



# Defining and capturing information on the beneficial ownership of listed companies

Policy Briefing

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# Overview

Publicly listed companies (PLCs, or listed companies) are companies that offer some or all their shares of stock to the general public to trade on securities markets through a stock exchange.<sup>1</sup> They play a significant role in the global economy, and many of the world's largest and most valuable companies are PLCs. A PLC's ownership is often distributed among general public shareholders through the free trade of shares on stock exchanges or over the counter markets.<sup>2</sup>

It was estimated that at the end of 2017, there were approximately 41,000 listed companies in the world with a combined market value of nearly USD 84 trillion, which was roughly equivalent to the global GDP.<sup>3</sup> The total market capitalisation of listed companies increased between 2017 and 2022, reaching nearly USD 98.5 trillion in 2022, with the world's top 50 PLCs holding over a quarter of the proportional market share of global GDP in 2020.<sup>4</sup>

In light of the role of PLCs in the global economy, it is important that securities markets function well. To protect existing and potential investors and foster confidence in the markets, PLCs are often made subject to strict transparency and disclosure requirements by jurisdictions where they are registered or listed. For instance, they are often required to file certain reports to their respective regulators on an annual, quarterly, or ongoing basis, such as audited financial statements, management reports, responsibility statements, and beneficial interest (BI) reporting.

Since the mid-2010s, many jurisdictions have been implementing beneficial ownership transparency (BOT) reforms through requiring the upfront disclosure by corporate vehicles of their beneficial ownership (BO) to a central government register. Many countries are doing so in order to comply with Recommendations 24 and 25 of the global anti-money laundering (AML) standard-setting body, the Financial Action Task Force (FATF). To ensure an effective BO disclosure system, and to ensure

it can achieve the widest range of policy aims, disclosure requirements should comprehensively cover all relevant types of entities and arrangements.<sup>5</sup>

There are, however, significant practical challenges to applying BO disclosure requirements to PLCs, whose ownership is highly distributed and subject to rapid change. It is difficult for many PLCs to maintain a clear, real-time picture of their beneficial owners due to their numerous and geographically dispersed shareholders; the prevalence of intermediaries and nominees; and the high speed of trading in securities globally, which means that aggregate ownership by any one individual in a PLC may change in intervals of seconds. Many implementers lack knowledge and information on what disclosure requirements related to BO they should put in place for PLCs to provide relevant, useful, and usable information. Jurisdictions often exempt PLCs from their BO disclosure regimes on the basis that PLCs are already subject to transparency and accountability requirements.

Although the misuse of PLCs for money laundering (ML) and other financial crimes may appear to be limited and the risk is generally considered to be low, there are some documented cases of their misuse in ML, corruption, tax evasion, and especially fraud cases. In cases where jurisdictions have excluded certain types of corporate vehicles from disclosure requirements, this has displaced risk and led to them becoming more attractive for misuse.<sup>6</sup> Civil society organisations have therefore been proposing and advocating for means by which transparency about who owns, controls, and benefits from PLCs may be strengthened.<sup>7</sup> Further exploration is needed to establish whether, in addition to the existing transparency and disclosure requirements on PLCs, BO disclosure is an appropriate instrument to generate useful information for their oversight.

This briefing explores a number of relevant questions for policy makers and agencies with responsibilities for implementing BOT reforms. These include the extent to which the reporting requirements already placed on



PLCs by regulators and stock exchanges ensure sufficient visibility of and access to information about who ultimately owns, controls, and benefits from them; whether these requirements are sufficiently standardised across jurisdictions and stock exchanges; and which details should be collected from both exempt and non-exempt PLCs to ensure relevant information is readily accessible, useful, and usable. This briefing aims to address this through an analysis of international and national policy and regulatory frameworks on the BOT of PLCs, systematically exploring these questions and providing considerations for policymakers. It also identifies gaps for further research. The aim is to help decision makers and those implementing or supporting BO disclosure reforms to think through various issues and approaches toward ensuring the BOT of PLCs.

The briefing concludes with the following policy considerations:

- Policymakers should consider what information should be collected from PLCs and how this should be defined. They should consider the practical realities of PLCs as well as the concepts of BO and BI, and it should balance compliance feasibility with an exploration of the extent to which the information is useful and can be used to achieve stated policy objectives. Requiring BI information may be sufficient to meet some policy aims, and it may serve as a useful definition of the minimum amount of information to collect from all PLCs, in combination with BO disclosure where necessary and feasible. Jurisdictions should assess whether definitions of BO and BI are already included in their legislation and ensure a clear distinction is made between the definitions of BO and BI.
- Collecting and collating information about who owns, controls, and benefits from PLCs centrally, including reliable identifiers for corporate vehicles and individuals, will enable combining the information with other centrally held BO information. This can help with BO disclosure for non-listed corporate vehicles where PLCs appear in their ownership chains. Centralising the information will enable all users who have a role in advancing a jurisdiction's policy aims to access relevant information so it can be effectively used, as well as enabling necessary safeguards around access to be put in place. Standardising international definitions and data structures enables the integration and exchange of information, and lowers compliance burdens.
- The principle that relevant information is collected and is centrally accessible should be guiding to setting exemptions. They should only be granted on the basis

that this information exists somewhere and is readily available. Other factors, like the feasibility of disclosure for a PLC, could also be a criterion. There is a role for international standard setters and multilaterals to play in assessing the adequacy of transparency and reporting requirements to stock exchanges in order to assist governments in assuring their BOT regimes are providing sufficient coverage of PLCs.

- PLCs should not be wholly excluded from disclosure requirements to a central register, and they should at the minimum be required to disclose sufficient information to identify them, understand why they have been exempt, and readily access relevant information.



# An introduction to listed companies

A PLC is a company that has some or all of its equity traded publicly on a regulated market. Whilst other types of corporate vehicles, such as trusts and investment funds, may be listed publicly in some jurisdictions, companies are by far the most common type of corporate vehicle found on stock exchanges, and are thus the focus of the briefing. Listed corporate vehicles structured as trusts are often investment funds, which are covered in a separate briefing.<sup>8</sup> In turn, investment funds typically hold or are involved in majority shareholdings of PLCs. Therefore, BOT of PLCs and investment funds should be considered together.

Listed companies typically need to meet certain legal and regulatory requirements, which may vary from country to country. Some common criteria include the following:

- **Minimum share capital:** Many jurisdictions require a minimum amount of share capital to be issued and paid up. This ensures that the company has sufficient funds to meet its obligations.
- **Public offering:** A PLC must offer a portion of its shares to the public for purchase. This is usually done through an initial public offering, where shares are sold to investors on a stock exchange.
- **Limited liability:** Shareholders of a PLC have limited liability, meaning their personal assets are protected from the company's debts. This encourages investment.

- **Disclosure and reporting:** PLCs are often subject to strict disclosure and reporting requirements depending on the stock exchange where their securities are publicly traded, as well as being subject to the regulations and oversight of financial regulators and supervisors. For instance, a PLC registered on the London Stock Exchange (LSE) is subject to the Financial Conduct Authority's (FCA) regulations and requirements. Similarly, a PLC listed on the New York Stock Exchange (NYSE) is subject to United States (US) Securities and Exchange Commission (SEC) rules and regulations.

The specific rules and regulations applicable to PLCs vary depending not only on the jurisdiction but also the market in which a company is listed. For instance, in the United Kingdom (UK), the rules and regulations for companies listed on the Main Market of the LSE differ from the companies listed in the Alternative Investment Market (AIM) of the LSE, which are considered to be lower (see [Box 8](#)).<sup>9</sup> Similarly, the rules and regulations governing the issuance of certificated shares and uncertificated shares by PLCs may vary depending on the jurisdiction (see [Box 1](#)).<sup>10</sup> Many jurisdictions are moving away from certificated shares in recent years to promote greater transparency and efficiency in a process called dematerialisation.<sup>11</sup>





### Box 1. Certificated and uncertificated shares

Certificated shares refer to shares of stock in a company that are represented by physical share certificates. Each share certificate is a printed document that serves as proof of ownership and outlines the specific details of the share, such as the number of shares owned, the shareholder's name, and any unique identification numbers. Uncertificated shares, on the other hand, refer to shares of stock that are held in electronic or book-entry form without the issuance of physical share certificates.

|                              | Representation   | Transfer process  | Record keeping  |
|------------------------------|--|---|---|
| <b>Certificated shares</b>   | Certificated shares are physical, tangible paper documents that provide evidence of ownership.                         | When a shareholder wants to transfer or sell certificated shares, they must endorse and physically deliver the share certificate to the new owner.                          | The ownership and transfer of certificated shares involve maintaining a physical record of share certificates and their ownership.                                    |
| <b>Uncertificated shares</b> | Ownership of uncertificated shares is recorded electronically in the company's books or with a centralised depository. | Transfers of uncertificated shares are typically done through electronic entries in the company's records or through a centralised electronic system, such as a depository. | Ownership and transfer records for uncertificated shares are maintained electronically, providing a more efficient and convenient method of managing share ownership. |

Understanding how shares can be held in a jurisdiction is important to determining appropriate transparency requirements, as risks may be higher for one type or another. For example, certificated bearer shares that allow for ownership by the person in physical possession of the share certificate have been disallowed in most jurisdictions and are not permitted to be issued or held under the requirements of the FATF due to their high risk of misuse.

In addition to financial regulators and supervisors, there are a number of other intermediaries that play an important role, with varying degrees of responsibility, in ensuring the effective and smooth functioning of the financial market. These include, for instance, stock exchanges, clearinghouses, brokers, and central securities depositories (CSDs) (see [Box 2](#)).



## Box 2. Role of different actors in securities markets

**Stock exchanges** are the primary marketplaces where shares of PLCs are bought and sold. Stock exchanges are companies, and they are required to fulfil the requirements of the national securities regulator where they are established in order to get the status of a stock exchange.<sup>12</sup> For instance, the NYSE is owned by the Intercontinental Exchange, which is an American holding company that it also lists. Stock exchanges provide a platform for companies to list their shares and for investors to trade them. They establish listing requirements that companies must meet to be traded on their platform, including disclosure requirements on ownership and control of PLCs. Shares traded through stock exchanges are often held by intermediaries, such as stock brokers, and pooled investment vehicles, such as mutual funds. Their ownership can be highly distributed and subject to frequent and rapid change.

**Brokers** are intermediaries who are typically licensed by a specific regulatory body in a jurisdiction to facilitate the buying and selling of shares on behalf of investors. They execute trades on stock exchanges, provide market analysis, and offer advice to clients. Brokers are vital for individual and institutional investors who want to participate in the stock market. The FATF Recommendations require brokers to be included as reporting entities under AML legislation. This means brokers are required to identify and take reasonable steps to verify the identity of the beneficial owners of their clients.

