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Proposed Beneficial Ownership Register: Two Gaps Undermine Effectiveness

In 2024, Sri Lanka proposed an amendment to the Companies Act introducing a Beneficial Ownership register. The proposed register fails to meet International Monetary Fund and Financial Action Task Force commitments in two key ways as it lacks mechanisms to verify Beneficial Ownership information and restricts public access. As proposed, the law governing the register will fail to comply with the expected international standards.

A Beneficial Owner refers to the human person(s) who ultimately controls or owns a company.³ In the Extended Fund Facility to the Government of Sri Lanka by the International Monetary Fund (IMF) the Sri Lankan government committed to “develop amendments to the Companies Act to bring the beneficial ownership framework in line with the Financial Action Task Force (FATF

standards.”(International Monetary Fund, 2024, p. 12,105). On September 3, 2024, an amendment was proposed to the Companies Act to introduce a Beneficial Ownership register. The Bill contains positive features. However, it has two key shortfalls.

First, the proposed register does not include a mechanism to verify Beneficial Ownership information (BOI). The FATF

92

countries have Beneficial Ownership registers*

44

countries have publicly accessible registers.^{1*}

25

countries grant access to ‘obliged entities’^{2*}

These numbers are based on the best efforts of Open Ownership to map “world-wide action on beneficial ownership transparency”.(Open Ownership, n.d.)

1 The extent of information made publicly accessible varies from country to country.

2 Obligated entities are those that are required to assess the risk of money laundering and terrorist financing to which they are exposed in their operations. In the Sri Lankan context, obliged entities include Financial Institutions (FIs), Designated Non-Finance Businesses (DNFBs), and Insurers, which are bound by rules issued by the Financial Intelligence Unit (FIU) of the Central Bank of Sri Lanka (CBSL) to undertake customer due diligence measures to assess the risk of money laundering and terrorist financing.

3 Beneficial Owner refers to the natural person(s) who ultimately owns or controls a customer and/ or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be an ultimate Beneficial Owner, and more than one natural person can be the ultimate Beneficial Owner of a given legal person or arrangement.

requires countries to ensure that there is adequate, accurate and up-to-date BOI accessible to competent authorities⁴ (Financial Action Task Force, 2025). The proposed register does not include mechanisms to verify the accuracy of BOI submitted to the Register, contrary to FATF Recommendation 24.

Second, the proposed amendment limits public access to BOI, falling short of FATF Recommendation 24 which also encourages States to make BOI publicly available (Financial Action Task Force, 2025). The IMF in the Governance Diagnostic Assessment (GDA) recommended that Sri Lanka introduce a public Beneficial Ownership register (International Monetary Fund, 2023, p.16). That means, the proposed register by limiting the access of the public and key stakeholders to BOI, runs counter to both FATF and IMF commitments.

Transparency in Beneficial Ownership is a key step towards enhancing anti-corruption efforts. It requires the disclosure of BOI by legal persons⁵ and arrangements⁶ to competent authorities. Beneficial Ownership transparency is critical to reveal conflicts of interest in government contracts, tax evasion, terrorist financing, illicit enrichment by public officials, money laundering, among other important anti-corruption insights. BOI allows the authorities to 'follow the money' in domestic and international crime investigations. In this context, the gaps identified above on verification and public access must be rectified before the law is adopted.

This Insight first sets out the salient features of the Bill and then examines its shortfalls, i.e. (i) the absence of verification mechanisms for the BOI submitted, and (ii) limited access to BOI for the public and other key stakeholders, namely, stakeholders with a legitimate interest and obliged entities.

Salient Features of the Bill

The proposed Bill creates a central Beneficial Ownership register at the Registrar of Companies (ROC). It also

requires companies registered under the Companies Act to maintain a register of Beneficial Owners. This is the first time that there would be a mandatory legal obligation to disclose Beneficial Owners to the authorities, in Sri Lanka.

A Beneficial Owner refers to the human person(s) who ultimately controls or owns a company.

Several provisions of the Bill align with international standards, particularly FATF Recommendation No. 24. This includes the prohibition upon bearer shares and share warrants to bearer – instruments that can be used to disguise ownership.⁷ The Bill also grants competent authorities, including procurement authorities, access to BOI. Further, the Bill introduces a legal innovation which exceeds FATF standards by prohibiting Beneficial Owners from claiming Beneficial Ownership unless it is registered.

