimes managed by introducing a broader definition of control that can apply to all possible scenarios. However, this can result in a weaker definition of indirect control that is open to interpretation and evasion.

The best approach to understanding indirect control is to consider it from a “first principles” standpoint. The concept of control assumes that a natural person is making decisions or having a dominant influence on decisions about the way a business operates. This control might be exercised directly on the company by an individual through formal or informal means. The UK *BO* legislation refers to this concept as “a right to exercise significant influence or control,” and the statutory guidance supporting that legislation says:

In the context of a company, a person may hold a right to exercise significant influence or control as a result of a variety of circumstances including the provisions of a company’s constitution, the rights attached to the shares or securities which a person holds, a shareholders’ agreement, some other agreement or otherwise.

Indirect control also encompasses cases where a natural person has the right to exercise that control over a parent company, which might in turn control the reporting company.

The definition of *BO* in Mongolian law, including the one used by the GASR, comes from the 2013 Law on Combating Money Laundering and Terrorism Financing (AML Law) and makes reference to indirect ownership or control. This feeds into section 5.3 of the *BO* information submission form (UB-12 form), which aims to register *BO*s that have indirect control over the company.

Article 3.1.6 of the AML Law defines indirect control as “implementation of [the beneficial owner’s] actions through representation by others.” But neither the law nor any enforceable regulations or guidance provides a detailed definition of the term or what criteria to use to identify when indirect control exists and who has the right to exercise that control.

The lack of clarity on what constitutes indirect control in this context has two significant consequences for BO reporting:

Reporting companies are expected to apply their own interpretation to the law, which leads to inconsistency in the positions taken by different companies. Furthermore, companies that choose to disguise a natural person who has the right to exercise control may be able to do so based on their own interpretation of the indirect control. This is a loophole.

The existing definition may not provide sufficient clarity to be enforceable by the GASR or a court.

The lack of a clear definition of indirect control also affects verification because it is unclear what information reporting companies are required to provide in support of their "indirect control" submission. If the way in which the legislation is interpreted is inconsistent with the information being provided in support of filings, it is much harder for the GASR to verify the data.

The definition of indirect control should be sufficiently broad and flexible to ensure that it captures novel approaches to disguising beneficial ownership that may be developed in the future. At the same time, it must not allow for loopholes, so it must cover all possible means of control of a company or other legal person. Indirect ownership control may occur through a series of intermediate companies or legal arrangements, in which case the effective level of ownership or control must be calculated. However, there are also many other means of exercising indirect control.

While FATF does not give a definition of indirect control, it provides several examples, including:

"Dominant influence," which it does not further define

Ability to appoint and dismiss senior management

Personal and family connections

Financing of the legal entity

The challenge in defining indirect control is the ambiguous nature of some means of control, such as "dominant influence" and personal connections. These types of control may be exercised informally and may not be documented. While some forms of personal connection are clearer (e.g., ownership by close family members), other personal connections may be more difficult to discern, such as connections that originate in school, university, military service, or previous business ventures. In the case of close family members, a definition of control could include the assumption that relatives should be deemed as acting together for the purposes of the BO definition.

In practical terms, one solution is to back up the definition of indirect control with examples of situations that constitute such control, without implying that the examples represent a comprehensive list. This also allows for the inclusion of examples that reflect local context and business practices.

Recommendations on defining indirect control can be found on page 26.



7. The Challenge of a Public BO Register

The clear international trend is to promote public BO registers to help improve corporate transparency and combat corruption, tax evasion, money laundering, and other financial crimes. A public register does this by making available personal details about natural persons. However, making such personal data public comes with risks that need to be considered, especially considering privacy laws.

Existing BO registers sit on a scale from fully private to fully public.

A private register restricts access to BO data to the agency managing the register. That agency might then share BO data with national law enforcement agencies and other branches of government. It may also share data with foreign competent authorities upon request. Examples of countries with private BO registers include the British Virgin Islands¹¹ and Panama.¹²

A public register makes key BO data accessible to national and foreign law enforcement agencies, private-sector businesses, and the general public. Users may be required to register, request specific data, and pay a fee. Examples of public register approaches can be found in EU member states.

The most open and public form of a BO register is one in which the BO data are available for free and the data can be directly accessed online by anyone worldwide. An example is the UK PSC Register.

FATF recommendations 24 and 25 (R24 and R25) identify a central register as one option for securing access to BO data, but they do not prescribe that the register be open.¹³ However, FATF does support the principle of public registers, while not going as far as to include them in the recommendations.

