

OPENING UP ON COMPANY OWNERSHIP

In the wake of public outrage over the Panama Papers, and at a time when close to one hundred countries have committed to beneficial ownership transparency,¹ knowing who owns or controls companies and other legal entities is fast becoming a new global norm.

WHAT IS BENEFICIAL OWNERSHIP?

“A beneficial owner is the real person who ultimately owns, controls or benefits from a company or trust fund and the income it generates. The term is used to contrast with the legal or nominee company owners and with trustees, all of whom might be registered the legal owners of an asset without actually possessing the right to enjoy its benefits.”

Transparency International²

As more and more countries start to implement company ownership registers, leading companies are taking the first steps to make more information on their structures and ownership publicly available in open, structured data.

This briefing details why transparency in company ownership is important and good for business, how Natura and Unilever are leading the way in providing more information in open data, and what you can do to join them in raising the bar for corporate transparency.

WHY SHOULD COMPANY OWNERSHIP BE TRANSPARENT?

The creation of the limited liability company spurred innovation and enabled risk taking. Anonymity wasn't part of the original design but has become an “unjustified perk”³ in many parts of the world, enabling multiple ills that harm companies and society at large.

Anonymous shell companies are used to facilitate money laundering, fraud, terrorist financing, grand corruption, lawsuits by patent trolls⁴, funding foreign elections, manipulating tenders and public procurement, and enabling criminal enterprises. Anonymous companies are all too familiar as part of grand corruption cases⁵ and as dead ends for law enforcement when trying to

¹ The G20 countries have committed to High Level Principles on Beneficial Ownership Transparency; the 28 EU countries will all create central registries of beneficial ownership by the end of 2017 under the EU's 4th Anti-Money Laundering Directive, and the 51 countries of the Extractive Industries Transparency Initiative all must ensure that companies disclose their beneficial owners under the new requirement 2.5 in the 2016 EITI Standard to be fully implemented by 2020.

² https://www.transparency.org/glossary/term/beneficial_ownership

³ The Economist, “Light and wrong: Incorporation with limited liability is a privilege. It should not include anonymity”, published Jan 21st 2012, accessed at <http://www.economist.com/node/21543164>.

⁴ Patent trolls, often using anonymous shell companies to file lawsuits, are costing the companies they target over \$80 billion per year in lost profits and legal costs: James Bessen, Jennifer Ford, & Michael J. Meurer, The Private and Social Costs of Patent Trolls, Regulation 26 (2012).

⁵ World Bank and UNODC Stolen Asset Recovery Initiative, The Puppet Masters, (2011), World Bank.

bring criminal networks, terrorist financiers and corrupt officials to justice.

Transparency in company ownership can help both prevent corruption and end the role of anonymous companies in enabling impunity for wrongdoers.

Increasing transparency in company ownership is also good for business.⁶ It increases competitiveness by creating more transparent markets, reducing corruption and ensuring that the best and most competitive companies win contracts or have their projects and developments approved. It allows companies to know who they are doing business with, thereby reducing the risk of fraud, failed investments, and dealings with politically exposed persons, including potential liability under foreign bribery regimes.⁷ Transparency in company ownership reduces the costs of due diligence for companies and financial institutions and enables better overall risk management.

WHY AND HOW ARE COMPANIES MORE TRANSPARENT?

In the context of growing demands for transparency from governments, investors, companies and citizens, some companies are leading the way in being open about the entities in their group or their company group structures.

Natura Cosmetics, a Brazilian cosmetics company, and Unilever, a global fast-moving consumer goods company, have taken steps to make the entities within their corporate group clearer to the public by making information available in open, structured data.

They have done this to:

- Demonstrate their commitment to transparency and support for greater transparency of beneficial ownership information;
- Build trust with their consumers, investors, staff and other stakeholders by providing information in a form that is useable;
- Distinguish themselves from those using anonymous vehicles (and avoid being tarred with the same brush); and
- Demonstrate that being transparent about company structures and ownership is both possible and beneficial.

“Transparency is one of Natura’s core values. Among our priorities for 2020 is to boost the visibility and transparency of management practices and to ensure integrated reporting of results and impacts. We believe that transparency is what sustains trust over time; it is what allows us to overcome the natural challenges that all relationships are subject to. Consequently, when we faced the opportunity to be more transparent about our company structure, we were profoundly interested in doing so.”

