

BENEFICIAL OWNERSHIP TRANSPARENCY IN GEORGIA AND VISEGRAD COUNTRIES



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INTRODUCTION

The right to property is a fundamentally important one, representing one of the cornerstones of any kind of economic relationship, attracting investments, and guaranteeing the further development of the economy in general. However, the right to property is not an absolute right. On the one hand, it is a bearer of broad public social responsibility, and on the other hand, the legal regime of property rights also equips the bearer of such a right with corresponding obligations. In particular, the latter must be governed by domestic as well as international law and fulfill its obligations to other economic entities, organizations, individuals, and the state.

A particularly important aspect of the legal regime of property rights is openness. Third parties and investors should have access to complete and accurate data on property, on the basis of which it would become possible to conclude transactions and take legal and economic action. One of the practical manifestations of the openness of property rights is the real estate register and the register of entrepreneurs and non-entrepreneurial legal entities, which are presumed to be complete and truthful, meaning the following for third parties: that the information in the registers is not only fully represented, but also reliable.

The right to property is closely linked with its origin. Purchases of real estate and movable property are often made with financial resources accumulated as a result of corruption and other criminal activities. It is important to have complete, accurate, and verifiable information about the origin of the property and the owner of the financial resources necessary to acquire ownership of the property.

In the 21st century, it has become a common practice to invest the money earned as a result of illegal activities in offshore companies, and subsequently to conduct financial activities through such companies. Information about the beneficial (final) owners of offshore companies is usually not available, which makes it impossible to verify the origin of both the actual owners of a company and the financial resources available to a specific company.

International organizations and various states are taking active steps to legally regulate the beneficial owners' openness standard; Develop practical guidelines to help stakeholders obtain information in an understandable language to identify beneficial owners; and create electronic solutions to address this challenge in the form of a register of beneficial owners.

The issue of the opacity of final ownership is particularly problematic in developing countries, where the rule of law is fragile and corruption is rampant. Georgia is no exception in this regard. In Georgia, transactions often involve companies registered in offshore zones and their Georgian-based branches and subsidiaries. This increases the likelihood of suspicious transactions that may be carried out using financial resources obtained as a result of corruption with the aim of laundering money, promoting terrorism, or other illegal activities.

Given the importance of the transparency for beneficial owners, the purpose of this study is to review the legal framework for accessing data on beneficial owners of companies in four countries: In Georgia and Central Europe - Poland, Slovakia, Hungary, and the Czech Republic. The legislation sets out the practice of accessing data on beneficial owners, the extent to which there is a common registry practice in these countries, and how often local activists and the private sector utilize such registries in their day-to-day operations. In each country, recommendations are made for the implementation and improvement of transparency standards for beneficial owners.

IDFI prepared this study together with partner organizations. From each country, representatives of the following NGOs were involved in writing a sub-chapter about their country: **KohoVolit.eu (Czech Republic and Slovakia)**, **K-Monitor Public Benefit Association (Hungary)** and **ePanstwo Foundation (Poland)**.

HUNGARY

EXECUTIVE SUMMARY¹

- ❖ In accordance with the EU'S anti-money laundering directive, the Hungarian Parliament has re-codified the Hungarian money laundering act (Act LIII of 2017 on the prevention and combating of money laundering and the financing of terrorism), in which the central register of the beneficial owners appeared as an item under Article 25.
- ❖ Hungary is one of the nine European Union member states that have failed to meet the January 2020 deadline for the introduction of centralized beneficial ownership registers that would make business entities' beneficial ownership publicly available.
- ❖ However, as of June 2021, another Act that actually creates the register and lays down detailed rules has just entered into force, and some of the rules will only go into force in 2022. Therefore, the evaluation of the application of the new rules is not yet timely.

¹ This chapter is prepared by IDFI partner organization, [K-Monitor Public Benefit Association](#) (Hungary). Authors: Tibor Racz and Orsolya Vincze



INTRODUCTION

Beneficial owner means the natural person who owns or controls at least twenty-five per cent of the shares or voting rights in a business association directly or indirectly. Where no natural person is identifiable, the person who ultimately owns or exerts control over a business association, senior managing official(s) should be considered as the beneficial owner(s).

Hungary is one of the nine European Union member states that have failed to meet the January 2020 deadline to introduce centralized beneficial ownership registers that make business entities' beneficial ownership publicly available. According to the watchdog Transparency International, Hungary, Italy, and Lithuania do not have any centralized register yet ²

According to the Fifth Money Anti-Money Laundering Directive – which has been transposed by the Hungarian legislation into a national law – beneficial ownership information should be stored in a central register, in full compliance with Union Law. Therefore, to fulfil that obligation, the service providers – financial institutions, insurance companies, lawyers, notaries, accountants, real estate agencies, etc. – shall identify the so-called beneficial owners of business associations' mandates, who may not be the same people within the company registry or any such database.

But formation houses and lawyers who are in the business of opening offshore bank accounts and shell and shelf companies in tax havens and money laundering haven jurisdictions started to tip off the beneficial owners who would like to hide their true identities behind corporate vehicles; it is not uncommon to find articles on the internet by lawyers explaining tricks they may use to avoid the identification of their customers.

² <https://www.transparency.org/en/news/eu-beneficial-ownership-registers-public-access-data-availability-progress-2021>



LEGISLATION

Hungary has adopted its AML/CFT Act in 2017³ in order to transpose the Fourth EU AML/CF EU Directive⁴ (However, the concept of 'beneficial ownership' had been introduced to the Hungarian legal system in the earlier AML/CF legislation – e.g. as public organizations could only contract 'transparent entities', that is, those the ownership structure of which was transparent). The EU has tightened the AML/CF rules and has adopted the 5th Directive in 2018. One of the additions of the Fifth Directive is that member states have to store beneficial ownership information in a central register. Hungarian Authorities have decided to postpone the establishment of the register from 1st December 2020 to June 2021. In 2021, **the Hungarian Parliament re-codified the Hungarian anti-money laundering act (Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorism Financing – AML/CFT Act.), and adopted a new decree which sets out the requirements of the central UBO database in May 2021.**⁵

The current legislation states that service providers (financial institutions and designated non-financial businesses and professions, such as casinos, real estate agents, dealers in precious metals and precious stones, lawyers, notaries, other independent legal professionals and accountants, trust and company service providers who prepare or carry out certain duties on behalf of their clients) have to collect beneficial ownership information about their customers (legal persons, unincorporated organizations, fiduciary managers and state-owned companies, where in the ownership structure there is another owner besides the state who owns at least 25 % of the firm). Service providers, however, will not submit the collected data to the central register, but to the financial institutions (banks, etc.). The latter will submit the beneficial ownership data to the central registry. So, as reporting agents are obliged to open a bank account, their actual ownership data must be obtained by financial institutions and safe deposit boxes and then transmitted to the central register.⁶ The register is created and managed by the national tax authority (NAV).

The Transparency Register will contain the beneficial owner's name, date and place of birth, nationality, address or residence, and the nature and extent of the economic interest.⁷

Moreover, the register will contain a 'TT index', which expresses the reliability of the organization.⁸ If the data of the beneficial owner is not provided, the service provider shall refuse to establish a business relationship with the customer. The competent authorities and financial intelligence

³ Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorism Financing– AML/CF Act

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=HU>

⁵ Act 43 of 2021 on the establishment and operation of a data provision background related to the identification task of financial and other service providers.

⁶ Indoklások Tára, Magyar Közlöny melléklete, 67. Szám, 2021, május 28., péntek, p. 767

⁷ Indoklások Tára, Magyar Közlöny melléklete, 67. Szám, 2021, május 28., péntek, p. 769

⁸ At the time of the first data transmission, the organization concerned receives a national registration number and a so-called TT index, the value of which is ten points at the time of the first data recording. This index evaluates registered organizations on the basis of their reporting reliability. Based on the subsequent customer due diligence processes of the authorities and the service providers under the Act on of Money Laundering and Terrorist Financing (Pmt.), Indications may be sent to the registry about deviations from the register, leading to a decrease in the TT index.

intelligence units will have direct and unrestricted access to the data recorded in the Transparency Register. Under certain circumstances, third persons may also request data from the Transparency Register by way of an individual data disclosure request.

Authorised authorities and service providers will be able to query the register from 1 February 2022. The service provider query is aimed at checking the accuracy of the data provided and comparing it with the data in the register. The actual owners themselves will be entitled to access their own data as of 1 September 2021, presumably for the purposes of data matching, data verification, and ensuring the accuracy of the data.

From 1 July 2022, third parties will also be entitled to request data, with certain limitations. For example, third parties will by default only have access to specific data (name, year and month of birth, country of residence, nationality, and the nature and extent of the beneficial ownership interest) and will need to pay a fee to obtain requested data.

In the case of information on fiduciary trusts, the law grants access to third parties only if they can demonstrate a legitimate interest or make an application in respect of a trust arrangement in which they hold a majority interest in a company. In addition, an important limitation in this case is that third parties will in principle only have access to certain information (name, year and month of birth, country of residence, nationality, and nature and extent of the beneficial ownership interest)⁹

Major amendments of the law will enter into force from 1st July 2022, mainly due to the fact that the government decided in early 2021 to introduce a new comprehensive registry of companies and other legal entities. According to the reasoning of the Act, the new comprehensive register will become interlinked with the central UBO registry.

As of now, the registers operating in Hungary (e.g. company registers, court registers of NGOs), with the exception of certain private databases, do not contain ultimate beneficial ownership data, and therefore the law passed by the Parliament will create the legal background for an UBO database. The forthcoming single register of legal persons would be operational from 2022-2024 and will take over the role of the currently fragmented registers, including the UBO data.

From the perspective of this study, it is also useful to overview the MONEYVAL evaluation of Hungary. The country was placed by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL - on an enhanced follow-up process¹⁰ after the adoption of the country's mutual evaluation report back in September 2016. During the follow-up process, MONEYVAL has re-rated the country several times.¹¹

⁹ A pénzügyi és egyéb szolgáltatók azonosítási feladatához kapcsolódó adatszolgáltatási háttér megteremtéséről és működtetéséről, Iromány száma: T/15996.

Benyújtás dátuma: 2021-04-20 23:25, Parlex azonosító: 5HZ646G40002, p. 28

¹⁰ Note: Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up involves a more intensive process of follow-up. This is intended to be a targeted but more comprehensive report on the countries/territories' progress, with the main focus being on areas in which there have been changes, high risk areas identified in the MER or subsequently and on the priority areas for action.

¹¹ Anti-money laundering and counter-terrorist financing measures in Hungary, 3rd enhanced Follow-up report, December 2019, p. 3-4

In April 2021, Recommendation 12 has been re-rated to largely compliant due to latest legislative amendments. This recommendation deals with politically exposed persons, and is very much connected to accountability and beneficial ownership and control. According to the latest follow-up evaluations, there are still gaps in determining who is a PEP, and rules of enhanced due diligence procedures are to be set out in the internal rules of the service providers.

Hungary has also reported that in 2021 the Minister of Finance amended¹² the former **MNE Decree No 21/2017 by the Minister for National Economy** in order to set mandatory substantive elements of the declaration certifying the source of wealth. According to the MONEYVAL 4th enhanced follow-up report, the deficiency in relation to source of wealth is addressed to a large extent. Regarding Enhanced Due Diligence (EDD), the AML/CFT Act (section 16) specifies that high risk customers, including where the customer or the beneficial owner is a PEP, must be a subject of EDD. However the procedure should be initiated and framed by the service provider's internal rules. "Said procedure requires the approval of service providers' internal rules by a supervisory authority"¹³.

In the 61st Plenary, Hungary mentioned that the latest amendments to the legislation regarding the definition of PEPs and a risk management system gives service providers sufficient opportunities to collect and verify information on their customers. It was also noted that sources of information other than just the customer's declaration will be used.^{14 15}

Moneyval's Fifth Round Mutual Evaluation Report also identified several shortcomings regarding the legislation related to trusts and trustees, especially in the case of "non-professional trustees". A non-professional trustee must be registered by the Hungarian National Bank (Magyar Nemzeti Bank, MNB), a professional must be licenced by the MNB.

As a legal system, Hungary introduced trusts in 2014, law by the new Civil Code in 2014 as fiduciary asset management (in Hungarian: 'bizalmi vagyonkezelés', the "trust" or the "Hungarian Trust"), materialising in a contractual relationship between the settlor (in Hungarian: 'vagyonrendelő') and the fiduciary asset manager (in Hungarian: 'vagyonkezelő'). In a fiduciary asset management contract or other instrument (the "trust instrument") the settlor settles and transfers assets to the fiduciary asset manager (the "trustee"), to be owned and managed for the benefit of one or several beneficiaries (in Hungarian: 'kedvezményezett').

¹² Decree No. 3/2021. (II. 2.) on the amendment of certain ministerial decrees related to the implementation of Act 53 of 2017 on the Prevention and Combating of Money Laundering and Terrorism Financing.

¹³ Anti-money laundering and counter-terrorist financing measures in Hungary, 4th enhanced Follow-up report, April 2021, p. 4

¹⁴ According to MONEYVAL's Fifth Round Mutual Evaluation Report on Hungary, the beneficial ownership information, held by the Financial Institutions and DNFBPs, mostly rely on customers' declarations. "This raises questions with regard to the accuracy of the information gathered."#

¹⁵ <https://rm.coe.int/moneyval-2021-13-61st-plenary-meeting-report/1680a2e29c>

According to MONEYVAL, non-professional trustees are not subject to the AML-CFT obligations, including CDD measures. “The AML/CFT Act does neither require trustees (regardless of whether they are professional or non-professional) to disclose their status to the service providers, nor to provide information on beneficial owner(s). In regards to beneficial ownership, the AML/CFT Act does not contain such a notion for trusts. No information was provided on the sanctions imposed to legal entities for the failure to provide basic information or for providing incorrect information.”¹⁶

The document mentions in its “Priority Actions” section what next steps they expect from the Hungarian government and authorities, such as the Hungarian National Bank, the Hungarian Financial Intelligence Unit of the National Tax Authority. The paper pointed out that the country should undertake an assessment about the discrepancies related to legal entities in connection with the use of “straw men” by organized crime and corruption. The above-mentioned competent authorities should have accurate and direct access to beneficial ownership information. Moreover, “amendments should be introduced to the Trust Act or to the AML/CFT Act to unambiguously clarify that identities of the beneficial owner of trusts must be made available for CDD purposes to FIs and DNFBPs. Measures should be taken to ensure that non-professional trustees also disclose their status to FIs and DNFBPs upon opening a business relationship or when carrying out an occasional transaction above a certain threshold. Legal provisions should be introduced for prompt reporting of changes to the legal ownership of companies to the Court of Registry, with dissuasive sanctions for breaches of this requirement.”¹⁷

The MONEYVAL report also did not find adequate CDD measures among the DNFBP sector, where AML/CFT measures are generally less developed than in the financial sector. “There is a lack of understanding of the identification requirements for the beneficial owners among the financial institutions as well as DNFBPs. Given that the use of “phantom companies” and straw men in the establishment of companies, opening of bank accounts and execution of transactions are considered as high risk, this has an impact on the effectiveness of the AML/CFT preventive system.”¹⁸ According to the paper, it seems that there is no common practice to identify sources of wealth, especially if they are connected to PEPs wire transfers. In general the DNFBP sector meets difficulties applying the CDD measures.