FATF recently conducted a public consultation on R24 and R25, including questions about the merits of public registers. FATF has so far not reported on any proposed changes to R24 or R25, but a move toward stronger encouragement of central (including public) registers is possible.

The EU's Fourth Anti-Money Laundering Directive (AMLD4) introduced a requirement for all EU member states to have a public BO register.¹⁴ Not all EU member states have implemented their register, and the level and method of access varies among member states, but the underlying principle of the register being publicly accessible is shared across the EU.

Beyond the EU member states, many other countries are implementing public registers, including the UK, Ukraine, many countries in the Western Balkans, and countries in Africa (e.g., Ghana) and Asia (e.g., Indonesia). The British Overseas Territories (which include the Cayman Islands) have announced that their BO registers will all be publicly accessible by 2023; Gibraltar's BO register is already public. The introduction of a public BO register is included in several countries' Open Government Partnership action plans.

In addition, EITI implementing countries are required by the 2019 EITI Standard to have public BO reporting of companies operating in the extractives sector.

7.1 BENEFITS OF A PUBLIC REGISTER

A public register increases the range of users of BO information (including citizens and companies). The benefits of a public register include the following.

International cooperation in investigating financial crimes. International efforts to fight financial crime call for law enforcement agencies to quickly identify complex structures across multiple jurisdictions. Although processes are in place for competent authorities to request access to BO data held in a private register, allowing easier access to BO data would reduce the administrative burden on both sides and allow resources to be focused elsewhere when investigating criminal activity.

Due diligence by financial institutions and other obliged entities. Financial institutions and other obliged entities, including banks and accountants, are required to undertake due diligence on customers, including understanding the BO of each client. A public BO register can play a part in that due diligence. Although the data in the register may not be sufficiently reliable, they may be a starting point for the due diligence process and provide an initial picture that can be tested through further inquiry.

Due diligence by the private sector. Large private-sector businesses carry out significant due diligence on their suppliers and customers to mitigate commercial risk. Smaller businesses are less able to do this because the costs of third-party due diligence are prohibitive. A public BO register provides private-sector businesses with a tool to carry out that due diligence. Large businesses can use it as a first stage in the process, allowing resources to be focused on more detailed investigations into any red flags. For smaller businesses, it can provide a level of insight into suppliers, customers, and even competitors that would otherwise be impractical to achieve. It can also help those businesses avoid unwittingly getting involved in the criminal activities of others. Research conducted in the UK suggests that small and medium-sized enterprises are among the biggest user groups of the UK PSC Register.

In practice, making a BO register public shifts the position of private-sector businesses from simply being subject to a compliance burden to having a valuable tool to improve the way they do business and to reduce risk.

Verification. As noted earlier, no single mechanism can deliver effective verification of BO data. The solution will always be a suite of measures. Public registers allow for extra measures that private registers do not.

Verification measures include:

Requirement to notify. Obligated entities such as banks, lawyers, or accountants can be required to notify the register if they identify any discrepancy between the BO data they hold for customer due diligence purposes and what appears in the register.

International perspective. When an entity's ownership structure crosses international borders, public registers allow stakeholders to identify inconsistencies in what is reported to different registers.

Broad scrutiny. When more people have access to and use the register, more anomalies or errors will be identified.

Economic impact. As discussed earlier, a public BO register can be a tool that helps improve due diligence by private-sector entities. This may result in less corruption, money laundering, and other financial crimes. Research on the relationship between corruption, growth, and business performance suggests that reduced corruption benefits an economy overall.¹⁵ This means that greater transparency of BO information can be directly linked to increased economic activity.

7.2 RISKS ASSOCIATED WITH A PUBLIC REGISTER AND HOW TO MITIGATE THEM

When considering the genuine risks associated with having a public BO register, it is important to recognize the significant quantity of data already in the public domain. This includes publicly available government sources (e.g., commerce registers) as well as the internet and other open sources of information such as the media and social media platforms.

The risks described next are associated with a public BO register only if those data are not already in the public domain in some other form.

Identity theft. Criminal use of personal information to impersonate an individual is a common form of financial crime. Such crimes originate with the use of names, addresses, dates of birth, and other personal information such as tax registration numbers to extract banking details, passwords, or PIN numbers.

