



Designing sanctions and their enforcement for beneficial ownership disclosure

Ensuring compliance for adequate, accurate, and up-to-date information

Policy Briefing

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Overview

Having adequate sanctions in place, and enforcing them effectively, can drive up compliance with disclosure requirements and increase the accuracy and usability of beneficial ownership (BO) data, thereby complementing verification mechanisms. It can also make legal persons and legal arrangements less attractive for criminals to misuse for the purposes of money laundering, terrorist financing, tax evasion, corruption, and other financial crimes. Research and case studies in recent years have shown that although a legal obligation to disclose BO information is the most effective means of ensuring disclosure, it will prove to be ineffectual unless it is supported by a robust sanctions and enforcement regime.^a

Both the Financial Action Task Force (FATF), an international standard-setting body for anti-money laundering (AML) and combating the financing of terrorism (CFT), and the European Union's fifth Anti-Money Laundering Directive (AMLD5) require countries to apply “effective, proportionate, and dissuasive” sanctions for noncompliance with BOT requirements.¹ Criterion 5.6 of the Immediate Outcome 5 of the 2013 FATF Methodology, which assesses the implementation of beneficial ownership transparency (BOT) requirements by countries, also requires the assessment of the extent to which “effective, proportionate, and dissuasive” sanctions are applied against persons who do not comply with the BO information requirements.²

Nonetheless, despite asking countries to implement “effective, proportionate, and dissuasive” sanctions and enforcement systems for breaches of the BOT provisions, neither the FATF standards nor the AMLD5 prescribe any specific measures that should be applied by countries. There is also limited guidance, research, and available literature on the topic, which makes it difficult for policy makers

and implementers to clearly understand what amounts to “effective, proportionate, and dissuasive” sanctions, and how to ensure their enforcement in practice.

A 2019 joint study conducted by the FATF and the Egmont Group has highlighted the fact that the lack of effective, proportionate, and dissuasive sanctions is one of the most common challenges faced by countries implementing BOT.³ It is difficult to measure the effectiveness of sanctions, as it is challenging to establish direct causal effects between sanctions and compliance rates due to the presence of many other variables, such as a general compliance culture. Whilst high reporting rates cannot be attributable to sanctions alone, high rates have been associated with effective sanctions by the FATF, and the importance of sanctions to compliance is a core premise of this briefing.⁴

This policy briefing aims to highlight some key considerations for policy makers and implementers in putting in place an effective sanctions and enforcement regime for BOT, identifying emerging good practice from different countries and outlining key policy principles. Whilst the briefing has aimed to include a geographical spread of country examples, many of the case studies focus on Western countries, as these tend to be the early-adopters of BOT reforms with the most information published on sanctions and their enforcement. The briefing aims to help policymakers and those implementing BOT reforms to think through various legal, policy and technical aspects of establishing effective sanctions regimes for ensuring BOT. It also briefly analyses some additional aspects that the BO sanction regime can cover – for example, preventing the misuse of data – and the recent developments in a few countries in this regard, although this is not the main focus of this briefing.

^a For example, countries implementing the Extractive Industries Transparency Initiative (EITI) Standard that have introduced voluntary disclosure regimes have experienced low levels of compliance compared to countries that had legal disclosure requirements, such as the United Kingdom.



To ensure sanctions regimes are comprehensive and do not contain loopholes, they should contain:

- sanctions against **all types of compliance violations**, including:
 - non-submission of BO information;
 - late submission;
 - incomplete submission;
 - incorrect or false submission; and
 - persistent noncompliance;
- **monetary fines that are set sufficiently high**, so they are not regarded as the cost of doing business for noncompliance with their BO disclosure requirements;
- **non-financial sanctions** – which may prove more effective than monetary fines – and **criminal sanctions** against both natural persons and legal entities (see [Table 1](#));
- sanctions covering **all the persons involved in declarations and key persons of the company, and the company itself**. This includes the:
 - beneficial owner(s);
 - declaring person;
 - company officers; and the
 - legal entity.

This ensures that offending actors cannot claim plausible deniability or transfer liability to a single actor, and widens the pool of actors that have an interest in ensuring compliance maximising deterrence. If a country has imposed BO-related obligations (such as disclosure or a responsibility to ensure disclosures are accurate) on third parties (such as notaries or lawyers), these should also be made subject to sanctions for noncompliance or breach of their obligations.

The following features were identified in various disclosure systems as having a strong potential to contribute to effectively operationalising sanctions and their enforcement:

- **clearly determining the authority that would be responsible to enforce sanctions** and ensure that the designated authority has sufficient resources, legal mandate, and powers to enforce sanctions, including carrying out investigative or law enforcement functions;
- **establishing proper procedures and processes to ensure the effective exchange of information** between the agencies responsible for enforcement, for instance, between the registrar and prosecution authorities;

- ensuring they have the necessary **jurisdiction over the legal person supplying information about non-domestic entities and beneficial owners**, for instance, by creating a requirement for a domestic legal person to be involved in disclosure;
- **publishing information about noncompliance** and making information on sanctions imposed available to the public to drive up compliance by companies;
- **automating sanctions mechanisms where possible**;
- **establishing a robust verification system** to be able to better detect the submission of false information;
- **reversing the burden of proof** for administrative or civil fines and sanctions.

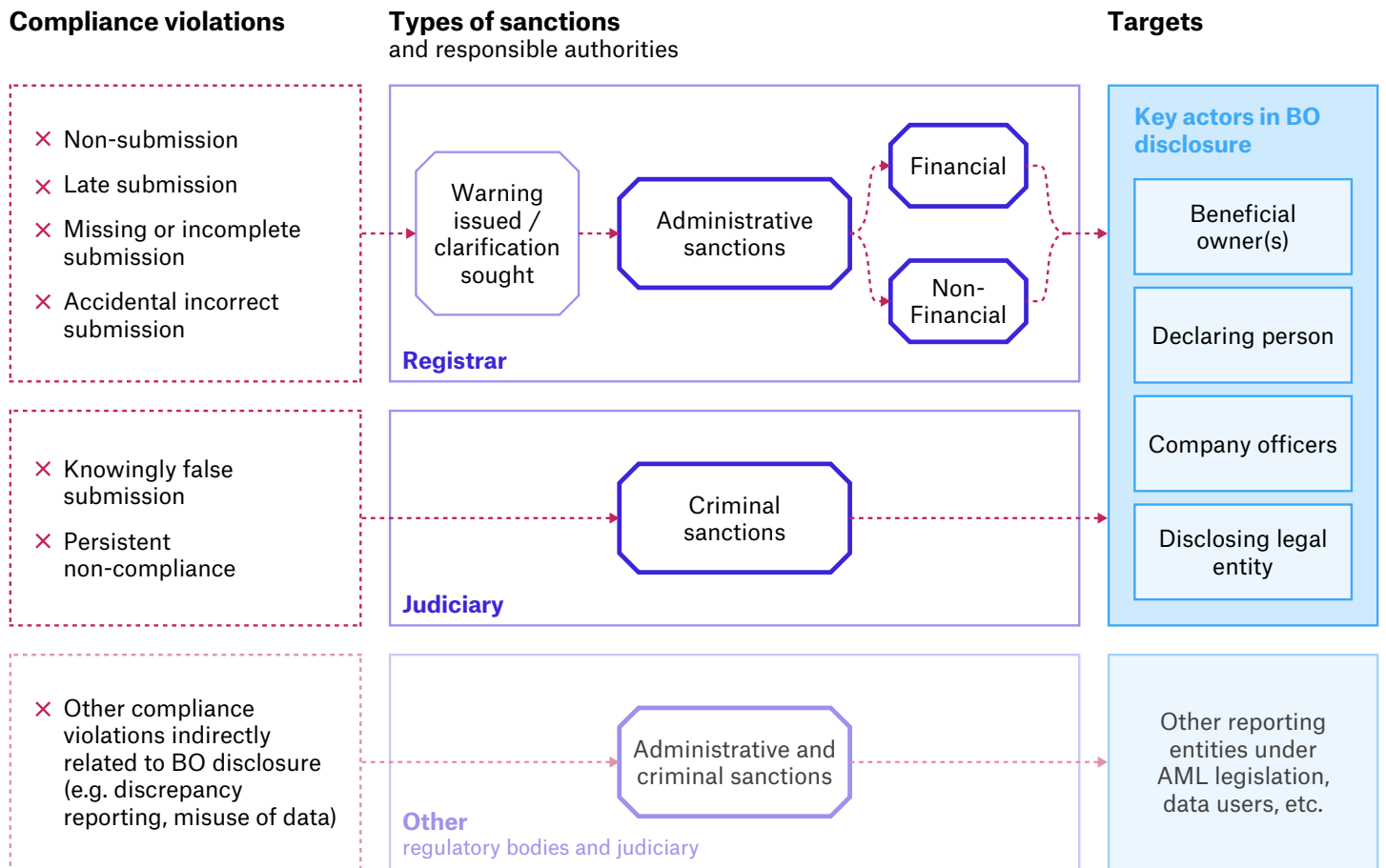
Establishing an effective, proportionate, dissuasive, and enforceable sanctions regime for noncompliance with BO disclosure requirements is a core tenet of the Open Ownership Principles (OO Principles).⁵ The OO Principles set the standard for effective BO disclosure and establish approaches for publishing up-to-date and auditable data,⁶ for which proportionate and dissuasive sanctions and their effective enforcement play a critical role in ensuring compliance and enhancing the quality of data. The OO Principles make published data usable, accurate, and interoperable.