Hungary will remain in enhanced follow-up and will continue to report back to MONEYVAL on progress to strengthen its implementation of AML/CFT measures. “Hungary is expected to report back to the 63rd Plenary (potentially via MONEYVAL’s written procedure mechanism) within one year. Should sufficient progress be not made to bring most if not all recommendations rated PC to the level of LC/C, the Plenary will propose the application of CEPs.”^{19,20}

¹⁶ MONEYVAL, Fifth Round mutual Evaluation Report, Executive Summary, p. 8

¹⁷ MONEYVAL, Fifth Round mutual Evaluation Report, Executive Summary, p. 10

¹⁸ MONEYVAL, Fifth Round mutual Evaluation Report, Executive Summary, p. 7

¹⁹ Compliance Enhancing Procedure

²⁰ Anti-money laundering and counter-terrorist financing measures in Hungary, 4h enhanced Follow-up report, April 2021, p. 8

TABLE 2. TECHNICAL COMPLIANCE WITH RE-RATINGS, APRIL 2021 ²¹

R1	R2	R3	R4	R5	R6	R7	R8	R9	R10
LC	LC	LC	C	LC	LC	C	PC	LC	LC
R11	R12	R13	R14	R15	R16	R17	R18	R19	R20
LC	LC	PC	C	PC	LC	LC	PC	LC	C
R21	R22	R23	R24	R25	R26	R27	R28	R29	R30
LC	LC	LC	PC	LC	LC	LC	LC	C	C
R31	R32	R33	R34	R35	R36	R37	R38	R39	R40
LC	PC	LC	LC	LC	LC	LC	LC	LC	LC

NOTE: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

²¹ Anti-money laundering and counter-terrorist financing measures in Hungary, 4th enhanced Follow-up report, April 2021, p. 8



PRACTICE

According to Transparency International’s research, the only three countries which did not develop any type of ultimate beneficiary registers are Hungary, Italy, and Lithuania.²²

BENEFICIAL OWNERSHIP REGISTERS ACROSS THE EUROPEAN UNION

- PUBLIC REGISTRY (free and open data)
- PUBLIC REGISTRY (free)
- PUBLIC REGISTRY (with fee)
- PRIVATE REGISTRY
- NO REGISTER
- **e** Access restricted to nationals/
EU citizens with e-identification
- **!** Free access with e-identification



(PHOTO: TRANSPARENCY INTERNATIONAL)²³

²² <https://bit.ly/3E4VZ1H>

²³ Access denied? Availability and accessibility of beneficial ownership data in the European Union, 2021

Authors: Adriana Fraiha Granjo and Maíra Martini

Contributors: Aram Khaghaghordyan, Daphne Caruana Galizia Foundation, Netzwerk Steuergerechtigkeit Deutschland and Transparency International chapters in Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

In Hungary, the availability of public registers is limited. On the website of the Ministry of Justice, at some level all companies registered in Hungarian courts can be found, but not all the data and documents are available to be searched.²⁴ Mostly the balance sheets, records of the annual meetings (if any took place), and the notes to the financial statement are available. Beneficial ownership structure can only be recognized if the beneficial owner company is Hungarian and there is available information about that company in the dataset or any other source.

The following information about Hungarian companies can be accessed online: the corporate registration number, name of the company, head office, branches, activities, share capital, tax number, bankruptcy or liquidation status if applicable. Additional information is available for a certain fee.

In order to search for company information using the Hungarian business register, individuals must submit the search using one of the following: company name, corporate registration number, tax number.

All the other business registries in Hungary are private business registry services, for example, <https://www.nemzeticgtar.hu>, <https://www.opten.hu>, or <https://www.bisnode.hu>; the latter usually contains beneficial ownership information, but in several cases, it is, for example, a company abroad.

Due to the pandemic, several restrictions on Hungarian courts have been introduced. For example, a regular citizen or even a journalist has to book a certain time slot to research, but only 30 minutes a day is available. Name and ID number of the requester is needed to book the time slot. Furthermore, the citizen/journalist also has to register which company he or she would like to research. The difficulty to access information raises significant challenges to journalists investigating fraud, corruption, or money laundering. Another question is whether the authorities should or should not know which companies are being investigated by investigative journalists, and another important issue is whether this situation can or cannot pose any personal risk for the journalists.

The registers offer downloadable data in pdf documents; a specific document's price is around 3 euros. In the case of Opten and Bisnode. the user must pay a subscription fee for a certain period to be able to access the data. Opten also offers a free search tool for very basic information like the company's address, whether it exists or not.

Crystal Worldwide, a company formation house registered in Liechtenstein but operating from Hungary in several offshore jurisdictions like Cyprus, Seychelles, and Malta, published on the business website Portfolio.hu a PR article with interesting provisions regarding what could happen after the countries launch the beneficial ownership registries in the EU.

It says that the UBO registry will simplify the company structures in Hungary, because it will make no sense to hide the owner. But the public can expect another reaction from the owners:

²⁴ <https://e-beszamolo.im.gov.hu/oldal/kezdolap>

"Up to now, if someone wanted to stay in the background, he or she could, in a good case, set up a sophisticated company structure that was known to the authorities but legally protected the identity of the real owner. The actual ownership register will be available to the public from next summer, but greater transparency will probably lead many to delegate to a straw man rather than build up a sophisticated company structure in the future. The register will not, however, bring any significant disadvantage to the criminal circles that have already used a straw men", said Dr. Csaba Magyar, a Crystal Worldwide's manager. He also gave a hint about how shady businesses will react to the new UBO registry: as he said, the 25% rule will lead to more owners per company. "If, for example, five persons will equally own the equity of the company, there will be no beneficial owner of the firm", and in that case, according to the law, the manager will be the beneficiary.²⁵ That implies a broader use of straw men in the country.

According to Dr. Csaba Magyar, it is possible for someone to set up a chain of contracts that does not meet the definition of a beneficial owner under money laundering legislation, but in fact has full control over the company. For example, the method of selling a company into debt, over which the lender (through exposure) has effectively full control, but a call option contract is also often used in this area for similar reasons.²⁶

²⁵ <https://www.portfolio.hu/gazdasag/20210622/a-stromanok-iranyaba-billenti-a-merleget-az-uj-penzmosasi-szabalyozas-488412>

²⁶ <https://www.portfolio.hu/gazdasag/20210622/a-stromanok-iranyaba-billenti-a-merleget-az-uj-penzmosasi-szabalyozas-488412>



RECOMMENDATIONS



Central Registries of Ultimate Beneficial Ownerships should require the disclosure of a legal entity's full ownership chain and the exact extent of control exercised by the beneficial owners.



More exact registration requirements have to be created to close loopholes and more sophisticated risk analysis should be prescribed.



All company registry data should be made publicly available in machine readable formats and accessible in bulk / via API.



Interconnectivity of company registries across the EU should be prescribed.



POLAND

EXECUTIVE SUMMARY ²⁷

- ❖ The transparency of beneficial ownership in Poland can be assessed as satisfactory. The relevant legislation is not only implemented, but on a level above international standards and regulations.
- ❖ The open register of beneficial owners has been active from July 2019, and in general each entity that is obligated to submit the relevant information is doing so.
- ❖ The register is open to the public, but is rarely used by journalists and CSOs. One reason for this is that public awareness around the topic of beneficial ownership and its implication on corruption is low. The other is that the register is not maintained using open data standards, so performing more comprehensive analysis is time-consuming and complicated.
- ❖ Therefore, two main recommendations for Poland are to implement open data standards in the beneficial ownership register, and to build public awareness around the topic.

²⁷ The chapter was prepared by IDFI partner organization, [ePaństwo Foundation](#) (Poland). Author: Krzysztof Izdebski



INTRODUCTION

Poland had adopted the first complex law on anti-money laundering and financing of terrorism already in 2000²⁸, as part of its preparation to join the European Union in 2004. This act was amended multiple times and was repealed in 2018, when the Law of 1 March 2018 on Anti-Money Laundering and Financing of Terrorism (AML Act) was published in the Official Journal²⁹. The Act entered into force on 13 July 2018. The introduction of the new regulations was, inter alia, aimed at aligning Polish legislation with Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC³⁰. Among other changes, on the basis of the Act, an ICT system - the Central Register of Beneficial Owners (Centralny Rejestr Beneficjentów Rzeczywistych: CRBR³¹) - was established. The register was launched on 13 October 2019. The register is public and the collected information on beneficiaries is made available free of charge. CRBR allows the registration of beneficiaries and representatives of the company and the downloading of an official statement confirming the fact of registration, as well as the viewing of the information on beneficial owners belonging to the company with a specified tax identification number (NIP) or information on companies in which a person with an indicated PESEL (Universal Electronic Civil Registration System) number or name, surname, and date of birth (for persons without a PESEL number) is a beneficial owner. The deployment of the Register was assessed as complicated already in 2016, when the Supreme Audit Chamber, in its report on the control of 2000 AML act, referred to interviews held with representatives of the special team set up within the Ministry of Finance to implement the 2015/849 Directive. The team's findings back in 2016 suggested that “the biggest legislative, organizational, and technical problem will be the implementation of the provisions of Article 30 of Directive 2015/849 on the introduction of a register of information on beneficial owners of legal persons. The proposal to solve this problem by expanding the information on legal persons placed in the National Court Register has not been accepted by the Ministry of Justice.”³² Fortunately, these fears were positively confronted in practice. Poland has one of the best registries on beneficial owners, although some changes need to be introduced to make the best use of it.

²⁸ Ustawa z dnia 16 listopada 2000 r. o przeciwdziałaniu praniu pieniędzy oraz finansowaniu terroryzmu (O.J 2000, no 116, item 1216)

²⁹ O.J 2018, item 753

³⁰ Official Journal of the EU L 141 of 05.06.2015, p. 73

³¹ <https://crbr.podatki.gov.pl/adcrbr/#/>

³² <https://www.nik.gov.pl/plik/id,11662,vp,14015.pdf>



LEGISLATION

Before the new amendments to the AML Act, which came into force on 15 May 2021³³, that were implemented due to the earlier changes in the AML Directive, only companies were subject to the obligation to register in the CRBR. After the amendment of the act, the obligation to register ultimate beneficial owners will cover (almost) all NGOs, as foundations, registered associations, and cooperatives which, among other entities, have been added to the catalogue. The new obligations for entities to register will come into force on the practical level on 31 October 2021.

The 2021 amendments have also imposed other obligations in terms of the accountability of the beneficial ownership register, including the obligation to verify that the data provided to the CRBR by obligated institutions is factual.

The AML act describes: **beneficial owner** as any natural person who directly or indirectly controls a customer by virtue of legal or de facto rights that give the ability to exercise a decisive influence over the activities or actions undertaken by the customer, or any natural person in whose name an economic relationship is established or a transaction is carried out on an occasional basis, including:

- a** in case of a legal person other than a company whose securities are admitted to trading on a regulated market that is subject to disclosure requirements under European Union law or the equivalent provisions of the law of a third country:
 - a natural person who is a shareholder holding more than 25% of the total number of shares in that legal person,
 - a natural person holding more than 25% of the total voting rights in the constituting body of the legal person, including as a pledgee or usufructuary or under agreements with other entities entitled to vote,
 - a natural person exercising control over a legal person or legal persons that together hold more than 25% of the total number of shares, or that together hold more than 25% of the total number of votes in the governing body of such a legal person, also as a pledgee or usufructuary or under agreements with other persons entitled to vote,
 - a natural person controlling the legal person through holding powers referred to in Art. 3.1.37 of the Accountancy Act of 29 September 1994, or
 - a natural person holding a senior management position in the event of a documented impossibility of establishing or doubts as to the identity of the natural persons referred to in the first-fourth indent and where no suspicion of money laundering or terrorist financing is established;

³³ O.J 2021 item 815

b in the case of a trust:

- a founder,
- trustee
- a supervisor, if any,
- the beneficiary or, where the natural persons benefiting from the trust have not yet been determined, the group of persons whose principal interest in the creation or operation of the trust is established
- another person exercising control over the trust,
- another natural person having powers or performing duties equivalent to those referred to in the first to fifth indents;

c in the case of a natural person acting in the course of his business and in respect of whom there are no indications or circumstances which could indicate that another natural person or persons control him, that natural person shall be deemed to be the beneficial owner.

A customer is a natural person, a legal person, or an organizational unit without legal personality to whom an obligated institution provides services or performs activities falling within the scope of its professional activity, including with whom an obligated institution enters into a business relationship, or on whose instructions it carries out an occasional transaction

The AML Act indicates that entities obliged to identify beneficial owners are the so-called **obligated institutions**. These are entrepreneurs, institutions, and companies, e.g. from the financial sector, which establish regular economic relations with their customers or carry out occasional transactions on their behalf. This group includes e.g:

- financial, credit, loan institutions such as banks, custodian banks, cooperative savings and loan associations, investment funds and companies, insurance companies and institutions, leasing companies, payment institutions, payment services bureaus, settlement agents, electronic money institutions, property dealers, e.g. portals and auction houses, bureaux de change (also online), real estate agents,
- entities operating in the field of gambling, betting, card games, and gaming on slot machines,
- non-profit organizations, i.e. foundations and associations,
- financial service professionals, such as tax advisors and auditors,
- members of the legal profession, including notaries, lawyers, and solicitors,

- entrepreneurs accepting or executing cash payments of at least EUR 10,000 in a single transaction or at least EUR 10,000 in many related transactions,
- entrepreneurs providing services of creating organizational units, running virtual offices, and performing a function or enabling to perform a function of a member of the management board of a company,
- entrepreneurs involved in trading or acting as intermediaries in trading or storing works of art, collector's items, and antiques - concerning transactions of a value equal to or exceeding the equivalent of EUR 10,000 (regardless of whether several transactions appear to be related),
- entrepreneurs dealing with the provision of services consisting of preparing declarations, keeping tax books, providing advice, opinions, or explanations regarding tax or customs legislation, not being other obligated institutions.



CONTROL MECHANISMS. THE CENTRAL REGISTER ON BENEFICIAL OWNERSHIP

In terms of transparency and accountability of beneficial ownership, the best mechanism which allows for broader control is the CRBR.

The Central Register is an ICT system and serves to process the information on the beneficial owners of the entities presented below as well as on the persons formally representing these entities, who are submitting the information to CRBR.

The following entities are obliged to report information on beneficial owners and update the information in CRBR:

- 01** general partnerships;
- 02** limited partnerships;
- 03** limited joint-stock partnerships;
- 04** unlimited liability companies;
- 05** simple joint-stock companies;
- 06** joint-stock companies, except for public companies within the meaning of the Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies (Dz.U. of 2020, item 2080, and of 2021, item 355)
- 07** trusts whose trustees or persons in equivalent positions:
 - a** have their domicile or seat in the territory of the Republic of Poland, or
 - b** establish business relations or acquire real estate in the territory of the Republic of Poland on behalf or for the benefit of the trust;
- 08** partnerships;
- 09** European Economic Interest Groups;
- 10** European companies;
- 11** cooperatives;
- 12** European cooperatives;
- 13** associations subject to registration in the National Court Register;
- 14** foundations.

The sub-motives listed in points 7 to 14 above are an expanded catalog introduced by the amendment of the AML Act of 30 March 2021.

