

Beneficial Ownership Transparency in Africa: Balancing Accountability, Privacy, and Implementation Realities

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Abstract

Beneficial ownership transparency (BOT) has emerged as a critical mechanism for addressing Illicit Financial Flows (IFFs), corruption, tax evasion, and money laundering in Africa. Although international frameworks such as the Financial Action Task Force (FATF) Recommendations 24 and 25 provide guidance, African countries encounter substantial legislative, institutional, and political obstacles in implementing BOT. This paper analyzes the legal provisions governing beneficial ownership disclosure in Botswana, South Africa, Ghana, and Kenya, identifying doctrinal divergences and gaps. It also examines privacy and data protection challenges and proposes a verification-driven BOT model tailored to African constitutional contexts, drawing on evidence from national legislation, policy reports, and FATF mutual evaluation reviews (MERs).

Keywords

Beneficial Ownership Transparency (BOT); Illicit Financial Flows (IFFs); Data Protection; Financial Action Task Force (FATF); Governance; Africa

1. Introduction

Illicit financial flows (IFFs) have persistently undermined economic growth and governance in Africa. United Nations estimates indicate that the continent loses between USD 50 and 88.6 billion annually due to IFFs, representing approximately 3.7% of Africa's GDP (UN, 2023). These losses are primarily due to opaque corporate ownership structures that obscure the identities of natural persons who ultimately control companies and trusts, thereby impeding anti-corruption, tax enforcement, and law enforcement initiatives.

In response, Botswana, Ghana, Kenya, South Africa, and other African countries have gradually embraced beneficial ownership transparency (BOT) as a cornerstone of anti-IFF strategies. BOT requires the disclosure of the "beneficial owners" behind companies, a concept formalized by the Financial Action Task Force (FATF) in the early 1990s amid growing concerns over money laundering (ML), terrorism financing (TF), and proliferation financing (PF). FATF Recommendations 24 and 25 now mandate multi-source data collection, verification processes, enforcement sanctions, and timely access to BO information by competent authorities.

Despite these developments, African countries continue to encounter significant challenges in drafting and implementing effective BOT regimes. These challenges include legislative inconsistencies, institutional fragmentation, limited capacity to verify data, and political resistance from vested interests. Additionally, BOT reforms raise legitimate privacy concerns,

particularly in environments with insufficient data protection frameworks and cybersecurity vulnerabilities.

This paper examines these intersecting issues across selected African countries and proposes a BOT framework that balances transparency and privacy while accounting for the continent's diverse governance contexts.

2. Methodology

This study utilizes a qualitative, evidence-based research methodology that integrates doctrinal legal analysis and comparative policy review, structured as follows:

(a) Document Analysis:

Critical examination of primary legislation on beneficial ownership in Botswana, South Africa, Ghana, and Kenya, supplemented by FATF Recommendations 24 and 25, ESAAMLG Mutual Evaluation Reports, and national BOT policies. Legislative texts were sourced from government gazettes, official parliamentary websites, and legal databases.

(b) Comparative Doctrinal Review

Systematic comparison of definitions, disclosure obligations, verification requirements, sanctions, and privacy protections across jurisdictions. Emphasis was placed on identifying alignment with FATF standards and best regional practices.

(c) Policy Literature Review

A review of secondary sources, including scholarly articles, policy briefs from Open Ownership, EITI, Tax Justice Network Africa, and UNODC reports, provided insight into the effectiveness of BOT regimes and the challenges specific to the African context.

(d) Synthesis of Evaluation Reports

ESAAMLG and FATF Mutual Evaluation Reviews (MERs) and Follow-Up Reports (FURs) were scrutinized to assess practical compliance gaps, enforcement challenges, and political economy dynamics influencing BOT reforms.

(e) Analytical Framework

The study applies a governance and data protection lens to assess how legal frameworks balance accountability and privacy. It further evaluates the political economy factors affecting legislative and implementation success.

This multi-layered approach enhances empirical rigor and ensures policy relevance in the formulation of recommendations.

3. Background and African Context: Legal Frameworks Governing BOT

This section provides detailed, jurisdiction-specific excerpts from primary legislation governing beneficial ownership transparency in the selected countries, emphasizing legal obligations, thresholds, and enforcement provisions.

3.1 South Africa

South Africa amended its Companies Act 71 of 2008 through the General Laws Amendment Act 22 of 2022 to incorporate BOT requirements consistent with FATF standards.

- **Definition of Beneficial Owner (Section 1 of Companies Act, 2008, as amended):**

“Beneficial owner’ means a natural person who, directly or indirectly, owns a share or exercises control over a company to the extent of 25% or more of the voting rights or ownership interest.”

