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Anti-money laundering and beneficial ownership

A report by the International Regulatory Strategy Group in association with Eversheds Sutherland (International) LLP

December 2023

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About the IRSG

The International Regulatory Strategy Group (IRSG) is a joint venture between TheCityUK and the City of London Corporation, comprising senior leaders from across the UK-based financial and related professional services industry. It is one of the leading cross-sectoral groups in Europe for the industry to discuss and act upon regulatory developments.

About Eversheds Sutherland

Eversheds Sutherland is a leading global law firm with a truly international technical and subject-matter expertise relating to financial crime, and in particular, anti-money laundering compliance. With offices in the UK, across the EU, the United States, Dubai, Hong Kong and Singapore, Eversheds Sutherland is able to provide in depth knowledge of both the UK anti-money laundering regime as well as insight into local regulatory regimes.

Eversheds Sutherland's Corporate Crime and Investigations Practice includes former prosecutors, regulators and investigators. Eversheds Sutherland boasts both advisory and real-world commercial experience within some of the world's leading financial institutions, and is regularly instructed by the world's largest corporates, UK banks, global overseas financial institutions and electronic money institutions across a range of sectors.

Eversheds Sutherland is well known for complex multi-jurisdictional investigations and advice on the intersection of criminal, civil and regulatory laws, and is an inaugural member of the UK FCA's Skilled Person Panel since its inception in 2014.

TheCityUK and the City of London Corporation co-sponsor the IRSG.

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FOREWORD

Steve Smith
Partner, Eversheds Sutherland (International) LLP

It has been a pleasure to work with the International Regulatory Strategy Group on this report.

The debate on how best to achieve an effective, robust and proportionate approach in the fight against economic crime and illicit finance is constantly evolving. Governments, regulators and law enforcement agencies across the world are regularly enhancing their approach to tackling money laundering to seek to keep up to date with the strategies used by organised criminals to enjoy the proceeds of their crimes. However, the debate is far from simple and the proportionality and fairness of requiring the transparency of beneficial ownership remains a constant item on the anti-money laundering agenda.

Requiring individuals to identify themselves as the ultimate owner of property and assets makes it harder for criminals to seek to hide the proceeds of crime. It follows that improving requirements for transparency of ownership will help build clean business, improve market confidence, tackle corruption and frustrate money laundering. Increased transparency can also improve corporate governance, supply chain due diligence and public procurement. However, increased transparency has the downside of an increased burden and cost on legitimate business. It also impacts on data privacy rights for the wider majority of law-abiding people. The fundamental question is where the balance should rest.

Through this report, we compare and contrast different beneficial ownership regimes from around the world. We have worked with colleagues from across the world to help understand the different regimes. We have then used this analysis to support a number of recommendations about how the global approach to beneficial ownership could be more effective. The debate is wide and there are many different views on the best global approach. However, we have found a number of regular themes pointing to the value of having a consistent international standard supported by better guidance at a national level. The nirvana being one comprehensive global register that is accessible by all (we recognise that that is not possible but do make a number of recommendations that are common and consistent with the view of many other national and international anti money laundering bodies and commentators).

The drafting of this report has been supported by numerous individuals and colleagues from around the world to whom I am very grateful. Particular recognition should go to Matilde Hernandez, an Associate in our Financial Services and Disputes Team, for her many hours of hard work, support and patience in helping to bring this report together.

FOREWORD

Antony Manchester, BlackRock
Chair, IRSG Global Regulatory Coherence Committee

Given rising levels of money laundering due to geopolitical risks and the changing nature of illicit finance, the time to ensure a robust anti-money laundering (AML) regime globally is now. A transparent and efficient beneficial ownership regime is at its core and the International Regulatory Strategy Group (IRSG) supports proactive efforts towards this goal.

With this report, the IRSG, in association with Eversheds Sutherland LLP, seeks to explore what regulatory considerations should enable a beneficial ownership regime that is transparent, effective and with global interoperability at its core.

Through examining the current global guidance on beneficial ownership and reviewing global beneficial ownership regimes, the report seeks to establish how effective the current regime is, where best practices can be shared and where further work needs to be done to tackle global regulatory fragmentation and to promote greater transparency.

The report does so by looking at a number of case studies - the tension between combatting AML and ensuring data privacy; the effectiveness of Companies House; the interplay between beneficial ownership transparency and financial sanctions. It outlines seven recommendations for a globally transparent and effective beneficial ownership regime.

If we achieve global coherence on regulatory approaches to beneficial ownership, we can enjoy some of the benefits outlined in this report, such as greater transparency, consistency and effectiveness of beneficial ownership and AML policy across the globe, which will go a long way towards combatting money laundering and illicit finance. The time is now to ensure an effective global regulatory approach to beneficial ownership, underpinned by jurisdictional buy in and international collaboration.

We are grateful to Steve Smith, Partner, and Matilde Hernandez, Associate, at Eversheds Sutherland LLP for their collaboration on this report.

SECTION 1
EXECUTIVE SUMMARY

In the face of rising levels of money laundering due to both, geopolitical risks and the changing nature of illicit finance, the time to ensure a robust and effective anti-money laundering (AML) regime globally is now. A transparent beneficial ownership regime is at its core. The International Regulatory Strategy Group (IRSG), together with Eversheds Sutherland, strongly support efforts, both domestic and international, towards this goal.

The financial and related services industry is committed to AML compliance and the cost of this commitment is ever increasing. However, questions remain whether these compliance costs are sustainable long term and lead to an effective fight against money laundering. Beyond the private sector, money laundering also has negative consequences for the wider economy, undermining the integrity of financial markets and global financial stability.

Through examining the current global guidance on beneficial ownership and reviewing global beneficial ownership regimes, this report seeks to establish how effective the current beneficial ownership regime is, where best practice can be shared and to identify where more work needs to be done to tackle global regulatory fragmentation and to promote greater transparency. The report does so by looking at a number of case studies, namely, the tension between combatting AML and ensuring data privacy, the effectiveness of Companies House and the interplay between beneficial ownership transparency and financial sanctions.

It is evident that financial crime and money laundering are hugely detrimental globally. The hypothesis proposed in this report states that international consistency on beneficial ownership will help combat international financial crime and support sanctions regimes across the world. Our analysis of current global guidance on beneficial ownership transparency and varying beneficial ownership regimes globally, shows consistent themes, particularly the need for standardised registers or an international register of UBO (Ultimate Beneficial Owners). The report has found that most countries have a beneficial ownership regime and threshold of about 25%, but fragmentation persists as there are inconsistent definitions.

As the first case study in the report finds, a key issue is the need for the beneficial ownership registers to align with data privacy rules. To that end, the report recommends that global standard setters develop clear rules and guidelines on how to balance privacy rights and obligations against AML/ beneficial ownership purposes. Access to beneficial ownership data is also important and clear rules and guidelines should be established around how access can be given to an overseas register of beneficial ownership and in which circumstances such access can be given. Ultimately, the establishment of an international register will address these issues, with more consistency welcome on coordination between current local, national or regional registers until such a register is established.

The second case study on Companies House shows that enforcement of these registers is very important. It provides a jurisdictional perspective from the UK on whether their regime has been successful to date. It provides a number of recommendations for the UK market specifically, namely the addition of a "UBO (Ultimate Beneficial Owner) Question" in UK Beneficial Ownership Register when understanding who the shareholders/directors of a company are. It also notes guidelines on professional service providers which often certify certain aspects of a company's structure/identity are important for jurisdictional registers.

The last case study in the report demonstrates the value of beneficial ownership transparency to sanctions regimes. It recommends the development of an internationally consistent UBO threshold, led by FATF and concludes with a note that standards should be proportional to the risk carried by various financial services products.

Ultimately, the report establishes that if we are to ensure an effective fight against illicit finance, there must be a robust, effective and transparent AML and specifically, beneficial ownership regime, and that all actors, both local and global, public and private, must act in alignment as the nature of the crime is cross-border. An effective beneficial ownership regime is important as it helps assess the risk of money laundering, enables the identification of those that are in scope for AML due diligence and prevents the utilisation of complex structures to hide the source of finance. National governments and regulators and international standard setters and organizations, like the Financial Action Task Force (FATF) have the opportunity to come together to address this mounting challenge and to promote the importance of joint action on the path towards a transparent beneficial ownership regime. Their commitment to fight against fragmentation in this space and to promote greater global regulatory coherence will contribute significantly towards reducing the high cost of fragmented AML compliance and the detrimental effect this may have on the effectiveness of AML regime's ability to combat illicit finance.

In the production of this report, the IRSG and Eversheds Sutherland have engaged with a number of key public and private sector stakeholders and our recommendations are rooted in the input received during this engagement. Below we outline seven recommendations to both, national and international stakeholders, including governments, regulators and standard setters, which we believe will enable a globally transparent and effective beneficial ownership regime.

RECOMMENDATIONS

How can we improve the Global Regime on Beneficial Ownership Transparency?

Owners, actions and outcomes

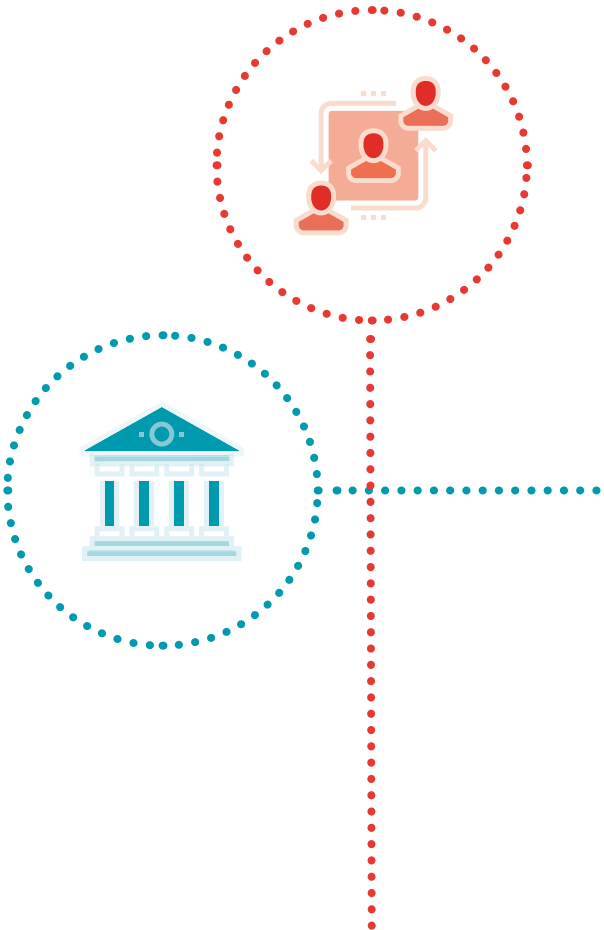
OWNER – WHO NEEDS TO ACT?	RECOMMENDATIONS	TARGET OUTCOME
GLOBAL STANDARD SETTERS FATF lead authority; other global standard setters and international bodies FSB, IOSCO, IAIS, OECD, G7, G20 and others to integrate into their work	**1.** Clear rules and guidelines around how access can be given to an overseas register of beneficial ownership and in which circumstances such access can be given.	Level playing field of access to overseas beneficial ownership information with clear rules and guidelines
GLOBAL STANDARD SETTERS FATF lead authority; other global standard setters and international bodies FSB, IOSCO, IAIS, OECD, G7, G20 and others to integrate into their work	**2.** Clear rules and guidelines on how to balance Privacy rights and obligations against AML/beneficial ownership purposes.	Data privacy and AML/beneficial ownership rules balanced with clear guidelines for stakeholders
GLOBAL STANDARD SETTERS FATF in first instance; national governments, with G20 coordonating implementation	**3.** Implementation of an International Register. [Or local, national or regional registers with specific enforceable terms, as well as different access levels to manage the balance between beneficial ownership transparency requirements and Privacy rights and freedoms of individuals who may be impacted by the creating and maintenance of any register/ lists of beneficial owners.]	Improved transparency results in the reduction of operational burden, promoting competitiveness and facilitating a more effective fight against illicit finance

OWNER – WHO NEEDS TO ACT?	RECOMMENDATIONS	TARGET OUTCOME
UK LEGISLATORS UK government to legislate; Relevant government departments HMT, DBT, DSIT, Home Office; Companies House to implement	**4.** The addition of a "UBO (Ultimate Beneficial Owner) Question" in UK Beneficial Ownership Registers when understanding who the shareholders/directors of a company are when a legal entity is able to be recorded as the beneficial owner as it is subject to its own disclosure requirements (applicable to the UK).	Improved transparency on UBO results in the reduction of operational burden, promoting UK competitiveness and facilitating a more effective fight against illicit finance in the UK
NATIONAL JURISDICTIONS Relevant to all countries, with G20 and other significant financial centres to take the lead (including Hong Kong, Singapore, Bermuda)	**5.** Guidelines on professional service providers which often certify certain aspects of a company's structure/ identity.	Clear guidelines for professional service providers on beneficial ownership requests lead to a more effective and efficient AML/ beneficial ownership compliance record in the wider ecosystem
GLOBAL STANDARD SETTERS FATF	**6.** FATF leading on formulating an internationally consistent UBO threshold.	One internationally accepted UBO threshold, results in the reduction of operational burden, promoting competitiveness and facilitating a more effective fight against illicit finance
GLOBAL STANDARD SETTERS FATF lead authority; other global standard setters and international bodies FSB, IOSCO, IAIS, OECD, G7, G20 and others to integrate into their work	**7.** Proportionate standards for lower risk financial services products (but note that this would have to be weighed up against the risk of parties taking advantage of such rules by pretending to be 'lower risk' and thereby facing less checks). Lower risks may also mean less information about beneficial owners being available.	Application of risk weighting to beneficial ownership standards results in the reduction of operational burden, promoting competitiveness and facilitating a more effective fight against illicit finance

SECTION 2
INTRODUCTION

Money laundering has had a significant detrimental impact on its victims as well as the global economy. Both domestic and international stakeholders, including governments, regulators, law enforcement, standard setters and the private sector, are facing ever increasing levels of threat, in light of, for instance, the war in Ukraine and some of the consequences of digitisation, inevitably also leading to tougher reacting from legislators and regulators and more resources spent on combatting this crime. In essence, the challenge is three-fold:

Money laundering has a detrimental impact on the wider economy – integrity of markets, cost to economy, financial stability: Money laundering has negative consequences for the wider economy. It undermines the integrity of financial markets. By skewing competition and impairing the development of the legitimate private sector it detrimentally impacts the wider economy and global financial stability. In the UK, according to Oxford Economics, the National Crime Agency (NCA) estimates the total financial crime compliance costs for UK financial services are at £34.2 billion per year in 2022. Moreover, regulation remains the biggest perceived external compliance cost driver – more so than financial crime itself.[1] Most importantly, money laundering activities cost the world 2% to 5% of its GDP. The United Nations believes that the estimated value of money laundering worldwide, according to recent statistics, is between 2% and 5% of the world's GDP, which is approximately $800 billion to $2 trillion annually.



