

UNLOCKING THE VALUE OF BENEFICIAL OWNERSHIP TRANSPARENCY: TOWARDS HARMONIZED SADC REGIONAL STANDARDS

INTRODUCTION

Illicit financial flows (IFFs) pose a significant threat to economic development and governance in Africa, particularly within the Southern African Development Community (SADC) region. According to the United Nations Conference on Trade and Development (UNCTAD), Africa loses approximately \$88.6 billion annually to IFFs, with the SADC region being one of the most affected (UNCTAD, 2020). A 2018 report by the African Development Bank (AfDB) estimates that IFFs from Africa amount to 3.7% of the continent's GDP, with the majority flowing out through trade mis-invoicing and other illicit means (AfDB, 2018).

Beneficial ownership transparency (BOT) is widely recognized as an essential tool to combat IFFs, money laundering, and corruption. This transparency reveals the natural persons who ultimately own or control legal entities such as companies or trusts. However, the SADC region faces challenges due to the uneven implementation of BOT measures across its

member states. Currently, only a few SADC countries have fully operational beneficial ownership registers, while others are still in the planning stages or in the process of implementation.

This position paper aims to explore the concept of beneficial ownership transparency, the need for harmonized regional standards, and to provide key recommendations for accelerating the implementation of BOT measures across the SADC region.

UNDERSTANDING BENEFICIAL OWNERSHIP TRANSPARENCY

















A beneficial owner is defined as the natural person who ultimately owns, controls, or benefits from a company or trust fund, and the income it generates. The threshold for determining beneficial ownership can vary between countries, but it typically involves direct or indirect ownership of a significant portion of shares or voting rights, or the ability to exercise control over decision-making. While there is a

distinction **between beneficial ownership disclosure** and **beneficial ownership transparency**, it is important to recognize that disclosure alone is insufficient for achieving the intended outcomes. Disclosure refers to providing beneficial ownership information to specific users, such as law enforcement agencies, without necessarily making it public. Transparency, on the other hand, requires that beneficial ownership data is made available to the public in a reliable and accessible format. This ensures greater public oversight and the ability to track potential illicit financial activities.

CURRENT STATUS OF BENEFICIAL OWNERSHIP TRANSPARENCY IN THE SADC REGION

The progress of implementing beneficial ownership transparency measures in SADC varies significantly across member states. As of the latest reports, nine out of sixteen SADC member states have live beneficial ownership registers, two are implementing regulations without a live register, and 5 are still in the planning stage. Table 1 below summarises the status of BOT across the SADC countries:

TABLE 1. STATUS OF BOT ACROSS THE SADC COUNTRIES

COUNTRY	STAGE	CENTRAL	PUBLIC ACCESS	ALL SECTORS	DATE
 South Africa	Live register	Yes	Yes	No	15/07/2020
 Botswana	Live register	Yes	No	Yes	19/02/2019
 Namibia	Live register	Yes	Yes	Yes	21/07/2023
 Zambia	Live register	Yes	Yes	No	25/02/2016
 Malawi	Live register	Yes	Yes	No	27/04/2020
 United Republic of Tanzania	Live register	Yes	Yes	No	25/02/2016
 Democratic Republic of Congo (DRC)	Live register	Yes	Yes	No	16/04/2020
 Seychelles	Live register	Yes	No	No	21/04/2021
 Mauritius	Live register	Yes	No	No	N/A
 Zimbabwe	Implementing	Yes	No	No	15/11/2019
 Mozambique	Implementing	Yes	Yes	No	17/04/2020
 Angola	Planned	Yes	Yes	No	24/02/2024
 Lesotho	Planned	Yes	Yes	No	16/07/2020
 Eswatini	Planned	Yes	Yes	No	20/07/2020
 Madagascar	Planned	Yes	Yes	No	14/07/2020
 Comoros	Planned	Yes	Yes	No	16/04/2020

The table above highlights the different stages of beneficial ownership implementation across the SADC region:

1. Countries with Live Registers:

- ▶ These countries, such as South Africa, Zambia, and Malawi, have implemented live beneficial ownership registers. They generally allow for centralisation and public access to beneficial ownership data, although the scope of sectors covered may vary.
- ▶ South Africa has made the register accessible to the public but does not include all sectors. Other countries like Botswana and Mauritius have limited public access to beneficial ownership data, which can restrict public and civil society involvement in monitoring the transparency of corporate ownership.

2. Countries Implementing Regulations:

- ▶ Countries like Zimbabwe, Mozambique, and Seychelles are in the process of implementing beneficial ownership regulations. While they have taken steps toward centralizing beneficial ownership data, public access is either restricted or still under development.
- ▶ In Zimbabwe, for instance, the Companies and Other Business Entities Act of 2019 mandates companies to maintain beneficial ownership registers but limits public access to this information unless certain conditions are met.

