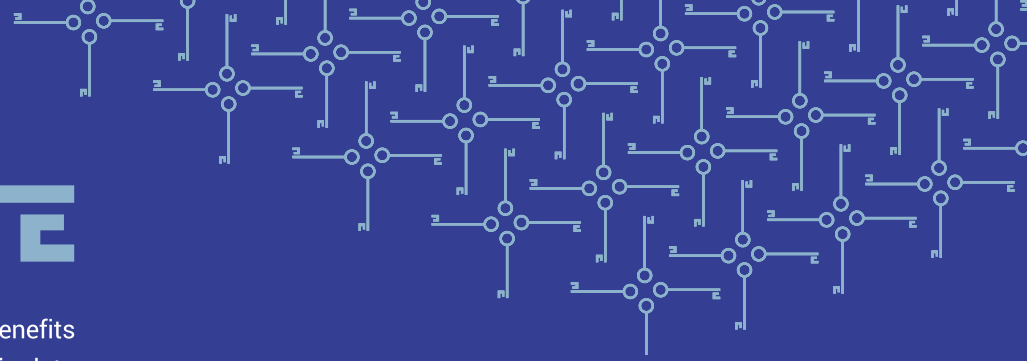




## Opening Extractives

Unlocking the benefits  
of ownership data



Legal analysis report

# Beneficial ownership transparency in Zambia

Jointly implemented by the EITI and Open Ownership

February 2023



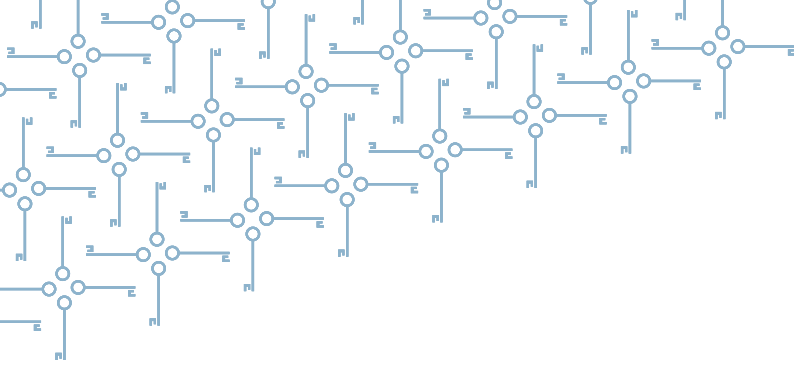


This report was prepared by **Moira Mukuka Legal Practitioners**, the Consultant engaged by Open Ownership to support the strengthening of beneficial ownership transparency in Zambia. The Consultant has undertaken a legislative mapping of the laws that provide for, or are relevant to, beneficial ownership.

Guided by the findings of the legislative mapping report, the Consultant has prepared this report with analysis of the mapped legislation, identifying the gaps and inconsistencies and making recommendations in line with the Open Ownership Principles, the Financial Action Task Force Recommendations 24 and 25 and the Extractive Industries Transparency Initiative Requirement 2.5 on beneficial ownership.

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## Executive summary

This report provides a comprehensive review and analysis of the beneficial ownership (BO) laws, regulations and policies in Zambia. It identifies the gaps, inconsistencies and practical challenges faced in implementing BO in Zambia and provides practical recommendations on how the legislative, regulatory and policy framework on BO can be improved. The report provides an overview of BO transparency in Zambia and pinpoints areas that may require further assistance and support in order to establish an effective BO disclosure regime. Zambia's BO framework has been measured against the Open Ownership (OO) Principles, the Financial Action Task Force (FATF) Recommendations 24 and 25 and the Extractive Industries Transparency Initiative (EITI) Requirement 2.5 on BO.

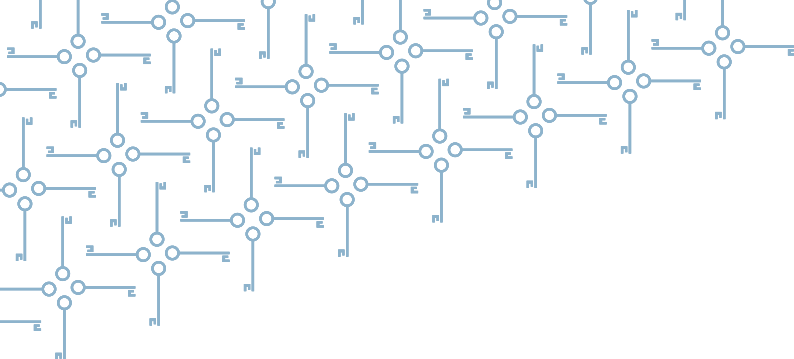
Zambia has made meaningful progress towards effective BO disclosure and transparency. For example, the enactment of the Companies Act, No. 10 of 2017 (the Companies Act), as amended by the Companies (Amendment) Act, No. 2 of 2020, was a major stride towards BO transparency, as it introduced the definition of BO, the creation of a centralised and public BO register and requirements for companies to disclose their BO information to the Patents and Companies Registration Agency (PACRA). However, our assessment of Zambia's BO framework reveals that despite having shown commitment to BO transparency and implementing BO reforms, there are still gaps, conflicts and inconsistencies in the legal framework that hinder effective disclosure. This has been exacerbated by challenges in practical implementation of BO reforms, including the costs and financial implications that come with maintaining a digital public registry and the low level of compliance due to a lack of awareness among private sector actors. Regardless, our analysis reveals that these can be addressed by strengthening the legislative framework through legal reform and introducing practical and more effective institutional approaches to BO implementation.

