

*Navigating a path
to trust and
transparency*
Can Ultimate
Beneficial Ownership
Registers help prevent
financial crime?



Overview



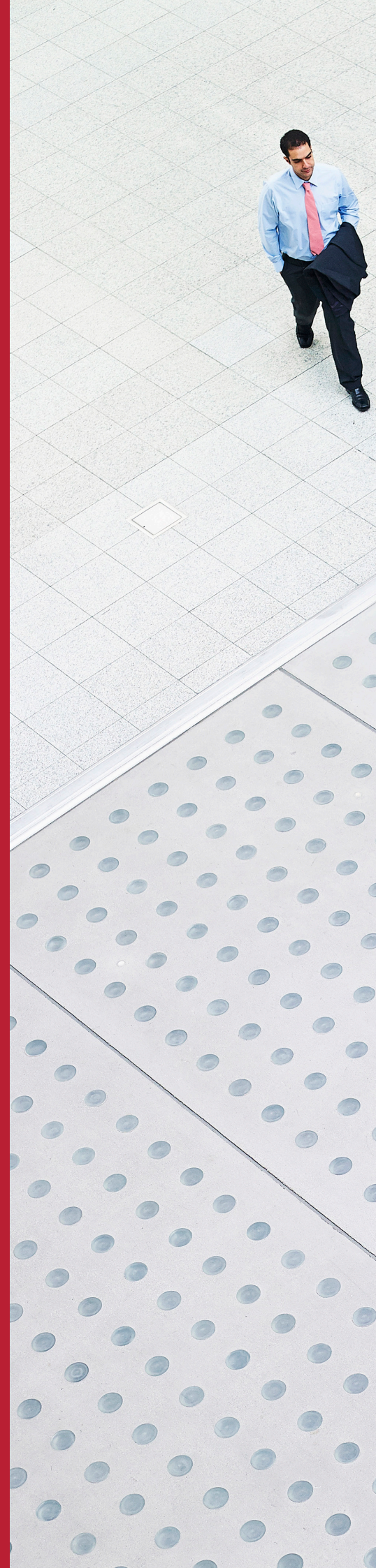
Transparency and accountability build confidence and trust in business. Without these qualities, organisations and increasingly individual executives, face reputational and commercial risk as investors, regulators and consumers demand clarity and disclosure. Following recent very public revelations about the beneficiaries of opaque corporate structures, governments have increased the tempo of global transparency and governance legislation. Much of the discussion has focused on tax evasion but these disclosures demand a wider conversation about financial wrongdoing. Citizens want to see and governments want to be seen to be taking a hard line on economic crime that funds criminal and terrorist activity – particularly if it is hiding behind apparently legitimate entities. This means shedding light onto who really owns and benefits from the activities of every company. It means establishing who is the Ultimate Beneficial Owner (UBO).

Creating UBO registers for each EU state is central to the fourth Anti-Money Laundering Directive (AMLD IV) with general agreement that company misuse can be solved by greater transparency of company ownership. But, as no country has a comprehensive UBO register¹, there is much to discuss and deliver before the directive comes into full effect on the 26 June 2017.

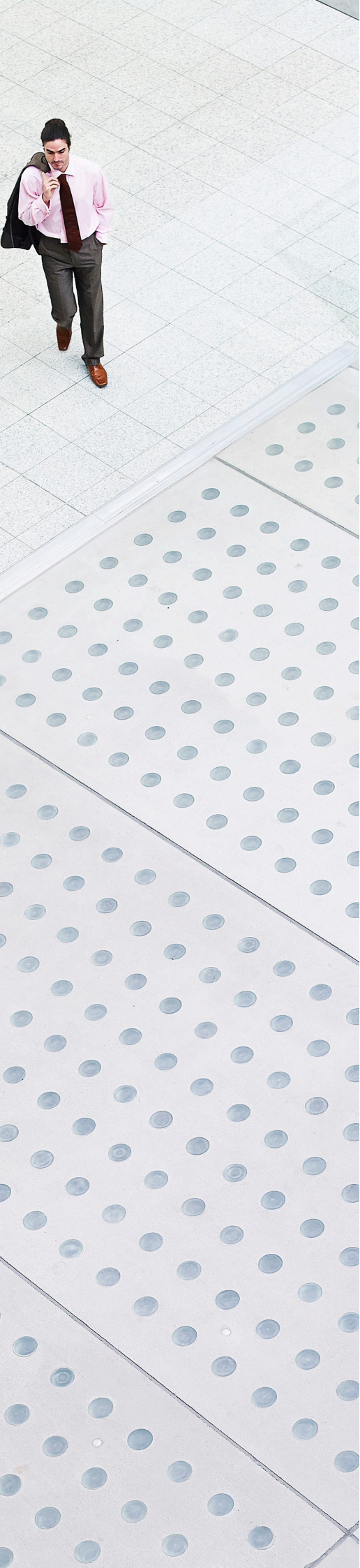
We support any legislation to tackle financial crime particularly if it provides an opportunity for greater efficiency in corporate compliance. However, questions remain as to how UBO registers will work in practice. Will they improve the quality of beneficial ownership information in each state – not only for law enforcement and regulators, but also for financial institutions as part of their Know Your Customer (KYC) compliance checks? There are also growing concerns over data privacy across Europe – as countries debate who should be given access to the registers and for what purpose.