A BO register needs to collect enough personal information to uniquely identify individuals—including full names, dates of birth, addresses, and national identity/passport numbers. This information would be valuable to a criminal, but there is an important distinction between information *collected* by a register and information *published* by a register.

For example, AMLD4 requires that the BO register collect the full date of birth of all beneficial owners. However, it publishes only the month and year of birth. Residential addresses are also collected but not made public. So, although the data being collected could be used for identity theft, the risk can be mitigated by carefully selecting the data to make public. It may not be necessary to disclose more personal information than many people choose to share through their personal or business social media accounts.

Personal safety. Risks to personal safety linked to wealth and influence are common, and particularly so in some jurisdictions. This can include increased risk of burglary or kidnapping. When considering the risk associated with public BO registers, it is important to focus on what additional information it puts into the public domain and then to assess whether that new information puts an individual in personal danger. The answer is generally no. The identities, residences, and movements of influential individuals are already well known, particularly due to social media. In the small number of cases in which public BO disclosure would be dangerous, it might be appropriate to allow those specific individuals to have their BO information redacted. This can be achieved without undermining the integrity of the BO register by tightly drafting rules allowing for the redaction of BO information—such as the BO of companies active in controversial areas—in specific circumstances. Redaction may also be appropriate if a beneficial owner is a minor.

Commercial secrecy. Commercial secrecy is a concern that has been raised consistently by private-sector companies. However, recorded examples of negative consequences as a result of transparency are rare. A potential scenario in which BOT could have a direct impact on a legitimate commercial activity might be when a business is buying pieces of land for development through anonymous companies. If it were disclosed that the acquisitions are related, remaining sellers would be able to demand artificially inflated prices. It might be possible to mitigate this risk by allowing for deferred disclosure of BO data in certain circumstances, but such cases are not common.

Data. As discussed earlier, the set of data made public by a register need not be the same set of data collected from reporting entities. Law enforcement agencies and competent authorities might need access to all the data in the register, but the data made public could be limited to what is needed by an external user of the register.

Online portal. National and international access to a register is best facilitated by having an online portal that provides immediate access to the BO data. An online portal can allow users to browse the register and also search for linkages.

7.3 FREE ACCESS

Introducing and administering a BO register has associated costs, including for information technology (IT) system design, implementation and running costs, resources to implement and manage the register, and external technical assistance. In some cases, registers are required or expected to cover the costs through fees charged to those reporting or accessing data.

Several options are available for a register to cover these costs, including:

Charging BO registrants. This spreads the burden over the largest population and avoids the need for international payments. The fees could be added to any annual business registration fees that entities are already paying. This approach generates a stable source of income, but it is often seen as an impediment to data updates, given the cost to entities, and is also a disincentive to businesses to report BO information.

Charging BO register users. This has the advantage of having those who benefit from the register cover the costs. However, it requires a more sophisticated portal that can take payments from users. It also restricts the ability of nongovernmental organizations and others to look at larger quantities of data.

Relying on strict enforcement. Financial penalties for late or incorrect reporting can be used to cover the costs of running the register. This has the advantage of not placing a financial burden on compliant companies and allowing free access. However, this may not generate a sustainable revenue stream. Improving compliance levels may result in fewer fines and therefore less funding.

Ideally, BO registers would be available without any fees being charged. If it is necessary to charge a fee, however, Mongolia could consider a combination of the above-mentioned options, depending on current practice and requirements. It is also important to consider the current charging mechanism for submission and publication of other corporate information.

Recommendations on public registers can be found on page 26.

PUBLIC REGISTER CASE STUDY: EU

The EU has taken a leadership role in BOT. It passed AMLD4 in May 2015 and subsequently the Fifth Anti-Money Laundering Directive (AMLD5), both of which relate to BO. AMLD4 created an obligation for EU member states to implement a public BO register by January 2020.

EU directives set out a minimum requirement that member states are required to adopt but often leave flexibility in the exact way those requirements translate into domestic legislation. As a result, the implementation of public BO registers has not been uniform across the 27 EU member states. Some member states are significantly further along than others in implementing their registers, and the interpretations of "public" have varied.

