

Beneficial ownership registers and protection mechanisms for beneficial ownership rights in foreign countries and in our country

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Abstract: Many countries around the world are promoting the increase of transparency regarding the ultimate ownership of companies. Indeed, this is a useful tool for stopping illicit financial flows and creating fair markets. However, it must also be considered that such measures may violate the right to privacy and pose threats to personal security. The need to protect this privacy may lead some companies and owners to refuse to disclose this information.

Furthermore, many organizations and individuals have warned that disclosing beneficial ownership information may be ineffective or could lead to the spread of incorrect information.

Keywords: Beneficial Ownership, beneficial property, public register.

Introduction: Many countries around the world have adopted the concept of beneficial ownership as an economic term. In Spain, however, the idea of beneficial ownership, or beneficial property, was mistakenly interpreted as an economic term and considered as a rule for the distribution of income.

However, the reference to the economic term was removed by the OECD (Organisation for Economic Co-operation and Development) in 2023, and it was concluded that in common law systems, beneficial ownership is nothing more than a "legal interpretation."

Beneficial ownership originated in England, and several years ago, a group of experts in England discussed the meaning of beneficial ownership and beneficial ownership rights, with much uncertainty surrounding the issue.

In Russia, cases related to beneficial ownership are often resolved through corporate decisions and transactions, such as the "Doctrine of Shareholder Restoration," "Doctrine of Lifting the Corporate Veil," and the "Doctrine of Beneficial Ownership."

Today, many countries around the world, particularly

India, the United Kingdom, Germany, France, Spain, and Italy, have started to introduce stricter regimes or mechanisms for companies to disclose the beneficial ownership rights of their owners. The goal is to increase transparency in corporate activities and combat money laundering, financing terrorism, tax evasion, and other illegal activities.

It is important to create mechanisms to identify individuals hidden behind complex corporate structures.

Failure to provide information on the ultimate beneficial owners or failing to do so in a timely manner, or knowingly submitting false information, is subject to varying penalties under national legislations.

O. Fridman and others confirmed that legal ownership is recognized as the right of an individual to control and possess something. For example, if someone buys a vehicle or a house with full payment, they have the right to alter and use it as they wish (within legal boundaries).

Similarly, the legal owner is recognized by law as the owner of something, specifically, an individual who holds the legal title to property for the benefit of another.

On the other hand, as M. Graziadei emphasized, beneficial ownership can be traced back to the history of trust law, which emerged from the principle of equality in the 12th-13th centuries.

This term is used differently from the term "legal ownership." Additionally, other terms are often used to convey the same meaning, such as beneficial right, equal right, beneficial interest, and equal ownership.

According to E.A. Sukhankov, although the trustee exercises the powers (orders) of the property owner, they do not acquire these rights based on the waiver of the trustee's claim.

According to U.S.A law, beneficial ownership refers to the true, primary ownership rights to an asset or property, even if the legal or title ownership is under a different name. This concept is particularly important for transparency and compliance with regulatory documents in finance and legal fields. The beneficial owner enjoys privileges such as earning income from or controlling the asset, while the nominal owner may act on behalf of the beneficial owner but does not benefit from these privileges.

However, in many states, including the notably prominent state of Delaware, corporate entities are allowed to form without disclosing information about their ownership structure to the public.

In 2015, the European Union's Fourth Anti-Money Laundering Directive was adopted. According to it, each country must have a centralized registry of beneficial owners and owners.

In January 2021, the U.S. Congress passed the "Corporate Transparency Act." On September 29, 2022, the FinCEN organization issued a final rule setting forth the requirement to report information about beneficial owners in accordance with the Corporate Transparency Act. FinCEN's Deputy Secretary, Himamauli Das, described the final rule as "a significant step in supporting our national security, intelligence, and law enforcement agencies in curbing illegal activities."

The new rule requires reporting companies to provide information about their beneficial owners, including controlling persons, to FinCEN. The new rule came into effect on January 1, 2024.

In the United Kingdom, to be considered a beneficial owner of a company, an individual must hold at least 25% of the shares or voting rights, or have significant influence over the company. Additionally, there is a public register known as the People with Significant Control (PSC) register.

Accordingly, the United Kingdom launched a beneficial ownership register in 2015. This public register also includes the company's internal documents.

On September 1, 2019, Luxembourg notably launched a public register of beneficial owners. Anyone can access the website (<https://www.lbr.lu/>) and obtain free information about any company. The site even offers an option to access anonymous data.