In this paper we will examine the requirements of UBO registers, and share some local perspectives from across EMEA on the challenges and opportunities of this new legislation, covering:

- What is a UBO register and what data will it capture?
- Is a register enough to improve EU transparency of company ownership?
- Who will manage the registers and verify the data?
- How will the data be accessed and by whom?
- What is the value of UBO registers to KYC and AML programmes?
- How will UBO registers work in the global compliance landscape?



¹ The UK register of People with Significant Control (PSCs) was introduced on the 6 April 2016 to make the ownership and control of UK companies more transparent but is not as comprehensive as the UBO register.



What is the UBO register and what data will it capture?

UBO registers are just one very important element of AMLD IV. 'Through transparency,' this aims, 'to fight tax evasion, money laundering and terrorist financing'.² The introduction of a UBO register is mandatory for all member states, giving its own definitions of terms such as 'legal entity', 'legal construct' and 'UBO'. PwC thought leadership has already been published that examines the implications of AMLD IV from a family business perspective (*see here*). In contrast this paper explores the value of UBOs to fighting financial crime – particularly for Financial Services companies, by providing a better, broader understanding of who controls and owns companies.

Defining the Ultimate Beneficial Owner

An Ultimate Beneficial Owner (UBO) is any natural person that ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted.

The UBO register will use the same definition of beneficial ownership as applied in the Third Anti-Money directive, as the basis for the statutory definition of 'beneficial ownership'. This means that the register will contain stipulated personal information on individuals who ultimately own or control more than 25% of a company's shares or voting rights, or who otherwise exercise control over the company or its management³. Where a qualifying beneficial interest in a company is held through a trust arrangement, the trustee(s) or any other natural person(s) (i.e. not a company) exercising effective control over the activities of the trust, will be required to be disclosed as the beneficial owner(s) of the company.

What details will the UBO register contain?

AMLD IV provides a minimum set of information that must be made accessible to persons/organisations that can demonstrate a legitimate interest.

The required details are:

-  **Name**
-  **Date of birth (month and year)**
-  **Nationality**
-  **Country of residence**
-  **Nature and size of interest**

Ultimate Beneficiary of Trusts

In the case of Trusts, the following details will be mandatory (Art 31. IV Directive)

-  **Settlor**
-  **Trustee(s)**
-  **Protector**
-  **Beneficiary(ies)**
-  **All other persons who have control of the trust**

² Brussels, 18.3.2015 COM(2015) 136 final: Communication from the Commission to the European Parliament and the Council on tax transparency to find tax evasion and avoidance.

³ At the time of writing, the European Commission has proposed to lower the 25% threshold to 10% in respect of certain limited types of entities which present a specific risk of being used for money laundering and tax evasion.

Can UBO registers alone improve transparency of a company's beneficial ownership?

It has been a longstanding aim of global groups such as the G7, World Bank, International Monetary Fund and the Financial Action Task Force (FATF) – to deconstruct complex company structures to determine the real owners. Although the majority of shell companies may be used for completely legitimate reasons, there is also a risk that these complex constructs can act as corporate smoke screens, hiding corruption, financial crime and money laundering.

The EU has decided that creating mandatory registers of beneficial owners in each EU country is the most effective way to reveal the truth about beneficial ownership. But if the goal of the registers is to build confidence and trust, collecting information without the right controls over its accuracy is not enough. It also takes specialised skills to investigate and understand the sophisticated shareholding structures and to highlight suspicious activity.