Money laundering has a high cost to businesses – high AML compliance costs, fines, reputation – and the threat of it as well as complexity continues to grow: Money laundering is a serious crime that has negative consequences for businesses. It undermines the legitimate private sector. Businesses that are involved in money laundering or fail to prevent it can face fines, revocation of licenses, asset seizures, loss of reputation. AML (anti-money laundering) compliance costs are high and the regulatory requirements can be demanding. Money laundering also skews competition and impairs the development of the legitimate private sector. Moreover, the threat and complexity of money laundering continues to grow as the global financial system and payment infrastructure undergoes digitalisation and cyber security has to become increasingly sophisticated to meet this challenge.

AML regulatory approach is globally fragmented and lacks transparency and efficiency, particularly on beneficial ownership: A lack of transparency in beneficial ownership is a subject which has been tackled by most UK, EU and global businesses in recent years. There is no global beneficial ownership

1 True-Cost-of-Compliance-2023-Report.pdf (oxfordeconomics.com)

register or clear guidelines that would allow easy access and real time data of beneficial ownership.

What's more, the nature of financial crime, illicit finance and money laundering is cross-border. Therefore, if we are to ensure an effective fight against all of the above, there must be a robust, effective and transparent AML and specifically, beneficial ownership regime. This regime cannot be fragmented across borders and global regulatory coherence on beneficial ownership is therefore paramount. All actors, both local and global, public and private, must have clarity and access to the relevant information to help tackle this challenge, guidelines on beneficial ownership, such as on UBO (Ultimate Beneficial Owner) thresholds, must be clear and universal, and standards in this space must be proportionate to the risks. Only then can there be global alignment on beneficial ownership.

The International Regulatory Strategy Group (IRSG), together with Eversheds Sutherland, strongly support efforts, both domestic and international, by governments, regulators and standard setters towards this goal. We welcome a more effective and efficient regime for both public and private actors. The private sector is committed that the compliance costs it has allocated to AML lead to an effective fight against financial crime and illicit finance. To that end, below the report examines why beneficial ownership transparency is important, what current guidance is there globally, and what considerations are important pertaining to an effective beneficial regime such as privacy, sanctions, a risk-based approach and current practices by, for instance, Companies House.

WHY IS BENEFICIAL OWNERSHIP TRANSPARENCY IMPORTANT?

Anti-money laundering (AML) and counter terrorist financing (CTF) regimes across the globe provide for a range of rules and regulations that seek to frustrate the efforts of money launderers. These typically include requirements for financial institutions and other regulated firms to deploy customer due diligence measures that enable them to assess money laundering risks and detect suspicious transactions. A key factor of such due diligence is the identification of the beneficial owners of a company or legal entity.

It is critical for AML and CTF purposes to be able identify the true beneficial owner(s) of a company and to be satisfied that due diligence relating to that company is accurate. In practice, this can be challenging, and criminals are known to "forum shop" to set up companies in regimes with less rigorous company registration requirements. Recent events such as the Panama Papers in 2016, and FinCEN leaks in 2020, have cast a spotlight on the extent and depth of steps taken by money launderers to abuse offshore banking facilities and use complex corporate structures to obfuscate beneficial ownership.

DEFINITION:

The beneficial owner of a company is the natural person who, directly or indirectly, ultimately owns or controls that company. In simple terms, the beneficial owner is the individual who ultimately benefits from assets held in the name of a company or other type of legal entity and, as such, has beneficial ownership of that company. Beneficial ownership is distinct from legal ownership, by which a legal owner holds the legal title of the company in their name but may not be the person who has actual control over it or the company or ultimately benefits from it.

WHAT GUIDANCE IS THERE GLOBALLY?

Having an effective approach to achieving transparency of beneficial ownership is largely accepted on the global stage as a key tool in the fight against financial crime. However, how to achieve the most effective approach remains a topic of much international debate, challenge and differences. Many countries do not publish beneficial ownership information of companies set-up within their jurisdiction on public registers, and even if provided, information can often be incomplete, incorrect or only partially accessible. This means that financial institutions and regulated firms with AML/CTF obligations can face

huge challenges in obtaining the necessary information to accurately establish and verify beneficial ownership.

OBJECTIVES OF THIS REPORT:

Improving transparency about who owns and controls companies will help build clean business, improve market confidence, tackle corruption and frustrate money laundering. Increased transparency can also improve corporate governance, supply chain due diligence and public procurement. **With this joint report, the IRSG and Eversheds Sutherland (International) LLP, build upon these principles, and set out actionable recommendations about how to help achieve a more effective coordinated global approach to beneficial ownership transparency.**

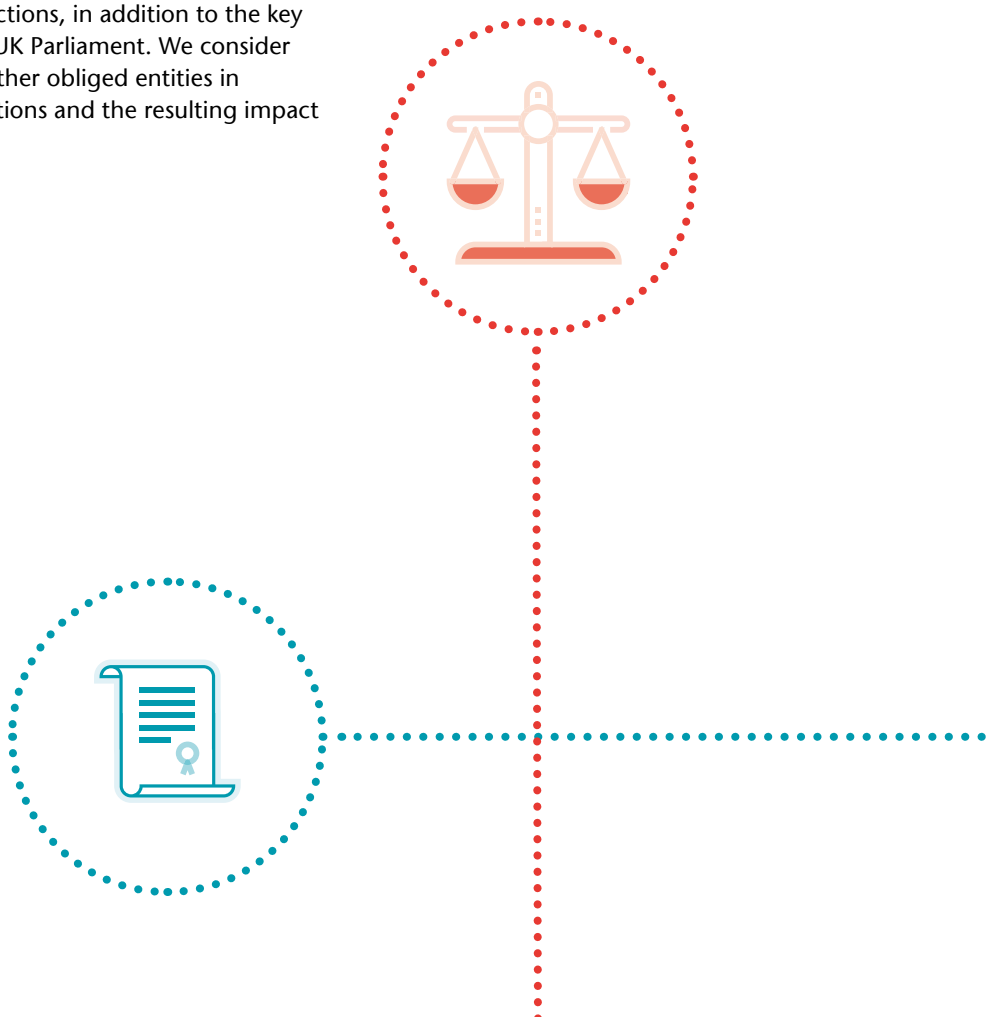
We firmly believe that the global approach presents an opportunity to ensure that international regulatory weaknesses are addressed, and to better equip investigators, authorities and firms with AML obligations to quickly and more effectively establish beneficial ownership information. This is a key time in terms of both the UK and global debate on the approach to beneficial ownership. **The recommendations in this report are designed to inform, enhance and challenge this debate.**

Beneficial ownership as it relates to AML: Whilst beneficial ownership is a concept that is relevant to numerous areas of legal and regulatory importance, including sanctions, tax, property law and corporate governance, this report intentionally focusses on the importance of beneficial ownership in relation to AML, with a brief consideration on sanctions.

Jurisdictional scope: This report assesses the current approach to beneficial ownership transparency globally; measuring the success of beneficial ownership reform across a number of key jurisdictions, in addition to the key reforms that are currently being debated in the UK Parliament. We consider the challenges facing financial institutions and other obliged entities in ensuring compliance with their AML/CTF obligations and the resulting impact on the consumer of regulated services.

FATF AND BOLG:

Aiming to promote coordination and cooperation to further AML/CTF efforts, international organisations such as the Financial Action Task Force (FATF) have published global standards and guidelines to strengthen the AML/CTF regime. Other groups, such as the Beneficial Ownership Leadership Group (BOLG), are driving for free and open beneficial ownership information, seeking to establish a "new global norm" of beneficial ownership transparency. In September 2021, the UK formally signed up to adhere to BOLG's best practice beneficial ownership disclosure principles.



POLICY FOCUS AND CASE STUDIES

Data privacy

The report considers the interface between data privacy and beneficial ownership transparency, analysing recent tensions in finding the balance between the general public interest for open access to beneficial ownership information whilst ensuring sufficient safeguards are in place to protect personal data against risk of abuse. The report examines the recent Court of Justice of the European Union (CJEU) cases of C-37-20 and C-601/20. These determined that implementation of a provision of EU Directive 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLD 5) that ensured general public access to beneficial ownership information was invalid and interfered with human rights to private life and protection of personal data. This is an interesting but very relevant dynamic in balancing the fight against financial crime (and the damage this ultimately does to individuals who are victim to such crimes) against an individual's right to privacy and a private life. This brings to life the concept of "giving with one hand but taking with the other" when looking at the challenges of finding a balanced and proportionate legislative approach.

RELEVANT RECOMMENDATIONS

1 GLOBAL STANDARDS

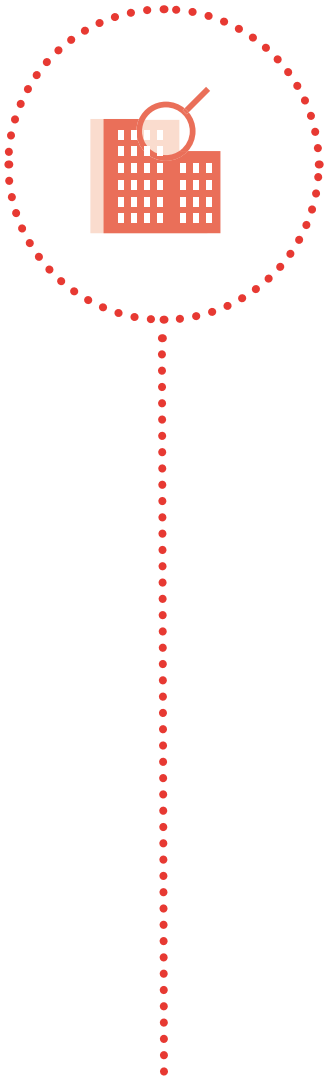
Clear rules and guidelines around how access can be given to an overseas register of beneficial ownership and in which circumstances such access can be given.

2 GLOBAL STANDARDS

Clear rules and guidelines on how to balance Privacy rights and obligations against AML/beneficial ownership purposes.

3 GLOBAL STANDARDS

Implementation of an International Register. [Or local, national or regional registers with specific enforceable terms, as well as different access levels to manage the balance between beneficial ownership transparency requirements and Privacy rights and freedoms of individuals who may be impacted by the creating and maintenance of any register/lists of beneficial owners.]



Companies House:

This report also examines the effectiveness of the UK Companies House as a hub for beneficial ownership information, as well as the challenges that it faces. In particular, we consider the well-publicised abuse of the Corporate Register by money launderers. Furthermore, part two of the UK's Economic Crime and Corporate Transparency Act received Royal Assent in October 2023. This Act has introduced reforms to the requirements for information that companies registered in England and Wales must submit to Companies House. These include new identification verification requirements for Persons of Significant Control (PSC), the broadening of the Registrar's powers to check and challenge information provided, improvements on financial information held in the PSC Register and enhancement to the protection of personal information provided to Companies House. However, these are not expected to be implemented until late 2024. This report builds on these proposed amendments, using the various sides of the UK debate to help inform and promote international co-operation in this space.

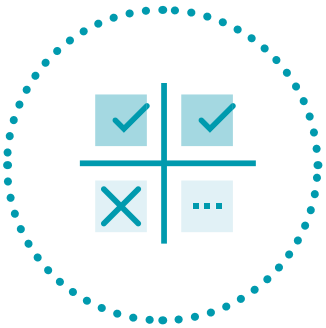
RELEVANT RECOMMENDATIONS

4 UK LEGISLATORS

The addition of a "UBO (Ultimate Beneficial Owner) Question" in UK Beneficial Ownership Registers when understanding who the shareholders/directors of a company are when a legal entity is able to be recorded as the beneficial owner as it is subject to its own disclosure requirements (applicable to the UK).

5 NATIONAL JURISDICTIONS

Guidelines on professional service providers which often certify certain aspects of a company's structure/identity.



Sanctions

Finally, this report considers the importance of beneficial ownership transparency not only in respect of AML/CTF, but also in other key areas of financial crime, notably financial sanctions. This report sets out how improved global beneficial ownership transparency can also better equip firms to comply with sanctions restrictions and combat evasion and circumvention attempts. The value of good, reliable beneficial ownership information is not just found in respect of AML.

RELEVANT RECOMMENDATION

6. GLOBAL STANDARDS

FATF leading on formulating an internationally consistent UBO threshold.