The next legislative amendment cycle is in the first quarter of 2023, and the Companies Act, among other laws, will be tabled before Parliament for amendment. In this report, our main recommendations relate to amendment of the identified legislation and institutional reforms in order to strengthen and optimise the BO framework.

Some of the suggested recommendations include:

1. Amendment of the Companies Act to include a non-exhaustive list of examples/ways in which BO interests can be held.
2. Harmonisation of the definitions and thresholds of BO.
3. Introduction of an effective enforcement and sanctions regime for breach of BO obligations.
4. Interlinking the PACRA system on BO with public registries and other data platforms hosted by government agencies to enhance verification processes.
5. Implementation of more realistic and effective measures to verify BO information to ensure its adequacy and accuracy.

In the following sections of this report, we identify the gaps and inconsistencies in Zambia's BO legal framework and provide practical and clear recommendations, in line with the OO Principles, the FATF Recommendations 24 and 25 and the EITI Requirement 2.5 on BO, on how Zambia can strengthen its BO regime.



# Introduction

Moira Mukuka Legal Practitioners (hereafter: the Consultant) has been engaged by Global Impact, in collaboration with OO, to support the strengthening of BO transparency in Zambia. The Consultant has undertaken a legislative mapping of the laws that provide for, or are relevant to, BO. Arising from this legislative mapping, the Consultant has prepared this report with analysis of the mapped legislation, identifying the gaps and inconsistencies and making recommendations in line with the OO Principles, the FATF Recommendations 24 and 25 and the EITI Requirement 2.5 on BO. This report primarily focuses on the Companies Act and amendments thereto, as well as on the changes that PACRA should implement in the upcoming legislative amendment cycle to improve the BO transparency of companies in Zambia.

## Methodology

The Consultant undertook legislative and policy mapping (the legislative mapping report), through which it identified the key existing legislative and policy frameworks that guide BO transparency implementation, disclosure and data use in Zambia. The Consultant analysed the mapped legislation using the framework of the OO Principles, the FATF Recommendations 24 and 25 and the EITI Requirement 2.5 on BO. The OO Principles<sup>1</sup> set a standard for effective BO disclosure and guide governments, international institutions, civil society and the private sector in understanding and advocating for effective reforms. They are a set of nine interrelated and interdependent principles centred around data disclosure and collection; data availability and accessibility; and data quality and reliability. The FATF Recommendations<sup>2</sup> 24 and 25 provide specific guidance on the implementation of transparency checks and disclosure on the BO of legal persons and legal arrangements. From an extractive perspective, the EITI Requirement<sup>3</sup> 2.5 recommends that countries publicly disclose BO information and maintain a publicly available BO register.

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1 Open Ownership (updated July 2021), *The Open Ownership Principles*. Retrieved from: <https://openownershiporgprod-1b54.kxcdn.com/media/documents/oo-guidance-open-ownership-principles-2021-07.pdf>.

2 FATF (updated March 2022), *The FATF Recommendations: International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation*. Retrieved from: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

3 EITI (17 June 2019), "EITI Requirements". Retrieved from: <https://eiti.org/eiti-requirements>.

The Consultant undertook its analysis on BO legislation, regulations and policies through desktop research and evaluation of the laws and regulations identified in the legislative mapping report. The Consultant also engaged in-person interviews of representatives from key stakeholders to get their views on the status of BO transparency and what policy or legislative changes could be implemented to improve the legislative framework of BO transparency. The interviews provided context to our findings and highlighted the specific challenges faced in implementing BO transparency and disclosure.

We also presented our recommendations in a stakeholder convening where the stakeholders provided insights on what resources would be required to implement the recommendations. We engaged the following stakeholders:

1. PACRA
2. Financial Intelligence Centre
3. Zambia Public Procurement Authority
4. Zambia Extractive Industries Transparency Initiative
5. Mining Cadastre under the Ministry of Mines
6. Ministry of Lands

### **Report structure**

This report consists of three (3) sections:

- 1. Introduction:** Sets out the general background of the report, the methodology and the synopsis of BO recommendations in the context of the BO legislative landscape in Zambia.
- 2. Legislative and policy review:** Assesses, reviews and analyses the mapped BO legislation by using the following categories:
  - a. *Section*, which identifies the particular section in the relevant legislation requiring comment and analysis.
  - b. *Provision*, which summarises the regulation set out in the identified section of the relevant legislation.
  - c. *Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Recommendations 24 and 25 and EITI Requirement 2.5*, which sets out how the provision in the identified section is inconsistent with or does not fully capture the meaning of the respective OO Principles, FATF Recommendations 24 and 25 and EITI Requirement 2.5 or is otherwise inconsistent with other laws on BO.