**Table 1. Examples of sanctions according to types and targets**

Types of sanctions	Target: Beneficial owner(s)	Target: Declaring person	Target: Legal entities	Target: Company officers
Financial For country examples, see page 12	<ul style="list-style-type: none"> – Administrative or civil fine – Increasing fines for persistent noncompliance 	<ul style="list-style-type: none"> – Administrative or civil fine – Increasing fines for persistent noncompliance 	<ul style="list-style-type: none"> – Administrative or civil fine as a percentage of turnover – Increasing fines for persistent noncompliance 	<ul style="list-style-type: none"> – Administrative or civil fine – Increasing fines for persistent noncompliance
Non-financial For country examples, see page 13	<ul style="list-style-type: none"> – Restrictions on: <ul style="list-style-type: none"> – voting rights; – shares, including suspending payment of dividends; – board appointment rights; – incorporating new companies 	<ul style="list-style-type: none"> – Revocation of professional or business licence (e.g., in case of notaries, lawyers, accountants, tax advisors, etc.) – Ban on being a declaring or authorised person for legal entities 	<ul style="list-style-type: none"> – Compulsory dissolution, deactivation, or striking off the company from the commercial register – Termination of business relationship by financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) – Ban on profit distribution and payment of dividends – Denial to grant or renew licence – Revocation or termination of licence or concession – Termination of any existing government contracts – Ban on supplying government contracts – Declaring a company dormant or inactive 	<ul style="list-style-type: none"> – Ban or disqualification from taking part in the management of any legal entity – Disqualification from the practice of business activities
Criminal For country examples, see page 15	<ul style="list-style-type: none"> – Criminal fines and imprisonment for severe violations, e.g. knowingly false submissions to the legal entity 	<ul style="list-style-type: none"> – Criminal fines and imprisonment for severe violations, e.g. knowingly false submissions to the register 	<ul style="list-style-type: none"> – Criminal fines 	<ul style="list-style-type: none"> – Criminal fines and imprisonment for severe violations, e.g. knowledge of a false submission to the register



Figure 1. Example of a beneficial ownership transparency sanctions and enforcement regime



Sanctions regimes should cover all types of compliance violations (see page 8), and have administrative financial and non-financial, as well as criminal sanctions (see page 11) for different violations, depending on severity and intent. Sanctions may also cover the noncompliance of other obligations related to disclosure (see page 9). Sanctions should cover all the key persons and entities involved in declarations (see page 16). Implementers should ensure sanctions are effective (see page 21), and enforced (see page 26), for instance, by clearly assigning roles, mandates, and powers to different authorities.



Aims of sanctions

Centralised BO disclosure regimes include legal requirements for companies to disclose their beneficial owners to a mandated government authority. These requirements specify who qualifies as a beneficial owner;⁷ which legal entities and natural persons are subject to disclosure;⁸ what information they should disclose;⁹ and when this information should be disclosed. Laws will also specify who is responsible and allowed to disclose the information. Whilst the responsibility is placed on the legal entity itself, in some countries only designated third parties (e.g. notaries or lawyers) are allowed to disclose information.

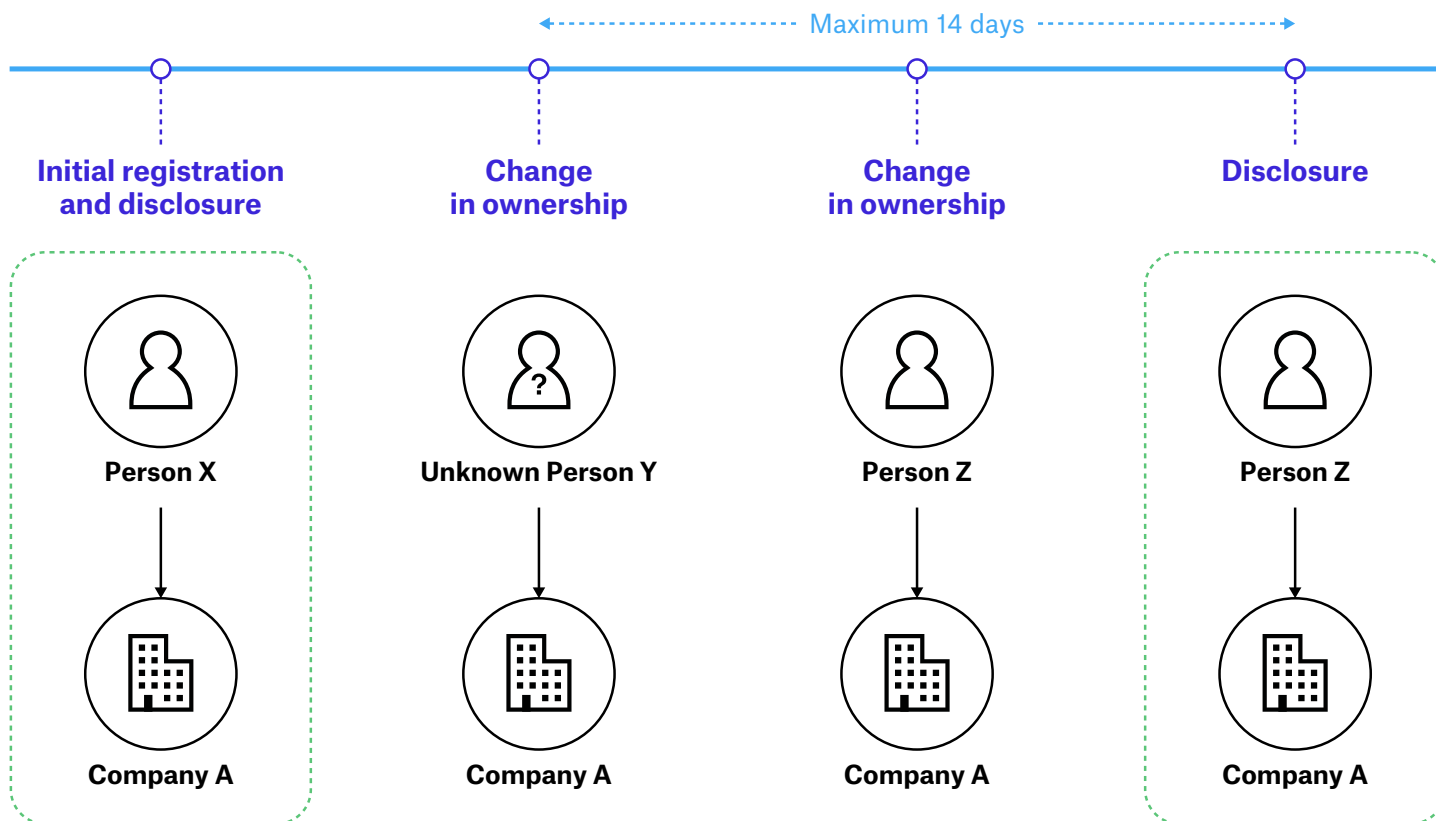
Legal requirements should specify which events trigger the requirement for disclosure and the timeframe within which the information must be submitted. Short time periods should be legally prescribed.¹⁰ Disclosure should follow:

- **initial incorporation** of the legal entity;
- **all subsequent changes** in BO: it is important to require the disclosure of all changes as this otherwise presents a substantial loophole (see [Figure 2](#));
- **a set period of time**: periodic confirmation that the disclosed information is still correct, at least on an annual basis.

The aim of BO sanctions regimes is to drive up compliance to legal requirements and to increase the quality of BO data in order to ensure that the data on the register is “adequate, accurate, and up to date”, thereby complementing verification mechanisms.¹¹ Therefore, an important consideration for policy makers and implementers is to determine the conduct that should be subject to sanctions to ensure the effectiveness of the BOT regime. This section highlights and discusses various potential sanctionable offences that should be included within the BOT regime of a country. It also briefly highlights some of the recent developments and concerns raised on the appropriate use of BO data by users, and discusses the potential sanctionable offences in this regard.



Figure 2. Reporting requirements loophole for changes in beneficial ownership



In this example, Company A has disclosed Person X to be its beneficial owner at initial registration. Later, Person Y replaces Person X as the company’s beneficial owner. The prescribed time period for reporting changes in this jurisdiction is 14 days. Within this time period, the beneficial owner of Company A changes again, from Person Y to Person Z. If there is no requirement to report all changes in BO, Person Y can legally avoid disclosure – and potentially exploit this for illicit purposes – provided that Person Z is disclosed as the beneficial owner within the prescribed time period of the first change in ownership.



Sanctionable offences in beneficial ownership transparency regimes

The following types of conduct constitute different types of noncompliance with BOT regimes, and should be sanctioned by countries to ensure the effectiveness of the disclosure regime.

Non-submission

Non-submission is the failure to submit information at a particular point in time required by law. To facilitate the completeness of the BO data, non-submission of BO data at initial registration should be sanctioned. Failure to submit any subsequent changes in BO to the register in a timely manner should also be sanctioned. In order to close the loophole discussed above (see [Figure 2](#)), a failure to make full and complete disclosures covering any and all subsequent changes to an entity's BO should be sanctioned. Whilst it may be difficult to detect the failure to disclose all changes, even with the most robust verification mechanisms, evidence that a person or company has failed to disclose information may emerge from investigations.

