



# What's in it for business? The US case

Lessons from private sector and civil society advocacy  
for beneficial ownership transparency reforms

## Impact Story

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# Overview

Beneficial ownership transparency (BOT) reforms aim to create a more transparent business environment where it is harder both for ill-intentioned suppliers to mislead legitimate corporations and for criminals to hide behind anonymously owned companies and enjoy the benefits of illicit gains.

In a 2017 report, the International Chamber of Commerce's Business Action to Stop Counterfeiting and Piracy (BASCAP) and the International Trademark Association (INTA) estimated that counterfeit and pirated goods would be worth about USD 3 trillion globally by 2022.<sup>1</sup> In the United States (US), anonymously owned companies have been used to sell millions to billions of dollars worth of counterfeit goods, ranging from cellphones to luxury handbags, anti-virus software, and even medicine, thereby potentially presenting a public health risk.<sup>2</sup>

The last few years have seen a rapidly increasing number of countries commit to BOT, with several governments developing legislation and systems to collect, verify, and store information about the natural persons who own or control corporate vehicles – the beneficial owners – and making this information available to a range of data users.

In the US, a variety of business and civil society actors have contributed to the passage of foundational legislation, which has paved the way for beneficial ownership (BO) reforms in the country. The Corporate Transparency Act of 2021 (CTA) provides for a centralised register of beneficial ownership information on companies, accessible to law enforcement and competent authorities.<sup>3</sup> This case study highlights learnings from the decade-long effort to bring about BO reform in the US. It presents useful lessons to help those in civil society and the private sector to support BOT reforms in other countries.

It proved critical that influential actors, such as the Bank Policy Institute (BPI),<sup>4</sup> came out in support of BO reforms as the awareness and understanding of the potential

benefits of BOT for businesses increased. Some of the main benefits to business that private sector actors rallied behind included:

- access to BO data for designated financial institutions to **help comply with anti-money laundering (AML) and Know Your Customer (KYC) regulatory requirements**;
- access to BO data for law enforcement to **investigate and prosecute fraudulent companies**, including those that defraud small- and medium-sized businesses and underbid them over the course of public procurement in order to **protect legitimate businesses**; and
- deterrence for bribery over the course of public procurement and licensing, ensuring more **equal opportunities for legitimate businesses**.

With this in mind, BPI and financial service providers' support for BOT helped rally other corporate voices and balance opposition from other business associations. As such, private sector actors' advocacy strengthened the work of civil society, helping define common goals and achieve legislative progress in the US.

The CTA was signed into law in 2021, turning the focus to how to effectively establish and implement a central BO register in order to generate high-quality, usable data that helps meet the US policy goal of protecting national security by helping prevent and detect the abuse of anonymously owned companies. Over the course of 2021-2023, the US government conducted a number of public consultations to help shape this.<sup>5</sup> Using Open Ownership's principles for effective beneficial ownership disclosure, the following key lessons can be drawn:<sup>6</sup>

- beneficial ownership transparency is in businesses' interest;
- partnerships are critical to laws being passed; and
- effective reforms don't stop at passing laws.

Corporate actors play a central role in advancing the implementation of BO reforms, as they are not only required to disclose data to the BO register, but they also



have an interest in using the data to conduct due diligence on suppliers, partners, and customers. These actors can hold governments accountable for delivering effective reform as well as urging them to use existing resources to ground action in evidence and strive for the greatest impact.

## Context



The US House of Representatives voting on the National Defense Authorization Act for fiscal year 2021, which includes the Corporate Transparency Act. 28 December 2020. Credit: House.gov.

With its roots in AML policy, BOT has been connected to a growing number of policy areas, including anti-corruption, domestic resource mobilisation, and natural resource management.<sup>7</sup> Support for BOT from various actors and institutions has grown steadily since the launch of the first BO registers in 2015. For example, the European Union, the Financial Action Task Force (FATF), the United Nations Convention against Corruption (UNCAC), the G7, the G20, the International Monetary

Fund, the United Nations, the World Bank, extractive companies,<sup>8</sup> and many national and international civil society organisations and media professionals and bodies have all come out in support of BO reforms, although with diverging ideas and standards on what these reforms should look like.



