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Register of Beneficial Ownership – Pipe Dream or Reality

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Introduction & Background



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- The 21st century sees an inexorable move to bring private information into the public domain.
- It is clear that private information must be accessible and readily available to law enforcement authorities upon request.
- But does it warrant that private information about people's private affairs must be in the public domain?
- Disclosure of private information raises a number of serious issues, ranging from human rights to that of security.
- Yet, plans for public registries of corporate beneficial ownership in Europe are unravelling quickly...
- How did we get there and what does the future hold?

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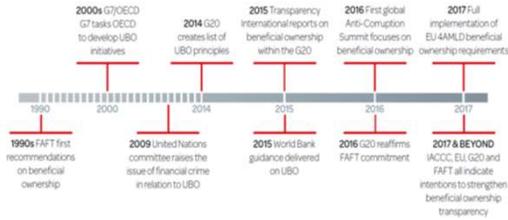
International Interest in Beneficial Ownership

- What is “Beneficial Ownership”?
- Why is there a need to ascertain who is the actual owner or controller of an entity is?
- Originally intended to detect/prevent money laundering, corruption and other financial crimes but then extended to tax related offences.
- 1998 - Initial interest in beneficial ownership information : Bank for International Settlements flags link between ultimate beneficial ownership and financial crime.
- Lead to 1st international instrument devised to focus on AML
- The principles would become the foundations for AML controls and widely adopted across Europe and beyond...



History of Beneficial Ownership Regulation

THE INTERNATIONAL INTEREST IN BENEFICIAL OWNERSHIP



Source: The Hidden World of Beneficial Ownership by Lexis Nexis



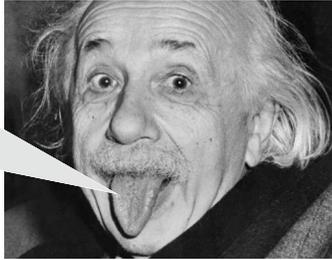
Issues raised by Register of BO

- Essentially information security, accuracy and integrity concerns & violation of privacy.
- Consider the risks of centralising and making accessible sensitive information at a click of a button: hacks, data breaches, personal security.
- Contrary to the fundamental right to privacy and data protection (Article 8 of the ECHR, EU Charter of Fundamental Rights).
- Courts’ approach to collection and retention of private data on citizens: see *Schrems v Data Protection Commissioner [2015]* (the Facebook’ decision, *Tele2 Sverige AB v Post- och telestyrelsen*; *Secretary of State for Home Department v Tom Watson (2016)*, French Constitutional Court case of *Re Helen (2016)*
- European Data Protection Supervisor (EDPS) negative views on new EU measures to be introduced to enhance transparency.



Conclusion

Reality is merely an illusion, albeit a very persistent one.



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Thank you very much!

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