

OAK



PUBLIC ACCESS: BENEFICIAL OWNERSHIP REGISTERS

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Has the pendulum finally swung back towards the rights of an individual for financial privacy?

The November ruling by the Court of Justice of the European Union (CJEU) that public registers are 'a serious interference with the fundamental rights to respect for private life and to the protection of personal data' indicates a sea-change in opinion from the expected narrative that transparency is in itself a panacea against financial crime. The CJEU quite rightly pointed out the responsibility for fighting financial crime and terrorist financing rests with government and financial institutions and not the general public.

This resulted in the Crown Dependencies releasing a joint statement in December stating that further legal advice was required prior to implementing their stated intention of opening company registers to the public.

This appears to be welcome news for those who firmly believe in the approach taken by the Crown Dependencies which focuses on the adequacy, accuracy and timeliness of the beneficial information held, its availability to competent authorities and the requirement for filings to be made by regulated nominated persons. Jersey has recently undertaken a review of industry compliance with the registry's beneficial ownership and control requirements. The review has focused on both the compliance by regulated entities but also a review by the registry of the quality and accuracy of information filed. The outcome of this review will be published in 2023 but it certainly demonstrates the importance that the jurisdiction places on the integrity of its registry.

In this post-Brexit world, there has been no response as yet from the UK Government on the recent ruling of the CJEU. It is still considering its position.

The UK of course already has a public register of beneficial ownership with the requirement to file Persons of Significant Control (PSC). The disclosure regime was extended last year with the Economic Crime (Transparency and Enforcement) Act 2022 which introduced the Register of Overseas Entities (ROE). This requires the registration by foreign companies directly or indirectly holding UK property and the disclosure of information regarding the beneficial ownership and control of those entities. The information filed, save for trust specific information, is available to the public.

The CJEU ruling surely brings into question whether the information disclosures under the PSC and ROE and the public nature of the information is proportionate and respects the fundamental rights to privacy and the protection of personal data. While legally the UK is no longer bound by decisions made by the CJEU it may wish to consider whether it wishes to be an outlier in Europe with a regime of public registers making it potentially less attractive for business compared to its European neighbours.

The Crown Dependencies however remain mindful of their close ties to the UK and will watch, wait and take appropriate advice over the coming months, carefully treading the balance between protecting the public and financial systems against money laundering and terrorist financing and protecting the rights of law-abiding individuals to a degree of financial privacy.

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