For the BO registration, the following data needs to be entered into the CRBR:

Data regarding the entity:

- business name;
- organizational form;
- seat and the address;
- number in the National Court Register;
- NIP (Tax Identification Number);

Data regarding the BO/representative:

- forename and surname;
- citizenship (s);
- residence;
- PESEL number or date of birth – in case of persons without PESEL number;
- information on the volume and nature of shares or rights vested to the UBO.

The information is reported to the CRBR free of charge by means of electronic communication, no later than within 7 working days from the date of the company's entry in the National Court Register (which is an official company register in Poland), and in the case of changes to the information already provided - within 7 working days from the change. Entities that were already registered in the National Court Register before 13 October 2019 were obliged to report the required information within 6 months from the date of entry into force of the register's regulations (i.e. before 13 April 2020). Due to the COVID-19 pandemic, the final date was set for 13 July 2020.

The notification can only be submitted electronically and shall bear a qualified electronic signature or a signature confirmed by the ePUAP trusted profile and shall include a statement of the person submitting the notification to the Register on the accuracy of information submitted to the Register. The person making the statement is required to include the following clause: "I am aware of the criminal liability for making a false statement".

The Minister of Finance acts as the competent authority for the Register and is authorized to: prepare statistical analyses of information processed in the Register; take action to ensure that the information contained in the Register is correct and updated, or impose, by way of a decision, the financial penalties referred to in Article 153. This provision states that entities that have not fulfilled the obligation to notify or update information on real beneficiaries within 7 working days or have provided information inconsistent with the facts are subject to a financial penalty of up to 1000000 PLN (around EUR 250000K).

The Regional Administrative Court in Warsaw, in ruling³⁴ on another matter not pertaining to the Register itself³⁵, stated that:

“This notification includes a statement made under the threat of criminal liability for making a false declaration. Thus, as follows from the essence of the provision, the notification of information on the beneficial owner consists in a declaration of will and knowledge of the person(s) authorized to represent the company, and indication of who controls the company in accordance with the definition of the beneficial owner. Therefore, it is impossible for the Minister of Finance to indicate who in a given company is the beneficial owner (the knowledge of who controls the company belongs to the persons authorized to represent the company), and it is precisely the purpose of the provision to provide this knowledge to the public - as the register of beneficial owners is public.”

It is also worth noting that this case is an example of problems associated with the understanding of the definition of beneficial owner. Before the Act entered into force with the requirement to submit the data to the Register, many entrepreneurs feared that they would make a mistake in identifying beneficial owners³⁶. But according to the interviewee from the Ministry of Finance, such a problem does not occur on a regular basis. Additionally, the Ministry is providing online support for entities required to submit the information to the register. There is an extensive Q&A service³⁷, as well as the possibility to send a question directly to competent public servants.³⁸

One of the key requirements for obligated institutions, and related to the application of appropriate financial security measures, is the identification of beneficial owners. As mentioned below, the Register acts only as an auxiliary tool.

In the context of the identification of beneficial owners, the AML Act introduces the important concept of "due diligence" in the identification process, i.e. applying verification measures appropriate to the risk assessment, establishing the ownership and control structure of the entity in question, gathering data on the purpose and nature of the business relationships entered into by the analyzed entity. It can be also done by comparing the data on the company that is present in the National Court Register or other public registers.

An obligated institution shall note discrepancies between the information held in the Register and the information it has ascertained about the beneficial owner of a customer and shall take measures to clarify the reasons for such discrepancies. This is actually the most important aim of the Register. However, the recent changes in the AML Act implemented a new provision that states that “Obligated institutions shall not rely solely on information from the Central Register of Beneficial Owners or the register referred to in Art. 30 or Article 31 of Directive 2015/849, kept in the competent Member State”.

³⁴ Ruling from 9th November 2020, VI SA/Wa 1579/20

³⁵ The party asked Minister of Finance to identify the specific beneficial owner in its company

³⁶ <https://biznes.gazetaprawna.pl/artykuly/1480099,tarcza-antykryzysowa-rejest-beneficjentow-rzeczywistych.html>

³⁷ <https://www.gov.pl/web/finanse/zgloszenie-informacji-do-centralnego-rejestru-beneficjentow-rzeczywistych>

³⁸ <https://www.podatki.gov.pl/crbr/kontakt-crbr/>

If discrepancies are confirmed, the obliged entity shall send the competent authority in charge of the register (Minister of Finance) verified information about these discrepancies together with the reasons and documentation for the discrepancies. The requirement of submitting reasons and documentation goes a bit further than the relevant provision of the AML directive. Article 30.4 of the AML directive requires only the submission of information on discrepancies, while the Polish act imposes the obligation to attach reasons and documentation. This was criticized during the legislation process by one of the Employers Association³⁹ members, but their opinion was not taken into consideration, and the government has justified this by claiming that this is connected with the obligations imposed by the directive⁴⁰.

The notification on discrepancies are submitted electronically through a dedicated form published on the CRBR. To secure credibility of such notifications, the obliged entity representative who submits it should sign the form electronically.

The data gathered in the registry of decisions of the Minister of Finance and cooperating entities regarding the administrative decisions imposing penalties for non-compliance with the MLA Act⁴¹ shows that there was no single decision based on the Act. 153 (see above) imposed a fine due to discrepancies (in the context of not submitting information or not updating it) in the Register. There is also no data available on potential criminal proceedings against persons who made a false declaration by submitting inaccurate data to the Register.

The register is open to the public and everyone can access it without any fee. However, it is only possible to access singular records and knowledge of some data is required. If the person wants to search for information on the specific company, it is required to use its NIP - tax registration number. If one is looking for a specific beneficial owner, one should know his or her PESEL number or, if the person does not have one, name, surname, and date of birth.

For this reason, Transparency International, in a report on the openness of registries in the EU⁴², qualified the Polish Register as, to a limited extent, restricted, but only in terms that it is not done within the open data standards.

³⁹ http://konfederacijalewiatan.pl/legislacja/stanowiska/prawo-branzowe/1/_files/2021_03/KL-125-91-AZ-2021-4.pdf

⁴⁰ [http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-382-2021/\\$file/9-020-382-2021.pdf](http://orka.sejm.gov.pl/Druki9ka.nsf/Projekty/9-020-382-2021/$file/9-020-382-2021.pdf)

⁴¹ <https://www.gov.pl/web/finanse/sankcje-administracyjne?page=1&size=10>

⁴² <https://www.transparency.org/en/news/eu-beneficial-ownership-registers-public-access-data-availability-progress-2021>

Wyszukaj wpisy w Centralnym Rejestrze Beneficjentów Rzeczywistych

Kontekst wyszukiwania

Wyszukiwanie spółki
 Wyszukiwanie Beneficjenta po PESEL
 Wyszukiwanie Beneficjenta po dacie urodzenia (wyszukasz wyłącznie osoby, dla których w Zgłoszeniu nie zarejestrowano numeru PESEL)

NIP

Pole wymagane

PESEL

Data urodzenia Imię pierwsze Nazwisko

Data od Data do

[Anuluj](#) [Wyszukaj →](#)

What is also important, apart from the lack of commonly accessible possibilities of analyzing bulk data, is that after finding a company, the data on beneficial owners is not visible on the screen. Only downloading a pdf or XML file allows access to the names of beneficial owners of the company.

[Pobierz plik XML](#) [Pobierz plik PDF](#)

Dokument pochodzi z Centralnego Rejestru Beneficjentów Rzeczywistych. Organem właściwym w sprawach CRBR jest minister właściwy do spraw finansów publicznych. Dokument nie wymaga dodatkowego podpisu.

Liczba wpisów: 1

Wyszukiwanie

Nazwa	NIP	KRS	Forma organizacyjna	Kod pocztowy	Miejscowość	Ulica
"CARREFOUR POLSKA" SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ	9370008168	0000020710	117 - Spółka z ograniczoną odpowiedzialnością	03-734	WARSZAWA	TARGOWA

1

Despite these technical difficulties, the Register remains an example of a transparent dataset on beneficial ownership. It follows international standards and is sometimes more progressive. For example, the structure and transparency of the Register go beyond the requirements of the FATF Recommendation 25, which states that “countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.” The model of the register implemented in Poland also secured the control held by CSOs and the general public. Even though Transparency International sees the obstacle in analyzing the data, it was assessed as progressive in the above-mentioned report.

It should also be noted that Poland is one of few countries in the EU where the company register (formally National Court Register) is open, free, and accessible to everyone. For this reason, the general public, CSOs, or other monitoring entities can easily assess who are the owners and representatives of a specific company. Additionally, since 2019 all companies' financial reports are being published in electronic form in the National Court Register, and the control over sources of funding and beneficial owners is effective.

There are no plans to introduce any changes which could increase the transparency of beneficial ownership in Poland. The recently adopted governmental Anti-Money Laundering and Countering Terrorist Financing Strategy⁴³ does not mention such steps in the next two years.

⁴³ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WMP20210000435/O/M20210435.pdf>



PRACTICE AND IMPLICATION OF THE IMPLEMENTATION OF BO TRANSPARENCY STANDARDS

There were no major concerns detected when it came to the practical implementation of the beneficial owners' transparency. Apart from the initial lack of certainty on how to identify the beneficial owner, some entrepreneurs raised doubts about its necessity when very similar information was already public in the National Court Register. In general, the biggest challenge remaining pertains to the question of how to verify the factualness of the information on beneficial owners when the seat of the company is abroad. Not every country provides services like open company registries that allow obligated entities or governmental institutions to compare the data in the register with other sources. The UE is currently running the assessment on the implementation of the IV MLA directive, but results are have not been published yet (as of October, 2021)⁴⁴.

The group that uses the Register the most are obligated entities on which such requirement is imposed by the relevant provisions. For this reason, at least thus far, beneficial ownership transparency has had the biggest impact on the financial sector.

The topic of beneficial ownership and its transparency is not widely recognized by journalists or CSOs. There are also no surveys or other research available on the attitude of the general public towards the transparency of beneficial owners. Poland was not hit by the Panama papers scandal, so the interest of groups that monitor risks of corruption is limited. Only ePaństwo Foundation has used the data from the Register to include them into their rejestr.io portal, which provides open data on companies' activities. The Foundation is scraping the data, as an official ICT system does not allow access to bulk data immediately. However, the data has not been used so far to analyze any irregularities.

Screenshots from rejestr.io showing an example of an international company with the seat in Poland, as well as how data on beneficial ownership could be presented in the official register:

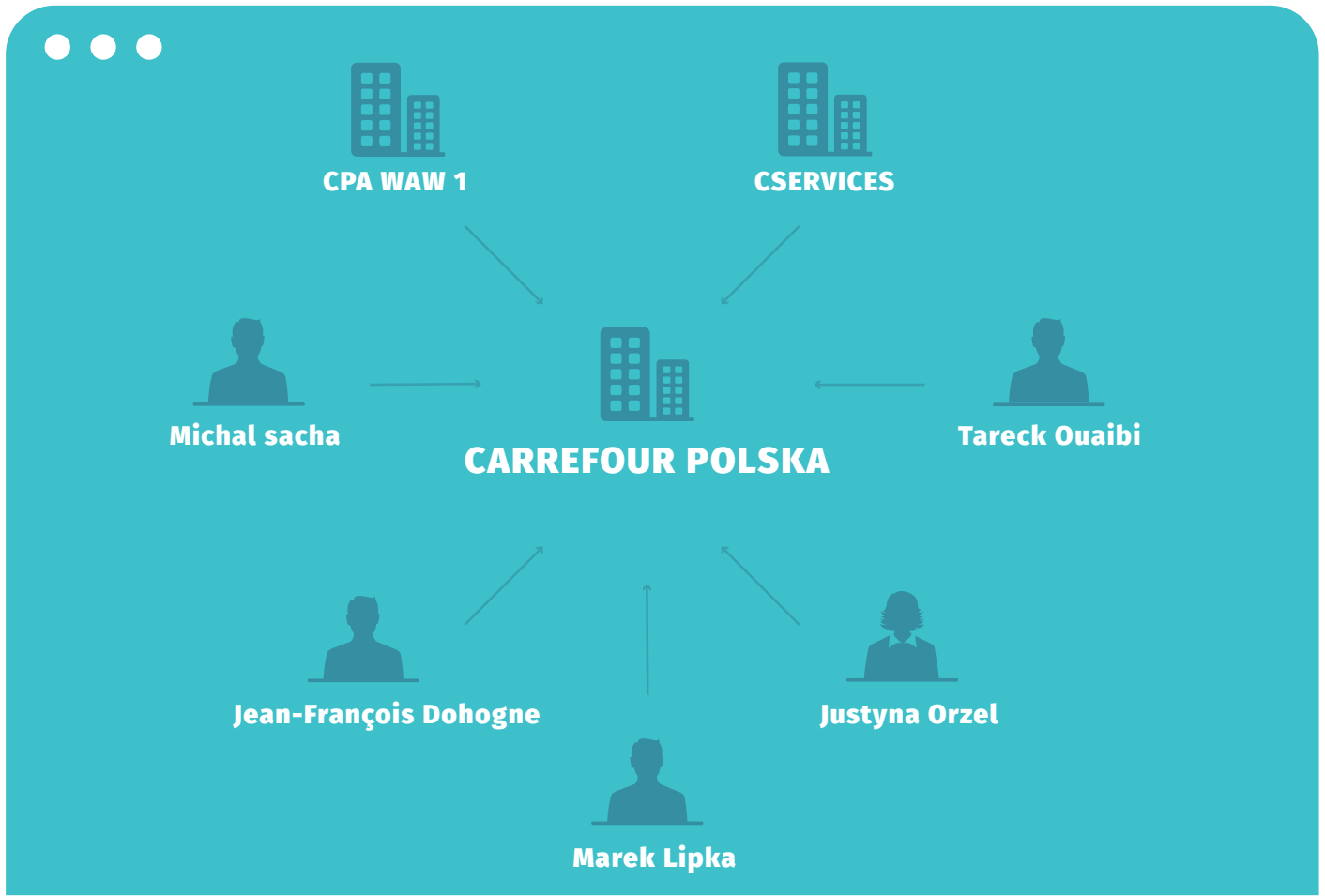
BENEFICJENCI RZECZYWIŚCI

Tareck Ouabi

WICEPREZES ZARZĄDU (T.J. OSOBA FIZYCZNA ZAJMUJĄCA WYŻSZE STANOWISKO KIEROWNICZE ZG. Z ART. 2 UST. 2 PKT 1 LIT. A TIRET 5 UPPPOFT)

Obywatelstwo Rezydencja

⁴⁴ <https://rm.coe.int/amld-project-summary-jun21/1680a2e05c>



Certain gaps that remain in beneficial ownership transparency are connected with the issue of a lack of open data standards and limited possibility of comparing the data in the Register with data from other countries.



RECOMMENDATIONS



TECHNICAL ASPECTS. ADDRESSEE: THE MINISTER OF FINANCE

Implement open data standards in the Central Register on Beneficial Ownership.



MONITORING OF DATA. ADDRESSEE: CSOS, JOURNALISTS

Build public awareness around the topic of beneficial ownership and conduct data analysis.



