

PSAM submission on the Draft Regulations relating to Beneficial Ownership Registers and Records of Details of Accountable Institutions, 2023

13 February 2023

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In July 2022, PSAM made a submission to the Financial Intelligence Centre, in response to a call to action, to inform the Beneficial Ownership risk assessment, responding to the MER report for South Africa.

In our [submission](#), we described a number of examples of where Beneficial Ownership Transparency has been effective at addressing fraud and corruption in Colombia, Ukraine, Nigeria and Indonesia, amongst others. We also explained the various concerns raised by civil society related to the definitions of beneficial ownership and accessibility of beneficial ownership registers.

According to the [Open Ownership Map](#) of a total of 223 countries that have committed to BOT, 117 countries aim to establish a central register while 106 have committed to a public register. Further, 80 countries have implemented BOT, with 39 central registers, and 31 public registers.

In countries where public registers of beneficial ownership information for private entities that provide goods and services to the public sector, or acquire assets or receive qualified financial contributions from the public sector have been implemented, early results suggest that making registers public can assist in **identifying and preventing** abuse of anonymous structures to conduct illicit business with the public, often at the expense of citizens, and stability of public finances.

The [draft regulations](#) on Beneficial Ownership Registers and Records of Details of Accountable Institutions provide an important update to this process. We are encouraged to see details of the public register of persons disqualified from serving as trustees, and a clear explanation of the details that must be recorded, which appear to be in alignment with global best practice in this emerging area of reform, **however, we are disappointed that the draft regulations again appear to elevate the protection of personal information of company directors and trustees over the public interest.** This despite numerous examples, from a variety of contexts where such registers have been made public.

We question what the justification for these privacy provisions, given the clause in the POPI Act which provides for disclosure in the public interest, and the transparency commitments, protected by the Constitution, and repeatedly stated by representatives of the state in terms of its approach to addressing corruption particularly in procurement of goods and services by the state. In the current context, it is critical that the state takes active steps to address corruption, safeguard public funds and prevent grey listing of South Africa, which is likely to exacerbate existing fiscal challenges.

The [codex](#), an interactive online publishing platform following State Capture in South Africa, estimated that State Capture cost the country somewhere between one and two trillion rand, or about 34% of GDP. The details emerging from various cases suggests that oversight bodies have not been able to effectively detect and prevent maladministration. Furthermore, the FATF's latest MER found that while South Africa has "a solid legal framework to fight money laundering and terrorist financing" it has "significant shortcomings implementing an effective system, including a failure to pursue serious cases". Across 11 ratings dealing with on the efficiency of implementing legislation, South Africa was scored critically weak.

In our submission we reiterated the call from other members of civil society that competent authorities capacity must be strengthened to support implementation of reforms.

We recommend that the following adjustments are considered:

The Beneficial ownership Register should allow for public access to BO information related to private entities that provide goods and services to the public sector, or acquire assets or receive qualified financial contributions from the public sector, on the basis that procurement should be conducted in a fair, equitable; transparent, competitive and cost-effective manner.

Inclusion of the Bid Adjudication Committee or Accounting Officer of the procuring entity also be provided with access to the register to inform due diligence processes. It is not good enough to only enable identification of beneficial ownership once a complaint is lodged or investigation is launched.

Those responsible for vetting bids should be required to provide proof that the register was checked, and this should become part of the paper trail related to procurement transactions, that must be shared upon receipt of a PAIA request, should beneficial ownership information not be made public.