The potential benefits of access to high-quality BO data for private sector entities, and of BOT for business more broadly, have been well established.<sup>9</sup> They include both levelling the playing field to broaden market participation and improve competition as well as allowing businesses to better manage risk. There is a growing trend in voluntary standards around the environmental, social, and governance (ESG) performance of companies, which is creating incentives to use BO data to gain better insights into suppliers, partners, and investees. Some countries, such as Latvia, are implementing BOT to create an enabling business environment and attract inward investment.<sup>10</sup> By March 2023, over 120 countries had committed to BOT in at least one sector of their economy.<sup>11</sup>

Despite growing global momentum, there is still a long way to go in terms of implementation. There is considerable divergence in how reforms are implemented, meaning, they do not always lead to useful and usable information that is accessible for data users, including private sector entities. In some places, both government implementers and potential private sector data users lack awareness and sensitisation on the potential benefits of BOT. Actors across civil society and, increasingly, the private sector have both an interest and a crucial role to play in ensuring that commitments are fulfilled and that effective BO reforms lead to accessible, high-quality information about the real owners of corporate vehicles. This case study explores the role of private sector actors and civil society in driving support for BOT reforms in the US as well as the potential benefits which were critical in eliciting support.

In the US, despite a push for increased transparency in beneficial ownership and some legislative progress aiming to achieve AML goals in the mid-2000s, certain business associations were opposed to proposed legislation. Whilst countries like the United Kingdom (UK) and Ukraine had already moved to establish central BO registers with public access by 2016, the lack of disclosure requirements to authorities at both the state and federal levels meant that the US remained an attractive place for criminals and corrupt individuals to hide their assets.<sup>12</sup>

The US went from the absence of specific BO legislation in the early 2000s to the development of several bills and eventual passage of the CTA as part of the 2020 Anti-Money Laundering Act.<sup>13</sup> In the years leading up to the passage of the CTA, a group of civil society organisations – including the Financial Accountability and Corporate Transparency (FACT) Coalition, Global Financial Integrity, Global Witness, and Transparency International US – sought the backing for BOT reforms from US-based private sector actors in order to gain sufficient political support for the CTA's passage. Some of these actors, who

were initially bystanders to the reform process, became active supporters of BOT. This case study looks at this journey. It highlights why these private sector actors consider BOT to be in their interest, and their role in supporting the passage of foundational legislation in the US.

Based on the experience of civil society advocates who closely worked with private sector actors to push for legislative changes on beneficial ownership in the US, this case study illustrates the impact that private sector action has had on moving towards greater beneficial ownership transparency in the country. It holds useful lessons for why BOT is beneficial for private sector actors, and more broadly for those who wish to lead the way in other countries, to build alliances with peers and ensure business interests can support and benefit from BOT reforms. It also includes useful lessons for international and national civil society organisations looking to engage the private sector to promote BOT reforms.



# Beneficial ownership transparency in the United States

Beneficial ownership is a relatively new area of policy reform. At the global level, the very first attempts to regulate the disclosure, access, and use of information about the real owners of companies go back to standards and mechanisms developed by the FATF and the Organisation for Economic Co-operation and Development (OECD) in the 1990s and early 2000s. These aimed to ensure specific actors would have information on the individuals who own and control companies in order to prevent them from being misused for money laundering and in an effort to tackle predicate crimes. International convergence around this issue continues to grow with, for example, the 2012 FATF Standard's Recommendations 24 and 25 starting to set international standards, including a definition of a beneficial owner as a “natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted” and “who exercise ultimate effective control over a legal person or arrangement”.<sup>14</sup>

Following the 11 September 2001 attacks in the US, countering the financing of terrorism was brought within the scope of the FATF's aims. The USA PATRIOT Act of 2001 first required financial institutions to collect BO information for any new bank account obtained by non-US legal entities and some individuals.<sup>15</sup> The Financial Crimes Enforcement Network (FinCEN) extended this requirement to any legal entity as part of the 2016 Customer Due Diligence Requirements for Financial Institutions.<sup>16</sup>

However, relying on banks – which are obliged to collect and verify BO information from customers – and the companies themselves to provide BO information to authorities upon request proved problematic, as the information was patchy and obtaining it took time and could tip-off those under investigation. US federal policy makers began to understand the lack of access to high-quality BO information as a national security issue, highlighted by a number of US Government Accountability Office studies pointing to a range of issues with US defence procurement, due to a lack of information on suppliers.<sup>17</sup> After the CTA

was signed into law in 2021, the US began implementing a central BO register to obtain BO information through the up-front disclosure by companies to authorities.

