

BENEFICIAL OWNERSHIP AND TAX EVASION IN LEBANON

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DEFINITION OF A BENEFICIAL OWNER AND INTERNATIONAL STANDARDS

Tax transparency and fight against tax evasion has been a top priority for governmental policies over the last couple of years.

According to the Global Forum on Transparency and Exchange of Information for Tax Purposes, *“The availability of beneficial ownership information on legal persons and arrangements (legal entities) is a key requirement of tax transparency and a key instrument in the fight against tax evasion and other financial and serious crimes, such as corruption, money laundering, and terrorist financing”*¹.

A beneficial owner is defined as “The natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”. This definition was established by the FATF, the Financial Action Task Force².

The beneficial owner is not always the legal owner. Legal ownership refers to the natural or legal person whose name appears on the shares registers and may simply be a nominee. One person/company may be registered as the legal owner of a company while another person may be the true beneficial owner.

The distinction between legal and beneficial owner is especially familiar in common law countries but has become more widely established and used by authorities as a result of its inclusion in international anti-money laundering standards³. 100 countries⁴ have already pledged to implement beneficial ownership transparency reforms in order to provide corporate accountability and helps fight illicit financial flows⁵.

*“In practice, this means more jurisdictions are requiring companies to disclose information on their actual (or, beneficial) owners in order to make this information available to law enforcement or the general public. However, in some countries, accessing information on the real owners of companies can still be challenging. This can be because they have not yet implemented reforms, or because they have implemented these poorly”*⁶

¹* Building Effective Beneficial ownership frameworks, a joint global forum and IDB Toolkit, OECD, 2021, [https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit_en.pdf]

²* A Beneficial ownership Implementation Toolkit, Inter-American Development Bank (IADB) and Organization for Economic Co-operation and Development (OECD), March 2019, [<https://publications.iadb.org/en/beneficial-ownership-implementation-toolkit>]

³* Louise Russell-Prywata, Beneficial ownership and Wealth Taxation, Wealth Tax Commission, [https://www.wealthandpolicy.com/wp/BP124_BeneficialOwnership.pdf]

⁴* What is Beneficial ownership Transparency (BOT)?, Open Ownership, [<https://www.openownership.org/what-is-bot/>]

⁵* What is Beneficial ownership Transparency (BOT)?, Open Ownership, [<https://www.openownership.org/what-is-bot/>]

⁶* What is Beneficial ownership Transparency (BOT)?, Open Ownership, [<https://www.openownership.org/what-is-bot/>]

Many international organizations or groups have already expressed support for Beneficial ownership Transparency (BOT) including the G7, G20, Financial Action Task Force (FATF), the World Bank, the International Monetary Fund (IMF) and the United Nations⁷. Some international standards related to BOT were adopted such as the FATF⁸ and Global Forum Secretariat standards⁹.

Initially, the FATF adopted 40 Recommendations¹⁰ in 2012 outlining a robust set of measures which countries should implement to combat money laundering, terrorist financing, financing of weapons of mass destruction. Six of these recommendations are directly related to beneficial ownership: preventive or prescriptive measures to be applied by AML/CFT obliged persons (Recommendations 10, 11, 17 and 22) and general measures for jurisdictions to ensure transparency and beneficial ownership of legal persons and arrangements (Recommendations 24 and 25).

The High-Level Panel on International Financial Accountability, Transparency and Integrity (FACTI Panel) published its final report on February 25, 2021 and recommends (Recommendation 3) *“to make beneficial ownership information more transparent by having a requirement in international anti-money-laundering standards that all countries create a centralized registry for holding beneficial ownership information on all legal vehicles.*

It also encourages countries to make the information public. To maximize the usefulness of this transparency tool, registries should be established in accordance with agreed international standards, which could include uniform definitions that accommodate different legal systems, clear information requirements, mechanisms for verification, and expansive scope of coverage covering all legal vehicles, including those ostensibly for non-profit purposes”¹¹.