A **clearinghouse** is a designated intermediary in the trading process between a buyer and seller in a financial market. A clearinghouse validates and finalises the transaction, ensuring that both the buyer and seller honour their obligations. Every stock exchange has a designated clearinghouse or an internal clearing division to handle this function, which reduces counterparty risk and ensures the integrity of the market. In most jurisdictions, clearinghouses are subject to AML requirements, including the need to perform know-your-customer (KYC) and customer due diligence (CDD) checks.

**CSDs** are specialised financial institutions or organisations that provide services related to the holding, settlement, and transfer of securities of PLCs through the updating of electronic records, often known as book-entry records. Their primary function is to facilitate the safekeeping and efficient movement of financial instruments such as stocks, bonds, and other securities in a centralised electronic system. CSDs play a critical role in modern securities markets, enabling efficient, secure, and transparent trading and settlement. They are regulated entities in most jurisdictions and are required to adhere to specific regulatory standards, including AML obligations, to ensure the integrity and stability of the financial system. Many countries have one domestic CSD that was traditionally associated with the national stock exchange. These are typically heavily regulated by the government and may or may not be separate from the exchanges where trading in securities occurs.<sup>13</sup>

**CSD participants** may vary depending on the specific CSD, region, and financial market structure. However, the primary participants typically associated with CSDs include the companies issuing shares, which seek to have their securities held and transferred through a CSD, and financial institutions, usually banks and brokers or brokerage firms, which act as intermediaries between investors and the CSD. Other entities involved in the securities market, such as market makers, transfer agents, and custodians, may interact with CSDs to perform specific functions related to the trading, settlement, or custody of securities. CSDs often work in close consultation and coordination with the private financial sector, including the stock exchange, private operators of CSDs, clearinghouses, banks, custodians, and broker-dealers.



# General legal and regulatory framework for listed companies

Transparency of PLCs' activities is essential for fair and proper functioning of capital markets and to protect existing and potential investors. Investors need reliable and timely information about the business performance and assets of the companies in which they invest, including transparency in the ownership and control structures of PLCs.

## Examples of transparency and reporting requirements in the European Union and the United States

In the European Union (EU), there are special reporting rules for companies with securities admitted to trading on regulated markets. Any companies issuing securities

are required to make their activities transparent by regularly publishing information, including yearly and half-yearly financial reports; information on voting rights, including those held through derivatives; major changes in the holding of voting rights; and ad hoc inside information which could affect the price of securities.<sup>14</sup> Each EU country is also required to create a mechanism through which the public can access the information disclosed by listed companies, including information on BI (see [Box 3](#)), and to ensure "at least one officially appointed mechanism for the central storage of regulated information".<sup>15</sup>

### Box 3. Beneficial interest and beneficial ownership

BI is a term that appears in company, trust, and property-related legislation of many jurisdictions, often referring to rights for third parties to a contract or trust. The term precedes BO in legislation, and there is no internationally accepted definition.

In disclosure requirements for PLCs, BI is sometimes used to refer to the interests held by a natural person or corporate vehicle who participates in any distributions in relation to the company's securities; exercises rights attached to them; or can direct their dispositions. A BI holder may have these interests even if the legal title or formal ownership is held by another entity or person. For example, an individual or a company may hold the legal title to shares on behalf of another person, but that person has the BI in the shares, entitling them to the economic benefits, such as dividends and capital appreciation.

Although BI may also use a percentage of shares as a threshold to determine disclosure, because BI does not extend to the natural person, implicitly there is no requirement to check if an individual may meet this threshold through the aggregation of multiple holdings.

BI focuses on the **powers of a holder either over or conferred by the shares**, whilst BO focuses on **the holder (a natural person)'s power over the corporate vehicle**. Therefore, there will always be a party who has a BI in the shares of a corporate vehicle, but there will not always be a party that has BO of a corporate vehicle. Additionally, BI will not extend to powers over the corporate vehicle not conferred by shares.





|                     | Beneficial interest in shares   | Beneficial ownership  |
|---------------------|---|---|
| <b>Similarities</b> | <ul style="list-style-type: none"> <li>– Captures information about rights a party may have with respect to a corporate vehicle in various ways, for example through shareholding, agreements, relationships, or nominee arrangements</li> <li>– Goes beyond immediate legal ownership to understand multiple levels of actors benefitting from the corporate vehicle's activities</li> <li>– Uses thresholds (percentage of securities) to determine disclosure</li> </ul> |   |
| <b>Differences</b>  | <ul style="list-style-type: none"> <li>– Can be a natural person, a legal entity, or a legal arrangement</li> <li>– Focuses on power associated with or over the shares (i.e. economic benefit, voting power, and the power to dispose of shares)</li> <li>– Does not necessarily consider aggregate power through multiple interests</li> </ul>  | <ul style="list-style-type: none"> <li>– Must be a natural person</li> <li>– Focuses on power over the corporate vehicle (ultimate ownership or control, including control not related to share ownership)</li> <li>– Requires looking at aggregate power through multiple interests</li> </ul> |

In some jurisdictions, such as South Africa, before BOT reforms were implemented all companies were subject to BI disclosures. There, PLCs exempt from BO disclosure remain subject to BI disclosure, as the former is deemed unfeasible to comply with (see [Box 7](#)). This briefing will explore in more depth whether BI is a more useful and relevant concept for PLCs compared to BO.

In some jurisdictions where PLCs are subject to the disclosure of BI – as it is defined in [Box 3](#) – it is referred to as BO. In the US, disclosures to the SEC for PLCs are referred to as BO, even though what is being reported is closer to the definition of BI, and BO is separately defined for other corporate vehicles.

Similar to the EU requirements, in the US, companies that are listed on the major US stock exchanges must follow the SEC's regulations.<sup>16</sup> Any company seeking to trade its securities publicly must disclose information through a two-part registration process that includes a prospectus and a document that contains, among others, the company's strengths, weaknesses, opportunities, and a threat analysis. PLCs are also required to prepare and issue two disclosure-related annual reports, one for the SEC and another for the company shareholders. The reporting requirements are also clearly stated under sections 13(d) and 13(g) of the Securities Exchange Act 1934 and Regulations 13D-G ([Box 4](#)).<sup>17</sup> Any reports submitted to the SEC are required to be updated by the company. As previously mentioned, even though the term BO is used, the definition is similar to the concept of BI (see [Box 4](#)).<sup>18</sup>

However, it is important to distinguish between these two terms when analysing the disclosure requirements applied by regulators or stock exchanges to PLCs. BO disclosure requirements are broader than BI disclosure requirements. Nonetheless, BI disclosure requirements sometimes overlap with BO disclosure requirements. For

example, ownership of more than 10% of shares would be captured in the BI disclosure requirements of many exchanges, which might also meet the definition of BO in the jurisdiction. BI information may be useful for competent authorities to understand the ownership and control of PLCs and to follow the lead to identify natural persons who are ultimately owning or controlling a PLC, even when the BO information has not been disclosed. Therefore, irrespective of the terms jurisdiction's use, this briefing will use the terms BI and BO as defined in [Box 3](#).

#### Box 4. The definitions of beneficial owner under the US Securities Exchange Act and Corporate Transparency Act

The Securities Exchange Act Rule 13(d-3) defines a beneficial owner as “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) voting power which includes the power to vote, or to direct the voting of, such security; and/or, (2) investment power which includes the power to dispose, or to direct the disposition of such security”.<sup>19</sup> In the securities context, any person (whether natural or legal)<sup>20</sup> who is a beneficial owner of more than 5% of any class of a listed company's stock must file a Schedule 13D or Schedule 13G; this information is made public for the benefit of actors such as investors and minority shareholders. As addressed



in [Box 3](#), the SEC's definition of the term beneficial owner bears a closer resemblance to BI than BO, as it is understood in the context of the implementation of central BO registers and its adjacent policy areas, including AML, anti-corruption, and public procurement.

In contrast, the Corporate Transparency Act (CTA) – the act mandating the creation of a central BO register – defines a beneficial owner of an entity as “an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity, or (ii) owns or controls not less than 25% of the ownership interests of the entity”.<sup>21</sup> Under the CTA, a beneficial owner can only be a natural person and BO covers within its scope both ownership and control, similar to the international standards. The meaning of the term beneficial owner thus differs between the US Securities Exchange Act and the CTA. The CTA's primary policy objective is ensuring national security by combating ML and corruption, and domestic law enforcement is envisaged as the main data user group. The level of access will therefore differ, though BO information collected under the CTA will also be available to AML-regulated entities and foreign jurisdictions under certain conditions. The CTA exempts public companies with a class of securities registered under the Securities Exchange Act of 1934.<sup>22</sup>

## Common transparency requirements across countries

Although transparency and disclosure regulations for PLCs may vary from country to country, common requirements include the following:

- **Financial reporting:** PLCs are typically required to prepare and publish audited financial statements on a regular basis, usually annually. These financial reports often must conform to certain standards, such as the Generally Accepted Accounting Principles or the International Financial Reporting Standards.
- **Annual reports:** In addition to financial statements, PLCs often publish comprehensive annual reports that provide a detailed overview of their business, operations, financial performance, and future prospects. These reports are made available to shareholders and the public.

- **Disclosure of material information:** PLCs must promptly disclose any material information that could affect the value of their shares. This includes information about financial results, significant events – such as mergers, acquisitions, or lawsuits – and changes in leadership.
- **Shareholder meetings:** PLCs are required to hold annual general meetings where shareholders can vote on important matters, including the election of directors and approval of financial statements.
- **Corporate governance:** Many countries and international organisations provide guidelines and codes of corporate governance for PLCs. These often include recommendations for board composition, the role of independent directors, and executive compensation.

The transparency and disclosure requirements applicable to PLCs in many countries also extend to the disclosure of certain minimum information about ownership and control to a regulator, such as the Securities and Exchange Commission ([Box 5](#)). The required information on ownership and control is usually collected when the company has its initial public offering and is generally verified by the responsible financial institutions and other obliged entities that provide services to the company. This may be referred to as BI or BO information, even though these differ substantively (see [Box 3](#) and [Box 4](#) above). It may be stored at the stock exchange at the time of the offering and be generally accessible on its website. Whether and how frequently ownership and control information will be updated depends on the policy and rules of each stock exchange.

However, from a BOT policy perspective, it is important to note that a common approach taken by regulators is to place BI or BO disclosure requirements only on the shares that are listed and traded on the stock exchange. The unlisted shares in a PLC which are not traded on the stock exchange may be subject to less stringent disclosure requirements. For example, in the US, reporting requirements for shareholders who acquire more than 5% of shares are not applicable for unlisted shares, although they are required to file other information with the SEC, such as annual reports and periodic reports. This discrepancy may create information gaps in some cases that prevent data users from having a complete understanding of who owns, controls, and benefits from a PLC.