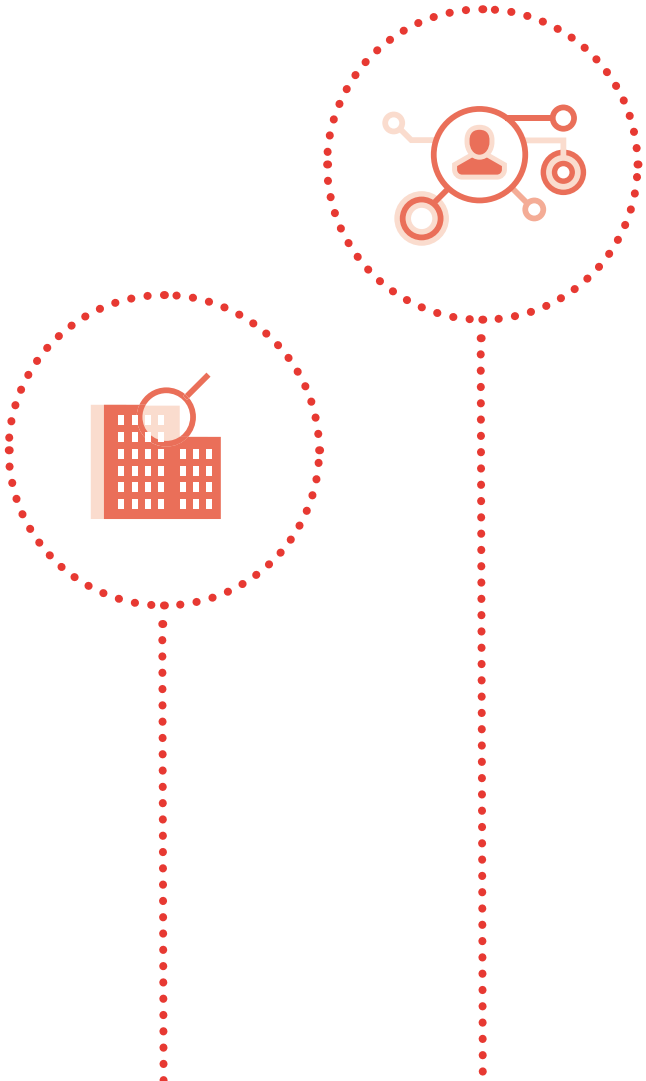
Risk based approach

This report is not an exhaustive nor comprehensive review. Whilst numerous pieces of key international legislation have been considered, there is a multitude of other legislation, guidance and work that has been, or is in the process of being produced relating to themes around enhanced transparency and the ongoing fight against economic crime. This report has adopted its own *risk-based approach* in selecting what are considered to be the most relevant areas for informing the discussion and formulation of recommendations. For example, The Shareholder Rights Directive (SRD I), as amended by The Shareholder Rights Directive II (SRD II in 2017, provides a set of EU measures seeking to improve shareholder engagement and transparency, as well as increase transparency around investment strategy). Legislation such as SRD I and SRD II come with their own proposals to increase governance and transparency in the financial markets, all of which ties in with the fight against financial crime, however, these have not been considered in this Report.

RELEVANT RECOMMENDATION:

7. GLOBAL STANDARDS:

Proportionate standards for lower risk financial services products (but note that this would have to be weighed up against the risk of parties taking advantage of such rules by pretending to be 'lower risk' and thereby facing less checks). Lower risks may also mean less information about beneficial owners being available.



SECTION 3
BENEFICIAL OWNERSHIP TRANSPARENCY – CURRENT GLOBAL GUIDANCE

KEY THEMES

This section of the report reviews guidance and principles published by global organisations, commissions and collectives, that aim to further AML/CTF efforts worldwide. Some of these reports and guidance were published nearly two decades ago, demonstrating the longevity of issues arising from beneficial ownership transparency and highlighting that, to some extent, it has been difficult to achieve real progress over this period. This is exacerbated by the significant change and development of the global economy and financial systems over the last two decades. Following analysis, a number of key themes have emerged from the guidance detailed in this section. These can be summarised as follows:

- Identification and verification of beneficial owners is critical. This should be an ongoing assessment throughout the course of a relationship or transaction, not just at the outset;
- It is important to be able to easily identify any inconsistencies or discrepancies in ownership information. A thorough understanding of ownership and control is vital. This is especially so in respect of complex structures such as trusts and charities;
- Beneficial ownership is not just a domestic issue; jurisdictions must also consider foreign companies with jurisdictional links. International cooperation is key;
- Government support is critical to the furthering of beneficial ownership transparency efforts. This is dependent on adequate resources being made available; and
- Access to a central register (or equivalent system) containing accurate and up-to-date information on beneficial ownership is essential.

A stock take: International organisations and beneficial ownership

3.1 INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO)

The International Organization of Securities Commissions (IOSCO) is the main regulator of the securities markets in over 130 jurisdictions across the globe. In May 2004, IOSCO published a report titled 'Principles on Client Identification and Beneficial Ownership for the Securities Industry'[2]. This set out core principles to be applied by securities service providers, as well as other securities regulators, concerning client due diligence (CDD). The report provides guidance on how these principles should be implemented to maintain robust CDD systems.

The report highlighted some key principles, including:

- The need for identification of beneficial owners, particularly in situations where securities are purchased or held through accounts on behalf of other parties;
- The need for identification and verification checks to be conducted by service providers at onboarding of clients, to determine the identities of beneficial owners;
- The onboarding process should inevitably include confirmation from the client on whether accounts are held on behalf of themselves or on behalf of another party; and
- Service providers are expected to take reasonable steps in order to identify and verify such beneficial owner(s) of client accounts, and to investigate and understand the ownership and control structure of their clients.

The report emphasises the importance of record keeping for all CDD data obtained during the onboarding process and throughout the duration of the business relationship, and that this data should include information on the client's business activities and all transaction records.

DEFINITION:

The report defines a 'beneficial owner' as a "natural person or persons who ultimately own, control or influence a client and/or the person on whose behalf a transaction is being conducted [or] persons who exercise ultimate effective control over a legal person or arrangement".

3.2 THE WOLFSBERG AML PRINCIPLES

The Wolfsberg Group (Wolfsberg) are a collective of thirteen global banks whose main objective is formulating and developing guidance to manage financial crime risks. Key areas of focus are CDD, AML and CTF. In 2012, Wolfsberg published guidance titled 'The Wolfsberg AML Principles – Frequently Asked Questions with Regard to Beneficial Ownership in the Context of Private Banking'[3] which aimed to give clarification on key questions surrounding beneficial ownership.

The guidance covers a range of matters relating to beneficial ownership including:

- Beneficial ownership should include individuals *"(i) who generally have ultimate control over such funds through ownership or other means and/or (ii) who are the ultimate source of funds for the account and whose source of wealth should be subject to due diligence"*;
- During the onboarding process, investigation and further due diligence should be conducted where the CDD data collected contains inconsistencies;

DEFINITION:

A beneficial ownership register is, quite simply, a register of legal entities established in a jurisdiction, setting out information about an entity and its owners and controllers.

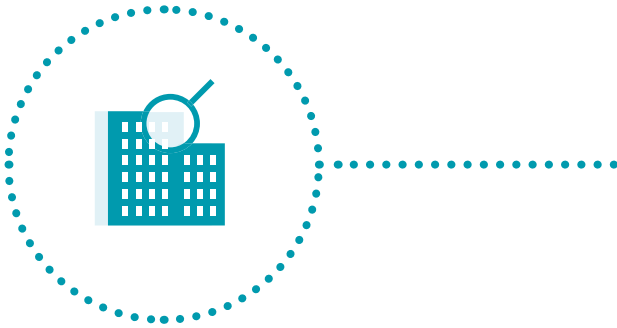
2 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD167.pdf
3 Wolfsberg FAQs on Beneficial Ownership

- Regardless of whether applicable laws require a corporation to disclose information regarding their beneficial owners, service providers should always seek to understand the ownership structure and identify beneficial owners of any potential client by conducting appropriate CDD. This can include where shares of a PLC are held in bearer form i.e. where the shares are not registered, the owner of the shares is considered to be whoever holds the shares at that point in time;
- The question of beneficial ownership should routinely be considered throughout the client relationship, especially where *"subsequent activity in the account [becomes] inconsistent with the originally anticipated account activity"* which might indicate that the account holder is acting on someone else's behalf; and
- Where a trust structure is involved, it is essential to understand who has control over the trust assets as there may be situations where a third party or a settlor exercises control or power over the trust assets. Service providers should seek to understand any arrangements in place, whether formal or informal, in order to minimise any risks.

More recently, in October 2022, Wolfsberg published a Comment Letter on the EU AML/CFT Legislative Package (the Comment Letter)[4], in response to recent legislative proposals by the EU to strengthen and harmonise the EU's AML/CFT framework.

The Comment Letter identified the need for facilitating an effective Risk Based Approach (RBA). This followed on from guidance produced by FATF establishing RBA as the key pillar of an effective AML/CFT programme. Within the Comment Letter, Wolfsberg outlined seven specific areas where the EU AML Package can enhance the RBA; one of these being beneficial ownership transparency.

Wolfsberg strongly believes that Beneficial Ownership reform must align with FATF recommendations. The following key points are made in the Comment Letter:



- Wolfsberg supports the EU objective to harmonise the definition of beneficial ownership and encourages the EU to retain its current threshold of 25% plus one share without the possibility of Member States to apply lower thresholds. Instead, Wolfsberg argues that Financial Institutions ('FIs') should be able to select lower thresholds for certain customer groups to manage risk in line with their own RBA. This topic is considered further on in this Report.
- Wolfsberg supports the importance in identifying beneficial owners but feels that information required to do so must have a clear AML/CTF purpose. Furthermore, FIs should have discretion to establish when such information is necessary to manage risk effectively.
- Wolfsberg notes the well-documented benefits of comprehensive and verified beneficial ownership registers to law enforcement, relevant persons, legal entities and legal arrangements. Wolfsberg lists a number of specific measures it believes necessary for beneficial ownership registers to be an effective tool for detecting and preventing Money Laundering and/or Terrorist Financing, including:
    - single EU wide definitions and methodology for assessing beneficial ownership;
    - legal compulsion to submit timely, accurate and complete information;
    - ultimate responsibility for the entity managing the register but also sufficient resource and risk-based powers;

4 Wolfsberg Group Comment Letter, 28 October 2022

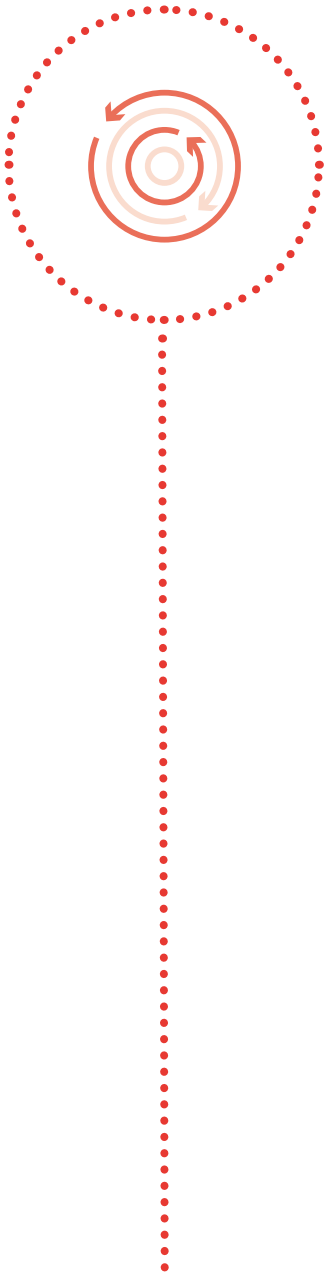
- use of multiple sources and methodologies to verify customer information; and
- requisite reporting of material discrepancies by obliged entities as a complementary measure rather than focus on administrative errors.

3.3 INTER-AMERICAN DEVELOPMENT BANK AND THE ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (IADB)

In March 2019, the Inter-American Development Bank (IADB) and the Organisation for Economic Cooperation and Development (OECD) jointly produced a guidance note for the Global Forum on Transparency and Exchange of Information for Tax Purposes titled 'A Beneficial Ownership Implementation Toolkit'[5], setting out the concept of beneficial ownership, a discussion on the FATF recommendations on transparency, clarification on the technical aspects of beneficial ownership and a series of checklists to assist in obtaining beneficial ownership information. Whilst the guidance is primarily focused on identifying beneficial ownership for tax purposes, it is nonetheless relevant for general CDD purposes.

The main considerations of the report are:

- Effective control from a beneficial owner can be more than, and may not be limited to, voting rights and can include where that person: (i) exercises influence over decision-making, (ii) is a party to agreements such as shareholders' agreements, or (iii) holds share options or convertible shares;
- Concerns around whether making beneficial ownership information more accessible could interfere with personal data protection laws and violations of privacy of the beneficial owners;
- Countries should expect to hold beneficial ownership information on foreign companies that have a sufficient nexus with their jurisdiction; and
- Supervision and enforcement from a country's legislative and governmental departments are crucial to effectively implement relevant procedures for collecting, updating, and sharing beneficial ownership information.



3.4 FINANCIAL ACTION TASK FORCE (FATF)

FATF is the global money laundering and terrorist financing watch dog. It plays a key role in setting international standards to ensure national authorities can effectively pursue illicit funds linked to drugs trafficking, the illicit arms trade, cyber fraud, and other serious crimes. In total, more than 200 countries and jurisdictions have committed to implement FATF Standards as part of a co-ordinated global response to preventing organised crime, corruption and terrorism. In 2003 FATF established one of the first beneficial ownership transparency standards and has recently strengthened its international standards on beneficial ownership information.

In February 2023, FATF updated its guidance titled 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations'[6] which sets out key considerations to enable countries to combat money laundering and terrorist financing amongst other issues.

5 OECD Beneficial Ownership Toolkit
6 FATF International Standards

Recommendation 24 (transparency and beneficial ownership of legal persons) and Recommendation 25 (transparency and beneficial ownership of legal arrangements) focus on beneficial ownership:

- Recommendation 24 sets out the need for countries to *"ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities, through either a register of beneficial ownership or an alternative mechanism"* and encourages countries to prevent issuance of bearer shares and nominee shareholders/directors from being used to facilitate criminal activity.
- Recommendation 25 expands on Recommendation 24 to include detailed information required for trust structures and other similar legal arrangements.

In the 'Interpretive Note to Recommendation 24' contained within the guidance, FATF provides further clarification on how countries should implement Recommendation 24, including:

- Accurate and up-to-date information on beneficial ownership as well as ownership information with links to that country, which is accessible by competent authorities;
- As a minimum requirement, countries should be knowledgeable on: (i) the types and forms of legal persons in the country, (ii) how such legal persons are created and beneficial ownership is obtained, (iii) how such information is to be made publicly available, and (iv) how money laundering and terrorist financing risks are mitigated;
- Companies should be registered in a company registry or equivalent system and should provide the relevant information including: (i) company details, (ii) list of shareholders and their shareholdings, (iii) list of directors, (iv) memorandum or articles of association or equivalent company powers, and (v) proof of incorporation in the relevant company. Supplemental information should also be available for competent authorities to access that goes further than the information contained in the company registry; and
- Systems and registry access should be such that it permits international cooperation in relation to obtaining beneficial ownership information from authorities located in other countries. Access should not be unduly restrictive and countries should monitor and develop processes in order to assist any international cooperation.

3.5 THE BENEFICIAL OWNERSHIP LEADERSHIP GROUP (BOLG)

BOLG was formed in 2019 with the aim of driving a global policy shift towards free and openly accessible beneficial ownership information through free to access, publicly available registers. As of July 2022, eight countries[7] including the UK have signed up to BOLG's set of best practice principles of disclosure. These principles are not legally binding, but mark a public signal that those governments intend to adhere to the following actions:

- Publishing freely downloadable, searchable, and reusable company beneficial ownership data, that the public can access free of charge and without proprietary software, or the need for registration.
- Implementing progressively ambitious best practice in beneficial ownership transparency, across technical, legislative, regulatory, and administrative parameters.

