

White paper

The definitive guide to beneficial ownership

Ideal for those who are new to the topic, or looking for a refresher course, this guide covers everything from what beneficial ownership is to the technology available to keep up with constant ownership change



BUREAU VAN DIJK

A Moody's Analytics Company

Table of contents

3	Introduction: the whats, whys and hows of beneficial ownership
5	Recognised definitions of beneficial ownership and what to do with it
7	How beneficial ownership information is used in compliance research and the basics on where to find it
9	An increased worldwide focus on beneficial ownership transparency: drivers and the changes they bring
15	Technology and data to identify and validate a company's beneficial owners
19	Dealing with the constant churn of beneficial ownership change
22	Conclusion: what this all means for your business
24	Bureau van Dijk and its compliance solutions

Introduction:
the whats, whys
and hows of
beneficial ownership

The compliance landscape is changing.

As technology improves, and regulations become tighter and more nuanced, we find ourselves leaving an era of box-checking to enter an age of rigorous, meaningful, data-driven due diligence.

And, though they're leading the way, it's not just the regulated industries that are acting. Societal pressures, consumer expectations and an increasing sense that it's the right thing to do are leading to a rise in the amount and complexity of compliance work that non-regulated corporations are choosing to undertake.

This applies to few areas of compliance more than beneficial ownership.

To future-proof your third-party relationships and protect your reputation, not to mention comply with the relevant laws and regulations, you need to stay on top of who your clients', suppliers' and business partners' beneficial owners are if you have any sort of ongoing relationship with them.

- **But what do we mean by “beneficial ownership”?**
- **Why is it so important?**
- **And how do we build the processes to keep track of it?**

This guide answers these questions for an audience of practitioners working in the worlds of anti-money laundering (AML), know your customer (KYC) compliance and enhanced due diligence (EDD).

Regulatory and technological developments have rocketed in recent years, so the paper also serves as a refresher course.

We cover:

- What beneficial ownership is and the areas of compliance it applies to;
- Recent regulatory developments and other drivers that have brought it into the spotlight, such as FinCEN's CDD Final Rule and the EU's fourth anti-money laundering directive; and
- The technology and methods you can use to explore beneficial ownership and keep up with constant ownership change.

We finish with a summary of the results of the polling questions we asked a large, diverse sample group at a recent webinar on beneficial ownership, which indicate how seriously compliance professionals are treating the issue of beneficial ownership.

Recognised definitions of beneficial ownership

For those vetting the [third-party](#) companies they deal with, identification and monitoring are two of the major challenges of beneficial ownership.

But before tackling those issues, let's establish what we mean by the term and outline some of its applications.

No beginner's guide would be complete without a summary of the definitions given by some of the leading bodies involved in regulating AML, KYC, EDD and similar areas of concern.

Let's start with the Financial Action Task Force (FATF). Often viewed as the top trendsetter, not just in financial crime but in [compliance](#) more generally, FATF's influence stretches beyond the limits of banks, financial institutions and the more regulated industries.

In a [glossary](#) on its website, it says that *beneficial owner* refers to:

"...the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

"Reference to 'ultimately owns or controls' and 'ultimate effective control' refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control."

That second paragraph is crucial, as we shall see in later sections.

Another key player is FinCEN, or the Financial Crimes Enforcement Network, an agency of the US Treasury. In its recent and wide-reaching [CDD Final Rule](#), which we'll touch on in a later section, it defines a beneficial owner as each of the following:

"Each individual, if any, who, directly or indirectly, owns 25% or more of the equity interests of a legal entity customer (i.e., the ownership prong); and

"A single individual with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or any other individual who regularly performs similar functions (i.e., the control prong). This list of positions is illustrative, not exclusive, as there is significant diversity in how legal entities are structured."

So, FinCEN's position is conceptually in line with FATF but introduces specific percentage thresholds.

Figures have also featured in the European Union's definitions for several years. Its fourth anti-money laundering directive – which, according to a [UK government consultation](#), aimed to address the updated FATF standards – talks in similar terms and, in the case of corporate entities, references the crucial cut-off "shareholding of 25% plus one share" (see [Article 3, section 6](#)).

