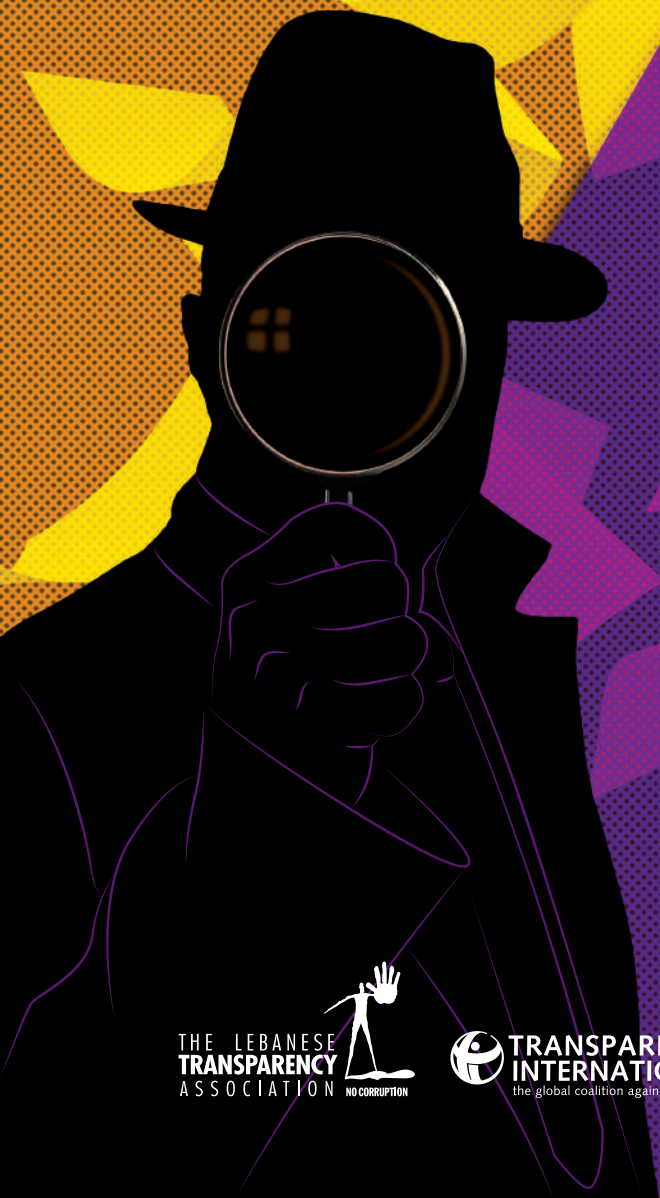


A Guide on Beneficial Ownership Information Verification Process



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This Paper is supported by the Center for International Private Enterprise (CIPE).

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Introduction

What is a Beneficial Owner?

There is no single international definition of a beneficial owner however international bodies such as the Financial Action Task Force (FATF) have provided one and in recent years, international bodies have converged somewhat to provide definitions that incorporate the three key components of an effective definition. These are:

1. The beneficial owner must be a natural person.
2. Beneficial ownership should cover both ownership and control interests.
3. Beneficial ownership should encompass both indirect and direct interests¹.

In general terms, a beneficial owner is defined as:

“A natural person who has the right to some share or enjoyment of a legal entity's income or assets or the right to direct or influence the entity's activities (control). Ownership and control can be exerted either directly or indirectly”².

In recent years, there is a growing trend towards collection of beneficial ownership information to meet multiple policy aims, including tackling money laundering, improving integrity of public procurement or for wider national security reasons. In Lebanon, there are multiple definitions of a beneficial owner across the Lebanese legal framework, nonetheless, they all provide for the same conditions that adhere to the FATF definition³.

Understanding who is a beneficial owner of a company, rather than only its legal ownership e.g., someone who might be appointed a director can help reveal the identities of the people who are ultimately owning or controlling the company and therefore indicate the reality of who you might be in a business relationship with. To do this, competent authorities such as the tax authorities, public procurement authorities, financial intelligence units, etc, collect beneficial ownership information, however, this information is not always true and might be used to hide the real identities of the actual owner/controller of a business activity which is why verification of the collected information is important to provide timely access to accurate information to competent authorities.

