

Register of Beneficial Ownership

The growing pressure on governments and companies to increase transparency and accountability has resulted in a global shift towards increased disclosure around beneficial ownership. The European Commission (EC) imposed a deadline of 26 June 2017 for member states to transpose the Fourth Anti-Money Laundering Directive into national law. The Directive aims to fight tax evasion, money laundering and terrorist financing. Beyond Europe, other countries are also following suit in an attempt to increase international standards.

European Union (EU)

The deadline for EU member states to adopt legislation to implement the Fourth Anti-Money Laundering Directive (the 'Directive') was 26 June 2017, yet debates are still ongoing about how the Directive should be implemented, who should have access to the registers and how much the legislation will improve transparency in practice.

One of the key concerns with the implementation of the Directive is around data privacy. Whilst many agree that having a register in place is worthwhile, there is some debate about who should be given access to the register and for what purpose. According to the Directive, the information should be available to the relevant authorities, financial intelligence units and any person or organisation who can demonstrate a 'legitimate interest'. It is currently optional for member states to make the beneficial ownership register publically available, however the EC are currently considering an amendment to the Directive in the form of a fifth Directive which would make it mandatory for the register to be public.

Contents of the Register



As a minimum, the Beneficial Ownership Register for relevant companies in the EU must include the following information:

- ✓ Name
- ✓ Nationality
- ✓ Country of residence
- ✓ Month and year of birth
- ✓ Nature of control
- ✓ Size of interest.

What is the definition of a beneficial owner?



For the purposes of the Fourth Anti-Money Laundering Directive, a beneficial owner is an individual or legal entity which ultimately owns or controls more than 25% of a company's shares or voting rights or exercises control over the management of the company.

In Denmark, it is already mandatory to report owners with more than 5% of capital or voting rights. The current criteria will be amended to meet the requirements under the Directive and reporting will be extended to the ultimate individual owners. The deadline for companies in Denmark to put the new register in place is 1 December 2017.

The challenge for member states in the process of transposing the Directive will be to balance the need for transparency and disclosure with ensuring privacy of personal data. In the UK, the information regarding Persons of Significant Control (PSC) is publically available at Companies House. In Ireland, the original date of 26 June 2017 for the transposition of the Directive has been delayed until the fifth Directive has been published. It is likely that the delay is due to the proposal to make the register publically available.

Another debate surrounding the register is whether a supervisory body is required to verify and monitor the accuracy of the information. Without supervisory bodies to monitor the information, how much will having a register in place improve transparency?

Whilst the debate over how the Directive should be transposed into national law is ongoing, there is a certain degree of uncertainty for multinational companies with an EU presence of future disclosure requirements.

Global transparency



The shift towards transparency is not just limited to the EU. One of the drivers for change is the Financial Action Task Force (FATF), an inter-governmental body which sets standards and encourages members to take measures to combat 'money laundering, terrorist financing and other related threats to the integrity of the international financial system'. The beneficial ownership register has already been implemented in a number of jurisdictions outside the EU and similar legislation is in the process of being drafted in many more jurisdictions.

Brazil



In Brazil, legislation came in to effect on 1 June 2016 which made it mandatory for companies registered with the National Corporate Taxpayers Register (CNPJ) in Brazil to disclose their ultimate beneficial owner. Companies already registered with CNPJ must disclose their beneficial owner when they next alter the information currently registered with CNPJ, with the ultimate deadline for disclosing the beneficial owner being 31 December 2018. Interestingly, Brazil have put a penalty in place for non-compliance in the form of the registration being suspended and transactions with banking establishments being blocked.

Singapore



The Companies Act and Limited Liability Partnerships Act in Singapore were amended on 20 March 2017, with a key change being the introduction of the register of controllers. The new legislation not only applies to incorporated companies and LLPs registered in Singapore, but also to branches of foreign companies. The criteria for becoming a registerable individual or legal entity is in line with the EC Directive, i.e. control over the management of the company or significant interest or control, with the threshold being 25% for interest in share capital or voting rights in the company. The legislation is adapted from the PSC requirements introduced in the UK in 2016 as part of the Small Business Enterprise and Employment Act 2015 (SBEE 2015). The key difference compared to SBEE 2015 is that the register in Singapore will not be public and access will only be granted to certain authorities.

Hong Kong



The introduction of a beneficial ownership register has also been proposed in Hong Kong. As part of the proposal, the current definition of a beneficial owner will be amended. The current definition for a beneficial owner is an individual who exercises ultimate control over the management of the company or who owns or controls, directly or indirectly, 10% of the share capital or voting rights. The proposal will amend the threshold for share capital and voting rights to 25% in order to align the criteria to other jurisdictions. If enacted, companies will need to put the register in place by 01 March 2018 and notify the Registry of the location of the register (although access will be restricted).

Cayman Islands



The commitment to increased transparency extends to the Cayman Islands. As of 1 July 2017, 'in scope companies' (ISCs) will be required to maintain a register of their beneficial ownership information at their registered offices and in a non-public centralised database. Beneficial owner would be any individual who i) hold 25% of share and/or voting rights; ii) have the right to appoint and remove the majority of the board; or iii) have the right to exercise, or actually exercises, control of the company or a trust, partnership or other entity which owns the company. There are a number of exemptions to the Regime, all Cayman legal entities should take steps to confirm if they are considered an ISC or if they qualify as a Registerable Person of an ISC. ISCs have an obligation to take steps to identify all beneficial owners and relevant legal entities and give notice to all Registerable Persons.

Next steps



If you are unsure about which entities in your group are required to establish and maintain a beneficial ownership register, KPMG can provide support with identifying the requirements in each jurisdiction and assist with the necessary actions to be compliant.

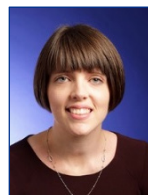
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