According to the OECD’s framework to building effective BO frameworks, *“Ideally, the register should be digitalized and maintained in a secure IT platform. Digital technologies are critical for managing high volumes of information, facilitating the reporting of information by obliged entities, lowering transactional costs, and ensuring the integrity of the information. Maintaining the register in an IT platform also facilitates the checking of consistency with other data sources and the timely access to information by law enforcement authorities”¹².*

Other international initiatives on transparency of beneficial ownership include: the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Extractive Industries Transparency Initiative, the United Nations Convention Against Corruption, the Partnering Against Corruption Initiative.

⁷* What is Beneficial ownership Transparency (BOT)?, Open Ownership, [<https://www.openownership.org/what-is-bot/>]

⁸* Best Practices on Beneficial ownership for Legal Persons, FATF, October 2019, [<https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>]

⁹* IDB and OECD, A Beneficial ownership Implementation Toolkit, OECD, 2019, [<https://oe.cd/41V>]

¹⁰* International standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, 2021, [www.fatf-gafi.org/recommendations.html].

¹¹* Financial Integrity for Sustainable Development, Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, FACTI, February 2021, [https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf]

¹²* Building Effective Beneficial ownership frameworks, a joint global forum and IDB Toolkit, OECD, 2021, [https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit_en.pdf]

HOW CAN BENEFICIAL OWNERSHIP TRANSPARENCY LIMIT TAX EVASION?

Principles and Standards

One essential way of addressing dangers pertaining to a system's financial integrity is the declaration of beneficial ownership information. Beneficial ownership is now a key element of international tax transparency and fight against tax evasion and other financial crimes. Indeed, beneficial ownership allows competent authorities, notably tax authorities, to conduct due diligence on an entity's real owners in order to perform an *a priori* as well as an *a posteriori* control on all taxpayers and connected activities.

Tax evasion can effectively be prevented by beneficial ownership declarations when the relevant authorities who have access to information pertaining to taxpayers can effectively impose the payment of the taxes due and can identify taxpayers who have not made their declarations or payments. Beneficial ownership declarations can also help identifying aggressive schemes and structures hidden under tax optimization.

In order to adequately prevent and help fight tax evasion, beneficial ownership must be properly implemented. Below are some of the necessary principles and standards¹³, for the effective applicability of beneficial ownership, notably with regards to tax evasion:

- The scope and thresholds of application of the beneficial ownership should not be subject to multiple variations. Indeed, **the definition of beneficial ownership must be clear and easy to**

understand in order to avoid any misunderstandings.

- The **collection of information as well as its verification** must be adequate and subject to consistent and effective control.
- Information pertaining to beneficial ownership should not only be accessible to authorities but also to all the public through the enactment and launch of a public registry. International Standards include timely access by authorities to updated and verified information. Open Ownership takes it a step further and asks for **beneficial ownership information to be accessible to the public**, therefore helping in public accountability.
- Moreover, putting in place **digital registries helps** in combating tax evasion and broadening the tax base by allowing the aggregation of taxpayers' data from a variety of sources.
*"Ideally, the register should be digitalized and maintained in a secure IT platform. Digital technologies are critical for managing high volumes of information, facilitating the reporting of information by obliged entities, lowering transactional costs, and ensuring the integrity of the information. Maintaining the register in an IT platform also facilitates the checking of consistency with other data sources and the timely access to information by law enforcement authorities"*¹⁴.

¹³* IDB and OECD, *A Beneficial ownership Implementation Toolkit*, OECD, 2019, [<https://oe.cd/41V>]

¹⁴* *Building Effective Beneficial ownership frameworks, a joint global forum and IDB Toolkit*, OECD, 2021, [https://www.oecd.org/tax/transparency/documents/effective-beneficial-ownership-frameworks-toolkit_en.pdf]

- The legal framework should include a **deterrent sanction regime** including administrative, financial and criminal sanctions that should be proportionate to the offence.

To strengthen and secure the enforcement of the provisions of the Law, deterrent sanction regimes such as large fines (substantial enough to change the incentives) and/or criminal/contractual sanctions (removal of license to operate, prohibition on participation in public bids and tenders) should apply.