INTEROPERABILITY WITH OTHER REGISTRIES. ADDRESSEE: MINISTER OF DIGITIZATION

Connect databases on beneficial ownership, companies register (National Court Register), and Central Register and Information on Economic Activity



SLOVAKIA

EXECUTIVE SUMMARY⁴⁵

- ❖ The primary piece of legislation on beneficial ownership in Slovakia is the Act on protection against money laundering from criminal activities (297/2008 Coll., particularly its amendment 52/2018 Coll.). This law introduces the obligation to register the end user of the benefits in the commercial register. However, this information is not publicly available. The government makes BO information available only via the sectoral public register of beneficial owners, the so-called RPVS register. It contains BO information for companies that receive public funding or conduct business with the government.
- ❖ The Register of public sector partners also contains information about beneficial owners. It led to several high profile cases in which companies lost the opportunity to conduct business with the public sector or some beneficial owners were pushed to make their ownership public.
- ❖ The Slovak legislation on the registration of beneficial owners cannot be considered comprehensive and compliant with the requirements of Directive IV.

⁴⁵ The chapter was prepared by IDFI partner organization, KohoVolit.eu (Slovakia).



INTRODUCTION

Act No. 52/2018 Coll. (Act amending Act No. 297/2008 Coll. on the protection against the legalization of proceeds from crime and on the protection against the financing of terrorism and on amending and supplementing certain acts, as amended) transposed Directive (EU) 2015/849 of the European Parliament and of the Council of 20 April 2015 on the protection against the legalization of proceeds from crime and on the protection against the financing of terrorism. 648/2012 and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ("4th AML Directive").

The Act also takes into account the recommendations of the Moneyval Committee of the Council of Europe from its fourth evaluation report on the implementation of measures against money laundering and terrorist financing in the Slovak Republic and the revised recommendations of the FATF (Financial Action Task Force G7) from February 2012, which respond to the ongoing developments in the field of combating money laundering and terrorist financing.

The Act also implements Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on data accompanying transfers of funds and repealing Regulation (EC) No 1781/2006. In addition to the above, the law responds to requirements arising from application practice.

The Act also took into account the Programme Statement of the Government of the Slovak Republic, in which the Government expressed its support for promoting measures and activities through which the movement of funds and other assets aimed at supporting and financing terrorist acts can be detected and restricted as effectively as possible, to apply measures facilitating the monitoring of terrorist organizations wherever possible in order to prevent them from committing criminal activities and to restrict the sources of income of terrorist organizations.

The law was approved by the MPs of the majority of parties in the National Council of Slovak Republic, with only the MPs OĽaNO and ĽS Naše Slovensko abstaining in the vote.



LEGISLATION

In the Slovak legal order, two laws speak about the final user of the benefits. The first is Act No. 297/2008 Coll. on the Protection against Money Laundering and the second is Act No. 315/2016 Coll. on the Register of Public Sector Partners.

For the definition, these laws use the description of persons they understand as the final beneficiaries. In the case of the latter law, reference is made to the first law for the definition of such a person, but in practice it could be said that the final beneficiary is understood as a person who trades with the state and has the final benefit from this trade.

Simply put, such an ultimate beneficiary is:

- ① one who controls or is controlled by a business entity or an entity with property, either directly or indirectly, but who has influence over it
- ① one for whose benefit an entrepreneurial, revenue-generating, or commercial activity is carried out, or who has the right to benefit economically from those activities
- ① whoever holds an interest in the voting rights or share capital of the business entity to such an extent that he or she is in a position to exercise real influence over the activities of the entity
- ① whoever has the right to appoint, designate or remove those bodies of the business entity which manage or control the entity

The ultimate beneficial owner is usually a natural person, so it cannot be a company or a legal entity. The identification of the ultimate beneficial owner is important in order to make it clear who benefits from the business.

The most well-known issue in this respect is the identification of the real 'owners' of businesses that deal in some way with the State. The identifying data is then entered in a public register and can be verified at any time. This makes it possible to find out who is 'behind' a company or business.

ACT NO. 297/2008 COLL. ON PROTECTION AGAINST MONEY LAUNDERING FROM CRIMINAL ACTIVITIES

Preparation of the law: Representatives of professional associations, namely the Slovak Banking Association, the Slovak Association of Insurance Companies, the Slovak Association of Management Companies, the National Association of Real Estate Agencies of Slovakia, and the Association of Financial Mediation and Financial Counselling were consulted on the issues related to the Act, the Association of Securities Dealers, the Slovak Bar Association, the Slovak Chamber of Tax Advisers, the Slovak Chamber of Auditors, the Slovak Chamber of Notaries, the Republic Union of Employers, the Association of Employers' Unions and Associations of the Slovak Republic, the Association of Industrial Unions, the Slovak Chamber of Commerce and Industry, the 500 Club and the Centre for Better Regulation.

The consultations started in the form of a seminar (training) with the Slovak Banking Association and the Slovak Association of Insurance Companies during the month of June 2016, and the duration of the consultations was approximately 3 hours. Subsequently, the consultations continued from 18.07.2016 via electronic communication with the above-mentioned entities. The deadline for comments on the main points of the consultation was set to 27.07.2016, while only three of the entities contacted had commented by 17.08.2016. Representatives of the Slovak Association of Insurance Companies were consulted repeatedly for at least 1 hour. Prior to the consultations, meetings and negotiations were held with the National Bank of Slovakia, which is the supervisory authority for the majority of obliged persons in the financial sector, in connection with the preparation of the amendment to Act No 297/2008 Coll.

Act in section 6. In this case, it distinguishes the final beneficiary according to its form, i.e. whether it is a legal entity, a natural person entrepreneur, or a pool of assets.

In general, an ultimate beneficial owner is any natural person who effectively controls a legal person, a natural person entrepreneur, or a pool of assets. It is also any natural person for the benefit of whom these entities carry on business or trade, i.e. engage in gainful and entrepreneurial activity.

In the case of legal persons, a natural person in particular is the one who:

- ◉ has a direct or indirect interest, or the aggregate thereof, of at least 25% in the voting rights in the legal person or in its share capital, including bearer shares,
- ◉ has the right to appoint, otherwise appoint or remove a statutory body, management body, supervisory, body or controlling body in the legal person or any member thereof,
- ◉ controls the legal person in a manner other than those referred to in the preceding possibilities, but controls it in such a way that there is a causal link,
- ◉ is entitled to an economic benefit of at least 25% of the legal person's business or other activity, for example if it is a profit-making activity

If we are talking about a natural person entrepreneur, the ultimate beneficiary is the natural person who is entitled to an economic benefit of at least 25% of the natural person entrepreneur's business. However, they may also see a benefit of 25% from their other activities.

The law also takes into account the situation where no natural person meets the criteria set out therein. In such a case, it proceeds further in the hierarchy of persons.

The obligation to enter the final beneficial owner in the commercial register is not new. For those entities that have not yet done so, the deadline for the obligation to do so expired on 31 December 2019. This was the case for those entities that were established earlier. If they have not done so in time, they risk a fine. This can be imposed by the court either on the legal entity or on the authorized natural person, up to a maximum of €3,310.

Today, the obligation to indicate the end-user of the benefits is already directly stipulated as a condition for the application for entry of a new entity in the commercial register.

TRADE REGISTER

Amendment to Act No. 503/2003 Coll. No. 52/2018 Coll.

In effect from 01.11.2018, in addition to the data recorded until then, the identification data of the end-user of the benefits shall also be entered in the commercial register. This information is not public.

REGISTER OF PUBLIC SECTOR PARTNERS

Act No. 315/2016 Coll. on the register of public sector partners.

Natural and legal persons who are recipients of funds, property, or property rights from public sources, such as the state, municipalities, regional authorities, and other legal persons financed by them are partners of the public sector, according to Act No. 315/2016 Coll. on the register of public sector partners.

Similarly to public sector partners, the Register of Public Sector Partners also includes end-users of benefits. End-users of benefits are persons who actually control or control a legal entity, a pool of assets, or a natural person - entrepreneur, or persons for the benefit of whom these entities carry out transactions or their business activities.

SUMMARY

The Slovak legislation on the registration of beneficial owners cannot be considered comprehensive and compliant with the requirements of Directive IV.

Although the Act 315/2016 Coll., on the Register of Public Sector Partners, is often referred to as the transposition of the Directive, in fact the Slovak transposition of the Directive is the Amendment Act No. 52/2018 Z. z., which establishes the obligation (pursuant to Section 10a of the Slovak AML Act No. 297/2008 Z. z. in conjunction with Section 2(3) of the Slovak Commercial Register Act No. 530/2003 Z. z.) to register the ultimate beneficial owner (i.e. the beneficial owner) in the Slovak Commercial Register.

This information is not public and the breach of the obligation is punishable only by a monetary penalty of a maximum of EUR 3,310. The Slovak Republic is currently subject to proceedings before the European Commission under Article 258 TFEU (Infringement number 20170431) for imperfect transposition of Directive (EU) 2015/849 of the European Parliament and of the Council, which also concerns Article 31 IV. AML Directive.



PRACTICE

The end-user of the benefits is known in particular by the obligation to register it in the commercial register. Every entity must have an end-user registered in the register, but this is not a publicly available figure. Only selected public authorities can see who the end-user of benefits is in a specific entity.

But there is a very important exception to this rule: companies trading with the state. The government makes BO information available via the sectoral public register of the beneficial owners, the so-called RPVS register. It contains BO information for companies that receive public funding or conduct business with the government. The address of the register is <https://rpvs.gov.sk/rpvs>.

In addition to companies, non-investment funds, non-profit organizations providing services of general interest, and foundations are also obliged to register the final beneficiary.

- Name and surname: The standard entry in the registers of final beneficiaries is the name and surname of the natural person who will be considered as the final beneficiary.
- Birth number and date of birth: Birth number and date of birth are very important identifying data. These data are unique for each person, so that by recording them, the natural person who is to be the final beneficiary can be identified with 100% reliability.
- Address: The next data to be recorded is the address. This is usually the permanent address, but it is not a requirement; it can also be the address of another residence where the individual can be reached.
- Nationality and status: Within the data to be recorded, nationality is also an important identifier. This is particularly important in the case of suspected income laundering, not least to make it clear which country's jurisdiction the end-user falls under. If the natural person is a public official in the Slovak Republic, this information shall also be entered.
- Identity document: As part of the verification of the identification of the natural person, the information is compared with an identity document.
- Data relating to the status of the final beneficiary: Information on the basis of which the natural person is registered as the final beneficiary. This specifies the fulfilment of a condition for this, such as control of a share, share capital, or shares or other type of control of the entity.



IMPLICATION OF THE IMPLEMENTATION OF BO TRANSPARENCY STANDARDS

The Register of Public Sector Partners has shut down several companies doing business with the state. The reason was the confusion surrounding the owners. Some oligarchs were forced to reveal their ownership of companies linked to state contracts.

As a result of the three-year operation of the register, several big names in Slovak business had to admit their participation in companies doing business with the state. Some companies were removed from the register because they failed to convince the court of their ownership.

STARLAND HOLDING - BRAŇO PRIELOŽNÝ

The value of Starland Holding's assets rose after the National Motorway Company modified the Triblavina project of the D1 motorway. Starland Holding's ownership background has long raised questions. Tomáš Bednár, who also served on the company's board of directors, was listed in the register as the end user of the benefits. Last year, however, it emerged that the real beneficiary was billionaire Braňo Prieložný, co-founder of the financial group Istrokapitál.

ANEXT (LEIKTEC)

A major company that the court removed from the Register of Public Sector Partners is the IT company Anext, which profits almost exclusively from business with the state. Anext, now LeikTec, was involved in controversial eHealth and slovensko.sk projects. For years, the company has been associated with ex-Minister Počiatek and oligarch Brhel, described as a sponsor of Smer-SD.

It was deleted after the court did not believe that the end users of Anext were the couple listed in the register - Jozef Chamraz and Katarína Hajduová. The company did not provide credible evidence of the payment of income to their accounts. On the contrary, the money from Anext should have ended up in a Cypriot box.

BARCLET

Another company with links to a company with ties to Počiatek and Brhel - the Czech IT company Barclet - was similarly affected. The joint-stock company, known for a 16-million-euro contract for teleconference software for the Ministry of Education, failed to convince the court that its real owner is the Czech tax consultant Ilona Vošvrlová Prstecká. It can no longer take part in state contracts.

INFRA SERVICES - IVAN KMOTRÍK

Although the semi-urban firm Infra Services can benefit from public contracts, oligarch Ivan Kmotrík had to admit ownership. This happened a few hours before the court hearing.

Kmotřík claimed that he had bought the Infra Services shares less than a day before the hearing. The oligarch later claimed that he had never made a secret of profiting from Bratislava's waterworks.

Infra Services, where Kmotřík has a narrow minority, and the remaining 51 percent belongs to the Bratislava Waterworks Company (BVS), has been the target of criticism for years. The reason for this is disputed contracts worth millions for several private companies.

JHS - JOZEF HOLJENČÍK

JHS, a company associated with the former head of the Office for Regulation of Network Industries (ÚRSO) Jozef Holjenčík, is also no longer able to do business with the state. Holjenčík himself used to work for the company, but after joining ÚRSO he officially left the private firm.

The expert company, whose name is allegedly an abbreviation for Jozef Holjenčík Systems, received hundreds of thousands of dollars in contracts from the state after Holjenčík's departure. Štefan Varga, the only official shareholder of JHS, was identified in the register as the final beneficiary.



When the court investigated this, it came to the conclusion that Varga was not the real beneficiary of JHS and deleted the company from the register.

UNICREDIT BANK CZECH AND SLOVAKIA

Unicredit Bank Czech and Slovakia was once a partner of the public sector. The court removed it from the register in 2018. The reason was that the bank listed only members of the management of the Slovak branch as the end users of the benefits. As it is an international company, the members of the top management of the foreign parent branch should have been listed in the register as well. This was the first such case in Slovakia concerning the Register of Public Sector Partners.



RECOMMENDATIONS

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- The Government/National Council should propose the possibility of public access to the Register of Ultimate Owners to at least a basic set of information.
- 
- Basic information on companies should be accessible publicly and free of charge throughout the EU (see problematic shell companies in Cyprus)



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CZECHIA

EXECUTIVE SUMMARY ⁴⁶

- ❖ Registration of beneficial owners has existed in Czech legislation since 2018, but this regulation has been insufficient for many reasons.
- ❖ Since 2021, the Act on the Registration of Beneficial Owners No. 37/2021 Coll. transposed the regulation contained in the so-called V. AML (anti-money laundering) EU directive.
- ❖ The Act introduces a publicly accessible Register of Beneficial Owners.
- ❖ Since the law also significantly affects the Prime Minister of the Czech Republic, Andrej Babiš, the media coverage of the law has been appropriately wide.
- ❖ Given that the law has been effective since the beginning of June 2021, it is too early to conclude what the practical impact of this new law will be.

⁴⁶ The chapter was prepared by IDFI partner organization, [KohoVolit.eu](https://kohovolit.eu) (Czechia)



INTRODUCTION

The way of solving the problem of the registration of beneficial owners in the Czech Republic is firmly tied to the European Union, specifically to its IV. and V. AML (anti-money-laundering) Directives.

The first legislative implementation of beneficial ownership registration in the Czech Republic took place in 2018. It will be expanded significantly in 2021.

The importance of the topic in the Czech Republic is highlighted by the long-term conflict of interest of Prime Minister Andrej Babiš, the beneficial owner of Agrofert, one of the largest companies in the Czech Republic.

