

INSIGHT

Public registers of beneficial ownership: European Union and Crown Dependencies Vs. Switzerland

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The European Union's Directive (EU) 2018/843 amending the Directive (EU) 2015/849 (hereinafter '5th Fifth Money Laundering Directive' or '5AMLD') has determined a substantial step forward in the global on-going process towards transparency of beneficial owners of entities.

When fully implemented it will largely increase the possibility for the public to obtain information once considered strictly private and not accessible to it.

Among other things, the 5AMLD requires Member States to ensure that:

- a. corporate and other legal entities¹ incorporated within their territory obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held;
- b. the information on the beneficial ownership is accessible in all cases to:
 - competent authorities and Financial Intelligence Units, without any restriction;
 - obliged entities, within the framework of customer due diligence;
 - any member of the general public².

The governments of Jersey, Guernsey and the Isle of Man have recently announced a collective commitment to bring forward legislative proposals, in line with developing EU standards, in relation to public registers of beneficial ownership of companies to be achieved via a three steps process:

- a. the interconnection of the islands' registers of beneficial ownership of companies with those within the EU for access by law enforcement authorities and Financial Intelligence Units;
- b. access for financial service businesses and certain other prescribed businesses for corporate due diligence purposes;
- c. public access aligned to the approach taken in the 5AMLD.

Right to privacy approach

Such move towards a public register of beneficial ownership has become the norm in the European Union, in the United Kingdom and last but not least in the Crown Dependencies. Hence is more and more remarkable the different approach maintained by Switzerland, a country which is the vault of international wealth, situated in the heart of Europe but not member of the European Union and hence not bound by its legislation.

While being fully compliant to the requirements set by OECD's Common Reporting Standard – which grant a full disclosure of the beneficial owners of Swiss entities only towards the tax authorities – there is no knowledge of any intention to implement in the foreseeable future any publicly accessible register of beneficial owners of companies or other entities, including trusts.

The right to privacy is enshrined in the Swiss constitution and no legislative initiative which might have the effect to undermine such right is in sight.

Notes

[1]. Member States shall ensure that this provision applies to trusts and other types of legal arrangements, such as, *inter alia*, *fiducie*, certain types of *treuhand* or *fideicomiso*, where such arrangements have a structure or functions similar to trusts. Member States shall identify the characteristics to determine where legal arrangements have a structure or functions similar to trusts with regard to such legal arrangements governed under their law.

[2]. The persons herein referred to shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.

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