- d. *Regulator challenges*, which sets out the practical and institutional challenges, as shared by the regulator, that present a challenge to implementing the provisions of the legislation against the OO Principles, the FATF Recommendations 24 and 25 and the EITI Requirement 2.5 on BO.
  - e. *Recommendations*, which sets out the Consultant's recommendations on how the identified provisions can be amended or rectified to strengthen BO legislation in line with the OO Principles, the FATF Recommendations 24 and 25 and the EITI Requirement 2.5 on BO. It also provides practical recommendations considering the identified challenges faced by the regulator.
- 3. Synopsis of recommendations:** Provides a synopsis of the general and legislative recommendations and assigns them to the responsible agency/ government body.



# Legislative and policy review

## Companies Act, No. 10 of 2017 and the Companies (Amendment) Act, 2022

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation	
1	3.	<p>(a) Defines "beneficial owner", "control", "substantial economic benefit" and "substantial interest".</p> <p>(b) "Substantial economic benefit" is defined to include the benefit realised by a natural person from a corporate body, legally or equitably, of at least 5% of the proceeds of a transaction.</p> <p>(c) "Control" is defined as the control of a company by a person who beneficially owns more than 25% of the issued share capital of the company.</p> <p>(d) Defines BO in the context of a "corporate" and a "legal arrangement", terms which are also defined. However "control" is defined only in the context of a "company".</p>	<p>(a) Does not provide a non-exhaustive list of examples/ways in which BO can be held directly or indirectly as required by the "Definition" OO Principle.</p> <p>(b) The term "transaction" and the nature of the proceeds that amount to economic benefit have not been defined. E.g., a lender or bank receiving interest on a loan transaction may also be captured under this definition.</p> <p>(c) There is currently a discrepancy in the threshold for BO of shares. Paragraph (a) of the definition of "control" in the 2017 Act sets the threshold for control at 25%, which conflicts with the threshold of 5% set out in the definition of "substantial interest". This also conflicts with the OO Principles, which stipulate that thresholds should be set low to reduce the risk that someone with the relevant ownership or control remains hidden.</p>	<p>(a) The Companies Forms do not make provisions for capturing BO information relating to substantial economic benefit derived from transactions.</p> <p>(b) The unclear definition of the parameters to take into account when considering economic benefit from transactions have not been prescribed. PACRA is therefore unable to implement this provision.</p>	<p><b>Definition:</b></p> <p>(a) The Companies Act should be amended to include a non-exhaustive list of examples/ways in which BO can be held as the case, for example, in Slovakia's Act on the Register of Public Sector Partners and on Amendments to Certain Laws (Act No. 315/2015).</p> <p>(b) The Companies Regulations should be amended to make provisions for capturing BO information relating to substantial economic benefit derived from transactions and substantial interest.</p> <p>(c) Amend the definition of substantial economic benefit as far as it relates to transactions by defining the term "transaction". The definition must clarify what parameters should be taken into account when considering economic benefits.</p> <p>(d) Amend the definition of "control" in the Companies Act to make it consistent with the threshold of 5% set out in the definition of "substantial economic benefit" and "substantial interest".</p> <p>(e) Harmonise the definitions of "body corporate", "corporate", "legal arrangement" and "company" in defining what amounts to BO.</p>