### Box 5. Examples of beneficial interest or beneficial ownership disclosure requirements

In **Argentina**, the National Stock Exchange Commission requires the identification of the beneficial owners of companies listed on the stock exchange, applying a threshold of 10%.<sup>23</sup>

In **China**, listed companies are required to include in their annual reports minimal information about their beneficial owners, as defined by the FATF, along with their relationship with the respective companies.<sup>24</sup>

In **Italy**, the Italian public authority responsible for regulating the Italian securities market holds updated data on the major shareholders (more than 2%) with voting rights of the companies listed on the Italian stock exchange, whether held directly or indirectly.<sup>25</sup> Disclosure must be made where the holding exceeds or falls below the thresholds of 2%, 5%, every 5% increment until 50%, and 75%.

In the **UK**, Rule 5.1 of the FCA's Disclosure and Transparency Rules (DTR) requires any person who holds or is deemed to hold, through direct or indirect holding of financial instruments falling within DTR 5.3.1R(1) (or a combination of such holdings), a minimum of 3% voting rights in a listed company to notify the listed company of this percentage.<sup>26</sup> The person is defined as "any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership)".<sup>27</sup> This reporting requirement is applicable when a person reaches, exceeds, or falls below 3% and each 1% increment until 100% for UK issuers and 5%, 10%, 15%, 20%, 25%, 30%, 50%, and 75% for non-UK issuers.

In the **US**, section 13(d) of the 1934 Act and Regulation 13D require those with more than 5% of a class of equity securities in aggregate, whether held directly or indirectly, of a publicly traded company to file a report with the SEC. Schedule 13D must be filed within five days of crossing the 5% ownership threshold. Each person reported as a beneficial owner is required to sign the form, including each member of a group; however, this information is not verified by the SEC, and arguably would be very difficult to verify.<sup>28</sup> Any information provided *via* Schedule 13D is also required to be amended promptly to reflect any material changes.<sup>29</sup>



## Misuse of listed companies for financial crime

The risk of misuse of PLCs for ML and other financial crime purposes is considered to be low due to various checks and balances built into the securities system, including the application of AML requirements by various intermediaries and actors in the financial market. However, there are cases emerging that demonstrate that listed companies may very well be involved in corruption, ML, tax evasion, and fraud, some of which may involve senior management.<sup>30</sup> The misuse of PLCs by their owners or executives, for instance, can take various forms, and it often involves manipulating financial statements, deceiving investors and stakeholders, and diverting company funds for personal gain – corporate corruption or fraud. For example, owners with a significant ownership stake in a PLC may engage in coordinated buying or selling of shares or use shell companies to create artificial demand or supply pressure, leading to price movements that benefit them.

The following are some common ways PLCs are misused for financial crime, adding layers of complexity and anonymity to the ownership structure to conceal ownership and control, and using illegitimate funds in legitimate PLCs or otherwise to subvert regulations:

- **Use of pooled investment funds:** Pooled investment funds, such as mutual funds, hedge funds, and private equity funds, aggregate investments from multiple investors. Investors in these funds may indirectly hold shares in PLCs. However, their identity can be hidden behind the fund's name.

- **Nominee shareholders:** Nominee shareholders are individuals or entities who hold shares on behalf of another person or entity. This may be done for a number of reasons, such as to ease the administration of buying or selling securities in the market – for example, brokerage firms acting as nominees for their clients. This can also be exploited to hide a PLC's beneficial owner's identity.<sup>31</sup>
- **Intermediaries and offshore structures:** Intermediaries, shell companies, and trusts in multiple jurisdictions can obscure the true ownership of the shares in a PLC.
- **Complex transactions:** Transactions involving pooled investment funds, nominee shareholders, intermediaries, and multiple jurisdictions can be designed to further obscure beneficial ownership. These may include stock swaps, buybacks, and convoluted financing arrangements.

All these typologies make it difficult for authorities to identify individuals who ultimately own, control, and benefit from PLCs. A number of these appear in the example in [Box 6](#).



### Box 6. Potential share price manipulation through opaque ownership<sup>32</sup>

A recent report by the Organized Crime and Corruption Reporting Project (OCCRP) alleged that companies and investment funds based in Bermuda and Mauritius have been misused to acquire and trade large positions in shares of PLCs that are part of a large Indian conglomerate. The report alleged that a fund in Bermuda was used by two of the conglomerate's associates and the founder's sibling to bypass rules for Indian companies that prevent share price manipulation. According to Indian stock market rules, promoters (also known as corporate insiders in India) are prohibited from owning more than 75% of shares in PLCs in order to prevent artificial share price inflation. Indirect control of the fund in Bermuda via the two associates would therefore constitute a violation of stock market regulations.

The investment funds in question were used exclusively to trade shares of the conglomerate's PLCs. Through two funds in Mauritius, the two associates secretly controlled between 8% to 14% of the free float in three of four of the conglomerate's PLCs in January 2017. All three funds have been alleged to be indirectly controlled by the conglomerate and misused to manipulate or artificially inflate the share pricing.





# Policy and regulatory framework for beneficial ownership transparency for listed companies

## International framework

### Beneficial ownership definitions

When creating the legal definition of the BO of legal persons that sets out which criteria qualify an individual as a beneficial owner and require the disclosure of their details to a central register, jurisdictions often follow the requirements and definition of the FATF. In addition, obliged entities, such as financial institutions and other relevant businesses and professions, are required under AML regulations in many jurisdictions to identify the beneficial owners of corporate vehicles as part of KYC and CDD checks. The FATF's Recommendation 10 requires applying a cascading three-step approach in order to identify a beneficial owner of a legal entity:

- first, by identifying the natural person who has controlling ownership;
- second, if the ownership interests are so diversified that there are no natural persons exercising control of the legal person, by verifying the identity of the natural persons (if any) exercising control through other means; and
- third, where no natural person is identified via any of the above means, by identifying and taking reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.<sup>33</sup>

The FATF Recommendations clearly state that this approach does not amend or supersede the definition of who the beneficial owner is, but only sets out how CDD should be conducted by AML-regulated entities in situations where the beneficial owner cannot be identified.

### Challenges in applying the anti-money laundering framework to identify beneficial owners of listed companies

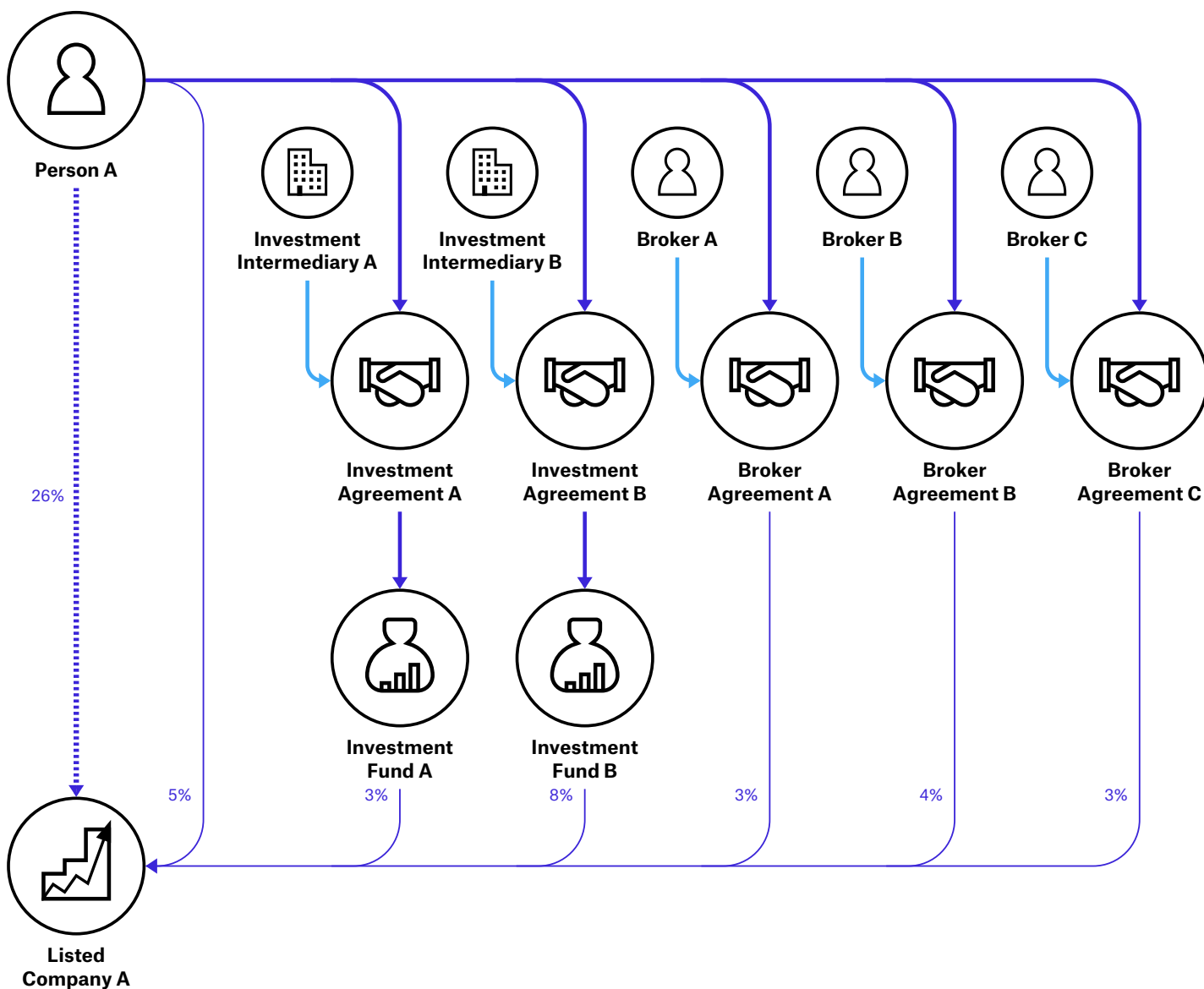
When applying the BO definition of legal persons to PLCs to identify their beneficial owners, several difficulties and complications can emerge. For example, due to the distribution of ownership and the prevalence of intermediaries, for most PLCs it will be difficult to identify individuals who meet the common BO criteria of having, directly or indirectly, 25% or more shares or voting rights. As a result, in most cases, even if PLCs are required to disclose their BO to a central register, it is likely that it is practically impossible to comprehensively establish whether any individual may meet the criteria through multiple indirect shareholdings, so no individual is identified as beneficial owner. In the context of CDD, whilst applying the third test in the cascading approach, the senior managing officials of a PLC, such as a chief executive officer (CEO), would be identified as a beneficial owner, even though they may be more an employee than an individual with ultimate control. In some jurisdictions, employees, including senior management, are explicitly excluded from the definition of BO for reporting requirements to central registers.<sup>34</sup>

Despite the above challenges in identifying the BO of PLCs, there are many ways in which natural persons can in fact exercise ownership or control over a PLC. As discussed above, in a PLC, an investor may hold interests directly or indirectly through a broker or a financial intermediary. There is also a possibility that an investor may hold interests in a pooled investment fund, which in turn holds interests in shares of a PLC, making it difficult to identify that person as a beneficial owner (see [Figure 1](#)). Given their prevalence in PLCs' ownership structures,



BOT requirements for investment funds should be considered alongside transparency in the ownership and control of PLCs.<sup>35</sup>

**Figure 1. Beneficial ownership through multiple indirect interests**



Person A owns 5% of Listed Company A directly, and indirectly owns a 10% share in the same PLC through Broker A, Broker B, and Broker C, and 11% through Investment Fund A and Investment Fund B. Altogether, Person A thus owns 26% of the PLC's shares and should be identified as a beneficial owner. However, because their interests are held through various intermediaries, it is difficult to identify Person A as a beneficial owner.

