Beneficial ownership transparency in light of Pandora Papers

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8 December 2021
Hiding the beneficial owner

- Shareholder
  - 100%
  - Company 1
  - Beneficial Owner
  - 100%
  - Company 1
  - Bearer Shares
  - Nominee
  - Company 1

- Shareholder
  - 100%
  - Company 4
  - 100%
  - Company 3
  - 100%
  - Company 2
  - 100%
  - Company 1

Ownership chain
When secrecy is available – anyone can use it!

<table>
<thead>
<tr>
<th>Shakira</th>
<th>Rafaelle Amato</th>
<th>Andrej Babis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singer</td>
<td>Criminal</td>
<td>Ex-president</td>
</tr>
<tr>
<td>Grammy award winner</td>
<td>Linked to over 12 killings</td>
<td>Promissed to crack down on tax evasion and corruption</td>
</tr>
</tbody>
</table>
## Triggers for beneficial ownership registration of legal entities & trusts in the EU (AMLD5)

<table>
<thead>
<tr>
<th>Trigger</th>
<th>Company/Legal entity</th>
<th>Trust</th>
</tr>
</thead>
<tbody>
<tr>
<td>It’s incorporated, created or governed by the laws of an EU country</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Any of its participants (eg shareholder, BO, beneficiary, settlor, director) is in the EU country</td>
<td>No</td>
<td>Only if: Local trustee</td>
</tr>
<tr>
<td>It has operations or assets in the EU</td>
<td>No</td>
<td>Only if: directly acquires real estate or establishes business relationships</td>
</tr>
<tr>
<td>The registry is open to the public</td>
<td>Yes</td>
<td>Only for those with ‘legitimate interest’</td>
</tr>
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The trust’s asset protection shield

The ownerless limbo

- It’s no longer mine (I gave it to the trustee)
- It doesn’t belong to my personal wealth. I’m just the manager
- It’s not mine yet. I need to wait for a distribution

Settlor (Discretionary) Beneficiary
The trust’s asset protection shield

**Recommendation 1**: Assets are considered property of the settlor up and until distribution to the beneficiary.
Ways of bypassing the threshold definition

All individuals must register as Beneficial owners

No individual needs to register as a beneficial owner (no one passes the 25% threshold)
Circumventing thresholds

Master Trust

Trust 1
Company 1
Investment fund
Football club

Trust 2
Company 2

Trust 3
Company 3

...

Trust 21
Company 21

https://mobile.twitter.com/AJEnglish/status/1425023828124749825?sf=19
Circumventing thresholds

**Recommendation 2**: Do not use thresholds! All beneficial owners should be registered no matter the stake.
We still have **bearer shares**! The ultimate secrecy device

In Malta, only **trusts** with local trustee or income taxable in Malta have to register... No BO is recorded for private trustees..

In Estonia, private **for profit foundations** do not have to report their BOs

Irish **Limited Partnerships** are not required to register their BOs...

BO registration only applies to companies, foundations and partnerships that have a **registered office** in Czechia.

In Cyprus, beneficial owners can be... Legal entities and arrangements
The United States has for long been harboring the most secretive legal arrangements, and refusing to cooperate in key international measures.

The United Kingdom and its network of Crown dependencies and territories are repeatedly shown as instrumental in the set up of tax avoidance and fraud schemes.

**Recommendation 3:**
Assess all jurisdictions objectively and transparently according to the risks they effectively create.

**Recommendation 4:**
Impose qualitative barriers to hold any property or investment in the EU.
Rec. 5: enablers should disclose clients who set up offshore structures

Source: 14 corporate service providers

Lists of clients having obtained services to set up foreign entities and arrangements are not subject to attorney-client privilege
Imperative: aligning legality and legitimacy

Alternative rules available to the super rich are not legitimate, although in most cases the arrangements might be legal.

Alignments of legality and legitimacy of tax rules is essential to the legitimacy of public institutions, such as the EU.

Misalignments...
• Damage tax morale of populations
• Foster distrust in institutions
• Undermine democratic engagement
**Recommendation 1:** Consider that assets are property of the settlor up and until distribution to the beneficiary.

**Recommendation 2:** Not using thresholds in BO definitions. All beneficial owners should be registered no matter the stake.

**Recommendation 3:**
Assess all jurisdictions objectively and transparently according to the risks they effectively create.

**Recommendation 4:**
Impose qualitative barriers to hold any property or investment in the EU.

**Recommendation 5:** Lawfirms and TSCPs should disclose clients who set up offshore structures
Thank you

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