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation	
2	12 (3) (e) as read together with Regulations 4 (e), 5 and 11 of the Companies (General) Regulations, SI No. 14 of 2019	Prescribes the particulars to be included, in respect of each beneficial owner, on the statement of BO, as well as the particulars to be included in the Register of Beneficial Owners.	The Regulations expand on the particulars required to be included in a statement of BO at incorporation, over and above what is prescribed in the Companies Act. For example, the Companies Act does not require an applicant to declare their identity number, phone number, number and class of shares owned, etc. This information is required under the Regulations. Applicants have argued that only the provisions of the Companies Act must be adhered to and have challenged the Regulations on account of the seeming inconsistency with the Companies Act.	N/A	<p><b>Detail:</b></p> <p>Section 12 of the Companies Act should be amended by deletion of the particulars to be provided in Section 12(3)(e). It should instead provide that the particulars of BO information shall be as prescribed in the Regulations. This will allow for easier amendment when required, as the Regulations do not need to be amended by Parliament but only by the Minister.</p>
3	12 (3) (e) as read together with 372 and 373	Creates a criminal offence for contravening the Companies Act or failing to comply with a request, direction or order of the Registrar of Companies.	There are no specific sanctions for failing to submit BO information. It is unclear which provision between section 272 and 273 would apply for this criminalised breach. This falls short of the <b>"Sanctions and enforcement" OO Principle</b> which requires adequate, effective, proportionate and dissuasive sanctions for noncompliance.	N/A	<p><b>Sanctions and enforcement:</b></p> <ul style="list-style-type: none"> <li>(a) The Companies Act should be revised to provide that sanctions for breach of BO obligations will be provided under the Regulations.</li> <li>(b) The Regulations should be revised to include specific penalties for different types of compliance violations, including failure to submit BO information; late, incomplete, incorrect or false submission; and persistent noncompliance.</li> <li>(c) The Regulations should clearly specify the targeted person on whom the penalty will be imposed, whether it is the beneficial owner, declaring person, legal entity or the company officers.</li> <li>(d) Compliance violations should be penalised through the imposition of administrative fines and other non-financial sanctions, including restrictions on voting rights, board appointments, processing of annual returns and deactivation of a company where noncompliance has persisted for a specified period of time.</li> <li>(e) Criminal sanctions should be reserved for serious BO violations, such as knowingly making false BO declarations, concealing the true beneficial owners of the company, etc. In this regard, section 359 of the Companies Act on furnishing false information should be amended to include BO.</li> </ul>

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
4	21 (2)	Establishes a central and public registry for BO information.	<ul style="list-style-type: none"> <li>(a) PACRA has found it difficult to effectively collaborate with other regulators and public bodies, as they do not have fully developed online systems that can integrate with the PACRA database which hosts the BO register.</li> <li>(b) The Companies Forms used to obtain BO information do not allow for the capture of BO information for complex legal arrangements and group company structures.</li> <li>(c) The Companies Forms are not user friendly.</li> <li>(d) PACRA has faced resistance to the declaration of BO information from some applicants and stakeholders on the grounds of data privacy and protection.</li> </ul>	<p><b>Access:</b></p> <ul style="list-style-type: none"> <li>(a) The criteria by which one can conduct a search on the public registry should be expanded to, include the name of beneficial owner, identity number of beneficial owner (national identity number or passport number) and taxpayer identification number of beneficial owner.</li> <li>(b) The BO declaration forms should be revised to allow data on the first layer of the ownership chain of a company to be collected for ease and consistency in data collection. The data should be collected in a structured format for interoperability.</li> <li>(c) The requirement to register an account with PACRA in order to access BO information should be removed. BO information should be made searchable by non-PACRA account holders.</li> <li>(d) The nature of BO should be included on the PACRA printout.</li> <li>(e) The Companies Act should be amended to include a broad legal basis for the publication of BO information, such as transparency and accountability, in order to meet requirements of the Data Protection Act No. 3 of 2021 (which provides that restrictions on data privacy can be exempted if done for legitimate and lawful purposes) and to mitigate against challenges for submission of BO information.</li> </ul>

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation	
5	(a) NV_CM_edits Zambia BO Legislative Report #Final #Shared	<p>a) Establishes a public registry that is only open to inspection by the public upon payment of prescribed fees.</p> <p>(b) Regulation 11 (e) particularly allows the Registrar to restrict specific BO information from being made public.</p>	<p>(a) A fee of ZMW 90.00 (approximately USD 5.30) per company is payable to access information of companies. This is a barrier to open access to open data.</p> <p>(b) At present, only law enforcement officers have unrestricted access to BO information on request. Members of the public are required to pay to access information from PACRA.</p> <p>(c) The Registrar has the discretion to exempt specific BO information from being made public under the Regulations, but no provision is given for criteria or guidelines for such exemptions.</p>	N/A	<p><b>Access:</b></p> <p>The regulations should be amended to clearly define and justify the grounds upon which publication of BO information may be exempted.</p>
6	21 (3) as read together with 372 and 373	A company is required to notify the Registrar of any changes in BO within 14 days of the change.	There are no sanctions specific to breach of these BO obligations. The general sanctions for breach under sections 372 or 373 would apply. However, it is unclear which of the two is applicable. Both sections criminalise the breach. This is a gap in relation to the requirements of the <b>“Sanctions and enforcement” OO Principle</b> on effective and proportionate sanctions.	PACRA has a very limited role in sanctions and enforcement, as BO offences attract criminal liability as opposed to administrative penalties.	<p><b>Sanctions and Enforcement:</b></p> <p>Kindly refer to the recommendations on sanctions and enforcement under row 3 above.</p>