The US focus on national security differs from the aims in other countries, where progress on BOT has been driven by a range of policy purposes, including fighting corruption and creating an enabling business environment.<sup>18</sup> Whilst the latter was not a core focus in the US, business interests have played an important role in first blocking, then catalysing the passing of new US regulations on beneficial ownership, which shows the importance of private sector actors in the development of BO reforms. Initial resistance was due in part to a deeply entrenched discourse present in the US political landscape, which stated that any new regulation related to companies' activity and information would necessarily have a negative impact on business interests. Most of the journey of the US private sector support for BOT revolved around debunking this idea.



# The journey of the US private sector in supporting beneficial ownership transparency reforms

## How is beneficial ownership transparency relevant to the private sector?

The private sector includes diverse actors that generally engage in activities that seek to generate a profit, and that are not owned or managed by a government.<sup>19</sup> From large financial institutions and multinational companies, to cooperatives and small and medium-sized enterprises active in a range of sectors, it is important to highlight that private sector actors are not a homogenous group of institutions and individuals. However, many private sector actors are subject to similar or the same legal obligations.

A few arguments have repeatedly been used by some private sector actors across different countries to push back against BOT reforms. One of the most common arguments – and one used by one of the main opponents to BOT reforms in the US – is that imposing BO disclosure obligations on companies would create a costly and unmanageable administrative burden, especially for small businesses.<sup>20</sup> Another concern that is often raised relates to privacy and perceived risks of unwanted publicity or personal harm linked to the accessibility of personal and corporate affiliation information.<sup>21</sup> Whilst these concerns need to be acknowledged and accounted for, implementers have developed approaches to mitigate potential risks to privacy. Additionally, experience in the UK shows that the economic benefits of BOT outweigh the cost of compliance.<sup>22</sup>

In a global study by EY in 2016, 91% of the business executives surveyed thought knowing the beneficial owner of companies with which they do business was important.<sup>23</sup> Knowing and being able to trust quality business partners is key to protecting a company's reputation and limiting major supply chain risks linked to fraud, corruption, counterfeiting, or modern slavery.<sup>24</sup> Direct access to this information by the private sector at large allows it to be integrated into a company's due diligence processes, and for the processes to be automated. Yet, even in places

where only authorised entities can access BO information, BOT reforms still have major advantages for businesses. For example, they make it more difficult for individuals to hide behind companies to win contracts unfairly or that they are not qualified for, at the expense of legitimate businesses. In countries with a strong framework to support the disclosure of and public access to BO information, such as Armenia and Nigeria, some private sector actors have praised the benefits of BOT for business interests and expressed the wish for greater involvement of the private sector to feed into existing processes to continue improving and sustaining BO reforms.<sup>25</sup>

It is important to acknowledge that transparency and privacy are two conflicting values. Many countries decide that, within their national and legal contexts, a degree of infringement on the right to privacy is justified by the broader public interest in access to BO information. However, to a degree, the infringement on privacy can be limited. For example, it is essential that BO reforms align with domestic privacy and data protection legislation. This may involve ensuring that the collection and publication of BO information has a solid legal basis, and that only the information that is necessary to guarantee all benefits of these reforms is made publicly available. For instance, whilst the name of a beneficial owner and their degree of ownership and control in a given company is essential to draw a full picture of ownership structures, sensitive information (such as a beneficial owner's personal address or social security number) is not required for a company to conduct due diligence on a potential supplier.<sup>26</sup> Working with those who might be directly affected by potential privacy risks is essential to developing effective mitigation strategies. For example, in Nigeria, authorities in charge of developing BO reforms closely involved private sector representatives early on in order to ensure their concerns were acknowledged and addressed, and to provide space to identify common ground between public policies and business interests.<sup>27</sup>



## Why did US private sector actors come to support beneficial ownership transparency reforms?

In 2016, as the US expanded due diligence requirements for banks to include BO checks of client companies, civil society organisations (including the FACT Coalition, Global Financial Integrity, Global Witness, and their political allies, philanthropic partners, and others), and increased their engagement with private sector actors to rally support to push for stronger BOT reforms. This engagement played a key role in the passage of the US BO disclosure rules. Civil society organisations' reflections on this engagement also yield important lessons for private sector actors who want to play a leading role in ensuring reforms that promote transparency also benefit business.