Two Key Deficiencies in the Bill

The Bill falls short of IMF commitments and FATF standards in two ways: First, it falls short of FATF standards as it does not include a mechanism for the authorities to verify the accuracy of BOI that is submitted to the register. Second, it falls short of IMF commitments by limiting the public, stakeholders with legitimate interests and obliged entities' access to BOI. These shortfalls, explained further below, would negate a core purpose of setting up a Beneficial Ownership register.

The Accuracy Deficiency - Absence of Verification Mechanisms

The proposed Bill falls short of FATF requirements as it does not ensure the accuracy of BOI. FATF Recommendation 24 and the United Nations General Assembly Special Session Against Corruption (UNGASS) requires countries

to ensure that there is adequate, accurate and up-to-date BOI accessible to competent authorities (United Nations General Assembly, 2021). 'Accurate information' is defined as information which has been verified by confirming the identity and status of the Beneficial Owner using reliable, independently sourced documents, data or information.

Other countries have adopted measures to verify BOI. For example, in Slovakia, BOI can only be submitted by 'gatekeepers' (authorized persons such as lawyers, banks, auditors) who carry out the first check of BOI and submit a verification document (United Nations Office on Drugs and Crime, 2024). Brazil uses an interoperable information technology system which automatically exchanges and cross-checks BOI with information in other government registries (Conference of the States Parties to the United Nations Convention against Corruption, 2023). The proposed Bill does not provide for verification mechanisms either by the ROC or by external parties. Therefore, it fails to meet the standards set out by the FATF and international best practice, as well as the government's commitments in the IMF agreement.

The Transparency Deficiency - Limited Access to BOI for Three Key Stakeholders

The proposed Beneficial Ownership register limits the scope of BOI made accessible to the public. In limiting public access to BOI, it also limits the access of stakeholders with legitimate interests and obliged entities such as Financial Institutions (FIs), Designated Non-Finance Businesses (DNFBs) and Insurers.

Limited Access for the Public

The proposed Bill limits public access to BOI contrary to FATF Recommendations, by restricting the extent of information disclosed and by adopting a procedure without adequate safeguards to ensure public access. FATF Recommendation

4 Competent authorities refer to all public authorities with designated responsibilities for combating money laundering and/or terrorist financing. This includes the FIU; the authorities that have the function of investigating and/or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency; and authorities that have Anti Money Laundering/Countering Financing of Terrorism (AML/CFT) supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and DNFBs with AML/CFT requirements.

5 'Legal persons' refer to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, partnerships, or associations and other relevantly similar entities.

6 'Legal arrangements' refer to express trusts and other similar legal arrangements.

7 Bearer shares (and share warrants) are a type of shareholding that are untraceable and can be used to disguise company ownership.

24 and the Report of the High-Level Panel on International Financial Accountability, Transparency, and Integrity for Achieving the 2030 Agenda encourage States to adopt publicly accessible Beneficial Ownership registers (FACTI Panel, 2021). The IMF GDA recommends that Sri Lanka establish a public Beneficial Ownership register (International Monetary Fund, 2023). Other countries such as Indonesia (Open Extractives, 2022) and the United Kingdom (Stolen Asset Recovery Initiative, 2024) have granted the public access to BOI. Clause 130D of the Bill limits public access to only the full name of the Beneficial Owner and the nature and extent of their Beneficial Ownership. This is insufficient for the public to verify the identity of the Beneficial Owner and to identify multiple ownership structures held by a single Beneficial Owner. In effect, the proposed Bill limits the public from having meaningful access to BOI, contrary to FATF and IMF commitments.

The proposed Bill does not provide for verification mechanisms either by the ROC or by external parties.

The mechanism for accessing BOI is also restrictive. The Bill requires the public to request BOI from the ROC. It does not stipulate a time limit within which the ROC must respond to such requests, nor does it provide for a recourse if the ROC fails to respond or unjustifiably denies a request. The limited scope of information disclosed, and the absence of procedural safeguards undermines access to even the inadequate information that can be requested.

Limited Access for Key Stakeholders

The proposed Bill does not expressly grant stakeholders with legitimate interests and obliged entities access to BOI. These stakeholders must rely on the limited public access granted in Clause 130D to access BOI. They are therefore, impeded by the same challenges that the public face in accessing BOI.

