

OPEN OWNERSHIP

Proposal for the design of the new
Norwegian registry of beneficial owners

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ABOUT THE REPORT

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Background

The international community faces major challenges in combating financial crime. Businesses that want to hide activities can operate hidden in many countries, partly because of a lack of transparency.

International organizations such as the G20 and the EU now want individual countries to establish central registries of beneficial owners, ie the natural persons behind a company. On 5th June 2015 a unanimous Norwegian Parliament decided to establish a register of beneficial owners. The decision reflects the public debate about ownership and transparency in Norway, a debate that builds on the growing international consensus regarding the importance of openness in the fight against financial crime:

"..it is particularly important for Norway to work for greater international openness about such information, since our tradition of openness on this issue is larger than in most other countries. The Committee points out that the greatest possible transparency in these issues will help to protect the economic system that has been built up in Norway." (From the Parliament's decision 5th of June)

Combatting financial crime must be a collective effort. We are very pleased that Parliament, through its unanimous resolution signaled that all parties stand united in this effort. Norway has a strong tradition of openness and transparency, but traditions and Parliament decisions do not automatically create a good registry. Finance Norway, ICT Norway and Tax Justice Network - Norway has therefore worked together to develop principles that must form the basis for further work to fulfill the intention of the Parliamentary resolution. We also present the functionality the registry must have in order to be of real benefit to the public.

A new registry of beneficial owners in Norway will strengthen democracy and prevent behaviour that undermines our society. Our ambition is that the Norwegian registry should be the best and be an inspiration for the authorities of other countries. We hope that this report can contribute to this.

Our respective organizations represent different perspectives: financial institutions, the movement for open data and the tax justice movement. This breadth has been a strength in preparing the report, but also shows the challenges of reconciling different approaches. The report therefore attempts mainly to emphasize the overriding principle recommendations, in line with the international trends in this area. We are united on the principle of greater transparency and better access to information but have different viewpoints on some areas. This will be explained in the report.

We want to thank everyone who contributed in preparing this report. This includes amongst others Oslo Børs, VPS, Finanstilsynet, DNB, Datatilsynet, KLP, For Velferdsstaten, Pressens offentlighetsutvalg, Bengler, Jon Wessel-Aas, UNIO, Revisorforeningen, Open Corporates (UK), Global Witness (UK), and Matti Kohonen (Finland). A special thanks to the reference group that has provided direction and input throughout the project: Vegard Venli (Kommunal Rapport), Peter Ringstad (author of the report "Hidden owners"ⁱⁱ (TJN Norway 2014), Heather Broomfield (DIFI), Andreas Hobbelin (BDO) and Morten Staude (Finansmarkedsfondet).

Tax Justice Network – Norway, Finance Norway and ICT Norway are responsible for the contents and recommendations in this report.

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1. Introduction

In 2014 the Parliament decided to create a new registry of ownership in companies. In June 2015 the registry's content and design was further emphasized by the Parliament.

In this report we present several overarching principles that must be followed in order to fulfill the intention of the new registry. Each principle are followed by several specific recommendations. We also have recommendations related to who should develop, manage and oversee the registry. The report is not exhaustive, but concentrates on the most important aspects.

An important prerequisite for success in developing a registry that meets the requirements for openness and transparency in Norway and internationally, is that the Norwegian authorities participate actively in influencing international developments.

The basis for our recommendations is therefore not only the parliamentary decisions of 2014 and 2015 but also the EU's fourth Money Laundering Directive and the Financial Action Task Force (FATF) evaluation of Norway. We have also looked to Norway's international obligations in the Open Government Partnership.

Another important prerequisite for success in establishing a good and user friendly registry, is that all information about beneficial owners gathered in one place so that both reporting entities and users can relate to one registry.

Moreover, we also use the good points from the Brønnøysund Register report that in our opinion points to relevant opportunities and challenges. But while Brønnøysundregistrene mainly highlights the shareholders' standpoint, this report focuses also on the usefulness of the registry for the general public. We find that the Brønnøysund Register mandate, granted by the Ministry of Trade, Industry and Fisheries (NFD), is too narrow and does not reflect the intention of the Parliament. Ownership and control of a company is for example not synonymous with shareholders. An electronic version of today's shareholder books will therefore not be enough to get an overview of - and access to, complex ownership structures. This is substantiated by the FATF's evaluation of Norwayⁱⁱ. With the decision from Parliament in 2015 the scope of the ownership registry was expanded and clarified, which the Brønnøysund report consequently not was able to account for.

Central to the work on beneficial ownership is to have an adequate definition of who the real owner is. In the report we have translated relevant English definitions of "beneficial ownership" which should give direction for the preparation of a Norwegian definition.

We also provide recommendations on what can be done nationally to achieve more transparency in the nominee accounts, and that ever-better solutions related to this requires closer international cooperation than we have today. This is challenging in part because many countries use nominee account arrangements in their central ownership registries, while the beneficial owner can be registered in various other registers.

We discuss data protection issues as a separate part of the report.

As part of the report we want to give an insight into the likely users of the new register. The most important success criterion is precisely whether it has value for those who want to search for information. The user experience should therefore be an important guide in the development of the registry.

2. Definitions of beneficial owner

(To the reader in the original Norwegian report this chapter focuses on shortening international definitions, and translating them into Norwegian. In this version of the report in English, the parts concerning Norwegian translations have been omitted.)

Whoever really owns a company is the individual who finally owns or controls the company (or another form of legal entity). In English used the term "beneficial owner" or "ultimate beneficial owner".

In this report we have chosen to use the term "beneficial owner". With this concept we mean both shareholders, the chairman and board members, the CEO and who controls the company. We do this because the international definition of "beneficial owner" includes both equity ownership in the company, and others who control the company.

Regardless of the terminology is the key to remember that there is a physical person who is meant by a "beneficial owner".

In this chapter we provide a summary of the definitions of actual owners of FATF, EU and OECD.

2.1. Financial Action Task Force (FATF)

Financial Action Task Force (FATF) was established in 1989 and currently has 34 member countries. FATF has since 1990 come with recommendations on measures to combat money laundering and terrorist financing to its member states and their recommendations are now recognized as global standards. The current FATF Recommendations from 2012 contains comprehensive requirements for transparency and beneficial ownership.ⁱⁱⁱ In October 2014 the FATF produced a 46-page guide that explain the 2012 recommendations on transparency and beneficial ownership, and the definition of beneficial owner.^{iv}

FATF definition (translated and abridged)

A beneficial owner is defined as the natural person who finally owns or controls (1) a company or organization (2) and / or the individual that a transaction is made on behalf of (3).