- **Obligations of Companies (Section 65B):** *“A company must - (a) keep a register of beneficial owners; (b) update the register within 10 business days of becoming aware of any change; and (c) verify the identity of beneficial owners through prescribed measures.”*
- **Verification Requirement (Section 210A):** *“Verification of beneficial ownership information must be undertaken using reliable sources, including official identification documents, and companies must implement reasonable steps to ensure accuracy.”*
- **Penalties (Sections 210B, 210C):** Failure to maintain or provide accurate beneficial ownership information attracts fines up to ZAR 1 million or imprisonment for up to 10 years.
- **Privacy Compliance:** Under the Protection of Personal Information Act (POPIA) 4 of 2013, personal data contained in the beneficial ownership registry must be processed lawfully and protected against unauthorized access.

3.2 Ghana

Ghana has integrated BO disclosure into the Companies Act 2019 (Act 992) as part of broader transparency reforms.

- **Definition (Section 110A (1)):** *“Beneficial owner means a natural person who ultimately owns or controls at least 25% of the shares or voting rights of a company or who otherwise exercises control over the company.”*
- **Filing Obligations (Section 110A (3)):** *“Every company must maintain a register of beneficial owners and file such information with the Registrar of Companies within 30 days of incorporation or as soon as the beneficial ownership changes.”*
- **Verification and Access:** While the Act mandates filing, it is silent on specific verification methods and does not require integration with the Ghana Revenue Authority or FIU databases, limiting enforcement reach.
- **Penalties:** Section 513 provides for sanctions, including fines up to 1200 penalty units (~GHS 12,000) for failure to comply with filing requirements, though enforcement has been sporadic.
- **Data Protection:** Governed by the Data Protection Act 2012 (Act 843), which mandates data controllers to ensure confidentiality and restrict public disclosure of personal data.

3.3 Kenya

Kenya’s Companies Act (No. 17 of 2015), supplemented by the Business Registration Service Directive No. 001 of 2024, provides a robust legislative framework for BOT.

- **Definition (Section 94G):** *“‘Beneficial owner’ means any natural person who owns or controls directly or indirectly at least 25% of the shares or voting rights, or exercises significant influence or control over the company.”*
- **Register and Filing (Section 94H):** *“Every company shall maintain a register of beneficial owners and submit prescribed information to the Registrar within 30 days of incorporation or any change.”*
- **Verification Directive:** The BRS Directive No. 001 establishes procedures requiring documentary evidence to verify BO identities, including Identity Documents, passports, and, in some circumstances, biometric data.
- **Enforcement and Sanctions (Sections 422, 423):** Non-compliance is punishable with fines up to KES 5 million (~USD 45,000) or imprisonment for up to 5 years.

- **Data Protection:** The Data Protection Act No. 24 of 2019 obliges data controllers to process information lawfully, provide transparency, and apply technical safeguards to protect registrants.

3.4 Botswana

Botswana’s legal framework is more fragmented, primarily shaped by AML/CFT statutes and policy guidelines rather than dedicated BO legislation.

- **Companies Act (Cap. 42:01):** Requires companies to maintain shareholder registers but lacks explicit beneficial ownership provisions regarding natural persons.
- **AML/CFT Legal Obligations:** Under the Proceeds and Instruments of Crime Act (PICA) and the Financial Intelligence Act, accountable institutions must identify and verify beneficial owners of their customers, incorporating FATF Recommendations in practice (UNODC, 2023).
- **Policy and Regulatory Context:** ESAAMLG mutual evaluations recommend the enactment of stand-alone BO legislation for better transparency and enforcement.
- **Data Protection:** The Data Protection Act No. 18 of 2024 provides foundational privacy protection but remains under-implemented.

Table 1 summarizes the key provisions and implementation features of beneficial ownership transparency frameworks in the four focal African countries, highlighting legal definitions, verification requirements, sanctions, data protection measures, integration, and political economy challenges.

Table 1: Comparative Overview of Beneficial Ownership Transparency Legal Frameworks and Implementation in Selected African Countries

Primary BOT Legislation	AML/CFT-related statutes (Proceeds and Instruments of Crime Act, Financial Intelligence Act); no dedicated BO law	Companies Act 71 of 2008, amended by General Laws Amendment Act 22 of 2022	Companies Act 2019 (Act 992)	Companies Act No. 17 of 2015 + BRS Directive No. 001/2024
Definition of Beneficial Owner	Implicit via AML/CFT definitions; no	Natural person owning/controlling ≥25% shares or	Natural person owning/controlling ≥25% shares or	Natural person owning/controlling ≥25% shares or