7 Other signatories to the principles are Armenia, Kenya, Latvia, Mexico, Nigeria, Norway, and the Slovak Republic

- Committing resources to enable improvements and iterations to data quality and standardisation.
- Contributing to the building of best practice, including by recognising the evolving illicit finance threat and considering implementing beneficial ownership transparency beyond companies to a wider group of assets classes.
- Working in partnership with civil society and enabling their role as watchdogs and users of the data.
- Engaging other partners, including governments and international institutions, to advance the objective of making beneficial ownership transparency a global norm; and

Governments signed up to the BOLG principles must also commit to publishing beneficial ownership information that is detailed, consistent and in machine-readable format and must ensure alignment with various technical parameters.

"In total, more than 200 countries and jurisdictions have committed to implement FATF Standards as part of a co-ordinated global response to preventing organised crime, corruption and terrorism."

SECTION 4
GLOBAL BENEFICIAL OWNERSHIP REGISTRATION SCHEMES

4.1 JURISDICTIONAL SCOPE OF BENEFICIAL REGISTRATION SCHEMES CONSIDERED IN THE REPORT:

The scope, impact and obligations set out under beneficial ownership registration schemes across the globe vary broadly. International associations, watchdogs and leadership groups have published comprehensive frameworks of measures designed to assist countries to combat money laundering and terrorist financing.

However, the adoption and implementation of such measures is in large part at the direction of each jurisdiction. This results in gaps between international standards, where some jurisdictions have implemented more stringent regimes and other jurisdictions may have much less rigorous requirements. This creates an opportunity for "forum shopping" by money launderers seeking lower, less intrusive standards when using legal entities to obfuscate ownership of assets.

This section of the report considers the legal principles underpinning beneficial ownership regimes in the following jurisdictions: **the UK, the US, the EU (France, Germany, Spain and Ireland), Switzerland, the UAE, Hong Kong, Singapore, the Cayman Islands, India, China, Guernsey and Jersey**. This set of jurisdictions has been selected to provide a broad basis from which to compare and contrast different regimes from across the globe in order to seek to identify trends, discrepancies and, where possible, success stories across those jurisdictions.

DEFINITION:

A beneficial ownership register is, quite simply, a register of legal entities established in a jurisdiction, setting out information about an entity and its owners and controllers.

4.2 THE UK POSITION

UK companies are required to produce, keep and maintain a dedicated register of persons with significant control over a company (the PSC Register). The intent being to ensure that every method of holding of significant control over a company is registrable. Failure to comply with this requirement is a criminal offence. A person (individuals and/or legal persons) must be registered as a person of significant control (PSC) if any one of the following conditions apply[8]:

- The person holds, directly or indirectly, more than 25% of shares or voting rights in the company;
- The person holds the right, directly or indirectly, to appoint or remove a majority of the board of directors; and/or

DEFINITION:

In the UK, the definition of a beneficial owner for the purposes of the AML regime is any individual who (i) exercises ultimate control over the management of a corporate; (ii) ultimately owns or controls, directly or indirectly, more than 25% of shares or voting rights or (iii) who controls the corporate.

8 Schedule 1A Companies Act 2006

- The person holds the right to exercise, or actually exercises, significant influence or control over the company.

Trustees of a trust, or members of a firm that is not a legal person, that meet any of the above conditions (or would do so if they were individuals), and who have the right to exercise, or actually exercise, significant influence or control over the activities of the trust or firm must also be registered as a PSC.

The above conditions establish that a person may still be considered to exercise significant influence and control over a company, and thus be required to be registered as a PSC, even where the 25% ownership threshold is not reached. "Control" indicates that a person has the right to direct the policies and activities of a company, whereas "significant influence" allows a person to ensure that the company adopts the policies and activities that the person desires. Such rights may be held even if not exercised, and may derive from a range of circumstances such as the company's constitutional documents, the rights attached to shares or securities, or from a shareholders or other agreement.

The PSC Register is kept and maintained by Companies House and almost all information held in it is publicly available, excluding a PSC's home address. A PSC can apply to protect their personal details if they, or someone living with them, are at serious risk of violence or intimidation resulting from their company's activities (which includes companies active in the defence industry, or those targeted by activists). Applications are considered on a case by case basis.

Transparency and tackling corruption remain the key drivers for the UK approach. Overseas entities are recognised as presenting a high risk of being used to conceal and launder the proceeds of bribery, corruption and organised crime. In response, following implementation of the Economic Crime (Transparency and Enforcement) Act in early 2022, Companies House set up a Register of Overseas Entities (ROE), the first of its kind globally, which requires overseas entities owning UK property to identify their registrable beneficial owners.

The conditions for who is registrable on the ROE are modelled on the conditions for the PSC regime, and the requirement for registration under ROE will be retrospective for overseas entities already owning UK property in England and Wales since 1 January 1999. It is a criminal offence to fail to comply with UK registration requirements. Potential sanctions include fines and imprisonment.

At Section 7, this report analyses the success and failures of the PSC Register maintained by Companies House and considers how to promote cooperation in this space.

"International associations, watchdogs and leadership groups have published comprehensive frameworks of measures designed to assist countries to combat money laundering and terrorist financing."

4.3 OVERVIEW OF GLOBAL BENEFICIAL OWNERSHIP TRANSPARENCY REGIMES:

In the table at Appendix 1 to this report we compare in detail the various beneficial ownership registration schemes implemented (and where appropriate, those that are planned for implementation), in key jurisdictions. Below, are some of the key points that have been drawn out from this analysis, alongside consideration of the direction in which beneficial ownership registration is moving. It is of note that in those jurisdictions where no such

register currently exists, there are plans underway to introduce a register or equivalent regime. It is clear that countries are increasingly aware of the need for beneficial ownership transparency and are looking to recommendations such as those published by FATF for guidance.

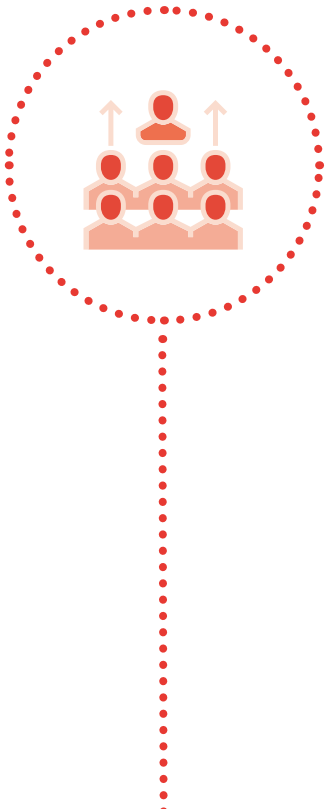
Common themes identified include:

- Most jurisdictions set the threshold for beneficial ownership at 25%. This is in line with standards for significant influence or control, set by FATF. However, there is increasing debate and movement in favour of this threshold being lowered. Indeed, a number of jurisdictions already apply a lower threshold.
- Most jurisdictions have in place a beneficial ownership register or have legislation in place that will shortly implement a registration regime. This is largely representative of efforts to meet FATF recommendations to do so.
- There remains inconsistency in the level and type of information that is required by each jurisdiction.
- The sanctions for non-compliance with the registration regimes are inconsistent.

European Union

In the EU, AML obligations are set out in EU Directives, which are then transposed into national legislation by Member States. Directive (EU) 2015/849 (AMLD 4) introduced the obligation for organisations to identify beneficial owners, and countries were required to establish a publicly accessible central registry of beneficial ownership information. The implementation of AMLD 5 has further strengthened requirements for keeping a register of beneficial owners, for example by requiring discrepancies found in the course of conducting due diligence to be reported.

The EU jurisdictions surveyed all applied almost identical thresholds for determining beneficial ownership. As is the case in the UK, the beneficial owner of a company is considered the natural person owning more than 25% of the capital or voting rights in the company, or a person who exercises significant influence or control (for example, a person with the power to appoint or dismiss a majority of the board or management of a company). Notably, negotiations on the new EU AML Package (AML Regulation, AMLD 6 and Regulation establishing new AML Authority) are showing that the EU Parliament (EP) is pushing for a lower threshold. This is supported by calls for extended transparency and could signal a move away for the EU from the more commonly agreed 25% threshold. Ahead of the trilogue negotiations in May 2023, the Council text aligned with the EC's proposal and internationally applied standard of 25%, however the EP is pushing for 15% in general and standalone 5% threshold for high-risk entities. The EP is clearly divided over this as some initial amendments from the members of the Parliament aimed to go as low as 5%.



FRANCE

In France, the beneficial ownership register is attached to its Trade and Companies Register, which is kept by the commercial court clerks and details information including name, date and place of birth, nationality and nature and extent of control. General public access is available to non-confidential data, and licences to access all information are available to supervisory authorities and persons with AML obligations.

GERMANY

In Germany, a "transparency register" sets out mandatory notification obligations for certain entities, and is supervised by the Bundesverwaltungsamt. Any person who demonstrates a legitimate interest has the right to inspect certain information (i.e. supervisory authorities, the German FIU, law enforcement and obliged entities if they can prove compliance with obligations). Persons obliged under AML law to inspect the register in the course of their obligations must notify the record-keeping body (Bundesanzeiger-Verlag) of any discrepancies.

IRELAND

Ireland maintains a "Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies", access to which is restricted to "designated persons", i.e. financial and credit institutions, or those with AML obligations, in a limited capacity, and to competent authorities in full.

SPAIN

Spain is in the process of creating a general beneficial ownership register, to be managed by the Ministry of Justice, alongside a register of "Real Ownerships". Access will be free of charge and unrestricted for competent authorities, notaries and registrars. Compelled law subjects will have access to current information, and third parties will have restricted access (to name, date of birth, residence and nationality etc.) upon demonstration of a legitimate interest and payment of a fee.

"It is clear that, as would be expected, a relatively consistent approach is taken across these EU jurisdictions, with access to information on the registers restricted to those with a legitimate need."

It is clear that, as would be expected, a relatively consistent approach is taken across these EU jurisdictions, with access to information on the registers restricted to those with a legitimate need. The impact of the November 2022 CJEU ruling (discussed in detail later on in this Report), has varied across the various EU Member States. The French Minister of Economy declared that public access to the register would be maintained pending full clarification of the decision, but in Ireland, access requests to the register made by members of the public will not be processed, pending clarification of the case.

Other jurisdictions

Hong Kong, Switzerland, the US, Cayman Islands, Channel Islands and Singapore all also apply the standard ownership (25% threshold) and control test for determining beneficial owners.

US

In the US, beneficial ownership is also determined by ownership (more than 25%) or control, broadly capturing anyone with "significant responsibility" to control, manage or direct a legal entity (i.e., someone who is able to make important decisions on behalf of a company). The Corporate Transparency Act (CTA), enacted on 1 January 2021, forms the legal basis for registration requirements. A final rule implementing beneficial ownership information reporting requirements was issued in September 2022 (the Final Rule)[9] and will come into effect on 1 January 2025. Reports of beneficial ownership will be made to the US Department of the Treasury Financial Crimes Enforcement Network (FinCEN). Access will be used only for statutorily authorised purposes and will be subject to stringent use and security protocols. Information on beneficial ownership may only be disclosed upon request from a federal agency.

9 FinCEN Final Rule on Beneficial Ownership Information Reporting Requirements

HONG KONG

In Hong Kong, there is no centralised beneficial ownership register, and instead, all unlisted companies must keep and maintain their own register of "significant controllers" (SCR). The definition of a significant controller is the same as that in the UK and EU (i.e., a person holding more than 25% of shares/voting rights, or control over a company). The SCR is kept at a company's registered office or prescribed place and is available for inspection by law enforcement officers or significant controllers. It was initially intended that access be granted to the public upon payment of a fee, and to members of the company free of charge, but upon pushback following public consultation it was agreed that access would be limited.

SWITZERLAND

Switzerland also does not yet have a fully operational register of beneficial ownership. However, development of such a register is underway. Swiss companies must instead keep and maintain a list of beneficial owners. This list is not publicly available and is instead an internal corporate document that can only be accessed by authorities in cases of criminal proceedings or civil investigations. The proposed future register will be accessible only to certain authorised parties (i.e., law enforcement agencies and those with AML obligations) and will not be made publicly accessible.

CAYMAN ISLANDS

The Cayman Islands require companies to maintain a register of beneficial ownership information, but this register is not publicly available. This is the same in Jersey and Guernsey but can be shared with law enforcement agencies and other competent authorities. In July 2020, the Cayman Islands government issued a statement committing to introduce a publicly accessible register of beneficial ownership, as part of global efforts to increase transparency and tackle illicit finance. Jersey too had similarly committed to providing access to the register to obliged entities by the end of 2022. However, in light of the November 2022 CJEU ruling in the LBR Cases, the Cayman Islands introduced a revised bill instead contemplating a register that would only be accessible by certain prescribed persons (i.e. Government-established authorities such as the police or financial regulator). In its current form, the bill does not allow for public access, but further developments are expected. Jersey too has delayed implementation of its commitment whilst it considers the outcome of the decision. All three jurisdictions implement the 25% threshold, though interestingly in Jersey the threshold is not set and can be reduced to as low as 10%.

INDIA

The threshold for beneficial ownership in India was also originally 25%, however the Ministry of Finance has recently reduced the threshold to 10%. Under India's Prevention of Money Laundering Act, which governs disclosure and compliance requirements relating to beneficial ownership, "Reporting Entities" (i.e. financial institutions, banks and other specified persons) must, at the outset of an account-based relationship, determine the beneficial owner of the client. Whilst the 10% threshold applies to companies, in cases where a client is a partnership, unincorporated association of body of individuals, the threshold is increased to 15%.

SINGAPORE

Similarly to other jurisdictions, though Singapore maintains a central register of "registrable controllers", the information on this register is not publicly available and can only be accessed by law enforcement agencies for the purpose of administering or enforcing laws under their powers. In terms of future developments, in October 2022 Singapore passed The Business Trusts (Amendments) Act 2022 which will require unlisted business trusts to obtain and maintain a register of registrable owners. However, there is no indication that this register will be publicly available either.

