



BENEFICIAL OWNERSHIP AND ILLICIT ENRICHMENT IN LEBANON: HOW DOES THE FORMER UNCOVER THE LATTER?



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Introduction

It took authorities two-and-a-half years to build enough evidence of embezzlement against former Kazakh banker Mukhtar Ablyazov¹, who had used a chain of eight companies to hide his crimes².

The call for fighting corruption and revealing the true identities of criminals employ a range of techniques and mechanisms to obscure their ownership and control of illicitly obtained assets. Identifying the true beneficial owner(s) or individual(s) exercising control represents a significant challenge for prosecutors, law enforcement agencies, and intelligence practitioners across the globe. Schemes designed to obscure beneficial ownership often employ a “hide-in-plain sight” strategy, leveraging global trade and commerce infrastructures to appear legitimate.

However, visibility does not equate to transparency, and many of the tools that were designed to encourage business growth and development, such as limited liability corporations and nominee directorship services, can be used to facilitate money laundering, tax evasion, and corruption. The globalization of trade and communications has only increased this threat, and countries now face the challenge of enforcing national laws in a borderless commercial environment.

¹ Rupert Neate, “Arrest warrant for Kazakh billionaire accused of one of world’s biggest frauds” (The Guardian, 16 Feb. 2012), <https://theguardian.com/business/2012/feb/16/arrest-warrant-kazakh-billionaire-mukhtar-ablyazov>.

² Anti-Corruption Initiatives, Beneficial Ownership, Open Government Partnership, Global Report, DEMOCRACY BEYOND THE BALLOT BOX, p.3, https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf

The Relation Between Beneficial Ownership and Illicit Enrichment

I. Definition of Beneficial Owner and International Standards:

“Beneficial Owner” is a term used to refer to an individual who literally owns or oversees a certain commercial establishment or company or any other asset. In other words, this person actually reaps the material harvest and profits made by the asset in place. The supervisory role can be realized directly or indirectly, such as via professional intermediaries, nominees, or through other contractual agreements. Such control can be implemented in several manners: for example, by holding a legal ownership interest or a significant percentage of voting rights, by having the ability to name or remove the members of an entity’s board of directors, or by holding negotiable shares or a convertible stock³.

The FATF standards define “beneficial owner” as the “natural person(s) who ultimately own(s) or control(s) 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”⁴.

According to the Lebanese legislation, the beneficial owner is every natural person, whatever his place of residence, who actually owns or controls, in the final outcome (ultimately) directly or indirectly, the activity that is carried out by any other natural or legal person on the Lebanese territories.

Circular No. 24/2018 issued by the SIC⁵ stipulates that a beneficial owner of a legal entity should be identified through reasonable measures as follows:

- i. Natural persons holding 20% of the legal person’s capital, whether directly or indirectly,
- ii. When the conditions in (i) are uncertain, beneficial owners can be identified by identifying the person who exercises control through holding the majority of voting rights, or the rights to appoint or dismiss the majority of an administrative or regulatory body of the given legal entity,
- iii. When the conditions in (i) and (ii) are uncertain, beneficial owners can be identified by implementing reasonable measures to verify the identity of the persons holding senior management positions.

³ Key Instruments in Fighting Corruption, Part II, Beneficial Ownership Transparency, <https://thedocs.worldbank.org/en/doc/734641611672284678-0090022021/original/BeneficialOwnershipTransparency.pdf>

⁴ Concealment of Beneficial Ownership July 2018, p.16, <https://www.fatf-gafi.org/media/fatf/documents/reports/fatf-egmont-concealment-beneficial-ownership.pdf>

⁵ Circular No.24/2018-Defining and Identifying the “Beneficial Owner”. Special Investigation Commission, www.sic.gov.lb/sites/default/files/laws-regulations/24EN_0.pdf.

Distinguishing between the beneficial owner and legal owner

While a beneficial owner is described as an individual controlling the assets held by a company, the legal owner is the person (or corporate structure) that holds the legal title. In a majority of cases, the beneficial owner and the holder of the legal title of a company are the same – if the legal owner is holding the title on his/her own behalf. In illicit practices, where there is an intention to hide the identity of the true owner of the asset, the legal owner whose name appears in a company registry, land cadastre, or bank account will be different from the beneficial owner. For instance, in the case of complex and opaque corporate structures, the legal owners are often companies or individuals with little actual control. **In these cases, a whole chain of legal owners might obscure the beneficial owner, i.e., the individual at the end of the chain with ultimate control.**

Common techniques to separate legal and beneficial ownership in order to conceal the identity of the beneficial owner include, inter alia, use of complex, cross-border ownership chains and control structures, use of informal nominees (straw men) as company directors or shareholders, and use of professional intermediaries for company administration, to name a few.