For example, enforcing beneficial ownership provisions ultimately depends on establishing effective sanctions for registering incorrect information or failing to update or file information. **Economic penalties** are the most used sanctions. If these are not sufficiently high, actors may decide that it is cheaper to pay the penalty than to file accurate information.

In addition to monetary sanctions, **criminal sanctions and other sanctions** to encourage compliance should be considered, including the loss of the rights intended to be acquired by establishing a legal vehicle and benefiting from limited liability. Entities that have not registered and/or updated their beneficial ownership information would not be eligible for this limited liability. Additional measures may include delisting entities from the list of entitled companies for bidding and tendering (i.e. consider making companies registered without publicly available beneficial owners, particularly those registered in tax havens, ineligible for tendering) and providing a "constitutive effect" to the beneficial ownership registration.

The rights and obligations would be solely dependent on their inclusion in the register. A person who does not appear on the register would have no rights to dividends or voting, and any corporate decision made by them may be null and void, regardless of any agreement. As a result, beneficial owners may be discouraged from using nominees.

By implementing these standards, it becomes more difficult for tax evaders to hide their criminal activities. Consequently, beneficial ownership requirements have been included in the reviews conducted by international organizations and bodies, such as the Financial Action Task Force (FATF). The FATF Recommendations are the most widely established international standards for ensuring the availability of beneficial ownership information to competent authorities.



Example of countries where beneficial ownership had a positive impact on fighting tax evasion

The concept of beneficial ownership has proven useful in determining who owns or benefits from assets held and moved through the global financial system via complex networks of companies. The Panama and Paradise Papers have revealed cases of financial crimes (money laundering, and tax evasion). The aftermath of these papers shed a light on BOT as a tool to fight financial crimes.

Many other countries have witnessed important changes since implementing BOT. *"In an analysis of financial crime investigations from 34 jurisdictions that involved companies with hidden beneficial ownership, the average sum involved per case exceeded US \$500 million (FATF and Egmont Group, 2018)"¹⁵.*

Besides, as much as 10 per cent of the world's GDP might be held in offshore financial assets. An estimated \$7 trillion of the world's private wealth is squirreled

away in secrecy jurisdictions. Taking into account just one sub-type of illicit financial flows – corporate profit-shifting, or the shopping around for tax-free jurisdictions by multinational corporations – such practices cost countries where these profits are actually made between \$500 to \$650 billion a year, according to some estimates¹⁶.

In the UK, six months after the Panama Papers leak, civil and criminal investigations took place based on evidence from the papers. This data *"led to civil and criminal investigations against 22 individuals for suspected tax evasion, and a further 43 high net worth individuals being placed under special review (UK Parliament, 2016)"¹⁷.*

The UK¹⁸ implements beneficial ownership reforms while paying due regard to privacy concerns¹⁹. While no systematic analysis of the scale of tax evasion related to hidden beneficial ownership has been conducted, the sums identified through a comparatively small data leak highlight the utility of beneficial ownership information in supporting enforcement action²⁰.

¹⁵* Louise Russell-Prywata, *Beneficial ownership and Wealth Taxation*, Wealth Tax Commission, [https://www.wealthandpolicy.com/wp/BP124_BeneficialOwnership.pdf]

¹⁶* *Financial Integrity for Sustainable Development, Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda*, FACTI, February 2021, [https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf]

¹⁷* Louise Russell-Prywata, *Beneficial ownership and Wealth Taxation*, Wealth Tax Commission, [https://www.wealthandpolicy.com/wp/BP124_BeneficialOwnership.pdf]

¹⁸* *In the UK, beneficial owners are called "Persons of Significant Control" (PSCs), and their data is held and published by Companies House in a fully public open data format. Currently, Companies House has data on over 4 million companies, associated with millions more beneficial owners. The UK has demonstrated that it is possible to approach the matter of privacy with nuance, offering transparency while mitigating its risks.*

