

Ministry of Justice wants specific legislation on the beneficial ownership approved within the next two years

- As part of the debate on expectations around the proposed law on the beneficial ownership in Mozambique, organized by the Center for Democracy and Development (CDD)¹, the Ministry of Justice, Constitutional and Religious Affairs (MJACR) reaffirmed the need for Mozambique to have specific legislation on beneficial ownership, as it understands that the Law for the Prevention and Combat of Money Laundering and the Financing of Terrorism is insufficient to cover all related matters to the beneficiary property.



¹ <https://cddmoz.org/first-ideas-launched-for-the-proposed-beneficial-ownership-law-in-mozambique-2/>

At this event, MJACR recognized that law making is a long process, but the goal is to have the beneficial ownership law passed within the next two years. Despite the pressure, the MJACR ensures that steps will not be skipped and that it will ensure that the law responds to society's wishes by establishing a multidisciplinary team to follow through with the process, including consultations with relevant parties.

Representing the Committee on Constitutional

Affairs, Human Rights and Legality of the Assembly of the Republic, deputy Hermenegildo Chiure assured that it is in the interest of Parliament to approve this legal provision so that Mozambique is aligned with international standards. For Oliveira Mucar, from the Foundation for Community Development (FDC), it is important to learn from past experiences and ensure that when the draft law is ready, it goes through a broad process of public consultation.



Hermenegildo Chiure, from the Committee on Constitutional Affairs, Human Rights and Legality of the Assembly of the Republic;



Artur Manhiça, representative of MJACR

Zimbabwe, Kenya, Liberia, and Zambia are African countries that already have adequate legal provisions of the beneficial ownership

According to Francis Kairu, representative of Tax Justice Network Africa (TJNA) and speaker at the event, it is important to consider some specific aspects when thinking about commercial activities and companies, especially how they have evolved over time. A study carried out recently analyzes how much of the revenue that some countries in Africa collected during the year 2021, compared to the revenue that was raised by companies, some of them very well known. The results are surprising as they show companies that are not the biggest in the sector raising much more revenue than certain African countries, including those that have the continent's biggest economies, the highest population numbers, and huge reserves of natural resources such as this is the case of Nigeria.

Another important reflection to take has to do with the levels of revenue collection between different countries. Some countries that have a hi-

gher population number and higher GDP, such as Nigeria, collect less revenue than countries with a smaller population and lower GDP, such as Kenya. According to Francis Kairu, the answer to these differences lies in the systems that are in place to strengthen tax collection capacity. Ensuring beneficial ownership transparency is one of the best ways to strengthen systems for greater revenue collection, reduce inequalities and improve the country's economy.

Currently, there are several countries in Africa that have started to develop beneficial ownership laws. Zimbabwe, Kenya, Liberia, and Zambia are some of those countries that have adequate legal provisions on beneficial ownership. There are also African countries that are in the transition period to get an adequate law on beneficial ownership, have previous subsidiary regulations requiring companies to provide information on beneficial owners, as is the case in Uganda and Tanzania.

Registration of beneficial owners will improve transparency in public procurement and asset recovery capacity

The movement of illicit funds through complicated corporate structures, funds often used to finance terrorism, need to be stopped and strictly tracked through a system that allows tracing back to the last beneficiary.

This need is also present in the public procurement process, where any government entity is responsible for the procurement of medicines, national security, and any other type of contract. This aspect reduces the capture of public institutions

by elites, allowing public procurement to be more transparent and for the government to be able to know who it is contracting with and who ultimately benefits.

Researcher Francis Kairu also pointed to the ability to recover assets that is strengthened with the registration of the beneficial owner. “One of the best ways to track and recover lost assets is by using beneficial ownership information from corporate entities.”

Mozambique is on the “grey list” for not complying with anti-money laundering requirements

In the 2021 assessment, the Financial Action Group (FATF) left relevant findings about the Mozambican State that need improvement, namely: **i) Lack of identification and verification of beneficial owners** – “Most reporting entities did not identify or even verify sufficiently all the information of beneficial ownership of the legal persons

with which they do business”; **ii) Absence of legal framework for the registration of the beneficial owner** - “Although Mozambique, in practice, obtains basic information on the companies commission, it does not demonstrate any legal framework that allows the Registry of Legal Entities (CREL) to collect this information”.

Eight (8) key elements that beneficial ownership law should seek to cover

Commenting on the expectations surrounding the draft law that will be prepared by the Ministry of Justice, Constitutional and Religious Affairs, Francis Kairu mentioned that a good beneficial ownership law must observe six (6) principles, namely:

1. Definition of the beneficial ownership -it is important to think of the beneficial ownerships as a human being, that is, a physical person. The law must recognize that behind every legal entity there is an individual. And the best standard is to include the requirement that each company provide details of the individual who controls the assets. For that, limits can be included, for example, considering that it is “an individual who owns

more than 10% of the shares”.

- 2. Inclusion of all legal entities** –second, it is important that the law covers all legal persons, such as partnerships, and trusts. Currently, Mozambican legislation does not recognize trusts, but that does not prevent them from operating in the country.
- 3. Identification requirement** –the law needs to require the identity documents of the person who is recognized as the beneficial owner. The name indication should not be enough, there must be an official document that shows who the beneficiary really is. If the beneficial owner is a foreigner, then the

requirement must be to present a valid passport that allows to identify him/her as a human being and then link him/her to a company and other details.

4. **Verification Requirement** –the law must provide and ensure that information provided to the government undergoes a verification process before being reflected.
5. **Update requirement** –the structure of companies can change, the owners of shares in a company can change, consequently the beneficial ownership can also change, as well as the number of people who become the beneficial owners. The law must present a requirement that establishes that when these changes take place, the beneficiary must proceed with the update with the entity responsible for the registration.
6. **Provide for the establishment of a registry** –it is important to systematize the information that will be collected on the beneficial owners of legal entities. That is, the law must

provide that once the information is registered, it serves to create a fund reserve register, and that some details are made available to the public.


7. **Embrace technology and automation** –As the law progresses, it will also be important to think about how to make some processes efficient, through the use of technology. Some African countries like Ghana, Kenya and Zambia are good examples of how technology can make law enforcement efficient. This involves ensuring the use of a fast and virtual system that allows people to log in and access and update their details. Whether it's for people to verify that details have been verified, data access by entities in investigation processes, as well as the public for specific information.
8. **Public consultations** –A successful law must ensure a broad involvement of the main state actors acting in the fight against money laundering, as well as the involvement of civil society and the public.



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