To illustrate, Indonesian law has a provision for sanctions for non-submission of BO data.¹² However, this has not yet been implemented in practice, presenting a gap in ensuring the quality and availability of accurate and up-to-date BO information in Indonesia. As of 28 November 2021, the Indonesian government noted that only 24.50% of companies had disclosed BO information.¹³

Implementers should consider a designated authority issuing one or more warnings or queries before conduct is considered non-submission, which should be subject to heavier sanctions than for late submission. The failure to respond to the designated authorities should also be sanctioned.

Late submission

To facilitate the completeness and accuracy of BO data, late submission of BO data at initial registration or on any subsequent changes to BO information within the prescribed period of time should be sanctioned.

Countries that require the confirmation of the BO data on an annual basis should also sanction non-confirmation or late confirmation. Each country should clearly prescribe a timescale within which the BO data should be confirmed at the end of each year, even when it is integrated into the existing business processes (for example, with the submission of annual returns). There should also be clear guidelines when the submission amounts to a late confirmation or a non-confirmation, leading to sanctions. To determine the timescale, countries should be guided by other provisions of their BO or company law and regulations to ensure consistency and effectiveness; for instance, the timescale provided for updating changes in the BO information. In Ukraine, for instance, BO information must be updated annually, within 14 days after the close of each year.¹⁴ In the United Kingdom (UK), legal entities are required to confirm their BO data to Companies House each year *via* the confirmation statement – the statement which they are required to submit no later than 14 days from the end of the last 12-month period.

The timescale for late submission should be as short as possible, within what is reasonable; for instance, no later than 14 calendar days from the due date after which submission will be considered as non-confirmation. The FATF specifies this should be a “reasonable period” in its Recommendation 24 but does not elaborate beyond this.¹⁵ A draft of legislation proposed by civil society in Canada discussed a period of 30 or 90 calendar days to accommodate legal entities securing attestations and copies of identification from the beneficial owners themselves, which was being proposed as a verification mechanism.



Missing or incomplete submission

Incomplete submission of BO data, either at the initial registration or at any subsequent changes, should be sanctioned to ensure the completeness and accuracy of the BO data. This will encourage the legal entities to submit complete data to the register.

In France, for instance, incomplete or late submissions can lead to a person being prevented from engaging in certain business activities or stripping certain national civil rights, such as being placed under judicial supervision. In addition, the person responsible is subject to six months imprisonment and a fine of EUR 7,500 (approximately USD 8,200). A company is also liable for fine for incomplete or late submission, which is five times the sanction applicable to a natural person.¹⁶

Incorrect or false submission

Both false submission of the BO information and the submission of false supporting evidence should be subject to sanctions. The provision of false information by beneficial owners to the legal entities should also be sanctioned. Good verification systems are required to help detect the submission of incorrect or potentially false information when cross-checking with other available data sources. Imposing sanctions for false declarations, as with other breaches, will complement verification processes.

However, an important policy consideration when determining the applicable sanctions is whether and how to differentiate between deliberate falsehoods and accidental errors. One emerging practice demonstrates that deliberate submission (or facilitating the submission) of false or misleading BO information knowingly or recklessly by natural or legal persons has been dealt with by more severe penalties compared to negligent submission. In Austria, for instance, a fine of up to EUR 200,000 (approximately USD 220,000) can be imposed for intentional violations and EUR 100,000 (approximately USD 110,000) for gross negligence. Similarly, in the Philippines, substantial penalties can be imposed on legal persons or a legal arrangement that “knowingly” provide false or misleading information to the registration authority (i.e. knowingly conceal their BO), including on designated persons within those entities who are responsible for compiling the information and submitting it to the registration authority.¹⁷ Proving that information was deliberately falsified rather than an accidental error can be difficult, and there are very few cases of successful prosecution for deliberate submission of false information. Evidence that false information was deliberately submitted may come from investigations by law enforcement.

Box 1: UK company director’s conviction for submitting false company information¹⁸

In 2018, the UK had its first ever successful prosecution of a company director for deliberately falsifying information about his companies. However, the person in question acted publicly to highlight a loophole.¹⁹

In this case, the company director incorporated two companies, one in 2013 and another in 2016, providing false information about their directors and shareholders. Companies House dissolved both companies and struck them off the register. Action was also taken against the company director who pleaded guilty to filing false information on the UK’s company register, and he has been ordered by the court to pay a fine of over GBP 12,000.

Persistent noncompliance

Countries should ensure that there are appropriate provisions in the relevant law for sanctioning persistent noncompliance with BO disclosure requirements. In Austria, for instance, in the event of a persistent failure to report BO information, coercive penalties will be imposed twice according to the BO disclosure regime.²⁰ Similar provisions on increasing the level of the fine for persistent noncompliance can also be found in the BO disclosure regimes of other countries, such as Greece and the UK.

Noncompliance of additional obligations related to disclosure

If a country has incorporated other relevant provisions in its BO disclosure regime applicable to third parties, it is important to ensure that these parties are made subject to liability, and that dissuasive and proportionate sanctions are put in place for their failure to comply with their obligations. It is important to ensure compliance and the effective implementation of these provisions by other relevant parties. This can include, for instance, imposing obligations on the private sector, such as the requirement for obliged entities to report any discrepancies between their own findings of due diligence processes and centrally registered BO information, also known as discrepancy reporting, as required by the AMLD5.



Other sanctionable offences

In addition to the above conduct, a few jurisdictions have also included other BO-related sanctionable offences within their BO regimes. These include, for instance, measures to ensure that BO data is not misused. Some of the potential misuses of BO data could be, for instance, using or sharing the data for commercial purposes; using it for malicious claims against individuals; or selling or sharing the data with criminals for the purpose of identity theft. The effect of this type of legislation remains to be seen, although this can potentially help mitigate risks arising from the reduction in privacy inherent in BO disclosures, which is even more important when information is made public.²¹ Although this is not the main focus of this briefing, it is nevertheless relevant to bring it to the attention of implementers and policy makers to consider the potential incorporation of such offences within their BO disclosure regime.

Where such provisions exist to prevent the misuse of BO data on the register, BO data access should be auditable and audited on a regular basis in order to enforce these. Such an approach, although in a different context, has also been adopted by the Organisation for Economic Co-operation and Development (OECD) Common Reporting Standard, which requires countries to impose penalties or sanctions for improper disclosure or use of the collected taxpayer data.²⁴

Box 2: Sanctions to prevent misuse of beneficial ownership data

In **Austria**, unauthorised consultation of the BO register is punishable with a fine of up to EUR 30,000 (approximately USD 32,500), and the distribution of BO information to third parties may result in a fine of up to EUR 50,000 (approximately USD 54,100).²²

In the **United States** (US), which is still implementing its BO register, civil and criminal penalties exist for improper disclosure or use of BO data. The Corporate Transparency Act (CTA) provides that except as authorised by the CTA, it is unlawful for any person to knowingly disclose or use the BO information obtained through a report submitted to the Financial Crimes Enforcement Network (FinCEN) under the CTA, or a disclosure made by FinCEN for any unauthorised disclosure or use. Any person making an unauthorised disclosure or use that violates the CTA is liable to the US for a civil penalty of up to USD 500 for each day that the violation continues or has not been remedied, and may be fined up to USD 250,000, imprisoned for up to five years, or both.²³



Types of sanctions in beneficial ownership disclosure regimes

This section provides an overview of different types of sanctions that could be applied to the different BO disclosure-related offences highlighted above, supported by country examples, and discusses their relative merits in achieving the aim of ensuring BOT. These sanctions could be contained either in the specific BO-related laws of a country (as in Albania, Austria, and Luxembourg) or in the penal codes outside the legislation on BO (as in Indonesia and Italy). In the UK, criminal sanctions are covered in primary legislation, whilst administrative sanctions are in secondary legislation. Whilst this will depend on a country's legal system, sanctions should be set in primary legislation if possible, leaving levels of administrative fines in secondary legislation so they are easy to adjust as necessary.

It is important for countries to ensure that a combination of these types of sanctions should be available and applied by the relevant authorities to ensure their effectiveness. As an overarching principle, sanctions should include both financial and non-financial penalties to ensure they are not seen as merely the cost of doing business. This will make them more effective, dissuasive, and proportionate.



