

BANKING SECRECY AND THE VERIFICATION OF BENEFICIAL OWNERSHIP INFORMATION

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CENTER FOR INTERNATIONAL
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Author:

Mazen Halawi
Attorney at Law

Reviewed by:

Mohammad Almoghabat
Senior Legal Consultant at Transparency International – Lebanon

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Introduction

What is Beneficial Ownership?

The Financial Action Task Force defines the beneficial owner 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 natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate beneficial owner (UBO), and more than one natural person can be the UBO of a given legal person or arrangement.

The provided definition incorporates three main components of beneficial ownership, which are:

1. The beneficial owner must be a natural person.
2. Beneficial ownership should cover both ownership and control interests.
3. Beneficial ownership should encompass both indirect and direct interests¹.

What is Banking Secrecy?

In General, banking secrecy is the agreement between a bank and its customer for privacy and confidentiality of all information related to the banking relationship.

Banking Secrecy laws around the world were mostly put in place long time ago when international banking, cooperation and financial crimes regulations were not widespread or developed, those laws are usually deeply rooted within the countries' regulations and their social and corporate ecosystem.

Regulatory environment in Lebanon

The Banking Secrecy Law of September 3rd 1956 established the professional secrecy on banks established in Lebanon and on banks that operate as branches of foreign companies.

The Law stipulates that the managers and employees of the banks, and any person who, owing to his/her capacity or position, has access by any means to the banks' books, operations and correspondence, are absolutely bound by banking secrecy in the interest of the clients of the said banks. These persons may not disclose any information known to them about the clients' names, funds, or personal matters to any party, be it an individual or a public authority, whether administrative, military or judicial, except when authorized in writing by the concerned client, his/her heirs or legatees, or in case the client is declared bankrupt, or there is a lawsuit involving banks and their clients over banking operations.

¹ Low, P and Kiepe, T. Beneficial Ownership in Law: Definitions and thresholds. Open Ownership. 2020. p. 6

Exceptions to the Banking Secrecy Law in Lebanon

- i. Exceptions related to requests from judicial authorities in relation to illicit enrichment lawsuits;
- ii. Exceptions related to the “Special Investigation Commission” created by Law No. 318/2001 amended by Law No. 44/2015 (Fighting Money Laundering and Terrorist Financing).

Banking Secrecy stands as an obstacle to an efficient verification of Beneficial Ownership information

The verification process of Beneficial Ownership information is, according to Open Ownership, “the combination of checks and processes to ensure that BO data is of high quality”². Verification of information serves as a crucial tool to maximize the efficiency of BO registers, at the point of and following submission, which leads in turn to a realistic representation of the owner(s)/controller(s) of a certain company³.

Without a doubt the banking secrecy, along with all its privacy, safety and confidentiality benefits to account holders, comes also with a big role and benefits to those who want to conceal their illicit proceeds, layer their transactions and hide their identity from relevant authorities.

While disclosure of Beneficial Ownership information have come a long way in making it harder to hide real ownership of assets, however the disclosure of such information should not be kept in banks files, as it will not be fully beneficial and effective unless systematically done towards the right parties at the right time, such as creating a Digital National Beneficial Ownership Information Registry (NBOIR), and allowing the auto-exchange of such information between relevant parties under a governing supervisory body for the purpose of comparison and verification.

² Open Ownership. Guide to implementing beneficial ownership transparency - Verification of beneficial ownership data. <https://www.openownership.org/en/publications/guide-to-implementing-beneficial-ownership-transparency/data-considerations-for-beneficial-ownership-registers/>

³ Ibid.

Example: A company may disclose its beneficial owners to the commercial registry (based on ministry of finance decisions 1472/2018⁴ and 2045/2018⁵) and to disclose other beneficial owners to bank A and then opens another account at bank B and discloses other beneficial owners as well, and all 3 parties have limited ability to check each other's received disclosures, knowing that ministry of finance will tax based on the form presented to the commercial registry and not the information available at banks which in most cases is more reliable since it supposed to be based on enhanced due diligence exercise by banks (based on BDL Basic Circular No. 83 "Addressed to Banks and Financial Institutions"⁶, and SIC Circular No. 5 "Addressed to External Auditors" amended by Circular No. 12⁷).

In this case the banks should be able to share the result of its own due diligence on beneficial ownership information to the commercial registry for automatic amendments.