- (1) Persons who "finally owns or controls" (ultimate beneficial owner) refers to situations where ownership and control is exercised through several stages or in some other way than through direct control.
- (2) "Company or Organization" here refers to the concept of legal person or other legal arrangement (such as a trust). Examples of this can be a state, a municipality, a company, an institution, a foundation, an organization or an association.
- (3) This definition also applies to the beneficial owner, or beneficiaries of, one life insurance policy or other insurance products that contain investment elements.

The definition of ownership actually includes not only legal ownership and control, but also final/ultimate ownership and control. The definition focuses on real, natural persons who actually owns and benefits from capital or assets of a company. This means the people who really exerts effective control over a company, regardless of whether they hold formal positions within the company or not, rather than just those people who are legally entitled (on paper) to do so.

The definition also includes natural persons that a transaction is being conducted on behalf of, even though they do not have factual or legal ownership or control of the company.

Actually ownership, then, is the real, live person at the end of the chain, which ultimately owns, controls or benefits from a company.

2.2. EU

EU's first directive on money laundering and terrorist financing came in 2005.^v Ten years later, in May 2015, the fourth update of the directive was adopted.^{vi} Already in 2005 transparency about beneficial ownership was discussed and defined. In the latter directive the definition is more precise. The directive now also requires that information on beneficial ownership shall be recorded in national registers, for example, a public register. Information about beneficial ownership can be collected according to the systems of each country, but the directive provides input to the design of and the framework for the register. (Directive Article 30).

EU definition of beneficial owner (translated and abridged)

A beneficial owner (beneficial owner) is the individual who finally owns or controls a legal entity (customer) and / or the individual as a transaction or activity is being done on behalf of and includes at least:

- a. as regards businesses: 1) the individual who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the entity, including through bearer shares, or through control via other funds. A stake of 25% plus one share or a stake of more than 25% held by a natural person is an indication of direct ownership. A stake of 25% plus one share or a stake of more than 25% held by a company, which is

under the control of an individual, or of several corporate entities, which are controlled by the same natural person, is an indication of indirect ownership. Member States have the right to decide that a lower percentage may be an indication of ownership or control. 2) if no person under paragraph (1) can be identified, or if there is any doubt that the person identified is the beneficial owner, the physical person who holds the position of senior manager official is considered to be actually owns.

- b. In the case of trusts: (i) the settlor; (ii) the Trustee (s); (iii) the protector, if any; (iv) the beneficiaries / recipients. If individuals who benefit from the scheme have not yet been determined, it shall be referred to a group of persons with an interest in the scheme. (v) any other natural person who exercises, or can exercise, control over the trust by using the direct or indirect ownership or otherwise;
- c. when it comes to legal entities as foundations and legal arrangements similar to trusts, the natural persons who hold identical or similar positions to those mentioned in paragraph (b) are beneficial owners.

2.3. OECD

In the OECD's standard for automatic exchange of tax information from 2014 definition of a controlling person in trusts largely overlapping with the FATF and the EU definition of beneficial owner. OECD uses the term beneficial owner differently in their instruments. In its Model Tax Convention they point out that the beneficial owner here is not defined in a "narrow technical sense", such as, for example FATF definition. See OECD's clarification in 2014:
<http://www.oecd.org/tax/treaties/2014-update-model-tax-convention.pdf>.

This definition confirms that a controlling person shall be a natural person and that there may be persons other than those which officially registered as owners.

OECD definition of controlling people in trusts: (translated and abridged)

"In the case of a trust, the term "Controlling Persons" means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust."^{vii}

3. The need for a new registry in Norway

Issues related to hidden ownership has been a debated topic both in Norway and internationally. What really speeded up the Norwegian debate were two parliamentary decision, and two reports: FATF's evaluation of Norway and the Brønnøysund Registers recommendations for the design of a new registry.

Parliamentary Decision 1

Parliament in May 2014 that adopted a text saying that "a publicly available registry with information about the owners of corporations to ensure greater transparency" is to be introduced in 2015. The adopted text says that we must ensure better access to ownership information "both compared with information in today's shareholder books and information provided in the Directorate of Taxes shareholder registry".^{viii}

Brønnøysund Register report

Ministry of Trade, Industry and Fisheries (NFD) gave Brønnøysundregistrene the mandate^{ix} to prepare its recommendations on how the registry could be designed. The report from Brønnøysund came in November 2014.^x The report gives a good overview of how the registry technically can be set up, but contains some recommendations that would limit the usefulness of the registry. Among other things, it recommends that there should be restrictions on access and opportunity for further use of the data in the registry.

Report from FATF

In December 2014 the Financial Action Task Force (FATF) evaluated Norway's efforts to combat money laundering and terrorist financing. Norway gets praise for its general openness about Norwegian shareholders, but was criticized for a lack of information about foreign ownership in Norwegian companies registered (see textbox 1). Norway has been a member of FATF since 1991 and had the presidency from 2012 to 2013.

Box: FATF criticism of Norway in December 2014:

- Lacking information about foreign owners
- The data on Norwegian ownership is not updated and verified
- Owner information is not available "in a timely manner"
- Information on ownership is in principle available, but not always in practice
- No sanctions for error reporting and lack of reporting

Parliamentary Decision 2

These two reports led to a larger public debate. It became evident that the mandate NFD had given to Brønnøysundregistrene did not safeguard Parliament's intentions well enough, and that Brønnøysundregistrene further interpreted the mandate too narrowly. On this basis, combined with the FATF-criticism and the general debate on hidden ownership internationally, the Parliament saw it necessary to make yet another decision.

In June 2015, Parliament instructed the Government to create a registry that not only provides information on shareholders, but which meets the need for transparency about ownership and control of companies in general. The Parliament's decision emphasized that transparency is essential to ensure democratic access to the public, and that maximum transparency will help protect the economic system that is built up in Norway.^{xi}

This harmonizes well with the principle of open data that is designed by Agency for Public Management and eGovernment (DIFI) (see textbox 2).