It is too early to determine the practical impact of the law.



LEGISLATION

Registration of beneficial owners has existed in Czech legislation since 1 January 2018 in the Act on Public Registers of Legal Entities and Natural Persons No. 304/2013 Coll., § 118b - § 118j.

Going into effect from 1 June 2021, the Act on the Registration of Beneficial Owners No. 37/2021 Coll. transposed the regulation contained in the so-called V. AML (anti-money-laundering) Directive - i.e. Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU. This amendment came more than a year later than the deadline imposed by the Directive.

The law was adopted with the support of the majority of the parties, while MPs from two right-wing parties abstained from the vote.

The previous regulation from 2018 was insufficient - the beneficial owner institution and its registration did not meet the requirements of the AML Directive. The very limited concept of beneficial owner registration under the Registration Act did not constitute a mechanism to ensure the quality of recorded data.

Ensuring the completeness, accuracy, and timeliness of the data was left solely to the legal entities (trustees), with no sanctions for failure to comply with the statutory obligations. The non-public registration regime was also unsatisfactory for local stakeholders, as media or other watchdogs could not access the information.

The beneficial owners under the new law are the natural persons who are the ultimate beneficiary or person with ultimate influence.

An end beneficiary is a person who may have, directly or indirectly through another person or a trust, a substantial part of the total property benefit generated by both the operation and liquidation of the legal person or trust.

A person with ultimate influence is a natural person who is a controlling person under the Corporations Act. The Act maintains a 25% threshold both for determining the ultimate beneficiary for a property benefit or right to a share of profits, other resources or liquidation balance, and for determining the person with ultimate influence, taking into account the person's direct or indirect share of voting rights.

One of the major changes in the new 2021 law compared to the previous 2018 law is the increased transparency of the entire beneficial owner register. As of 2018, the data on the entities registered in the Register was available only to a predefined circle of entities (courts, police, tax administration, etc.) that were entitled to obtain an extract of the registered entity's data from the Register. According to the new law, however, anyone can now obtain an extract from the Register on the website of the Ministry of Justice (even if it contains only basic information).

The new law also introduces fines for the failure to comply with the obligation to enter the data on the beneficial owner in the Register or for the failure to provide assistance to the registering person in entering the data on the beneficial owner in the Register. The fine for the failure to comply with these obligations may reach up to CZK 500,000 (~ €20,000).

Consequences of the absence of registration of the beneficial owner in the Register:

- Rights and obligations arising from a legal act concealing the person of the beneficial owner and arising at the time when the beneficial owner is not entered in the Register cannot be enforced;
- a corporation may not pay beneficial interest to a beneficial owner not entered in the Register, or to a legal person or arrangement of which it is also the beneficial owner or which does not have a beneficial owner entered in the Register;
- a beneficial owner not entered in the Register, or a legal person or arrangement of which it is also the beneficial owner or which does not have a beneficial owner entered in the Register, may not exercise voting rights or make decisions as its sole shareholder in the decision-making of the supreme body of a corporation.

Violation of these rules may create liability for members of the statutory body (e.g. if they pay a share of profits to someone for whom the Beneficial Owners Registration Act prohibits it), or create a problem where some entities lose their voting rights at the general meeting due to the absence of registration in the Register (temporarily).

Even entities that have fulfilled their obligation to enter data on their beneficial owner in the Register under the old regulation are obliged to ensure that the entered data complies with the new requirements of the Act after 1 June 2021 - which will often concern, for example, so-called substitute beneficial owners. In the event of failure to comply with the obligation to enter the beneficial owner's data in the Register, the obliged entities expose themselves to the risk of fines under the Act and the above-mentioned consequences.

The following have been cited as the main reasons for the introduction of the new 2021 Act:

- ❖ Transparency
- ❖ Combating money laundering and terrorist financing
- ❖ Reducing administrative burden
- ❖ Applicability, clarity, and systematic nature of the legislation
- ❖ Certainty in business dealings
- ❖ Compliance with European law

 **PRACTICE**

The basic output of the law and a tool of transparency is the publicly accessible Register of beneficial owners, which is operated by the Ministry of Justice of the Czech Republic at <https://esm.justice.cz/>.

As the obligation to indicate the final owners only applies from June 2021, it is too early to assess how exactly it will work in practice. However, it is possible to cite two cases involving some of the largest companies in the Czech Republic.

THE BABIŠ CASE

The Prime Minister of the Czech Republic, Andrej Babiš, is one of the richest people in the Czech Republic. Before the Conflict of Interest Act came into force, he was the sole owner of the Agrofert Group, one of the largest groupings of companies in the Czech Republic.

In the past, the company has made no secret of the fact that Prime Minister Babiš is a beneficiary of the company. On the other hand, Prime Minister Babiš denies having any influence on the company and refers to it as his former company.

Amendment to the Conflict of Interest Act 159/2006 Coll.: the law now prohibits companies, in which members of the cabinet have at least a quarter of the shares, from bidding for public contracts, non-revenue subsidies, and investment incentives. The law also includes a provision prohibiting cabinet members from broadcasting and publishing periodicals. The law was vetoed by President Zeman, but in January 2017 the House overrode the presidential veto by 129 votes to 49.

In response to this amendment, Andrej Babiš transferred his companies to a trust fund. He complied with the letter of the law, but did not lose his influence over the holding.

In August 2018, Transparency International ČR contacted the Municipal Authority in Černošice (the authority with extended jurisdiction for Průhonice, where the Prime Minister lives) on suspicion that Prime Minister Andrej Babiš was violating the Conflict of Interest Act because, as a public official, he owns media through Agrofert.

In August 2018, Transparency International ČR contacted the Municipal Authority in Černošice (the authority with extended jurisdiction for Průhonice, where the Prime Minister lives) over suspicions that Prime Minister Andrej Babiš is violating the Conflict of Interest Act because he owns media outlets as a public official through Agrofert.

Senator Ivo Valenta, for example, also found himself in a similar situation as Andrej Babiš. Due to suspicions of Valenta's conflict of interest, Transparency International filed a complaint for an investigation in mid-December 2018, which was dealt with by the Senate's Mandate and Immunity

Committee. However, the committee subsequently decided in March that Valenta had not violated the law because he became a senator during a period of more lenient legislation. However, he would be subject to stricter rules if he were to win a new mandate.

2019: According to a European Commission audit on Prime Minister Andrej Babiš's conflict of interest, Babiš is still in conflict of interest because he remains the ultimate owner of Agrofert, even though he has put it into a trust.

2020: President Zeman and MPs from (Babiš's) ANO and Úsvit přímé demokracie failed at the Czech Constitutional Court and the court left the amendment to the Conflict of Interest Act unchanged. According to the majority of constitutional judges, the law does not contradict the Constitution and pursues the public interest in fair political competition. "Economic power can contribute to the acquisition of political power, which can then be used synergistically to strengthen economic power, for example by obtaining public contracts or restricting competition," the ruling said.

The ruling also states that elections in a democratic state governed by the rule of law are supposed to be a properly conducted contest for the trust of the electorate, not a contest to for the winner of the election to control the state in order to use or even abuse its capacities and resources. The state is not a business, the ruling explicitly states.

According to the Constitutional Court, it is the duty of the rule of law to create the conditions for a public official to be able to perform his or her duties properly, but also to prevent him or her from using the power entrusted to him or her to promote his or her own interests. The Court stated that the legislation does not prevent anyone from running for public office because of a possible conflict of interest based on property or pursuit of a particular activity.

In spring 2021, the anti-corruption organization Transparency International pointed out that the German register of beneficial owners of companies records Babiš as a shareholder and an interested party in the company SKW Stickstoffwerke Piesteritz, which is part of Agrofert. Similarly, the UK has registered Babiš as a person with decisive influence. Transparency International has previously pointed out that Babiš is also still listed in Slovakia as an end-user of benefits from Agrofert.

The question of the real owner is important from the point of view of subsidies (from the Czech or EU budget), which are a substantial income of Agrofert and therefore of Prime Minister Babiš.

In July 2021, a translation of the latest audit letter on the conflict of interest of Prime Minister Andrej Babiš arrived in the Czech Republic. The criticism in the letter is mainly directed at the Ministry of Industry and Trade, which distributes EU subsidies to entrepreneurs for innovative projects under the Operational Programme Enterprise and Innovation for Competitiveness. They accuse its officials of failing to improve the control of conflicts of interest and trust funds.

To improve the screening of conflicts of interest, the Ministry of Regional Development issued a methodological opinion at the end of last year. This is to be followed by all Czech authorities in charge of EU subsidies. However, according to the auditors, the Ministry of Industry did not include it in its procedures at all.

In spring 2021, the European Commission published the results of an audit on structural funds, according to which Babiš is in conflict of interest and Agrofert was not entitled to any subsidies since 9 February 2017, when the amendment to the Czech law on conflict of interest came into force.

The European Commission therefore does not intend to pay any cohesion subsidies to the company until Babiš resolves the conflict situation. The Prime Minister, who has placed the company in trust funds, rejects the Commission's conclusions.

The Commission's audit concerns EU subsidies to Agrofert, the holding company owned by Babiš. In 2017, because of the conflict of interest law, he put his company's shares in trust funds, but the EU audit concluded that Babiš has a conflict of interest because he controls the funds by appointing and removing their officials.

THE ALZA.CZ CASE

Alza.cz is the largest Czech e-commerce company and one of the largest Czech companies in general. According to unconfirmed reports, the company is still controlled by its founder Aleš Zavoral, possibly with minority participation of his close friend Ivo Lukačovič, owner of Seznam (also one of the largest companies in the Czech Republic).

Alza.cz has listed attorney Pavel Steinwicht, who is linked to Alza in a number of cases, as an "indirect beneficial owner". Alza's press department came up with an "explanation" that "apparently there was a misunderstanding of the term beneficial owner".

The issue of Alza.cz's ownership is also important at the moment because the likely owner, Aleš Zavoral, is divorcing his wife, who helped build the company. So the question of ownership of Alza.cz will probably end up in court.



IMPLICATION OF THE IMPLEMENTATION OF BO TRANSPARENCY STANDARDS

Given that this is a new law and it fundamentally concerns, among others, Prime Minister Babiš, the launch of the register of beneficial owners was widely covered by the media in the Czech Republic.

From the first weeks of operation, it can be assumed that the media will include the Register of Beneficial Owners among the sources of information they will routinely work with.

The same can be said about the nonprofit sector.



RECOMMENDATIONS



The various actors (European Union, non-profit sector, etc.) should push some countries whose legislation is used to hide the real owners, for example Cyprus, to make the basic data from the company register available to anyone via the internet without charges.



The Ministry of Justice should also make publicly available data on beneficial owners as open data.



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- 11 Constitutional Court: provisions of the Conflict of Interest Act restricting public officials remain unchanged <https://bit.ly/3E0poxz>



GEORGIA

EXECUTIVE SUMMARY ⁴⁷

- ❖ More than 65,000 transactions and 31 suspicious transactions were carried out between 2018-2020 with the involvement of legal entities registered in high risk jurisdictions and the legal entities registered in Georgia by them in the territory of Georgia that were above the threshold provided by the legislation on the prevention of illicit income legalization.
- ❖ Studies have shown that Georgia lost about 4 billion USD between 2011 and 2020 due to corruption risks in public procurement. According to the Extractive Industries Transparency Initiative, since 2011, developing countries have lost about \$1 trillion as a result of corrupt and illegal transactions concluded by companies registered offshore. According to the World Bank, on a global scale, 70% of major corruption cases between 1980 and 2010 involved companies whose beneficial owners' information was not publicly available. Various studies show that about \$11 trillion is held in offshore havens. However, a closed financial system makes it impossible to determine the amount of capital that was obtained lawfully and the amount of property acquired through illegal transactions.
- ❖ An analysis of the legal framework showed that it is possible to deviate from the traditional definition of a beneficial owner if required by regulating specific areas, and it is possible, depending on the field, to take a selective approach for regulating the transparency of beneficial ownership. For instance, the law of Georgia on Commercial Bank Activities and the Law of Georgia on Broadcasting require a lower percentage of shares, thus a stricter standard for mandatory transparency of beneficial owners, than the law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism.
- ❖ A Register of Beneficial Owners, with some differences, exists in almost 30 states. Therefore, Georgia must share in the international experience and harmonize with EU legislation, ensure compliance with the FATF recommendations, and address the deficiencies identified in the Moneyval Evaluation Report, comply with the terms of its statement made at the 2016 London Anti-Corruption Summit, strengthen work with Open Government Partnership (OGP) working groups, work towards the Extractive Industries Transparency Initiative (EITI), which will ultimately result in establishing a public register of beneficial ownership.
- ❖ As a first step, it is necessary to identify priority fields where transparency of beneficial owners should become mandatory. In particular, such areas could be public procurement, state property auctions, and the extractive industry.

⁴⁷ The chapter was prepared by the Institute for Development of Freedom of Information (IDFI). Author: David Maisuradze, Open Government Direction Head, IDFI



It is important to establish a central register of beneficial ownership, which, on the one hand, strengthens the principle of openness and accountability, and on the other hand, saves costs for commercial legal entities and government bodies, including the National Bank and Communications Commission, as the register will provide an alternative method of verifying information.



INTRODUCTION

Transparency of ultimate beneficial owners is of great topical importance in Georgia. The accountable persons and supervisory bodies defined by the law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism and society should be aware of who stands behind the entity involved in certain entrepreneurial activity. Having information on the owners of commercial legal entities helps prevent corruption, enhance accountability, and protect the rights of citizens. Transparency of beneficial ownership is important in areas such as public procurement, the extractive industry, and when conducting due diligence on contractors.

Individual states as well as civil society and international organizations have proposed different methods for identifying beneficial owners. The register of beneficial owners is particularly relevant in this regard. This paper analyzes the existing legislation, challenges, and needs concerning the transparency of beneficial owners in Georgia.

First, we should emphasize that the Government of Georgia committed to considering the need for establishing a beneficial ownership register during the London Anti-Corruption Summit 2016. However, it should be noted that the civil society is not informed about whether the Georgian government has studied the benefits and drawbacks of establishing a beneficial ownership register, which is grounds to assume that such a study has not taken place.⁴⁸ In addition to considering the establishment of a transparent register of beneficial owners, Georgia made the following commitments at the summit:⁴⁹

- ❖ Signing bilateral agreements with partner countries to exchange information between law enforcement agencies on beneficial owners of the companies registered outside Georgia;
- ❖ Taking the necessary steps to ensure transparency of the owners and controllers of companies involved in public contracting;
- ❖ Strengthening cooperation between the public and private sectors to prevent illicit income legalization, especially with regards to corruption offenses;
- ❖ Working together with other states to introduce openness of companies operating in the field of oil, gas, and mineral resources. The commitment contributes to the activities that should be conducted in cooperation with EITI. At the same time, the Georgian government stated that it would collaborate with the Open Government Partnership (OGP) and the Extractive Industries Transparency Initiative (EITI) working groups to enhance transparency and accountability in the extractive sector.

⁴⁸ Georgia at the London Anti-Corruption Summit, Institute for Development of Freedom of Information (IDFI), 2016, available at: <<https://id-fi.ge/en/georgia-at-london-anti-corruption-summit>>.