¹ Low, P and Kiepe, T. Beneficial Ownership in Law: Definitions and thresholds. Open Ownership. 2020. p. 6

² Ibid, p. 3

³ See “Almoghabat, M, Assessment of the Lebanese Beneficial Ownership Regime; in line with international standards. Lebanese Transparency Association. February 2022” for a full assessment of the Lebanese Beneficial Ownership Legal Framework. Available at: https://transparency-lebanon.org/Uploads/Workshop/18/download/658921c8-37d8-4043-8132-9be4b461e804_18.pdf

What is Verification?

Verification is the combination of checks and processes that a particular disclosure regime opts for to ensure that the beneficial ownership information is of high quality, meaning it is accurate and complete at a given point in time.

For most companies with relatively simple ownership structures, determining and verifying their beneficial owner(s) (BO) will be a relatively straightforward exercise. Determining BO is more challenging for the minority of companies with complex and often transnational ownership structures involving many different legal entities. In such cases, it may not be possible to reach 100% certainty that the disclosed BO information represents an accurate and complete picture.

A BO disclosure is a statement that is made about BO at a certain point in time, rather than absolute truth. This is the case for many other types of information that are routinely filed by companies, such as statements of financial activity. Therefore, a sound verification system is required so that users can rely on the data. Verification systems increase reliability by:

- Providing clarity about the provenance of the data and what checks have been done.
- Reducing the risks associated with the data being false.
- Triggering the appropriate alarms when BO data is false or suspicious⁴.

Given that verification is a combination of checks and processes to ensure data is of high quality it is also important to consider the role of good design in ensuring that information is of the best quality as it enters the system. This is covered in more detail below. A well-designed system will, as a minimum:

- Provide high quality guidance for businesses i.e. explain exactly what they are being asked to do;
- Help a business disclosing to input good information e.g., where information is being collected via a digital system, a minimum number of fields are free text e.g. dates (date of birth for example) are chosen from a list or calendar rather than allowing a company to enter it manually, and to the fullest extent possible, closed options are given for fields.

Focussing on getting these aspects of system design correct can do a great deal to support the best quality data being inputted into the system.

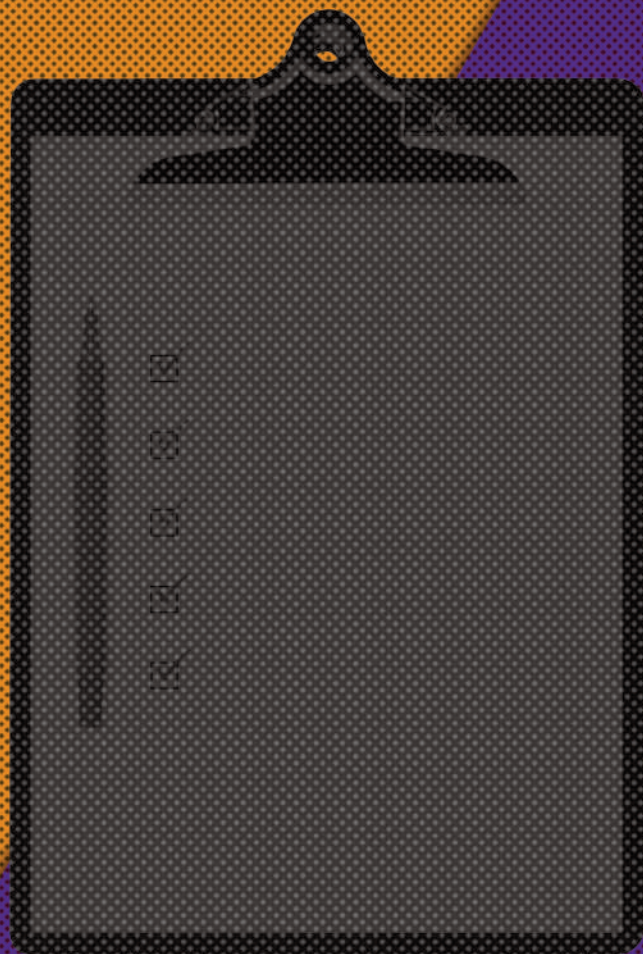
Verification Requirements in FATF Recommendation 24

The Financial Action Task Force (FATF) sets international standards to combat global money laundering and terrorist financing. In March 2022, FATF revised Recommendation 24 which relates to BO.