Box:

Open data must

- be available in its entirety, at any time as a free download or ask interface (API) via the Internet.
- be available in a simple form and possible to edit.
- made available under conditions that allow sharing and further use, even when combined with other data sets.
- designed so that everyone has the opportunity to use and share - no work, individual or group should be discriminated against. It is not allowed with restrictions that prevent commercial use, or restrictions for certain applications, such as "just in teaching."^{xii}

Open government data is essential for social development:

- Improved efficiency and innovation: When data is shared between businesses we get better coordination, more efficient service development and improved public services.
- Economic development: Businesses get the opportunity to develop new services, products and business models based on access to public information.
- An open and democratic society: access to the basis for decisions and priorities in the public sector provides better opportunity for control and scrutiny.^{xiii}

4. Users of the registry

The registry must be designed so that it caters to the needs of the users. We have made a list of different users and their needs for information on beneficial owners. The list is not exhaustive.

The financial industry: banks, trust companies, insurance companies and other financial corporations, is currently committed by the Money Laundering Act to know their customers. This means that the establishment of a customer relationship, conducting large transactions, suspected offenses or if correct customer information is doubted, banks and other financial institutions must collect and record information about the beneficial owners.^{xiv} The European Banking Federation said in 2014 that they based on FATF recommendations support greater openness about beneficial ownership.^{xv}

"It is an advantage both for the right of democratic transparency, and for financial market functioning, the Norwegian owner registers remain equally open to inspection as they are today. It also means that information about the "beneficial owners" should be sought made available to the public." (From Parliament's decision of 5 June 2015)

Prosecuting and supervisory authorities: prosecuting and supervisory authorities can now request access to ownership information. However, this may take a long time, require a lot of resources and has uncertain outcomes. A new owner registry will be resource-saving and help speed the investigation of economic crime. An open registry will also enable the public and journalists to identify matters that could be of benefit to prosecuting and supervisory authorities.

"Transparency of ownership is important to have sensible transactions in business, and to prevent economic crime. In today's information society, information concerning ownership should be just a few keystrokes away in all countries. "- Harald Brandsås, Revisorforeningen.^{xvi}

Tax administrations: A new owner registry will make it easier to make sure that the right person / company is taxed the right amount. The new registry will also be resource-saving because the companies themselves must provide beneficial owners. This avoids the IRS many requests to foreign governments. This job will become easier as more countries also introduce open own registers.

"A growing international acceptance of the need for transparency across national borders, and acceptance of the fact that different countries' tax and police authorities must be able to collaborate seamlessly, providing room for hope that the transparency of ownership can be better internationally and thus also in countries outside Norway. The Committee believes this could be an important modernization of an effective international market economy. It will also provide a better opportunity for the general public transparency and control. "(From Parliament's decision of 5th June 2015)

Investigators: Private investigators that investigate fraud in the company will save time and reduce costs through an open registry. Investigators (and journalists) need to do search without notifying the company or person they are investigating. Investigators from countries with less confidence between the authorities and the population than we have in Norway can perceive requirements for

login as an attempt track their searches. But also in Norway, a login solution may affect how many people actually use the register: the introduction of login when searching tax lists and tracking led to a sharp drop in the number of searches, from 8.6 million (2013) to 1 million (2014).^{xvii}

"Timely access to Information on beneficial ownership should be ensured in ways to avoid any risk of tipping off the company concerned". (EU fourth Money Laundering Directive)

Journalists: The press access to information is crucial for journalists to carry out its social mission.

"Activities such as tax evasion, money laundering and corruption is often based on hidden ownership. Both investigative journalism and healthy competition in the business world requires effective access to shareholder information. "- Siri Gedde-Dahl, journalist in Kapital and head of Pressens offentlighetsutvalg.^{xviii}

Information about beneficial ownership is especially important to reveal tender fraud, corruption or tax evasion. In order to perform thorough work journalists depend on a registry that allows to compile information with other registers.

"The press and voluntary organizations contribute with their investigations to important debates about ownership and economic conditions. Tax authorities also benefits of the work that the press does, for example, when new knowledge about tax evasion comes to light. The Government will therefore implement remedial actions to ensure better openness about shareholders, both compared to the present shareholder register of the Tax Administration will be able to give. "(From the parliamentary resolution of 1st December 2014)

The general public and civil society: Disclosures in the media often begin with a tip from individuals or organizations.

"As a journalist, I am dependent on the public's eyes and ears - a large proportion of my investigative projects start with a tip. Knowledge of who really owns a company is part of the infrastructure of a society and is the basic information every citizen must have access to exercise their democratic rights. " - Vegard Venli journalist in Kommunal rapport.^{xix}

For residents in a municipality it is relevant to know the ownership interests the mayor and other politicians in local businesses have, to make it possible to reveal tender cheating. An employee should be able to know who owns the firm where she works. If the owner is not known, one can not find out what plans the owner has. This can create an unstable working environment and makes it difficult to see whether for example cutbacks are verified.

"We want to know the real owners of multinational companies, in several places they operate nursing homes and schools. The political process in connection with the municipalities considering tender processes deserve full transparency." - Erik Orskaug, UNIO.^{xx}

Research & statistics: Access to appropriate and comprehensive information can provide the basis of better statistics and research. Open data can highlight the power and ownership structures of society and form the basis for new and useful research.

"Public access to such a registry will help to secure and quality of the register and thereby to affected statistics." Letter from SSB (Sentral bureau of statistics) to NFD 04.24.2015.

Facilitators of public data: Many people will not have the resources or interest to search in the register itself and will continue to pay for information from facilitators like proff.no or purehelp.no. Such operators will be able to offer better and up-to-date services when a new owner registry is in place. It will ensure more transparency and easier access to information.

Public or private purchasers: Have a need to uncover rigging of tenders by checking whether the same people are actually behind the various tenders / offers.

Insurance and pension companies: These often vote at general meetings and vote for chairmen. If a director of a company has a stake in another company, this is relevant information.

"With an open own registry could have an overview of networks and interests between and internally in companies. This is very useful information for us. "- Jeanett Bergan, manager KLP Asset Management^{xxi}

Business and industry: A healthy business, with real competition, relies on quickly access to shareholder information. Businesses must know who they do business with, both in order to take viable decisions and to stay away from unscrupulous ones. For the few people involved in dodgy businesses, it will of course be negative, but for the majority it is a distinct advantage to know their customers, partners, suppliers and owners.