### Nominee shareholders

The use of nominee shareholders makes the ownership and control structures of PLCs more complicated. For instance, an everyday investor might own shares in a PLC indirectly through consumer banks, or nominee companies established by wealth managers may collectively hold all or the majority of the shares in a listed company on behalf of their clients.<sup>36</sup> In the latter case, a wealth manager acts as an intermediary. The true beneficiaries can be high-net-worth individuals and family offices, a type of private investment vehicle that is relatively unregulated, and often not named in public shareholder

registers. Whilst this is not necessarily problematic, it could also be abused to hide the ownership of family-owned listed companies, for example enabling them to hide their conflict of interest if they also hold management positions or serve on the board of directors (see, for example, [Box 6](#)).<sup>37</sup>



## Disclosure requirements to central beneficial ownership registers

In international AML policy and regulatory frameworks, PLCs are generally treated as lower risk and are therefore excluded or exempt from disclosure to a central BO register.<sup>38</sup> The FATF does not explicitly require the collection of the BO of PLCs by authorities, but the measures taken do need to respond to identified risks. Information held by stock exchanges is considered part of supplementary measures, alongside a central BO register.<sup>39</sup> Depending on the disclosure requirements of the stock exchange, PLCs may be considered low risk.

However, to rely on stock exchanges as a means of providing additional supplementary information on beneficial owners of companies, countries are required to “consider the extent to which exchanges have processes in place in order to determine the accuracy of basic and beneficial ownership information”.<sup>40</sup> Even in the case of countries that have already established or are in the process of establishing BO registers, this is an important consideration when granting an exemption to PLCs. Furthermore, the use of different definitions of BO and BI for PLCs by some stock exchanges and their regulators raises the question of whether they would be fully compliant with the spirit of this requirement even where BO information is available (see [Box 3](#)).

The EU’s fourth Anti-Money Laundering Directive (AMLD4) allowed member states to have exemptions from BO disclosure requirements for “a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information”.<sup>41</sup> For instance, Ireland’s 2019 AML regulations exempt listed companies from maintaining and reporting their BO information to a central register on this basis.<sup>42</sup> The EU’s 2024 AML package, expected to be formally adopted in April 2024, suggests that the criteria for exemptions will become stricter, and that exemptions will only apply to PLCs where “control over the company is exercised exclusively by the natural person with the voting rights” and “no other legal persons or legal arrangements are part of the company’s ownership or control structure”.<sup>43</sup> This suggests the BI information disclosed about active shareholders where these were legal entities or legal arrangements may have been insufficient. Time will tell how these rules will be applied in practice. The latest draft of the EU’s 2024 AML Regulation states that:

[The EU] introduced strict transparency requirements for companies whose securities are admitted to trading on a regulated market. In certain

circumstances, **those transparency requirements can achieve an equivalent transparency regime to the beneficial ownership transparency rules set out in this Regulation. This is the case when the control over the company is exercised through voting rights, and the ownership or control structure of the company only includes natural persons.** In those circumstances, there is no need to apply beneficial ownership requirements to those listed companies. The exemption for legal entities from the obligation to determine their own beneficial owner and to register it **should not affect the obligation of obliged entities to identify the beneficial owner of a customer** in customer due diligence when performing customer due diligence [emphasis added].<sup>44</sup>

Neither the FATF nor the EU suggest that the companies listed on the stock exchange do not have beneficial owners or that there is no need for listed companies or others to identify their beneficial owners, but rather that sufficient information should be available elsewhere. It follows that PLCs should only be excluded or exempt from BO disclosure requirements when they are listed on a stock exchange that itself has adequate disclosure requirements and transparency measures.<sup>45</sup> These requirements and measures differ, and providing a blanket exemption to PLCs without assessing the stock exchange where they are listed would thus not be in line with the intent of international standards. The EU appears to go even further and set exemptions not just based on the transparency and disclosure requirements of stock exchanges and regulators, but also on the ownership and control structures of the PLCs themselves.<sup>46</sup> In addition, to easily find relevant information held in exchanges for different PLCs, a number of civil society organisations argue that some information should still be collected centrally for PLCs.<sup>47</sup>

## Customer due diligence requirements

The FATF also states that it is not necessary to identify and verify the identity of any shareholder or beneficial owner of a PLC which is “listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership.”<sup>48</sup> This exclusion or exemption is, however, largely based on the assumption that the financial regulator or a stock exchange where an exempt company is listed would have adequate and appropriate transparency and disclosure requirements over individuals who own or control the entity.<sup>49</sup> However, disclosures to a stock exchange are often not verified or verifiable due to the



challenges mentioned earlier. This means that disclosure requirements for PLCs may rely fully on self-reporting and may not be subject to external checks and verification.

Evidence suggests that where jurisdictions have previously excluded other types of corporate vehicles from disclosure requirements, this has displaced risk and these have become more attractive for misuse.<sup>50</sup> In addition to AML, this exclusion or exemption may not be appropriate for other policy aims, including protecting other shareholders (see [Box 6](#)).

### Gaps in international frameworks

A prominent gap in the international frameworks is the lack of clarity about how much of a company's equity needs to be listed on an exchange with sufficient disclosure and transparency requirements for it to be exempt from BO disclosure requirements. This gap might have significant implications because a company may, for example, list only 5% or less of its shares on such an exchange and nevertheless still qualify for full exemption. An exchange may then only require BO disclosure for this small proportion of listed shares and not impose sufficient disclosure requirements about the ownership and control of the unlisted shares. Some or all of the rest of the shares could also be listed on another exchange, with different or low disclosure and transparency requirements.

Implementers can try to assure the transparency of the unlisted shares of a listed company through a number of approaches. For instance, stock exchanges can be required to strengthen disclosure requirements for unlisted shares, or PLCs could be required to disclose the BO of unlisted shares to a central register. The transparency requirements of stock exchanges for unlisted shares requires further research and analysis. In the UK, for instance, unlisted or certificated shares of exempt PLCs are not subject to either BI or BO disclosure to either the central BO register or the stock exchange.<sup>51</sup> This also appears to be the case in the US, where the 5% BO reporting threshold only applies to listed shares.

This further highlights the importance of assessing the disclosure and transparency requirements imposed by individual stock exchanges, and using that as a basis for exemptions. The Extractive Industries Transparency Initiative (EITI), for instance, encourages national multi-stakeholder groups to review the comprehensiveness, reliability, and availability of ownership information disclosed on stock exchange filings to ensure the quality of information on ownership and control disclosed by PLCs.<sup>52</sup> A number of recent studies have also further identified that the BO information collected by stock exchanges is not always adequate, accurate, or up to

date.<sup>53</sup> Additionally, there is a possibility that the information kept by a stock exchange may be poorly structured, poorly formatted, or not easily accessible to all relevant parties.<sup>54</sup>

As covered above, the term BO as understood and used by a stock exchange may not always be the same as it is defined in the international standards. The following section on national frameworks explores whether BI information comprises sufficiently useful and usable information about who owns, controls, and benefits from PLCs, and whether it is more practically feasible to comply with than BO disclosure. Whilst it does not necessarily include the identification of a natural person, a PLC failing to identify a beneficial owner may potentially disclose less information than one that is complying with BI disclosure. Moreover, where corporate vehicles hold BI in a PLC, information about their BO may be available in a central register, in cases where it is not exempt – which is often the case for investment funds – or based in a jurisdiction that has not effectively implemented BOT reforms.

A study examining the accessibility of PLCs' BO information in seven Asian countries highlighted that in several countries, the mandatory BO reporting by PLCs has merely become a box-ticking exercise, leading to only minimally compliant disclosures that fail to meet the intended regulatory objectives.<sup>55</sup> The report emphasises that ownership and control structures of the majority of PLCs are not adequately disclosed in an accessible way.

The majority of stock exchanges and securities regulators mainly focus on outlining rules and regulations, and providing references and links to the annual reports of listed companies where BO information can be found.<sup>56</sup> However, finding BO information in annual reports, which can be hundreds of pages long, can be a time-consuming exercise. Accessing, interpreting, or inferring BO information of listed PLCs from some stock exchanges can require expertise or local knowledge due to the technical style of presenting information, without any charts or graphs.<sup>57</sup>

Separate guidance from Open Ownership includes some early thinking on factors that should be considered by policymakers when creating a list of stock exchanges for which listed companies could be exempt.<sup>58</sup> These factors include:

- timely notification on the acquisition and disposal of significant voting rights;
- notifications on the basis of aggregated holdings and interests used jointly via an agreement;





- notifications of ownership and control arrangements via financial instruments that have a similar effect to owning shares or controlling votes;
- notifications that contain information on the means through which major shareholding or voting rights are exercised (for example, the chain of ownership);
- notifications of interests held by company officers;
- information on who has access to this information, whether it is easily accessible or there are any conditions, the format in which it is available, and whether information storage policies are adequate.

International standards could be extended to include clear criteria on how to set exemptions, including how to assess disclosure and transparency requirements of stock exchanges and regulators, and requiring information on exempt PLCs to be centralised. The divergence of how international standards are applied is explored in the following section.

## National frameworks

Jurisdictions around the world, often applying a risk-based approach, have taken significantly different approaches in implementing BOT requirements for PLCs. Generally, the approaches range from applying the same requirements to PLCs as to other legal entities, to fully excluding PLCs from BO disclosure requirements. PLCs are one of the categories of corporate vehicles that are most commonly exempt from full BO disclosure requirements or otherwise excluded from BOT regimes altogether.

