

Beneficial Ownership, Public Access and the Consequences for Private Clients



Zac Lucas is a Partner covering International Private Wealth at Spencer West law firm, and focusing on Asia. He offered delegates at the Hubbis Indonesia Wealth Management Forum in Jakarta on March 29 a lively presentation on what beneficial ownership publicity will mean for the wealth management industry. He explained the timeline for implementation and discussed the implications around public registers and the need to review and then often remediate structures.

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FATF and its requirements

Beneficial Ownership has been introduced by the Financial Action Task Force (FATF) and concerns two types of structures that clients will typically use – companies and trusts. The FATF requires beneficial ownership of both types of structures to be readily available for law enforcement agencies, and does not therefore mandate public access as a global standard.

The international standard, or indicative standard, for company beneficial ownership is 25% and above share ownership, which can be in capital and/or voting stock. Below that, you are not generally captured as a beneficial owner. In the Cayman Islands, it is lower at 10-%, and in Europe, it is going to be dropping to 15%. Therefore it is important to check the threshold limits for each jurisdiction, and whether individual standards capture more than just share ownership.

Trusts are more complex

Trusts are a bit more difficult. Instead of percentages, the key is status of individuals in the trust, such as the settlor (or grantor), the protector (or power holder)

and beneficiaries. Generally, the settlor or protector will always be beneficial owners. Beneficiaries are only identified as beneficial owners to the extent that they receive a benefit from the trust.

There is also the forthcoming arrival of public access. Zac explained that public access to beneficial owner registers is not endorsed as a FATF global requirement.

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No obligation to go public with registers

In other words, no jurisdiction is required by the FATF to create a public register. This all means that there is no impetus for any countries in the world to go public with ownership structures. Singapore will not, nor Hong Kong unless it becomes an international standard endorsed by the FATF.

In the EU, Zac explained, a recent decision of the European Court of Justice had led to public registers begin declared illegal and in breach of the European Union's constitution.

The UK dances to a different tune, and their Overseas Territories

The UK meanwhile permits full public access to company ownership and limited public access to trusts, with access, for example, to the media if they are investigating money laundering and so forth.

Relating to SE Asia and offshore structures in British Overseas Territories, the UK has said those territories will have to open up public access to their beneficial ownership of companies, but this does not apply to trusts, Zac reported. Such territories include, for example, Anguilla, Bermuda, the Cayman Islands, Montserrat, Turks and Caicos, and the British Virgin Islands, or BVI. All of them must by

no later than end 2023 open their company registers and allow free public access online.

Beware the implications of offshore structures in British jurisdictions

The implication, for example, would be that a Singapore trust owning all the shares of a BVI would by default then disclose the beneficial owners at the top. But as Zac had explained, Singapore and Hong Kong have no desire to have public registers, but they would be dragged into this net because of the BVI or other offshore companies in a British Overseas Territory.

Scratching their heads...

Everyone is scratching their heads as to what to do next, Zac reported. Some might go to another offshore centre that is not a British territory, such as the Bahamas. Some might shift the company to midshore ie Singapore or Hong Kong, or the UAE,

or perhaps wrap everything in a life insurance structure such as Private Placement Life Insurance (PPLI).

He said that there is some considerable uncertainty out there as to how to react if people have combination structures or complex structures. As a result, clients in the region are working with advisors to review existing structures and all the privacy and other implications.

For some families, there is also a political angle, as more information

becomes public and those families might then become easier targets for political enemies or those with a political agenda. He said this was a considerable concern in the emerging economies of SE Asia.

Be aware, get up to speed, and take the best advice

Zac advised a stronger effort to educate advisors and clients on these issues, so at least they are aware and begin to work with expert lawyers and

other specialists to review and remediate structures and potential exposures.

Careful planning is vital, he stated, and proactive remediation is well worth it, as political situations and agendas can change rapidly, as seen, for example, in Argentina and other countries where punitive, politically motivated wealth taxes and even asset expropriation by the state had emerged post covid. ■