3. Countries in the Planning Stage:

- ▶ Several countries, including Angola, Lesotho, Eswatini, Madagascar, and Comoros, are still in the planning stage. These countries have yet to establish beneficial ownership transparency measures, though they are preparing to do so. The success of these

efforts will depend largely on the political will to implement comprehensive systems and provide public access to beneficial ownership information.

In the case of Angola, the country is expected to finalize its implementation by February 2024. The success of these planned implementations will need to prioritise public accessibility to ensure effective monitoring of illicit financial flows and corruption.

CASE STUDY: ZIMBABWE'S BENEFICIAL OWNERSHIP TRANSPARENCY EFFORTS

Zimbabwe presents a unique case in the implementation of beneficial ownership transparency. The Companies and Other Business Entities Act stipulates that companies maintain up-to-date beneficial ownership registers. However, while Zimbabwe has made progress in implementing beneficial ownership disclosure, public access to this information remains restricted. The Companies and Other Business Entities Act of 2019 defines a beneficial owner as a natural person who:

- ▶ Directly or indirectly holds more than 20% of the company's shares or voting rights;
- ▶ Holds the right to appoint or remove a majority of the company's directors;
- ▶ Otherwise exercises significant influence or control over the company (Government of Zimbabwe, 2019).

According to the Act, public access to beneficial ownership data requires either the consent of the beneficial owner or a court order, creating significant barriers to transparency. This limitation was particularly highlighted by Transparency International Zimbabwe (TI Z) in a case involving public contracts awarded to certain companies. TI Z faced difficulties in

determining the beneficial owners of these companies due to the restricted access to beneficial ownership registers (TI Z, 2020). This case demonstrates how limited access to beneficial ownership information can undermine anti-corruption efforts and transparency in public procurement. While Zimbabwe is in the process of implementing beneficial ownership regulations, it is clear that disclosure alone is insufficient. For BOT to be effective in fighting corruption and illicit financial flows, transparency must be a fundamental element. This means ensuring that beneficial ownership data is publicly accessible and not subject to cumbersome legal processes.

PRINCIPLES FOR HARMONIZING BENEFICIAL OWNERSHIP STANDARDS IN SADC

To unlock the full value of beneficial ownership transparency and make progress toward a more cohesive and effective regional approach, the SADC region should adopt the following principles:



1. Universal Disclosure Requirements

All SADC member states should adopt universal standards for the disclosure of beneficial ownership information, ensuring that every company and legal entity in the region identifies and registers its ultimate owners. This includes both domestic companies and foreign companies operating within national borders. Universal disclosure also means publicly accessible

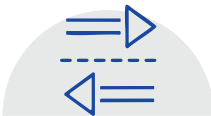
registers, allowing civil society, the media, and other stakeholders to have access to the information to ensure accountability.

For example, South Africa’s Companies and Intellectual Property Commission (CIPC) has implemented a partial register, and it should aim to move toward full public access, like that in the UK or EU, to boost transparency and reduce opportunities for financial crime.



2. Accessible and Reliable Data

Beneficial ownership data must be accurate, up-to-date, and easily accessible. A commitment to creating a centralised, digital register for all beneficial ownership data is essential. This will not only ensure that enforcement agencies can quickly obtain information but also enable stakeholders like businesses and the public to access data when necessary.



3. Cross-Border Information Sharing

Given the cross-border nature of many illicit financial activities, SADC member states must establish frameworks for the sharing of beneficial ownership data across borders. This regional cooperation will help track and uncover ownership structures that may be hidden across multiple jurisdictions. Such a system would also allow for better enforcement of regional and international anti-money laundering and anti-corruption frameworks.



4. Legal and Institutional Frameworks

National laws and institutional frameworks must be adapted to support beneficial ownership transparency. This includes ensuring that there are legal penalties for failure to disclose beneficial ownership information, as well as creating institutions with the mandate and capacity to enforce the regulations.

For instance, the Zambian Financial Intelligence Centre (FIC) is tasked with ensuring compliance with anti-money laundering (AML) regulations. Expanding its mandate to include monitoring beneficial ownership disclosures could strengthen the fight against IFFs in Zambia.



5. Engagement with Civil Society and Private Sector

Stakeholders such as civil society, the private sector, and international organizations should be actively engaged in the development and implementation of beneficial ownership transparency standards. Their involvement ensures that policies are comprehensive and that they are not only seen as government-driven but also supported by a broad coalition of actors. The implementation of such frameworks in countries like Malawi, where civil society has pushed for stronger anti-corruption laws, can

serve as a model for fostering cooperation across sectors.