Limited Access for Stakeholders with Legitimate Interest

The proposed Bill does not expressly grant stakeholders with a legitimate interest, access to the full extent of BOI.

Rather, they must rely on the limited public access granted in Clause 130D.

The corrective measures to address them are first, to have the proposed register include mechanisms to verify BOI, and second, to have the register made publicly accessible.

The UNGASS Political Declaration recognised the role of civil society in combatting corruption (United Nations General Assembly, 2021). This was also recognised by the Court of Justice of the European Union in *WM, Sovim SA v Luxembourg Business Registers* (Joined Cases C-37/20 and C-601/20). The court recognised that Civil Society Organisations (CSOs) and journalists have a legitimate interest in accessing BOI to fight corruption. Countries such as Austria, Cyprus and Lithuania grant stakeholders with legitimate interest, access to BOI (United Nations Office on Drugs and Crimes, 2024). The proposed Bill does not recognise the legitimate interest of key stakeholders such as CSOs and journalists to access BOI. It only provides for access to limited information.

Expanded access to stakeholders with legitimate interests allows CSOs and journalists to use BOI to identify potential misuse of legal persons. It also allows them to act as external verification mechanisms to ensure the accuracy of BOI. For instance, CSOs used BOI to identify Prime Minister Andrej Babiš of the Czech Republic, as the Beneficial Owner of the Agrofert Group (Open Ownership, 2020). This was in contravention of conflict-of-interest laws in the Czech Republic. This is why access to the full extent of information being extended to parties with a legitimate interest such as journalists and CSOs is an important feature of a Beneficial Ownership register.

Limited Access for Obligated Entities - FIs, DNFBs, and Insurers

The proposed Bill does not expressly give obliged entities access to BOI, despite an obligation cast on such entities to maintain BOI of customers, by the Central Bank. UNCAC Article 14(1)(a) requires banks and non-bank

financial institutions where appropriate, to identify the Beneficial Owners of their customers. To this end, FATF Recommendation 24 encourages countries to grant FIs and DNFBs that conduct customer due diligence under Recommendations 10 and 22, access to BOI. The IMF GDA also recommends that access should be granted to reporting institutions with Anti-Money Laundering/Countering Financing of Terrorism (AML/CFT) obligations (International Monetary Fund, 2023, p.52).

In Sri Lanka, obliged entities are required to maintain BOI of their customers (Financial Institutions (Customer Due Diligence) Rules No. 1 of 2016; Insurers (Customer Due Diligence) Rules, No. 1 of 2019; Designated Non-Finance Business (Customer Due Diligence) Rules, No. 1 of 2018). They must take reasonable measures to determine the natural persons who ultimately own or control the customer. Despite this obligation, Clause 130B of the proposed Bill only grants access to "any public authority having the responsibility for investigating or prosecuting money laundering, terrorist financing or any other criminal offences". As FIs, DNFBs, and Insurers are not vested with the responsibility to investigate or prosecute money laundering and terrorist financing, Clause 130B does not extend to obliged entities. As such, obliged entities must rely on Clause 130D to access BOI. The proposed Bill, therefore, fails to grant obliged entities adequate access to BOI, contrary to UNCAC, FATF and IMF recommendations.

The proposed Bill limits public access to BOI contrary to FATF Recommendations.

Expansion of access to obliged entities will strengthen anti-money laundering efforts. This is why extending accessibility to BOI to obliged entities, and allowing obliged entities to report discrepancies in BOI, is an important feature of a Beneficial Ownership register.

Corrective Measures

The proposed Beneficial Ownership register falls short of IMF commitments and FATF Recommendations in two key ways. The corrective measures to address them are first, to have the

proposed register include mechanisms to verify BOI, and second, to have the register made publicly accessible.

These two measures would automatically enable access for stakeholders with legitimate interest

who could then fortify efforts against opaque ownership structures that facilitate illicit financial flows. It would also strengthen Sri Lanka's AML/CFT framework by equipping obliged entities, i.e., stakeholders with AML/CFT obligations, with the information they

need to comply with their obligations.

At the very least, the proposed register should expressly grant access to the full scope of BOI to obliged entities and stakeholders with a legitimate interest.♦

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