Generally, the approaches taken by jurisdictions differ in terms of which PLCs are subject to disclosing what information and to whom. For example, PLCs may be required to disclose either BI or BO information to a regulator or stock exchange, or to make information directly available through their website or quarterly or annual reports. On this basis, they may be required to disclose less or no information to a central BO register. There may also be differences in whom reporting requirements fall upon – the party holding the interest, or the PLC itself. The following section explores different national approaches using examples from different jurisdictions.

## Information to be disclosed

### Beneficial ownership and beneficial interest

In many countries, PLCs are required to disclose BI information, either to the stock exchange – as in South Africa (see [Box 7](#)) – or to the regulator. For example, in Canada, disclosure requirements for PLCs include shareholders with direct or indirect control over more than 10% of the company's equity or voting rights to the Canadian Securities Administrators within two days of acquisition.<sup>59</sup> These can be either natural persons or companies.

In some jurisdictions, PLCs are required to disclose BO information. For example, in India, whilst listed companies are exempt from BO disclosure to the central register, the securities regulator implemented specific BO requirements for listed companies in 2018, using the exact same BO definition as for the central register in the Companies Act, stating that “all the terms [...] shall have the same meaning as specified in [the] Companies (Significant Beneficial Owners) Rules, 2018”.<sup>60</sup> The timeframe for disclosure is also the same for PLCs as for private companies: a total of 60 days to report BO information or any changes to the BO information. However, PLCs are required to make BO information available in their quarterly reports.<sup>61</sup>

When looking at jurisdictions that require PLCs to disclose BO information, whilst these requirements are arguably more stringent than requiring BI information, in practice this approach may run the risk of generating little to no information on ownership and control (see, for example, [Box 8](#)). Conversely, jurisdictions that require the disclosure of BI information appear to collect more useful information (see [Box 7](#)). When BO information is disclosed by PLCs in jurisdictions where this is required, the information seems to be of a type and nature that would be captured under the definition of BI, for example, direct shareholdings or voting rights, although it does not extend to natural persons.





### Box 7. In-depth case study of the disclosure requirements for listed companies in South Africa<sup>62</sup>

In order to comply with international AML standards, South Africa legislated for central BO registers for a number of corporate vehicles through the 2022 General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act (GLAA).<sup>63</sup> In the legislation, a public company is considered an affected company under section 117(1)(i) of the Companies Act, making it subject to different disclosure requirements than regular companies.<sup>64</sup> Listed companies are obliged to maintain a BI register and file it with the Companies and Intellectual Property Commission (CIPC), as prescribed in regulations.<sup>65</sup> However, a public company that is listed on a South African stock exchange is exempt from filing its BI register with the CIPC, provided such information is already kept at a stock exchange or any other institution with the authority to collect and keep such records. The concept of BI existed in South African legislation before the GLAA, and applied to all companies in terms of the Companies Act of 2009 as amended. During the passage of the act, the Johannesburg Stock Exchange (JSE), among others, voiced serious concerns about being able to comply with BO disclosure and proposed central BI disclosure as an alternative.

The law makes a clear distinction between BI and BO. A beneficial owner of a legal person is mainly defined as meaning a natural person who, directly or indirectly, ultimately owns a company or exercises effective control over a company, using a threshold of 5%.<sup>66</sup> On the other hand, the definition of BI refers to either legal persons or natural persons who receive or participate in any distribution in relation to the company's securities; exercise any attaching rights to these securities; or can dispose or direct the disposition of the company's securities, such as a nominator in a nominee arrangement.<sup>67</sup> BO therefore includes, and is much broader than, the concept of BI.

According to a representative from the JSE, PLCs in South Africa are exempt from reporting their BO information because, first, it is challenging for them to identify their beneficial owners and thus to practically comply with BO reporting requirements. Second, adequate transparency measures are already in place to provide information on BI holders in a listed company, which will be useful in the identification of the beneficial owners of a PLC when such information is required by competent authorities.

On the identification and reporting of BO information by PLCs, the JSE also notes that this is particularly difficult and complex for PLCs due to the reasons already outlined in this briefing. These include, for instance: a large number of PLCs' shareholders are often dispersed across several geographical locations worldwide; the structure of registers in South Africa – shares are often held by nominees as registered shareholders, and there is no direct connection between shareholders and the company; and the nearly daily changes in the shareholding of listed companies.

In terms of transparency and disclosure requirements for listed companies, South Africa appears to be setting a good example despite some challenges related to foreign nominees. Based on information from a JSE representative and other public information, a listed company in South Africa is required to maintain a register of all BI holders under the Companies Act.<sup>68</sup> An obligation is also placed on registered shareholders to disclose to the listed company the identity of the natural or legal persons on whose behalf any securities are held in the listed company at regular intervals – almost on a weekly basis.<sup>69</sup> The JSE representative emphasised that this disclosure by registered shareholders who are acting as nominees provides significant transparency of listed securities, down to the level of BI holder. Through these disclosures, a PLC will know at regular intervals who all of its BI holders are. In addition, companies acting as nominees in South Africa are also required to be licensed and approved by the Financial Sector Conduct authority. Moreover, exchanges also license nominee companies as brokers.

The Companies Act also places an obligation on any person who acquires or disposes of a significant percentage of BI in a listed company to disclose this to the company, including the extent of their BI, within three days.<sup>70</sup> The threshold for this disclosure is currently set at 5% of the issued securities and increases in 5% increments. As a result, anyone who acquires or disposes of 5% or more shares in a listed company is required to disclose this information, which is in addition to the obligation placed on nominee shareholders to disclose the identity of the BI holder on whose behalf they hold securities.

PLCs are required to publish the identity of all persons who hold 5% or more of BI in their annual financial statements.<sup>71</sup> JSE listing rules also require PLCs to publish the information on significant BI holdings that



has been disclosed to the company.<sup>72</sup> When any BI holder acquires or disposes of 5% or more of shares, all other shareholders have to be notified and the information made public within 48 hours. Any changes are also required to be reported to the JSE.

The existing transparency and disclosure requirements implemented for listed companies in South Africa, through a combination of the Companies Act and JSE listing rules, are considered by the JSE to provide timely public disclosure of information about all significant BI holders. This information also aids competent authorities in identifying beneficial owners when required.<sup>73</sup> For instance, in the case of the disclosure of legal persons as BI holders, competent authorities have to conduct further investigation to collect the relevant information about their beneficial owners. This information can be obtained from the CIPC in the case of legal persons incorporated in South Africa, as they are required to disclose their BO information to the

CIPC. However, it is more difficult when dealing with foreign legal persons, particularly in those jurisdictions where BO registries do not exist or the information is inaccessible.

The JSE representative also highlighted the challenges with foreign companies acting as nominees, which fall outside the scope of legislation and South African jurisdiction. They are not required to identify themselves as nominees to the company, meaning foreign nominee shareholders may be viewed as BI holders. Overall, however, the JSE affirms the granting of exemption to PLCs from the BO disclosure requirements in view of the difficulties PLCs encounter in identifying and disclosing their beneficial owners as well as the transparency and disclosure requirements placed on South African listed companies. These requirements are practically feasible for PLCs and ensure relevant ownership information beyond legal ownership is available in a timely fashion.

### Which party has a mandate to collect information

Jurisdictions require disclosure to one or more of the following parties: the central BO register, the regulator, the stock exchange, or directly to the public. For example, in India, PLCs are required to disclose BO information to the regulator, as well as to the public in quarterly reports on their own websites. This means that for the public, access to information is not centralised, may be time consuming to find, and is not available in a structured format. In Canada, BI information is collected by the regulator. In South Africa, BI information is collected by the regulator unless it is already disclosed and published by a domestic stock exchange, and significant BI holdings are also published in annual reports. In the UK, BI information is collected by the regulator, and all PLCs are also subject to BO reporting to the central BO register, although exempt PLCs do not need to disclose their BO (see [Box 8](#)).

### Which listed companies are subject to disclosure

PLCs are typically exempt from BO disclosure regimes on the grounds that they are subject to extensive reporting and disclosure requirements about ownership and control that in some ways exceed the BO reporting requirements for privately owned companies and other corporate vehicles. Often, this is on the basis that the information discussed above is already disclosed in some form to another party. However, the level of transparency over the ownership of PLCs varies between jurisdictions and among stock exchanges, making it difficult in certain

cases to obtain and access adequate, accurate, and up-to-date information on ownership and control of listed companies. Countries can exempt PLCs either explicitly or implicitly from the BO registration framework.<sup>74</sup>

### Inclusion

A number of countries have either explicitly covered or have not explicitly excluded PLCs from their BO regime.<sup>75</sup> In Albania, for instance, since companies listed on a stock exchange are not explicitly excluded from the BO registration law (No. 112/2020), it is assumed that they are covered within the BO disclosure requirements. However, looking at various random entries of listed companies on the Albanian BO register, many BO statements for listed companies appear to be inaccurate or illogical.<sup>76</sup> For instance, the BO statement for a listed bank includes the names of its CEO and vice-chair as both having 0% indirect ownership.

### Exemption based on stock exchanges or their jurisdictions

Exemptions are often made on the basis of the jurisdictions of the stock exchange (or exchanges) through which the PLC has listed its shares, as the regulatory environments determine the disclosure requirements for the PLC. For example, in Germany, a PLC listed in the country or another jurisdiction within the European Economic Area (EEA), or subject to equivalent transparency requirements, is not required to disclose information to the BO register.<sup>77</sup> German PLCs are subject



to the disclosure requirements on major shareholdings and voting rights, and any changes therein, under the EU AMLDs, as explained above. In the UK, for instance, the FCA has exempted the companies listed on the LSE from the BO disclosure requirements, as it is subject to similar requirements as in the EU as a regulated market. However, no such exemption is applicable to companies

listed on the AIM, as it is subject to the same disclosure requirements as the LSE's Main Market and not classed as a regulated market (Box 8).

Some jurisdictions, like South Africa (see Box 7) and Kenya exempt PLCs listed in domestic exchanges.<sup>78</sup> The British Virgin Islands exclude any exchange listed on the World Federation of Exchanges, and specific designated exchanges.<sup>79</sup>

### Box 8. Exemption and compliance with disclosure by listed companies in the United Kingdom

The UK's 2017 People with Significant Control (PSC) (Amendment) Regulations exempt the following PLCs from maintaining and disclosing their BO information on the PSC register:

- a. companies with voting shares admitted to trading on a regulated market which is situated in a EEA state (for example, the LSE Main Market); and
- b. companies with voting shares admitted to trading on certain specified markets in Israel, Japan, Switzerland, and the US (under listed markets in Schedule 1 of the regulations).<sup>80</sup>

From 26 June 2017, UK-incorporated public companies with shares admitted to trading on a prescribed market – including the AIM segment of the LSE or the NEX Exchange Growth Market – are no longer exempt from BO disclosure requirements to the PSC register, unless they have multiple listings and also fall within one of the two exemptions listed above. This is due to the fact that AMLD4 only permitted the exemption of regulated markets and not prescribed markets.<sup>81</sup> These listed companies are required to: make reasonable investigations as to their beneficial owners; produce and make their BO information public; and comply with the ongoing obligations to make all the requisite filings with the registrar, Companies House. This is because the entry criteria for AIM are lower: for example, making it possible to gain admission without a trading record, which allows newer companies that are looking for a stepping stone into the regulated market to benefit from a more flexible regulatory environment in the interim.<sup>82</sup>

AIM's rules for companies include Rule 26, which requires certain information to be published on "a website", including information about significant shareholders, which must be updated every six months, and the percentage of shares not publicly traded.<sup>83</sup> Significant shareholders are defined as "Any person with a holding of 3% or more in any class of AIM

security".<sup>84</sup> These can be individuals, companies, and investment funds, or an entire family.<sup>85</sup> This appears to be less stringent than the disclosure requirements of regulated markets.