The revised Recommendation 24 now requires that beneficial ownership information be verified, although, at the time of writing, guidance has yet to be issued by FATF to provide further detail on what constitutes adequate verification.

It is important to note that the revised Recommendation 24 also specifies that access is provided to relevant public authorities during public procurement.

⁴ Kiepe, T. Verification of Beneficial Ownership Data. Open Ownership. 2020. p. 2

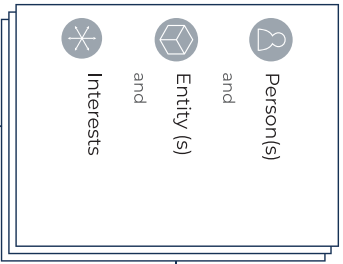


Verification Overview

Step 1

Data Submission

A beneficial ownership disclosure is submitted as information about a person, an entity and the control relationship between the (page 4).



Step 2

Verification at Point of Submission

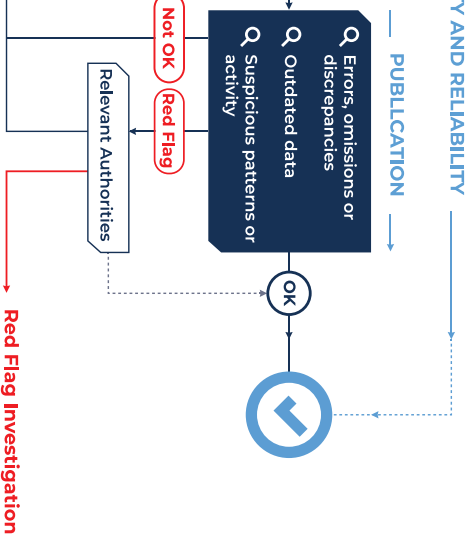
A number of verifications checks (conformance, cross-checks and supporting evidence checks) are conducted at the point of submission (page 4). Data that fails these checks requires resubmission. Data that passes these checks undergoes a number of checks following submission (page 7).



Step 3

Verification after Submission

Errors, omissions and discrepancies are reported to the registrar and require correction or resubmission (page 7); outdated data requires resubmission, or a confirmation that it is still correct (page 8); suspicious activity or patterns in the data are passed onto an FIU, and triaged as being a false positive, requiring resubmission, or escalated for further investigation (page 8).



Verification at the Point of Submission

Verification at the point of submission should:

- Ensure the information conforms to expected patterns and is clear and free from ambiguity (e.g. a date e.g. birth date, follows the expected pattern)
- Ensure the information reflects values that actually exist and are real by cross-checking against authoritative systems and other government registers where possible (e.g. a location or place actually exists)
- Check supporting evidence by checking submitted information against original documents (either hard copy or via digital identification, e.g. proof of address; passports for owners or submitters' identities; share certificates for ownership).

BO disclosure comprises three types of information:

1. Information about the person(s) involved in an ownership or control relationship
2. Information about the nature of their ownership or control
3. Information about the company or other legal entity they own or control

Different verification checks can be conducted on each of these information statements. It is critical for disclosure regimes to be able to disambiguate between different individuals and entities, points 1 and 3, both in the type of data they collect and the verification mechanisms they employ. Point 2, information about the nature of their ownership or control, is the hardest to verify, and where most deliberate falsehoods occur.

Verifying each of these types of information is substantially easier to do when the data is structured (i.e. consistently organised into separate fields, and ideally machine readable) rather than unstructured. Information about the submitter is crucial metadata to the three information statements.

Approaches to verifying these three types of information can be divided into three main categories outlined below. It is important to bear in mind that one approach does not preclude the other, and that multiple approaches complement each other and can mutually reinforce reliability and data quality.

Conformance Checks

Conformance checks are an effective tool to remove accidental errors. The checks are relatively easy and cheap to implement in a digital system. They are, however, less effective at tackling deliberate falsehoods.