Variations across the EU include:

The level/status of implementation of AMLD4, with some member states not having met the deadline

The types of data included in the publicly accessible part of the register

Ease of access to those data and whether users must open an account and demonstrate a legitimate interest in the data

Levying of fees to access the data

Denmark is an example of an EU member state that has implemented AMLD4. It is seen as being at the forefront of international best practice on BO disclosure. It was one of the first countries globally to introduce a public BO register and therefore one of the first EU member states to meet the BO obligations of AMLD4. In FATF's October 2019 Best Practices paper, Denmark is one of the most frequently cited countries.¹⁶ Several aspects of Denmark's approach to BO disclosure are cited as examples of best practice, including:

Governance of the company formation and registration process

Existence of a public BO register

Verification of information, including use of technology for automated checking and updating

Mandatory reporting of discrepancies by some users, such as professional advisors

Requirements for foreign owners to register and provide more detailed information

Identification of nominee shareholders (and a ban on bearer shares)

Requirements for record-keeping and the ability of authorities to demand documentary evidence

Enforcement of compliance, including compulsory dissolution of companies that refuse to comply

In its FATF follow-up evaluation in 2018, Denmark's rating for R24 was upgraded to "largely compliant."¹⁷ The only deficiencies noted concerned the lack of coverage of all types of legal persons (e.g., noncommercial foundations and elements related to Greenland and the Faroe Islands, although the follow-up report does not give further details).



8. Findings

The findings from our research, stakeholder interviews and assessment of the status of BOT in Mongolia are as follows:

The political momentum behind reforms in Mongolia has created opportunities for important transparency-related reforms, including the creation of a public BO register. The government is proposing a series of legislative reforms to improve governance and accountability in the business environment. A new Public Information Law is awaiting enactment, and reforms to SOEs have been proposed. The government has also established an anti-corruption task force.

Mongolia has already made considerable progress toward implementing a BO regime that meets FATF requirements. However, the current system has weaknesses that undermine its technical compliance with FATF requirements, its effectiveness, and its alignment with international best practice. Because entities owned by the Mongolian government are exempt from BO reporting obligations, the FATF requirement that all legal entities be in scope have not been met. This exemption creates a potential loophole and is a significant gap in Mongolia's BOT regime. The gap can be addressed by putting in place specific reporting requirements for SOEs (see the next item).

Specific reporting requirements are also needed to ensure sufficient information about companies listed on stock exchanges. Mongolia's BO reporting obligations currently include no specific reporting requirements for those companies. Without the reporting requirements recommended earlier in this report and in the next item, a listed company could report no BO data and the interests of transparency would not be well served. Listed companies should be required to submit information on the markets where they are listed so an assessment can be made of the strength of governance regulations to which they are subject and how they may be held accountable.

Mongolia's BO reporting system should strengthen the provisions related to reporting the existence of PEPs in ownership and control structures. This should include identifying and reporting foreign PEPs. This requires a specific definition of foreign PEPs that is flexible enough to accommodate the variety of potential foreign public officials. It also needs a specific threshold for PEPs and an obligation for companies to report foreign PEPs both in submitting BO information to the GASR and during public procurement processes.

To improve the effectiveness of its BO reporting system, the GASR should put in place a comprehensive verification process. This will require implementation of a wide range of measures at various stages of the BO reporting process, from data entry through enforcement and eventually making the BO register public.

Existing BO-related legislation in Mongolia does not provide an effective framework for capturing cases where the BO arises as a result of direct or indirect control rather than ownership. An effective regime requires a broad definition of control that is set out in primary legislation, supported by a published list of examples that meet the requirement to report. This helps reporting companies make more meaningful submissions and enables the GASR to better verify the data and enforce compliance.

The next section offers more specific recommendations on these matters.

9. Recommendations

OVERALL RECOMMENDATIONS

1. The Mongolian government should obtain technical assistance to help the GASR close gaps between the current BO disclosure system and international best practice, including in the system's verification measures and the implementation of a public BO register.
2. The Mongolian government should introduce regulations to implement BO requirements in the Public Information Law so as much BO information as possible is publicly available and any exemptions are narrow.
3. The Mongolian government should make compliance with BO reporting requirements a condition of participation in public procurement processes. Companies that are not in compliance with the country's BO regulations should be barred from tendering contracts or joining a bidding or winning consortium.
4. The GASR should ensure that data stored in its electronic BO register are in a format that facilitates sharing with other jurisdictions, by using an internationally recognized data standard.
5. The GASR and civil society organizations should monitor the outcome of FATF's review of R24 to ensure that Mongolia's BO disclosure regime continues to meet FATF requirements.
6. LTRC should continue to monitor progress in BOT implementation in Mongolia and help identify potential sources of technical assistance for implementing BO measures.