	explicit corporate law definition	voting rights (Companies Act)	voting rights (Companies Act)	voting rights (Companies Act)
Obligation to Maintain BO Register	Not mandated for companies; accountable institutions must verify BO for AML	Companies must maintain BO register with verification obligations (Section 65B)	Companies must maintain BO registers and file with Registrar (Section 110A)	Companies must maintain BO registers and submit info to Registrar (Section 94H)
Verification Requirement	Primarily imposed on financial institutions under AML framework; no explicit company verification mandate	Mandatory company-level verification using reliable documents (Section 210A)	No explicit statutory verification procedure specified	Verification required per BRS Directive No. 001; documentary evidence mandated
Sanctions for Non-Compliance	AML enforcement sanctions applicable; no company-specific penalties for BO nondisclosure	Criminal penalties including fines and imprisonment for false info or failure to disclose	Monetary fines for failure to disclose; limited enforcement intensity	Fines and imprisonment for failure to comply with disclosure obligations
Access to BO Information	Limited to competent authorities under AML laws; no public access regime	Tiered access: full access for authorities, conditional for regulated entities, limited public info	Restricted access; limited integration limits info sharing among agencies	Tiered access regime aligned with FATF risk-based approach
Data Protection Framework	Data Protection Act 2018, limited implementation	Protection of Personal Information Act (POPIA) 2013; comprehensive safeguards	Data Protection Act 2012 (Act 843) in force	Data Protection Act No. 24 of 2019; robust provisions
Integration with Other Agencies	Weak; institutional silos persist despite AML mandates	Progressive inter-agency data sharing between tax, FIU, procurement	Fragmented; limited integration between BO registry, tax, FIU	Improving integration; BRS coordinating registry, FIU, and tax
Digital Infrastructure	Limited digitization of	BO registry launched April 2023; digital	Partial digitalization; system	Digital registry maintained;

	beneficial ownership info	systems under development	interoperability challenges	challenges in data quality persist
Political Economy Challenges	Political resistance linked to vested interests; weak domestic ownership of reforms	Notable political interference suspected; improved post-grey-listing enforcement	Some resistance; enforcement hindered by fragmented mandates	Political economy factors impact enforcement; strong donor influence in reforms

Notes:

- **AML:** Anti-Money Laundering
- **BRS:** Business Registration Service
- **BO:** Beneficial Ownership
- **FIU:** Financial Intelligence Unit
- **FATF:** Financial Action Task Force

4. Research Problem and Questions

Despite significant political will, multiple factors undermine BOT effectiveness in Africa:

- Inconsistent or outdated legislation
- Fragmented coordination among registries, FIUs, tax, and law enforcement agencies
- Inaccurate or unverifiable beneficial ownership data
- Insufficient enforcement sanctions
- Political interference and insufficient local ownership
- Conflicting imperatives between transparency and constitutionally guaranteed privacy rights

Given these challenges, the central research question emerges:

How can African jurisdictions design and implement BOT frameworks that enhance financial accountability and governance while respecting privacy and data protection rights?

Supporting inquiries include:

- What persistent gaps characterize African BOT regimes?
- Which political, legal, and institutional dynamics hinder BOT implementation?
- How can transparency be balanced with privacy within African constitutional contexts?

5. Literature Review

FATF Recommendations 24 and 25 (FATF, 2023) establish that countries must:

- Define beneficial owners in legislation with a clear ownership/control threshold (commonly 25%).
- Maintain accurate, adequate, and up-to-date BO information accessible to competent authorities.
- Incorporate multi-source verification procedures, including cross-checking with tax, FIU, and national ID data.
- Implement sanctions for misinformation and non-compliance.
- Balance transparency and privacy in accordance with constitutional and data protection laws.

Comparison of Legislation in Focus Countries:

- **Alignment:** All four countries legally define beneficial owners using a 25% ownership/control threshold, consistent with FATF norms.
- **Disclosure Requirements:** South Africa, Ghana, and Kenya mandate filing and maintenance of beneficial ownership registers, though Ghana lacks detailed verification procedures compared to South Africa and Kenya. Botswana's absence of a specific legal mandate represents a significant gap.
- **Verification:** South Africa and Kenya require documented verification; Ghana mandates disclosure without explicit verification protocols, reducing reliability. Botswana defers verification largely to AML regulations imposed on financial institutions rather than on companies themselves.
- **Enforcement and Sanctions:** Kenya and South Africa have prescribed criminal sanctions and financial penalties; Ghana's enforcement mechanisms exist but are underutilized, and Botswana's sanctions are linked primarily to AML compliance.
- **Data Protection:** All jurisdictions have data protection laws. However, South Africa's POPIA and Kenya's Data Protection Act provide comprehensive safeguards directly applicable to BOT data, whereas Ghana and Botswana face challenges with implementation and legal clarity that affect BOT privacy protections.

Academic and Policy Observations:

Jalipa and Danzi (2020) note that, despite legislative progress, the absence of systematic verification and enforcement undermines the efficacy of BOTs across Africa. Gilmour (2023)

emphasizes the privacy risks posed by public BOT registers and advocates for tiered access models that protect personal identifiers without compromising transparency.