Example: Belgium

In the Belgian UBO-Register (Ultimate BO), the system prevents the registration of more than 100% of the shares/voting rights for an individual as this would not technically be possible, thereby ensuring data conforms to expected patterns⁵.

Recommendation:

The Public Procurement Authority in Lebanon (PPA) and other public entities should create a digital disclosure form which prevents submission of data that does not match a pre-defined format

- E.g., standard date format and a system that does not allow for disclosures to the register of more than a 100% shareholding. In short, all fields for completion in a form should be either closed questions, or ask for a standard form of data such that an invalid input cannot be submitted. If an option for non-digital disclosure is also allowed, very explicit guidance should be given against each field to explain the precise way it should be filled in.

⁵ FATF. "Best Practices on Beneficial Ownership for Legal Persons". October 2019. Available at: <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf> [Accessed 20 April 2020].



Cross-Checking Data

Cross-checking data can, to a large extent, be automated, and is more effective than conformance, both in general, as well as specifically tackling deliberate falsehoods. Effective cross-checking requires a basic technical infrastructure and capacity, including in other parts of government, that provide data for cross-checking. These checks are dependent on authoritative registers being in place and accurate (has the data in those registers been verified?). The checks may only cover domestic citizens or residents, depending on what information is available.

Example: Denmark

The Danish Central Business Register (CVR) automatically cross-checks submitted information with various governmental registers, including the civil register and the Danish address register. The system prevents, for example, the registration of a deceased person⁶.

Recommendation:

- The PPA and other public entities should assess what other data sources they are able to access that may provide useful cross-checking of data they are collecting through the procurement process. This may include checking for valid company numbers and cross-checking of identity documents where a beneficial owner is a Lebanese citizen or resident.

Checking Supporting Evidence

Certification checks can be used for all three types of information. They involve third party natural persons e.g. notaries that are impartial (often under oath) that stake their professional reputation on veracity claims and bear liability for false filings. Certification checks do require strict requirements and guidelines to avoid having diverging practices in the submission of information.

Example: Japan

In Japan, notaries are required to check the identity of the beneficial owner by examining the submitted articles of association and other documents. They also check identities against their own database on organised crime groups and international terrorists⁷.

Recommendation:

- The PPA and other public entities should consider requiring supporting evidence for ownership and control statements. This could take the form of requiring a copy of share certificates to demonstrate a direct ownership stake in a company or a written statement from the company that the beneficial owners exercise ownership or control through some other means. Retaining these documents will provide a long-term evidence chain should any disclosures later turn out to be incorrect or are flagged as part of sample for checking. Ideally, these documents would be notarised or authenticated by a notary or other designated profession (e.g. a lawyer).

⁶ ibid.

⁷ ibid.

Verification After Submission

There are several general approaches to verification after submission, including checks after the publication of BO information. As with verification checks at the point of submission, multiple approaches can be deployed to complement each other and can mutually reinforce reliability and accuracy.

One of the most effective ways to verify data once submitted is to make it publicly available and allow anyone to perform checks. Publishing this data in a structured and machine-readable format will enable the most effective method for checking against a range of other data sources.

If this approach is taken, it will be important for the authority holding the data to provide a mechanism and policy for third parties to report inaccuracies in the data.

Example: The United Kingdom

In November 2016, Global Witness and a consortium of NGOs analysed 1.3 million companies in the UK's Persons of Significant Control BO register. They were able to inform Companies House – the body overseeing the register – of over 4,000 companies with ineligible information⁸.