An open Norwegian registry will reflect Norway's desire to be able to map Norwegian companies' activity abroad or Norwegian companies need to know their foreign partners.

"In a situation where an increasing share of world trade takes place between companies with the same owners, the likelihood increases of inadequate competition. It is revealed that this not rarely results in prices far from real market prices and weakened tax revenue, as a consequence of profit shifting. An ownership registry which contributes to openness could therefore improve the competitiveness of Norwegian industry. "(From Parliament's decision of 5th June 2015)

Box:

"The B-team"^{xxii} (a coalition of business leaders) believe that greater transparency regarding beneficial owners will provide:

- increased competitiveness
- reduced risk by knowing who you are doing business with
- management of financial risk and increased stability
- reduced impunity

"The default option should be full transparency." - Mark Moody Stuart, former chairman of Shell.^{xxiii}

Foreign users: According to Økokrim it becomes increasingly easier to establish companies abroad. Transparency of ownership must therefore also be global. Foreign registers must be searchable from Norway, and a registry in Norway must correspondingly be able to be used by foreigners.

Several of those legally obliged to use the information that will be contained in this register are abroad, such as foreign financial institutions. Foreign investors need information from such a registry to be able to make informed investment decisions. Authorities in other countries should not need to go the burdensome bureaucratic way to obtain information about ownership in Norway. Poor countries' governments and civil societies have few resources, but perhaps an even greater need to uncover economic crime than us.

5. Content and access to the registry

In this chapter we present the main principles which must govern the new owner registry in Norway. Each of the main principles is justified in separate subsections, and followed by recommendations to the functionality the registry needs to fulfill the principle.

5.1. Principle I – All owners must be registered

The type of ownership to be registered

The debate in Norway about an ownership registry has mostly dealt with one owner type: shareholders. The definition of "beneficial owner" of the EU, OECD and FATF, however, includes anyone who exercises control of a company. The international definitions also clarifies another key element: the true owner is a physical person.

From Parliament's decision of 5th of June 2015: "The definition of "beneficial owners" must be at a level that ensures that Norway still stands out as a pioneer when it comes to transparency regarding ownership issues."

From the EU's fourth Money Laundering Directive: "A beneficial owner is defined as the natural person who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the entity, including through bearer shares, or through control via other means." See Chapter 2 for detailed definitions.

The new owner registry must therefore facilitate that all owners and others who control the company can be recorded. This includes shareholders and others with voting rights, the chairman, directors, executive management, family ownership, the right to sign. Much of this information, such as directors and executive management, are already in registers managed by Brønnøysundregistrene.

In addition, it must be ensured that owners of the trusts entered and recorded. This includes as a minimum the roles of "nominee", "trustee" and "beneficial owner". Trusts are not regulated by Norwegian law, but trusts occur as owners of companies. The various owners of trusts should be compared with other types of ownership in the Register. The registry in Britain will only register "trustee", and not the underlying real owner. However, this is in conflict with what OECD requires recorded in connection with its new standard for automatic information exchange. See Chapter 2 for OECD's definition.

In Norway, currently it is allowed to list a company as general manager, so-called "company director". This can not be maintained in order to satisfy the requirement of registration of individuals in the various definitions.

The records must as far as possible include an obligation for all businesses operating in Norway to record information in the registry. This includes AS, ASA, foundations, associations, trusts, state owned enterprises and funds, mutual funds, SVP (Special Purpose Vehicle), private equity funds and

other legal entities / legal entities. The same requirements must include companies which have been defined its business in Norway as "not permanent establishment". The law must be designed in such a way that future legal structures are included.

Recommendations

- A 1. The registry must include all shareholders, including shareholders and other with voting rights, the chairman, directors, executive management, family ownership, signature / procuration, owners of trusts.
- A 2. It can not be allowed that a company is listed as a manager, so-called "company director".
- A 3. All businesses, foundations and the like must be reportable. A new legal framework must be designed so that future legal structures are included.

Number of shareholders to be registered

All companies must have an overview of its shareholders today, partly to pay dividends and convene a general meeting. A company is required to keep track of all shareholders. The new registry will replace the manual shareholder books companies have today, so companies only need to register the owners one place. The registry will then act as 'master' (main source) as described in the Brønnøysund Register report. In connection with the design of this registry, this registry should have equivalent legal effect as Shareholder Register and VPS (central securities depository) have today.

Box: EU operates with a very high threshold for which shareholders must be recorded - at least 25%. Member states have the opportunity to set a lower threshold. In Denmark, the threshold is set at 5%.^{xxiv} For owners who want to hide it is however easy to structure ownership so they go below the threshold. A company can be controlled in many different ways, not only through holding the majority of shares or voting rights. A person can, for example, have 20% direct ownership, 20% contractual control and 10% indirect ownership through several long ownership- and control chains.

Frequency of registration

"The Committee wishes to emphasize that it is important to work for solutions that can provide insight into the ongoing ownership and ownership changes, preferably also changes that occur throughout the year. Beyond the companies' share books and registration in VPS, there are currently no public record of an ongoing ownership of companies. Brønnøysund Register information is based on the submitted annual accounts, while the Tax Directorate's internal registers only record data for each year.» (From Parliament's decision 5th of June 2015)

Ongoing registration can prevent the spread of misinformation and false charges, and will make it possible to detect financial crime when it happens, and not long afterwards.

Fact box: In the UK the registry is updated once a year, including history of ownership changes that have happened along the way. It is indicated that more frequent updates may come. In Denmark's new owners must be registered the companies register within two weeks.

Brønnøysundregistrene proposes in its report that access to previous ownership changes should only be given to official authorities. We believe this is not sufficient. Having changes in ownership visible, it will be difficult to "trick" the system, for example by setting up a company for illegal activities, and then liquidate it quickly afterwards, or by transferring ownership to others for shorter periods. Investigation conducted by auditors and journalists often depend on seeing ownership changes backwards in time.

Box: In several countries' existing company records one can find historical data about the company and the owners (for example, Denmark^{xxv} and New Zealand^{xxvi})

Recommendations

A 4. The register should be continuously updated throughout the year. Such continuous updating was also recently made possible in the existing Shareholder Register.^{xxvii}

A 5. The register should be organized to show changes over time, including for dissolved and liquidated companies and companies that are bankrupt.