Some of the main arguments that helped rally support from a number of private sector actors focussed on the benefits of BO data for business, including:

- access to BO data for designated financial institutions helps to comply with AML and KYC regulatory requirements;

- by using BO data, law enforcement can more easily investigate and prosecute fraudulent companies and protect legitimate businesses; and more generally,
- promoting access to BO data can help deter bribery over the course of public procurement and licensing, and ensure more equal opportunities for legitimate businesses.

A crucial step to securing greater private sector support for BOT reforms was to develop a strong understanding of the business landscape in the US. This included not only understanding who was in favour of or against potential reforms, but also understanding the level of awareness and knowledge of BOT among private sector actors, what influencing power various actors had on policy makers, and what relations existed between various businesses.

This level of analysis allowed advocates to identify a number of key influential actors. The table below covers a number of these, and summarises their profile, influence, and position on BOT reforms at the time.

Private sector actors	Influence and positioning regarding BOT reforms in the US
<b>Conservative small business trade associations, including the National Federation of Independent Business (NFIB)</b>	<ul style="list-style-type: none"> <li>• NFIB is a trade group that self-describes as representing US small businesses. The most vocal among conservative small business trade associations, NFIB was ideologically opposed to BOT and ostensibly concerned about the regulatory burden and costs of new BO rules for businesses.</li> <li>• NFIB and its sizable constituency of business members was identified as being influential on Congressional Republicans.</li> <li>• Despite engagement with private sector and civil society advocates, NFIB remained an <b>opposing</b> voice to BOT in the US.</li> </ul>
<b>Other small business trade associations (for example, Small Business Majority)</b>	<ul style="list-style-type: none"> <li>• Small Business Majority is a national organisation with a network of over 85,000 small businesses and 1,500 business and community organisations that aims to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth.</li> <li>• Several small business associations were key voices in efforts to counter NFIB's and other opponents' arguments, and they <b>supported</b> BOT reforms.</li> <li>• These actors perceived the value of BOT reforms in helping law enforcement to <b>investigate and prosecute individuals behind companies that defraud legitimate small and medium-sized businesses</b> and underbid them over the course of public procurement.</li> </ul>



Private sector actors	Influence and positioning regarding BOT reforms in the US
<b>US Chamber of Commerce</b>	<ul style="list-style-type: none"> <li>• The US Chamber of Commerce is a large business organisation, including small businesses, chambers of commerce across the country, industry associations, and global corporations.</li> <li>• It <b>initially opposed</b> BOT reforms for many years, raising concerns about reporting burdens and the stifling of business innovation and capital formation.</li> <li>• After engagement with some influential representatives from large banks who are members of the US Chamber of Commerce and companies sitting on their Board of Directors, the US Chamber of Commerce did not itself become a vocal advocate in favour of BOT, but <b>provided backing</b> for new BOT rules.<sup>28</sup></li> </ul>
<b>BPI and the financial sector</b>	<ul style="list-style-type: none"> <li>• BPI is a nonpartisan public policy, research, and advocacy group, representing the leading and largest banks in the US. BPI and financial service providers' willingness to develop a more comprehensive understanding of BO – with support of civil society actors – led BPI to understand the benefits of BOT for business, specifically <b>its value in meeting regulatory requirements</b> and interests, and to <b>support</b> the BO disclosure legislation to members of Congress. Some member organisations of BPI became engaged themselves, including lobbying the US Chamber of Commerce.</li> <li>• The financial services sector held some influencing power over congressional committees responsible for passing BOT legislation.</li> <li>• Support from BPI and a variety of small, medium, and large financial sector actors played a role in both softening the US Chamber of Commerce's opposition to BO disclosure legislation and <b>creating a supporting environment</b> for passing the legislation.</li> </ul>
<b>The National Foreign Trade Council (NFTC) and anti-counterfeiting organisations</b>	<ul style="list-style-type: none"> <li>• NFTC is a national business organisation that advocates for the international and public policy priorities of its members (for example, international trade, investment, tax, and export finance).</li> <li>• Sustained engagement with civil society activists helped NFTC as well as member companies and anti-counterfeiting organisations to develop a better understanding of BOT and its potential to <b>prevent business losses due to counterfeit products and smuggling</b>, especially for large brands.</li> <li>• As a result, a number of Fortune 500 corporations provided <b>public support</b>.</li> </ul>
<b>Real estate sector</b>	<ul style="list-style-type: none"> <li>• Anticipating that <b>AML and due diligence obligations</b> might expand to the real estate sector, some of the largest trades in this sector saw both <b>practical and political value to lending some support</b> to BO disclosure.</li> <li>• However, not all real estate professionals supported the reforms, with some actors being worried about a potentially increased regulatory burden.</li> </ul>