SOEs

1. The Mongolian government should ensure that the draft SOE law contains provisions on information disclosure, including how control is exercised and who exercises control.
2. The Mongolian government should require SOEs to publicly disclose the following information on how they are controlled by government representatives:
 - a. The percentage of ownership by each government agency
 - b. The name and address of each government agency that is a beneficial owner
 - c. The nationality of each government agency
 - d. The country of incorporation of the government-owned company, if different from the nationality given above
 - e. A notarized copy of proof of ownership, such as an extract from the relevant corporate register
 - f. Details of each government official who exercises control, including:
 - i. Full name and any former name
 - ii. Position and date appointed
 - iii. Nationality
 - iv. Method by which the official exercises control
3. Mongolia EITI should undertake a scoping study on meeting the EITI requirements on SOEs.

LISTED COMPANIES

1. The GASR should collect the following information on companies listed on one or more recognized stock exchanges:
 - a. Proportion of shares listed
 - b. Names of the stock exchange(s)
 - c. A link to stock exchange website pages that provide details on the company's listing
 - d. Any other information the GASR deems relevant
2. Recognized stock exchanges should be the Mongolian Stock Exchange and stock exchanges in OECD member countries, Hong Kong, and Shanghai.

FOREIGN PEPs

1. The Mongolian government should include in its BO regulations a separate definition of foreign PEP that includes high-ranking officials from foreign institutions.
2. The government should include a threshold of 10% in the definition of foreign PEP in its BO regulations.
3. The government should create and enforce a legal obligation for companies to report foreign PEPs in their ownership structure.
4. The government should require bidders for public contracts to disclose any foreign PEPs in their ownership structure or roles (e.g., consultant) in the bid or in the event of winning the contract.

VERIFICATION MEASURES

1. The GASR should put in place a comprehensive and multi-layered verification process for BO information, including all the stages and elements noted earlier in this report.
2. The GASR should ensure that the IT system it implements for the BO register includes, where possible, automated verification measures (e.g., alerts for overdue submissions and comparison of data with data in other government databases).
3. The GASR should develop a system for identifying red flags in submissions from reporting companies, including a clear set of criteria and procedures for investigating red flags.
4. The GASR should review penalties for noncompliance to ensure that they are proportionate and dissuasive.
5. The GASR should require certain users (such as professional advisors and financial institutions) to report any discrepancies. The public register should also have a way for any user to report a discrepancy.

INDIRECT CONTROL

1. The GASR should enact regulations and provide guidance to ensure that the definition of indirect control covers all aspects recommended by FATF and includes catchall provisions that minimize the risk of loopholes, with examples of cases where indirect control does and does not exist.
2. The GASR should require reporting companies to provide details of their ownership structure, including intermediate layers of ownership.

PUBLIC REGISTERS

1. The data that are made public should be limited to the subset of the BO data collected that is sufficient to uniquely identify each beneficial owner and indicate how ownership or control is exercised.
2. The GASR should introduce a system to allow individuals to apply to have their BO data redacted, but only in extremely specific and limited circumstances, as discussed earlier.
3. The GASR should ensure that the BO data are available to the public through a mechanism such as an online portal, allowing immediate and direct access with various searching and visualization options.



10. Conclusion

As Mongolia continues on its journey toward a BOT regime, it will have to make a series of strategic and tactical decisions on the matters discussed in this report to ensure that it puts in place a robust public BO register that meets international best practice.

A robust BOT regime in Mongolia that includes a public BO register and meets international best practice would contribute to:

The government's policy of creating a digital economy

Government efforts to improve the integrity of the business environment and attract investment to the mining sector as well as the wider economy

Government efforts to combat money laundering and other illicit financial flows

Addressing concerns from civil society organizations about corruption, conflicts of interest, and weaknesses in public procurement processes

Allow companies to use BO information in their risk management and due diligence processes and better understand who they are really doing business with and so build trust in the economy



Appendix: Organizations Interviewed

Erdenes Mongol SOE

Erdenes Tavantolgoi JSC

Financial Intelligence Unit, Mongolia

General Authority for State Registration, Mongolia

Independent Authority Against Corruption, Mongolia

Ministry of Finance, Mongolia

Open Government Partnership

Office of the President of Mongolia

Transparency International Mongolia

The authors also interviewed two members of the Parliament of Mongolia, representatives of three SOEs not listed above, and a representative of a commercial bank. All of these individuals requested not to be identified.



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