Financial sanctions

Financial sanctions are generally the fines, both administrative and criminal,^b which are imposed by the relevant authorities for noncompliance with the BO disclosure requirements. The range of fines imposed for noncompliance with BOT requirements varies between countries:

Table 2. Examples of different levels of financial sanctions in different countries

Country	Financial sanction
Malawi ²⁵	USD 0.35
Kazakhstan ²⁶	USD 7.00
Malaysia ²⁷	USD 12-USD 140
Ghana ²⁸	USD 350
Albania ²⁹	EUR 2,000-EUR 4,000 (approximately USD 2,200-USD 4,400)
Montenegro ³⁰	EUR 3,000-EUR 20,000 (approximately USD 3,300-USD 22,000)
France ³¹	EUR 7,500 (approximately USD 8,200) for individuals and EUR 37,500 (approximately USD 41,100) for legal entities
Belgium ³²	Administrative fine of EUR 250-EUR 55,000 (approximately USD 275-USD 60,300) and a criminal fine of EUR 400-EUR 40,000 (USD 440-USD 44,000)
Slovenia	EUR 6,000-EUR 60,000 (approximately USD 6,600-USD 66,000)
Liberia ³³	USD 100,000 for an individual and USD 1,000,000 for a company
Austria	EUR 200,000 (approximately USD 220,000)
Ireland ³⁴	a fine of EUR 5,000 (approximately USD 5,500) on summary conviction and EUR 500,000 (approximately USD 550,000) on conviction on indictment ^c
Luxembourg ³⁵	EUR 1,250-EUR 1,250,000 (approximately USD 1,370-USD 1,370,000)
Germany ³⁶	Up to EUR 1,000,000 (approximately USD 1,100,000) or up to double the amount of the economic advantage created by the infringement

A number of countries, such as Bulgaria, Croatia, Estonia, France, and Liberia, differentiate between individuals and legal entities when imposing financial sanctions, generally imposing higher fines on legal entities. Nonetheless, it has often been argued that financial sanctions, even if they

are in the high-end range, may be considered an acceptable added cost by those engaging in illegal activities.³⁷ Therefore, it is often recommended that countries also include non-financial and criminal sanctions within their regime.³⁸

^b An administrative fine is a financial penalty which is imposed by the relevant authority as restitution for wrongdoing, which is typically defined in the legislation, regulations, or both, and constitutes an administrative offence. Administrative fines are different from criminal fines, for the former is primarily used to compensate the state for the harm done to it rather than to punish the wrongful conduct.

^c In Ireland and some of the other jurisdictions, including the UK, a summary conviction offence is an offence which can only be dealt with by a judge in the lower court without a jury, and an indictable offence is one which can or must be tried before a judge and jury. The summary offence is a less serious offence when compared to an indictable offence, and it is punishable by a different set of rules, regulations, and lower sentencing guidelines.



Non-financial sanctions

Countries should impose non-financial sanctions on both individual and legal persons for breach of the BO disclosure requirements to ensure their effectiveness. Some non-financial sanctions to be considered by countries that are aiming to enhance compliance with their BO disclosure regime include the following:

Constitutive effect

Constitutive effect means that registration or disclosure itself creates rights.³⁹ Whilst it is not a punishment in the same way as other sanctions discussed in this briefing, it is an important provision and will have a similar impact. Namely, it imposes restrictions on exercising certain rights in a company if the BO information has not been disclosed or updated.

To encourage the registration and updating of BO data on the established BO register within the country, a few countries (such as Austria and Uruguay)^d have provided for the registration to have a constitutive effect, meaning rights within the company exist only upon registration of BO information. BO itself does not have constitutive effect: a person is a beneficial owner of a company irrespective of whether or not that status has been disclosed. However, accurate and up-to-date disclosure can be given constitutive effect with respect to certain benefits associated with company ownership. For example, an unregistered beneficial owner or shareholder could be prevented from voting or receiving dividends. In Uruguay, for instance, bans are imposed on profit distribution in cases where corporations fail to disclose their beneficial owners.⁴⁰ External enforcement of these provisions may, however, be challenging.

A director appearing in the register may be held liable for BO disclosure-related offences, even if they have resigned, unless the information on the register has been updated. Any decision taken by the new directors should be considered void unless their information is on the register. Such an administrative sanction would create an incentive for all parties to ensure that their information is registered and updated.

Non-financial sanctions against companies

These include: preventing companies from incorporating; denying companies the issuance or renewal of particular licences (Malawi);⁴¹ preventing financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) from forming business relationships or executing transactions with an entity that has failed to register or update information on the central BO register (North Macedonia); suspension of the annual certificate of validity (Uruguay and the Philippines); and revocation or termination of licence or concession (Cameroon, Colombia, Indonesia, Kazakhstan, Kyrgyz Republic, and the Philippines).

If a company is not properly registered, the legal vehicle should not be considered to legally exist, or as able to hold assets or engage in business.⁴² In Slovakia, for instance, if a company has been removed from the Register of Public Sector Partners by the Registration Court due to breaches relating to BO disclosure requirements, its existing government contracts can be cancelled, and the company cannot undertake contracts with the government.⁴³

The sanction imposed by North Macedonia prevents FIs and DNFBPs from establishing or continuing a business relationship with an entity that has not provided or updated its BO information on the centralised BO register. This sanction is an important one in turning registers into relevant databases that need to be checked in real time, rather than using them as repositories to store information or documents. If implementers also have discrepancy reporting requirements in place, it is important to consider how these two requirements interact.

Compulsory dissolution or striking off

Some countries take the approach of dissolving or deactivating companies if they fail to comply with BO disclosure requirements. In Denmark, for instance, it is possible for the Danish Business Authority to enforce a compulsory dissolution or the winding up of a Danish company if there is no, or inadequate, BO information registered. Partnerships and limited partnerships that are required to be registered in Denmark can also be struck off from the Central Business Register (CVR) due to providing inadequate BO information or not registering BO information.⁴⁴ Such a provision will have a constitutive effect, as the striking off from the register dissolves the company, and it no longer

^d Georgia has also adopted and is implementing this sanction to ensure that the basic (not BO) information on their commercial register is accurate and up to date. Changes to basic information will only take place after their registration in Georgia's National Agency of Public Registry. Non-registered changes do not have a legal force. For further details, see: *Anti-Money Laundering and Counter-Terrorist Financing Measures: Georgia – Fifth Round Mutual Evaluation Report* (Strasbourg: MONEYVAL Secretariat, September 2020), <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MONEYVAL-Mutual-Evaluation-Georgia-2020.pdf>.



exists as a legal person. In Latvia, for example, 400 companies have been struck off from the Enterprise Registry in 2019 for failing to submit their BO information.⁴⁵ A similar provision can also be found in the Belgian legislation where entities that do not fulfil their BO registration obligations can be made subject to judicial liquidation proceedings in the court by the registrar.⁴⁶

Giving such sanctioning powers to the relevant authority to strike off legal entities from the register if they do not comply with their BO disclosure requirements is not only important to drive up compliance but also to clean up the data, which bolsters verification efforts. In Indonesia, as of 28 November 2021, the government noted that only 24.5% of companies had disclosed BO information.⁴⁷ Reportedly, a substantial proportion of companies are expected to be dormant, but the registrar does not have the powers to strike off all types of companies. To deal with such situations, the registrar should be given the necessary powers to warn and then strike off the company to ensure the availability of up-to-date and accurate BO data.

Nevertheless, registrars should be cautious with exercising this power for new reporting requirements. In Kenya, for instance, low compliance (30-35%) with the BO register is suspected in part to be because many companies are dormant or inactive.⁴⁸ However, reportedly some companies that were set up a long time ago do not have the required historical records, and active companies are struggling to migrate to the e-register platform, as they need high-quality, historical information about their companies – and the company's changing BO over time – in order to do so.⁴⁹

Any legal entity that has failed to submit or confirm its BO information by the due date should be sent warning notices. Failing a legitimate reason, the company should automatically be considered as dormant or inactive and removed from the list of active entities. Such a sanctioning provision would incentivise the companies to keep their BO records up to date. FIs and DNFBPs should also be required to constantly check the list of active entities on the register to ensure that their client entities are still active, and they are thus allowed to operate (e.g., that they can open a bank account, transfer money, sign a contract, etc.) with these entities.⁵⁰ FIs and DNFBPs should not be allowed to establish or continue business relationships with an entity whilst it remains inactive on the register. This could be enforced as part of supervisory inspections by the relevant authorities, in the same manner as the enforcement of the requirement on FIs and DNFBPs to conduct customer due diligence (CDD) checks before establishing business relationships and as part of ongoing monitoring of business relationships.

Sanctions against individuals holding management positions in companies

These include, for instance: criminal proceedings; banning individuals from forming companies or holding management positions if their company has breached BO obligations (Spain and France); disqualification from the practice of business activities (France); or “partial privation from national and civil rights” (France).⁵¹ In Spain, if a company breaches its BO disclosure obligations, the company director(s) can be banned from holding such positions in any company for a maximum of five years.⁵² Sanctions should also be imposed against professional enablers (such as lawyers, accountants, or trust and company service providers, etc.) if they assist a legal entity in concealing their identity; these can include criminal proceedings and the loss of their professional or business licence. In the latter case, the self-regulatory bodies of different professions (such as lawyers, notaries, and accountants) can play a significant role in imposing these sanctions as a part of disciplinary proceedings, provided they have sufficient capacity and resources. These sanctions would be specifically relevant for countries where the BO disclosure regime relies on intermediaries. In these countries, attention should be given to aspects of the legal framework governing intermediaries which may impede compliance and enforcement, such as professional privilege.