⁴⁹ The Statement of the Government of Georgia at the London Anti-Corruption Summit 2016, available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522706/Georgia.pdf>.

Georgia, to some extent, has taken some measures to fulfill the commitments made at the London Anti-Corruption Summit. However, the central activities - the examination of the practicality of the beneficial ownership register, ensuring the openness of the company's beneficial owners involved in public contracting, and the transparency of the companies involved in the extractive industry - have not been implemented.

It should be noted that civil society organizations, including the Institute for Development of Freedom of Information (IDFI), have been emphasizing the necessity of establishing a beneficial ownership register for many years, yet the Georgian government is reluctant to commit to establishing such a register.

Georgia is a member of the Open Government Partnership (OGP). Councils/forums comprised of representatives of state bodies and civil society organizations have been formed in OGP member countries, including Georgia. The Council member CSOs have repeatedly appealed (in the form of a so-called "starred commitment") to the Government of Georgia and its administration with a request to establish a beneficial ownership register and join EITI as well, but the Georgian government has refused to do so.⁵⁰

Originally, a beneficial ownership register operated only in the UK, but more than 25 OGP participating countries have undertaken the commitment to establish a register of beneficial owners since then.⁵¹ Among others, Eastern and Central European countries such as Armenia, Slovakia, and Latvia have also made such commitments.⁵²

Georgian CSOs, including IDFI, encourage the Government of Georgia to introduce and implement Extractive Industries Transparency Initiative (EITI) principles. The extractive industry is one of the areas where the transparency of beneficial owners is ensured to a lesser degree. Yet, despite its commitment at the London Anti-Corruption Summit, the Government of Georgia is playing a passive role in introducing the Extractive Industries Transparency Initiative principles. EITI supports the openness of companies involved in the extractive industry, including the transparency of beneficial ownership.⁵³ It should be noted that the obligation of openness of the beneficial owners in terms of a beneficial ownership register that Armenia took applies to the companies involved in the extractive sector.⁵⁴

The role of the European Union and its legal mechanisms in introducing the beneficial ownership transparency needs to be emphasized. The EU, through its directives, is actively seeking to ensure the establishment and operation of a register of beneficial owners in its Member States. Especially

⁵⁰ See, for example, IDFI Recommendations for the Open Government Partnership Action Plan, which also discusses starred commitments, 2020, available at: <<https://idfi.ge/public/upload/OGP/translation-IDFI-OGP-Commitments-gov-eng.pdf>>.

⁵¹ Dickson, S., OGP's Approach to Peer Exchange: The Example of Beneficial Ownership, 2021, <<https://www.opengovpartnership.org/stories/ogps-approach-to-peer-exchange-the-example-of-beneficial-ownership/>>.

⁵² OGP, Beneficial Ownership, available at: <<https://www.opengovpartnership.org/policy-area/beneficial-ownership/>>.

⁵³ Beneficial Ownership, EITI, available at: <<https://eiti.org/beneficial-ownership/>>.

⁵⁴ EITI, Armenia, available at: <<https://www.eiti.am/en/annual-reports/2021/>>.

noteworthy is the Directive (EU) 2018/843 of the European Parliament and of the Council (the 5th Anti-Money Laundering Directive) amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/ EU), which obliges EU Member States to take effective steps in identifying beneficial owners, including through the exchange of information between beneficial ownership registers.

Although Georgia is an associated partner of the European Union and must harmonize with EU law, it has not yet taken effective steps to identify and ensure the transparency of beneficial owners.

In Georgia, parties to the transaction are often companies registered in offshore zones and their Georgian-based branches and subsidiaries. This increases the likelihood suspicious transactions being concluded that might be using financial resources obtained from corruption or other illegal activities and have an intention to facilitate money laundering or terrorism. According to the World Bank, on a global scale, 70% of the biggest corruption cases between 1980 and 2010 involved companies whose beneficial owners' information was not publicly available.⁵⁵

According to the information received from the LEPL Financial Monitoring Service, more than 65,000 transactions and 31 suspicious transactions were carried out between 2018-2020 on the territory of Georgia that were above the threshold provided by the legislation on the prevention of illicit income legalization. The legal entities registered in tax havens⁵⁶ and/or their Georgian branches and/or companies where these entities hold 25% or more were involved in both types of transactions mentioned above. Transactions in Georgia are carried out from the territories such as the British Virgin Islands, the Cayman Islands (BOTs), the Bahamas, Vanuatu, and others.⁵⁷

The purpose of the following chapter is to offer practical recommendations to interested parties from both private and public entities and non-governmental organizations for introducing and implementing beneficial ownership transparency standards in Georgia. At the same time, the document reviews all the positive aspects of openness of the beneficial ownership and its expected positive outcomes for the target groups.

⁵⁵ OGP, Beneficial Ownership, available at: <<https://www.opengovpartnership.org/policy-area/beneficial-ownership/>>.

⁵⁶ Ordinance N 615 of the Government of Georgia of December 29, 2016 on Compiling the List of Tax Haven Countries; Source and date of publishing: legislative herald of Georgia, 30/12/2016; Registration Code: 200250000.10.003.019682.

⁵⁷ Letter N 01/213 (213-01-2-202110271814) of the LEPL Financial Monitoring Service of Georgia, 27/10/2021.



THE GOVERNMENT'S CURRENT POLICY ON THE BENEFICIAL OWNERSHIP TRANSPARENCY

While reviewing the Georgian legislation, it is necessary to emphasize the role of the Financial Monitoring Service of Georgia in promoting and identifying the transparency of beneficial owners. Anti-money Laundering and Countering the Financing of Terrorism legislation regulates preventive mechanisms of money laundering and terrorism financing, defines the concept of beneficial owner, and highlights the importance of supervisory bodies' involvement in the prevention of illicit income legalization.

At the same time, two fields should be pointed out where the law prescribes openness of beneficial owners in particular: broadcasting and commercial banking.

PREVENTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM

The Financial Monitoring Service of Georgia is a legal entity under public law, the main purpose of which is facilitating the fight against money laundering and terrorism financing.⁵⁸ The main legal act regulating the activities of the Financial Monitoring Service is the law of Georgia on Facilitating the Prevention of Money Laundering and Financing of Terrorism. According to paragraph 1 of article 34 of this law, Financial Monitoring Service of Georgia „analyses reports and other information (document(s)) received from accountable persons and other sources, and if a reasonable belief arises with money laundering, the financing of terrorism, or other crimes, it sends the outcomes of its analysis to the Prosecutor's Office of Georgia, the State Security Service of Georgia, the Revenue Service, and/or the Ministry of Internal affairs of Georgia“.⁵⁹ Additionally, according to paragraph 3 of the same article, the Financial Monitoring Service examines the methods of money laundering and the financing of terrorism in Georgia and abroad, and develops guidelines for notable signs when detecting suspicious transactions.⁶⁰

Article 13 of the same law defines the concept of a beneficial owner. According to it, „a beneficial owner is a natural person who is the ultimate owner or the ultimate controller of a client and/or on whose behalf a transaction is prepared, made, or completed“.⁶¹ According to paragraphs 2 and 3 of this article, „a beneficial owner of a legal person is a natural person who owns, directly or indirectly, 25% or more than 25% of the shares or voting rights in that legal person,, or otherwise exercises

⁵⁸ For further information, please see: <<https://www.fms.gov.ge/eng/page/about>>.

⁵⁹ Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism”, Article 34.1, Date of issuing: 30/10/2019; Source and date of publishing: legislative herald of Georgia, 30/10/2019; Registration Code: 080090020.05.001.019627; Consolidated version: 30/03/2021.

⁶⁰ Ibid, Article 34.3.

⁶¹ Ibid, Article 13.1.

ultimate control over that legal person. The direct ownership of shares shall be considered the ownership of 25% or more than 25% of shares or voting shares by a natural person in an entrepreneurial legal entity, and indirect ownership shall be considered the ownership of 25% or more than 25% of shares or voting shares in an entrepreneurial legal entity by a legal person who is controlled by a natural person(s), or by several legal persons controlled by the same natural person(s).⁶² Therefore, although the definition of beneficial ownership the law requires the ownership of 25% or more shares in a legal entity, it also provides for the possibility to bypass that ownership of shares and for a natural person exercising control to be considered a beneficial owner as well.

The Financial Monitoring Service actively cooperates with both local and international organizations when carrying out its functions. For instance, the law sets out a list of supervisory bodies (Service for Accounting, Reporting and Auditing Supervision, Georgian Bar Association, National Bank of Georgia, Ministry of Justice of Georgia, Ministry of Finance of Georgia, LEPL Insurance State Supervision Service of Georgia) that, under Article 34, are required to ensure that accountable persons (financial institutions, DNFBPs, public entities) monitor compliance with the law remotely or through on-the-spot verification. In addition, the supervisory body can issue relevant guidelines. According to Article 39.2 of the Law, the supervisory body is obliged to inform the Financial Monitoring Service about violations identified during the audit of the accountable person in a timely manner.

At the same time, beneficial ownership transparency and enhanced accountability are important for the Financial Monitoring Service to achieve its objectives pertaining to the identification of ultimate owners and the source of finances. The 2020 annual report of the Financial Monitoring Service did not directly provide information on beneficiary ownership transparency.⁶³ For the purposes of this paper, the MONEYVAL (Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) Committee evaluation report⁶⁴ adopted on 17 September 2020 and the document on "Money Laundering and Terrorism Financing Risk Assessment of Georgia"⁶⁵ developed by the Financial Monitoring Service were used for examining the issue of beneficial ownership transparency in Georgia.

According to the Moneyval report,⁶⁶ with regard to the effectiveness of money laundering and terrorist financing prevention measures and the Financial Action Task Force (FATF) recommendation 24 (transparency and beneficial ownership of legal persons), which obligates the government to take measures to ensure transparency of beneficial owners of legal persons, Georgia needs to continue working on eliminating various existing challenges. In particular, the report states that the mechanisms to obtain basic and beneficial ownership of legal entities are: (i) Illicit Income

⁶² Ibid, Articles 13.2. and 13.3.

⁶³ LEPL Financial Monitoring Service of Georgia, Annual Report, 2020, available at: <https://www.fms.gov.ge/Uploads/files/GEO_Annual_Report_2020_28.04.21.pdf>.

⁶⁴ See <<https://www.fms.gov.ge/geo/news/133>>.

⁶⁵ Money Laundering and Terrorism Financing Risk Assessment of Georgia, Report 2019, available at: <https://www.fms.gov.ge/Uploads/files/N-RA_Georgia_Geo.pdf>.

⁶⁶ MONEYVAL (2020)20, Anti-money Laundering and Counter-terrorist Financing Measures, Georgia, Fifth Round Mutual Evaluation Report, available at: <<https://rm.coe.int/moneyval-2020-20-5th-round-mer-georgia/1680a03271>>.

Income Prevention and Financial Monitoring Legalisation, including subordinate acts; (ii) keeping of share registers by the NAPR, which provides information about the partners of legal persons; and (iii) keeping of share registers by the legal persons, but nevertheless:

- The evaluation report indicates that some of the features of the Georgian system may create vulnerabilities in terms of money laundering and terrorism financing, e.g. availability of virtual registration addresses (virtual offices) and tax-exempt companies (special trade companies, international trading companies, and free industrial zone companies). The report states that, in general, the existence of fictitious companies poses a risk of money laundering.⁶⁷ On the other hand, according to the 2019 report on Money Laundering and Terrorism Financing Risk Assessment of Georgia, the overwhelming majority of entrepreneurial legal persons that are involved in money laundering cases are registered as a limited liability company, since their establishment and management are associated with less stringent requirements.⁶⁸
- The fact that the information in the public register is complete and reliable⁶⁹ does not compensate for the fact that the public register does not fully reflect the information about the beneficial owners of companies.⁷⁰
- In addition, the Moneyval report also identifies problems in the area of trust law. "Georgia is not a party to the Hague Convention on the Law Applicable to Trusts and their Recognition. The legislation does not recognize the concept of "dual ownership" characteristic to the common law trusts (hereinafter referred to as the "trust") or its analogues in continental European law."⁷¹ Whenever there is a trust relationship, anti-money laundering and anti-terrorist financing regulations apply to attorneys and accountants, as they are required to keep client-related information. However, even if lawyers or accountants refuse to collect such information, they are not subject to sanctions.

The Moneyval report shows that there are challenges related to "fictitious" companies, and a tax exemption regime can also be dangerous in terms of money laundering. Depriving trading companies and international trading companies of such status if, in reality, they are not operating, can be a solution in this regard.

⁶⁷ Ibid, p. 221.

⁶⁸ Money Laundering and Terrorism Financing Risk Assessment of Georgia, Report 2019, p. 54, available at: https://www.fms.gov.ge/Uploads/-files/NRA_Georgia_Geo.pdf.

⁶⁹ According to article 7.3. of the law of Georgia on Entrepreneurs, the presumption of reliability and entirety shall apply to the registered data in a public register, yet, it does not mean that the information about the ultimate owners of the enterprises should also be provided. Law of Georgia on Entrepreneurs, Article 7.3., Date of issuing: 28/10/1994; Source and date of publishing: Departments of the Parliament of Georgia, 21-22, 28/10/1994; Registration code: 240.000.000.05.001.000.087; Consolidated version: 02/08/2021.

⁷⁰ MONEYVAL (2020)20, Anti-money Laundering and Counter-terrorist Financing Measures, Georgia, Fifth Round Mutual Evaluation Report, pp. 225-226, available at: <https://rm.coe.int/moneyval-2020-20-5th-round-mer-georgia/1680a03271>.

⁷¹ Money Laundering and Terrorism Financing Risk Assessment of Georgia, Report 2019, p. 54, available at: https://www.fms.gov.ge/Uploads/-files/NRA_Georgia_Geo.pdf.

A register of special trading companies⁷² and a register of international companies⁷³ is available on the website of the Revenue Service. The Institute for Development of Freedom of Information examined the information about each company listed in the register in terms of identification of beneficial owners (via the webpage of the National Agency of Public Registry)⁷⁴ and submission of financial reports (via Reporting Portal)⁷⁵. According to articles 5, 6, 7, 8, and 9 under the law of Georgia on Accounting, Reporting, and Audit, companies shall submit annual reports corresponding to their category, the non-submission of which may become a ground for sanctions under Article 26 of the abovementioned law.⁷⁶ The report can be submitted through the reporting portal. When a company is active, it will surely work on preparing and submitting such a document, while when the company exists in name only, it does not submit these reports.⁷⁷ Even more critical is when a company exists and operates but deliberately refuses to disclose a reporting document. Therefore, when examining trade and international trade companies, the Institute for Development of Freedom of Information came to the view that it is this criterion that shows the activity and good faith of companies. The examination of the companies revealed that **almost 50% of international trading companies and more than 30% of the total number of special trading companies are owned by foreigners and/or legal persons registered outside Georgia, including offshore zones.**

According to the Register of Special Trading Companies of the Revenue Service, the total number of special trading companies stands at 181, of which 102 companies have not submitted financial reporting documents (the figure does not include companies registered in 2021, as they do not yet have an obligation to submit reports). According to the Revenue Service Register, the total number of international trading companies stands at 33, with almost all of these companies having published financial reporting documents.⁷⁸ Therefore, it is important to withdraw the status of a special trading company with respect to non-active ones, which, at the same time, will be an opportunity to implement the evaluation provided by Moneyval.