3.4 GLOBAL DEVELOPMENTS AND IMPROVEMENTS TO BENEFICIAL OWNERSHIP TRANSPARENCY:

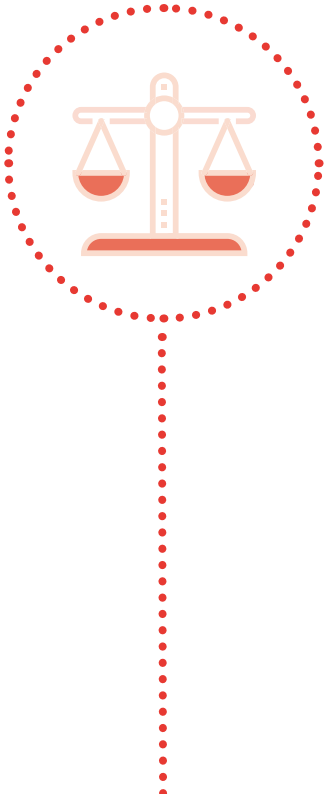
The overarching aim of this report, and the driver of the recommendations that it seeks to put forward, is to develop an international standard for beneficial ownership transparency. A key aspect of that goal is to formulate an internationally consistent standard, which includes agreeing the threshold for which ultimate beneficial ownership is determined. As highlighted in this section, many jurisdictions already apply a 25% threshold, which is in line with FATF recommendations. However, the 25% threshold is not universal, and there is present debate at EU level around lowering the threshold from 25% to 15%.

"The overarching aim of this report, and the driver of the recommendations that it seeks to put forward, is to develop an international standard for beneficial ownership transparency."

In assessing the regimes across these key jurisdictions, this report also considered any issues or successes raised by the implementation of the beneficial ownership registration scheme in each jurisdiction. A summary of the key points is detailed below.

GERMANY

In Germany, the linking of "know your client" obligations and transparency register obligations is new to AML regulations (i.e., the requirement for a regulated firm to report discrepancies found between information held in the register and information obtained from customers as part of customer due diligence process). Initial data shows that obligated parties are making active use of discrepancy reports. Evidence suggests that discrepancy notifications are most commonly made in cases where there are complex shareholding structures, voting trust agreements or fiduciary relationships. It should be noted, however, that such structures are more often present in family-owned businesses and as such, this demographic may be disproportionately affected by such reports. It will be interesting to see whether such unintended effects be taken into account by German authorities given the data protection concerns within the EU (see below).



IRELAND

In Ireland, "designated persons" are required to inspect the register of beneficial ownership as part of due diligence processes when onboarding customers and must report any discrepancies to the registrar. The RBO has seen an increase in submissions received, and discrepancy notices served. The first cases have been brought by the RBO before the Dublin Metropolitan District Court in May 2022, with nine companies facing prosecution for failure to file.

SWITZERLAND

In Switzerland, development of a register is underway. On 12 October 2022, the Swiss Federal Council instructed the Department of Finance to draft a bill on increased transparency and easier identification of beneficial owners, to be completed by the second quarter of 2023. This demonstrates an intent to strengthen the prevention and prosecution of financial crime.

US

In the US, the issuance of the Final Rule is largely being heralded as a success, following years of bipartisan efforts to bolster the US' corporate transparency framework and to address deficiencies in its AML regime that have been identified by FATF. Prior to the Final Rule, few jurisdictions in the US required legal entities to disclose beneficial ownership information, resulting in historic vulnerabilities in the US' AML/CTF network. The issuance of the Final Rule is indicative also of increased multilateral cooperation, allowing the US to implement a number of FATF recommendations. However, though there is some scope for caution. The number of reports that are likely to be made as a result could be vast, with estimates of up to approximately 100 million beneficial owner names to go through the system. As such, its impact and effectiveness are yet to be determined, but it is hoped that the Final Rule will close some of the gaps impacting the US exposure to financial crime risk.

HONG KONG

Hong Kong too is seeking to further implement FATF recommendations, in order to maintain its status as an international business hub. Out of 40 FATF recommendations, Hong Kong is currently compliant on 11, largely compliant on 25 and partially compliant on four. The implementation of the SCR regime marked a significant policy adjustment for Hong Kong in relation to ownership transparency for private companies. Before its implementation, only the identity of immediate shareholders was available in a company's annual filing.

CHINA

China is in the process of drafting new regulations around beneficial ownership information, including legislation on Interim Administrative Measures for the Information on the Beneficial Owners of Market Entity. This legislation has been published by authorities for comment and is intended to be introduced in the near future. This legislation will provide more detailed rules for beneficial ownership registration, including duties of competent authorities, contents to be filed, definition and identification criteria of beneficial ownership, and management of beneficial ownership information.

EU

On 28 March 2023, EU Parliament published a press release detailing the position adopted on three pieces of draft legislation introducing new AML measures[10]. MEPs from the Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees agreed that beneficial ownership should be amended to mean having 15% plus one share or voting rights, or some other direct or indirect ownership, or 5% plus one share (in the extractive industry or in a company exposed to higher money laundering and/or terrorist financing (ML/TF) risk). The aim of this change is billed as a way to reduce circumvention attempts.

10 New EU measures against money laundering and terrorist financing, 28 March 2023

There are concerns from the financial industry that a reduction in the threshold, as proposed by the EU, will not materially deliver a better outcome, but may in fact fragment the approach to combatting economic crime. This may also have a disproportionate impact on the legitimate customer as the costs of complying with this tighter regime will likely be indirectly passed on to them. In its Comment Letter on the EU AML/CTF Legislative Package, the Wolfsberg Group encouraged the EU to retain the current 25% plus one share threshold for identifying beneficial ownership, arguing against the ability for Member States to apply lower thresholds in favour of giving financial institutions the ability to use a lower threshold on a risk based approach. Whatever the outcome if such a change is implemented, it is likely to have a ripple effect through the financial sector and could trigger the need for a refresh exercise.

UK

The UK has made clear its intention to keep the percentage threshold for beneficial ownership in line with FATF recommendations of 25%, arguing that such a change would disproportionately increase the burden on companies to provide information on minority shareholders. UK government has argued that instead, the catch-all condition of significant influence or control ensures the threshold is not abused[11].

"The percentage figure for beneficial ownership threshold in itself is not the key element; whilst the 25% threshold makes most sense to give financial institutions the ability to conduct further due diligence if deemed necessary on a risk-based approach, there is no magic number which will eradicate abuse."

3.5 CONCLUSION: GLOBAL CONSISTENCY MORE IMPORTANT THAN BENEFICIAL OWNERSHIP THRESHOLD ITSELF

It is the opinion of this Report that the percentage figure for beneficial ownership threshold in itself is not the key element; whilst the 25% threshold makes most sense to give financial institutions the ability to conduct further due diligence if deemed necessary on a risk-based approach, there is no magic number which will eradicate abuse. Criminals will be able to manipulate any threshold to some degree of success.

In our opinion greater importance should instead be placed on ensuring consistency globally of beneficial ownership regimes and of data collected within these, in order to reduce the potential for confusion and unnecessary administrative burden not only on banks and other financial institutions, but on the corporates who must provide that information. Where percentage thresholds differ globally, corporates with a presence in multiple jurisdictions must comply with a host of similar by different requirements and variables. Indeed, the issue is not limited to the percentage threshold, but to the type of information each jurisdiction requires, the format in which it is required, and when, where and to whom it must be provided.

Creating a consistent approach would engender a more effective and proportionate AML/CTF regime which would simultaneously support authorities, regulators and banks in carrying out their roles and obligations in an efficient and effective way, whilst reducing the burden on corporates, the vast majority of whom are innocent users of those products.

11 UK Government Factsheet on beneficial ownership

SECTION 5
CASE STUDY 1

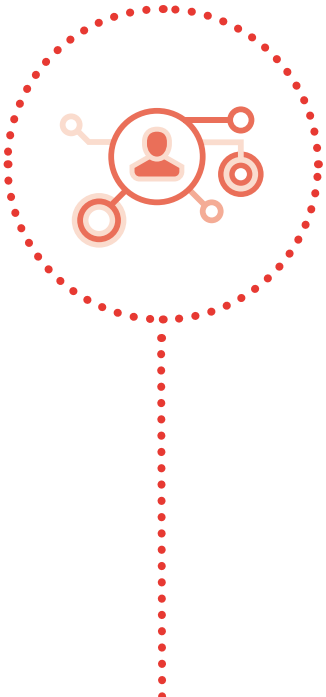
The tension between combatting AML and ensuring Data Privacy

5.1 GLOBAL APPROACHES TO DATA PRIVACY

Whilst there are convincing arguments for enhancing beneficial ownership transparency for AML/CTF purposes, these cannot be considered in a vacuum. Moves for increased transparency engage wider issues in relation to the interface between requiring more detailed personal information with data privacy and human rights, particularly the right to privacy. The human right of privacy and data protection legislation (together, Privacy) offers protection for individuals in respect of their privacy and personal information. Such protection can conflict with transparency objectives relevant to security, law enforcement and the type of AML/CTF checks that are considered above.

However, these Privacy rights are not absolute. They must often be considered and balanced against other rights or requirements. Some legislation builds in circumstances for which exemptions can be applied to those rights, but only where certain requirements and/or conditions are met.

An additional factor to be considered when looking at the interaction between Privacy and beneficial ownership transparency are the cultural differences that may exist within these concepts globally. There may be some similarities globally about the right to privacy and data protection, or the need for beneficial owner transparency – however, how this is achieved may vary by jurisdiction. In this Report we focus on the position adopted in the UK, with some reference to the EU as well. We only lightly touch on wider global regimes. It is very important to recognise that careful consideration will need to be given to potential cultural differences or norms if any common or global solution is to be found.



5.2 LEGAL FRAMEWORKS FOR DATA PRIVACY ACROSS JURISDICTIONS

United Kingdom

Article 8 of the European Convention on Human Rights (ECHR) provides individuals with a right to respect for private life, family life, home and correspondence. This right is incorporated into UK law through the Human

Rights Act 1998 (HRA), specifically Schedule 1, Part 1, Article 8. Protection of personal data falls within the right to respect for private life. However, as noted above, this right to privacy is not absolute. Both the ECHR and the HRA contain frameworks which allow for the differing rights to be balanced with other rights and/or obligations. Such example is the case with the sometimes competing right of privacy with interests of national security, economic well-being of the country, or the prevention of disorder or crime.

The UK General Data Protection Regulation (UK GDPR) focuses on the use and protection of personal data. Article 1(2) of the UK GDPR clearly sets out its objective; that is to protect "fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data". One of those fundamental rights is the right to privacy enshrined in the ECHR and HRA. However, even within the UK GDPR there are exemptions or conditions which allow for processing for purposes which may not align with GDPR principles and obligations.

"Moves for increased transparency engage wider issues in relation to the interface between requiring more detailed personal information with data privacy and human rights, particularly the right to privacy."

UK GDPR sets out seven principles with which personal data must be processed in accordance with. For the purposes of this Report we will focus on two of the seven principles, namely the first principle (the Fairness Principle) and the third principle (the Minimisation Principle).

Under the Fairness Principle, personal data must be processed fairly, lawfully and transparently. In order to be considered lawful, data processing must meet one of the grounds (i.e., lawful bases) set out in the UK GDPR. This includes, for example, where individuals have provided consent, or where data processing is necessary to comply with a legal obligation (amongst other specific bases). The Fairness Principle also requires that personal data is processed fairly, meaning data should only be used in a way that could reasonably be expected and that is not unduly detrimental or misleading. In relation to transparency, the Fairness Principle requires honesty and openness in the processing of personal data, which includes being clear about how an individual's data is being processed and why. This information must be made available to individuals in a way that is clear and easy to understand, and often before the processing is undertaken.

Both Privacy rights and beneficial ownership transparency objectives have elements of transparency that are relevant but approach these elements in different ways. From the perspective of beneficial ownership transparency, the objective is for transparency of the individuals who own the asset, in order to enable AML/CTF types of checks. That is to say, the individual needs to be seen and visible. Conversely, from a Privacy perspective, the individual has the right to be shielded, and those who request access to information behind the shield must be clear and transparent about the reasons for such access. These differing approaches to transparency is one such demonstration of the tension between Privacy and the processing of personal information for security or law enforcement purposes, and highlights the need to find a balance between the two.

The Minimisation Principle requires that only personal data that is adequate, relevant and limited to what is necessary is processed for any specific purpose. In other words, processing must not include information that is "nice to have" or "in case it could be helpful" but should be limited to that which is strictly needed to achieve the purpose. The Minimisation Principle is a critical question for beneficial ownership transparency in terms of which solutions may be appropriate in order to achieve beneficial ownership transparency objectives.

European Union

In addition to the ECHR, the Charter of Fundamental Rights of the European Union (EU Charter) also provides for the following:

- the right to respect for private and family life, home and communications (Article 7); and
- the right to protection of personal data (Article 8).

As in the UK, neither Articles 7 nor 8 confer absolute rights on individuals. It is possible for there to be limitations on the exercise of these rights, but any such limitation must be provided for by law and must respect the essence of these rights. Additionally, any limitation must be proportionate, necessary and genuinely meet the objectives of the EU.

UK GDPR originated from the EU General Data Protection Regulation (EU GDPR), and the two laws are currently very similar in terms of black letter law. As such, EU GDPR also requires compliance with the Fairness Principle and Minimisation Principle noted above. Often the differences between EU GDPR and UK GDPR are clearest through the different interpretations of the law by local jurisdiction regulators.

Other jurisdictions

As noted earlier, the assessments in this Report are made primarily from a UK and EU centric perspective. However, even between the UK and EU (as well as amongst the EU member states), there is not always a common agreed approach to Privacy. This is even more so when considering other jurisdictions. Newer laws globally tend to look to EU GDPR as a starting point from which to consider and develop data protection laws, but the position and approach in relation to the right to privacy is certainly not universal.

In terms of comparison, from a Privacy perspective, all the non-UK or EU jurisdictions considered in this Report have some kind of privacy or data protection law in place, however the scope and extent of such laws are unique to those jurisdictions. In the US, there are some privacy laws in various States, but there is currently no federal data protection law. The UAE also takes a different approach to Privacy in that there may be federal laws that apply across the Emirates, but these laws exclude Free Zones which may have their own specific data protection laws. Other jurisdictions considered in this Report closely align with EU GDPR, including Guernsey and the Isle of Man.

Varying approaches to Privacy legislation often come from different attitudes and expectations in relation to the concept of privacy. Different cultural and historical contexts may, alongside other sensitivities, have an influence on the local approach to privacy and will impact not only the interpretation of the law but also the approach of regulators. Whether the right of privacy is considered a human right or not may have a significant impact on such interpretation, especially if that right has been specifically enshrined in law as a result of historical circumstances. Such considerations must be kept in mind when considering the concept of privacy and how it can come into conflict with security or law enforcement issues.

4.3 HOW DOES THE LAW INTERACT WITH TRANSPARENCY FOR BENEFICIAL OWNERSHIP AND AML/CTF REQUIREMENTS?

It is clear that in some jurisdictions there are tensions between Privacy, and

the AML/CTF objectives behind beneficial ownership. The most clear example of this is in the EU, where the CJEU recently issued a decision in relation to two joined cases, which specifically addressed the concept of registers for beneficial ownership and Privacy in Luxembourg[12]. Both cases involved the Luxembourg Business Registers and are referred to as the LBR Cases.

In the first LBR Case *(WM v Luxembourg Business Registers (C-37/20))*, WM, a beneficial owner of real estate company 'YO', argued that his personal information be restricted only to specific entities on the basis that general public access to that information would expose him and his family to disproportionate risk. It was argued that WM's position as an executive officer and beneficial owner meant that he frequently had to travel to countries with unstable political regimes and high levels of crime, and as such there was a significant risk of him being kidnapped, abducted, subjected to violence or killed.