ROBERTA SALVADOR, DIRECTOR OF LEGAL AND COMPLIANCE, NATURA COSMETICOS

Natura Cosmetics have made their ownership of entities available in open, structured data. Their data is available at their website at <http://bit.ly/1T514iA>

⁶ See more discussion of this point in The B Team, Ending Anonymous Companies – The Business Case, January 2015, accessed at http://issuu.com/the-bteam/docs/bteam_business_case_report_final.we?e=15214291/11025500.

⁷ Settlements in the past five years under the U.S. Foreign Corrupt Practices Act (FCPA) alone have cost businesses \$3.8 billion not including legal expenses, post-settlement expenses like periodic reporting or independent monitors, penalties in other jurisdictions, reputational damage and drops in stock price: Richard L. Cassin, FCPA Blog, 2013 FCPA Enforcement Index, Jan. 2, 2014, accessed at <http://www.fcpablog.com/blog/2014/1/2/2013-fcpa-enforcement-index.html>.

Unilever published an extensive list of entities in their 2015 Annual Report and Accounts. In support of further transparency, they have now made this list – which includes percentages of ownership by the UK and Dutch parent companies – available in open, structured data. Their data is available at their website at <http://bit.ly/1TzMiwf>

In both cases, the companies have provided this information in a downloadable and searchable format which will aid interested parties in their use of the information and represents an important step forward in corporate transparency.

For Natura, this work was made possible with the support of OpenCorporates who developed a lightweight schema for the company to use and supported them through the process.

WHY PUBLISH IN OPEN, STRUCTURED DATA?

Today we live in a data-driven world, and having information in data form has multiple benefits – enabling people to use, analyse and compare data easily and therefore building trust and understanding.

Open, structured data means that data is useable – organised into clear categories that can be compared to and combined with other data sets and can be analysed by interested parties. This is a step change from the image-based PDFs currently available from UK Companies House or the US Securities & Exchange Commission (SEC) filings in myriad arbitrary text formats that require significant work to convert them into data, and even then often remain unclear and incomplete.

Open data about companies supports a better business environment and a fairer society. When organisations publish open data they are deliberately lowering the barriers for reuse, and saying that they wish to engage with the wider community in a positive, proactive and forward-thinking way.

THE GLOBAL BENEFICIAL OWNERSHIP REGISTER

The Global Beneficial Ownership Register (GBOR) would help enable businesses to know who they are doing business with, financial institutions to know who their customers are, citizens to see who benefits from public funds, and law enforcement to hold individuals accountable for crime and corruption. The GBOR will aggregate data from public registers of beneficial ownership (e.g. planned registers in the UK, Norway, Australia, South Africa and the Netherlands) and be a mechanism that governments, companies and international institutions could use to require that entities bidding on contracts are transparent about their beneficial ownership in a system where the information can be checked by others. The first pilot of the GBOR is planned for 2016.

ABOUT THE B TEAM:

The B Team is a not-for-profit initiative formed by a global group of business leaders to catalyse a better way of doing business, for the wellbeing of people and the planet.

The team includes Marc Benioff, Sir Richard Branson, Sharan Burrow, Kathy Calvin, David Crane, Bob Collymore, Dr. Gro Harlem Brundtland, Arianna Huffington, Dr. Mo Ibrahim, Guilherme Leal, Strive Masiyiwa, Blake Mycoskie, Dr. Ngozi Okonjo-Iweala, François-Henri Pinault, Paul Polman, Mary Robinson, Ratan Tata, Zhang Yue, Professor Muhammad Yunus, Jochen Zeitz.

WHAT CAN YOU DO?

As G20, European Union and those countries signed up to the Extractive Industries Transparency Initiative implement new registers and other mechanisms to make beneficial ownership transparent, companies will need to comply with new regimes to provide accurate and timely information on their beneficial ownership.

In addition to complying with regulation, companies have a critical role to play in making beneficial ownership transparency a reality. They can:

- Follow the lead of Natura and Unilever by making their company structures and ownership information available in open, structured data;
- Require beneficial ownership declarations of suppliers and business partners and include these declarations as contractual terms;
- When the Global Beneficial Ownership Register is live, put their own details onto the Register and require suppliers or partners to register to be considered for contracts with their company; and
- Voice their support for government action on beneficial ownership transparency.

If you are interested in taking any of these steps please contact May Miller-Dawkins at The B Team at mmd@bteam.org who can provide links to resources and initiatives to support your action.

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FOR MORE INFORMATION

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