As part of the "increased focus" section, we cover more on the intricacies of the Directive, which came into effect across the EU in June 2017. But the main points here are that: regardless of your jurisdiction, beneficial ownership definitions are broadly aligned; and, given the globalised nature of trade, there's overlap in which regulations companies should adhere to or be influenced by in relation to beneficial ownership.

How beneficial
ownership information
is used in compliance
research and the
basics on where
to find it

Regulated industries – banks, financial institutions, professional service firms and the like – have no choice but to adhere to beneficial ownership regulations. The fines and other consequences for noncompliance are high.

For other industries, the compliance landscape is theoretically simpler, and they're bound only by the general corporate laws that apply to all companies and employees. But a growing number of companies are choosing to operate tighter regimes to help protect their reputation – something that can be seriously damaged by dealing with third-party companies with questionable beneficial owners.

And that's the essence of beneficial ownership compliance: not only must you avoid working with "bad" people and companies, you must avoid working with companies that have bad beneficial owners, whether that ownership is direct or indirect.

It's a conceptually simple notion but in practice can be very difficult to determine and monitor. And what do we mean by "bad"?

It can mean many things. Beneficial owners can appear on watchlists. They can be involved in anti-money laundering. They might be implicated in bribery and corruption, modern slavery, drugs trafficking, terrorist financing... the list goes on. And it's covered by companies' general policies on AML, KYC, due diligence and EDD, as well as the relevant laws and regulations.

So, put simply: be careful!

Access to the right company information, such as that available on Bureau van Dijk's [Orbis](#) database of 275 million private companies around the world, is crucial when researching beneficial ownership. While such databases don't in most cases reveal whether a beneficial owner is problematic, they

do usually reveal the owner's identity, which is a necessary step in the research process. If not, they can lead to a shell company, which can provide a useful prompt for further investigation. Complex and/or off-shore ownership structures can also provide useful prompts for further investigation if they appear designed to obfuscate transparency.

In relation to a specific and overlapping area of compliance, if that person is on a [sanctions](#) list, that fact *can* be identified on [Compliance Catalyst](#), a workflow tool used in conjunction with Orbis, which gives access to the WorldCompliance database of PEPs and sanctions information.

Sometimes [targeted](#), economic sanctions are issued by a number of bodies, including the Office of Foreign Asset Controls (OFAC) in the US or by the EU and its member states' governments, and they apply to everyone, not just regulated industries.

Sanctions can be imposed on entities, and these aren't directly relevant to beneficial ownership, or on individuals, which *are*. They also apply a less nuanced definition of control, for most sectors 50%. But, as this can cascade down through multiple layers of ownership, similar investigative processes can be used, and we'll touch on these later.

As much as anything, beneficial ownership is about establishing *context* to your investigations, as discussed in an [extended guest blog post](#) by Keith Furst of Data Derivatives.

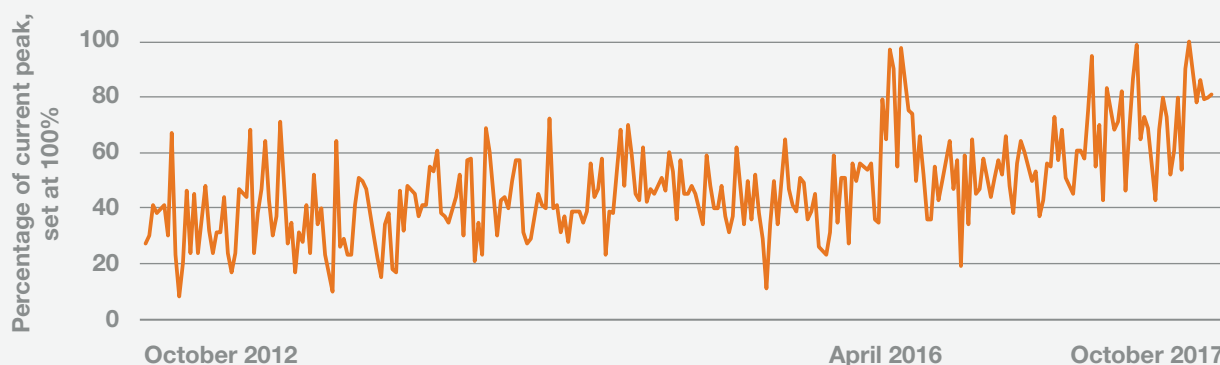
And its reach is expanding. As we're about to discuss.