This case study illustrates two major factors to ensuring effective private sector support for BOT reforms:

- private sector's understanding of BOT and its benefits for business interests; and
- civil society's understanding of the power relationships between businesses, industry, and trade associations, and sustained engagement with a variety of actors.

Sustained engagement with a group of civil society activists allowed the BPI and financial service providers to reflect on common arguments used to push back against reforms and to see that enhanced BOT would likely contribute to reducing the regulatory burden for banks if they could easily access BO data by reducing the time and effort to carry out mandatory checks. Tacit and mild support from BPI in particular became proactive and engaged support for BOT, influencing the US Chamber of Commerce's position; providing support that outweighed NFIB's opposition; helping to rally other business groups



and industries; and ultimately pushing for the passage of new BOT rules. Securing support for BOT among a variety of actors, including well-known and influential ones as well as across a range of industries, was part of a layered approach that helped to create a sense of momentum and gather further support. For example, besides engagement with businesses and business associations themselves, reformers also secured support from several investment management firms whose clients' assets collectively amounted to a total of USD 740 billion. A civil society organisation representative also stated that engagement with the Secretaries of State who were initially opposed to the reforms to take a neutral position was also critical in securing the passage of the legislation.

Long-term engagement helped actors build a more comprehensive understanding of business relationships. For example, some civil society actors erroneously assumed that the main financial services and trade associations worked closely together in a coordinated way. In terms of engagement strategies to ensure the greatest number

and most influential members of the business community would come out in support of BOT, reformers first engaged trade associations, which helped gain support from their members. In other instances, engaging with a key member of an association helped rally support from the association's staff and leadership and ultimately gather further support from other members.

These examples illustrate how coordination and partnerships between civil society organisations and private sector actors could secure a solid understanding of the business landscape and serve common interests to ensure effective BOT reforms. Civil society organisations pushing for reforms should engage as many private sector actors as possible and sustain this engagement even when first interactions are not fruitful. In turn, business leaders can help build mutually beneficial alliances by signalling their willingness to engage with civil society actors around this topic and being proactive in rallying fellow business leaders.



The Financial Crimes Enforcement Network headquarters in Vienna, Virginia. Source: CoStar



# Key lessons

## Beneficial ownership transparency is in businesses' interest

Understanding how BOT can support businesses to achieve their goals was key in driving greater private sector support for BOT reforms in the US. In summary, BOT can help in the following ways:

1. Many private sector actors are required to comply with reporting obligations related to AML and KYC regulatory requirements; having access to high-quality BO data helps meet these regulatory requirements.
2. Due diligence for operational, financial, and reputational risk is an important aspect of supply chain analysis and risk prevention for any business partnership. Anonymously owned companies are an obstacle to carrying out these checks. BOT helps companies know who they are dealing with and manage risk effectively.
3. Anonymous companies are often used for criminal activities that harm companies both directly and indirectly. BOT is a tool to combat business-related criminal activity, such as counterfeiting, trademark infringements, theft of intellectual property, procurement fraud and corruption, patent trolls, and insurance fraud.
4. Companies and their partners complying with BO disclosure requirements can increase customers' trust in a business. The disclosure and use of BO information is increasingly being used in ESG indicator frameworks.