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation	
7	124	Registrar must ensure that the BO information of shares is known, ascertained and verified before the shares can be registered.	In practice, PACRA has no capacity to verify BO information provided by companies. Reliance is placed on the honesty of those submitting the BO information.	PACRA is unable to verify the BO information submitted by applicants. Some level of verification for BO would be possible if the PACRA system used the Integrated National Registration Information System (INRIS), hosted by the Ministry of Home Affairs, to verify BO information submitted in relation to Zambians and foreign nationals with Zambian permits.	<p><b>Verification:</b></p> <ul style="list-style-type: none"> <li>(a) Amend the Companies Act to require PACRA to implement measures to ensure the adequacy and accuracy of BO information, including an express provision that information declared to the Registrar shall be legally binding.</li> <li>(b) Invest in an automated IT system to automatically red-flag BO information that is inconsistent with information held on other government databases or information that has previously been declared.</li> <li>(c) Interlink the PACRA system with public registries and other data platforms hosted by government agencies to enhance verification processes. PACRA and other data platforms can rely on the INRIS to verify BO information relating to Zambian nationals or of foreign nationals present in Zambia.</li> <li>(d) Adopt verification measures, such as requiring BO disclosures to be notarised before submission.</li> </ul>
8	270 (3)	Requires a company to lodge an annual return with PACRA within 90 days after the end of each financial year.	The provision states that an annual return, in the case of a public limited company, should include updated BO information. This appears to place the requirement for lodging updated BO information only on public companies and implies that other types of companies, such as private companies and state-owned enterprises, are excluded from this obligation. This falls short of the “ <b>Up-to-date and historical records</b> ” OO Principle, as these types of companies could use this as a basis to not provide updated BO information.	N/A	<p><b>Up-to-date and auditable data:</b></p> <ul style="list-style-type: none"> <li>(a) Section 270(3) of the Act should be amended to make it clear that all companies must confirm, update or provide BO information when filing annual returns.</li> <li>(b) The annual returns indicating change in BO information should be accompanied by the Notice of Change of BO form, which will contain details on the nature and dates of such changes.</li> <li>(c) Section 272 of the Act should be amended to provide that companies should expressly declare that BO information is the same and has not changed when filing a no change annual return. The section should also clearly state that a declaration of BO should be made where there has been a change.</li> <li>(d) The PACRA system should not allow filing of annual returns where a company has not previously disclosed BO information.</li> </ul>

## Registration of Business Names Act, No. 16 of 2011

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
8	Provides for registration of a business as a nominee, trustee or agent of another person or corporation.	Does not provide for BO declaration for trustees and agents.	There is no requirement in the Act or the application forms to disclose the BO of a business registered by trustees or agents.	<ul style="list-style-type: none"> <li>(a) Amend the Act by including an obligation for disclosure of BO information of businesses by incorporating requirements of the Companies Act.</li> <li>(b) Amend the BN Form BIII (Application for Registration of Business Name) to include a requirement for disclosure of BO.</li> </ul>

## Mines and Minerals Development Act, No. 11 of 2015

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
67(4)	Provides for what amounts to control and sets a threshold of 50% of the equity or ability to appoint at least half of the board of directors.	Does not provide for BO declaration requirements.	N/A	<ul style="list-style-type: none"> <li>(a) Include obligation in legislation for mining and exploration licence holders to declare BO information to PACRA. The legislation should also include a requirement for licence holders to provide evidence of compliance with BO declaration from PACRA.</li> <li>(b) Define BO by cross-referencing to the Companies Act.</li> <li>(c) Requirements for BO declaration should be included at licence application stage, renewal stage, transfer stage and at any point where BO changes.</li> <li>(d) Reduce the threshold for what amounts to "control" from 50% of the equity to align with the threshold of control in the Companies Act.</li> <li>(e) The Mining Cadastre system should be linked to the PACRA system in a way that allows Mining Cadastre staff to extract BO information and verify against what has been provided by licence holders and applicants.</li> </ul>

## Mines and Minerals Development (General) Regulations, Statutory Instrument No. 7 of 2016

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
Application Form I	Information to be provided by applicant for licence.	Does not provide for disclosure of BO information.	N/A	(a) Include provision for submission of BO in the forms, for which the Mining Cadastre can verify against the BO register maintained by PACRA.
Notice of change in particular, Form XI	Change in particulars of licence holder.	Does not provide for disclosure change in BO information.		
Application for renewal, Form XIII	Renewal of licence.	Does not provide for disclosure of BO information of applicant.		

## National Mineral Resources Development Policy 2022

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
2.2	Encourages the use of Information and Communication Technology (ICT) and various online platforms as well as entrenchment of transparency and accountability in the Mining Cadastre System.	N/A	Inadequate/ proper ICT infrastructure.	The promotion of ICTs and transparency is a basis for linking the Mining Cadastre System to the PACRA register, which hosts BO information on companies.