In the second LBR Case *(Sovim SA v Luxembourg Business Registers (C-601/20))*, Sovim argued that public access to the personal data of its beneficial owner infringed the rights in Articles 7 and 8 of the EU Charter as well as several provisions of the EU GDPR and its fundamental principles. Sovim also suggested that it had not been adequately demonstrated how the granting to the public of unrestricted access to data held in the register of beneficial ownership helps meet the aim of identifying beneficial owners of companies used for the purposes of money laundering or terrorist financing, thus ensuring certainty in commercial relationships and market confidence. In essence, Sovim argued that the personal data being processed was not fair (as it was not proportionate), and was not limited to that which was necessary to achieve the stated purpose. In other words, it was a breach of the two data protection principles of Fairness and Minimisation mentioned above.

In the LBR Cases the ECJ gave a preliminary ruling that the provision under AMLD 4 (as amended by AMLD 5) that obligated Member States must ensure that beneficial ownership information is accessible in all cases to any member of the general public, *was invalid*. It was found that this level of accessibility constitutes a serious interference with the fundamental rights under Articles 7 and 8 of the EU Charter. The ECJ did however find that press and civil society organisations "connected with the prevention and combating of money laundering and terrorist financing have a legitimate interest in accessing information on beneficial ownership". In other words, there is no absolute prohibition on having the types of registers that the LBR held, but that the level of access to the information on those registers went further than was appropriate given the fundamental human right to privacy enshrined in EU law. It follows that this may be a key plank in finding a balance between Privacy and the fight against financial crime.

The LBR Cases highlight some of the current key issues to be considered in order to find an approach to conducting AML/CTF checks in relation to beneficial ownership, and the potential Privacy considerations that need to be taken into account.

In particular, there are issues regarding the Fairness Principle, for example, questions around what is considered transparent for Privacy purposes versus for AML and CTF objectives, and what is considered fair, need to be assessed not just in terms of the benefits for law enforcement, but against the general right of individuals to their privacy. It also raises questions over what is considered necessary both in terms of complying with the law and in terms of the volume and access, which goes to the Minimisation Principle. If the concept of beneficial ownership is only considered from a law enforcement

12 WM v Luxembourg Business Registers (C-37/20) and Sovim SA v Luxembourg Business Registers (C-601/20)

perspective, this may not adequately take into consideration the fundamental right to privacy which, at least in the UK and EU, is enshrined in law.

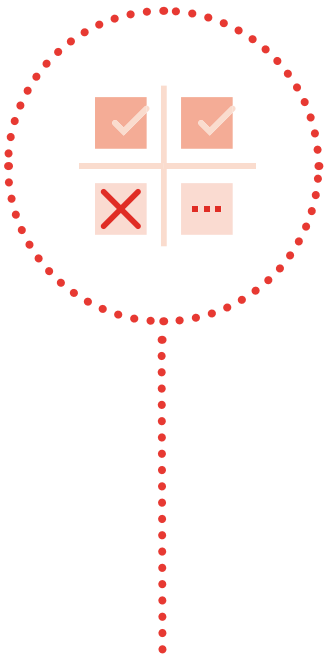
The LBR Cases found that, whilst the legislation allowed access to beneficial ownership information conditional upon online registration and prevented general public access in exceptional circumstances, this approach did not achieve a proper balance between the interests pursued by enabling access to beneficial ownership information (including in respect of AML/CTF) and the fundamental EU Charter rights. That is, merely having exception-based access does not mean that actual Privacy considerations have been assessed or mitigated. In order to do so, legislators need to consider what data and what access to that data is necessary and proportionate (i.e., compliance with the Minimisation Principle).

Further, even when such access is granted, the decision in the LBR Cases noted that more needed to be done to protect personal information from abuse or misuse. In other words, consideration must be given to how to ensure access to beneficial ownership registers is given only for legitimate purposes. This is a question of fairness, and a requirement of the Fairness Principle.

The LBR Cases are not the only area in which the concept of data sharing and transparency are being debated in the EU. In March 2023 the European Data Protection Board (EDPB) published a letter to the European Parliament, Council and European Commission on the issue of data sharing for AML/CTF purposes (the Letter)[13]. In the Letter, the EDPB highlighted the Council's decision of 5 December 2022 to introduce provisions allowing (in certain conditions) obliged entities or public authorities to share information with each other concerning suspicious transactions to be reported to FIUs, as well as personal data collected in the course of performing CDD. The Letter highlights the "significant risks" the EDPB feels are facing rights to privacy and protection of personal data, and recommended that those provisions not be included in the final draft.

The Letter perhaps worryingly demonstrates a lack of understanding of existing data sharing partnerships for AML/CTF purposes, which are able to be construed in compliance with privacy requirements. Moreover, output from the industry, for example the recent whitepaper published by the Payments Association on "Data Sharing to prevent Economic Crime"[14], argue instead for the need for increased data cooperation, not just in a consumer space but also in a beneficial ownership transparency and wider financial crime space.

Though an in-depth discussion on data sharing is outside the scope of this report, and indeed, significant work has already been undertaken in this space by key stakeholders such as the Payments Association, it is worth noting that data sharing could be a fundamentally important tool in combatting the epidemic of financial crime, and the implementation of a system-wide approach is one of a myriad factors needed to address this.



It is clear that without some form of increased transparency, it is very unlikely that a stop will be put to the rising tide of financial crime. The CJEU preliminary ruling in the LBR Cases presents a hurdle to increased transparency which money launderers may seek to hide behind. It is, however, not a complete barrier. It is the view of this report that having open, publicly accessible registers with quality and up-to-date information on beneficial owners is an effective and robust manner in which financial crime can be reduced. However, having well maintained registers that can be accessed by a "restricted group", including regulated firms who require this information, will still provide a good mechanism through which to combat financial crime as it

13 EDPB Letter, 28 March 2023
14 Payments Association whitepaper on Data Sharing to prevent Economic Crime

enables more efficient and effective know your customer activity. Making the regime simpler for regulated firms will also, ultimately, benefit the customers of those firms as they will have faster and less intrusive access to regulated services.

As a result of the LBR Cases, some EU Member States have restricted access to beneficial ownership registers whilst awaiting further guidance from the European Commission and the outcome of the negotiations on the new AML Package. Possible solutions to this situation have been inserted into the text of the European Parliament Anti-Money Laundering Directive 6 (AMLD 6) (see Articles 10-12), but this could still be changed pending negotiations with the Council.

Through these amendments, the EU Parliament has tried to define a new approach to beneficial ownership registers access based on legitimate interest.

The proposed text in AMLD 6 clarifies that a legitimate interest exists for:

- Journalists, civil society organisations or higher education institutions who are connected with the prevention of ML/TF;
- Persons who are likely to enter into transactions with a certain entity; and
- Financial institutions, authorities and external agents involved in the prevention of money laundering.

The text also introduces detailed rules on granting access rights. The decision is based on a declaration of honour and proof of identification. Member States are to ensure timely access to the registers for groups of persons for whom the legitimate interest is explicitly set to exist under AMLD6 (see above). For every other person, the existence of a legitimate interest is to be assessed on a case by case basis[15]. The proposed text clarifies that the decision on granting access to the beneficial ownership registry is to be limited to at least two and a half years, and be mutually recognisable in other Member States, with the option of it being renewed. If renewed, the legal persons must notify register authorities[16].

Notably, the proposed amendments from the European Parliament aim to make the European Central Platform created under the EU's Company Law Directive as a central search service for making beneficial ownership information available[17].

From a UK perspective, Brexit has perhaps offered a unique opportunity to enable a different stance on the balance between data privacy and beneficial ownership transparency in order to drive a more transparent regime. There is scope for the UK government to diverge from the stance taken by the EU, and the UK courts may well take a different view as regards data privacy. However, when considering change on a global scale, the EU decision cannot be ignored. For any jurisdiction bound by or sensitive to EU law, it will be difficult to give less weighting to data privacy, should the CJEU not revisit its decision.

Whilst the above analysis is made from a UK and EU centric view, there may be additional thoughts, considerations and assessments needed in other global jurisdictions, especially in jurisdictions that have different approaches to data protection, or where privacy is not considered a fundamental right enshrined by law.

"It is clear that in some jurisdictions there are tensions between Privacy, and the AML/CTF objectives behind beneficial ownership. The most clear example of this is in the EU, where the CJEU recently issued a decision in relation to two joined cases, which specifically addressed the concept of registers for beneficial ownership and Privacy in Luxembourg."

15 Article 12(2a) AMLD 6
16 Art 12(2b) AMLD 6
17 New Article 12a AMLD 6

5.4 WHAT OPTIONS ARE THERE TO ALLOW TRANSPARENCY FOR BO/AML/CTF WHILST CONSIDERING PROTECTION OF FUNDAMENTAL/HUMAN RIGHTS AND UK/EU GDPR OBLIGATIONS

It will be challenging to implement globally reaching standards that would allow for the circumvention of Privacy obligations, given that the right to privacy and data protection has been enshrined in EU and UK law. There is likely to always be a tension between the need for increased beneficial ownership transparency for AML/CTF purposes, and Privacy. This is exacerbated by the potential variation globally as to the importance of Privacy versus the importance of beneficial ownership transparency, and as such the likelihood of being able to create a "single global register" is slim from a legal perspective, even before taking into account the length of time it would take multiple government representatives worldwide to agree on an approach including deciding who would be responsible for the hosting and managing of such a list and, importantly, who would fund it.

However, the use of registers or check-lists is not prohibited from a Privacy perspective. There are various examples, from the lists of company Directors at Companies House in the UK, to the Sanction Lists that are maintained in different jurisdictions. Indeed, even the LBR Cases do not absolutely prohibit the use of such lists; they simply question the appropriateness and necessity of the level of access to the type of information contained within the Luxembourg lists. This allows room for a solution, so long as the appropriate analysis and assessment has been undertaken to show proportionality and necessity to justify any exceptions to Privacy requirements.

We set out some ideas and thoughts in relation to this below.

LIMITATION ON INFORMATION REQUIRED:

When addressing beneficial ownership transparency, consideration must be given to what information is actually needed in order to achieve the intended purpose, and to minimise the level of information captured and/or used. Doing so will align the beneficial ownership transparency approach with the Minimisation Principle. The reasons for the information and why it is necessary should also be recorded to demonstrate compliance with the Minimisation Principle (if required). If this is not done, and more information than is actually needed is gathered, stored or is accessible from any beneficial ownership register, this will both increase the potential for harm to the impacted individuals on the list and the risk of being deemed invalid as a result of its inconsistency with Privacy requirements.

Such an approach is required not only to comply with the Minimisation Principle under the UK and EU GDPRs, but is also relevant to beneficial ownership transparency as noted in Recital 34 of the Fifth Money Laundering Directive, which provides that data to be made available to the public should be limited, and clearly and exhaustively defined. Data should also be of a general nature so as to minimise potential prejudice to beneficial owners.

TIERED ACCESS:

It may be worth considering whether providing differing levels of access to differing levels of information could be implemented. This will mean assessing the purpose for access to the beneficial ownership registers in more detail, but may allow for further information to be obtained and retained, so long as who can access the information and why they have the level of access they do is justified. As noted in the LBR Cases, full

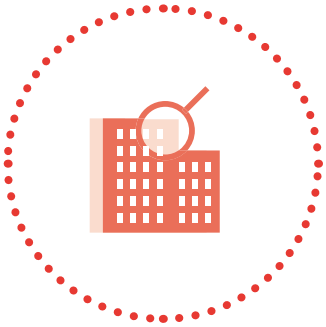
public access was deemed to interfere with the rights enshrined in the EU Charter, so there is a question whether tiered access, potentially with a payment gateway with terms applying to the access, could address this issue.

However, it is important to note that tiered, or restricted, access creates new risks in respect of independent investigative journalism. It will be necessary for records to be retained to demonstrate compliance with the restricted access conditions (i.e. information stored to justify how a condition was met to enable the information to be released). This potentially undermines the ability of investigative journalism to obtain information which, if provided to individuals under investigation, may hinder the investigation.

CONSENT

Using consent (i.e. by which those who submit the information to the register consent to that information being used for wider purposes) in order to create a register is not considered to be a viable solution. It is certainly not from a UK or EU perspective. Furthermore, if a register was created on a consent-based approach, there is no guarantee that such consent would be given, resulting in the processing of any such information being hard to justify and inconsistency and operational risk arising in respect of the management of that information. Similarly, consent cannot be given on an indefinite basis and as such can be withheld or withdrawn at any time, which could result in incomplete or missing data, perhaps omitting those beneficial owners whose information it is most important to capture. Any further processing of information once consent is withdrawn would be unlawful.

Finally, there are practical considerations around managing consent, which would include tracking and actioning of any withdrawals of such consent. As such, it is unlikely that a consent based approach to the creation of a register would be an attractive or practically viable solution.



RELEVANT RECOMMENDATIONS

1. GLOBAL STANDARDS

Clear rules and guidelines around how access can be given to an overseas register of beneficial ownership and in which circumstances such access can be given.

2. GLOBAL STANDARDS

Clear rules and guidelines on how to balance Privacy rights and obligations against AML/beneficial ownership purposes.

AN INTERNATIONAL REGISTER:

The possibility of creating an international register of beneficial ownership is potentially the "holy grail" of solutions - especially if this would be one register that is intended to be a single source of truth. The benefits of a single source register include the creation of one standard for all jurisdictions to follow, which would reduce inconsistencies and confusion. Furthermore, a single source register has the potential to hinder the ability of criminals to obfuscate ownership through forum shopping different regimes. However, there are a number of issues that need to be addressed.

In practical terms, there are a number of important questions that should be considered in order to implement an international register. This includes how to securely share a substantial amount of data between multiple governments, countries and/or specific departments. This would likely take a long time to agree in principle, let alone put in place.

There would also be questions around:

- Who would have responsibility for keeping and maintaining the register?
- Who ensures it is accurate and up to date?
- Who would host the data contained within the register?
- On what terms that contract would be made and who would fund its upkeep?
- What sanctions could be applied for non-compliance?
- How would these sanctions be applied against individuals in different jurisdictions with different enforcement regimes?

It may be that these issues make the implementation of a central register implausible, although the benefits would likely be significant.

Further challenge to agreeing upon a universal approach may arise from varying attitudes to Privacy, and differing legislation across the globe. Consideration will need to be had to cultural sensitivities and to differences which influence perspectives on transparency and Privacy. There is general agreement that an international register is a good idea, but the practicalities of actually effecting it are likely to be what becomes the issue. Therefore, while an international register is the desired end goal, an intermediate goal is to have standardised national registers which are similar.