Lifting Banking Secrecy facilitate efficient verification of Beneficial Ownership information and to what entities should it be lifted

While lifting the banking secrecy will have an impact on the deeply rooted sense of banking privacy in Lebanon, it will also surely enable concerned parties and regulators to easily and efficiently obtain and analyze information and match it with the NBOIR along with comparing information from different banks.

Several government bodies should have the ability to access the banks data when this data helps in detecting criminal activities, mainly ministry of finance/tax authorities, ministry of justice/commercial registry, court of audit, in addition to expanding automatic exchange to the Special Investigation Commission and the NBOIR that should be established.

⁴ The Lebanese Association for Taxpayers' Rights. MoF Decision No. 1472/1 Dated September 27, 2018 With Respect to the Mechanism of Defining the "Beneficial Owner" (Law No 74/2016). <https://www.aldic.net/mof-decision-no-14721-dated-september-27-2018-with-respect-to-the-mechanism-of-defining-the-beneficial-owner-law-no-742016/>

⁵ The Lebanese Association for Taxpayers' Rights. Decision No. 2045/1 dated 31/12/2018 relating to the new Forms applicable to the "beneficial owners". <https://www.aldic.net/decision-no-20451-dated-31122018-relating-to-the-new-forms-applicable-to-the-beneficial-owners/>

⁶ Banque Du Liban. Basic Circular No. 83 "Addressed to Banks and Financial Institutions". <https://www.bdl.gov.lb/circulars/download/3/en>

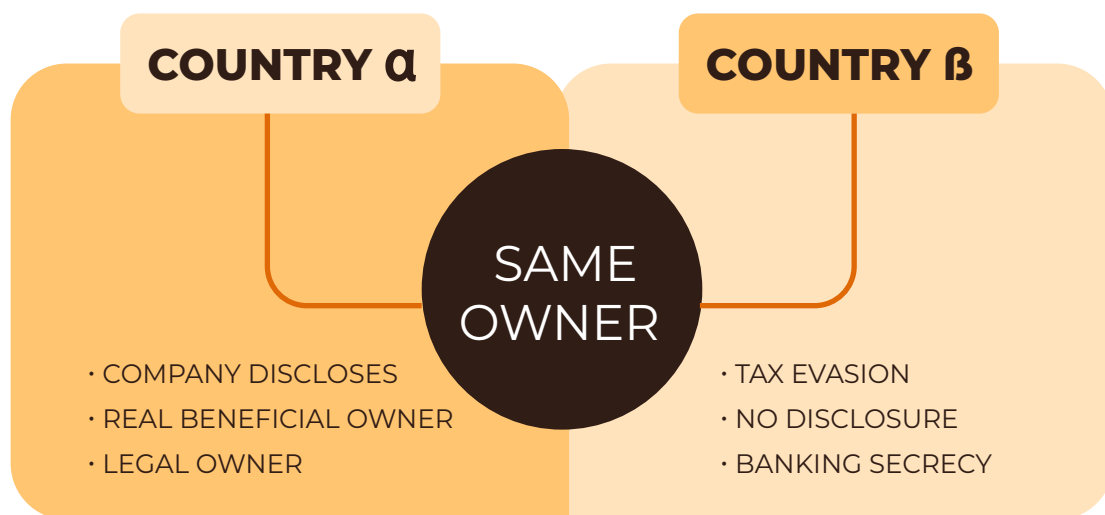
⁷ Special Investigation Commission. Circular 5 amended by Circular 12 "Addressed to External Auditors". <https://sic.gov.lb/sites/default/files/laws-regulations/SIC%20Circular%205%20amended%20by%20SIC%20Circular%2012%20En.pdf>

Impact of efficient verification processes of Beneficial Ownership information on:

Tax evasion

Beneficial Ownership information assists tax authorities in linking funds to their real owners and consequently tax them based on local tax regulations.