An increased
worldwide focus on
beneficial ownership
transparency:
drivers and the
changes they bring

Interest in beneficial ownership is on the rise, a point proven by a quick analysis using the Google Trend tool.

By reviewing “beneficial ownership” as a search term during the five-year period from September 2012 to September 2017, we can see its popularity grow from around 30% to a peak in April 2016, when the revelations from the leaked Panama Papers first hit the headlines. But, after an initial and expected dip, the upward trend continues beyond that point.

Worldwide interest over time in the search term “beneficial ownership”



Data source: Google Trends (www.google.com/trends)

Why is this?

For some time, corruption has been viewed as a worldwide epidemic, one that threatens our economy and culture.

In the [foreword to a collection of essays on corruption](#), then British Prime Minister, David Cameron, wrote:

“Corruption is the cancer at the heart of so many of our problems in the world today. It destroys jobs and holds back growth, costing the world economy billions of pounds every year. It traps the poorest in the most desperate poverty as corrupt governments around the world syphon off funds and prevent hard-working people from getting the revenues and

benefits of growth that are rightfully theirs. It steals vital resources from our schools and hospitals as corrupt individuals and companies evade the taxes they owe. It can even undermine our security, as Sarah Chayes argues in her essay, if the perceived corruption of local governments makes people more susceptible to the poisonous ideology of extremists.”

Not everyone shares Cameron’s general political outlook, but few would disagree with these sentiments. And the UK Bribery Act 2010 – enacted under the previous administration he led and with cross-party support – helped popularise a range of efforts around the world to combat all forms of corruption, many of them inextricably linked to beneficial ownership.

Related legislation followed, such as the Modern Slavery Act 2015, much of it leading back to beneficial ownership. And regulations around the world – particularly in the US and EU – have evolved, with the activities they apply to coming under increased scrutiny.

Recent violations

These drivers should be viewed alongside recent violations. High-profile examples include the Netherlands-based telecoms company VimpelCom (now VEON), which acquired two cellular companies in Uzbekistan in 2015.

According to former federal prosecutor and [FCPA](#) expert [Michael Volkov](#), speaking as a panellist on one of Bureau van Dijk's [webinars](#) in 2016, “both of the target companies had shell companies in the ownership structure. In other words, the ultimate recipient of the money that was being paid [for the acquisition] was a shell company, and that was known by not only the lawyers, it was known by the board, it was known by senior management. Now, senior management tried to push this through without disclosing certain basic information.”

But board members have a “fiduciary responsibility,” added Volkov, and they didn’t ask who owned the

shell companies. They should have, and had they done so, their research would have led them to Gulnara Karimova, daughter of the Uzbek president.

In 2016 the US Department of Justice and Dutch regulators fined the company nearly \$800 million for FCPA violations.

Another prominent case relates to a drilling company operating in Angola and the ownership of its joint venture business partner. The company’s due diligence was insufficient. But the authorities determined that the business partner was 10% owned by Manuel Vicente, head of the state-owned Angolan oil company Sonangol.

“Obviously this was a bribery problem,” said Volkov, “but what this shows is, not only is it a control issue, you need to go down to the 10% level, [even] to the 5% level.”

And this is a crucial point: against this backdrop we’re seeing a tightening of percentage thresholds and other requirements, which feature in the short discussion of recent regulatory changes that follows.