It has done this in two ways by publishing enough personally identifying information to distinguish between beneficial owners and officers, while withholding sensitive information (birthdate and residential address) for access by law enforcement for official purposes only. Public access is only given to month and year of birth and a registered address for correspondence. And second by allowing beneficial owners with privacy concerns to apply to have their information removed from the register. This process is rule-governed and permits exemptions under specific conditions unique to the UK context; for instance, some companies are exempted because they fear their businesses will be the target of protests, from:

Alice Powell, United Kingdom: Curbing Money Laundering Through Beneficial ownership Transparency, Open Government Partnership, 2018, [https://www.opengovpartnership.org/wp-content/uploads/2018/09/Early-Results_UK_Beneficial-Ownership_2018.pdf]

¹⁹* *Chapter 9: Beneficial ownership Transparency*, the World Bank, [<https://thedocs.worldbank.org/en/doc/734641611672284678-0090022021/original/BeneficialOwnershipTransparency.pdf>]

²⁰* Louise Russell-Prywata, *Beneficial ownership and Wealth Taxation*, Wealth Tax Commission, [https://www.wealthandpolicy.com/wp/BP124_BeneficialOwnership.pdf]

Slovakia is another relevant example on how beneficial ownership information contributed to the fight against tax evasion. Since Slovakia launched a beneficial ownership register, around 70 investigations have been conducted including the first fine against a company for misreporting beneficial ownership information. In addition, five companies chose to end their government contracts in order not to disclose their beneficial owners²¹.

“The more and better quality of beneficial ownership data we have, the more expensive and difficult it will be for corrupt parties to hide. Combining open contracting data and beneficial ownership, as done in Ukraine, can make it easier to detect corruption and money laundering risks as well as deter fraud. In point of fact and very often, anonymous shell companies — whose real, controlling beneficial owners may be hidden under layers and layers of corporations — are the getaway vehicles for global financial crime and corruption. High-level, corrupt public officials and corrupt, bribe-paying firms can arrange to transfer funds without involving the local banking system by creating a complex pattern of transfers that disguise their origin.

With this in view it is recommended making beneficial ownership information more transparent by having a national centralized registry for holding beneficial ownership information on all legal vehicles and persons established in accordance with agreed international standards.

While it would be ideal to have an online international registry of all public procurement over a certain threshold with publication of contracts, this will be logistically difficult to achieve. However, existing standards, for example from the Open Government Partnership and Open Contracting Partnership, are good examples of frameworks to rely on. Public access may create a deterrent effect in addition to allowing more actors to verify information. For example, if access is public and in open data format, not only authorities and regulated entities subject to anti-money laundering provisions could verify it, but also civil society organizations, investigative journalists and other businessmen”²².



²¹*Chapter 9: Beneficial ownership Transparency, the World Bank,

[<https://thedocs.worldbank.org/en/doc/734641611672284678-0090022021/original/BeneficialOwnershipTransparency.pdf>]

²²* Beneficial ownership and open contracting, Open Contracting Partnership,

[<https://www.open-contracting.org/what-is-open-contracting/beneficial-ownership/>]

COUNTRY ANALYSIS: LEBANON

Lebanon and International Standards

Lebanon is a member of the MENA FATF; the regional FATF organization. Consequently, Lebanon is seeking compliance with the FATF Recommendations, particularly Recommendations No. 24 and 25 addressing BOT of Legal Persons and Arrangements. Indeed, the last evaluation for Lebanon by the FATF was in 2009 and the next evaluation is set to be in July 2022.

The Lebanese beneficial ownership legal framework has undergone remarkable milestones as per beneficial ownership since 2009.

Lebanon has not, to this day, implemented a law regulating solely beneficial ownership. Indeed, the concept of beneficial ownership was first introduced in the Lebanese legal framework in 2001 through Law No.318/2001 "Fighting Money Laundering". A Central Bank Circular (83/2001) attaching "Regulations on the Control of Financial and Banking Operations for Fighting Money Laundering and Terrorist Financing", pursuant to Law No. 318/2001, subsequently introduced for the first time a definition to beneficial ownership.