Looking at UK-registered companies that are listed on the AIM provides an opportunity to study the type of information available when BO requirements are applied to PLCs, particularly because the UK company registrar makes structured data available in bulk. Looking at a sample of 600 of the 649 companies listed on the AIM, 393 of these are registered in the UK and active, and are therefore subject to BO disclosure requirements.<sup>86</sup> Of these 393 companies, 266 (68%) report that, "The company knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the company". A further 41 claim an exemption, either because they claim to be listed on an EU regulated market (4) or a UK regulated market (37). Based on a review of all individual company websites, only 2 of the 41 companies claiming an exemption based on being listed on a UK or EU regulated market actually appear to be listed on a regulated market in addition to the AIM. Therefore, a total of 39 appear to be noncompliant in claiming an exemption. There may be a range of reasons for this, including insufficient guidance or a lack of verification.

Another 7 companies in the sample appear to be noncompliant by having made no disclosure statement to the register (2); disclosing a non-UK corporate vehicle (directly or through a relevant legal entity) (4); or disclosing an individual as a company (1). This means that for 309 companies, or 79% of the sample, there is no additional information provided through BO reporting because they have either declared not to have any beneficial owners (266); have claimed an exemption that does not appear valid (39); or are otherwise noncompliant (7). For 81 of the 393 companies in the sample, BO reporting provided information on



individuals as beneficial owners, or relevant legal entities which lead to BO statements with individuals or a valid exemption due to dual listing (1).<sup>87</sup>

This suggests that subjecting PLCs to BO disclosure does not necessarily lead to more useful information about ownership and control for all companies. Listing on the AIM does not qualify a PLC for an exemption due to the fact that it has lower disclosure and transparency

requirements than the LSE Main Market segment, and AIM-listed PLCs are therefore subject to additional BO disclosure requirements. However, the vast majority of these do not provide any useful or usable information. Therefore, it is reasonable to assume that there is less useful information available about PLCs deemed higher risk, and is in fact counterproductive to the intentions of the exemption regime.

### **Blanket exemptions or exclusion**

Some jurisdictions provide blanket exemptions or exclude all companies listed on stock exchanges from disclosure requirements. For example, Finnish guidance states that listed companies are not liable to file a notification of BO.<sup>88</sup> This also appears to be the case in France and Sweden. Given the fact that the transparency and disclosure requirements of exchanges vary significantly, and these requirements can even differ within different segments of an exchange, blanket exemptions are a potential loophole.

### **Reporting requirements for exempt listed companies**

Where exemptions to BO disclosure for PLCs apply, jurisdictions collect different amounts of information from the exempt companies through BO reporting. Some jurisdictions, like Luxembourg, require exempt PLCs to disclose certain minimum information to a central BO register, even if they are exempt from full BO disclosure requirements. This approach helps users find connected and relevant information about ownership and control, and makes BO registers more useful and usable. This is in contrast to other jurisdictions, like Germany, which do not require PLCs to disclose any information to the central BO register, as information on ownership is disclosed elsewhere. In Luxembourg, listed companies whose securities are admitted to trading on a regulated market are excluded from the obligation to provide information regarding their beneficial owner(s) on the Luxembourg Register of Beneficial Owners (*Registre des Bénéficiaires Effectifs*, or RBE). Nevertheless, they must disclose the name of the regulated market on which their securities are admitted to the RBE, thereby making it easier to find relevant information.<sup>89</sup>

Similarly, in Mongolia, listed companies are exempt from reporting their BO information to the General Authority for State Registration (GASR). However, they are required to disclose information to the GASR about the proportion of shares listed; the names of the stock exchanges; and a link to the relevant stock exchange website pages, with details of the company listing and other relevant details.<sup>90</sup>

Nigeria also requires PLCs to disclose the name of the stock exchange and to provide a link to the stock exchange filings where they are listed.<sup>91</sup> In the UK, the general basis for exemption is collected and published, but not any additional information about where relevant information can be found.

Finally, the 2023 EITI Standard also takes this approach. It does not explicitly exempt PLCs from BOT disclosure requirements, but requires that PLCs, including wholly owned subsidiaries, disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed to facilitate public access to their ownership and control information.<sup>92</sup>





# Policy considerations

An analysis of the various approaches from different jurisdictions above, established principles of effective BOT reforms, and an exploration of what core information should and can realistically be collected and published about PLCs give rise to a number of policy considerations and potential solutions, detailed below.<sup>93</sup>

## Defining what information to collect from listed companies

Information about who owns, controls, and benefits from PLCs should strike the balance between being feasible and practicable to disclose for PLCs, whilst also being sufficient for the users of the information to achieve their respective purposes. A jurisdiction's policy aims may inform the range of uses for this information, as well as which information is made accessible to which users and in what format.

BOT as a policy area has historically focused on private limited liability companies. Increasingly, countries are looking to include additional corporate vehicle types into the scope of disclosure. Whilst substantively the concept of BO remains the same – the natural persons who ultimately own, control, or benefit from corporate vehicles – legal definitions have developed for unlisted limited liability companies. These definitions are not necessarily suited to apply the substantive notion of BO to other corporate vehicles. For example, where BO is highly distributed for PLCs, smaller proportions of ownership may amount to a controlling interest.

As BOT is being applied to an increasing number of corporate vehicles, there is a need to constantly reassess what BO means as a substantive concept when applied to other entities and arrangements, such as trusts, state-owned enterprises, investment funds, and PLCs.<sup>94</sup> Consequently, jurisdictions may be best served by including a single, unified, broad definition of BO in primary legislation,

which should not be prescriptive to a level of detail that limits what this means when applying the substantive concept of BO to different corporate vehicles.

The comparison of various national frameworks suggest that applying the concept of BI may lead to more useful and usable information than applying the concept of BO, despite it being a less exhaustive concept. This is perhaps unsurprising, as the categories of beneficial owners that are practically feasible to identify for PLCs and likely to exist, given their highly distributed and dynamic ownership, are ones that are already captured by the concept of BI, including direct interests and interests held through nominees.

Looking at the examples of Albania and the UK above (Box 8), it appears that subjecting PLCs to BO disclosure does not necessarily lead to more useful information about ownership and control. Where this requirement is created on the basis that a PLC is not subject to adequate disclosure and transparency requirements through a given stock exchange, it is reasonable to assume that this may create a counterproductive situation in which there is less useful information available about PLCs deemed to be higher risk. In comparison, there seems to be more useful information available about ownership and control as a result of subjecting all PLCs to BI disclosure. It may also provide an opportunity to subject all PLCs at the minimum to the same disclosure requirements, and to remove potential loopholes due to exemptions.

Nevertheless, more research should be conducted with prospective data users to see whether BI disclosure is sufficient to use the information to meet various policy aims. This should include a range of users, both inside and outside government, and a range of policy areas, including AML, tax, and corporate governance. South Africa will be a useful test case to follow in this regard. For example, for competent authorities with investigative powers, BI information alone may be adequate to help identify beneficial owners in their investigations, even where BI is held by a corporate vehicle. As BI holders can be either natural





persons or corporate vehicles, the jurisdiction of incorporation of these corporate vehicles, including whether they are subject to BO disclosure, should be a consideration, as illustrated by the South Africa example. Governments should assess whether the information is also sufficient for other users without investigative capacities, both inside and outside government. The same approach could be taken with respect to thresholds, whether for BO or BI information, and iteratively reviewed on the basis of the usability of the information collected – effectively, to what extent they can be used to manage and mitigate certain risks – and balanced against compliance feasibility. The South Africa example suggests that PLCs should be able to report this information regularly in short time periods.

If BI information is sufficient to meet policy aims, the main challenge becomes addressing the current deficiencies in the information ecosystem. A standardised, international definition of BI as well as structured data could enable the integration and exchange of information, whilst also lowering compliance burdens. Structured data refers to information that is highly organised according to a predefined model. Because the structure is predefined, users know what to expect from the data, and this makes it easy to work with.<sup>95</sup>

Jurisdictions should assess whether definitions of BO and BI are already included in their legislation and are sufficient, and ensure a clear distinction is made between the definitions of BI and BO. Both definitions should consider certain rights and powers held through other means, such as derivatives. If policymakers decide BI information may be sufficient to collect from PLCs, where the BI holder is a natural person, the same information should be collected as under the BO disclosure requirements, and should be sufficient to identify the individual. Where the BI holder is a corporate vehicle, reliable identifiers should be collected. Policymakers should consider placing obligations on these parties to disclose their status to the PLC in question, although how to ensure compliance by non-domestic parties requires further thought.

## **Storage of and access to centralised structured information**

Evidence and experience with the implementation of BO registers for non-listed companies make clear that effective implementation and use of the information requires it to be centralised. Where information about the ownership and control of various corporate vehicles is held by different authorities, the information should be combined and ideally searchable through a single portal. At the very least, it should be clear and intuitive where information is

held if it is not held in a single location, including for those not familiar with the jurisdiction. Moreover, the use of a data standard helps ensure that BO data is of high quality and is interoperable.

Practically, this means it should not matter whether relevant information for PLCs is held by a central BO register or a regulator, provided the information is integrated. If PLCs are included within the central BO register, there should be direct links to any relevant information held by the regulator. Information should not just be published directly by PLCs themselves, and it ideally should not just be held by the stock exchanges, particularly where there are multiple stock exchanges in a jurisdiction. There are significant practical challenges to users accessing and using information about PLCs reported by exchanges, particularly where this relies on annual reporting.<sup>96</sup> If information is held by a stock exchange as structured data, such as in South Africa, governments might choose to explore whether this information could be centralised and integrated with other information by automatically ingesting it into the central register. Governments can also explore whether other intermediaries, such as CSDs, may hold relevant information that could be integrated to form comprehensive views of ownership structures.