An important consideration when incorporating non-financial sanctions in the legal and regulatory framework is ensuring that non-financial sanctions are in line with the BOT policy aims in order to be as dissuasive as possible. For example, in the case of a procurement register, natural and legal persons who have failed to comply with the BO disclosure requirements could be prevented from being considered for government contracts. Such a provision has been adopted by Slovakia; this bars companies from public contracts for up to three years, and imposes a fine of up to EUR 1 million if they fail to comply with the requirements of the law relating to the Register of Public Sector Interests. A similar approach is also under consideration in the UK for its public procurement register, which is considering non-disclosure of BO information as mandatory grounds for exclusion, and adding entities to a debarment list.⁵³



Criminal sanctions

In addition to financial and non-financial administrative sanctions, countries should also impose criminal sanctions against natural persons and legal entities (depending upon the legal system of a country in the latter case, as discussed in more detail below) for the violation of various BOT requirements. Criminal sanctions are recommended to be imposed for more flagrant or repeated violations of the BO disclosure requirements, which involve criminal knowledge and intent rather than accidental errors or omissions. Criminal sanctions include the imprisonment of natural persons for the violation of the BOT regime requirements, and may range from an imprisonment sentence of a few months to a few years. In Cameroon, for instance, a person who violates the BO disclosure regime could be imprisoned for up to three months; in France and the Netherlands, imprisonment could be for a maximum term of six months; in the UK, it could be up to two years; in Zambia, it could be up to five years; and in Poland, it could be up to eight years.

Criminal sanctions are often argued to be more effective than financial sanctions in ensuring compliance with BO disclosure requirements.⁵⁴ Nonetheless, due to the difficulty in proving the knowledge and intent of the concerned person to impose criminal sanctions, countries often do not incorporate criminal sanctions into their regime or limit them to criminal fines. Even in countries where criminal sanctions have been incorporated, there is currently a lack of sufficient data on prosecutions and their implementation. As previously mentioned, there are very few cases of successful prosecution for deliberate submission of false information.

In the US, a proposed approach is to provide a safe harbour and not impose sanctions if a report that contains inaccurate information on BO has been voluntarily corrected within 90 days.⁵⁵ This is conditioned on the inaccurate report not having been submitted to evade the reporting requirements or with actual knowledge of its inaccuracy, which provides a similar challenge in demonstrating knowledge and intent. It appears that this approach has been proposed to protect innocent parties in case of accidental disclosures of incorrect or incomplete BO information. Nonetheless, such an approach should be adopted very cautiously by jurisdictions, as it may result in a loophole which could be exploited to gain extra time. It might also prove difficult for the responsible authority to determine the intent behind inaccurate BO information disclosed initially – whether accidental, reckless, or intentional.



Subjects and targets of sanctions

When legislating for sanctions, policy makers and implementers should consider who should be the subject or target of the BOT sanctions. There are relative merits to applying sanctions against various parties associated with a legal entity as well as the legal entity itself. However, there should be sanctions against all these parties to ensure that offending actors cannot claim plausible deniability or transfer liability to a single actor, and to widen the pool of actors that have an interest in ensuring compliance, maximising deterrence. As a general principle, it is important to ensure that sanctions are available against both the natural persons (the beneficial owner, the person making the declaration, and registered officers of the company) and the legal entity (the company making the declaration) to ensure that the deterrent effect of sanctions applies to all the key actors involved in the declaration.

Beneficial owner(s)

To incentivise compliance from the beneficial owner(s) and to ensure that they cooperate with the legal entity in accurately providing the required information for BO disclosure, it is important to include beneficial owners within the BO sanctions regime. This is an approach that has been adopted by the AMLD5, which requires member countries to impose an obligation on beneficial owners to provide the legal entity with all the necessary information which the legal entity requires to comply with the BO disclosure regime and to apply “effective, proportionate, and dissuasive” measures or sanctions in cases where this obligation is breached by the beneficial owner.⁵⁶ If a nominee has been intentionally declared as the beneficial owner, rather than the actual beneficial owner, sanctions could extend to the nominee. Sanctions should only be applied if the person was complicit, and this was done with knowledge and intent; for example if the person has voluntarily and knowingly done this as a service in exchange for payment. However, if there is evidence that an individual was not informed or was coerced into serving as a nominee, sanctions may not be applicable.

Provisions applying sanctions against beneficial owners can be found in the BO disclosure regimes of a number of countries within the EU, including Austria, Luxembourg, and Poland, as well as in the UK. The type of sanctions that are, or should be, applied against beneficial owners include:

Financial sanctions

In Luxembourg, a financial sanction of up to EUR 1,250,000 (approximately USD 1,370,000) can be imposed on a beneficial owner in the case of their non-disclosure of information or documents to the registered entity, that the entity may need to fulfil its BO disclosure obligations under the law.⁵⁷

Non-financial sanctions

These include, for instance, subjecting the shares or rights of the beneficial owner to restrictions, such as suspending the payment of dividends or voting rights (as in India, Poland, and the UK). A provision that gives companies the power to impose sanctions on beneficial owners for their failure to provide information or for providing false information can be incorporated within relevant BO disclosure laws.

Depending upon their legal system, implementers also need to determine whether a company could reach this decision internally by passing a resolution, or whether it needs to apply to the court for such an order. In the UK, for instance, the effects of a “restrictions notice” on beneficial owners’ rights are set out in the Register of People with Significant Control Regulations 2016 and Companies Act 2006, which can be triggered by the company without an express provision in the company’s articles.⁵⁸ Under the UK law, a company may issue a restrictions notice to the beneficial owner, which has the effect of freezing that person’s relevant interest (their shares, voting rights, or board appointment rights) in a company, if the beneficial owner has failed to respond to two requests from the company to provide the relevant BO information. Implementers should



ensure that a company cannot evade liability by simply declaring their BOs to be uncooperative, and the effectiveness of these sanctions will depend on how they combine with other sanctions, including against the legal entity.

It should be noted that non-financial sanctions may be effective against a beneficial owner where they have an ownership stake in the entity in question, and where the company has an incentive to self-regulate. They will have little impact where the company is a shell company set up wholly for unlawful activities, or where the beneficial owner exercises de facto control over the entity that does not involve formal ownership.

Similar provisions can be found in the US banking legislation which are imposed on “institution-affiliated parties”, who are administratively removed from their positions by the bank supervisory authorities in cases of serious violations of the banking legislation.^e Effective enforceability of these sanctions is limited to regulated industries. Another approach, similar to the one taken by Hungary (see [Box 3](#)), could also be useful if the beneficial owner has failed to provide the necessary BO information required to be disclosed on the centralised register. In addition to applying sanctions against the beneficial owners, it is recommended to also declare or flag such a company as “uncertain” or “unreliable” in the BO register for the competent authorities and reporting entities to take note of such a non-disclosure and apply appropriate due diligence checks and measures accordingly. If such information is disclosed to the reporting entities as a part of their CDD process, they should notify it to the register. This creates an incentive for the legal entity to self-regulate and mitigate potential reputational consequences.

Box 3: “Uncertain” and “unreliable” legal entities in Hungary⁵⁹

Under Hungary’s Act XLIII of 2021 (also called the Ultimate Beneficial Owners’ (UBO) Register Act or the Afad act), which came into force on 22 May 2021, legal entities are assessed on a ten-point reliability index called the TT index. Each legal entity starts with ten points. If an authority, public prosecutor, court, or other reporting entity under the AML/CFT Act detects a material discrepancy between the data it knows and the data uploaded to the central BO register, it may notify the National Tax and Customs Administration of Hungary, which is the responsible authority for maintaining the BO register.

The tax administration will amend the legal entity’s TT index based on this notification. Depending on who the notification is submitted by (a competent authority or by another service provider), the legal entity’s TT index will be reduced by two or one points. A legal entity with a TT index below eight will be labelled “uncertain”, or “unreliable” if it drops below six. Following a change, legal entities will be notified and will have a five-day grace period to amend the data.

The UBO Register Act does not cover monetary sanctions for “uncertain” or “unreliable” legal entities, but it does include other sanctions. These include:

- First, the names of legal entities labelled as “unreliable” will be published on the tax administration’s website. Legal entities labelled as “uncertain” will be published after 180 days, unless the legal entities regain their ten-point TT index in the meantime by duly updating their data.
- Second, all reporting entities under the AML/CFT act (including lawyers, banks, and domiciliary service providers) are banned from facilitating transactions exceeding HUF 4.5 million (approximately USD 13,000) with an “unreliable” client due to their high money laundering risk.

^e U.S. Federal Deposit Insurance Act, section 8(e). An “institution-affiliated party” includes, among others, a controlling person of a bank, roughly the equivalent of a beneficial owner under the FATF Standards.



Criminal sanctions

In the UK, for instance, failure to provide information by a beneficial owner is a criminal offence punishable by two years' imprisonment, a fine, or both. In France, Ordinance 2020-115 also provides that a beneficial owner who fails to provide the legal entity with the required information within the prescribed time limits, or provides inaccurate or incomplete information, shall be liable for criminal sanctions i.e., six months' imprisonment and a fine of EUR 7,500 (approximately USD 8,200). A similar approach has also been proposed by the US, where the breach of BO obligations under the Corporate Transparency Act could result in a fine of USD 10,000 and imprisonment for up to two years.⁶⁰

Declaring person

A declaring person discloses or declares the necessary BO information to the register. Such a declaring person may be an individual or a DNFBP, depending upon the law. A declaring person can be a beneficial owner themselves, but in many instances, they may also be a company advisor (such as a lawyer, auditor, or consultant) or a notary who is required, in some countries, to certify the accuracy of the BO information submitted to the register.