Other legislations were introduced over the years but in a similar way to the above-mentioned legislations, these laws covered specific sectors and did not consolidate requirements related to beneficial ownership to all legal persons or arrangements in one law or circular. Nevertheless, these laws and decrees contributed to the development of the beneficial ownership concept in diverse sectors.

For instance, the adoption of Law No.44/2015 together with the Special Investigation Commission (SIC) Circular "Defining and Identifying the Beneficial Owner" No. 24/2018, initiated the legislative work for a clearer definition and implementation of beneficial ownership. This law is of high importance considering that it contributed to incriminating tax evasion by including this crime in its first article as part of the crimes that can be a source of money laundering. Tax evasion has been defined exhaustively by virtue of article 57 of the Budget Law No. 144 dated 31/07/2019 and introduced among the definitions of the Code of Tax Procedures (Law No. 44 dated 11/11/2008 and its amendments). Tax evasion has in short been defined as knowingly and intentionally refraining from declaring and/or paying the taxes and duties due to the State and payable on the income or on the fortune, and/or refraining from paying or remitting the taxes a person has the obligation to withhold at source, and/or declaring lower taxes or withdrawing the declaration and payment in an illegal manner by the use of illegitimate means, which includes but is not limited to:

- To conceal income subject to tax.
- To register fictitious financial obligations contrary to their actual purpose.
- To register false documents or fictitious charges or hold a double accountancy.
- To knowingly destroy accounting documents before the prescription date imposed by the law.

- To refrain from issuing invoices in accordance with the regulations in force, or from declaring its employees, or from allowing the beneficial owners to be identified.
- To refrain from declaring the imports and exports at their actual value.

Lebanon has indeed included some of the main international standards in its legislation through laws, decrees, and circulars.

1) A clear definition of Beneficial Ownership:

The Central Bank Circular No. 83/2001 introduced, for the first time, a definition of beneficial ownership which fits the standards and conditions that were later adopted at an international scale.

This definition has subsequently been adopted by Law No. 106/2018 amending the Tax Procedures Law and the SIC Circular No. 24/2018, hence excluding all potential perplexity pertaining to the existence of several definitions. In addition, the definitions adopted were all compliant with FATF international guidelines as per the definition of beneficial ownership.

Furthermore, explanatory regulations have been introduced such as the Ministry of Finance Decision No. 1472/1 of September 2018, which adopted a similar definition and set up guidelines as per the mechanism of declaration.

All the above mentioned has made Lebanon a country where the declaration of beneficial owners should in principle be a rather easy and clear process. This should contribute to the exclusion of probable alibis or pretexts that taxpayers could set forth.

2) Adequate collection of information and effective control

Considering that Lebanon has adopted the approach according to which it would implement beneficial ownership requirements through diverse laws, and that no law regulates all beneficial ownership requirements that would apply to all entities, the Lebanese legal framework regulating beneficial ownership has implemented diverse control mechanisms pertaining to each sector.

This has started with Law No.44/2015 in a rather indirect way. Indeed, this law introduced an obligation upon Banks and Financial Institutions (as well as financial leasing companies, institutions that issue and promote credit or debit cards, institutions that handle cash transfers electronically, financial intermediaries and collective investment organizations and any other institutions that are subject to licensing from the Central Bank) to ensure that the beneficial owner of their client is identified and take necessary steps to verify their identity based on documents, information, or trusted data. This obligation also applies on institutions that are not subject to the "Banking Secrecy Law" such as insurance companies, gambling clubs, property traders and brokers, traders of high value products, and in specified cases, notaries, certified public accountants, and lawyers. By introducing such provisions, this law was the first legislative tool designating diverse sources as responsible for ensuring that the declaration of beneficial ownership information takes place and for verifying the authenticity of the declared beneficial owners at the same time. . (This Law goes further by prosecuting the above-mentioned "authorities" in case the beneficial ownership declaration has not been properly respected as will be detailed below). Furthermore, Law No.44/2015

expanded the powers of the SIC (which was established by Law No. 318/2001 as the Lebanese Financial Intelligence Unit) by including in its mission the duty to ensure the proper verification of the information collected by banks and financial institutions with regards to, inter alia, beneficial ownership, giving it thus a judicial nature.

