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Client Alert
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Corporate transparency: a global view

Focus on transparency of ownership

Companies and other legal entities are increasingly being asked to reveal details of their underlying beneficial owners rather than just their legal owners. This transparency obligation is in addition to any tax filing, customer due diligence or other anti-money laundering requirement that may apply. Globally, the move towards greater transparency partly stems from international standards and initiatives such as the G20's "High-Level Principles on Beneficial Ownership Transparency," intended to combat criminal behaviors such as money-laundering.

Baker McKenzie has surveyed the majority of the G20 members (including each EU member state) and a number of other substantive jurisdictions, to gain an overview of the global position for corporates (excluding any stock exchange reporting obligations).

- Of the 72 countries reviewed, nearly half (31 countries) have legislation in force requiring entities to maintain a register of beneficial interests.
- Not all entities within those 31 countries must comply with the legislation now. Many jurisdictions have staggered the compliance requirement including allowing pre-existing entities a transitional compliance period.
- In virtually all of those 31 countries regulators/authorities have access to the beneficial ownership data with around a quarter also requiring the information to be publicly available.

The Report also includes commentary on the status of EU member states' compliance with article 30 of the fourth anti-money laundering directive ("**MLD4**"). Article 30 MLD4 required member states to amend their domestic legislation by 26 June 2017 to require corporate and other legal entities incorporated within their territory to obtain and hold information on their beneficial owners. Click here for our EU alert on article 30 MLD4.

Which businesses does the obligation apply to?

Entities within scope vary according to the jurisdiction. The obligation usually applies to corporate and other legal entities, with some countries extending requirements to include other forms such as foundations and associations.

In addition to obligations imposed on the entities themselves, certain jurisdictions, for example the UK and the Republic of Ireland, also impose requirements on beneficial owners to declare their interests.

Exceptions may apply. In the EU for example, entities listed on an EU regulated market, which already have to provide similar information, fall outside the scope of the regime. There is no exception for entities belonging to groups headquartered outside the EU.

Who is a beneficial owner?

Not all jurisdictions recognize the concept of beneficial ownership. Those that do may share certain similarities such as defining a beneficial owner as a natural person who ultimately owns or controls an entity through direct or indirect ownership of a prescribed percentage of the voting or ownership interest.

What should businesses be doing now?

Understand their obligations

An analysis of whether the requirement to identify beneficial owners is in force in each jurisdiction within the business structure should be undertaken. If relevant, which entities are within scope, the test for beneficial ownership and what the relevant obligations are must be considered. Failure to do so, in certain jurisdictions, puts the entity or person at risk of fine(s), imprisonment and/or a restriction on the ability to exercise rights attaching to an interest.

Impact on M&A

In addition to any ongoing compliance requirement, corporate transparency obligations may impact:

- The timing of a deal if not considered in advance, as certain jurisdictions require details of beneficial owners to be provided before a new entity can be formed;
- The ability to transfer interests in those jurisdictions which permit legal rights attaching to interests to be restricted, a potential concern for a seller, buyer or lender; and
- Deal documents, which may need to provide for recognition of the transfer of the beneficial interest and relevant register.

How can Baker McKenzie help?

For assistance with understanding the legal landscape in your jurisdiction(s), or for a copy of the report, please get in touch with your usual Baker Mckenzie contact, or any of the contacts listed below.

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