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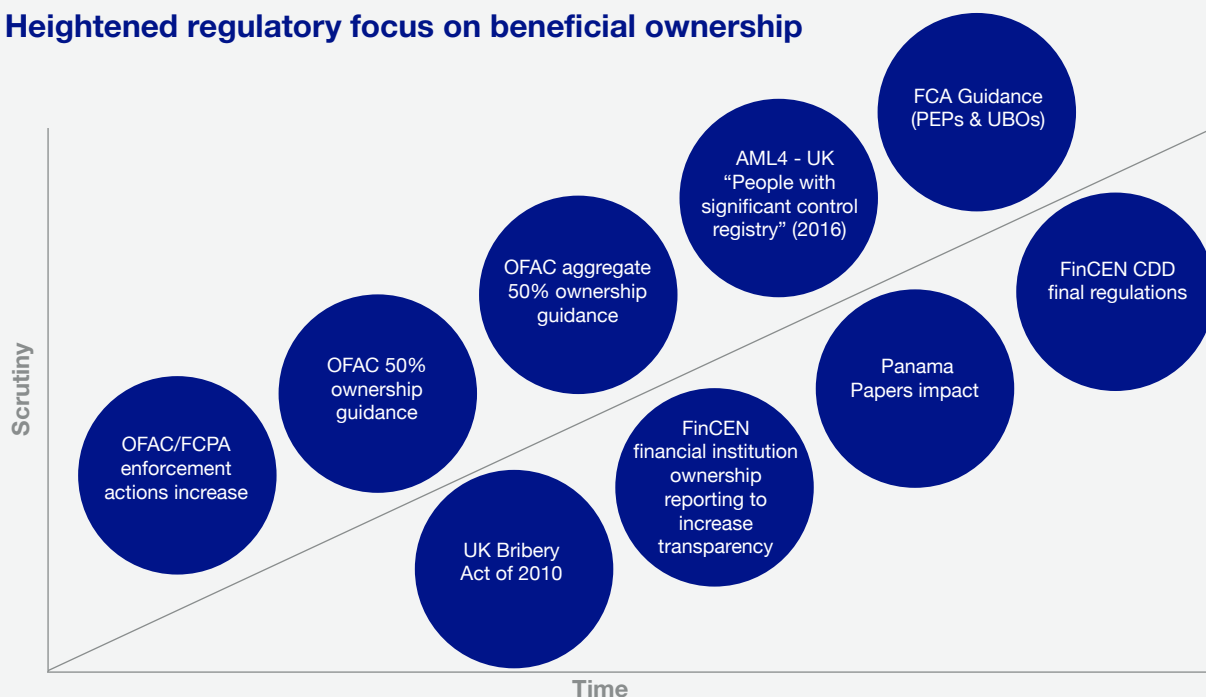
Michael Volkov, former federal prosecutor and FCPA expert



Regulatory changes

In the “recognised definitions” section of this white paper we namechecked several high-profile regulatory bodies. The diagram below summarises these, along with some of the other main drivers, showing levels of scrutiny against time.

Heightened regulatory focus on beneficial ownership



Let’s focus on two of the most important elements, starting with FinCEN’s CDD Final Rule, which was announced in July 2016 and will be applicable from May 2018. The [Federal Register](#), the official daily journal of the US government, summarised it thus:

“FinCEN [issued] final rules under the Bank Secrecy Act to clarify and strengthen customer due diligence requirements for: Banks; brokers or dealers in securities; mutual funds; and futures commission merchants and introducing brokers in commodities. The rules contain explicit customer due diligence requirements and include a new requirement to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions.”

Before this rule, this information wasn’t generally required, which FinCEN said has “enable[d]

criminals, kleptocrats, and others looking to hide ill-gotten proceeds to access the financial system anonymously”. This new “beneficial ownership identification and verification” requirement “address[es] this weakness”.

While the final rule is already starting to have a knock-on effect on the culture and expectations of non-financial organisations, it hasn’t come into force and debates remain about the efficacy of “self-disclosure”, which is a feature of the rule.

What *has* come into effect, and *should* now be on EU member states’ statute books, is AML4.

AML4 is a wide-ranging anti-money laundering Directive, some of the [key aspects and risks of which we discussed in an extended blog post](#) a few months before it came into effect in June 2017.

It contains several provisions on beneficial ownership, two important ones being:

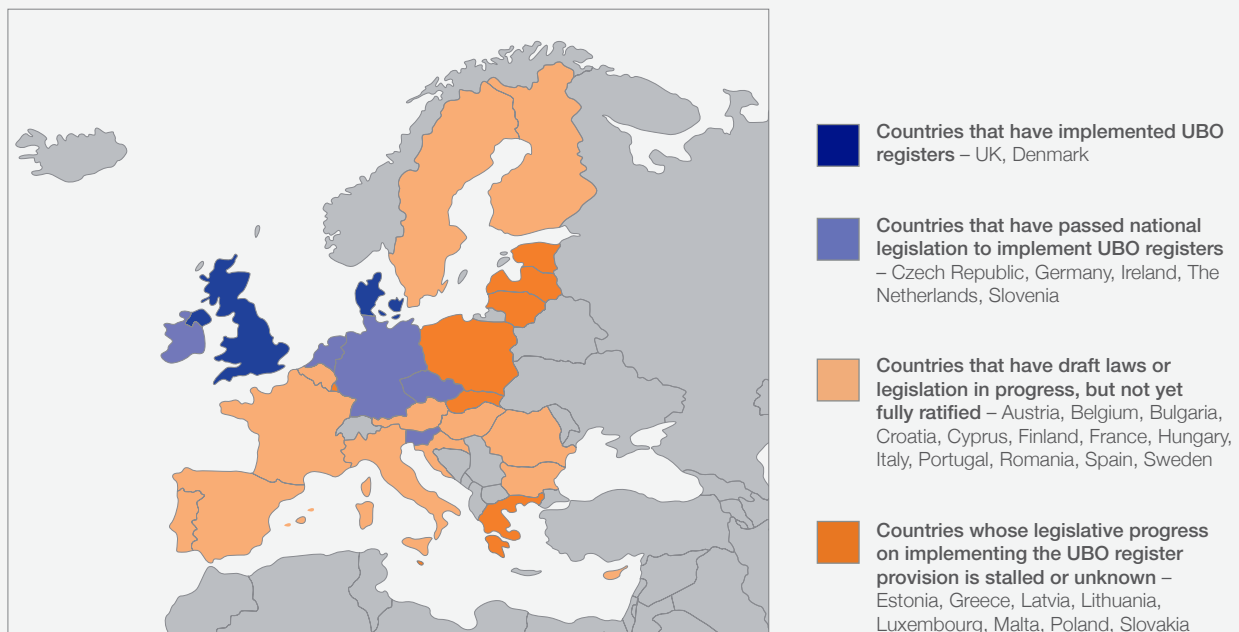
- The establishment of national central registers – AML4 mandates that member states create and maintain registers containing information on the beneficial owners of companies, including people of significant control (PSC). Due to their reliance on companies' self-reporting, and that the information supplied isn't checked by government officials, [these registers often have gaps](#) in their records or even incorrect data; and
- An expanded definition of beneficial ownership to 10% for high-risk companies – in keeping with its heightened focus on risk (and dovetailing with

Volkov's point), AML4 insists that "beneficial owners who have 10% ownership in certain companies that present a risk of being used for money laundering and tax evasion" be included in the national registries. For companies that present a lower risk, the threshold for inclusion remains at 25%.

It also requires that a larger section of the public be given access to the beneficial ownership data in these national registers.

Are all member states up to speed on the registers front? Well, when we [assessed the situation in May](#), one month before AML4 came into effect, it was a mixed picture, best illustrated by the map and chart below.

Implementation status of national registers of beneficial ownership as of May 2017



Levels of enactment and transparency as of May 2017

Level of enactment ↑	National ownership registry in place				United Kingdom Denmark	
	Registry legislation passed – on course for enactment by deadline		Germany	Czech Republic Ireland Slovenia	The Netherlands	
	Registry legislation in progress	Austria Belgium Hungary	Romania Sweden	Cyprus France	Bulgaria Croatia Italy Spain	Finland Portugal
	Registry legislation stalled or progress unknown	Estonia Greece Latvia	Lithuania Poland Slovakia	Luxembourg Malta		
		Unknown level of transparency	Lower level of transparency and/or paid access	Medium level of transparency – legitimate interest	Greater level of transparency - publicly accessible and/or free	
		Increasing level of transparency →				

But progress has been made, and the tide continues to flow in this direction. To demonstrate this point, note by way of example two legislative offshoots of AML4 in the UK.

The first is a statutory instrument, the [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#), which came into force in tandem with AML4.

Part 3 deals with customer due diligence and applies to more than just banks and traditional financial institutions; casinos, for example, are also in scope.

Among other things, it highlights in detail the importance of: identifying beneficial owners; identifying changes of beneficial owner; and, in some circumstances, treating senior personnel as beneficial owners.

The second is the Criminal Finances Act, which became law at the end of September 2017, three months after the formal implementation of AML4.

[Summarised by law firm Norton Rose Fulbright](#), it introduces new corporate criminal offences of failing to prevent facilitation of UK and foreign tax evasion, and is divided into three “stages”: tax evasion; criminal facilitation of tax evasion by an “associated person”; and failure to prevent that facilitation.