II. How can Beneficial Ownership Transparency uncover illicit enrichment?

Beneficial ownership transparency has emerged as an essential means for combating corruption, stemming illicit financial flows, and fighting tax evasion. In response, governments as diverse as Denmark, Kenya, Nigeria, and the United Kingdom have committed to publish beneficial ownership information. Compared to the larger OGP membership, however, still very few have made commitments to date⁶. Beneficial ownership transparency must not focus solely on companies which are just one of many types of legal vehicles that criminals can use to hide illicit funds and evade taxes.

Moving forward, there are four key issues to be addressed by new beneficial ownership commitments:

- Firming up the disclosure necessities and underpinning fundamental legal and regulatory requirements for revelation of diverse sorts of ownership across numerous legal vehicles, as this is vital to more effective and transparent procedures.
- Enhancing the interoperability of data by applying common standards, such as the “Beneficial Ownership Data Standard”. This is usually implemented by connecting ownership information with other policy areas in order to trace money and possessions across sectors and jurisdictions.
- Validating registered information whereby open beneficial ownership data, coupled with strong authentication systems, ensure that the figures are precise and consistent.
- Involving citizens in monitoring and accountability through informal and formal channels to ultimately enable them to actively use ownership data to expose networks of corruption.

When paired with effective disclosure systems (asset declarations and beneficial ownership disclosure), illicit enrichment laws can be a powerful tool to spot and seize inexplicable affluence. In financial centers, this tool can be useful to law enforcement, journalists, and NGOs in exposing foreign public officials (politically exposed persons) seeking to conceal, capitalize, and relish illicitly attained wealth abroad⁷.

Beneficial ownership transparency has played an important role in the successful use of a recently introduced illicit enrichment tool in the UK. **Unexplained Wealth Orders (UWOs)**⁸ allow law enforcement to compel individuals suspected of having committed a crime, or politically exposed persons (PEPs) with assets valued over £50,000 that are disproportionate to their income, to explain the source of the wealth, and to seize the assets if no reasonable explanation is provided.

⁶ Anti-Corruption Initiatives, Beneficial Ownership, Open Government Partnership, Global Report, DEMOCRACY BEYOND THE BALLOT BOX, p.1, https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf.

⁷ Key Instruments in Fighting Corruption, Part II, Beneficial Ownership Transparency, p.253, <https://thedocs.worldbank.org/en/doc/734641611672284678-0090022021/original/BeneficialOwnershipTransparency.pdf>

⁸ For more background on Unexplained Wealth Orders see: <https://star.worldbank.org/content/star-newsletter-january2019#spotlight>.

“In the first use of a UWO, law enforcement used the UK’s company register to establish that the wife of a jailed Azeri banker had been the beneficial owner of a UK company for one day in 2016. They subsequently used a UWO to investigate the assets and require information from the owner. The company’s assets, valued at £10.5 million, were subsequently seized by UK authorities”⁹.

Beneficial ownership transparency also helps detect and avert conflicts of interest.

In 2019, Czech activists used the Slovakian beneficial ownership register to establish that the Prime Minister was the beneficial owner of a company getting European Union grants. This is now under inquiry by the European Commission for latent conflict of interest.

Beneficial Ownership Registers thus play a significant role in the surveillance of public bidding to thwart self-serving by politically associated persons.

III. Country Analysis: Lebanon

In the event of indicting someone with the commitment of an illicit enrichment crime, the past Lebanese legislation numerated 154, dated 27/12/1999, required a conviction with a principal crime, which rendered the prosecution of illicit enrichment quasi impossible.

Around 20 years later, and by virtue of the “Law on Asset and Interests Disclosure and the Punishment of Illicit Enrichment” No. 189, dated 16/10/2020, illicit enrichment eventually stands as an independent crime, subject to effective prosecution and trial.