To ensure BO information is made available and updated in an accurate and timely manner, various international standards require legal entities to authorise⁶¹ one or more natural persons who are residents of the country, or a DNFBP, to provide the required BO information.⁶² In compliance with these standards, many jurisdictions require that there is an authorised person who is a resident in the jurisdiction who will be responsible to disclose the necessary BO information to the register. Such an approach is recognised to be particularly useful for ensuring compliance by foreign legal entities with the BO disclosure regime, particularly in terms of enforcement. Nonetheless, to make the disclosures more effective, it is also important that sanctions be applied against these authorised or declaring persons, including the company's representatives, holding them personally liable for noncompliance with the BO disclosure requirements.⁶³

However, in the case of the involvement of third parties (such as lawyers, accountants, and notaries) in disclosing the required BO information, a question often arises as to the liability of a third party if it is not aware of having received false or misleading BO information before providing it to the register. Some countries, such as Slovakia, specifically hold third parties liable for information accuracy as a means of verification (see [Box 4](#)). By contrast, in Ukraine, notaries were reportedly against such a system, as they did not want to be held liable and sanctioned for submitting false information that was provided to them by legal entities who they believed would make it difficult for them to establish whether the information was accurate or not.

To avoid such potential situations, it is important that the law incorporates some preconditions on third-party submissions of the BO information to ensure the effectiveness of sanctions. For instance, in the case of DNFBPs, since they are the entities obliged in the majority of jurisdictions under the AML/CFT framework to submit this information, they are required to carry out proper due diligence on their customers, including verifying the information provided to them based on reliable and independent documents. Such preconditions should also be incorporated in the relevant BO disclosure regime to ensure that the declaring



person undertakes all the necessary BO due diligence checks to verify the accuracy of the BO information before submitting it to the register. If a third party has been found to be in breach of these due diligence checks, resulting in the breach of BO disclosure obligations (for example, the submission of inaccurate, false, or misleading information), they should be held liable for sanctions. Sanctions should also be imposed if they knowingly or recklessly facilitate the submission of false or misleading information to the register.

Box 4: Third-party liability in Slovakia⁶⁴

In Slovakia, the BO information on the Register of Public Sector Partners is required to be filed by an authorised person, which may include a lawyer, notary, auditor, or tax advisor. Under Section 5(6) of the Law on the Register of Public Sector Partners, it is the obligation of an authorised person to provide true and complete information in the application for registration of BO data on the register. The law also obliges an authorised person to notify the registrar within 60 days of the date when any changes have occurred to the BO data and to update the BO information and submit a verification document (Section 9). Section 11(1) of the law clearly states that:

*... the public sector partner and the authorised person shall be responsible for the accuracy of the data entered in the register, the identification of the beneficial owners and the verification of the identification of the beneficial owner.*⁶⁵

Under Section 13 of the Law on the Register of Public Sector Partners, an authorised person shall also be held liable to pay the fine imposed on the legal entity for the provision of false or incomplete BO information in the register unless such an authorised person proves that they have acted with professional care. The authorised person shall also be a party to the proceedings for a financial fine imposed on the legal entity.

Box 5: Provisions on third-party obligations and liability in Denmark⁶⁶

In Denmark when a company is established, the business register requires confirmation from third parties such as a lawyer, auditor or bank that the required capital has been fully paid. This means that parties subject to AML/CFT obligations and required to perform CDD checks are most often involved in a company's incorporation.

Individuals or entities that are creating or managing legal persons in the CVR are required to use a special form of ID (NemID), and are required to sign an electronic declaration stating that the information entered into the CVR is correct. NemID is issued by a government agency, and leaves an electronic footprint with digital information about the person registering that the Danish Business Authority (DBA) can use for the purposes of verification. NemID is also used as a secure internet login for other purposes, such as procuring information from public authorities and online banking.



Company officers

To ensure that the officers of a company take necessary steps to provide adequate, accurate, and up-to-date BO information on the register, it is important that company officers are also covered within the BO sanctions regime. Here, the question might arise as to who qualifies as a company officer. Usually, this includes company directors,^f executives, and management. In Denmark, for instance, if the company does not register the BO information or provide it to the competent authorities, the company and its management have committed a criminal offence.⁶⁷ A similar provision can also be found in France, where the managers of a company can be held liable for criminal penalties (six months' imprisonment and a fine of EUR 7,500, or approximately USD 8,200) or even banned from being involved in the management of companies, for noncompliance with BO disclosure requirements.⁶⁸

In Belgium, if a company fails to comply with the BO reporting requirements, a criminal fine of between EUR 50 and EUR 5,000 (approximately USD 55-USD 5,500, which could be multiplied 8 times) is applicable to directors, and an administrative fine of between EUR 250 and EUR 50,000 (approximately USD 275-USD 60,300) is applicable to those responsible for the infringement: directors, members of statutory board, the executive committee, and persons participating in the effective management.⁶⁹ Jurisdictions should consider including sanctions against the company officers as part of a comprehensive sanctions regime.

Legal entities

In the majority of jurisdictions, liability and sanctions against legal entities for breaches of the BO disclosure regime is a common provision found in the legislation. However, these sanctions are often limited to non-criminal financial and non-financial sanctions.

Imposing corporate criminal liability is not a common feature in the majority of jurisdictions, for applying such a sanction depends largely upon the legal system of the jurisdiction and varies from country to country. In the UK and the US, for instance, corporate criminal liability normally arises in the regulation of corruption and money laundering, whatever the predicate offence. In the UK, it is a criminal offence for a company to disclose false information about their beneficial owners. This is punishable by two years' imprisonment (with the directors also being criminally liable, as mentioned above). Similarly, Section 7

of the UK Bribery Act 2010 also establishes it as an offence for a company to not take adequate measures to prevent bribery.

However, the constitutional appropriateness of imposing corporate criminal liability is an issue of major debate, especially in civil law countries where great emphasis has been placed upon the inability of inanimate actors such as legal entities to have intent, and therefore cannot be held responsible. Nevertheless, some civil law countries, such as Belgium, Denmark, France, and the Netherlands, have also adopted corporate criminal liability, demonstrating to an extent that it is clearly not a constitutional concomitant of the civil code. However, as stated earlier, imposing criminal corporate liability might not work for all countries, depending entirely upon each country's legal system.

^f In the UK, even a shadow director is required to be treated as an officer of the company.



Operationalising effective sanctions

This section highlights some of the key questions and considerations for policy makers and implementers to analyse and answer when operationalising sanctions to ensure that they are effective.

Grace period for operationalising sanctions and enforcement

The first key consideration for policy makers is to determine the grace period (if any) that should be given to legal entities before operationalising sanctions, as well as the duration of the grace period. In many countries, the trend has been to delay the operationalisation of sanctions and their enforcement for a certain period to ensure that legal entities get familiar with the BO disclosure and registration requirements. In Colombia, this initial grace period was eight months,⁷⁰ and the US is considering giving a one year period.⁷¹ Kenya extended its initial deadline in order to “enable compliance.”⁷² These periods can potentially be misused by legal entities knowing that they will not be penalised severely within this period. Therefore, these periods should be set as short as is reasonably possible, in consultation with the private sector; this could be determined using a risk-based approach.

Levels and types of sanctions

To make sanctions dissuasive, the first consideration for policy makers and implementers is to ensure that the level of financial sanctions imposed on entities or natural persons is not set so low that the entities or natural persons find it affordable to pay the fines instead of disclosing their BO information. This level may vary between countries, and there is only anecdotal evidence of levels being set too low. For example, in Ghana, the fine of USD 350 was found to be too low to promote compliance with BO disclosure requirements, as companies reportedly opted to pay the fine because it was cheaper than compliance.⁷³ This also underlines the need for more severe sanctions for persistent noncompliance.

Similarly, the 2019 Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) Mutual Evaluation Report (MER) of Malta noted that the fine on companies, partnerships, and associations ranging from EUR 500-EUR 1000 (approximately USD 550-USD 1,100), together with daily penalties ranging from EUR 5-EUR 10 (approximately USD 5.50-USD 11) for failure to submit their BO information on the register, was too low to be considered dissuasive and proportionate, considering the nature and scale of business undertaken in Malta. In order to address these deficiencies, Malta increased fines tenfold and also introduced non-financial sanctions.⁷⁴ In this instance, countries may consider imposing higher fines; imposing different fines for different sectors based on the sectoral risk; or setting variable fines – for example, as a percentage of turnover or income. However, the latter two approaches do not appear to be current practice yet, which might be due to the challenges in incorporating and imposing such fines in practice. Germany, however, has implemented sanctions “up to double the amount of the economic advantage caused by the infringement.”⁷⁵

To make sanctions dissuasive, countries should not limit their BO sanctions regime to financial sanctions only. The BO legislative regime should also incorporate non-financial sanctions and criminal sanctions against both natural persons and legal persons or arrangements. It is also important that countries should review – and potentially revise – their sanctions on a regular basis to ensure that they remain effective, dissuasive, and proportionate.

It is difficult to measure the effectiveness of sanctions, as it is challenging to establish direct causal effects between sanctions and compliance rates due to the presence of many other variables, such as a general compliance culture. Whilst high reporting rates cannot be attributable to sanctions alone, they have been associated with effective sanctions by the FATF.⁷⁶ Countries with high reporting rates, such as Austria (93% reporting rate, as of July 2019),⁷⁷ Denmark (96% reporting rate, as of January 2019),⁷⁸ and



the UK (99% reporting rate, as of March 2019),⁷⁹ have all extended their BO sanctions regime beyond financial sanctions.