Furthermore, the Central Bank Circular No. 83/2001 stipulates that banks and financial institutions are required to keep a copy of the statement identifying the beneficial owner of their customers in addition to all related documents for at least five years after closing the account or ending the business relationship, making Lebanon compliant with the minimum requirement set out by the FATF Interpretive Note on Recommendation 24.

In addition, the Lebanese Commercial Law has recently included beneficial ownership declaration. Indeed, upon incorporation, all companies whose headquarter is in Lebanon must disclose the identity of the beneficial owners of its shareholders when submitting the documents for registration²³. Moreover, companies registered before the implementation of such requirement are not exempt from such obligation considering that the registrars of the commercial registries in both Beirut and Baabda have begun requiring from companies, upon registration of the yearly general assembly's meeting minutes at the registry, the declaration of the beneficial owners²⁴. Both requirements could be regarded as a way of enforcing the declaration of beneficial owners in the corporate sector, notably considering that, according to article 33 of the Lebanese Commercial Law,

the commercial registrar's employees are entitled to refuse the registration of any documentation presented at the registry in case it is not compliant with the legal requirements which include the declaration of all beneficial owners.

Other authorities participate in limiting tax evasion on a wider scale. This has been possible given that Law No.106/2018 has foreseen the obligation of beneficial ownership declaration along with an effective implementation mechanism. Indeed, all taxpayers (individuals and legal persons) have the obligation to hold information on beneficial ownership in private registries. Moreover, legal persons must annually declare to the Tax Department at the Ministry of Finance any change pertaining to their beneficial ownership information. Furthermore, the Tax Department is entitled to compel all taxpayers to submit information pertaining to the beneficial owners of their activities (article 37, paragraph c and article 44). In addition, Law No. 2016/2018 goes further by obliging tax authorities to apply due diligence measures on information pertaining to beneficial owners in the course of their mission. These authorities even have the right to enter the taxpayer's place of business operations or the place where the accounting documents are kept in coordination with the taxpayer. This law goes further by including a provision according to which tax authorities have the right to request data, in writing, from any person who has information that could benefit the auditing process within a time limit specified by these authorities, including information related to the identity of beneficial owners.

²³* This was introduced in 2019 by article 26 of the Lebanese Commercial Law as modified by Law No.126/2019.

²⁴* Registrars have started requiring such declaration after the implementation of the Law No.126/2019. Indeed, when companies register their yearly minutes of meetings at the commercial registry, they must present either a written letter duly signed by the Chairman of the Board or by the General Director assigned as an authorized signatory, stating the beneficial owners of the shares of the company; or introduce a table in the attendance sheet, signed by the shareholders and members of the office (Bureau) of the Assembly, including the names of the beneficial owners.

It is important to mention, that existing tools in the Lebanese legislation that help to combat fictive transactions notably between connected persons as well as combat tax optimization which has one and only purpose: evade tax burden in accordance with the provisions of article 10 of the Code of Tax Procedures (Law No 44 dated 11/11/2008) and articles 11 to 13 of the implementation decree No 2488 dated 03/07/2009.

3) Establishment of a Beneficial Ownership Public Registry

In Lebanon, a general beneficial ownership registry has not, to this day, been established. Some diverse regulations have enshrined registries pertaining to beneficial ownership, and access to such registries varies depending on each law.

For instance, the Lebanese Commercial Law as well the commercial practice have made it mandatory for companies to declare the beneficial owners upon incorporation and registration of the yearly general assembly's meeting minutes. Such data is indeed preserved in the commercial registry. The Commercial Law does not stipulate an obligation to declare any amendment with regards to companies' BOs immediately.

However, considering that the obligation to register the minutes of meetings has become a yearly obligation as of 2019, the law would be indirectly ensuring an updated record of the companies' beneficial owners in the commercial registry.

Therefore, access to the "Beneficial Ownership Registry" in this case falls under regulations related to the commercial registry in general and such access is in principle updated and free of charge as the commercial registry's website is in principle accessible to all²⁵.