Initial company registration is often performed by a legal or Corporate Service Provider (CSP) that manages and files the necessary paperwork. In Europe, the majority of CSPs and some legal professionals already carry out KYC checks, including the collection and verification of documents that prove the identity of beneficial owners when they set up a company. These CSPs also have an ongoing responsibility to maintain these records – showing any changes in beneficial ownership. All of these professionals are regulated and work closely with their clients. Some argue that, if the objective of AMLD IV is transparency, these CSPs are best placed to perform deeper UBO checks. As these records can already be accessed by regulators, tax authorities and law enforcement, one could question what

additional value the UBO register will add? As a European initiative, perhaps the register will deliver more detail, greater consistency and wider accessibility to UBO data across jurisdictions. But this will depend on how the register is created and managed in each country – which is still far from clear. The EU is not the first to invest in a UBO register: Jersey established its own register to meet and exceed international standards in combatting financial crime. What can we learn from Jersey's experience?

1. Jersey did not want only to rely on the information CSPs or individuals gave when they set up a company. When the company is first registered, the Jersey registry runs beneficial owners' identities through comprehensive due diligence software.
2. The regulator supervises the CSPs on the island (whom are licenced and regulated) to ensure that UBO information is continually maintained.
3. Company registration is only approved if specially-trained registry staff are confident that they have accurately identified the beneficial owner.

Jersey's registry established processes to verify documentation and invested in the right forensic skills from the outset. It remains to be seen if EU countries are willing to make similar investment in people and process.

Who will manage the register and verify the data?

All companies must record their existence in an official registry for example, Companies House in the UK, KRS (National Court Register) in Poland, the Swedish Companies Registration Office, the Commercial Register (Handelsregister) in Germany (although this information is not kept centrally as companies are registered geographically with lower courts) and the Registro delle Imprese in Italy. The UK government has already stipulated that its UBO initiative, called the Persons of Significant Control register, will be the responsibility of Companies House, but elsewhere this is not the case, with intense debate in some countries about financing the UBO register.

In terms of verifying the data, in the UK, Germany and Poland, for example, companies will be responsible for updating UBO information. In other countries such as Italy, no indication has been given about who will be responsible for the data verification process. This raises a concern as sanctions or fines for failure to comply with UBO requirements have been, up until now, uncommon.

If each state's planning for its UBO register does not provide an adequate process for verification and maintenance – we may have increased data without increased transparency and trust.

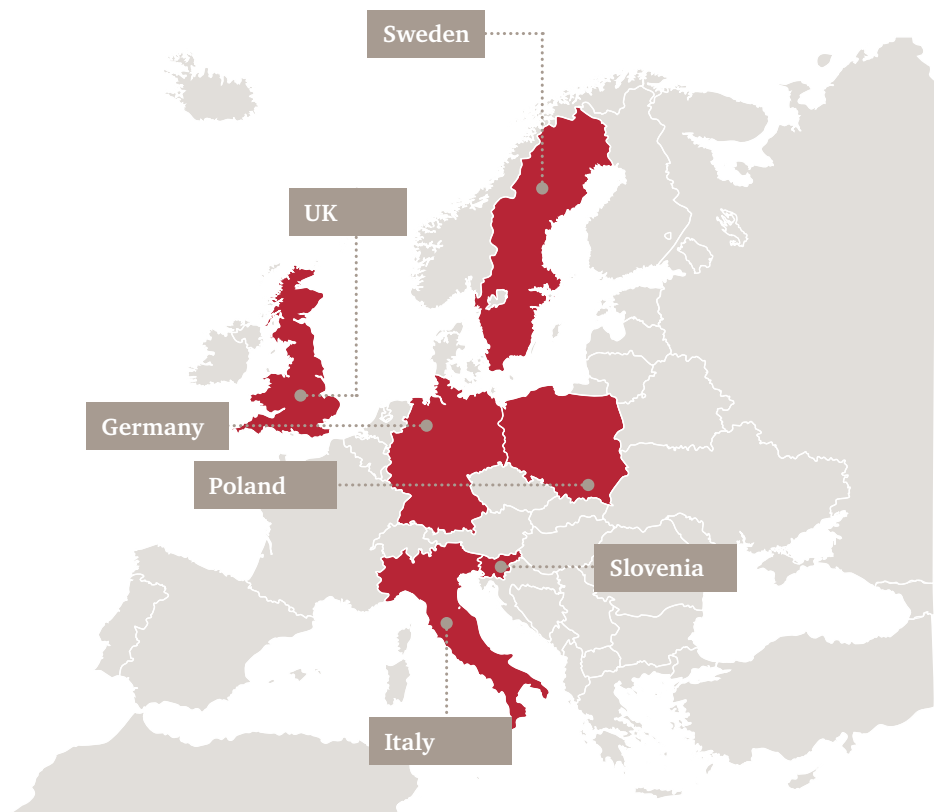


How will the data be accessed and by whom?