5.2. Principle II – Owners must be uniquely registered

The new registry must ensure a reliable identification of the owners. In the list below we have built on international recommendations, including Global Witness^{xxviii} and the EU. We have also included recommendations from the Brønnøysund Register report. There, among other things, it is emphasized that the date of birth should be given for all foreign owners in addition to an ID number.

We believe that the new owner registry may eventually replace the information in the Register of Shareholders which includes ownership.

The Foundations registry (Stiftelsesregisteret) includes information about who controls assets in foundations. It may therefore be appropriate to consider aligning / integrating Stiftelsesregisteret in the new owner registry in the future. Work on the new registry can also have links to the proposed development of new electronic tax returns for businesses.

The following information should be recorded for each beneficial owner:

1. Full name
2. Nationality
3. Home Address (automatic connection to the National Register by Norwegian addresses / Norwegian nationals)
4. Social Security or equivalent (eg. TIN) in countries where such numbers exist. (Should not be publicly available.)
5. For shareholders, number of shares and class of shares and other information recorded in today's Shareholder Register. (Other information that is not related to ownership and who do not have public interest should not be publicly available.)
6. Date of birth (ISO 8601-formatted (YYYY-MM-DD))
7. Other contact information: phone number and business address
8. Copy of passport. (Should not be publicly available.)

9. Description of the type of control the owner has in the business. If the type of control does not belong to fixed categories, such as "Director," "shareholder", it should be possible make a description of the control in prose text.

If the true owner does not have direct control of the business, but exercises control through a chain of ownership, the chain of ownership must be described. Parliament's resolution of 5th June 2015 expresses the need to identify the ownership chains.

In the US, ownership / control through close family is specifically regulated: "shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual."^{xxix} This should be considered for implementation in Norway.

10. A unique number should be assigned to all persons registered in the registry to ensure unambiguous registration, and to prevent wrong connections being made. We propose to extend the use of current Shareholder ID from the Tax Administration. This number may for example be renamed to an "Owner ID" so that it can be applied to all beneficial owners in the new register. The number will be publicly available and therefore can not be used for identification purposes.

11. When Norwegian shareholders have ownership in foreign companies, the shareholders themselves must report into ownership. It is important that the foreign company is registered with an organization number or similar unique number.

Recommendations

A 6. Information recorded about a person must be sufficient so as far as possible ensure that the person is detected unambiguously. See separate list for details.

A 7. The new owner registry should be designed so that it may eventually replace companies' duty to register ownership information with the tax authorities Shareholder Register.

A 8. Consideration should be given to regulate the registration of ownership / control of a close family corresponding legislation in the US.

A 9. Norwegian authorities should contribute to international and regional processes to put in place adequate systems for social security / ID number in other countries.

5.3. Principle III – The registry must be open and accessible to all

More openness and greater transparency are important principles that must be prioritized in the development of the new Norwegian ownership registry. Transparency in ownership is important to safeguard our democratic values and guarantee the fulfillment of the two parliamentary resolutions which greatly emphasized that the public should have broad access to information in the registry. In this sub-chapter we give our recommendations on who should get access, how easy it should be to find the information and how the information can be used.

"The proponents want to emphasize the importance that the public has effective access to information about ownership. (...) Enterprises should be able to investigate who they do business with, and disclosures in the media about damaging economic conditions often come after tips from individuals or organizations. The proponents therefore believe it is unfortunate if this access is restricted so that these do not have access to the registry information, as proposed by the Brønnøysundregistrene. " (From Parliament's decision of 5 June 2015)

Box: EU fourth Money Laundering Directive says that government and companies themselves should have access to the registry, but that others must show a "legitimate interest" to access. Member states may, however, adopt further access. In the Danish registry information on ownership more than 5% is publicly available. Ownership below 5% will still be recorded in the "Central Business Register," but is not public.^{xxx}

We recommend the following:

A 10. Information concerning ownership could not be considered sensitive information. The registry should be established pursuant to a separate Act to ensure the safeguarding of public participation, access and use of data. We have discussed privacy question separately in chapter 7.

A 11. The register should have two interfaces for access, where both are adapted for Norwegian language and English-speaking users:

1. An open website where anyone can easily look up information about the beneficial owners.
2. Ability to download entire database as raw data

Raw data must be downloaded in a machine readable format that handles large amounts of data. Brønnøysundregistrene opened up for download of raw data from the Legal Entities Registry in 2012^{xxi}, and has expertise on this. In addition, it should in the creation of a new registry be considered adopting future technologies for handling large amounts of data, such as JSON or CSV files.

There exists today few standards and interfaces for the exchange of data in the public domain in a unified manner. Standardized formats are needed to break down and analyze large amounts of data and connect information from other registers together. Examples of such records: Public procurement records, bankruptcy records, court decisions, lists of "PEP" (publicly Exposed Persons), lobby registers, sanction lists and the Stock Exchange primary insider register.

Box: The registry in New Zealand is an example of a register where searches on individuals and some filtering capabilities are easily available. Here one can search for "directors, shareholders and disqualified directors". One can also refine the search by company type, status, address type and date of incorporation.

Tax Justice Network - Norway, ICT Norway and Finance Norway have different views on how the transparency should be practiced. Finance Norway is of the opinion that there should be some limitations on openness. There may be, in certain cases, a legitimate need to protect investors' interests against access. This can be done partly by introducing thresholds, delays and / or introduce a requirement for a legitimate interest. Tax Justice Network - Norway and ICT Norway believes

investor needs do not weigh heavily enough to impose such restrictions. The different visions are described more below.

Finance Norway:

The possibility for the general public at any time to see updated information about who is controlling owners of a company is unproblematic. Access to an individual's ownership in various companies should be justified by a legitimate interest, such as foreseen in Article 30 of the EU directive. This is because a too broad openness might negatively affect the stock market dynamics such as breach of the insider trading provisions. An unlimited openness may also have adverse consequences in that it gives players an opportunity to shadow other actors' investment strategies and copy these or build defense mechanisms.

Delay in publication of the information could alleviate this problem somewhat, but not the fact that full transparency may be one tool for sellers of investment services, etc. who would use the registry as a list of prospects, and the investor may not opt out of this.