## Partnerships are critical to laws being passed

The private sector is not a homogenous group of entities and individuals. This case study illustrates how diverse the industries, companies, and associations involved in both opposing and supporting BOT reforms in the US are. Understanding the variety of interests, goals, influences, and networks was key to rallying private sector actors to support BOT reforms in the US. This required both efforts by civil society to build links between various actors, and private sector actors to use their own influence and network to gather further support for common goals.

Whether it is civil society actors seeking to engage with the private sector or business leaders looking to build business coalitions in support of BOT reforms in their countries, the example of the US shows that investing time into comprehensive stakeholder and power mapping is worthwhile, and that partnering across sectors can add value by building greater momentum for reforms.



## Effective reforms don't stop at passing laws

Whilst legislating for BOT is an important step in early implementation, key implementation design decisions will also impact the effectiveness of the reforms.<sup>29</sup> The CTA lays the responsibility for the creation and management of a BO register with FinCEN. Here is a summary of elements that will be essential to consider, which private sector actors can help push for, as the US moves towards implementation:

1. **Continue consulting BO data users.** From legislation to the development of a system to collect and publish BO data and ensuring compliance, policy makers can ensure reforms are rooted in the reality of those who will need to disclose and use the data (for example, businesses, banks, state agencies, etc.) through effective consultation on BOT reforms.<sup>30</sup> In line with this, as of 2021, the US government conducted public consultations to further define how to implement the CTA.<sup>31</sup>
2. **Review legislation.** Private sector, civil society actors, and others can help by reviewing legislation to ensure effective implementation. This can be done as part of a public consultation process or by directly engaging the implementing agency.<sup>32</sup> For example, some of the benefits of BO reforms for businesses depend on who can access BO information, under what conditions, and in which format. If information is only accessible to authorities, many companies may miss out on a range of potential benefits, such as using the information to help manage risk. Nevertheless, even limited access by the authorities and financial institutions can help level the playing field by tackling fraudulent businesses.
3. **Systems that are fit for purpose.** BOT reforms can only be effective if the information is collected, stored, and accessible as structured, high-quality data. A range of tools and guidance exists to help reformers with this. Consultation with businesses who will need to disclose their beneficial ownership can also help ensure that data collection forms are user friendly and minimise the input of incorrect information. There are a range of elements that influence whether the implementation of reforms to improve the BOT of corporate vehicles will lead to effective BO disclosure. These include, but are not limited to:<sup>33</sup>
4. **Machine-readable, interoperable, structured data.** Structured data is data that is highly organised according to a predefined model. Collecting, storing, and making BO information available as structured and interoperable data improves its functionality. It reduces the cost of producing, using, and maintaining the information, and has a greater chance of meeting BOT policy goals. For example, it enables new types of analysis for both technical and non-technical users by allowing websites, apps, and other tools to readily process the data. The Beneficial Ownership Data Standard is a template for publishing structured data about beneficial ownership in a format that can be read and understood by computer systems around the world.<sup>34</sup>
5. **Verified and reliable data.** To maximise the impact of BO registers, it is important that users and authorities can trust that the representation of ownership in a register reflects the reality of who owns or controls a particular corporate vehicle. Governments should put in place a combination of checks and processes to verify BO information to help ensure that BO data is accurate and complete at a given point in time. This can be done, for example, by cross-checking information with different authoritative sources.<sup>35</sup>
6. **Data accessibility.** Open Ownership's research on the use of BO information by financial intelligence units and law enforcement agencies shows that data is most useful when the information includes historical data and access is direct and unfettered, including for foreign authorities.<sup>36</sup> Broad access to BO data can help expand the user base to increase the impact of reforms, and it can also help improve data quality. Public access is one of the most effective ways to ensure that all user groups who can use the information to advance specific policy aims have access to the information.<sup>37</sup>



## Endnotes

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- 11 "The Open Ownership map: Worldwide commitments and action", Open Ownership, n.d., <https://www.openownership.org/en/map/>.
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