

The Fiduciary Client's Right to Privacy

Understanding the implications of ever-growing transparency measures

Nel Schoeman

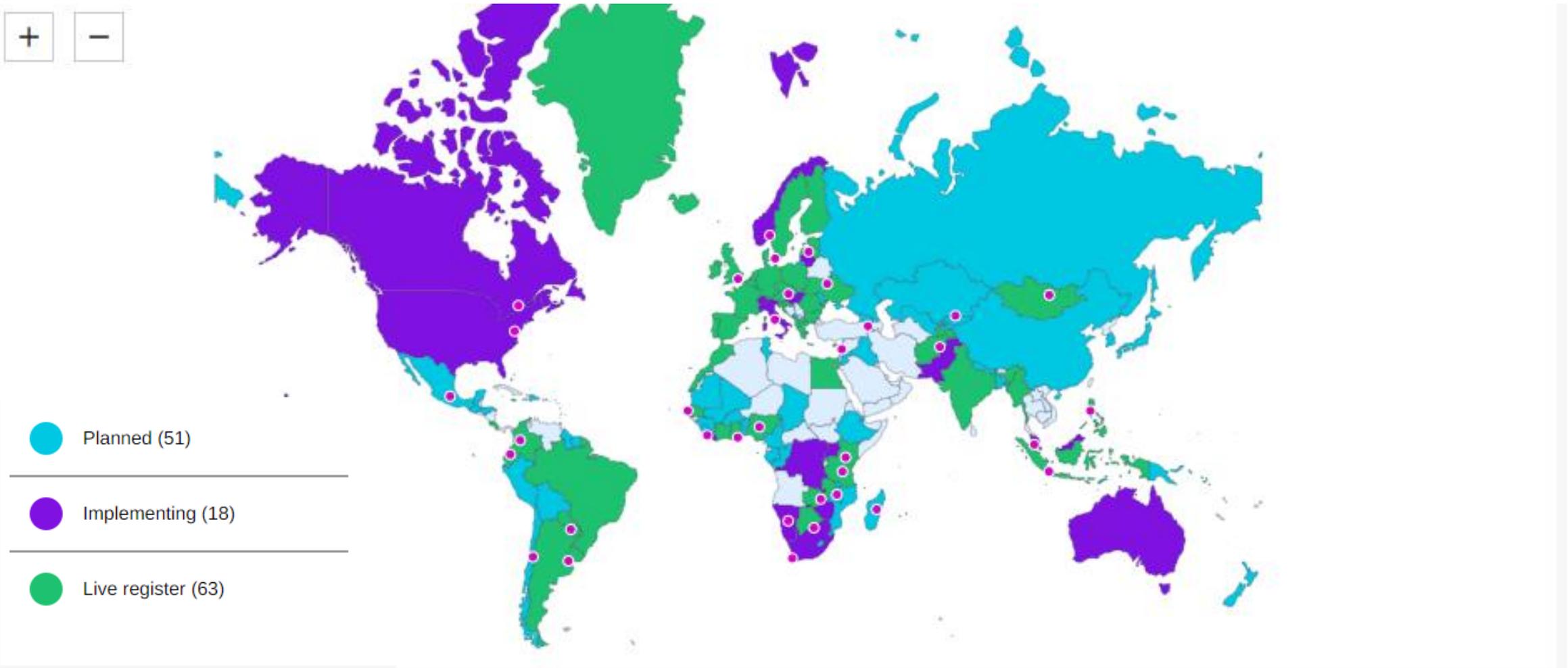
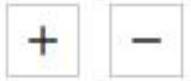
Head of Corporate

Guernsey

Fundamental right to Privacy



Global Status



How did we get here?

European Court of Justice decision

- 22 November 2022, the Court of Justice delivered its judgment in joined cases [WM \(C-37/20\)](#) and [Sovim SA \(C-601/20\)](#) versus Luxembourg Business Registers
 - Public access
 - Not strictly necessary
 - Not proportionate
 - Not a justified infringement
 - Pandora's box of private information
 - Domino affect
-
- The Court considered that such indiscriminate public access was **neither strictly necessary** to prevent money laundering and terrorist financing, **nor proportionate** and could therefore not justify a serious interference with fundamental rights, namely the right to respect for private life and to the protection of personal data enshrined in Articles 7 and 8 of the Charter.



Legitimate interest

Restricted to parties who can show legitimate interest

- Competent authorities / Government bodies
 - Financial institutions
 - Entities with AML obligations
 - Journalists
 - Civil society organizations that investigate or campaign on crime and corruption
 - General concerns
-
- the Court confirmed in this ruling that journalists and civil society organizations that investigate or campaign on crime and corruption, as well as financial institutions and other entities with AML obligations, have a legitimate interest in access to beneficial ownership information.

BO Registers in SA - Trusts

Overview

- To address FATF deficiencies
- Trust Property Control Act, 1988
- Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022
- Submitted to the Master of the High Court
- No deadline for submissions
- Fine of up to ZAR 10 million
- Imprisonment for a period of up to five years



BO Registers in SA - Trusts

Who are 'beneficial owners'

- Beneficiaries
- Potential beneficiaries
- Founder (or Ultimate Controlling Person)
- Each Trustee
- Accountable institutions (no need to submit to Master)

BO Registers in SA - Trusts

Beneficial ownership register requirements in SA

- Teething problems / concerns?
- Credibility of information protection systems
- Exclude court order trust (RAF / MEC) or testamentary trust
 - Difficult or impossible to change beneficiaries
 - Source of funds known
- Trusts dating back to 1990's
- Potential beneficiaries
- Access to information on legitimate interest basis?

CRS

Over-Reporting: Protectors and Settlers?

- FI: Settlor, Beneficiary, anyone who has ultimate effective control
- Protectors - default if Passive NFE only
- Competent Authority Agreement & Commentary – Legislation
- FAQ – Handbook: Default reporting
- Principle of **Legality**
- GDPR
- Necessary & Proportionate? Tax evasion – not FATF / AML / CFT

Summary and Conclusion

IQEQ
Know how Know you

Interested Inspired

www.iqeq.com