What data should be recorded, at what level and how they will be assembled and presented must be assessed from the authorities and society's real needs. Where to draw the line between what belongs to private life and what the public is entitled to scrutinize, is a question that must be examined more closely, where the need to maintain the dynamics of the stock market as such and avoid adverse consequences for the Norwegian market, must weigh heavily. The approach to these questions is also important to look to other countries' practice to get as good harmonization across borders as possible.

Tax Justice Network - Norway and ICT Norway:

As shown in Chapter 4, many different groups need information from the registry. An open registry will make information flow more efficient, both between government agencies and others. It will provide more innovation as new solutions arise when people start using data in new ways and thus creating new knowledge and services.

To attempt to delineate who has legitimate interest we believe is very difficult and not advisable. The discussions around privacy in Chapter 7, we believe show that limitations can not be made on access or compiling the information.

If there will be imposed a fee for making extracts, this may in practice exclude groups with little financial means of extracting information. For example, local newspapers, actors from poor countries and small enterprises. Open systems are overall cheaper for society because both governments and other don't need to use resources related to processing and writing applications and associated appeal processes.

We also believe that the solution should be organized without login, as this provides an additional barrier for the retrieval of information, and there is a risk that users can be tracked.

6. Development, operation and supervision

This chapter includes our recommendations on who should operate the registry, who will supervise it, and who and how the information will be fed into the registry. This includes the issue of owners operating through nominees. We also make some considerations about the costs associated with the development of the registry.

6.1. Development and operations

The Brønnøysundregistrene currently contains list of all businesses in Norway, and already contains information about multiple types of beneficial owners (such as directors and CEO).

We think it makes sense that Brønnøysundregistrene¹ is the place where the user gets an overall access to information about the beneficial owners. The requirement for registration of ownership should be linked to the company's existence, which makes it natural for the owner information is collected where the company is registered. It will also be time-saving when the same information doesn't need to be registered in two or three different registers. By placing responsibility for the register at one place, it increases the chance of creating a solid and effective register.

The coordination of data in the public sector and state agencies is lacking today. When information is one place, this could contribute to a better flow of information between and within public institutions. Private operators will also benefit from finding raw data in one place.

Recommendations

A12. All information about the beneficial owners should be collected in a solution hosted by Brønnøysundregistrene.

6.2. Reading register data

Brønnøysundregistrene described well in its report how information on shareholders may be included in the existing registry, including by automatically creating a shareholder book for all businesses that are registered. It should be easy to include also the owner types that are currently missing (as the identification of family ownership).

The company shall be responsible for keeping the register updated with information on their actual owners. It is important that the update is as automated as possible and simple to use. In the following we describe more specifically how such updating can happen.

For corporations listed on the Oslo Stock Exchange

Trade with shares registered on the stock exchange is real-time registered today through the Central Securities Depository (VPS). The report from Brønnøysund outlined several solutions on how and whether the VPS data to be integrated into the new owner registry. The best solution is clearly the one that allows the user only to go to one place to get an overview of shareholders and other owners. It is also important not to impose the companies and market participants more reporting

¹ The Brønnøysund Register Centre develops and operates many of Norway's registers and electronic solutions. Administering Altinn, coordinating data in the public sector and providing advisory services are central tasks.

requirements than is strictly necessary. Ideally, it must be adequate to report each piece of information in one place.

The information can be sent to Brønnøysundregistrene at a predefined time and format, such as once per day, possibly also as soon as changes happen. This must occur in formats that allow the automatic loading of data from one machine to another. (For example: ISO messages, API (Application Programming Interface))

Nominees

Foreign investors may choose to acquire shares via a nominee. The nominee can for example a bank. Shares will then be registered in the name of the bank. The investor does not have to have a relationship with a local bank in the country where it wants to invest. This means that relatively small investors can invest across national borders.

The Nominee shall keep records of the identity of the customer. However, it is common that there are several levels of managers, and the first level of the management chain will not necessarily have knowledge of who is the ultimate owner at the end of the chain.

As mentioned earlier in the report, the FATF criticized Norway for this system as it makes it difficult to obtain information about the final owner in "a timely manner." Also the Parliament's decision of 5th of June 2015 states this:

"The committee will not argue against that the nominee registration may still be available in Norway, in line with the practical arrangements that exist in our neighboring countries. However, it is a prerequisite for such registration that the company itself, and authorities who need it and the public, at any time can get information about the underlying owners. Transparency and openness in nominee accounts should be as similar as possible to the transparency that is to be established for Norwegian shareholders in the new register. "

Nominees update VPS daily with information about changes in ownership. Here, only the name of a nominee and not the beneficial owner is registered. Ideally, these changes also contain information about the final physical owner (last level) of the management chain.

The ECB (European Central Bank) is in the process of implementing the project "Target2-Securities" (T2S) to harmonize and standardize the settlement of securities in Europe. The increased investment rate that is expected to follow by T2S, has given its concern that it will be even more difficult to identify the real owner behind investors. Therefore a special task force has been established. The task force describes in his report two options to ensure the transparency of shareholders:^{xxxii}

1. It is possible for each country to establish a decentralized solution where central securities depositories collects information about beneficial owners, before the T2S project is in place.
2. That a harmonized solution in addition can be implemented after the T2S project is completed.

Both solutions require the preparation of a specific format for reporting beneficial ownership.

Today it can be difficult for managers to find the true owner when many levels of nominees are used. As part of the T2S work it is being discussed if the number of nominee levels should be restricted. This has also been discussed in the Norwegian context, see box.

Box: The report NOU 2005: 13 About nominee registration of shares in Norwegian companies says: «The risk of failure in reporting is predicted to increase, when nominees who are not approved by Norwegian authorities occur in the ownership chain.» The minority in the committee therefore proposed to only allow nominee registration in one level.^{xxxiii}

Also trusts should be treated specifically since ownership information from these can be very difficult to obtain.

In connection with the establishment of the registry, Norway should as far as possible facilitate obtaining information from the nominees manually. This information will be used as an initial input to the register, and will provide valuable experience to the development of national and international solutions. The Financial Suvervisory Authority of Norway (FSA) conducted a similar exercise in 2005. ²The frequency of updtades should then be increased in line with the satisfactory international technology solutions and reporting procedures are in place, such as quarterly or more frequently.