One of the most hotly-debated areas of the UBO register is that of data access. Should the register be public or not? Attitudes to this question differ widely across Europe with all countries trying to find the right balance between maintaining the principle of transparency, integral to AMLD IV, and concerns over the welfare and safety of potentially vulnerable individuals, such as children whose details might form part of the register. Countries are at different stages of consultation on this issue.

As well as local Financial Intelligence Units (FIUs), regulators and specific financial services companies will be given access to the UBO register; for example, Banks.

There are no objections to FIUs, regulators or professional advisors accessing the register. The pressing issue is – should the register be public? At present, this will essentially come down to each country's interpretation of who has a 'legitimate interest', however proposed amendments made in July 2016 to the Directive by the European Commission may change that. It has been proposed that information on beneficial owners be made publically available by Member States in the hope that this engenders a greater level of scrutiny of the data in the registers. While there are legitimate concerns that making this information public could increase the risk of other crimes such as kidnapping, we believe that provided that exceptions for situations where these other crimes are higher risk remain in place, this increased transparency can be an effective deterrent to those who would commit financial crime. The attitudes towards access to the registers in Member States are varied:



UK

The UK has perhaps been the most vocal in its commitment to a public register, despite objections by industry bodies such as ICASA, the Law Society and the ICAEW. The UK government has decided that a public register would help businesses, consumers and citizens – including those in developing countries – identify who really owns companies. There is a perception that a public register would be 'self-policing' and consequently more accurate, enhancing the UK's reputation as a trusted place to do business and invest. This means that, in the UK, the UBO data will be available digitally to law enforcement, regulators and financial institutions as well as those that have a 'legitimate interest'. It is not yet clear what this term means and whether it would enable professionals such as journalists to also gain unrestricted visibility to beneficial owners and their personal details.

Sweden

Swedish companies are already obliged to register and maintain detailed shareholder information with Swedish Companies House for publicly traded companies, and feel the full force of the law if they fail to comply. In a country where so much is open to the public, the main area of tension around the UBO register, is likely to be data privacy. As the draft legislation moves forward Swedish data protection regulators may feel somewhat squeezed between the drive for a greater level of transparency in AMLD IV and the EU General Data Protection Regulation (GDPR) that will come into effect on 25 May 2018. Some industry bodies, representative of highly regulated industries, have also voiced their concern that a UBO register will add little additional value and will increase the burden of compliance. It is clear that Sweden is taking financial crime seriously with a raft of new legislation, of which AMLD IV is just one element, currently moving through the legislative process. What is less clear at this stage, is how these new laws will be paid for and implemented.

Slovenia

Slovenia was one of the first EU Member States to start legislative work on implementing AMLD IV. The draft Bill was presented to the public in the second quarter of 2015 followed by a public consultation process. The intention is to make the UBO register information a new category of information within the existing Slovenian Business Register (ePRS). During the consultation process, the Slovenian Information Commissioner raised serious concerns over making the personal data contained in the UBO register publically available. A compromise was reached by agreeing to make elements of the register available, free of charge to the public but restricting full access to law enforcement and financial institutions as stipulated in AMLD IV. Slovenia has also put in place an appeal body to test claims for access based upon 'legitimate interest' putting itself ahead of other states in anticipating data access disputes.

Germany

The German government has yet to publish exact plans for the register, but the assumption is that the defined threshold for those with 'legitimate interest' will be relatively high. This means that any obligated party under the German Anti Money Laundering Act (GWG) and the German tax and customs officials will benefit from the UBO register. There is an idea that the register will also be accessible to journalists, allowing them to freely publish any details they have acquired lawfully if in return they would share their information with the register which seems unlikely. So far, no information has been released about which German authority will manage the UBO. But whichever body is given the responsibility will have no obligation to verify the information. This responsibility will remain with the company providing the data as defined by the current German AML Act (Geldwäschegesetz).

Poland

Poland tends to be late adopters of legislation and the country is still in the early stages of consultation. Right now, there is more debate about which body will take responsibility for creating and maintaining the UBO register than about access, but this will come as there is more discussion around the impact of AMLD IV in Poland. There are likely to be concerns about who can access the UBO register information and, as in other countries, this may lead to defined exemptions to protect vulnerable people from the press and perpetrators of fraud. Much of the information in the UBO register will be new, and is likely to follow the existing self-certification model for beneficial ownership. From a compliance point of view, there is great excitement about the possibilities of a central repository, but equally there are concerns over the resources and governance of data to maintain regulatory standards.