## The Lands and Perpetual Succession Act, Chapter 186 of the Laws of Zambia and the Land (Perpetual Succession) (Amendment) Act, No. 11 of 2020

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
4(2) (h) and (i)	The provisions require a person applying for a certificate of incorporation of a trust as a corporate body to submit a statement of BO and declare that such information has been submitted with the knowledge of the beneficiaries.	<p>(a) There is no requirement for the Registrar to verify the accuracy of the information declared in the statement of BO.</p> <p>(b) There is no definition of what amounts to BO in the context of trusts.</p>	<p>(a) There are currently no BO declaration forms. Applicants are therefore required to design their own BO declaration forms, resulting in insufficient information being submitted.</p> <p>(b) There is no BO registry. This makes searching for BO information a challenge.</p>	<p>(a) Amend the Act to provide for verification of information submitted by applicants.</p> <p>(b) The Ministry of Lands system should be linked to the PACRA system in a way that allows their staff to extract BO information and verify against what has been provided by applicants.</p> <p>(c) Develop a standard BO declaration form.</p> <p>(d) Amend the Act to specifically provide a definition of what amounts to BO in the context of trusts, as their corporate structure is fundamentally different from companies and, as such, the reference to trusts in Section 21(2) (c) contained in the Companies Act is insufficient to help a disclosing person determine who a beneficial owner of a trust is.</p>

## Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
N/A	N/A	Does not provide for disclosure of BO information.	N/A	<p>(a) Include a provision that companies that wish to own, purchase, transfer or otherwise convey land must declare their BO to PACRA.</p> <p>(b) Provide a definition of BO which cross-references the Companies Act.</p> <p>(c) The Ministry of Lands system should be linked to the PACRA system to enhance BO verification procedures.</p>



## Financial Intelligence Centre Act, No. 46 of 2010

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
2	Defines “beneficial owner” in terms of an individual exercising effective control or on whose behalf a transaction is conducted.	Effective control is defined to include receiving a large percentage of declared dividends. This definition does not provide a definite threshold for what amounts to control and is uncertain.	Reporting entities do not have the capacity or infrastructure to verify BO information provided by customers.	Amend legislation to include a specific threshold of a share in dividends that amounts to control from an anti-money laundering (AML) perspective.

## Banking and Financial Services Act No. 7 of 2017

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
2	Definition of BO, control and significant shareholding.	<p>(a) One of the qualifications to be considered as having control under the Banking and Financial Services Act is to hold 50% of the issued share capital of a company. This conflicts with the OO Principles, which stipulate that thresholds should be low to reduce the risk that someone with relevant ownership or control remains hidden.</p> <p>(b) Further, the definition of “significant shareholding” means a person who has direct or indirect shareholding or a beneficial interest of 10% or more of the share capital of a financial service provider.</p>	The regulated entities do not follow these reporting requirements.	The threshold under the definition of “control” in relation to issued share capital of a financial service provider should be lowered and harmonised with international or regional standards where applicable.
25	Approval of the Bank of Zambia when you acquire a beneficial interest or the ability to control 25% of the voting rights under any arrangement in a financial service provider.	Beneficial interest is defined under “significant shareholding”, which means a direct or indirect shareholding or beneficial interest of 10% or more of the share capital of a financial service provider.	N/A	For consistency, the definition of BO, control and significant shareholding should be aligned with that in the Companies Act. We recommend a threshold of 5% on the basis that financial service providers are important industries that require stringent and robust disclosure requirements.

## Securities Act, No. 41 of 2016

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
2	Definition of BO, control, insider, nominee, substantial shareholder and take-over.	<p>One of the qualifications to be considered as having control under the Securities Act is 50% of the issued share capital of a company. This is inconsistent with the threshold contained in the Companies Act and the standard requirements for low thresholds.</p> <p>Further, the definition of "significant shareholding" is a person who has direct or indirect shareholding or beneficial interest of 15% or more of the share capital of a financial service provider.</p>	N/A	The threshold under the definition of control in relation to the issued share capital of a company should be lowered to be consistent with the Companies Act.

## Insurance Act, No. 38 of 2021

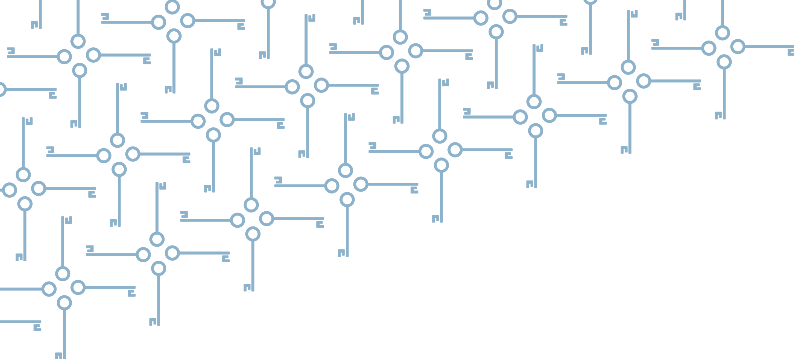
Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
2	Defines BO as provided in the Companies Act.	Mirrors deficiencies of the Companies Act. See part 2.1.	N/A	N/A