"The nominee lists make no sense, and several Norwegian NGOs have stated that companies should get to the bottom of the shareholder base. We have agreed to this and been open about our largest shareholders for several years. The process of getting the nominees to disclose information may be very difficult. "- Per Sagbakken, then leader of ownership relationships in DNB (Norway's largest financial services group).^{xxxiv}

Box: In the new English registry trustees must provide information once a year, but must then also include history of ownership changes over the last 12 months. More frequent updates may implemented in the future.

Experience shows that there is an urgent need for closer international cooperation and harmonization of regulations across national boundaries so to develop ownership records that also contain information on the true owners behind a chain of investor. Norway should to a greater extent than today contribute actively into the European standardization work in this area. This will contribute to more and better solutions come into place also in other countries, and ensure that the Norwegian registry is continually improved.

We propose a gradual introduction of measures for more transparency in the nominee account system in Norway, while pointing to the need for a stronger involvement by the Governement in the international processes. *Finance Norway believes that this is important for reducing the risk of negative consequences in the Norwegian stock market. Negative consequences may be that foreign*

² Elaboration from the FSA in an email 9 July 2015 connection to the making of this report: «FSA sent letters to all the nominees and asked them disclose the beneficial owners behind all nominees holdings (excluding bond holdings and holdings in unlisted instruments) per 15.09.2005. This amounted to 7545 stocks with a total value of about 298 billion spread over 217 different financial instruments (ISIN).»

investors are experiencing it more difficult to invest in Norwegian companies and that investment goes down.

Recommendations

- A 13. Norway should contribute actively into the European efforts to harmonize and standardize regulations related to the nominee system
- A 14. Relevant data currently being collected by VPS should be connected by Brønnøysund so that the user can retrieve the data from one location.
- A 15. Acquiring initial input of the beneficial owners from nominees as far as possible before the registry startup. This should be repeated every 12 months, and then include ownership changes that have occurred in the meantime. The frequency of collection should then be increased in line with the satisfactory international technology solutions and reporting procedures are in place, such as quarterly or more frequently.

In addition, TJN Norway recommends:

- A 16. Norway should set limits on the number of levels of nominees an investor can use. Eventually, the maximum number should be two levels.
- A 17. Norway should prohibit trusts from investing through nominee arrangements.

For other companies

Businesses that are not on the stock exchange, will in most cases not have frequent changes of the shareholder base. For these it will be important to have a simple user interface for registering owners. This can be done in Altinn, and the existing solution "Coordinated Registration Notification". Here you can easily choose the change you want to make, and fill this out. Details of shareholders can be automatically updated through automatic reporting of end-user systems, as described in the Brønnøysund Register report.

The filling could also be done by an accountant / auditor. Larger companies with frequent changes could benefit from use of the services of a securities registry.

Denmark has created an online ownership book solution that automatically sends selected information to the register. In Denmark, however it is not mandatory to use this online solution, and so all the owners are thus not in one place.

It is important to have a secure login solution for reporting to prevent data manipulation, including company theft.

Recommendations

- A 18. Make a simple user interface for registering the different types of ownership.

6.3. Supervision

From Parliament's decision of 5th of June 2015, "The proponents will point out that the mechanisms that ensure enforcement is crucial for such a registry to function as intended, in line with FATF recommendations. There should be established a system for verification, control and possible sanctions if the registry requirements are not complied with. "

Verification

As there will be a large amount of information in the new register it will require significant resources if all information must go through a separate verification authority. Instead, it is important to make it easy for the company to report the information and that adequate systems for remote control and sanctions are established.

Open data in itself contributes to self policing. Through maximum transparency in the registry, errors could be detected by the audience, who thus will be able to function as a form of quality assurance. Citizens of other countries can detect reporting errors that require local knowledge (eg wrong address) or language skills.

It should be possible for the public to easily report any suspected errors anonymously. If the registry itself can not handle such a message, it should send the error message to its supervisory authority.

Control and supervision

Brønnøysundregistrene should have supervisory authority in the first instance, pursuant to sanction. Brønnøysundregistrene is currently administrated by the NFD, but none currently has supervisory authority for the registers. As information on companies referred to in this report are part of the "financial world" we mean the FSA³ should oversee the new register. Financial supervisory activity should be authorized by law.

FSA should receive regular reports from Brønnøysund, and annually implement a structured inspection to identify systematic errors and ensure continuous improvement of the registry. This includes ensuring that the natural persons at the end of the control chain is registered. It should also be ensured that Norwegian supervising authorities have authority over all companies operating in Norway and / or registered on the Oslo Stock Exchange.

Sanctions

There must be effective sanctions that can be used if companies, managers or direct owners fail to report required information to the registry.

Companies: There should be an obligation for companies to register information on ownership and control in order for the company to be assigned a organisational number. For companies that already have such a number, ownership information must be changed or confirmed annually. Brønnøysundregistrene should be able to issue fines if such an update does not happen.

³ FSA - Finanstilsynet is an independent government agency that builds on laws and decisions emanating from the Parliament (Stortinget), the Government and the Ministry of Finance and on international standards for financial supervision and regulation.

Violation of the reporting obligation should be punished in line with the breach of the Accounting law and inadequate overview of the owners should ultimately lead to the compulsory enforced liquidation of the company. As happens today when corporations are lacking auditor, CEO or chairman. In Denmark, companies may now be liable to fines if the registration requirement is not met.^{xxxv} This should also be considered in Norway.

Managers: if the nominee fails to/does not provide sufficient information at the appropriate time, the company / VPS / bank should notify the FSA. FSA must then implement sanctions to ensure that the information is put in place. Such sanctions should include fines, closure of account and the possibility to withdraw the manager license.

Current regulations allow FSA to withdraw manager licenses or close accounts when they have not provided necessary information.^{xxxvi} The threshold for adopting these sanctions, however, appears high since they rarely implemented.

Recommendations

- A 19. Develop a user friendly interface so that the public can report errors in the register anonymously.
- A 20. Legislate the financial supervisory activity in law, and ensure that Norwegian supervision has authority over all companies operating and / or publicly registered in Norway.
- A 21. FSA should obtain sufficient knowledge of corporate structures and beneficial owners, to oversee the new register.
- A 22. Updating the current regulations to ensure that further sanctions may be used.

7. Privacy

The Brønnøysundregistrene believes that it should not be permitted to conduct searches on person because of privacy concerns. This theme is also mentioned in legislation, by the Datatilsynet⁴ and a in a recent ruling by the Parliamentary Ombudsman. These parties have a different opinion about the privacy issue than does Brønnøysund, and we here present their views and our interpretations.