Italy

In Italy a special committee was appointed to examine the impact of the new rules. In September 2015 the committee issued recommendations concerning the implementation of AMLD IV which are now moving through the Italian Government's legislative process. Italy is very positive about the potential for the UBO register as a useful and powerful tool especially for Financial Intelligence Units or supervisory authorities. Currently anyone can pay a fixed fee to access data about the shareholders of a company but this information may not contain details about the UBO. For this reason, the register would be of value. But the main concern in Italy remains the verification and control of UBO data. It is still unclear if a supervisory body will be appointed to control UBO data and whether, after ratification of AMLD IV, access will be still restricted to authorised entities and those that can demonstrate a 'legitimate interest'. As in other EU countries, what this term means has yet to be fully agreed to balance transparency with the risk of potential misuse of UBO data. These are the issues that are likely to be considered when creating the UBO register.

The value of a UBO register to KYC and AML programmes

If UBO registers simplified the customer due diligence process, they could be extremely valuable to a host of organisations required to carry out detailed customer checks. This could even be a first step to towards providing central KYC Utilities – with governments investing in the compliance process, rather than businesses carrying the full cost of AML. At the beginning of this paper, we talked about trust and in the current regulatory climate, organisations would need to be 100% sure that they could rely on the data held in the register without any increased risk. To comply with best practice and existing AML requirements, many institutions already take measures to identify and verify the ownership and control structure of their customers. Asking for more information from individuals setting up companies does not necessarily guarantee that the information

will be more accurate, timely, or honest without an ongoing verification process. Those responsible for wording the legislation have been clear that this is not a comprehensive data source for CDD checks and so there seems little hope that UBO registers will reduce the corporate compliance burden – in fact their very existence may add to the list of required sources to check. And checking may be made more difficult and time consuming if registers are all created in different formats making it difficult for existing customer on boarding systems to collect relevant information.

The value of AML IV for KYC – Article 30

'Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.'

How will UBO registers work in a global compliance landscape?

If UBO registers are successful, we will have greater transparency and therefore trust that we know who we are doing business with. But there are still many grey areas around how each member state will incorporate the directive into national legislation. As this paper highlights, core issues such as who owns, validates and accesses the data still remain unclear and every member state has a certain amount of freedom in their interpretation. The real value would be in a single, central register and this has been considered. Once national registers are in place by June 2017, Article 30 of AMLD IV implies that these could be interconnected via the European Central Platform by 2019 giving an integrated EU wide source of UBO information. Precisely how the interconnection will work is yet to be explained, however the European Commission has been tasked to draw up a

report by June 2019 to assess the conditions, technical specifications and procedure for ensuring the interconnection. The interconnection will make it easier for competent authorities, FIUs and obliged entities to identify beneficial owners and will increase the transparency requirements on companies and trusts. But three years is a long time. Following the Brexit referendum vote the UK looks set to exit the EU within two years – removing the compulsion to create a comprehensive UBO register. However, the UK Government has been such a vocal supporter and an early adopter of AMLD IV, with its own People of Significant Control (PSC) legislation in April 2016, even Brexit is unlikely to lead to a change in policy on financial crime matters.

And what about the rest of the world? There are certainly no plans to create a UBO register in the United States, for example. If they work, UBO registers may initially encourage those that are intent on criminal activity to register companies outside of the EU which will not necessarily reduce financial crime. But on the other hand, this flight from good governance may inspire other jurisdictions to follow the EU's lead – increasing global transparency over just who owns and controls companies – leaving financial criminals with less space in the world to operate.

Start talking now about how UBO registers could impact you

This paper demonstrates how many EU states remain in the consultation and draft legislative phases of AMLD IV and are still making decisions about how to implement a UBO register. Financial institutions are on the front line of this legislation and have much to gain and more to potentially lose. Now is the time to get involved in the conversation and debate before we wake up to 28 different registers to navigate for customer onboarding and CDD checks. If UBO registers make KYC compliance less efficient and more arduous this is an opportunity lost.

While the most vocal debate centres on the emotive issue of data access to UBO registers the real issue across Europe is how to verify the data so that we can trust, as in the words of the directive, that it is 'adequate, accurate and current'. In most countries the register's data will be self-certified because this is the easiest option but is it the right option? Financial Services companies have already been warned that UBO register information should not be relied upon as the only KYC data source which surely implies a lack of

faith in the value of the data for compliance. If it is not good enough for compliance – it begs the questions whether it is good enough for law enforcement to reduce financial crime?

There is still time for EU countries to examine innovative ways to use the right people or technology for verification – exploiting the Jersey model or exploring KYC Utilities that would provide central, verified data. There is still time to navigate a single path to 'one version of the truth' for company control and ownership – whether this is through UBO registers remains to be seen.

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