Collating the information centrally and collecting reliable identifiers for corporate vehicles and individuals will allow combining the information with other centrally held BO information.<sup>97</sup> This will help with visualising full ownership chains, particularly where information on intermediaries is collected, and help with BO disclosure for non-listed corporate vehicles where PLCs appear in their ownership chains. Centralising the information will enable all users who have a role in advancing a jurisdiction's policy aims to access relevant information so it can be effectively used, as well as enabling necessary safeguards around access to be put in place.

## **Deciding which listed companies should be subject to disclosure**

On the basis of determining which information is required, and with the aim of centrally collecting this, governments can determine which PLCs should disclose what information to which party, and can exempt certain PLCs from full disclosure to certain parties on the basis that they are already doing so.<sup>98</sup> The overarching principle should be that relevant information – at the minimum BI information – is collected and centrally accessible. Exemptions should only be granted on the basis that this information exists somewhere and is readily available. Where disclosure and transparency standards are lower,



for example, because of a less comprehensive definition, less timely disclosure, or lack of access or centralisation and poorly structured information, PLCs can be required to disclose relevant information to a central register. Based on the nature of and risk posed by certain exchanges, and the ownership and control structures of certain PLCs, requiring full BO disclosures may be more proportionate to meeting policy aims, as well as being feasible and necessary.

A key factor to consider is that not all PLCs list all their shares, or they may list on multiple exchanges with varying disclosure and transparency requirements, which is a potentially significant gap in current reporting regimes. Implementers should consider what disclosure requirements apply to the unlisted shares to determine whether a PLC which lists some of their shares can be exempt, or whether a minimum threshold of shares listed should apply in order to be exempt. For example, PLCs could be required to disclose the BO of their unlisted shares to a central BO register, or be exempt on the basis that the exchange requires disclosure about the unlisted shares.

Exemptions should only be given based on the jurisdiction of the exchanges, if the same conditions apply to all exchanges in that jurisdiction. The list of stock exchanges, either approved or excluded, should be publicly available and regularly reviewed, at least on an annual basis. Information about or assessments of the adequacy of transparency requirements among stock exchanges could be made public. The EU appears to be on track to go further and set exemptions not only based on the transparency and disclosure requirements of stock exchanges and regulators, but also on the ownership and control structures of the PLCs themselves.<sup>99</sup> How this will be implemented and play out in practice will undoubtedly inform the thinking on the BO disclosure of PLCs, and highlights the need for better information on corporate structures, through BO disclosures, information held by intermediaries, or otherwise. Regardless, the dematerialisation of shares will allow for better monitoring, oversight, and enforcement of disclosure requirements and exemptions.

There is a role for international standard setters and multilaterals to play in assessing the adequacy of transparency and reporting requirements to stock exchanges in order to assist governments in assuring their BOT regimes are providing sufficient coverage of PLCs. These assessments could be a valuable asset for implementing governments and data users. Governments should also consider how

they legislate for exemptions. For example, each stock exchange that qualifies for exemption should be listed in secondary legislation or regulations.<sup>100</sup>

## Collecting information from exempt listed companies

PLCs should not be wholly excluded from disclosure requirements to a central register, as they should be at the minimum required to disclose sufficient information in order to understand why they have been exempt, and for relevant data users to readily access relevant information where it is held, particularly if this is outside the jurisdiction in question.<sup>101</sup> This means that PLCs should be identifiable based on the published BO data, and sufficient data should be collected to connect them to relevant stock exchange listings.<sup>102</sup> For auditability, it should be possible to connect a PLC to existing relevant filings of information about its ownership, for instance, on a stock exchange, using information available from the BO declaration or a related entry in a register (see [Box 9](#)).

Like non-listed companies, PLCs should be subject to confirming their information on a regular (at least annual) basis, including on what basis they qualify for an exemption, if any. Certain changes in their listing of shares should trigger a requirement to update information. In order to ensure the adequacy and accuracy of the information reported by exempt PLCs, it is also important to ensure that the agencies responsible have the capacity to check and, if necessary, reject claims for exemptions based on their listings in the reported stock exchanges.



### Box 9. Core information to be collected about an exempt listed company<sup>103</sup>

Each stock exchange on which a company is listed should be identified using three fields from the ISO 10383 Codes for the exchanges and market identification (MIC) standard.<sup>104</sup>

- **stock exchange name:** the name of the stock exchange, as specified in the NAME-INSTITUTION DESCRIPTION field in the MIC standard;
- **stock exchange jurisdiction:** the ISO 3166 country code for the jurisdiction in which the stock exchange is based;
- **MIC:** the market identification code, as specified in the MIC field in the latest MIC list.<sup>105</sup>

In addition, the following should also be collected:

- the percentage and class of *non-listed* stock;
- on what basis the PLC qualifies for the exemption;
- URLs where all regulatory notifications of major holdings can be found.

For each stock exchange, each stock type listed should then be specified with:

- the percentage of that stock type listed on the stock exchange(s);
- the stock ticker;
- the International Securities Identification Number (ISIN).

To identify the listed company, the following information should be collected:

- the same basic company information (name, registered office, etc.) required of non-listed declaring entities;
- any identifiers that can be used to locate both the legal entity and any related stock exchange filings. It should be possible to collect multiple identifiers for a single company. These may include:
  - the company number for the legal entity that is listed on the stock exchange, using the org-id.guide format;<sup>106</sup>
  - a Legal Entity Identifier (LEI), if available.<sup>107</sup>



## Conclusion

Listed companies play a significant role in the global economy. As information about these companies is fundamental to their functioning and that of the business environment, they have historically been subject to disclosure and transparency requirements, focused mainly on informing and protecting investors. With the advent of BOT, many implementing agencies have faced challenges with how to deal with these companies. The application of BO definitions for non-listed companies to PLCs is challenging due to the distributed and dynamic nature of their ownership, and the presence of many intermediaries in securities markets. However, the exemption of PLCs from BO disclosure on the basis that they are already subject to transparency requirements may leave considerable blindspots in visibility over corporate ownership and control, due to the fact that these requirements can differ significantly, and may displace risk to PLCs.

The analysis of various international and national frameworks in this policy briefing suggests that relying on the concept of BI, whilst far less comprehensive than the concept of BO, may lead to more useful and usable information to be collected about the ownership and control of PLCs. If BI information is sufficient to meet policy aims, the main challenge becomes addressing the current deficiencies in the information ecosystem. Standardising both the definition of BI and the information collected as a minimum for all PLCs, and integrating BI into the information on the ownership and control of corporate vehicles held by central BO registers, may constitute significant steps towards developing comprehensive view of corporate vehicles. BO disclosures may continue to be required and justifiable for some PLCs. More nuanced criteria on determining which PLCs need to disclose what, for instance based on their ownership and control structures, may lead to a more proportional and tailored approach. This will ensure information can be used to both protect the shareholders of PLCs and prevent their misuse. Policymakers should involve data users in making these decisions to ensure disclosure leads to effective data use.



## Endnotes

- 1 Listed companies are also known as publicly traded companies or publicly held companies. In some jurisdictions, shares in companies can be publicly traded without being listed. In the UK and other jurisdictions, PLC can refer to a public limited company, which does not imply they are listed. Other types of corporate vehicles can also be listed (for example, a unit trust). Although these are not within the scope of this briefing, the recommendations may still be relevant.
- 2 Caroline Banton, "Publicly Traded Company: Definition, How It Works, and Examples", Investopedia, 26 September 2023, <https://www.investopedia.com/terms/p/publiccompany.asp>.
- 3 A. De La Cruz, A. Medina, and Y. Tang, *Owners of the World's Listed Companies* (Paris: OECD, 2019), OECD Capital Market Series, 5, <https://www.oecd.org/corporate/owners-of-the-worlds-listed-companies.htm>. (Whilst emphasising the importance of understanding the ownership of PLCs to fully comprehend their economic and strategic decision-making, the OECD report identifies that four main categories of investors dominate the ownership of PLCs, including: institutional investors (41%); public sector owners (14%); and private corporations and strategic individual investors, with a combined ownership of 18%.)
- 4 See: "Total market capitalizations of domestic companies listed on stock exchanges worldwide from 2013 to July 2023", Statista, August 2023, <https://www.statista.com/statistics/274490/global-value-of-share-holdings-since-2000/>; Omri Wallach, "Top 50 Companies Proportion of World GDP", Visual Capitalist, 19 July 2021, <https://www.visualcapitalist.com/top-50-companies-proportion-of-world-gdp/>.
- 5 Open Ownership, *Open Ownership Principles – Coverage* (s.l.: Open Ownership, 2023), <https://www.openownership.org/en/principles/coverage/>.
- 6 Alanna Markle, *Coverage of corporate vehicles in beneficial ownership disclosure regimes* (s.l.: Open Ownership, 2023), 8–9, <https://www.openownership.org/en/publications/coverage-of-corporate-vehicles-in-beneficial-ownership-disclosure-regimes/>.
- 7 See: Andres Knobel, *Beneficial ownership in the investment industry: A strategy to roll back anonymous capital* (s.l.: Tax Justice Network, 2019), 11, <https://taxjustice.net/reports/beneficial-ownership-in-the-investment-industry-a-strategy-to-roll-back-anonymous-capital/>.
- 8 See: Ramandeep Kaur Chhina and Alanna Markle, *Defining and capturing information on the beneficial ownership of investment funds* (s.l.: Open Ownership, 2024), <https://www.openownership.org/en/publications/defining-and-capturing-information-on-the-beneficial-ownership-of-investment-funds>.
- 9 Companies listed on the main market of the LSE have key continuing obligations under the listing rules, the UK Corporate Governance Code, the FCA's Disclosure Guidance, the Transparency Rules and Corporate Governance Rule, and the LSE's Admission and Disclosure standards. The AIM is a specialised unit of the LSE, catering to smaller and growing companies from a wide range of countries and sectors. It was founded in 1995 and aims to offer a balanced approach to regulation, which is better suited to smaller companies, whilst offering appropriate investor protection.
- 10 Please note that there is a difference between certificated shares and bearer shares. In the case of certificated shares, the ownership is directly tied to the person or entity named on the certificate. To transfer the ownership of certificated shares, the physical share certificate must be endorsed and physically delivered to the new owner or their representative. In the case of bearer shares, the ownership is not registered in any specific person or entity's name but whoever holds the physical share certificate is deemed the rightful owner of the shares. To transfer the ownership of bearer shares, it simply requires transferring possession of the physical share certificate.
- 11 See, for instance: Lucy Fergusson, "UK digitisation taskforce looks to abolish share certificates", Linklaters, 18 July 2023, <https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2023/july/18/uk-digitisation-taskforce-looks-to-abolish-share-certificates/>; "CSDR: Commission proposes targeted changes; Countdown to application of Article 3", Arthur Cox, 6 May 2022, <https://www.arthurcox.com/knowledge/csdr-commission-proposes-targeted-changes-countdown-to-application-of-article-3/>.
- 12 There are roughly 80 major stock exchanges in the world with a combined value of USD 110.2 trillion. See: Dorothy Neufeld, "Mapped: The Largest Stock Exchanges in the World", Visual Capitalist, 18 October 2023, <https://www.visualcapitalist.com/largest-stock-exchanges-in-the-world>. Depending on its laws, a country may have no stock exchange approved or there may be more than one stock exchange approved. For instance, in the US there are 13 stock market exchanges, and the major ones are NYSE and Nasdaq.
- 13 There are also international CSDs that settle trades in international securities, such as eurobonds, although many also settle trades in various domestic securities, usually through direct or indirect (through local agents) links to domestic CSDs. Examples of international CSDs include Clearstream (previously Cedel), Euroclear, and SIX SIS.
- 14 European Union Law, "Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC", Official Journal of the European Union, EUR-Lex, latest version consolidated 9 January 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0109>. Amended in 2013 by: European Union Law, "Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC", Official Journal of the European Union, EUR-Lex, 26 November 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0050>.
- 15 On 25 November 2021, the Commission adopted a proposal for a European Single Access Point as set out in action 1 of the 2020 capital markets union action plan. See: Directorate-General for Financial Stability, Financial Services and Capital Markets Union, "Capital markets union: Commission adopts package to ensure better data access and revamped investment rules", European Commission, 25 November 2021, [https://finance.ec.europa.eu/publications/capital-markets-union-commission-adopts-package-ensure-better-data-access-and-revamped-investment\\_en](https://finance.ec.europa.eu/publications/capital-markets-union-commission-adopts-package-ensure-better-data-access-and-revamped-investment_en).
- 16 For US laws and regulations governing the securities market, see: Office of the Legislative Counsel, U.S. House of Representatives, "The Laws That Govern the Securities Industry", SEC, 1 October 2013, <https://www.sec.gov/about/about-securities-laws>.
- 17 See: SEC, Final Rule, "Modernization of Beneficial Ownership Reporting", 17 CFR Parts 232 and 240 [Release Nos. 33-11253; 34-98704; File No. S7-06-22] RIN 3235-AM93, 2023, <https://www.sec.gov/files/rules/final/2023/33-11253.pdf>.
- 18 "Glossary – Beneficial Owner", Nasdaq, n.d., <https://www.nasdaq.com/glossary/b/beneficial-owner>.
- 19 SEC, "Determination of beneficial owner", 17 CFR 240.13d-3, as amended 7 November 2023, <https://www.ecfr.gov/current/title-17/chapter-II/part-240/subpart-A/subject-group-ECFR7ce825ff9ac140/section-240.13d-3>.
- 20 The term "person" is defined in the Securities Exchange Act as "a natural person, company, government, or political subdivision, agency, or instrumentality of a government". See: Federal Government of the United States, "Securities Exchange Act of 1934", Public Law 73–291, as amended through Public Law 117–328, enacted 29 December 2022, 11, <https://www.govinfo.gov/content/pkg/COMPS-1885/pdf/COMPS-1885.pdf>.
- 21 31 U.S.C. 5336(a)(3), added by CTA Section 6403(a).
- 22 Andrew James Lom and Rachael Hashmall, "The Corporate Transparency Act is here — are you ready?", Norton Rose Fulbright, January 2024, <https://www.nortonrosefulbright.com/en/knowledge/publications/55b72cd0/the-corporate-transparency-act-is-here>.
- 23 Resolution CNV 687/2016. See: Andres Knobel, *Regulation of Beneficial Ownership in Latin America and the Caribbean* (s.l.: Inter-American Development Bank, 2017), 37; "Argentine