In addressing these challenges, this Report is not resigned to the impossibility of such a register, nor that Privacy, or more specifically data protection laws, prohibit its creation. Indeed, the building blocks for international coherence in the financial sector have already begun to be laid. The Legal Entity Identifier (LEI), for example, is the first global and unique entity identifier, created as a reference code to be used across markets and jurisdictions to allow for unique identification of legal entities that engage in financial transactions. Tools such as LEI are designed to enable regulators to identify parties to financial transactions immediately, and accurately. There is clearly an increasing awareness of the needed for consistency and global standards across multiple strands of the financial sector.

It may be that, rather than there being an international register, initially we recommend that different registers cooperate during the initial stages of the implementation of various different regional registers that track and manage beneficial ownership transparency considerations within a limited geographic area, similar to sanctions lists which are currently in place. This would limit the amount of data being shared between countries, and to an extent renders more manageable the international transfer considerations detailed in this section which could instead be managed through international transfer agreements built into terms and conditions entered into by those accessing the various national registers.

RELEVANT RECOMMENDATIONS

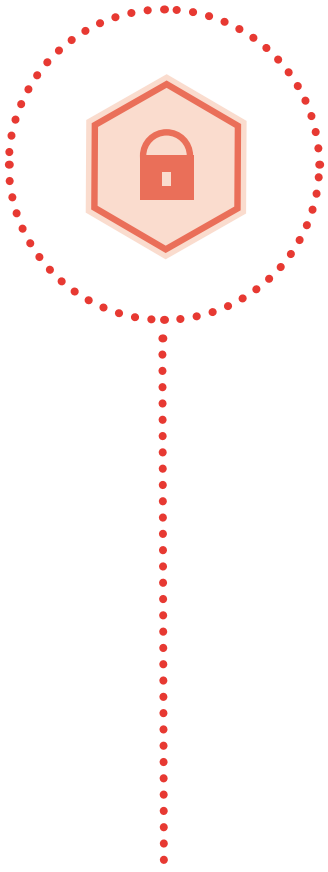
3. GLOBAL STANDARDS

Implementation of an International Register. [Or local, national or regional registers with specific enforceable terms, as well as different access levels to manage the balance between beneficial ownership transparency requirements and Privacy rights and freedoms of individuals who may be impacted by the creating and maintenance of any register/lists of beneficial owners.]

5.5 CONCLUSION

Ultimately, when addressing beneficial ownership transparency, account must be taken of existing Privacy considerations. Failure to do so with sufficient rigour and without having considered the Privacy requirements may well result in legal challenge and ultimately result in proposed laws or approach being struck down as invalid, as was seen in the LBR Cases.

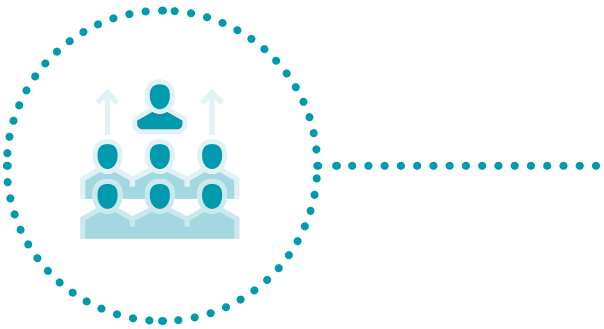
However, Privacy does not absolutely exclude or prohibit the use of lists or registers for certain lawful purposes – the question in a beneficial ownership transparency scenario, given the reality of what being on such a list means (i.e., significant wealth and resource), is how this can be achieved taking into consideration the potential risks to Privacy rights that beneficial owners enjoy, particularly in the UK and EU. Thought must be given in order to ensure that an appropriate balance is struck between conflicting interests, and that protections are in place for individuals and their personal data whilst still promoting the AML/CTF objectives which beneficial ownership transparency can bring.



SECTION 6
CASE STUDY 2

Companies House: Success or Failure?

6.1 INTRODUCTION



In March 2022, the UK government passed the Economic Crime (Transparency and Enforcement) Act 2022 (the Economic Crime Act). This introduced a long awaited publicly accessible beneficial ownership regime (in the form of the ROE) for overseas entities which own specific interests in UK land. The aim behind the Register of Overseas Entities (ROE) was to increase transparency over the ultimate ownership of overseas entities which own specific interests in UK land and to seek to tackle the risk of the UK property market being a destination of choice for international money launderers. Overseas entities that hold certain estates in land in the UK must now register with Companies House as "overseas entities" and in so doing disclose their registrable beneficial owners. This measure seeks to harmonise the reporting requirements of such overseas entities with those of English companies which have to disclose beneficial ownership information under the PSC regime.

The UK National Crime Agency (NCA) has since 2017 *"observed increased overseas buyers and overseas cash flows into the UK property market. Money laundering cases involving the ownership of property by overseas individuals and companies are inherently complex and their greater occurrence has increased resource constraints... Purchases made by corporate structures or trusts based in secrecy jurisdictions pose the greatest level of risk, due to the difficulties in determining the ultimate beneficial owners"*[18].

The NCA further notes that *"Corrupt foreign elites continue to be attracted to the UK property market, especially in London, to disguise their corruption proceeds. Property can be bought through complex systems of shell companies registered overseas in secrecy jurisdiction to obscure ownership, rendering the true purpose and origin of money transactions unclear. For example, research by Transparency International has found that 75% of properties linked to corruption are owned by companies registered in secrecy jurisdictions."* (*Corruption on Your Doorstep, How Corrupt Capital is Used to Buy Property in the UK* – Transparency International, March 2015).[19]

The drivers behind the introduction of the new regime in the UK requiring the registration of beneficial ownership for overseas entities that own UK land need no further introduction. The new regime has enjoyed some success but has also encountered some challenges. We explore these below.

18 See pages 107 to 108, *UK National Risk Assessment of money laundering and terrorist financing* 2020.
19 Page 109, ibid

6.2 TERRITORIES WHERE BENEFICIAL OWNERSHIP INFORMATION IS NOT PUBLICLY AVAILABLE

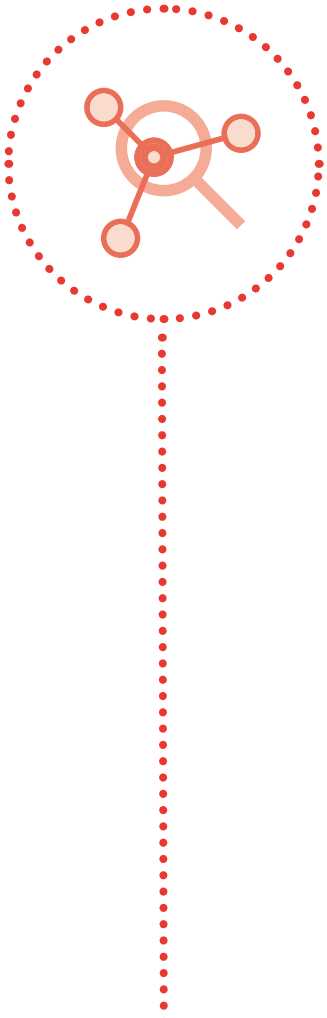
Analysis of the filings of those overseas entities that have to date registered on the ROE has shown that the register is proving effective in revealing the identities of individuals of interest who have ownership stakes in overseas entities holding UK land, including politically exposed persons. For example, the former Angolan Vice President Manuel Vicente was found to have been the beneficial owner of BVI company Riser Limited since 1997, the latter having bought two luxury Kensington apartments for approximately £1.5m. The purchase period coincided with the time when Vicente was the chief executive of the Angolan national oil company Sonangol. A period during which Vicente was investigated for bribery of Portuguese state officials.[20] In this way, the new register has proven of value in bringing to light more rigorously scrutinising the dealings of individuals being investigated for criminal offences.

6.3 INFORMATION SUBMISSION AVOIDANCE

Overseas entities were given until 31 January 2023 to register on the ROE and file information on their registrable beneficial owners. By this date, about 19,665 overseas entities were successfully registered and there were approximately 5,054 pending registrations that had been submitted.[21] However, Companies House had sent 57,000 notice letters to all entities in scope in August 2022 (albeit this included some duplicate letters). This means that an estimated 7,000 overseas entities that were expected to have complied with the registration requirements had not done so at that point.

There is a real risk that many of these entities have failed to register as they are ultimately owned by individuals who are seeking to obfuscate their ownership to evade sanctions or hide the proceeds of criminal activity. The Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023 gave Companies House the power to take enforcement actions and impose financial penalties on any person where it is satisfied, beyond reasonable doubt, that the person has engaged in conduct amounting to an offence of failing to comply with the requirements of the ROE. It is also possible that criminal penalties could follow a successful prosecution for failing to register were Companies House to consider it necessary to enforce compliance in this way. These criminal penalties include potential custodial sentences for managing officers of the overseas entity.

It should also be noted that data about those overseas entities that have failed to register could also provide useful leads for law enforcement investigations. Even if Companies House does not use the full suite of enforcement powers available, the absence of registration could provide useful leads for criminal investigatory authorities.



6.4 SUBMISSION OF NON-COMPLIANT FILINGS IN RELATION TO REGISTRABLE BENEFICIAL OWNERS

A registrable beneficial owner includes an individual, a government, a public authority or a legal entity. For a legal entity to be a registrable beneficial owner it must (amongst other things) be subject to its own disclosure

20 See *Through The Keyhole: Emerging insights from the UK's register of overseas entities* – Transparency International, 2023.

21 See Statement of Kevin Hollinrake, Parliamentary Under-Secretary of State of Business, Energy and Industrial Strategy dated 1 February 2023 (Hansard Volume 727)

requirements. As such, an overseas entity cannot simply declare that another opaque entity is its registrable beneficial owner. Nonetheless, there remain examples of companies making such filings in an apparent attempt to avoid the register's transparency aims.

Companies House is understood to be preparing to bring enforcement action but this is yet to be seen[22]. In more serious situations, Companies House could work alongside and refer suspicious matters to law enforcement authorities with additional powers available to them under the Proceeds of Crime Act 2002 to freeze assets and require explanation of ownership. This is also yet to be seen.

6.5 OBFUSCATING TRUST STRUCTURES

It is well known that trust structures are abused to make the ownership and control of offshore entities that hold property assets opaque in attempt to seek to conceal the true ownership. It is recognised that it is permissible for overseas entities to have trustees as beneficial owners, and there are many legitimate reasons for these arrangements. However, this is an area of weakness in the UK regime that is open to exploitation.

Where an application to register on the ROE includes details of a registrable beneficial owner being either an individual or a legal entity, the application must include information on whether that individual or entity is a trustee. If this is the case, certain information on the trust must be provided, including information on its trustees, beneficiaries and settlors. However, Companies House can only make this data publicly available if the same information is available for a reason other than it being provided for the ROE application or to certain prescribed individuals.[23] Where it is not available in this way, it must instead be requested directly from His Majesty's Revenue and Customs (HMRC). These requests for information related to trusts can take up to two months to be answered (in practice, it is often much longer than this). HMRC also requires those seeking such information on beneficial ownership trusts to demonstrate they have a legitimate interest in a money laundering or terrorist financing investigation – this can be a particularly onerous and prohibitive hurdle to achieving transparency. Given the risk of trusts being used as vehicles to obscure disclosure of ownership, this delay frustrates the ability for this to be as an effective control as it could be.

Scotland may offer an example of a more effective alternative, as its Register of Persons Holding a Controlled Interest in Land requires disclosure of those with a controlling interest in the underlying land, rather than the holding company. This has the benefit of piercing through layers of ownership to get straight to the beneficial owner. In light of this, the UK Parliament could consider whether there are lessons to be learned from the more direct approach taken by the Scottish Register.

"Overseas entities that hold certain estates in land in the UK must now register with Companies House as "overseas entities" and in so doing disclose their registrable beneficial owners."

6.6 OVERSEAS ENTITIES WITH NO REGISTRABLE BENEFICIAL OWNERS

Currently, overseas entities that have no reasonable cause to believe that they have any registrable beneficial owner(s) must, as well as providing the required information about the overseas entity also provide information about each 'managing officer' of the entity. Of the circa 20,000 overseas entities that have filed data to the register, 12% state they have no reasonable cause to believe that they have any registrable beneficial owner(s) and provide the relevant information

22 Ibid.
23 See section 23 Economic Crime (Transparency and Enforcement) Act 2022 and The Register of Overseas Entities (Disclosure and Dispositions) Regulations 2023

relating to a managing officer. This provision creates a lacuna that could be taken advantage of by those seeking to hide the ultimate beneficial ownership.

One possible solution to address this abuse is to require entities without a registrable beneficial owner to provide a fuller explanation as to the reasons why it does not have a registrable owner. This would be assisted by clear guidance about the definition of ownership and control. There are, of course, many reasons why an entity may not have a "registrable beneficial owner", however, this does leave the regime open to abuse and circumvention.

6.7 SERVICE PROVIDERS LISTED AS BENEFICIAL OWNERS:

Similarly, investment fund structures are also increasingly being exploited in order to conceal the ultimate beneficial owners of the underlying property. Legal, accounting and wealth management firms (commonly referred to as "professional enablers") are increasingly listed as the owners and managing officers of offshore companies. This is permitted where those persons are managing assets on behalf of passive investors. However, what is not permitted is where management firms that have no control or influence over investment decisions are listed as beneficial owners of those investment fund structures, when in fact they are "fronting" for their client who has effective control. Activity of this kind can carry criminal and civil sanctions.

RELEVANT RECOMMENDATIONS

4. UK LEGISLATORS

The addition of a "UBO (Ultimate Beneficial Owner) Question" in UK Beneficial Ownership Registers when understanding who the shareholders/directors of a company are when a legal entity is able to be recorded as the beneficial owner as it is subject to its own disclosure requirements (applicable to the UK).

5. NATIONAL JURISDICTIONS

Guidelines on professional service providers which often certify certain aspects of a company's structure/identity.

6.8 CONCLUSION

The introduction of the ROE has had a positive impact in improving transparency of ownership. In turn, this has helped identify situations where property may be used for money laundering. However, there remains scope for circumvention of the registration regime and there is a heavy dependency on effective enforcement action being needed to ensure full engagement and compliance with the regime.

Companies House has various civil and criminal enforcement tools available to support effective compliance with the regime. However, it remains to be seen how readily Companies House will use these powers; whilst the new UK regime has given them potential *teeth* to enforce compliance, Companies House is yet to show the willingness to *bite*. This would be greatly helped by provision of additional resource and Parliamentary support.

SECTION 7
FINANCIAL SANCTIONS – WHY IS BENEFICIAL OWNERSHIP TRANSPARENCY IMPORTANT?

7.1 INTRODUCTION

Beneficial ownership transparency is a key tool in combatting money-laundering, and for ensuring effective compliance with anti-money laundering and terrorist financing obligations. However, the importance of beneficial ownership transparency is not limited to anti-money laundering but is equally crucial in other key areas of corporate crime, such as sanctions.

A global beneficial ownership register would allow for sanctions regimes to be more effective. As a secondary benefit, improved global beneficial ownership transparency could greatly reduce the due diligence burden on firms and financial institutions required to determine ownership and control of potentially sanctioned entities, and facilitate compliance with sanctions regimes.