Supposing this registry is functional, the register is merely a static electronic register and not digitized, in other words, the register does not provide the option for searching for linkages between chain of ownerships in a direct way, which in turn requires a massive amount of time to be able to search each company on its own and then link these companies together. This can be considered as intentional obstacle facing that undermines the object and purpose of having a public commercial register in addition to public beneficial ownership information. In any case, tax authorities should be able to compare registries, to ensure the adequate and correct declaration of beneficial ownership information in the tax registries and thus contribute to the prevention of financial crimes.

Such control may not be as effective and advantageous as it may seem considering that no definition of beneficial ownership has been, to this day, included in the Lebanese commercial law.

This legal deficiency has indeed led to the fact that the presidents of the courts of first instance of Beirut and Baabda in charge of the commercial register imposed the declaration of beneficial ownership of "any

^{25*} Below is the Commercial Registry's website. It is worth mentioning that the website is not always functional: <http://cr.justice.gov.lb/books/books.aspx>

share or stock", regardless of the percentage held or the notion of "control" found in most existing international and internal legislation. Therefore, any control executed and based on the commercial registry's information is likely to be erroneous. Moreover, the obligation to register on a yearly basis is not as efficient as one could think, notably with regards to any amendment in the companies' beneficial owners. Indeed, companies could fail to abide by such obligation for numerous years and continue to normally carry out their activity considering that the only sanction applicable in this case is a fine²⁶. In addition, the commercial registry's website is not always accessible as it is not consistently functional.

In addition, the public remains incapable of accessing all information pertaining to beneficial ownership in other fields.

Indeed, Decision No. 1472/1 dated 27/9/2018 has set forth an obligation to keep all information related to the beneficial ownership in a private registry. Such registry remains closed to the public. This has also been enshrined in other laws and decrees such as Law No. 106/2018.

In all cases, tax legislation has made it compulsory for taxpayers to ensure full unlimited access to the relevant tax authorities to several registries, nonetheless, the public is still excluded from full disclosure.

4) Implementation of an effective sanction regime:

The enactment of sanctions is considered as the most effective tool ensuring implementation of and compliance with

legal provisions. Thus, the efficiency of any legal framework principally depends on (i) the existence of fines and/or criminal sanctions and (ii) their effective enforcement.

The Lebanese framework contains diverse sanctions pertaining to the violation of beneficial ownership regime, given that no law has regulated beneficial ownership for all sectors.

For instance, article 9 of Law No. 106/2018 has introduced penalties when failing to provide or providing false information regarding BO as follows:

- 1) A shareholder or Partner in a Joint Stock Company who withholds correct information on the beneficial owner's contribution in the company shall be fined with an amount equivalent to 100% of their shares in addition to other penalties.
- 2) A partner in a Persons Company/Partnership or owner at an Individual Institution, who withholds information from the company itself on their beneficial owner shall be fined with an amount equivalent to 100% of the taxes due on their shares.
- 3) Any person who fails to declare information related to beneficial owners when submitting the required forms, or fails to inform the Tax Department that a Partner or a Shareholder abstained from providing information on the beneficial owners of their activities in the annual tax declaration shall be fined as follows:

²⁶* According to article 102 of the Lebanese Commercial Law, the said fine amounts to 100,000 LBP per document for every year.

- For Joint Stock Companies: 2,000,000 LBP (\$1,333 USD in accordance with the official exchange rate);
- For Persons and Limited Liability Companies and Entities Exempted from Taxes: 1,000,000 LBP (\$666 USD in accordance with the official exchange rate);
- For Individuals and Other Taxpayers: 500,000 LBP (\$333 USD in accordance with the official exchange rate).

Despite the existence of penalties in this law, some of them might be considered as negligible today due to the inflation Lebanon is undergoing. Sanctions might therefore not be considered as effective as initially aimed.

In addition, articles 3, 4 and 5 of Law No. 44/2015 provide that if banks, financial institutions and all other entities addressed in articles 4 and 5 commit, attempt to commit, incite, facilitate, interfere, participate or if they are accomplices of money laundering and/or terrorism financing crime, they can be prosecuted for their activities. The violation of their obligations pertaining to beneficial ownership as foreseen in the law, might lead to criminal charges under money laundering and/or terrorism financing activities.

