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Overview

Ultimate Beneficial Ownership Registration

How did we get here ?

What is an Ultimate Beneficial Owner ?

US Securities Laws

“The beneficial owner of an asset is the person for whose benefit the security is being held. Beneficial ownership arises when an asset is owned by one person (the "legal owner") who has a duty to use it on behalf of another; one person holds assets as trustee for another”.

What is an Ultimate Beneficial Owner ?

Wolfsberg Principles

“ the level of ownership that equates with control over or entitlement to funds ”

Political Landscape

- **G8**, Corporate Transparency initiative - primarily led by the UK
- **G20** – Anti-Corruption Working Group
- **European Union** – AML Committee Directives
- **Financial Action Task Force (FATF)**

Overview

February 2012 - FATF adopt revised Recommendations on Transparency and Beneficial Ownership.

February 2013 – EU releases proposals for a 4th AML Directive to meet new FATF standards.

April 2013 – EU holds first discussions on the 4th AML Directive.

June 2013 - G8 Countries endorse “transparency” principles
- Crown Dependencies / some OTs release Action Plans

Overview

October 2013 - David Cameron commits the UK to “lead by example” to create a publicly accessible central registry of company beneficial ownership information.



Overview

November 2013 – slight U-Turn - Cameron realises legal principles in respect of trust arrangements may need to be abandoned in order to meet UBO public registry requirements - writes to EU President

April 2014 - Cameron asks overseas territories, to follow the mainland UK example and establish publicly available registers.

Q4, 2015 - 4th Money Laundering Directive (“4MLD”) expected to come in to effect.

Perceived Benefits

Publicly available Registers of UBO details will ensure Compliance with FATF Recommendations
24 / 25

Summary FATF Recommendations 24 and 25



“Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons (and / or arrangements) that can be obtained or accessed in a timely fashion by competent authorities.”

FATF – Misuse of Corporate Vehicles



“It matters less who maintains the required information on the corporate vehicle provided that the information on beneficial ownership:-

- 1) exists,*
- 2) is complete and up-to-date, and*
- 3) available to competent authorities.”*

Perceived Benefit

Creates Transparency

Question - is a publically accessible central register so beneficial in the fight against money laundering that it justifies an erosion of the right to privacy ?

Right to Privacy - fundamental principle of English Law unless there is an overriding public interest issue that requires otherwise.

Legitimate Privacy Needs

- Investments that may be controversial
- Security, cybercrime and ID theft
- Data harvesting
- Extortion and kidnapping
- Tabloid press
- Competitors and acquisition
- Market speculation

Perceived Benefit

Central Resource will assist Law Enforcement Agencies and/or Regulators.

Only if its accurate !

Real Time – registries are a useful starting point but generally archival in nature.

Feasibility – can we really get to a global “real time” register of UBOs ?



Costs – UK Open Data Policy costs already out of control

“If transparency initiatives are to be more than aspirations, then Government needs to measure and monitor both their costs and benefits.

What the Government is lacking at the moment is a firm grasp of whether that is being realised”.

Amyas Morse, head of the UK National Audit Office

Central Resource for Law Enforcement

OTs already have agreements in place covering:-

- Regulatory Exchange of Information
- Memorandums of Understanding
- Tax Information Exchange including FATCA
- Co-operation and information exchange

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Perceived Benefit Creates a Level Playing Field



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16 out of the 21 EU FATF member countries are either non-compliant or partially compliant with its recommendations on corporate beneficial ownership.

None are fully compliant regarding beneficial ownership of legal arrangements (such as trusts).

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“Our 50 states are forming nearly 2 million companies each year and, in virtually all cases, doing so without obtaining the names of the people who will control or benefit from those companies.”

Statement of Sen. Carl Levin, U.S. Senate Permanent Subcommittee on Investigations



Who has agreed to adopt a Public Register?



“a leader should never jump before ensuring that others will follow”



G8 (*now 7) Hong Kong and Singapore

Definite Yes (apart from trust arrangements) - UK

Supportive, no firm commitment - Canada, France (maybe) Germany, Italy, USA

No - Hong Kong, Japan, *Russia, Singapore

Public Consultations - Generally a No

Overseas Territories

- Anguilla
- Bermuda
- British Virgin Islands
- Cayman Islands
- Montserrat
- Turks and Caicos

Crown Dependencies

- Guernsey
- Isle of Man
- Jersey

General Themes / Responses

- Offshore already more transparent than the UK, US e.g. UBOs already recorded by some registries.
- Intrusion into Privacy rights.
- Exchange of information agreements already exist and work well – TIEAs, MOUs, FATCA

General Themes / Responses

- No agreement or strict definition of beneficial ownership - differing benchmarks for each jurisdiction.
- Competitiveness - Co-operation must be the same standard for all – unrealistic to obtain.
- Costs - benefits do not generally outweigh implementation.

General Themes / Responses

- Private sector – further administrative burden on compliance.
- Loss of business or jurisdictional jumping.
- Domino effect economy.

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