

Whitepaper

Challenges & Obligations when complying with UBO Requirements.

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Introduction

Globally, there has been an increasing focus on **transparency** in business, especially concerning **company ownership**. Banks, financial service providers, law firms, insurance providers, and other regulated and obliged entities continue to experience unprecedented volumes of regulatory change and complexity. Many governments have translated the call for openness into formal recording and reporting of **ultimate beneficial ownership (UBO)**, increasing the need for companies and compliance staff to monitor and record their structure and ensure they meet local regulatory requirements of disclosure.



The Momentum for Global Transparency

The European Union has legislated for a number of Anti-Money Laundering Directives (“AMLD”) on the prevention of the use of the financial system for money laundering or terrorist financing. Most recently the 6th Anti-Money Laundering Directive (6th AMLD)¹.

The 6th AMLD came into effect for all EU member states on 3 December 2020 and must be implemented by regulated businesses by 3 June 2021. It is intended to expand the scope of existing anti-money laundering directives (4th and 5th AMLD), clarifying certain regulatory details, and toughening criminal penalties across the bloc. One of the most significant changes is Article 7(2), the extension of liability, where **‘the lack of supervision or control’²** by a directing mind within the organisation means even if the criminal activity that generated illicit funds cannot be identified, an **individual or legal person can be convicted**.

The shift towards transparency is not just limited to the EU. Many non-EU countries have publicly committed to UBO registers such as Australia, Singapore, Hong Kong, Panama, and some Canadian provinces.

In December 2020, the U.S. Congress and the White House have agreed to include broad anti-money laundering reforms. The National Defence Authorization Act

(NDAA)³ included commitment aimed at **enhancing corporate transparency** including at least one proposed law that would require corporations and limited liability companies formed in the U.S. to **disclose beneficial ownership information** to be included in a registry maintained by the Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”)⁴. The proposed U.S. law is similar to the EU’s 4th AMLD⁵.

Post-Brexit the UK will not deviate too far from the EU’s position. The Sanctions and Money Laundering Act of 2018⁶ will be enforced in the UK. The Act states most of the points that EU’s 5th AMLD⁷ mentions. From January 2021 obliged entities in the UK will either need to refer to the UK Sanctions List⁸, which covers all sanctions made under the Sanctions and Anti-Money Laundering Act 2018, or The Office of Financial Sanctions Implementation (OFSI) Consolidated List of Financial Sanctions Targets⁹, which covers all financial sanctions designations.

It will be critical for regulated entities to screen new and existing clients against financial sanctions lists on an ongoing basis, and due diligence is expected to be carried out so that you know who you are dealing with, both directly and indirectly,

¹ DIRECTIVE (EU) 2018/1673 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

² DIRECTIVE (EU) 2018/1673 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

³ H.R.6395 – 116th Congress (2019–2020): National Defense Authorization Act for Fiscal Year 2021 | Congress.gov | Library of Congress

⁴ Information on Complying with the Customer Due Diligence (CDD) Final Rule

⁵ DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⁶ Sanctions and Anti-Money Laundering Act 2018

⁷ DIRECTIVE (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

⁸ The UK sanctions list

⁹ Who is subject to financial sanctions in the UK?

for example, looking at ownership and control of an organisation.

Global Enforcement Fines

The enormity of global fines is on the rise. For many companies, especially those in highly regulated industries, ensuring compliance with a growing number of government and industry regulations **can be challenging**. However, the costs of not complying can be extremely steep. Research indicates that failure to comply has become more costly than ever for organizations, far exceeding the costs of compliance. Last year the total value of infringements paid by banks around the world \$19.9 billion, almost double the \$11.8 billion the year before.¹⁰

In recent events, including high-profile fraud, AML failures, and hefty fines (Swedbank), authorities are trying to work on corporate as well as individual liability in major actions, something that should not be lost on compliance professionals in Europe, especially with the implementation of the 6th AMLD.