Box 6: Non-financial sanctions in Denmark⁸⁰

In Denmark, registration of the BO information is a prerequisite for obtaining a Central Business Register (CVR) number for most types of legal persons. If the existing persons do not provide or provide inadequate information to the register, the law incorporates a provision for compulsory winding up of the entity. It is a criminal offence for a company and its management to not provide the BO information to the register. Partnerships and limited partnerships, which are required to register in Denmark, could also be struck off from the CVR for providing inadequate BO information or not registering the beneficial owners.

By November 2018, the Danish Business Authority (DBA) had compulsorily dissolved around 7,500 companies for failing to register the BO information within the prescribed timescale. It has been noted that, as of January 2019, approximately 96% of all entities covered by the BO legislation had registered their BO information. Further, 99.8% of the entities covered by the company laws under the DBA's area of responsibility had registered BO information.

Despite high BO reporting rates evident in a few jurisdictions, it is very difficult to determine any exact factors that have contributed to the effectiveness of these BO disclosure regimes. Austria's 93% reporting rate could be due to various factors, such as low-burden and user-friendly data collection and reporting mechanisms; digital reporting guidance; built-in conditions and error indications; and automated verification procedures.⁸¹ Nonetheless, the level of penalties imposed in Austria for noncompliance with the BO disclosure requirements certainly appears to be one of the factors that drives up compliance in Austria, in addition to automating certain sanctions (see [Box 9](#)).

Box 7: Austria's sanctions regime⁸²

Under the Beneficial Owners Register Act (BORA) of Austria, submission of an incorrect or incomplete report or failure to submit a report is sanctioned with a fine up to EUR 200,000 (approximately USD 220,000) for intentional acts or up to EUR 100,000 (approximately USD 110,000) for gross negligence (Art. 15 para. 1 BORA). This includes in particular the following cases:

- inaccurate reporting of beneficial owners;
- unclear information leading to the inability to identify the beneficial owner;
- annual reporting obligation not being fulfilled;
- reporting outside the statutory time period when legal entities are established;
- cases in which certain legal entities are exempt from the reporting obligation but have another natural person as the beneficial owner through control (e.g., through a *Treuhand*, trusteeship agreement or other control relationship) in which case the exemption does not apply and they have failed to report such natural persons to the BO register, as required by the law; and
- cases of not reporting changes of beneficial owners within four weeks of obtaining knowledge of the changes.

In case of a persistent failure to report, coercive penalties are imposed twice under Art. 16 BORA.

Cases where the information reported about beneficial owners to the BO register is correct but – in the course of the voluntary submission of a Compliance Package⁹ – documents transmitted were false or falsified, will be punished with a fine of up to EUR 75,000 (approximately USD 82,000).

Cases in which there is a failure to submit copies of an official photo ID with a report or in which the individual details of beneficial owners who have been disclosed are incorrect or missing are punished with a fine up to EUR 25,000 (approximately USD 27,500).

⁹ A Compliance Package is a set of documents required for identification and verification of BO that may be submitted to the register on a voluntary basis by the legal entities as of 10 November 2020 and, therefore, could be inspected and used by obliged parties for the purpose of fulfilling the due diligence obligations. For further details, see: "Compliance Package", Ministry of Finance, Austria, n.d., <https://www.bmf.gv.at/en/topics/financial-sector/beneficial-owners-register-act/Compliance-Package.html>.



Cases in which it seems that the legal entity intended to provide a correct report but where individual documents were not transmitted or other obligations were not met in the voluntary submission of a Compliance Package, legal entities will be punished with fines up to EUR 10,000 (approximately USD 11,000), if not already covered by an individual sanction.

Relevant best practice in non-beneficial ownership sanctions regimes

There is a possibility that a country may have an effective sanctions regime in another area similar to BO disclosures, such as the submission of annual returns or financial statements by entities. Policy makers and implementers should consider how sanctions and enforcement has been approached by comparable regimes, and whether any best practices could be drawn for their BOT regime.

In Hong Kong, for instance, the Companies Ordinance provides for sanctions against companies that fail to comply with information filing, including failure to submit information on registration and to file annual returns. The Company Ordinance provides that if a company fails to comply within the specified time, the company and every responsible person within the company commits an offence, and they are liable to a HKD 50,000 (approximately USD 6,400) fine. In the case of a continuing offence, they are liable to a further fine of HKD 1,000 (approximately USD 130) for each day that the offence continues.⁸³ The Company Registrar also has the power to strike off the company if they fail to file annual returns for consecutive years, as this is a cause to believe that the company is not in operation or carrying on business.⁸⁴ Hong Kong has also issued the Companies (Amendment) Ordinance 2018, introducing a requirement on companies to obtain and maintain their own BO registers. This Ordinance also contains sanctions for certain acts, such as providing false information. Such legislation may provide lessons to help policy makers and implementers develop an effective sanctions regime for a centralised BO register.

Roles, mandates, and powers of different authorities

There is no uniform approach among jurisdictions as to which authority or agency would be responsible for holding, maintaining, and monitoring the BO register. In some jurisdictions, it is the tax authority (as in Brazil) or the central banks (as in Costa Rica and Uruguay), but most commonly it is the registrar of companies (as in Austria, Denmark, the UK, and Zambia), due to it, in many cases, being the central authority that is already registering companies and therefore most suitable to hold and maintain a BO register. However, the ability of a registrar to verify the information supplied to it is useful only to the extent that it has the legal power to impose sanctions when it is provided with inaccurate, incomplete, or false information.⁸⁵ Although most registrars can impose some form of administrative penalty in the event of noncompliance, such sanctions are typically limited to the suspension or revocation of registration.⁸⁶ They do not have any investigative or law enforcement functions, although they can refer any suspected noncompliance to the relevant prosecuting authorities.

If the enforcement function is to be carried out by the registrar rather than another relevant agency, this would move the registrar's mandate more toward that of a supervisory authority rather than that of a repository. The policy makers and implementers should therefore ensure that necessary legal and policy reforms are introduced so that the registrar of companies or other responsible authorities are able to sanction any breaches of the BO disclosure regime. This includes determining the types of investigatory and enforcement powers that are necessary and appropriate, and likely to be implementable. This is particularly relevant for the BO registrar, which should be entrusted to a non-law enforcement body, such as a registrar of companies. This should include, for instance, the authority to analyse the data for this purpose; the power to request information and documents from and send warnings to legal entities, related natural persons (such as beneficial owners, declaring persons, and officers of the company), and other competent authorities; and the power to sanction natural persons and legal entities for noncompliance (as in Austria).

In the UK, for instance, Companies House is responsible for maintaining the BO register, but lacks the necessary powers to ensure the adequacy and accuracy of the BO data disclosed on the register, and does not have the legal mandate to impose sanctions for breaches of the BO disclosure requirements. This has led to questions over the reliability of the UK's data. To address this gap, a wider set of reforms has been proposed to enhance the mandate and powers of the registrar.⁸⁷



To ensure effective cooperation and coordination between the designated agency and other law enforcement authorities (for example, prosecution to enforce criminal sanctions), proper procedures and processes should also be put in place to ensure the effective exchange of information between the agencies responsible for enforcement. For instance, it should be clear who can issue which types of sanctions and which government bodies can deal with appeals; these should not rely on an overburdened justice system with backlogged courts, as lengthy procedures can present loopholes.

Effective sanctions for foreign entities

Enforcing sanctions against foreign entities has often been identified as a major challenge by countries, especially if the registered officers of the company are located abroad or if the entity's directors themselves are other entities.⁸⁸

To ensure the effectiveness of the BOT sanctions regime against foreign entities, sanctions must be applicable to the person supplying the information, which means that the registrar or other enforcement authority must have jurisdiction over that person. An effective mechanism, as discussed earlier, is to require the authorised natural person, or a DNFBP, to be both responsible for making BO disclosures for foreign entities and for the information to be correct, and to require them to be resident within the jurisdiction. Sanctions should cover all the relevant parties, including the legal entity itself, for violating any BO disclosure requirements.

Recording, reporting, and publishing information on sanctions

FATF Recommendation 33 requires countries to “maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CFT systems.”⁸⁹ In line with this recommendation, another important consideration for policy makers and implementers is to determine how they should record or store the information on any sanctions that are applied against natural and legal persons under the BO disclosure regime, and how regularly this information should be updated. In addition, implementers should determine when and how this information should be made available to the relevant authorities, and whether this information should be available to the public.

The public availability of information on sanctions and noncompliance with BO requirements may drive up compliance and ensure the completeness, accuracy, and currency of the BO data on the register. However, the approach of naming and shaming is unlikely to be effective

if it is not complemented by tough sanctions and enforcement. For example, experiences from the labour market,⁹⁰ improving business payment practices in the UK,⁹¹ and the assessment management sector in Nigeria⁹² have each shown that the approach of naming and shaming companies may not work on its own.