- Securities Commission Updates Regulation on Ultimate Beneficial Ownership", Marval, 4 July 2023, <https://www.marval.com/publicacion/la-cnvt-adequa-su-normativa-sobre-beneficiario-final-15531&lang=en>.
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- 25 Michele Riccardi and Ernesto Savona, *The identification of beneficial owners in the fight against money laundering*, (Trento: Transcrime – Università degli Studi di Trento, 2013), 66, <https://www.transcrime.it/wp-content/uploads/2013/11/BOWNET3.pdf>; "Disclosure Requirements – Italy", LuxCSD, 5 March 2024, <https://www.luxcsd.com/luxcsd-en/products-and-services/market-coverage/europe-t2s/italy/disclosure-requirements-italy-1279872>.
- 26 FCA, "Section 5.1: Notification of the acquisition or disposal of major shareholdings", *Disclosure Guidance and Transparency Rules sourcebook*, February 2024, <https://www.handbook.fca.org.uk/handbook/DTR.pdf>.
- 27 "person – FCA Handbook", FCA, n.d., <https://www.handbook.fca.org.uk/handbook/glossary/G869.html>.
- 28 See: Cornell Law School, Legal Information Institute, "17 CFR § 240.13d-101 - Schedule 13D — Information to be included in statements filed pursuant to § 240.13d-1(a) and amendments thereto filed pursuant to § 240.13d-2(a)", n.d., <https://www.law.cornell.edu/cfr/text/17/240.13d-101>.
- 29 See: "Officers, Directors and 10% Shareholders", SEC, 6 April 2023, <https://www.sec.gov/education/smallbusiness/goingpublic/officersanddirectors>.
- 30 Regarding **corruption**, a number of cases have emerged in the past few years (such as Siemens AG (Germany), Enron Corporation (USA), Petrobras (Brazil), Odebrecht (Brazil), and Eurasian Natural Resources Corporation (ENRC) (UK)) where PLCs have been either alleged or found guilty of their involvement in corruption through various means, including bribery and kickbacks. Regarding **money laundering**, see, for example: Goldenberg Scandal (Israel) and 1MDB Scandal (Malaysia). On the Goldenberg Scandal, see: Office of Public Affairs, U.S. Department of Justice, "Israel's Largest Bank, Bank Hapoalim, Admits to Conspiring with U.S. Taxpayers to Hide Assets and Income in Offshore Accounts", Press Release, 30 April 2020, <https://www.justice.gov/opa/pr/israel-s-largest-bank-bank-hapoalim-admits-conspiring-us-taxpayers-hide-assets-and-income>. On the 1MDB Scandal, see: Bradley Hope, Tom Wright, and Patrick Barta, "How a Malaysian Scandal Spread Across the World", *Wall Street Journal*, 21 December 2016, <https://www.wsj.com/graphics/1mdb-how-a-malaysian-scandal-spread-across-the-world/>; "The 1MDB Money Laundering Scandal and Corrupt Politicians", Financial Crime Academy, 19 February 2024, <https://financialcrimeacademy.org/the-1mdb-money-laundering-scandal-and-corrupt-politicians/>. Finally, PLCs can be misused for **tax evasion** through various tactics that exploit gaps in tax regulations, transfer pricing manipulation, and offshore structures. To avoid taxes, subsidiaries may be created solely for the purpose of moving profits and reducing tax liabilities. See Apple Inc. (Ireland) case: European Commission, "State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion", Press Release, 30 August 2016, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_16\\_2923](https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2923). See also: Michael Forsythe, "Paradise Papers Shine Light on Where the Elite Keep Their Money", *The New York Times*, 5 November 2017, <https://www.nytimes.com/2017/11/05/world/paradise-papers.html>. The article states that "the use of complex offshore structures has helped keep much of Apple's more than \$128 billion in profit abroad free from taxation". For general discussion on PLCs and tax evasion, see: Richard Phillips, Hannah Petersen, and Ronen Palan, "Group Subsidiaries, Tax Minimization and Offshore Financial Centres: Mapping Organizational Structures to Establish the 'In-Between' Advantage", *Journal of International Business Policy* 4, (2021): 286–307, <https://doi.org/10.1057/s42214-020-00069-3>.
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- 37 OECD, *Beneficial Ownership Disclosure in Asian Publicly Listed Companies*, 11.
- 38 FATF, *FATF Recommendations*, 71.
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- 40 FATF, *Beneficial Ownership of Legal Persons* (Paris: FATF, 2023), 91, <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-Beneficial-Ownership-Legal-Persons.pdf.coredownload.pdf>.
- 41 European Union Law, "Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC", Official Journal of the European Union, EUR-Lex, 20 May 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>.
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- 48 See: FATF "Interpretive Note to Recommendation 10", *FATF Recommendations*, 68; and Article 3(6) of the EU AMLD4.



- 49** See: FATF, "Interpretive Note to Recommendation 10", *FATF Recommendations*, 68, which states: "Where the customer or the owner of the controlling interest is a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies". A similar provision is contained under Article 3(6) of the EU AMLD4 which provides that: "beneficial owner" means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least: (a) in the case of corporate entities: (i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information".
- 50** Markle, *Coverage of corporate vehicles in beneficial ownership disclosure regimes*, 8-9.
- 51** See: "Ownership, control, or influence? UBOs and further complications", *The Dark Money Files*, Podcast Episode, 19:27 mins, September 2023, <https://open.spotify.com/episode/78N5J4RPPrOCqZEKzSZo7pz?si=e340e80ffe24795>.
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- 64** An "affected company" is a regulated company as set out in section 117(1)(i) of the Companies Act and a private company that is controlled by a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a). Affected companies include: a public company; a state-owned company; a private company – in terms of the transfer of securities when exceeding the percentage prescribed by a Minister (10%) within a 24-month period; a private company that is controlled by an affected company (regulated company) or is a subsidiary of an affected company. Parliament of the Republic of South Africa, *Companies Act 2008*, No. 71 of 2008, adopted 9 April 2009, Section 1, [https://www.gov.za/sites/default/files/gcis\\_document/201409/321214210.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/321214210.pdf).
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- 66** The CIPC Guidance Note 2 of 2023 on BO filing requirements defines "beneficial owner" in respect of a company as: "an individual who, directly or indirectly, ultimately owns that company or exercises control of that company, including through – (a) the holding of beneficial interests in the securities of that company; (b) the exercise of, or control of the exercise of the voting rights associated with securities of that company; (c) the exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company; (d) the holding of beneficial interests in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company; (e) the ability to exercise control, including through a chain of ownership or control, of – (i) a juristic person other than a holding company of that company; (ii) a body of persons corporate or unincorporate; (iii) a person acting on behalf of a partnership; (iv) a person acting in pursuance of the provisions of a trust agreement; or (f) the ability to otherwise materially influence the management of that company".
- 67** Section 1 of the Companies Act 2008 states that "when used in relation to a company's securities[,] "beneficial interest" means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to – (a) receive or participate in any distribution in respect of the company's securities; (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities, but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002)." *Companies Act 2008*, Section 1.
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