7.1. Datatilsynet

Datatilsynet says: "We do not dispute that there is a need for transparency and that the purpose of the registry is justified. A closer review should be made by the legislature. A new public register should be authorized by law or regulation."^{xxxvii}

Parliament and the public can therefore on the basis of the two parliamentary resolutions and existing laws choose that transparency is more important than privacy considerations.

Datatilsynet continues: "It must be a precondition that the register is likely to meet the specified purposes. It must contain the necessary, accurate and current information."

In other words: The register must have good quality information, which also includes adequate control. A malfunctioning registry is not good for privacy.

7.2. Companies Act

The Companies Act provides investors with an opportunity to operate with limited liability. In a corporation, the shareholder normally has no personal liability for company obligations. This means that the shareholder initially risks losing the share capital and creditors may only contact the company with their demands. This is an advantage that is given by society and it would then be reasonable that the society knows who avails itself of this freedom.

Buying and selling stocks is voluntary, and you are free to not choose to being publicly exposed about your ownership, simply by not trading stocks. This as opposed to the payment of taxes which is a duty imposed on all of society and not (in theory) can be deselected. The Datatilsynet says the following: "Information about who owns the company, will normally be less «protect worthy» than information about income and assets as provided in the tax rolls."^{xxxviii}

Act § 4-5 no. 2 says that every company today should have shareholder books containing owners' name, birth date and address. Here it should also be stated how many shares each shareholder in the company hold, and what type of share it is. This is information that Companies Act § 4-6 states should be available for everyone.^{xxxix}

The Ombudsman states in a statement to the Ministry of Finance from August 2015 that the information reported to the shareholder register, which shall be publicly available in each company's shareholder register, is not subject to confidentiality.^{xl}

⁴ Datatilsynet - The Norwegian Data Protection Authority - protects the right to privacy and strives to prevent misuse of personal data.

7.3. Public Administration Act

The Ministry of Justice interprets the confidentiality on personal matters in the Public Administration Act, in a guidance document. Here the ministry states that someone's ownership in a share is not subject to confidentiality.^{xli}

7.4. The Personal Data Act

Ownership information is not considered as sensitive personal data under the Personal Data Act,^{xlii} and Brønnøysundregistrene says that "The information to be processed will not be sensitive information according to the Personal Data Act. The data are not of such a nature that a large proportion of the population perceive them as sensitive. The information is not confidential under the Public Administration, or other legislation. The information shall be under the Securities Act be available to anyone who requests to access them."^{xliii}

7.5. Freedom of Information Act

Tax Administration gave insight into the shareholder registry to a journalist on September 16, 2015, referring to the decision that the requirements for access to the register of shareholders falls under the rules of the Freedom of Information Act § 9, "the right to assemble information from from databases".^{xliv}

7.6. Existing personal data files

Today we have several registers containing personal data, such as probate records, media owner registry and tax lists.

Information about who owns real property can be registered on the grounds that this is a matter of great values and that by registering this information, one is protecting the market. Real estate is considered of special importance, as apart to individuals ownership of other valuables. Registration of other movable goods would not be proportional to the need to register the information.

Register of media ownership in Norway is grounded on democratic governance, in order to ensure pluralism in the media and thus avoid media oligarchies.^{xlv} Similarly, registration of tax information is well founded and accepted as a necessity because everyone must help to maintain the welfare state.

8. Summary of recommendations

In this report we have presented recommendations as to how the registry can be built and operated. Recommendations that not all parties are united on is marked in italics and explained in more detail in the report.

A1. The records must include all shareholders, including shareholders and other with voting rights, the chairman, directors, executive management, family ownership, signature / procuration, owners of trusts.

A 2. It can not be allowed that a company is listed as a manager, so-called "company director".

A 3. All businesses, foundations and the like must be reportable entities. A new legal framework must be designed so that future legal structures are captured.

A 4. The register should be continuously updated throughout the year.

A 5. The register should be organized to show changes over time, including for dissolved and liquidated companies and companies that are bankrupt.

A 6. Information recorded about a person must be sufficient as far as possible ensures that the person is detected unambiguously. See separate list for details.

A 7. The new owner registry should be designed so that it may eventually replace the companies' duty to register ownership information with the tax authorities Shareholder Register.

A 8. Consideration should be given to regulate the registration of ownership / control of a close family, similar to legislation in the US

A 9. The Norwegian authorities should contribute to international and regional processes to put in place adequate systems for social security / ID number in other countries.

A 10. Information concerning ownership could not be considered sensitive information. The registry should be established pursuant to a separate Act to ensure the safeguarding of public participation, access and use of data.

A 11. The register should have two interfaces for access, where both are adapted for Norwegian language and English-speaking users: An open website for easy search, and the ability to download the entire database as raw data. Tax Justice Network - Norway, ICT Norway and Finance Norway have different views on how this openness should be practiced.

A 12. All information about beneficial owners should be collected in a solution hosted by Brønnøysundregistrene

A 13. Norway should contribute actively into the European efforts to harmonize and standardize regulations related to the management arrangement.

A 14 Relevant data currently being collected by VPS should be connected by Brønnøysund so that user can retrieve the data in one location.

A 15. Acquiring initial input from nominees on beneficial owners behind nominee accounts at the registry startup. This should be repeated every 12 months, and then include ownership changes that have occurred in the meantime. The frequency of collection should then be increased in line with the satisfactory international technology solutions and reporting procedures are in place, such as quarterly or more frequently.

A 16. Norway should set limits on the number of nominee levels that investor shall be permitted to use. Eventually, the maximum number of levels should come down to 2. (Supported by Tax Justice Network - Norway)

A 17. Norway should prohibit trusts investing through nominee arrangements. (Supported by Tax Justice Network - Norway)

- A 18. A user friendly interface for registering the different types of ownership should be prepared.
- A 19. Develop a simple interface so that the public can report errors in the register anonymously.
- A 20. Legislate the financial supervisory activity into law, and ensure that Norwegian supervision has authority over all companies operating and / or publicly registered in Norway.
- A 21 FSA should obtain sufficient knowledge of corporate structures and beneficial owners, to oversee the new register.
- A 22. Updating the current regulations to ensure that further sanctions may be used.

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