

EU Court of Justice Blocks Public Access to Beneficial Owner Information: Implications for Bermuda

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On 22 November 2022, the European Union Court of Justice (the “European Court”) invalidated the provision in the EU Anti-Money Laundering and Terrorist Financing Directive that would require EU Member States to ensure that company beneficial ownership information is accessible in all cases to any member of the general public. This latest development will almost certainly affect the commitment given by the Bermuda Government in July 2020 of its intention to make the central register of companies’ beneficial ownership information accessible to the public.

European Court Ruling

According to the European Court judgment, the general public’s access to information on beneficial ownership constitutes a serious interference with the fundamental rights to respect for private life and to the protection of personal data, enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union.

The European Court observed that requiring public access to beneficial ownership information enables a potentially unlimited number of persons to find out about the material and financial situation of a beneficial owner. Furthermore, the potential consequences for beneficial owners resulting from possible abuse of their personal data are exacerbated by the fact that, once their information has been made available to the general public, the data can not only be freely consulted, but also retained and disseminated.

The European Court’s ruling recognises that competent authorities and certain other entities should have access to beneficial ownership information; however, this right to access should only extend to other organisations or members of the general public with a demonstrably legitimate interest.

Bermuda Government Commitment

Bermuda has a comprehensive central register of beneficial ownership information, which is held and maintained by the Bermuda Monetary Authority. Presently, this information is readily available to relevant competent authorities and law enforcement agencies through production orders or other permitted mechanisms.

In a statement issued on 12 July 2020, referring to Bermuda’s 70-year beneficial ownership information framework, the Bermuda Government stated its commitment to work with international bodies (including the Financial Action Task Force, OECD, International Organization of Securities Commissions, International Association of Insurance Supervisors, and G20) and other jurisdictions in respect of standards relating to corporate transparency and information exchange mechanisms.

While the statement recognised “the importance of the provision of beneficial ownership information for the prevention and detection of domestic and cross-border crime”, the Bermuda Government confirmed its intention to make the companies register of beneficial ownership information accessible to the public only once it became adopted as a global standard.

The Bermuda Government’s July 2020 announcement was similar to the undertakings given by the Crown Dependencies of Jersey, Guernsey and the Isle of Man in June 2019, by the Cayman Islands in October 2019 and by the British Virgin Islands in September 2020.

Implications for Bermuda

While it is too soon to assess the full impact of the European Court’s recent ruling on Bermuda’s previous commitment to make companies’ beneficial ownership information accessible to the public, it is clearly a set-back for proponents of publicly accessible

beneficial ownership information. At the very least, this judgment is likely to frustrate global efforts to advance international standards for the transparency of beneficial ownership information.

According to reports in the Bermuda press, "The Ministry of Finance has taken note of the ruling and will continue to monitor developments in this regard."

Conyers will keep you advised of any material developments in this matter.

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