

Editorial: Unmasking who controls illicit wealth through beneficial ownership transparency

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In many ways, beneficial ownership transparency has become a double-edged sword, raising important questions about how governments should implement anti-money laundering (AML) measures and ensure corporate accountability, while safeguarding citizens' fundamental rights to privacy. On the one hand, transparency advocates have rightly called for increased public scrutiny of corporate affairs in the wake of the 'Panama Papers' and subsequent financial scandals. A default response to this has embraced global AML efforts centred on mandating the disclosure of corporate ownership through public registers of beneficial owners. Within the UK, there are now three separate such registers: the PSC register covering persons of significant control of UK companies; the Trusts Registration Service containing details of trust arrangements, their trustees, settlors and beneficiaries; and the newly introduced Register of Overseas Entities concerning overseas entities that trade in UK property or land. Nearly 100 various jurisdictions across the globe have implemented some sort of register or beneficial ownership disclosure regime, demonstrating significant global progress towards beneficial ownership transparency (Knobel and Lorenzo, 2022, p. 3).

On the other hand, critics have reasonably argued that maintaining a certain level of confidentiality is essential for innovation and competitiveness within financial markets, and prevents unintended harm to people and their associates linked to registered companies. There is also the regulatory burden of AML compliance and disclosure duties, which come at considerable cost to the business and financial sectors. Effective compliance is costly—over

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3 £34 billion is reported to be spent by the UK financial services sector on compliance every year
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5 (LexisNexis, 2023). It is difficult to assess whether governments have really managed to strike
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7 the right balance between meeting the needs of opposing views on beneficial ownership
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9 transparency. Perhaps, and more importantly, there are two key questions to consider here:
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11 first, to what extent does beneficial ownership transparency impact governments' progress on
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13 preventing financial crime? (there is certainly a lack of empirical evidence on this) and second,
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15 how should domestic governments implement such transparency initiatives in a proportionate
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17 and lawful way?
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23 The challenges of implementing registers of beneficial owners are well documented
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25 (see, e.g., Gilmour, 2020, 2023; Matras, 2023; Thomas-James, 2020). Not only are public
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27 central registers fraught with trust, privacy and verification concerns, but strict banking secrecy
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29 laws and client confidentiality rules mean that sharing of beneficial ownership data between
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31 international authorities is often restricted or defied. There are certainly good reasons for
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33 withholding information on beneficial owners. Registers hold commercially and personally
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35 sensitive information about beneficial owners that can expose commercial interests or risk
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37 personal safety (e.g., fraud, blackmail, or other risk of harm). Withholding the identity of
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39 beneficial owners also has a lawful purpose for procuring contracts and facilitating corporate
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41 mergers. Studies have further highlighted concerns around inaccurate beneficial ownership
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43 data and lack of proper verification; although, the United Kingdom at least, intends to address
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45 these concerns through the new Economic Crime (Corporate Transparency) Act 2023 and
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47 related Company House reforms.
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53 Furthermore, governments must consider the recent judgement by the Court of Justice
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55 for the European Union (CJEU) handed down on 22 November 2022. The CJEU ruled that it
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57 was unlawful for EU Member States to make information on beneficial owners within registers
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3 accessible “in all cases to any member of the general public” (See *WM and Sovim SA v.*
4 *Luxembourg Business Registers*, 2022). Judges ruled that doing so would represent a “serious
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6 interference with the fundamental rights to respect for private life and to the protection of
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8 personal data” ... which “is neither limited to what is strictly necessary nor proportionate to the
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10 objective pursued”. The judgement effectively invalidates amendments to the Council
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12 Directive 2018/843EU (the 5th Anti-Money Laundering Directive) that guaranteed full
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14 transparency of beneficial ownership information (see also Thomas-James, 2023). Although
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16 this judgement is a clear setback for proponents of corporate transparency (Open Ownership,
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18 Tax Justice Network and the like) with some EU Member States (Austria, Belgium, Greece,
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20 Ireland, Luxembourg to name a few) swiftly restricting access to beneficial ownership
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22 information; other nations, like Latvia, Estonia, and France, for example, have taken a
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24 somewhat more pragmatic approach (Lorenzo, 2023). The ruling may not necessarily have a
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26 longer lasting or global-reaching impact.
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34 Important international bodies still advocate for public access to beneficial ownership
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36 to combat illicit wealth. The Financial Action Task Force, the global AML standards setter,
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38 recommends that countries consider public access to beneficial ownership. Meanwhile,
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40 publicly available information on beneficial ownership remains a key indicator of the
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42 Sustainable Development Goals adopted by the United Nations (Siems, 2023, p. 1138). The
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44 purpose of enhancing beneficial ownership transparency is to combat individuals hiding illicit
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46 wealth through ownership of corporate entities. Corporate secrecy can potentially mask
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48 unethical practices and hinder regulatory oversight. Dubious offshore corporate structures,
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50 shrouded in secrecy, have been used to facilitate money laundering and hide the true
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52 beneficiaries behind anonymous shell companies (Gilmour, 2020). According to many
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54 international AML organisations, enhanced transparency helps to clamp down on corporate
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56 entities exploiting offshore tax havens and secrecy jurisdictions to engage in tax evasion. Such
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3 practices, highlighted in the Panama Papers, hinder national economies and official efforts to
4 create a fair and transparent tax system. However, public registers in their current form are
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6 arguably failing to achieve meaningful impact on combating illicit wealth as intended.
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11 Much of the international spotlight has also been on the so-called offshore ‘tax havens’
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13 in far-flung Caribbean tropical microstates, like Bermuda, the Cayman Islands, Panama,
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15 Anguilla, and British Virgin Islands. Yet, these locations have become successful financial
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17 hubs because of their close structural ties to the financial systems of Britain and other Western
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19 nations. It is the likes of the United Kingdom, its British Overseas Territories and Crown
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21 Dependencies; United States; Hong Kong; Singapore; and Luxembourg that have ranked top
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23 of Tax Justice Network’s Financial Secrecy Index (Janský et al., 2023; Tax Justice Network,
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25 2022). Furthermore, some USD\$194 billion in global corporate tax revenue is avoided by
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27 multinational corporations due to base erosion and profit shifting, a dubious practice that
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29 involves companies exploiting loopholes in the international tax rules (Janský and Palanský,
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31 2019, p. 1063). Such evidence suggests that these powerful financial centres based in the UK,
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33 Europe, US and Asia, where many of the world’s largest multinational corporations are also
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35 headquartered, are the real enablers of corporate secrecy.
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42 It is questionable whether mere public, centralised registers are really the ‘magic bullet’
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44 to combating financial crime that they are purported to be. Registers of beneficial owners have
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46 historically simply served as a repository of data that law authorities or those with a ‘legitimate
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48 interest’ can access (Gilmour, 2020). They have lacked the proper infrastructure to ensure
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50 intelligence gathering on suspicious transactions or means to maintain robust data on company
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52 ownership. It remains to be seen to what extent the new Companies House reforms will
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54 strengthen the current beneficial ownership regime in the UK. Although having registers of
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56 beneficial owners is an important concept towards enhancing corporate transparency, further
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3 work is needed to ensure they are implemented effectively. They are only part of the solution
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5 in the fight against financial crime. Perhaps, and more importantly, more pressure should be
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7 placed on Western governments to have the political will to implement a more robust beneficial
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9 ownership regime that truly restricts corporate secrecy and avenues for illicit financial flows.
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