The onus here is on organisations to identify major risks and priorities, of which the identity of beneficial owners is a significant factor.

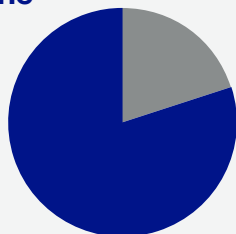
In both examples, our rules aren’t just being tightened, they’re becoming more subtle, targeted and specific.

Technology and
data to identify and
validate a company's
beneficial owners

Unless you rely solely on the information companies tell you about themselves – which we wouldn't advise – beneficial ownership identification is dependent on good data.

This seems obvious but it can't be overstated. We also can't take good data for granted.

~10-30% of company names held by clients are not the legal registered names



Bill Hauserman, senior director of compliance solutions at Bureau van Dijk, was another panellist on our recent beneficial ownership webinars.

According to Hauserman, the master data held by companies about their third parties typically contains 10 to 30% of company names that are neither registered nor the established marketing names.

This is before you attempt to look for these companies' beneficial owners.

So, the starting point is validating an entity's name, for which you need access to a good database of company information.

This can be done in bulk with your portfolio of clients and third-party data, and it starts with a matching exercise with one of Bureau van Dijk's databases, such as Orbis.

"Cleanliness of the existing data before introducing more extensive due diligence is critical," says Hauserman. "It's a waste of time if you can't clean up the data first. Beneficial ownership is derived from who the legal entities *are*."

Bureau van Dijk makes this possible through the work it does in capturing data from regulatory and other sources, and from treating the data to add value.

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Bill Hauserman, senior director of compliance solutions at Bureau van Dijk



Capture

Data is captured by Bureau van Dijk from regulatory and other sources



Treating data to add value

Addition of user interface and data visualisation tools



Bureau van Dijk works with a number of information providers around the world. It also has an in-house ownership data team, as well as researchers working in its mergers and acquisitions team, which feed information to the ownership data team. And the data is structured so that ownership links between entities, other entities and individuals are established, and ownership percentages are given.

This means you can easily trace lines of ownership where we have the information, and you can set percentage thresholds according to your risk appetite or relevant regulations.

“[Without databases] risk analysts sitting down to do data discovery on an organisational structure would be swamped with literally dozens, if not

hundreds, of entities to search through,” says Hauserman. “The intent of Orbis is to support this type of due diligence: legal entity validation up-front that gives you the target; if you have the right target, then layering on owners, directors and managers is far more simplified.”

“Bill Hauserman always talks about identification and validation, and I agree with him,” said Michael Volkov, when we [interviewed him about his compliance consultancy work](#) in September. “So, you’ve got to find out beneficial ownership, and you guys are the leaders in that area,” he added. Bureau van Dijk offers “probably the most effective and reliable window into beneficial ownership. The work it does is absolutely critical.”

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Michael Volkov, former federal prosecutor and FCPA expert

Dealing with the constant churn of beneficial ownership change

Due diligence processes aren't confined to onboarding; many elements need to be reviewed periodically and for the lifetime of a third-party relationship.

Monitoring corporate ownership is a prime example, and the numbers speak for themselves.

According to internal metrics on Orbis...



companies had changes in their ownership data this month

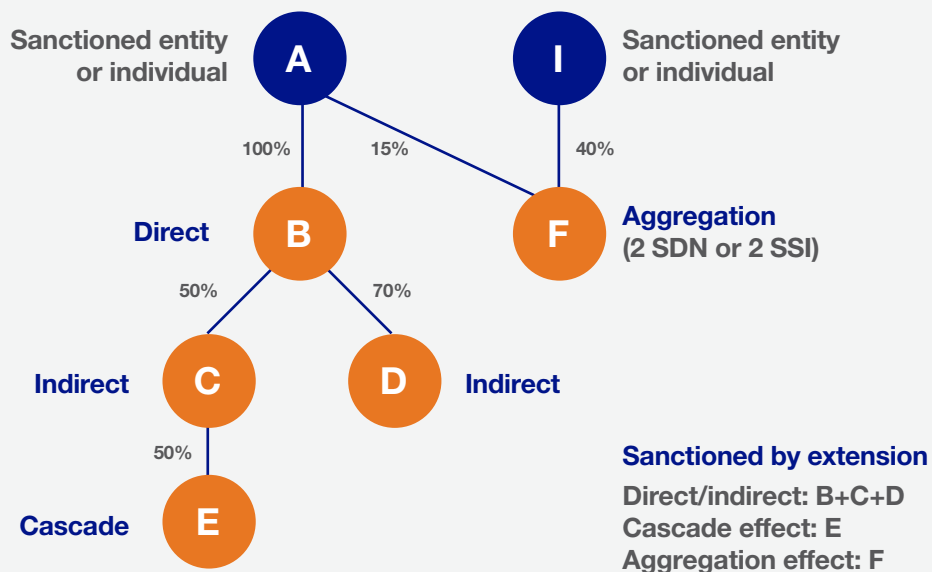
According to Hauserman, access to structured data is crucial because: "If you just take Orbis, on average we're talking about five million companies