Beneficial ownership registers exist in many countries, including Germany, Belgium, Austria, Ireland, Latvia, Luxembourg, Slovenia, and Latvia. In the CIS region, such registers are also present in Russia, Ukraine, Belarus, and Armenia.

In Japan, as part of measures to identify beneficial owners of legal entities, a system for listing the beneficial owners of legal entities was established on January 31, 2022.

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The register for the state registration and re-registration of business entities is formed and maintained by the State Services Centers (hereinafter referred to as registration authorities) and is updated daily.

Due to the priority of the information in the register, it is considered relevant and accurate, which, in turn, encourages the preservation of the timeliness and validity of legal entities' information in the register.

When submitting an application for the state registration of a business entity, it is required to fill out a questionnaire regarding the beneficial owner of the legal entity in the register.

Changes made to the registration documents of legal entities are subject to administrative responsibility under our legislation if the registration authorities violate the conditions and procedures for providing information.

According to Article 1762 of the Administrative Liability Code of the Republic of Uzbekistan, failure to provide or the submission of false information regarding changes in the address, bank details, or re-registration of a business entity will result in a fine for responsible persons, ranging from ten to fifteen times the base calculation amount.

The disclosure of information may pose a threat to individuals' personal rights and the protection of their personal data. This raises new legal issues. Do beneficial ownership registers conflict with personal data protection and privacy laws, or do they oppose them?

The right to privacy is guaranteed in a number of international human rights documents, including the Universal Declaration of Human Rights, and in the constitutions of over 100 countries around the world. The right to privacy demands that all individuals be free from arbitrary or unlawful interference with their privacy, home, correspondence, and family, as well as attacks on their honor and reputation.

The Law of the Republic of Uzbekistan "On Personal Data" includes provisions for the protection of personal data, stating that personal data should not be disclosed or distributed without the subject's consent or a legal

basis, and that the owner and/or operator or any other person permitted to use personal data must ensure confidentiality.

The owner and/or operator, along with others authorized to use personal data, must not disclose or distribute personal data to third parties without the subject's consent.

For a long time, Russian law ignored beneficiaries as legal entities, and they were not legalized. However, with the widespread use of offshore companies and trusts in Russia, there has been a growing trend towards recognizing beneficiaries. Russian courts, therefore, cannot disregard the doctrine of beneficial ownership.

The legal status of beneficial ownership should encompass not only obligations and responsibilities but also legal rights and guarantees. Therefore, it is considered necessary for the possibility of holding a beneficiary liable for the debts of a controlled company to be fully effective.

Mathias Rinhard-DeRoo in his book "Beneficial Owner" approaches the concept from two perspectives: legal grounds and the scope of US federal law. In order to better understand the basic concepts and features of beneficial ownership, both legal theories and judicial practices are carefully examined. Rosko Pound, in what he calls "the law in action," has selected federal Indian law to study the exact implications of the concept of beneficial ownership. For some, this choice of law may seem unusual. How might India's federal law address pressing financial sector issues? As usual, there are short and long answers. The short answer is that analyzing such a complex area of law could open new perspectives in a particular field of law.

Slovakia and Denmark were the first European Union countries to implement a beneficial ownership registry. In Slovakia, registration began on November 1, 2015, and it was initially mandatory only for private companies participating in public procurement. This obligation expanded to all companies with contracts worth at least 100,000 euros with the government, effective from February 1, 2017.

The primary reason for establishing the registry was to ensure the transparency of the ownership structures of companies involved in public procurement. According to the law, if a company fails to register but still participates in public procurement, it is subject to a fine ranging from 10,000 euros to 1,000,000 euros and a three-year ban from participating in public procurement.

In the Republic of Uzbekistan, the term "beneficiary" can be found in relationships related to trust

management agreements, guarantees, public procurement, banking relations, and securities transactions.

It is worth noting that although this term is frequently encountered in national legislation, there are still issues regarding the identification of who the beneficiary is and which properties should be classified as beneficial ownership.

In relation to a legal entity, the form of beneficial ownership is considered to be the ownership share (such as a specific share of shares, capital share, voting rights percentage, or information about direct or indirect ownership). The property of a legal entity (assets) or other forms of control (whether physical persons have provided indirect financial support or exert decisive influence on decision-making or control over management) determine the impact on the control of the legal entity; or clarifying whether an individual is a senior executive of the legal entity.

According to the Presidential Decree of the Republic of Uzbekistan (UP-6191) dated March 23, 2021, starting from June 1, 2021, law enforcement agencies and other state bodies were granted unrestricted access to information related to state registration systems.

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