The FATF Interpretive Notes on Recommendation 24 requires that there should be explicit responsibility of natural and legal persons and be subject to liability and effective, proportionate, and dissuasive sanctions when noncompliant with beneficial ownership requirements. Therefore, the sanction mechanism Lebanon could be interpreted as not sufficient to place the country in a compliant position with the FATF Recommendations.



KEY RECOMMENDATIONS FOR BETTER LEGISLATION CONCERNING BENEFICIAL OWNERSHIP

In order to comply with international standards and better use beneficial ownership information to fight tax evasion, we give the following recommendations:

- Adopt a National Centralized Public Registry for Beneficial Ownership Information (one of the key international standards for beneficial ownership efficiency is the public registry). The Lebanese legislative authority has neither committed to an accessible public registry in the regulated fields with regards to beneficial ownership nor consolidated or included the rules applicable to beneficial ownership in all sectors. For example, while some countries have already included provisions in their Public Procurement laws relating to the beneficial owners of the companies contracted by the government, Lebanon failed to include such provisions in its recently promulgated Public Procurement Law No. 244/2021. Indeed, corruption schemes, including tax evasion, often take place in public procurement transactions, considering that it can be difficult to track down the real identity of the winner of the bid (i.e. the beneficial owner of the winning entity). Moreover, having a public centralized registry aids in revealing any false declarations or inconsistencies by not only governmental authorities but also the civil society organizations and the public.

- A deterrent sanction regime such as large fines (substantial enough to change the incentives) and/or criminal/contractual sanctions (removal license to operate, ban on the participation to public bids and tenders) should apply to strengthen and secure the enforcement of the provisions of the law. Indeed, Lebanese laws for beneficial ownership place a fine for non-compliance, however, the economic collapse of the country has turned these fines into mediocre amounts for large companies. As mentioned before, if the financial fines are not high enough, actors may consider it cheaper to pay the penalty rather than to file correct information.

In addition to monetary sanctions, criminal sanctions as well as other sanctions to encourage compliance should be considered involving losing the rights that were intended to be acquired by setting up a legal vehicle and benefiting from limited liability. Additional measures may consist in delisting the entities from entitled companies for bidding and tendering (making companies registered without publicly available beneficial ownership information, notably for those registered in tax havens, ineligible for tendering) as well as providing a “constitutive effect” to the beneficial ownership registration.

The rights and obligations would exclusively depend on being mentioned in the register. A person who does not appear in the register would have no rights to dividends or to voting, and any corporate decision undertaken by them could be

nullified disregarding any secret agreement. Hence, real beneficial owners may be deterred from using nominees.

Criminal investigations and prosecutions should also replace the procedure adopted by tax authorities in the tax issues in connection with public procurement and “ghost beneficiaries”²⁷. Such sanctions would circumvent the practices of bribery and tax evasion and force the concerned contracting party to disclose the beneficiaries of the bribes. The burden of proof would be on the payer to provide a trail tracing the funds back to their source that can demonstrate their legitimacy. Otherwise, the concerned contractor or supplier will be banned and forbidden to participate to any public tender. It goes without saying that such hard sanctions and coercive measures will contribute to create a deterrent factor for those national or foreigners who intend to adopt such unlawful arrangements and pay bribes as regards to public procurement.



^{27*} i.e., the hidden distributions registered as such in the companies' books and registers which correspond actually to bribes and kickbacks paid to intermediaries acting on behalf of influential public servants or corrupt public officials. Those payments are usually challenged by the tax authorities who instead of investigating and prosecuting just deal with these infractions and infringements by adding back those amounts to taxable income and applying additional tax on distributions. However, the whole criminal circuit remains hidden. In order to circumvent those practices and curb corruption both Tax and Contracting Authorities could refuse to accept those “arrangements” and force the concerned contracting party to disclose the beneficiaries of such payments.