Personal Liability

The personal liability of Anti Money Laundering (AML) compliance officers is increasing as regulators and prosecutors appear more willing to prosecute and

fine AML officers who fail in their duties to the public.

On March 4, 2020, FinCEN announced a US\$450,000 penalty against a chief risk officer, Michael LaFontaine, who worked at the US Bank National Association over a failure to prevent violations of the Bank Secrecy Act¹¹ and a failure to ensure its compliance function was financed and resourced to meet its AML compliance obligations.

In 2016 the Financial Conduct Authority (FCA)¹² fined Sonali Bank (UK) Limited (SBUK) £3,250,600 and the bank's former money laundering reporting officer (MLRO), Steven Smith, £17,900 for serious anti-money laundering systems failings.

Corporate Liability

In the case of Swedbank Estonia, local prosecutors accused the bank of, "approving high-risk customers without having **complete documentation regarding the ultimate beneficial owners**, proof of source of funds or explanation of the legitimate business purpose of the customers and did not address red flags that arose from the information that was provided." Furthermore, Swedbank Estonia accepted customers despite knowing that the listed beneficial owners were not the actual beneficial owners and "**accepted**

¹⁰ Bank Fines 2020

¹¹ Bank Secrecy Act (BSA)

¹² FCA imposes penalties on Sonali Bank (UK) Limited and its former money laundering reporting officer for serious anti-money laundering systems failings

customer corporate structures knowing they were designed to conceal the true beneficial owner from home country tax authorities.”

Senior management failed to establish a clear division of responsibilities between the front-line business unit and the compliance team.

Compliance professionals, however, can draw some valuable lessons from Swedbank’s struggles: **all customers and their beneficial owners must be fully identified**, AML controls must be consistently applied across the group, banks should be **transparent with their regulators**.

Other recent examples of regulatory failures to verify and identify clients, controllers, and UBOs include:

Purplebricks

In August 2019, Her Majesty’s Revenue and Customs (HMRC)¹³ fined Purplebricks £266,793, the largest AML fine for an estate agency, for not complying with UK regulations. Purple Bricks violated the Money Laundering, Terrorist Financing and Transfer of Funds¹⁴ (Information on the Payer) Regulations 2017 for breaching policies, control and procedures (Regulation 19), customer due diligence (Regulation 27) and enhanced due diligence of a politically exposed person (Regulation 35). However, most notably Purplebricks violated Regulation 28(2)

(4) and 30(2) pertaining to **failures in identifying and verifying the ultimate beneficial owners of their clients** and the timing of verifications.

Taylor Vinters Law

In September 2020 international law firm Taylor Vinters was fined almost £20,000 for **failing to carry out appropriate due diligence on a number of clients**. The firm admitted four rule breaches under money laundering regulations and settled with the SRA (Solicitors Regulation Authority).

Be Effective, Be Vigilant.

The biggest challenges in obtaining beneficial ownership information include an insufficient amount of **accurate** and **accessible information** relating to company registration.

The key requirement for beneficial ownership information requires legal entities to obtain and hold **“adequate, accurate and current”** (Article 30 of 5AMLD) information on their beneficial ownership, including the details of the beneficial interests. This emphasis on the **“currency”** of data and **providing up-to-date information** is a key aspect of the 5AMLD. The enforcement powers directed toward the legal entities themselves ensure the quality of this information is better and more accurate

¹³ HM Revenue & Customs.

¹⁴ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

than was available from corporate registries previously. (Article 33 5AMLD)

New powers will help the relevant enforcement agencies to ensure compliance by the companies themselves, to ensure this information is available to obliged entities for KYC. However, obliged entities cannot rely exclusively on the central register to fulfil their customer due diligence requirements. Those requirements can be fulfilled by using a **risk-based approach**, including collecting appropriate risk-based information from customers themselves and checking this against reliable sources, principally the UBO register. Additional sources can be used on a risk necessary basis.