⁷² available at: <<https://rs.ge/CompanyStatus>>.

⁷³ available at: <<https://rs.ge/InternationalOrgStatus>>.

⁷⁴ National Agency of Public Registry: <<https://napr.gov.ge/>>.

⁷⁵ Reporting Portal: <<https://reportal.ge/>>.

⁷⁶ Law of Georgia on Accounting, Reporting, and Audit, date of issuing: 08/06/2016; source and date of publishing: Website, 24/06/2016; registration code: 260000000.05.001.018170; consolidated version: 02/08/2021.

⁷⁷ For further details about reporting and sanctioning, please see: "Regulatory Impact Assessment of the Latest Accounting, Reporting, and Auditing Regulatory Framework", 2020, Iliia State University and the Center for International and European Economic Law (CIEEL), available at: <<https://iliauni.edu.ge/uploads/other/61/61007.pdf>>.

⁷⁸ The number of companies in the mentioned registers is counted as of November 2, 2021.

LAW OF GEORGIA ON COMMERCIAL BANK ACTIVITIES

Today, one of the most efficient entities in terms of ensuring the transparency of beneficial owners is the National Bank of Georgia. According to article 48 of the organic law of Georgia on the National Bank of Georgia, the National Bank has full authority to supervise the activities of financial institutions.⁷⁹ At the same time, this article allows the National Bank of Georgia to impose various sanctions on a representative of the financial sector, including monetary fines, revocation of registration and authorization, and deprivation of a license. According to article 49 of the above-mentioned law, the National Bank of Georgia is authorized to "require and receive information on the sources of the capital of a commercial bank and on both direct and beneficiary owners of its significant shares".⁸⁰ At the same time, the National Bank of Georgia is entitled within the scope of its authority to "request and obtain any information (including confidential information) on direct owners and beneficiary owners of a commercial bank, and set additional requirements for such commercial bank on the basis of the legal act."⁸¹ This rule does not apply only to commercial banks. The National Bank has a similar authority over other representatives of the financial sector, in particular, to request and receive information on "direct owners of a significant share, and on beneficial owners (including on the origin of property and/or financial resources".⁸²

According to article 1 of the law of Georgia on Commercial Bank Activities, a beneficial owner is "a person receiving financial or other benefits under the law or an agreement, and who has no obligation to transfer these benefits to another person; and if a beneficial owner is an entity established to achieve best objectives,⁸³ or if an owner is a legal person that has no person who owns a significant interest, a beneficial owner is a member of the management body."⁸⁴ Applicants for a banking license must submit to the National Bank, among other information, a compliance declaration, which must include information about both the direct owner and the beneficial owner of significant shares.⁸⁵ Moreover, under the law of Georgia on Commercial Bank Activities, when acquiring a significant share in a commercial bank, a person or jointly acting group of partners/shareholders shall submit a compliance declaration to the National Bank in person or through a representative, with the inclusion of information on significant shares and beneficial owner.⁸⁶ At the same time, according to the same law, "on the basis of available information, a

⁷⁹ Organic Law of Georgia on the National Bank of Georgia, article 48; date of issuing: 24/09/2009; source and date of publishing: legislative herald of Georgia, 29, 12/10/2009; registration code: 220.010.000.04.001.003.616; consolidated version: 28/04/2021.

⁸⁰ Ibid, article 49.1.

⁸¹ Ibid.

⁸² Ibid, article 48.41.

⁸³ This is a non-profit (non-commercial) legal entity.

⁸⁴ Law of Georgia on Commercial Bank Activities, Article 1.d). Date of issuing: 23/02/1996; Source and date of publishing: Parliamentary Gazette, 003, 23/03/1996; Registration code: 220.020.000.05.001.000.126; consolidated version: 02/08/2021.

⁸⁵ Ibid, article 3.2.3).

⁸⁶ Ibid, article 81.1.

commercial bank shall provide the National Bank, together with annual reports, information on the direct owner and the beneficial owner of more than 10 percent of bank shares and shall indicate whether it confirms the accuracy of the information provided."⁸⁷ Further, if the National Bank believes that the owner of the significant share does not meet the compliance criteria anymore, the National Bank is authorised to suspend the voting rights of such person and require him/her/it to reduce his/her/its shares to 10 per cent within 60 days.⁸⁸

The license conditions for a brokerage company, a central depository, and a stock exchange as specified by the law of Georgia on Securities Market should be emphasized here. Applicants interested in obtaining these licenses must submit an application and information on beneficial owners to the National Bank. In particular, according to article 24 of the abovementioned law, an applicant seeking a licence for a brokerage activity shall submit an application to the National Bank of Georgia with the information on the beneficial owner of a brokerage company who directly or indirectly holds a significant share.⁸⁹ According to article 27 of this law, one of the licence conditions for stock exchanges is submitting the compliance declaration to the National Bank of Georgia, including information on the beneficial owner of significant shares.⁹⁰ According to Article 27 of the law, one of the licence conditions for stock exchanges is submitting the compliance declaration to the National Bank of Georgia, including information on the beneficial owner of the significant shares. A similar condition applies to applicants seeking a Central Depository licence under Article 28 of the law.⁹¹

Unlike the Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism, the law of Georgia on Commercial Bank Activities takes a stricter approach to determining the transparency of beneficial owners and sets a mandatory transparency standard for owners with more than 10% of the shares. In addition, on June 23, 2021, with its order N83 / 04, the National Bank of Georgia approved the "Rules for submitting the information and completing the questionnaire for supervision of the compliance control system of commercial banks with respect to anti-money laundering and countering the terrorism financing". The purpose of the rule is for the National Bank to remotely assess the effectiveness of the compliance control system in a commercial bank (hereinafter "the Bank") and its compliance with anti-money laundering and countering the terrorism financing legislation, requirements imposed by the National Bank, and international best practices.

⁸⁷ Ibid, article 83.1.

⁸⁸ Ibid, article 84.

⁸⁹ Law of Georgia on Securities Market, article 24, date of issuing: 24/12/1998; source and date of publishing: legislative herald of Georgia, 1(8), 14/01/1999; registration code: 040.170.280.05.001.000.467; consolidated version: 02/08/2021.

⁹⁰ Ibid, article 27.

⁹¹ Ibid, article 28.

LAW OF GEORGIA ON BROADCASTING

The state allows for a general exception to the transparency policy of beneficial owners with the law of Georgia on Broadcasting,⁹² according to article 37.2 of which a license holder and/or authorized person in the field of broadcasting may not be a legal person registered offshore or a legal person, the shares or stocks of which are directly or indirectly owned by a legal person registered offshore. According to paragraph c³ of article 2 of said law, offshore is a state or the territory of a state where information on property, activities, and partners, and/or shareholders of a legal entity is kept confidential. According to paragraph c1 of article 2 of the above-mentioned law, a beneficial owner is “a person who, on the basis of law or a transaction, receives or may receive monetary or other benefits from the activities of a broadcaster and who has no obligation to transfer this benefit to another person, whereas if a beneficial owner is an entity established for ideal purposes, or if a corporate owner does not have a person owning a substantial share, a beneficial owner shall be a member of its governing body.” Therefore, according to the Law of Georgia on Broadcasting, both commercial and non-commercial legal persons can be beneficial owners, the issue of openness of which will be raised subsequently.

According to article 37¹ of the Law of Georgia on Broadcasting, a license and/or authorization applicant shall attach a declaration of compliance to an application, which, among other things, must indicate that the person or its beneficial owners are not persons registered offshore. The declaration of compliance must also contain information on the identification data of beneficial owners of a license applicant and/or authorization applicant and information about the shares owned by them.

It should be noted that the Law of Georgia on Broadcasting defines both offshore zone and the concept of a beneficial owner rather loosely, which is in line with the objectives set out in article 1 of the law, in particular, regulating broadcasting activities in accordance with the principles of transparency, fairness, and impartiality. Therefore, the law indirectly indicates that having no information about beneficial owners may adversely affect transparency, fairness, and impartiality. Significantly, the law also does not specify the amount of the share of the beneficial owner of a legal person registered offshore. Although the definition of a beneficial owner includes the words “significant share”, the combination of words is followed by “member of the governing body”, which indicates the purpose of the law is to accurately identify a person with real authority, which can be both a shareholder and a member of the governing body. It is noteworthy that according to paragraph 20 of article 2 of the law of Georgia on Securities Market, **“control (significant share) is a condition where a person or a group of related persons hold more than 10% of the voting rights in an enterprise**

⁹² Law of Georgia on Broadcasting, Date of issuing: 23/12/2004; Source and date of publishing: legislative herald of Georgia: 5, 18/01/2005; Registration code: 450.140.000.05.001.001.632; Consolidated version: 07/09/2021.

*or are otherwise able to control such an enterprise.”*⁹³ Hence, the Law of Georgia on Broadcasting requires stricter standard for disclosing information on beneficial owners than the law on Facilitating the Prevention of Money Laundering and the Financing of Terrorism, where the transparency of beneficial owners usually begins with them holding 25% of shares or otherwise exercising control.⁹⁴

⁹³ Law of Georgia on Securities Market, date of issuing: 24/12/1998; source and date of publishing: legislative herald of Georgia, 1(8), 14/01/1999; registration code: 040.170.280.05.001.000.467; consolidated version: 02/08/2021.

⁹⁴ Beneficial Ownership Implementation Toolkit, OECD, 2019, p. 4, available at: <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>.



THE CHALLENGES THAT BENEFICIAL OWNERSHIP TRANSPARENCY STANDARDS AIM TO ADDRESS

Establishing beneficial ownership transparency standards will help Georgia address problems in various areas, particularly in reducing high-level corruption,⁹⁵ preventing money laundering, and protecting the interests of locals. There are several fields particularly vulnerable to corruption schemes and illicit income legalization.

FORMATION OF OFFSHORE COMPANIES BY POLITICALLY EXPOSED PERSONS

According to article 21 of the law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism, a politically exposed person is a natural person performing important public or political functions, including head of state, head of a government, a minister, a member of a legislative body, and a member of a court of the highest instance. These persons usually do not have the right to carry out business activities, and for this reason, they use offshore zones to maintain their anonymity and carry out entrepreneurial activities through companies registered in offshore zones.

Politically exposed persons use offshore zones to set up companies while investing capital into them to launder money and/or buy real estate that can be tax-exempt. In recent years, journalist associations have investigated cases of dozens of state leaders and businessmen acquiring real estate through companies registered in offshore zones. For example, according to the Pandora Papers, the King of Jordan, the Presidents of Ukraine, Kenya, and Ecuador, the Prime Minister of the Czech Republic, and more than 130 billionaires from Russia, the United States, and Turkey have ties to offshore companies.⁹⁶ Thus, persons who should take care of bringing down the number of high-risk jurisdictions and increasing financial transparency use territories where the information about beneficial owners is not open and invest money earned through corruption and illegal transactions.

According to the information provided by the Financial Monitoring Service, in Georgia, transactions above the prescribed threshold limit were carried out involving legal persons registered in the British Virgin Islands or legal persons established in Georgia with the participation of the latter. In particular, 19,442 transactions were carried out in 2018, 22,958 transactions in 2019, and 18,774 transactions

⁹⁵ 150 biggest corruption cases analysis shows that the standard technique used to conceal ownership is a company. FATF, Concealment of Beneficial Ownership, p. 25, 2018, available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>.

⁹⁶ Available at: <https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/>.

in 2020. It is important to note that, according to the Financial Monitoring Service, 31 suspicious transactions were recorded between 2018 and 2020 involving legal entities registered offshore. 26 out of 31 transactions were carried out by legal persons registered in the British Virgin Islands or legal persons established in Georgia with the participation of the latter (legal persons registered in the British Virgin Islands).

Various studies confirm that about \$11 trillion is held in offshore tax havens. However, a closed financial system makes it impossible to determine the amount of capital obtained lawfully and the amount of property acquired through illegal transactions.⁹⁷

The Register of Entrepreneurs and Non-Entrepreneurial Legal Entities contains about 3200 companies, all or part of which are owned by a legal person registered offshore. Companies registered offshore own various business organizations in Georgia, including Chiaturmanganum Georgia, Rustavi Metallurgical Plant, Beeline, Silk Road Group Holding, Batumi International Container Terminal, and other enterprises. In 2011-2020, up to \$5.2 billion foreign direct investment in Georgia came from offshore territories, accounting for 38% of total foreign investment during the period. We should also emphasize that in 2012-2020, offshore companies were given state property through both auctions and direct privatization.⁹⁸

The Register of Beneficial Owners is a powerful tool for eliminating high-level corruption and preventing such politically exposed persons obtaining illicit income through companies registered in offshore zones. For instance, in 2018, the Czech branch of Transparency International, through the Slovak Register of Beneficial Owners, revealed that the Prime Minister of the Czech Republic, Andrej Babiš, is linked to a company that received millions of euros (75 million euros in total) in subsidies from the EU each year.⁹⁹

In addition, it should be noted that the organic law of Georgia on Political Associations of Citizens strengthens the openness of beneficial owners of legal persons that transferred money to a party account. Specifically, the organic law ensures the openness of public donations received by a party and public access to them. According to article 25 of the Organic Law, donations are also monetary funds deposited to the party's bank account by a legal person who is registered in the territory of Georgia and whose partners are exclusively citizens of Georgia or the legal persons registered in Georgia, the final beneficiaries of which are only citizens of Georgia.¹⁰⁰ According to paragraph 6 of article 26 of the same organic law, information on the donations received by a party shall be publicly available. The State Audit Office ensures access to this information. The State Audit Office makes the information on the donations received by a party available to the public through its website.¹⁰¹

⁹⁷ Available at: <<https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/>>.

⁹⁸ Transparency International Georgia, „Offshore companies in Georgia: Business interests and corruption risks“, 10 June, 2021, available at: <<https://transparency.ge/en/blog/offshore-companies-georgia-business-interests-and-corruption-risks>>

⁹⁹ Transparency International, Out in the Open: How Public Beneficial Ownership Registries Advance Anti-Corruption. (2021), available at: <<https://bit.ly/2XFCTCU>>.

¹⁰⁰ Organic Law of Georgia on Political Associations of Citizens, article 25, date of issuing: 31/10/1997; source and date of publishing: Parliamentary Gazette, 45, 21/11/1997; registration code: 010.290.000.05.001.000.283; consolidated version: 22/06/2021.

¹⁰¹ Ibid, article 26.



THE SIGNIFICANCE OF OPENNESS OF BENEFICIAL OWNERS FOR PUBLIC PROCUREMENT AND OTHER TOPICAL ISSUES

PUBLIC PROCUREMENT - one of the most problematic areas in the management of public finances is public procurement, where transparency and openness are of great importance. Various studies show that due to corruption risks in public procurement, Georgia has lost about 4 billion USD between 2011 and 2020.¹⁰² Although digital technologies are introduced in the sphere of public procurement, it is still crucial not only to protect the competition and fairness in the bids of the companies participating in procurement, but also to identify the people behind these companies and ensure publicity. In Georgia, politically exposed persons and/or persons affiliated with them often form commercial organizations that participate in state-announced procurements and win. As mentioned above, such examples are part of high-level corruption. Consequently, maintaining transparency at such times is crucial in terms of informing the public and preventing corruption risks.