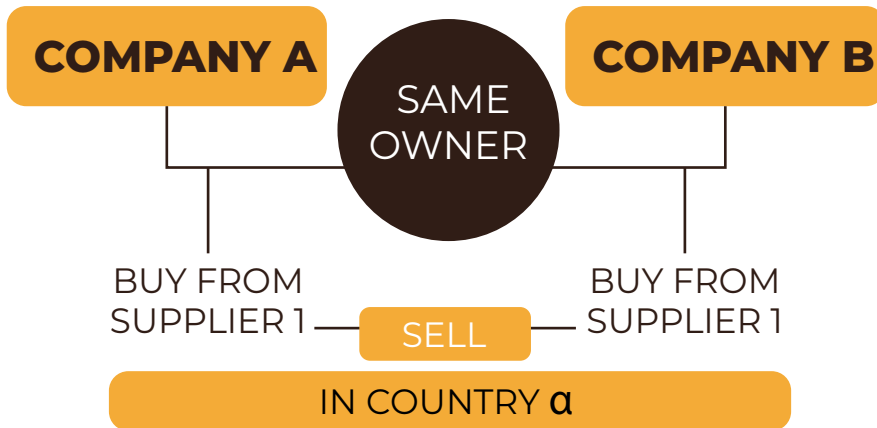
Example: a domiciliary company established in country α has a legal owner resident in country α and a beneficial owner resident in country β , so the company discloses to the commercial registry that the real beneficial owner is the legal owner himself and the company account will not be shared based on CRS (Common Reporting Standards) to country β , the banking secrecy here will help the real BO in evading his taxes in country β , any exchange of information between the bank and other parties might expose the real beneficial owner from hiding.



Competition

Regulating anti-competitive market practices is destined to promote general welfare and consumer protection, companies evade these regulations by creating companies and hiding the real beneficial owner, disclosing the real ownership will limit these practices to a large extent.

Example: a company A owned by X, has an agency agreement with Supplier 1, under the agency agreement company A can buy a specific quantity of products to be sold in country α , so X goes and establishes company B using front names in order to be able to obtain additional products from Supplier 1 to sell them in country α .



Public procurement

Public procurement encompasses many inherent risks that endangers the loss of public funds, among these risks, corruption and conflict of interest, and the best way to decrease and control these risks is transparency, hidden beneficial ownership information jeopardizes transparency and facilitates corruption.

Example: the son of a Lebanese politician established a company using his friend’s name who does not disclose the real BO, the company facilitate banknote printing agreement for the central bank and gets a hefty commission, the politician used his power to make the central bank officials choose his son’s company when documents do not show the link, the bank through the due diligence will surely discover the real BO and should be able to disclose this information to competent authorities, even without having doubt of corruption, since this doubt is already covered by reporting the case to the SIC under Law No. 44/2015.

HIDDEN BENEFICIAL OWNERSHIP INFORMATION
Established a company using another name
No disclosure or real BO
Facilitation of banknote agreement
Hefty commission

Corruption crimes within the public sector

One of the major risks in public sector is corruption; Corruption, which can be identified, according to Transparency International, as “the abuse of entrusted power for private gain”⁸, is attracting a lot of attention around the world due to the huge losses of public funds that may cripple economies and the impoverish people, nearly all of corruption crimes are based on anonymity and using front persons to acquire the ill gained funds, consequently, and in addition to other related laws and regulations, transparency and disclosure of beneficial ownership information will further impede these practices.

Corruption crimes in Lebanon are so diverse that we have hundreds of examples, and it is known that corruption proceeds do not go directly to the UBO, but go through hidden channels before getting to him in order to use the illegitimate funds, therefore at any of these channels the real BO should be disclosed in order to identity the relationships and the real BO.

Conclusion

Since most of the proceeds of financial crimes pass by and/or end up in the financial system, where criminals conceal, move and spend money, public private partnership is considered of utmost necessity to enhance intelligence, investigation, and prosecution to fight financial crimes.

Personal information and data of criminal convictions can be processed to generate a central view of behavior to help banks and authorities remain one step ahead of sophisticated criminals, while privacy of information is sacred for good citizens, however, regulations must be put in place in order to decrease its abuse by criminals.

Recommendations

1. The amendment of the Banking Secrecy Law to allow for the establishment of an Automatic Exchange of Banking Information between Banks and Competent Authorities.
2. The establishment of a Digital Automatic Exchange of Banking Information System.
3. The specification of safeguards needed to ensure that the lifting of the secrecy and the establishment of the Automatic Exchange System are not abused for personal/political gains by employees at competent authorities and politicians that could gain access to such information (Minister of Finance as an example...).

⁸ Transparency International. What is Corruption? <https://www.transparency.org/en/what-is-corruption>