Some of the jurisdictions that have adopted this approach of making sanctions information available to the public include Belgium, Germany, and Poland. To incentivise compliance by entities with the BO disclosure regime, implementers should consider making the sanctions and enforcement information (e.g. fines and blacklisting) available to the public within a defined, short period of time from the date when any sanction has been enforced (e.g. 14 days).



Box 8: Country examples of the public disclosure of sanctions and enforcement information

In **Germany**, any sanctions imposed on companies for failure to comply with their reporting requirements are required by the law to be published on the Transparenzregister's website.⁹³

In **Belgium**, the treasury has identified the publication of a blacklist of noncompliant legal entities or legal arrangements as one of the mechanisms that could be implemented on a medium or long-term basis, although it does not appear to be put into practice yet.⁹⁴

In **Poland**, the law provides that public records maintained by the Commercial Registry Office will indicate any entity that has failed to comply with the obligation of filing the BO information with the centralised BO register.⁹⁵

In the **UK**, Companies House publishes: information on late filing penalties imposed and appeals received; prosecutions by the department under the Companies Act 2006; and disqualification of directors for persistent breaches of companies' legislation, as part of their management information statistics.⁹⁶ The information is published as statistics, however, and companies are not named.



Operationalising enforcement

This briefing has outlined numerous reasons why enforcement of sanctions for BO-related offences can be challenging for implementers. A sanctions regime is credible only to the extent that it is actually used. The imposition of sanctions on those who have breached the BO disclosure requirements needs to be routine. Countries need to ensure that sanctions are robustly enforced.

Therefore, it is key that implementers and policy makers consider implementing sanctions in a way that they can be effectively enforced.

Automating sanctions

Policy makers and implementers should consider automating sanctions where possible. Systems could be developed to identify violations and enforce automated penalties. For instance in Austria and Belgium, legal entities are required to confirm on an annual basis, within a certain timeframe, that their reported BO data is up to date, accurate, and adequate. If this reporting requirement is not fulfilled by the legal entities within the prescribed timeframe, coercive penalties are automatically issued. The FATF has recognised that the automated sanctions system that was adopted by Austria has contributed to achieving an overall reporting rate of more than 93% in the country, as of July 2019.⁹⁷

Box 9: Austria's automated sanctions system⁹⁸

In Austria, automated coercive penalties are used to ensure ongoing compliance with the obligation to report BO information. Authorities automatically send a reminder letter if a report is not filed within a deadline of 28 days for newly established entities, or within the initial reporting period, threatening the legal entity with a EUR 1,000 (approximately USD 1,100) coercive penalty. The penalty is imposed if the legal entity fails to report within the deadline given in the reminder, and a higher penalty of EUR 4,000 (approximately USD 4,400) is threatened. If the legal entity continues to fail to report, the coercive penalty of EUR 4,000 is imposed and the case is forwarded to a responsible fiscal penal authority.

Similarly, in some jurisdictions that automatically cross-check BO information with other government-held data sources for verification, if checks reveal that any data points of a BO declaration have not been updated on the BO register within the prescribed timescale, this can result in automated sanctions. Automated sanctions can reduce resources required for enforcement. However, if automated sanctioning systems are not carefully designed, they can be a resource burden elsewhere (for example, for the judiciary) if increased sanctions lead to a substantial increase in appeals.



Robust verification checks

Verification of BO data is a precondition to enforcing sanctions for the submission of false information, as it will help identify violations. Depending upon the jurisdiction, different verification mechanisms may be put in place.⁹⁹ For example, cross-checking with other available government registers and databases, such as asset declaration registers for politically exposed persons or tax registers, which could be useful in verifying the submitted information. There might also be other verification mechanisms incorporated within the legislative framework, such as a discrepancy reporting requirement for obliged entities.

Whenever a discrepancy between the BO information in the register and BO information another party holds is identified or reported, especially if the data is inaccurate, false, or misleading, the relevant sanctions and enforcement regime should incorporate proper procedures. This should be done whether the discrepancy was reported by automated systems, reporting entities, competent authorities, or civil society. Proper procedures should be followed by the relevant authority before they enforce any sanctions. This may include, for instance, requesting the legal entity, declaring person, or beneficial owner (if applicable) to provide further information or supporting documents on the identified discrepancy, and collecting further information from other competent authorities (such as tax authorities). If these do not lead to a satisfactory resolution, the procedure to enforce sanctions should be followed.

Sufficient capacity, resources, and legal mandate for investigations

Effective enforcement requires the capacity to impose sanctions in the event of noncompliance by the entities, but also noncompliance by the shareholders or beneficial owners who would not disclose requested information to the entity. A known track record of effective enforcement is likely to increase the overall deterrent effect in a jurisdiction.¹⁰⁰

In this regard, implementers should ensure that:

1. the designated authorities for investigating and enforcing any breaches of the BO disclosure regime have clear legal mandates;¹⁰¹ and
2. such authorities and agencies have sufficient capacity and resources (both human and technical) to carry out their functions effectively.

Lack of sufficient capacity and resources is often cited as one of the major hindrances in enforcing BO disclosure requirements. In Belgium, for instance, it has been reported

that due to the limited availability of resources and the extent of the work involved, the designated authority cannot conduct systematic *ex ante* controls of the information registered by legal persons and legal arrangements.¹⁰² Similar resource constraints have also been cited by the UK.¹⁰³

Burden of proof

Another important consideration for policy makers and implementers is to determine on whom the onus lies for proving that the natural or legal person has breached the requirements of the BO disclosure regime or not. It can be placed on the investigators, the enforcement authority, or the natural or legal person. Again, this may vary depending upon the legal system of each country. For administrative or civil fines and sanctions, placing the burden of proof on the natural or legal persons may greatly enhance the quality and accuracy of the BO data submitted on the register. This is the practice adopted in Slovakia. If a natural or legal person has submitted complete, accurate, and up-to-date data on the register, it will be less burdensome for them to prove the accuracy of the submitted information than imposing such an obligation on the investigators, for whom it might become more resource-intensive and time-consuming, especially in countries with limited verification mechanisms. This approach may also be effective for other declarations that are difficult to verify, such as from non-resident legal entities and non-resident beneficial owners.

Box 10: Reversal of burden of proof in Slovakia¹⁰⁴

In Slovakia, there is a proceeding that requires the company to verify the data they submitted on the Register of Public Sector Partners, which is maintained by the Registration Court, on the submission of a query by anyone that the Registration Court finds to be reasonable. This creates a reverse burden of proof that is based on two principles:

1. it is reasonable to require people who register data to prove it is correct, for they have the best access to the data; and
2. it is fair for the burden to be on owners because they benefit most from the ownership.



Conclusion

To ensure the effectiveness of a BO disclosure regime that contains adequate, accurate, and up-to-date BO information, it is critical for countries to adopt and enforce effective, proportionate, and dissuasive sanctions. This policy briefing, along with the OO Principles, provides a framework for thinking about how best to develop and enforce a BO sanctions regime.

To summarise, this policy briefing outlines key considerations for implementers and policy makers to establish an effective, dissuasive, and proportionate sanctions and enforcement regime to drive up compliance with BO disclosure requirements, and ensure adequate, accurate, and up-to-date information. Sanctions regimes should have a combination of administrative, financial, non-financial, and criminal sanctions against both natural persons and legal entities and arrangements. Only having monetary fines, or setting these too low, can lead to sanctions being regarded as a cost of doing business. Various types of non-financial sanctions have been discussed in this briefing, which may be more effective than monetary penalties. To avoid creating liability loopholes, sanctions should cover all the key persons of the company – the declaring person, the beneficial owner(s), and the officers of the company – as well as the company itself. This ensures a deterrent effect applies to all the key actors involved in disclosure. This also means that if a country has imposed BO-related obligations on third parties (such as notaries or lawyers), it must be ensured that these third parties are also subject to sanctions for noncompliance or other breaches of their obligations. In some instances, such as for non-resident BOs and companies, implementers should consider requiring declarations be made – and verified to be correct – by resident third parties, so that key actors in disclosures fall within their jurisdictions. Sanctions should be in place for all forms of noncompliance, including non-submission of BO information, late-submission, incomplete submission, and false submission, as well as persistent noncompliance. Implementers may also wish to consider adding sanctions for other BO-related offences, such as the misuse of BO data.

To effectively operationalise sanctions and their enforcement, it should be clearly determined which authority is responsible for enforcing sanctions. The designated authority should have sufficient resources, legal mandate, and powers to enforce sanctions, including carrying out investigative or law enforcement functions. There should also be proper procedures and processes ensuring the effective exchange of information between the agencies responsible for enforcement, for instance, the designated authority and prosecution. To further increase the potential deterrent effect of sanctions, information on sanctions imposed could be published. Sanctions should be automated where possible, and robust verification checks and processes are required in order to detect noncompliance (e.g. submission of false information). Reversing the burden of proof for administrative or civil fines and sanctions can be a powerful enforcement tool.

Finally, it is difficult to measure the effectiveness of sanctions, as it is challenging to establish direct causal effects between sanctions and compliance rates in the presence of many other variables, such as a general compliance culture. If policymakers tasked with implementing sanctions regimes collect, monitor, and publish statistics on issued sanctions and prosecutions and their outcomes, as well as compliance rates, this will enable others to develop a better understanding about the causal relationship between sanctions and compliance, and what makes sanctions effective, dissuasive, and proportionate.



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