## Public Procurement Regulations, Statutory Instrument No. 30 of 2022

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
2	Defines BO as provided in the Companies Act.	Mirrors deficiencies of the Companies Act. See part 2.1.	The electronic government procurement system is not integrated or linked with the PACRA system which hosts the BO information, affecting verification capabilities for procuring entities.	<ul style="list-style-type: none"> <li>(a) Procuring entities and the regulator, the Zambia Public Procurement Authority, should have access to the BO register maintained by PACRA.</li> <li>(b) Amend the Regulations to provide that beneficial owners are also liable to sanctions and not only directors, shareholders and other principal officers of erring suppliers, as is currently the case.</li> </ul>

## Income Tax Act, Chapter 323 of the Laws of Zambia

Section	Provision	Gaps, conflicts and inconsistencies with other laws, OO Principles, FATF Rec. 24 and 25 and EITI Requirement 2.5	Regulator challenges	Recommendation
2	Defines BO as provided in the Companies Act.	Mirrors deficiencies of the Companies Act. See part 2.1.	N/A	Zambia Revenue Authority should have access to the BO register maintained by PACRA on companies, the Ministry of Lands on Trusts and the INRIS for verification purposes.



# Synopsis of recommendations

Responsible agency	Legislative recommendations	General recommendations
<b>Patent and Company Registration Agency</b>	<ul style="list-style-type: none"> <li>(a) The Companies Regulations should be amended to make provisions for capturing BO information relating to substantial economic benefit derived from transactions and substantial interest.</li> <li>(b) Amend the Companies Act to include a non-exhaustive list of means/ways in which BO can be held, as is the case, for example, in Slovakia's Act on the Register of Public Sector Partners and on Amendments to Certain Laws (Act No. 315/2015).</li> <li>(c) Amend the definition of substantial economic benefit as far as it relates to transactions by defining the term "transaction". The definition must clarify what parameters should be taken into account when considering economic benefits.</li> <li>(d) Amend the definition of "control" in the Companies Act to make it consistent with the threshold of 5% set out in the definition of "substantial economic benefit" and "substantial interest".</li> <li>(e) Amend Section 12 of the Companies Act by deletion of the particulars to be provided in Section 12(3)(e). It should instead provide that the particulars of BO information shall be as prescribed in the Regulations.</li> <li>(f) Revise the Companies Act to provide that sanctions for breach of BO obligations will be provided under the Regulations.</li> <li>(g) Revise the Companies Regulations to include specific penalties for different types of compliance violations, including failure to submit BO information; late, incomplete, incorrect or false submission; and persistent noncompliance.</li> <li>(h) Revise the Companies Regulations to clearly specify the targeted person on whom the penalty will be imposed, whether it is the beneficial owner, declaring person, legal entity or company officers.</li> <li>(i) Revise the Companies Regulations to provide for penalisation of compliance violations through the imposition of administrative fines and other non-financial sanctions, including restrictions on voting rights, board appointments, processing of annual returns and deactivation of a company where noncompliance has persisted for a specified period of time.</li> <li>(j) Revise the Companies Act and Companies Regulations to reserve criminal sanctions for serious BO violations, such as knowingly making false BO declarations, concealing the true beneficial owners of the company, etc. In this regard, section 359 of the Companies Act should be amended to include BO.</li> <li>(k) Revise the BO declaration forms to allow data on the first layer of the ownership chain of a company to be collected for ease and consistency in data collection. The data should be collected in a structured format for interoperability.</li> <li>(l) Amend the Companies Act to include a broad legal basis for the publication of BO information, such as transparency and accountability, in order to meet requirements of the Data Protection Act No. 3 of 2021 and to mitigate against challenges for submission of BO information.</li> </ul> <p>&gt; continues on page 20</p>	<ul style="list-style-type: none"> <li>(a) One of the qualifications to be considered as having control under the Banking and Financial Services Act is to hold 50% of the issued share capital of a company. This conflicts with the OO Principles, which stipulate that thresholds should be low to reduce the risk that someone with relevant ownership or control remains hidden.</li> <li>(b) Further, the definition of "significant shareholding" means a person who has direct or indirect shareholding or a beneficial interest of 10% or more of the share capital of a financial service provider.</li> </ul>