It has become associated to the public officials’ considerable and unjustifiable increase in wealth as compared to their legitimate financial resources. Such lack of explanation is considered one of the elements of the crime as per Article 10 of the aforementioned law. Moreover, every public official is currently obligated to submit the disclosure form to the concerned and competent authority, which is the National Anti-Corruption Commission, except for those public officials of rank No. 4 or less or its equivalent, as long as they are not entrusted with duties of a higher rank, as well as members of the educational commission at the Lebanese University and the public schools and institutions¹⁰.

⁹ Key Instruments in Fighting Corruption, Part II, Beneficial Ownership Transparency, p.254, <https://thedocs.worldbank.org/en/doc/734641611672284678-0090022021/original/BeneficialOwnershipTransparency.pdf>

¹⁰ Article 1, paragraph 2 of the Law on the Declaration of Patrimony and Interests and the Punishment of Illicit Enrichment 189, dated 16/10/2020.

Nevertheless, public officials at the Ministry of Finance, customs, and real estate registry, in addition to the President, members and employees of the administrative committees and independent and regulatory commissions established by laws are all bound to declare their patrimonies and assets, irrespective of their ranks and hierarchical positions¹¹.

Public officials under the obligation of declaration ought to include the following data in their disclosure form:

- A full inventory of the asset in Lebanon and abroad, of the concerned public official, as well as those of their spouse(s) and minor children;
- Interests of the concerned public official in Lebanon and abroad, as well as those of their spouse/s and minor children;
- All interests that result in any financial income from any source other than the public office, in addition to movable and immovable funds and the value of these incomes.

This means, for example:

- a. All activities and investments in any economic project (for example: partnership, quotas, stocks, bonds, investment portfolios of all kinds, any certificate, bond whose returns are linked to financial flows resulting from commercial bonds, securities, dividends, or bond interest; as well as all fiduciary interests.
- b. Positions, roles, jobs and memberships, whether by appointment or election, of any person:
 - i- Persons of public law (for example: membership of boards of directors of public institutions, oversight bodies, committees, and advisory positions in public administrations, including bodies regulated by laws, municipalities or their federations, departments, and elective councils).
 - ii- Persons of private law (for example: membership of boards of directors, companies, associations, parties, clubs, trade unions, and any conglomerate of local and/or foreign companies that won a contract of commitment or partnership between the public and private sectors.
 - iii- Any other interests that may fall within the scope of the permit, considering the declarant and declarants the owners of the direct right or the economic right.

¹¹ Article 1, paragraph 2 of the Law on the Declaration of Patrimony and Interests and the Punishment of Illicit Enrichment 189, dated 16/10/2020.

It is evident from the above that enforcing the duty of interest disclosure has become consolidated in the Lebanese legislation No. 189/2020, where such a declaration leverages the identification of the real beneficiary, and therefore contributes in revealing illegitimate excess of wealth in an attempt to hold the concerned persons accountable.

Tunisia is also another example of a country which enacted the Law No. /46/, dated 1/8/2018, related to declaring gains and interests and combatting unlawful enrichment and conflict of interests. This Law sets the criteria on how to prevent conflict of interests; i.e., a situation in which a person subject to the provisions of this Law and has a direct or indirect personal interest that he derives for himself or for others, affecting or likely to affect his objective, integrous and impartial performance of his professional duties¹².

Key Deductions

The Lebanese legal infrastructure offers a particularly permitting milieu for the implementation of beneficial ownership in the sphere of illicit enrichment. Yet, several recommendations rise to the surface in this regard:

- It is pivotal that the Lebanese authorities adopt a **National Centralized Public Registry for Beneficial Ownership Information** as per international standards. Albeit the fact that Lebanon has newly promulgated a law on Public Procurement No. 244, dated July 19th, 2021. The mentioned Law lacks provisions related to beneficial owners of companies contracted by the official procuring authorities, which is considered to be a good soil for illicit enrichment, as it is quite hard to track the true identity of the winner of the bid.
- Strengthening the enforcement of prevalent laws relays a powerful message to disclose the beneficiaries of the illicitly obtained wealth.
- Coupled with the above, high fines and criminal sanctions play an essential role in deterring others from hiding their real profiles and bringing manipulative arrangements to the table. Further measures may include depriving companies who fail to provide beneficial ownership information publicly from entitlement to tenders.
- CSOs, hand in hand with investigative journalists, should play a proactive role in monitoring proper implementation of the relevant mechanisms of beneficial ownership.

¹² Section 4 of Tunisian Law no. /46/, dated 1/8/2018.