Sample Testing/Checking

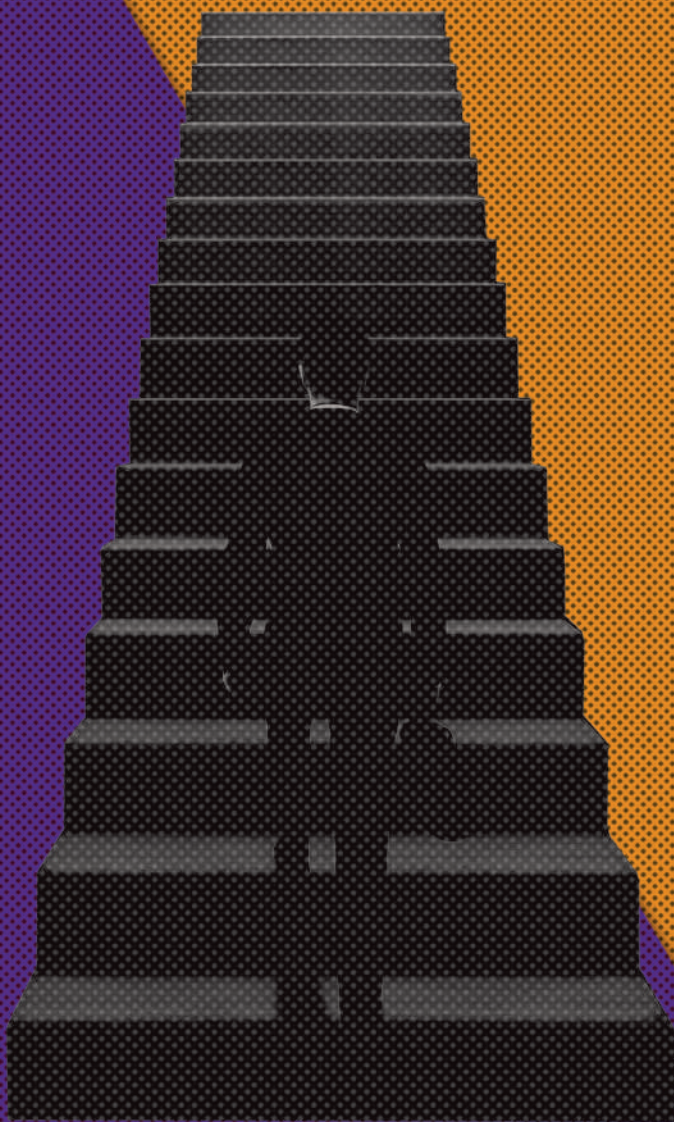
Agencies responsible for BO registers can conduct in-depth investigations of samples of the data or require external parties to do so. These tests provide a deterrent to companies against submitting wrong information. However, sample testing is not likely to be a very effective substitute for a robust verification mechanism during submission and can be quite resource intensive. Some of these challenges can be mitigated by using a risk-based approach to sample testing.

The World Bank has developed a useful methodology for risk assessment for Anti Money Laundering and Terrorist Financing⁹, which can broadly be used to design a sampling approach. In short, this process identifies a broad range of sectors in the economy and advises drawing on specific sector expertise to assign a risk rating to it. Whether the goal is to detect money laundering or terrorist financing, or more broadly to identify where BO disclosure may not be accurate, drawing on sector-specific expertise to develop this methodology is a good place to start. Alternatively, a target for sampling per year could be set (depending on capacity) and follow up checks with businesses carried out where they are requested to submit further supporting evidence that their original disclosures were accurate. If undertaken, it is important to publicise this well with all businesses disclosing as this can have a deterrent effect.

⁸ Global Witness. "The Companies We Keep". 2016. Available at: https://www.globalwitness.org/documents/19400/Briefing_The_Companies_We_Keep.pdf [Accessed 20 April 2020].

⁹ Risk Assessment Support for Money Laundering/Terrorist Financing. World bank Brief. February 29, 2016. Available at: <https://www.worldbank.org/en/topic/financialsector/brief/antimoney-laundering-and-combating-the-financing-of-terrorism-risk-assessment-support>





Challenges in Verification

Key Challenges: Verifying Nationals of Another Country

Verifying, or achieving a relatively high degree of assurance of the identity of a beneficial owner who is either a Lebanese citizen or resident, with the right access to documents and an ability to cross-check against other ID sources, or more effectively, requiring identity documents to be notarised, is a relatively straightforward undertaking. As a minimum, for non-Lebanese citizens or residents, a copy of a passport data page should be required as part of a disclosure and ideally notarised in their jurisdiction of residence.

The issue of robustly verifying beneficial ownership data relating to foreign parties is a particularly challenging one for which no clear international solution has yet been found. Indeed, some countries have found this concept sufficiently difficult to deal with, that they proposed removing all reporting obligations for foreign entities altogether. However, such an approach is not tenable, especially considering revisions to the FATF Recommendation 24, approved in March 2022, that requires countries to collect BO information on foreign entities which have a “sufficient link” to the jurisdiction, with the ownership of real estate mentioned as an example.