THE IMPORTANCE OF HARMONISED REGIONAL STANDARDS

A harmonised approach to beneficial ownership transparency across SADC would ensure that member states adopt consistent and effective measures to combat IFFs. This would provide a cohesive framework for detecting and preventing illicit activities such as tax evasion, corruption, and money laundering. It would also facilitate better cross-border cooperation in tracking illicit financial flows and holding perpetrators accountable.

Key benefits of harmonizing beneficial ownership standards in SADC include:

- ▶ **Increased Transparency:** Making beneficial ownership information publicly accessible across all sectors will increase transparency in business practices and government contracts.
- ▶ **Improved Due Diligence:** Public access to beneficial ownership data will enable businesses to conduct thorough due diligence on potential partners, reducing the risk of engaging with entities involved in illegal activities.
- ▶ **Enhanced Governance:** A consistent and transparent approach to beneficial ownership will strengthen governance frameworks across SADC countries, improving the effectiveness of anti-corruption and anti-money laundering initiatives.

SADC countries will enhance their capacity to detect and prevent illicit activities if they collaborate on a harmonised approach to beneficial ownership transparency.

- ▶ **Regional Cooperation:** Harmonized standards will make it easier for SADC countries to cooperate on investigations and enforcement actions against illicit financial flows that cross borders.

CONCLUSION AND KEY RECOMMENDATIONS

Beneficial ownership transparency is a critical tool in the fight against illicit financial flows (IFFs), corruption, and money laundering. By uncovering the real owners and controllers of companies, governments can ensure greater accountability in both the public and private sectors. In the context of the SADC region, the current uneven implementation of beneficial ownership transparency across member states presents a challenge. However, there is significant potential for harmonising standards across the region, which could provide a more unified and effective approach to combatting financial crime and fostering good governance.

Key Recommendations:



- 1. Adopt Universal Disclosure Requirements:** SADC member states should implement consistent standards for the disclosure of beneficial ownership information. This includes ensuring that every company, whether domestic or foreign, maintains an accurate and up-to-date beneficial ownership register. Full public access to this information would support transparency and accountability.



- 2. Ensure Accessible and Reliable Data:** Data on beneficial ownership must

be accurate, up-to-date, and made easily accessible to the public. Creating centralized, digital registers across SADC would help streamline access for enforcement agencies, businesses, and the public, improving the region’s ability to detect and prevent financial crimes.



- 3. Foster Cross-Border Information Sharing:** Given the cross-border nature of illicit financial activities, it is essential to establish frameworks for sharing beneficial ownership information between SADC countries. This collaboration would help uncover ownership structures that span multiple jurisdictions, facilitating the enforcement of regional and international anti-money laundering and anti-corruption efforts.



- 4. Strengthen Legal and Institutional Frameworks:** National legal frameworks should be strengthened to require mandatory disclosure of beneficial ownership information, with clear penalties for non-compliance. Institutions responsible for ensuring compliance, such as the Zimbabwean Registrar of Companies or the Zambian Financial Intelligence Centre, must have the resources and authority to enforce these standards.



- 5. Engage Civil Society and the Private Sector:** Civil society, the private sector, and international organisations should be actively engaged in shaping and implementing

beneficial ownership transparency standards. Their involvement ensures that the policies are comprehensive, practical, and supported by a broad coalition of stakeholders, which can strengthen the legitimacy and impact of these reforms.

While the SADC region has made strides towards transparency, particularly in the realm of beneficial ownership, there

is still much to be done. A harmonized approach across the region would help to address the challenges posed by IFFs, enhance governance, and foster economic development. By implementing the recommended principles, SADC countries can build a more transparent and accountable business environment, contributing to the long-term success of the region's fight against corruption and financial crime.

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CONTACT DETAILS

Head Office
P O Box CY 434, Causeway
Harare, Zimbabwe
Tel: +263 242 793 246/7,
+263 78 209 1460
VOIP CALL: 08677004072

TIZim_info 

@TIZIM_info 

transparencyintzim 

www.tizim.org 

ABOUT TRANSPARENCY INTERNATIONAL ZIMBABWE (TI Z)

Transparency International Zimbabwe (TI Z) is a non-profit, non-partisan, systems-oriented local chapter of the international movement against corruption. Its broad mandate is to fight corruption and related vices through networks of integrity that are in line with the global strategy. TI Z believes corruption can only be sufficiently tackled by all citizens including people at the grassroots level.

VISION

A Zimbabwean society free from all forms of corruption and practices.

MISSION

To combat corruption, hold power to account and promote transparency, accountability, and integrity in all sectors of society.

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COMPILED BY

Tafadzwa Chikumbu

REVIEWED BY

Dakarayi Matanga