that have some change of ownership and, of that, I can say that [a significant number] are a control change. And a control change means the EU and the OFAC 50% rule are definitely in play, so this goes back to that concept of monitoring."

So, it's not just the identity of the owners that changes, their percentage shares do too, with some slipping in and out of the recognised definitions for beneficial owner.

Hauserman's EU and OFAC point is best explained by the diagram below, which shows the percentage thresholds at each level in a corporate structure for a company to be "sanctioned by extension":

Sanctions: OFAC and EU 50% & 33% Rule (2008 – 2017)



As we said in the second section, sanctioning doesn't always tie in with beneficial ownership. But, where the sanction originates with an individual, there's a very definite overlap, and [monitoring such relationships is important](#).

Through Bureau van Dijk's systems you can monitor your third parties and set up alerts for changes such as ownership.

These are steps in "operationalising" your beneficial ownership programme, and it's the only way to keep on top of these constant changes.

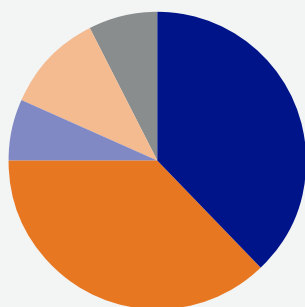
Conclusion:
what this all means
for your business

The most recent webinar we alluded to was called *Beneficial ownership – have you got it right?* Free to [watch on demand](#), it included four polling questions.

More than 1,000 compliance professionals from a range of industries around the world took part. The issue of beneficial ownership was clearly already on their radar. But the sense of urgency shown in some of their responses was notable nonetheless.

75% of the audience, for example, said that they planned to review their beneficial ownership process before the end of 2017 – giving them a six-month deadline from the date of broadcast.

Polling question: How urgent is it for you to review your current process for identifying beneficial ownership?



Within the next quarter:	37.9%
Before the end of 2017:	37.2%
Before the end of 2018:	6.6%
Sometime in the future:	11%
No urgency:	7.3%

The reasons for this were clear to Hauserman. “You’ve got several regulations that ’17, ’18, ’19... those are the years that they’re going to have to be written up for if they’re not adhering to them, or they’re going to at least have enough that regulators are satisfied or an auditor is satisfied initially,” he said, adding: “So that actually doesn’t surprise me given just the volume of questioning and actually angst.”

Other questions, all [reviewed on a blog post](#) we published shortly afterwards, also revealed how pressing participants believed the issue is; nearly half of respondents were already actively implementing process improvements. And, underlining the analysis in the previous section of this white paper, 85% fully agreed that the process of beneficial ownership identification should be ongoing for the lifetime of a client or third-party relationship, with a range of drivers cited as their principal motivation for identifying beneficial ownership.

Following the herd is bad advice. But this was no herd. These were informed compliance professionals doing the right thing and staying on the right side of the regulations.

And there’s a something of a chicken-and-egg situation at play with these things: the more a group of people shows a willingness and ability to comply, the more that regulators – and the public – will expect them to.

With access to the right tools, you can keep up.

Bureau van Dijk and its compliance solutions

The leading provider of the richest, most reliable private company information in the market, Bureau van Dijk is in the business of certainty.

Its product range combines data from regulatory and other sources, including 160 information partners, with flexible software to allow users to manipulate data for a range of research needs and applications.