Responsible agency	Legislative recommendations	General recommendations
<b>Patent and Company Registration Agency</b>	<ul style="list-style-type: none"> <li>(m) Amend the Companies Regulations to clearly define and justify the grounds upon which publication of BO information may be exempted.</li> <li>(n) Amend the Companies Act to implement measures to ensure the adequacy and accuracy of BO information, including an express provision that information declared to the Registrar shall be legally binding.</li> <li>(o) Adopt verification measures, such as requiring BO disclosures to be notarised before submission.</li> <li>(p) Strengthen verification by having recourse to the INRIS.</li> <li>(q) Amend section 270(3) of the Act to make it clear that all companies must confirm, update or provide BO information when filing annual returns.</li> <li>(r) The annual returns indicating change in BO information should also include the nature of the BO and the dates on which BO commenced or ended, as the case may be. This should be accompanied by the Notice of Change of BO form.</li> <li>(s) Amend section 272 of the Companies Act to provide that companies should expressly declare that BO information is the same and has not changed when filing a no change annual return. The section should also clearly state that a declaration of BO should be made where there has been a change.</li> <li>(t) Amend the Registration of Business Names Act by including an obligation for disclosure of BO information of businesses by incorporating requirements of the Companies Act.</li> <li>(u) Amend the BN Form BIII (Application for Registration of Business Name) to include requirement for disclosure of BO.</li> </ul>	<ul style="list-style-type: none"> <li>(a) One of the qualifications to be considered as having control under the Banking and Financial Services Act is to hold 50% of the issued share capital of a company. This conflicts with the OO Principles, which stipulate that thresholds should be low to reduce the risk that someone with relevant ownership or control remains hidden.</li> <li>(b) Further, the definition of “significant shareholding” means a person who has direct or indirect shareholding or a beneficial interest of 10% or more of the share capital of a financial service provider.</li> </ul>
<b>Ministry of Mines and Minerals Development</b>	<ul style="list-style-type: none"> <li>(a) Amend the Mines Act to include an obligation for mining and exploration licence holders to declare BO information to PACRA. It should also include a requirement for licence holders to provide evidence of compliance with BO declaration from PACRA.</li> <li>(b) Amend the Mines Act to define BO by cross-referencing to the Companies Act.</li> <li>(c) Amend the Mines Act to require BO declaration at licence application stage, renewal stage, transfer stage and at any point where BO changes.</li> <li>(d) Amend the Mines Act to reduce the threshold for what amounts to “control” from 50% of the equity to 5% to align with the threshold in the Companies Act.</li> <li>(e) Amend the Mines Regulations to include provisions for submission of BO in the declaration forms, for which the Mining Cadastre can verify against the BO register maintained by PACRA.</li> </ul>	<ul style="list-style-type: none"> <li>(a) The Mining Cadastre system should be linked to the PACRA system in a way that allows Mining Cadastre staff to extract BO information and verify against what has been provided by licence holders and applicants.</li> <li>(b) The Ministry of Mines can strengthen verification by having recourse to the INRIS as a reference point.</li> </ul>

Responsible agency	Legislative recommendations	General recommendations
<b>Ministry of Lands</b>	<ul style="list-style-type: none"> <li>(a) Amend the Lands (Perpetual Succession) Act by providing a definition for BO which is specific to trusts.</li> <li>(b) Amend the Lands (Perpetual Succession) Act to provide for verification of information submitted by applicants.</li> <li>(c) Promulgate regulations for the Lands (Perpetual Succession) Act to create a standard BO declaration form.</li> <li>(d) Provide a definition of BO in the Lands and Deeds Registry Act which cross-references the Companies Act.</li> <li>(e) Include a provision that companies that wish to own, purchase, transfer or otherwise convey land must declare their BO to PACRA.</li> </ul>	<ul style="list-style-type: none"> <li>(a) The Ministry of Lands system should be linked to the PACRA system in a way that allows their staff to extract BO information and verify against what has been provided by applicants.</li> <li>(b) Strengthen verification by having recourse to the INRIS.</li> </ul>
<b>Financial Intelligence Centre</b>	Amend legislation to include a specific threshold of a share in dividends that amounts to control from an AML perspective.	N/A
<b>Bank of Zambia</b>	<ul style="list-style-type: none"> <li>(a) Amend the Banking and Financial Services Act by lowering the threshold under the definition of "control" in relation to issued share capital of a financial service provider.</li> <li>(b) Revise the Banking and Financial Services Act by amending the definition of BO, control and significant shareholding to be aligned with that in the Companies Act. We recommend a value of 5% on the basis that financial service providers are important industries that require stringent and robust disclosure requirements.</li> </ul>	N/A
<b>Securities and Exchange Commission</b>	The threshold under the definition of control in the Securities Act in relation to the issued share capital of a company should be lowered to be consistent with the Companies Act at 25%.	N/A
<b>Zambia Public Procurement Authority</b>	Amend the Regulations to provide that beneficial owners are also liable to sanctions and not only directors, shareholders and other principal officers of erring suppliers, as is currently the case.	<ul style="list-style-type: none"> <li>(a) Procuring entities and the regulator, the Zambia Public Procurement Agency, should have access to the BO register maintained by PACRA.</li> <li>(b) Procuring entities may seek to strengthen verification by having recourse to the INRIS.</li> </ul>
<b>Zambia Revenue Authority</b>	N/A	The Zambia Revenue Authority should have access to the BO register maintained by PACRA on companies, the Ministry of Lands on Trusts and the INRIS for verification purposes.



## Disclaimer

- (a) This report was prepared using desktop research and verbal interviews with relevant regulatory and government institutions.
- (b) This report is based on Zambian law as at the date hereof.
- (c) We express no opinion on, and have taken no account of, the laws of any jurisdiction other than Zambia.





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