Key Challenge: Verifying an Ownership and Control Statement

A far more significant challenge is verifying an ownership and control statement made as part of a BO disclosure i.e. is what this person(s) claims to own or control of this company true? In cases of share ownership as the means of ownership and control, this can be done to a degree by requesting copies of share certificates. Where control is exercised through other means, there is often no single official document outlining what or how that control is exercised.

Full and complete solutions to this problem, if they ever do emerge, will take a long time to achieve. Beneficial ownership reform is, for most countries, still a relatively new reform and so it will naturally take time for new and innovative solutions to emerge.

The best way to approach this problem is to use a range of approaches that have been outlined above which together contribute to a greater assurance that the information provided is correct.

The UK’s new beneficial ownership register of overseas entities which own or are purchasing property is an example of this. This system mixes heavy sanctions for false filing with the requirement that UK registered agents e.g. law firms or property agents complete verification of the identity of beneficial owners and the conditions that are met that qualify that person as a beneficial owner. Helpfully, the UK’s technical guidance to accompany this reform lays out in good detail the types of documentation that would be sufficient for verifying each field of the disclosure regime¹⁰.

¹⁰ Guidance for the Registration of Overseas Entities on the UK Register of Overseas Entities – Technical guidance for registration and verification. Department for Business, Energy & Industrial Strategy. August 2022. Pg. 45 -53. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1095742/guidance-registration-verification-of-overseas-entities-on-the-uk-register.pdf

Conclusion and Recommendations

Verification of beneficial ownership information includes both verification of the identify of a named beneficial owner as well as assurance of an ownership and control statement made as part of the disclosure.

The verification of identity is far easier to do than establishing whether a person who is named as a beneficial owner is in fact a beneficial owner and if so, by what means and to what extent.

Agencies collecting beneficial ownership data in Lebanon should approach the challenge by considering what level of assurance they need and for what purpose. In a public procurement context, the threshold for assurance may well be lower than in an obliged entity, given the PPA can build into its contracts with an awarded supplier, clauses which allow them to exit the contract should information provided on beneficial ownership later turn out not to be correct. In other words, in this context the purpose of verifying the data is less to comply with international standards, but to ensure the integrity of a public contract throughout the life cycle of delivery. The PPA or contracting authority in this context can therefore maintain some leverage throughout the delivery of the contract as the chosen supplier will wish to continue delivering the contract and receiving funds to do so.

Providing public data is the best way of ensuring that data can be verified. Providing this information to investigative journalists, civil society and the wider international community allows it to be compared to and used in conjunction with any number of other data points to assess its accuracy. In the public procurement context, we strongly recommend that data the PPA may collect on beneficial ownership, potentially of bidders but at a minimum those bidders awarded a contract be placed in the public domain to allow for this form of verification to take place.

Verification of beneficial ownership data is not a single process or approach and what has been outlined in the booklet provides a non-exhaustive list of a range of options the PPA and other agencies can pursue. The recommendations in full are:

- The PPA and other authorities should create a digital disclosure form which prevents submission of data that does not match a pre-defined format e.g. date format, and does not allow for disclosures to register more than 100% of shareholding. In short, all fields for completion in a form which are either closed questions or asking for a standard form of data should be designed such that an incorrect input cannot be submitted. If an option for non-digital disclosure is also allowed, very explicit guidance should be given against each field to explain the precise way it should be filled in.
- The PPA and other public entities should assess what other data sources it is able to access that may provide useful cross-checking of data they are collecting through the procurement process. This may include checking for valid company numbers and cross-checking of identity documents where a beneficial owner is a Lebanese citizen or resident.
- The PPA and other public entities should consider requiring supporting evidence for ownership and control statements. This could take the form of requiring a copy of share certificates to demonstrate a direct ownership stake in a company or a written statement from the company that the beneficial owners exercise ownership or control through some other means. Retaining these documents will provide a long-term evidence chain should any disclosures later turn out to be incorrect or are flagged as part of sample for checking. Ideally, these documents would be notarised or authenticated by a notary or other designated profession (e.g. a lawyer).