7.2 WHAT ARE FINANCIAL SANCTIONS?

Sanctions are an important foreign policy and national security tool, which enable governments to impose both preventative and targeted measures to change or coerce certain behaviour or stop illegitimate activity. There are various types of sanctions, common examples of which include financial, trade and immigration sanctions, as well as country wide embargoes in certain cases.

Sanctions have come to the forefront more than ever in the in the 12+ months since Russia's illegal invasion of Ukraine began. In this time, governments around the world have significantly increased the scope of their sanctions regimes relating to Russia, targeting increasingly broad areas of the Russian economy on an unprecedented scale.

These widespread sanctions include asset freeze restrictions on targeted companies and individuals, as well as restrictions on financial markets and services such as capital market and transferable security restrictions. UK, EU and US sanctions target a wide range of persons including Russian financial institutions, Russian companies operating in key sectors of the Russian economy, and high-profile Russian individuals.

7.3 WHO IS SUBJECT TO FINANCIAL SANCTIONS?

At a high level, asset freeze restrictions in the UK and the EU prohibit dealing with funds or economic resources owned, held or controlled by the target

of an asset freeze (a Designated Person) or the making available of funds or economic resources to, or for the benefit of a Designated Person. There are similar restrictions in the US which block all property and interests in property of persons determined to be subject to those restrictions (known as Specially Designated Nationals, SDNs), and effectively prohibit all transactions with such SDNs.

Restrictions on transferable securities and capital markets imposed under the UK, EU and US Russian-sanctions regimes vary amongst the jurisdictions but broadly include prohibitions on dealing with transferable securities (which includes shares, bonds and other equity and debt instruments) issued by certain Russian persons, the granting of certain loans to Russian persons and the making of new investments in Russia. These targeted financial restrictions are applicable not only to individuals or entities who are Designated Persons or SDNs, but also to persons subject to specific financial and investment restrictions or general sectors of the Russian economy.

It can be relatively straightforward to determine whether an individual or an entity is subject to an asset freeze or other financial sanctions in their own right, as governments commonly maintain a list of persons subject to such restrictions. In the UK, for example, the government maintains a consolidated list of asset freeze targets and a separate list of persons subject to financial and investment restrictions, both of which are accessible free of charge, and by the general public.

However, UK and EU asset freeze restrictions also apply not only to persons specifically listed in their own right, but to any entity that is owned directly or indirectly more than 50%, or controlled, by a Designated Person, and, in the US, the property blocking restrictions (the US equivalent of an asset freeze) apply to any entity directly or indirectly owned 50% or more by a US Specially Designated National (SDN).

As such, entities not subject to restrictions in their own right may in fact be caught by sanctions by way of their ownership or control. This creates an added layer of complexity when ensuring compliance with sanctions, in particular when dealing with entities that form part of complex and opaque ownership or corporate structures where ultimate ownership is not clear.

7.4 OWNERSHIP AND CONTROL CONSIDERATIONS

Determining ownership is typically less complicated than determining control, as an assessment may simply involve considering the percentage holdings of a given entity's shareholders. If any such shareholder who is a Designated Person meets the ownership threshold, the entity will be designated. Similarly, an entity that is owned more than 50%, or 50% or more (depending on jurisdiction) by an entity subject to certain targeted financial restrictions may also be subject to those restrictions as a result.

However, both the EU and the US (but notably not the UK) aggregate ownership, meaning that if the combined shareholdings in an entity of more than one Designated Person, or sanctioned entity, exceed the ownership threshold, the entity in question will be deemed sanctioned by way of its ownership.

In many cases it has proved a significant challenge for firms and financial institutions to determine the shareholding percentages owned by Designated Persons in Russian companies, as at the top of a corporate structure there are often found to be Russian oligarchs using a range of techniques to hide their assets or evade sanctions impacting their holdings. Sanctions targets may

utilise complex corporate structures, such as trusts located in jurisdictions without beneficial ownership requirements, rendering it almost impossible to determine exact shareholdings. Designated Persons also use tactics such as transferring shareholdings to trusted proxies, such as relatives or employees, just prior to their designation, or divesting their shareholding to just below the ownership threshold but retaining influence and control.

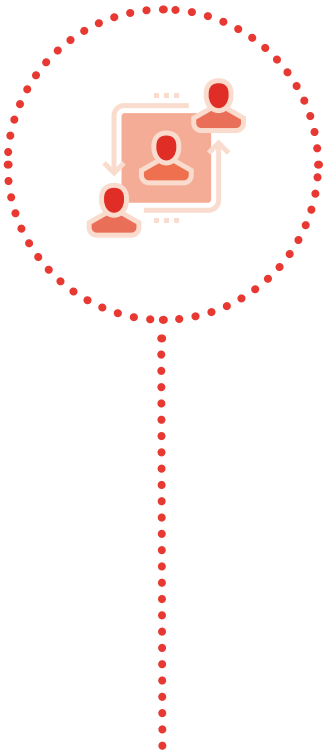
In the absence of publicly available corporate governance documents, determining ownership can therefore prove very challenging if not impossible; as such, it is then crucial to look to the element of control. Establishing control can prove challenging and requires analysis of available evidence to show that a Designated Person is able to conduct the affairs of a company in line with their own wishes. This can be shown by a Designated Person possessing the ability to appoint the majority of the board of directors, or holding more than 50% of the shares or voting rights, but in reality, this evidence is often hard to prove.

7.5 HOW CAN BENEFICIAL OWNERSHIP TRANSPARENCY BOLSTER SANCTIONS COMPLIANCE?

The existence of a global beneficial ownership register, or at the very minimum an increased beneficial ownership transparency regime, has the potential to hugely assist financial institutions and other entities with sanctions compliance obligations. As detailed in the section of this report, beneficial ownership transparency is of particular importance when determining the sanctions status of entities that may be subject to sanctions by way of their ownership or control.

A more transparent beneficial ownership regime would enable, for example, the tracking of movements of shareholdings to and from Designated Persons in order to accurately determine shareholding of a company at any given time without the need for reliance on often unverifiable reports of ownership transfers. Enhanced beneficial ownership transparency has the potential to lift the veil on complex trust or other legal structures which are often established in opaque or offshore jurisdictions, in order to determine the individuals that ultimately benefit from those structures.

As a result, the due diligence burden faced by financial institutions and other persons with AML obligations in carrying out adequate sanctions screening could greatly reduce.



RELEVANT RECOMMENDATIONS

6. GLOBAL STANDARDS

FATF leading on formulating an internationally consistent UBO threshold.

7. GLOBAL STANDARDS

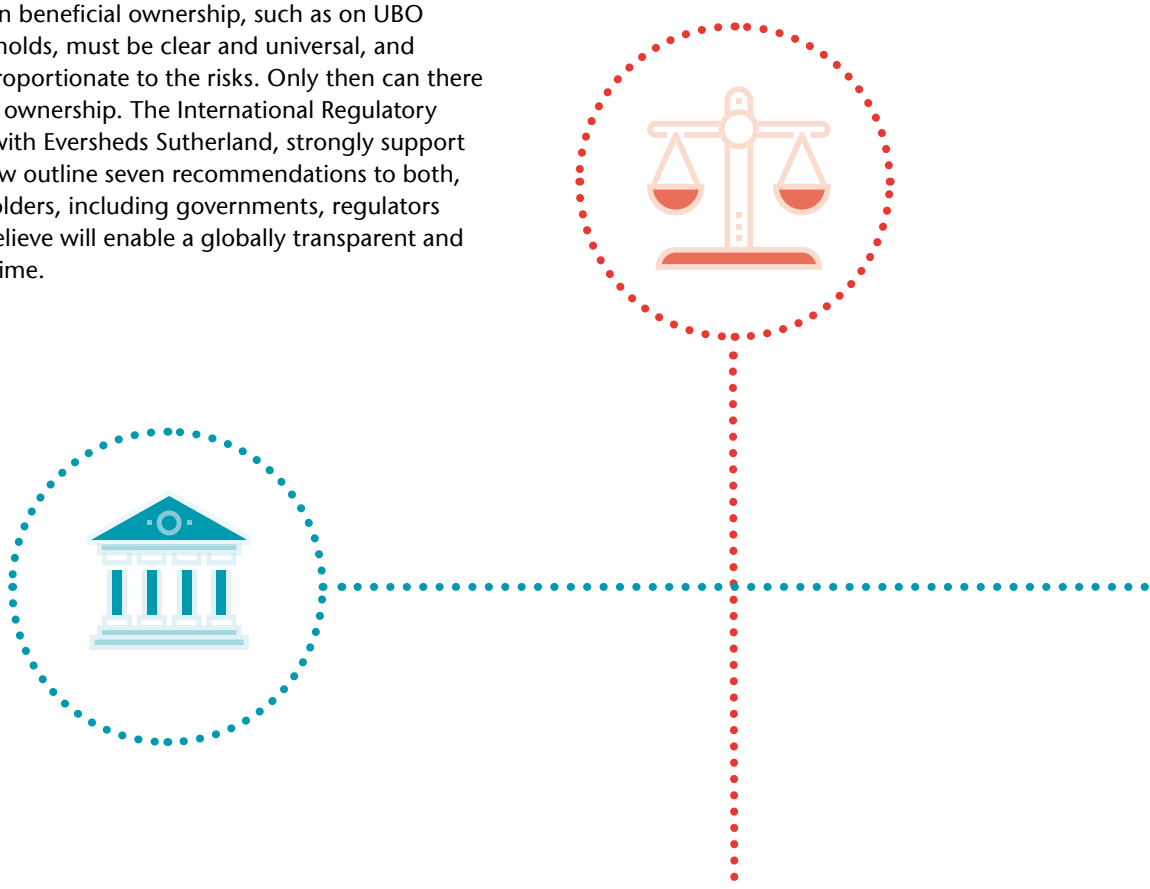
Proportionate standards for lower risk financial services products (but note that this would have to be weighed up against the risk of parties taking advantage of such rules by pretending to be 'lower risk' and thereby facing less checks) . Lower risks may also mean less information about beneficial owners being available.

SECTION 8
RECOMMENDATIONS

How can we improve the Global Regime on Beneficial Ownership Transparency?

Given the ever rising levels of financial crime and money laundering due to mounting geopolitical risks and the changing nature of illicit finance, and the significant and detrimental impact on its victims as well as the global economy more generally, it has never been more imperative to ensure a robust and effective anti-money laundering (AML) regime globally, with a transparent beneficial ownership regime at its centre. The International Regulatory Strategy Group (IRSG), together with Eversheds Sutherland, strongly support efforts, both domestic and international, by governments, regulators and standard setters towards this goal.

As the nature of financial crime, illicit finance and money laundering is cross-border, a robust, effective and transparent beneficial ownership regime cannot be fragmented across borders and global regulatory coherence on beneficial ownership is therefore paramount. All actors, both local and global, public and private, must have clarity and access to the relevant information to help tackle this challenge, guidelines on beneficial ownership, such as on UBO (Ultimate Beneficial Owner) thresholds, must be clear and universal, and standards in this space must be proportionate to the risks. Only then can there be global alignment on beneficial ownership. The International Regulatory Strategy Group (IRSG), together with Eversheds Sutherland, strongly support efforts towards this goal and below outline seven recommendations to both, national and international stakeholders, including governments, regulators and standard setters, which we believe will enable a globally transparent and effective beneficial ownership regime.



Recommendations

OWNER – WHO NEEDS TO ACT?	RECOMMENDATIONS	TARGET OUTCOME
 **GLOBAL STANDARD SETTERS** FATF lead authority; other global standard setters and international bodies FSB, IOSCO, IAIS, OECD, G7, G20 and others to integrate into their work	**1.** Clear rules and guidelines around how access can be given to an overseas register of beneficial ownership and in which circumstances such access can be given.	Level playing field of access to overseas beneficial ownership information with clear rules and guidelines
 **GLOBAL STANDARD SETTERS** FATF lead authority; other global standard setters and international bodies FSB, IOSCO, IAIS, OECD, G7, G20 and others to integrate into their work	**2.** Clear rules and guidelines on how to balance Privacy rights and obligations against AML/beneficial ownership purposes.	Data privacy and AML/beneficial ownership rules balanced with clear guidelines for stakeholders
 **GLOBAL STANDARD SETTERS** FATF in first instance; national governments, with G20 coordonating implementation	**3.** Implementation of an International Register. [Or local, national or regional registers with specific enforceable terms, as well as different access levels to manage the balance between beneficial ownership transparency requirements and Privacy rights and freedoms of individuals who may be impacted by the creating and maintenance of any register/ lists of beneficial owners.]	Improved transparency results in the reduction of operational burden, promoting competitiveness and facilitating a more effective fight against illicit finance

Recommendations

OWNER – WHO NEEDS TO ACT?	RECOMMENDATIONS	TARGET OUTCOME
UK LEGISLATORS UK government to legislate; Relevant government departments HMT, DBT, DSIT, Home Office; Companies House to implement	**4.** The addition of a "UBO (Ultimate Beneficial Owner) Question" in UK Beneficial Ownership Registers when understanding who the shareholders/directors of a company are when a legal entity is able to be recorded as the beneficial owner as it is subject to its own disclosure requirements (applicable to the UK).	Improved transparency on UBO results in the reduction of operational burden, promoting UK competitiveness and facilitating a more effective fight against illicit finance in the UK
NATIONAL JURISDICTIONS Relevant to all countries, with G20 and other significant financial centres to take the lead (including Hong Kong, Singapore, Bermuda)	**5.** Guidelines on professional service providers which often certify certain aspects of a company's structure/ identity.	Clear guidelines for professional service providers on beneficial ownership requests lead to a more effective and efficient AML/ beneficial ownership compliance record in the wider ecosystem
GLOBAL STANDARD SETTERS FATF	**6.** FATF leading on formulating an internationally consistent UBO threshold.	One internationally accepted UBO threshold, results in the reduction of operational burden, promoting competitiveness and facilitating a more effective fight against illicit finance
GLOBAL STANDARD SETTERS FATF lead authority; other global standard setters and international bodies FSB, IOSCO, IAIS, OECD, G7, G20 and others to integrate into their work	**7.** Proportionate standards for lower risk financial services products (but note that this would have to be weighed up against the risk of parties taking advantage of such rules by pretending to be 'lower risk' and thereby facing less checks). Lower risks may also mean less information about beneficial owners being available.	Application of risk weighting to beneficial ownership standards results in the reduction of operational burden, promoting competitiveness and facilitating a more effective fight against illicit finance

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The International Regulatory Strategy Group (IRSG) is a joint venture between TheCityUK and the City of London Corporation. Its remit is to provide a cross-sectoral voice to shape the development of a globally coherent regulatory framework that will facilitate open and competitive cross-border financial services. It is comprised of practitioners from the UK-based financial and related professional services industry who provide policy expertise and thought leadership across a broad range of regulatory issues.

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