Introducing the principles of transparency of beneficial owners in Georgia is vital for making improvements in the field of public procurement. Transparency of beneficial owners will enable us to identify politically exposed persons, including former government officials, who stand behind companies involved in public contracting.

The second significant challenge is the participation of companies that are sanctioned by the state of Georgia for violating the terms of the contract in public procurement. Such companies can establish new companies using offshore zones and participate in public procurement.

Particularly problematic is the participation of companies that have a place of registration in states not recognizing the territorial integrity of Georgia in public procurement and business transactions. For instance, according to the information provided by the Financial Monitoring Service, in 2018-2019-2020, 16 above threshold transactions were concluded on the territory of Georgia involving legal persons registered in Vanuatu and/or legal persons established in Georgia by such legal persons. Relations between Vanuatu and Georgia were damaged by reports of Vanuatu recognizing Abkhazia as an independent state, which Vanuatu eventually retracted.¹⁰³

¹⁰² Available at:
<https://public.tableau.com/app/profile/gti1940/viz/Corruptioninpublicprocurement/Overviewofcountries>;
<http://www.govtransparency.eu/the-imf-anti-corruption-challenge/>;
<http://www.govtransparency.eu/wp-content/uploads/2020/10/IMF-policy-brief-200928.pdf>.

¹⁰³ For further information, please see: < <https://bit.ly/3CJb5Ng>>.

A separate group of sanctioned companies is Russian enterprises that have been sanctioned by the United States and the European Union for the occupation of the Crimean Peninsula by Russia and its support for separatists in the Donbas. In addition to the fact that Georgia did not join in imposing the sanctions, these companies make financial transactions and buy production facilities on the territory of Georgia.¹⁰⁴

The openness of information on beneficial owners is crucial for the purposes of the law of Georgia on Occupied Territories, which prohibits any kind of economic activity on the occupied territories.¹⁰⁵ The Russian company "Rosneft" has been operating illegally on the territory of Abkhazia for many years and owns a network of filling stations there. In 2014, Rosneft acquired 49% of shares in the Georgian company Petrocas Energy Limited. By 2014, the company owned oil terminals in Poti and the Gulf filling station network in Georgia. The change in the shares of the company's partners was not reflected in the register of entrepreneurs and non-entrepreneurial (non-commercial) legal entities. Accordingly, it was argued that the owner of the shares had changed in companies registered offshore that control Petroka Energy Limited. The then Minister of Economy and Sustainable Development, Giorgi Kvirikashvili, and the then Minister of Energy, Kakha Kaladze, argued that the state had no leverage to prevent the transaction because it was concluded through companies registered offshore.¹⁰⁶ The Register of Beneficiary Owners is the lever that should ensure the openness of the beneficial owners of companies registered in offshore zones and facilitate the observance and implementation of Georgian legislation in terms of state procurement and compliance with the regulations regarding the occupied territories as well.

EXTRACTIVE INDUSTRY

The extractive industry is a particularly problematic area both internationally and locally. Numerous international associations and initiatives have been set up with the participation of both state and civil society organizations seeking to protect the interests of local people, preserve historic landscapes and cultural heritage sites, and raise the social responsibility standards of extractive companies. Organizations such as EITI (Extractive Industries Transparency Initiative) and PWYP (Publish What You Pay) play a significant role in this regard.¹⁰⁷ Although CSOs are actively calling for it,¹⁰⁸ the Georgian government unfortunately does not plan to join EITI at the moment. PWYP members in Georgia are the Institute for Development of Freedom of Information (IDFI) and the International Business and Economic Development Centre.¹⁰⁹

¹⁰⁴ The sanctioned Russian companies and the position of the Georgian government, May 13, 2015, available at: <http://damoukideblo-ba.ge/c/news/sanqcirebuli_rusuli>.

¹⁰⁵ Law of Georgia on Occupied Territories, article 6.1., date of issuing: 23/10/2008; source and date of publishing: legislative herald of Georgia, N 28, 30/10/2008; registration code: 010.080.000.05.001.003.300; consolidated version: 15/07/2020.

¹⁰⁶ The sanctioned Russian companies and the position of the Georgian government, May 13, 2015, available at: <http://damoukideblo-ba.ge/c/news/sanqcirebuli_rusuli>.

¹⁰⁷ For further information, please see: <<https://www.pwyp.org/about/>>.

¹⁰⁸ IDFI's Recommendations for the 2021-2022 Open Government Georgia Action Plan, 2020, available at: <https://idfi.ge/en/idfi_recommendations_for_the_2021-2022_open_government_georgia_action_plan>.

¹⁰⁹ Available at: <https://www.pwyp.org/pwyp_members/georgia/>.

According to the Extractive Industries Transparency Initiative, developing countries have lost about \$1 trillion as a result of corrupt and illegal transactions since 2011. These transactions are mainly concluded by the companies whose beneficial ownership information is not publicly available.¹¹⁰ For example, as mentioned above, in Georgia, one such company whose beneficial ownership information is not transparent is ChiaturManganum Georgia. Interestingly, at the same time, the register of beneficial owners operating in Armenia maintains the openness of the information about companies working in the extractive industry.¹¹¹

Increasing the transparency of beneficial ownership in the extractive industry will enhance the accountability of extractive companies, minimize corruption risks, and increase the protection of local interests.

OTHER TOPICAL ISSUES OF BENEFICIAL OWNERSHIP TRANSPARENCY

Due diligence - in Georgian legal sources it is referred to as "proper prudence"¹¹² or "double diligence".¹¹³ Transparency of beneficial owners is not significant only for the protection of the rights of citizens and minimizing the risks of corruption. The openness of beneficial ownership also saves financial resources in small and medium-sized enterprises, since a thorough study of the legal and financial aspects of the contract is a costly process for them. The openness of information about beneficial ownership facilitates the decision-making process in contracting companies, reduces the likelihood of conflict of interest, and enables companies to minimize financial and legal risks and save and use financial resources in other ways.

Covid-19 - The past two years demonstrated the importance of openness and accountability. The pandemic has allowed us to see the need for constant care to strengthen the openness and accountability of state entities, not only in developing but also in Western European countries. The pandemic has had an adverse impact on the introduction of transparency standards for beneficial owners in terms of data collection.¹¹⁴ The pandemic has, in particular, hampered the effectiveness of governments, which in Georgia manifested itself, among other things, in the Open Government Partnership State Action Plan not being ratified.

¹¹⁰ EITI, Beneficial Ownership, available at: <<https://eiti.org/beneficial-ownership>>.

¹¹¹ For further information, please see: <<https://www.eiti.am/en/annual-reports/2021/>>. The English version of the report provides information on the beneficial owners on pp. 70-76.

¹¹² Maisuradze, D., Corporate Legal Protective Measures during the Reorganization of a Capital Partnership (Comparative Legal Research Predominantly on the Example of Delaware and Georgian Corporate Law), pp. 82-90, 2014, available at: <http://press.tsu.ge/data/image_db_innova/disertaciebi_samartali/davit_maisuradze.pdf>.

¹¹³ Makharoblishvili, G; Implementing fundamental changes in the structure of capital partnerships based on corporate legal actions (acquisition, merger), comparative legal analysis, pp. 178-187, 2014, available at: <http://press.tsu.ge/data/image_db_innova/disertaciebi_samartali/giorgi_maxaroblishvili.pdf>.

¹¹⁴ Open Ownership, Five areas where beneficial ownership transparency is key in addressing Coronavirus, 2020, available at: <<https://www.openownership.org/news/five-areas-where-beneficial-ownership-transparency-is-key-in-addressing-coronavirus/>>

The pandemic has once again made the significance of e-government clear. Public services should be available electronically, including access to registries and public information. The beneficial ownership register is no exception in this regard. The existence of such a register and its publicity is a guarantee that access to information about beneficial owners will not be affected by similar outbreaks or other force majeure circumstances. The pandemic and restrictions of rights pose a particular challenge for Eastern European countries, including Georgia, since the weak state institutions are unable to cope with the dynamics of these restrictions. In 2020, the European Commission issued a recommendation to EU member states that offshore companies should not receive funding from government programs for helping businesses affected by the pandemic¹¹⁵. Therefore, protecting the transparency of beneficial owners is of particular importance.

¹¹⁵ Transparency International Georgia, „Offshore Companies in Georgia: Business Interests and Corruption Risks“, 10 June, 2021, available: <<https://transparency.ge/en/blog/offshore-companies-georgia-business-interests-and-corruption-risks>>



SOLUTIONS TO CHALLENGES EXISTING IN THE FIELD OF BENEFICIAL OWNERSHIP

UNDERTAKING AN OBLIGATION

Consistent and well-grounded policies are essential for the introduction of a beneficial ownership transparency standard. To that end, it is particularly significant to develop a transparency policy for beneficial owners within the EU, the Open Government Partnership, and other international and regional communities and platforms. This increases the quality of the implementation of transparency standards for beneficial owners and its acceptance by stakeholders. Today, within the framework of the international community, Georgia has the opportunity and, at the same time, the obligation to implement the transparency of the beneficial ownership from the standpoint of both the EU and the Open Government Partnership (OGP). Moreover, transparency of beneficial ownership is useful in terms of preventing corruption and strengthening the system of private and public accountability.

INTERAGENCY COOPERATION

Cooperation between the public, private and non-governmental sectors is crucial for the introduction of beneficial ownership transparency. The introduction of such a commitment will lead to significant legal and financial changes at both the public and the private levels, and consequently, all categories of interested groups should have the possibility to review and approve it.

An excellent example of setting up an interagency working group is the Open Governance Inter-Agency Coordination Council, which was established by the Decree of the Government of Georgia of February 13th. The Coordination Council covers all three branches of the government and consists of – the representatives of the ministries, Deputy Chairperson of the Supreme Court of Georgia, and the Chairperson of the Open Governance Permanent Parliamentary Council. Additionally, members of non-governmental organizations are represented in the Council with voting rights. Therefore, the decision-making process in the Council is based on a cumulative majority of the representatives of the state agencies and NGOs. Representatives of state agencies are designated as the permanent members of the Coordination Council, including Parliamentary Secretary of the Government of Georgia, Deputy Minister of Regional Development and Infrastructure of Georgia, Deputy Minister of Economy and Sustainable Development of Georgia, Deputy Minister of Justice of Georgia, Chairperson of the State Procurement Agency as well as the representatives of other state institutions. According to the Statute, the Council is chaired by the Head of the Administration of the Government of Georgia. Unfortunately, despite the possibility

provided by the Statute, due to the inaction of the Government of Georgia, the mentioned Inter-Agency Coordination Council is not functioning actively.¹¹⁷

Despite this inaction, the decisions made by the Council have a high degree of legitimacy, since many interested groups are involved in the decision-making process. The decisions of the Council should be followed by amendments to the framework of the legislative and subordinate normative acts, which should form the basis for the introduction of beneficial ownership transparency standards.

ENSURING OPENNESS IN COMPLIANCE WITH INTERNATIONAL EXPERIENCE

The register of beneficial owners, where companies established in offshore zones are registered, the information about the final owners of which is not open and accessible, is considered a major tool for ensuring the transparency of beneficial ownership.

Similar registers exist in up to 30 states. Most notable is the Registry of Beneficial Owners in the UK, which has been functioning since 2016.¹¹⁸ In the UK, the transparency requirement for beneficial owners starts from owning 25% or more of the shares of the company.¹¹⁹

It is important to note that similar registers function in post-Soviet countries, in particular, in Ukraine¹²⁰ and Armenia.¹²¹

The register of beneficial owners in Ukraine is presented together with the register of legal entities. A beneficial owner is a person who directly or indirectly owns or controls at least 25% of a company.¹²² From the case analysis of Armenia, we can say that the standard of openness of beneficial owners applies to companies involved in the extractive industry. Armenia undertook the obligation to join the EITI as part of its Open Government Action Plan, which introduced a mandatory openness criterion for companies in the extractive industry. Information on the beneficial owners working in the extractive industry is also available from the third EITI report of Armenia 2019.¹²³ At the same time, Armenia intends to increase the transparency of the beneficial ownership register, and the beneficial owners of broadcasting companies will also be subject to the mandatory transparency criterion.¹²⁴

¹¹⁷ For further information, please see: <<https://idfi.ge/en/regress-of-the-government-of-georgia-towards-implementation-of-ogp-principles>>.

¹¹⁸ Available at: <<https://find-and-update.company-information.service.gov.uk/>>.

¹¹⁹ For further information, please see: **The Concealed Beneficiaries behind Fictional Characters**, Maisuradze, D., Institute for Development of Freedom of Information (IDFI), 2020, pp. 21-24.

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¹²¹ Available at: <<https://www.e-register.am/en/>>.

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¹²³ For further information, please see: <<https://www.eiti.am/en/annual-reports/2021/>>. The English version of the report provides information on the beneficial owners on pp. 70-76.

¹²⁴ Armenia's Progress in Beneficial Ownership, Freedom of Information Center of Armenia, 2021, available at: <<http://www.foi.am/en/news/item/2011/>>.



RECOMMENDATIONS AND LEGISLATIVE AMENDMENTS

Based on the circumstances discussed above, several conclusions can be drawn, which form the basis for legislative amendments:

- ◆ A number of areas in Georgia include the standard of transparency of beneficial owners in the field of broadcasting and commercial banks activities. However, given the challenges discussed, the mandatory openness standard of beneficial ownership needs to be expanded. Establishing the Beneficial Ownership Register is crucial for ensuring effective protection and universal accessibility of the transparency of beneficial ownership. For universal accessibility of beneficial ownership, it would be best to integrate it in the public register system, where citizens will have the opportunity to get information about entrepreneurial and non-entrepreneurial legal entities, including partners of legal entities. The data must be available in an open format.
- ◆ In order to address the problem of "fictitiousness" raised by Moneyval to some extent, and at the same time introduce another type of sanction, which will be an additional requirement for companies in terms of preparing and submitting reporting documents, it is necessary to withdraw the corresponding status from trading and international trading companies that do not have a financial reporting document submitted (this does not include companies that were registered in 2021 and acquired the above mentioned status in 2021).
- It is desirable for the government to use the term beneficial owner as defined in the law of Georgia on Broadcasting or the Law of Georgia on the Activities of Commercial Banks, and set the ownership of more than 10% (or possibly even less percentage) of the shares as the threshold for control of a company. This is a stricter approach in comparison to international standards and the law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism. It is, however, still more realistic since in the securities market particularly, where minority shareholders are often grouped in corporations, holding minor shares can become the basis for corporate control. Therefore, in the future Register of Beneficial Owners, open ownership should start with ownership of at least 10% of the shares (and not 25% or more percent) or otherwise exercising the control.
- Before establishing a register of beneficial owners, it is crucial to extend the openness of beneficial ownership to additional fields (as in the case of broadcasting and commercial banking), including public procurement, state property administration, and companies working in the extractive industry. These fields have increased corruption risks.
- The pandemic was accompanied by many promises from the Georgian government to restore the economy and attract investment. It is important that financial resources are managed under the principle of transparency and that, when implementing the agenda of the Government of Georgia and, consequently, managing the state budget or state property, the citizens of Georgia are aware of the persons behind specific companies.



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Institute For Development of Freedom of Information (IDFI)



20, T. SHEVCHENKO STREET



+995 32 2 921514



INFO@IDFI.GE



WWW.IDFI.GE