

Introduction & Background

- The 21st century sees an inexorable move to bring private information into the public domain.
- It is clear that private information must be accessible and readily available to law enforcement authorities upon request.
- But does it warrant that private information about people's private affairs must be in the public domain?
- Disclosure of private information raises a number of serious issues, ranging from human rights to that of security.
- Yet, plans for public registries of corporate beneficial ownership in Europe are unravelling quickly...
- How did we get there and what does the future hold?

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International Interest in Beneficial Ownership

- What is "Beneficial Ownership"?
- Why is there a need to ascertain who is the actual owner or controller of an entity is?
- Originally intended to detect/prevent money laundering, corruption and other financial crimes but then extended to tax related offences.
- 1998 Initial interest in beneficial ownership information:
 Bank for International Settlements flags link between ultimate beneficial ownership and financial crime.
- · Lead to 1st international instrument devised to focus on AML
- The principles would become the foundations for AML. controls and widely adopted across Europe and beyond...

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Issues raised by Register of BO

- Essentially information security, accuracy and integrity concerns & violation of privacy.
- Consider the risks of centralising and making accessible sensitive information at a click of a button: hacks, data breaches, personal security.
- Contrary to the fundamental right to privacy and data protection (Article 8 of the ECHR, EU Charter of Fundamental Rights).
- Courts' approach to collection and retention of private data on citizens: see Schrems v Data Protection Commissioner [2015] (the Facebook' decision, Tele2 Sverige AB v Post- och telestyrelsen; Secretary of State for Home Department v Tom Watson (2016), French Constitutional Court case of Re Helen (2016)
- European Data Protection Supervisor (EDPS) negative views on new EU measures to be introduced to enhance transparency.

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Status of implementation of Register of BO

- UK surprisingly leads the pack by going for public register of beneficial ownership that will also include trusts.
- Other EU Countries have shown a more mitigated approach 16 countries have failed to meet implementation deadline for 4AMLD.
- Major international offshore financial jurisdictions seem to have drawn a line and shall not be implementing a publicly accessible register.
- Most rightly contend that they have been collecting information about the beneficial owners of registered companies and trusts for decades.
- UK House of Lords has rejected a proposal for British overseas territories to implement a public register.
- During the debate, a number of Lords severely criticised the UK for trying to impose this requirement to BOTs.



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Status of implementation of the EV AAALO and URD Register of BO Table 1: The Status of Implementation of the EV AAALO and URD Register | Author | 1: The Status of Implementation of the EV AAALO and URD Register | Author | 1: The Status | Author

Conclusion

- Should the inaction from around half of the EU member states be interpreted as a sign that they do not think that it is a good idea?
- It remains that 16 EU countries, have or are in the final stages of implementing a public beneficial ownership register
- Clearly the regulatory trend towards absolute transparency raises complex legal issues and there is bound to be legal challenges to the new rules before the courts.
- It would be fair to say that Registers of BO is already a done deal in many jurisdictions.
- Time will tell whether others will be able to withstand the pressure and reach of international organisations.
- So, between illusion and reality, the Register of BO unfortunately is looking more like REALITY for some...



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