Risk-based Approach

The requirements to fulfill customer due diligence shall be done by using a risk-based approach. The enhancements to 5th AMLD have emerged around the need to **maintain transparent, up-to-date corporate data on beneficial owners**.

The 5AMLD states that “**an obliged entity cannot solely rely on the beneficial ownership register alone, it must obtain other validation from the customer or another acceptable source.**” It is more appropriate to get validation from a company director through a method that is **immediate, legally binding** (for the company and the director), and reliable rather than rely on other sources that may not be current, reliable, or accurate.

A publicly accessible registry is extremely useful to obliged entities because it enables them to investigate who the beneficial owners of companies are. However, in countries such as the UK, obliged entities cannot solely rely on the registry since the **accuracy of the information** is not guaranteed by the operator. In May 2019, the UK government launched a consultation to review issues related to the accuracy of the information held at Companies House¹⁵, abuse of personal information in the register, and misuse of UK registered entities as vehicles for economic and other crimes. This situation benefits the “**bad actors**” in the system who may either falsify their information or simply not register any information at all. In this instance, obliged entities may still need to go deeper in understanding ownership for specific customers on a risk-sensitive basis.

¹⁵ Companies House

In Ireland, unique identifiers need to be provided for each beneficial owner and filed with the Register of Beneficial Ownership of Companies (RBO)¹⁶. This enables the RBO to validate the identity of beneficial owners leveraging government databases. In some cases, if law enforcement authorities identify in the course of their work a discrepancy between the information in a central registry and the beneficial ownership information available to them, they must notify the RBO.

There is a similar provision in the UK legislation. The UK Money Laundering and Terrorist Financing Amendment Regulations 2019¹⁷; regulation 30, is amended to ensure that obliged entities collect proof of registration or an excerpt from the register in relation to a company or other entity type. It also places new obligations on obliged entities to report discrepancies with the beneficial owner register to Companies House (implementing Article 30.4.)

This is to improve the **quality and accuracy of the data at the register**, which will follow up with the company directly and inform the obliged entity of the outcome. Regulation 28 is further updated to ensure that **Obliged Entities take reasonable measures to “understand the ownership and control structure”**¹⁸ of that legal person, trust, company, foundation or similar legal arrangement. Corporate data is frequently stored in a

variety of private databases by third-party data providers. According to guidance by HMRC¹⁹, one of the minimum requirements, for obliged entities, when conducting customer due diligence is that **“you must identify and verify a person acting on behalf of a customer and verify that they have authority to act” on behalf of their company.** HMRC also states one of the indications of a lower risk customer is where **“provided information on the identity of the beneficial owners is available upon request”.**

You do not satisfy your obligation to identify and take reasonable steps to verify the identity of beneficial owners by relying only on the information contained in a People with Significant Control (PSC)²⁰ register.

This guidance is clear- an obliged entity is not obligated to verify UBO data against third party data sources. Third-party UBO data can be **inadequate, inaccurate, and not current.** Reliability is of paramount importance. The provenance of third-party data is **not transparent** either.

¹⁶ Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies

¹⁷ The Money Laundering and Terrorist Financing (Amendment) Regulations 2019

¹⁸ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

¹⁹ Anti-Money Laundering Supervision: Trust or Company Service Providers

²⁰ People with significant control (PSCs)

data has some **serious implications**; most importantly, it leads to **significant inaccuracies of a customer's risk profile**. Furthermore, with more and more enforcement actions under GDPR, the provenance of the personal data collected through third parties cannot always be established.

Robust Compliance Process

Obligated entities and compliance staff are key gatekeepers in the fight against money laundering, they play a critical role by safeguarding public trust and reporting suspicious activities to those charged with governance responsibilities, as well as regulators. At the same time, they are also at risk of unwittingly enabling money laundering, especially by sophisticated professional money launderers.

A proactive approach is necessary to solve ongoing Know Your Customer (KYC) and Client Due Diligence (CDD), whilst also satisfying the customer's needs. Obligated entities must **evaluate and adjust** their compliance process and beneficial owner management to meet on-going regulations. This will enable them to represent to auditors and regulators that they have performed the necessary AML verification and identification checks to establish the true beneficial owners of their customers.