Its **Orbis** database contains information on more than 275 million private companies around the world, as well as all listed companies. Among other things, it contains standardised company financials, financial strength indicators, directors and corporate ownership structures. Ownership can be visualised and navigated through the Ownership Explorer within Orbis (see screenshot below).

Compliance Catalyst is a risk assessment tool that streamlines KYC, AML and reputation risk research, and helps with client onboarding and customer due diligence. It was created to help

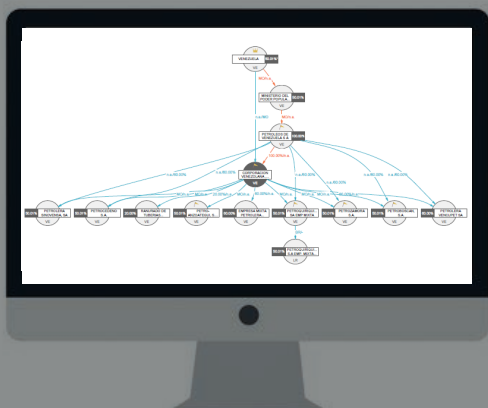
customers use the “compliance critical” information in Bureau van Dijk’s products more efficiently. It pulls relevant data from Bureau van Dijk’s databases and customers’ own data into a tailor-made platform.

For contact information, see www.bvdinfo.com/contactus.

For more resources on corporate ownership and compliance, visit our [knowledge base](#).

Highlights include:

- Our white paper, [Really getting to know your third parties](#);
- [Compliance and financial crime](#) articles on our blog; and
- Our [A-Z guide and integrated corporate ownership poster](#)



Contact information

Argentina

tel: 54 (11) 5246 5065
buenosaires@bvdinfo.com

Australia

tel: 61 (0) 2922 330 88
sydney@bvdinfo.com

Austria

tel: 43 (1) 606 11 96 0
vienna@bvdinfo.com

Belgium

tel: 32 2 639 06 06
brussels@bvdinfo.com

Brazil

tel: 55 11 2348 5176
saopaulo@bvdinfo.com

China

tel: 86 10 8515 2255
beijing@bvdinfo.com

tel: 86 21 2312 7527

shanghai@bvdinfo.com

Denmark

tel: 45 33 4545 20
copenhagen@bvdinfo.com

France

tel: 33 1 53 45 46 00
paris@bvdinfo.com

Germany

tel: 49 (30) 34 655 42 28
berlin@bvdinfo.com

tel: 49 (69) 963 665 0
frankfurt@bvdinfo.com

Hong Kong

tel: 852 2154 3822
hongkong@bvdinfo.com

Italy

tel: 39 02 43 98 22 77
milan@bvdinfo.com

tel: 39 06 840 4611
rome@bvdinfo.com

Japan

tel: 813 5775 3900
tokyo@bvdinfo.com

Mexico

tel: 52 55 3683 8080
mexico@bvdinfo.com

Netherlands

tel: 31 (0) 20 5400 100
amsterdam@bvdinfo.com

Portugal

tel: 351 211 528 700
lisbon@bvdinfo.com

Russian Federation

tel: 7 495 739 57 12
moscow@bvdinfo.com

Singapore

tel: 65 6496 9000
singapore@bvdinfo.com

Slovakia

tel: 421 2 32 11 90 11
bratislava@bvdinfo.com

South Africa

tel: 27 (0) 11 881 5993
johannesburg@bvdinfo.com

South Korea

tel: 82 2 3789 6727
seoul@bvdinfo.com

Spain

tel: 34 91 310 38 04
madrid@bvdinfo.com

Sweden

tel: 46 8 51 51 04 80
stockholm@bvdinfo.com

Switzerland

tel: 41 22 707 83 00
geneva@bvdinfo.com

tel: 41 44 269 85 00
zurich@bvdinfo.com

United Arab Emirates

tel: 971 4 4391703
dubai@bvdinfo.com

United Kingdom

tel: 44 (0)20 7549 5000
london@bvdinfo.com

tel: 44 (0)161 829 0760
manchester@bvdinfo.com

United States

tel: 1 (312) 235 2515
chicago@bvdinfo.com

tel: 1 (212) 797 3550
newyork@bvdinfo.com

tel: 1 (415) 773 1107
sanfrancisco@bvdinfo.com

tel: 1 (202) 905 2079
washingtondc@bvdinfo.com