Furthermore, literature underscores the influence of political-economic factors—such as the protection of politically exposed persons through non-transparent corporate structures—that create resistance to reform (Tax Justice Network Africa, 2023).

6. Discussion

6.1 Verification Challenges and Legal Mandates

Across jurisdictions, the legal requirement to maintain accurate beneficial ownership information converges on a 25% ownership/control threshold, consistent with FATF Guidance (Recommendation 24). However, legislation diverges on verification rigor:

- South Africa’s Companies Act explicitly mandates companies to verify beneficial ownership information and imposes penalties for false information (Section 210A).
- Ghana mandates disclosure but lacks explicit statutory provisions for third-party verification or integration with tax and FIU systems.
- Kenya imposes sanctions, including fines and imprisonment for failure to comply with disclosure obligations (Companies Act, Sections 422–423).
- Botswana’s legislative instruments require entities dealing with BO information to comply with AML standards, but enforcement is largely reactive rather than proactive.

The Botswana and Kenya case studies illustrate gaps between legal provisions and practical enforcement, highlighting the need for digital modernization and cross-agency data integration.

6.2 Privacy Laws and Data Protection Frameworks

The constitutional protection of personal data varies across these countries:

- South Africa’s Protection of Personal Information Act 4 of 2013 (POPIA) sets out stringent data protection principles, requiring lawful processing, data minimization, and security safeguards. BOT data-handling must comply with POPIA to avoid breaches.
- Ghana’s Data Protection Act 2012 (Act 843) similarly regulates personal data, imposing conditions on processing and disclosure.
- Kenya enacted the Data Protection Act No. 24 of 2019, mandating data controllers to implement adequate security measures.
- Botswana’s Data Protection Act of 2018, though newer, is not yet robustly enforced.

These laws require balancing transparency with privacy - a tension reflected in national and international academic discourses.

7. Policy Recommendations

To advance effective and rights-compliant BOT regimes, African states should consider:

- **Politically Insulated Oversight:** Establish independent BOT units or enhance registries with statutory mandates and operational autonomy to resist political interference.
- **Multi-Source Data Collection and Verification:** Integrate company filings with tax, FIU, national ID, and financial institution data, employing automated risk-based verification.
- **Tiered Information Access:**
 - Full access for competent authorities (FIU, law enforcement, tax agencies).
 - Conditional access for regulated entities (banks, legal, and accounting professionals).
 - Limited public access to high-level ownership information, excluding sensitive identifiers.
- **Legal and Digital Infrastructure:** Update legislation for clarity and robustness, enforce sanctions for non-compliance, and invest in secure digital platforms.
- **Integration with National Integrity Agendas:** Align BOT with anti corruption initiatives, tax mobilization, procurement transparency, and public sector digitization strategies.
- **Local Ownership and Sustainability:** Ensure reforms are led by national priorities, supported by multi-stakeholder coordination, and not solely donor-driven.

8. Conclusion

Beneficial ownership transparency is vital for addressing illicit financial flows and strengthening governance in Africa. However, political resistance, institutional fragmentation, limitations in data quality, and privacy concerns continue to impede current reform efforts.

A context-specific, verification-based BOT model with risk-sensitive information access and robust privacy safeguards offers a viable path forward. Political insulation of oversight bodies, enhanced inter-agency cooperation, modernized digital infrastructure, and strong enforcement mechanisms are indispensable for success. When embedded in comprehensive governance reforms, improved BOT frameworks can substantially reduce IFFs and contribute decisively to Africa's development aspirations.

Policy Recommendations (With Legal Reform Suggestions)

To improve effectiveness, the following legal reforms are recommended:

- **Legislative Harmonization:** Countries should harmonize BOT laws with data protection statutes, clarifying permissible uses of BO data to protect privacy while enabling enforcement.
- **Strengthening Verification Mechanisms:** Legislation should mandate verification steps with defined penalties for nondisclosure or false disclosure, and empower registries with investigation authority.

- **Institutional Autonomy:** Amend legal frameworks to establish independent BOT authorities or units insulated from political interference.
- **Data Security Provisions:** Embed mandatory cyber security standards for BOT registry systems in law, referencing standards such as ISO/IEC 27001 to mitigate risks of breaches.
- **Enhanced Enforcement Tools:** Enact stringent sanctions, including criminal penalties, for non-compliance to increase deterrence.

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- **Ghana**
 - Companies Act 2019 (Act 992)
 - Data Protection Act 2012 (Act 843)
- **Kenya**
 - Companies Act 2015 (No. 17 of 2015)

- Business Registration Service Directive No. 001 of 2024
- Data Protection Act No. 24 of 2019
- **Botswana**
 - Companies Act (Cap. 42:01)
 - Proceeds and Instruments of Crime Act
 - Financial Intelligence Act
 - Data Protection Act No. 18 of 2024

Verified and Updated Online Sources

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