Obligated entities need a **robust beneficial owner solution**, one that they can easily use and integrate into their existing system and processes seamlessly. A

robust compliance process should:

Meet on-going regulations:


Identification of beneficial owners is a complicated process. Improving transparency and verifying beneficial owners from **accurate sources** will make it far easier to **manage risk** and catch potential problems from the start. The solution should demonstrate that the compliance program obtains and holds **"adequate, accurate and current"** information on their beneficial owners. The process needs to be tracked and documented at every step of the customer journey.

UBO Service provides **automated**, fast legal declarations for beneficial owners. We ensure the data received is live from primary source registers (**adequate and accurate**) and the declarations are made in real-time (**current**) meeting your AML requirements. Our detailed automated audit logs mean obligated entities can **demonstrate compliance to regulators**. Not only does this secure compliance requirements, but also saves time for the compliance staff and the customer.

Embrace change quickly:

As regulatory requirements are changing it is important the solution is powered to keep up to date and continues to meet on-going regulatory requirements.

At UBO Service our agile technology is powered to **embrace change quickly and effectively**. Obligated entities can **immediately** begin verifying beneficial owners and controllers **instantly** with our online portal and API. Our flexible solution can be easily configured for their business needs.



The role of technology: The progression from the 4th and 5th AMLD to the 6th AMLD makes it clear that regulators have their sights set on the money laundering risks surrounding UBO's. However, the identification of UBOs is a complicated process, especially as many checks are done manually. Obligated entities will benefit from technology that **enhances the onboarding process**, providing access to all necessary data sources and **automating** the collection of data on UBOs to thoroughly **vet** beneficial owners.

UBO Service lets you automate the KYC process to **seamlessly onboard, identify and verify customers**. Our solution will reduce your overheads, reduce your risk exposure, and reduce customer delays. Analysts and compliance staff can make decisive **risk-based decisions** based on trusted UBO declarations, at a much lower cost than traditional approaches.

Conclusion

Understanding who ultimately has control of your customer plays an important role in **detecting, disrupting, and preventing money laundering and terrorism financing**. It can also protect your business or organisation from being exploited for other forms of criminal activity.

In the face of increasing regulatory demands, increasing cost pressure and a legacy of inefficient technology, obliged entities are struggling to meet their financial crime compliance obligations, which leads to significant compliance risk and costly regulatory fines, both individually and corporate. Obligated entities **need a cost-effective, sustainable (and scalable) solution** to financial crime risk detection and investigation, which uses innovative technology. By embracing new technology, obliged entities can automate the KYC compliance function and leap ahead of the competition, providing the type of **onboarding experience regulators demand and customers expect**.

If you would like more information on Beneficial Ownership, please email info@uboservice.com.

About UBO Service

UBO Service offers an innovative new solution for obliged entities to capture accurate Ultimate Beneficial Owner declarations in real-time. From start-ups to large corporate entities, we help businesses transform customer journeys, automating compliance processes to help them ensure ongoing compliance in the face of circumstantial change and reducing their regulatory risk.

We connect customers to the registry at every search, ensuring that we can guarantee the quality and accuracy of the information we return. We then take this information and capture beneficial owner declarations in real-time directly from your clients within our UBO Dashboard and Application Programming Interface (API).

Through an entirely transparent and accessible declaration process, UBO Service provides customers with reliable data that exceeds compliance requirements but also enables them to make better business decisions. Our automated solution can also help improve top-line and bottom-line business performance and is easily integrated within existing CRM and CDD processes via Application Programming Interface (API) or our cloud-based platform.

To discover more about UBO Service, visit www.uboservice.com or **Request A Demo**

The logo for UBO Service, featuring the letters 'ubo' in a stylized blue font with a white dot for the 'o', followed by the word 'service' in a white sans-serif font.

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