



**Isle of Man
Government**

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Summary of Responses

Consultation on the Transparency of the Beneficial Ownership of Companies

Cabinet Office
Oik Coonceil ny Shirveishee

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CONSULTATION ON THE TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES - ISLE OF MAN GOVERNMENT RESPONSE

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A. INTRODUCTION

In June 2014, the Isle of Man Government, building on its commitment in June 2013 to “undertake a national assessment of whether a centralised registry containing information on the ownership and control of companies in the Isle of Man would improve transparency”, published a consultation on the transparency of the beneficial ownership of companies.

The Isle of Man Government invited comment as to whether a centralised registry would improve transparency of the ownership and control of companies in the Isle of Man. The Consultation Document outlined developments and sought views and opinions from individuals and representative bodies, whether in their private or professional capacities, who felt that they might be affected in any way by the evolving public policy in this context.

The consultation originally closed on 29 September 2014. Whilst engaged in considering the responses to the consultation, there were a number of concurrent developments. This document provides an overview of these regulatory and political developments in the period up to December 2015, details of the responses received, and sets out next steps for the Isle of Man Government.

B. DEVELOPMENTS

As stated in the Consultation Document, the Isle of Man Government has committed itself to “maintaining domestic legislation, policies and procedures which ensure effective compliance with the international standards and, where necessary, progressing further measures in the future to implement evolving international standards and best practice.”

It is therefore important to note that, since the Isle of Man published its consultation on beneficial ownership, there have been a number of developments locally, in the UK and internationally. These are detailed below:

(i) UK

Following a pledge to the G8 group of nations, the UK government is introducing a public register of “people with significant control” (PSC Register) for certain companies and partnerships.

From June 2016, when applying to register a new company, a statement of initial significant control must be filed at Companies House (UK). A company already registered must have a PSC Register from April 2016, and from 30 June 2016 must send PSC Register information annually to Companies House with its confirmation statement¹.

¹ See ‘The Small Business, Enterprise and Employment Act is here’ (via Gov.uk) <https://www.gov.uk/government/news/the-small-business-enterprise-and-employment-bill-is-coming#psc-info>

On 16 November 2015, the UK published its Implementation Plan on the G20 High Level Principles on Beneficial Ownership Transparency². Point 5 notes that the UK:

5) Will hold in a central register the beneficial ownership information of trusts that generate tax consequences in the UK. Domestic competent authorities will be able to access this information.

(ii) EU

Beneficial ownership developments at an EU level centre on the EU's Fourth Anti Money Laundering Directive (4AMLD). Central registers of beneficial ownership were not originally envisaged in initial proposals for the 4AMLD by the European Commission. However, these were included by MEPs in subsequent negotiations.

On 20 April 2015 the Council of the European Union approved the 4AMLD³ including a requirement for all Member States to create central registers of beneficial ownership information for corporations, other legal entities, and trusts incorporated in their respective territories.

The decision followed an agreement reached on 27 January 2015 between the European Parliament and the Council.

Under the Directive, which implements recommendations from the Financial Action Task Force (FATF), Member States must ensure that registers are available to competent authorities, financial intelligence units, and "obliged entities", such as banks conducting due diligence.

Persons who can show a "legitimate interest" in alleged money laundering, terrorist financing, and predicate offences such as tax crimes can access the following beneficial ownership details: name, month and year of birth, nationality, country of residence, and nature and approximate extent of held beneficial interest.

For trusts, central beneficial ownership information registers "will be used when the trust generates tax consequences", according to a Council Statement of Reasons⁴. It will be up to individual Member States to decide whether to make their beneficial ownership registers public.

In June 2015 the 4AMLD came into force, and all Member States have until 26 June 2017 to transpose the 4AMLD into their domestic systems. This

² <https://www.gov.uk/government/publications/uk-g20-beneficial-ownership-implementation-plan>

³ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73) http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.141.01.0073.01.ENG&toc=OJ:L:2015:141:TOC

⁴ [Statement of the Council's Reasons, 8/2015](#)

process will provide an infrastructure of procedures and enforcement at both national and EU level. Transposition workshops are ongoing, and are being provided in the course of other preparations.

(iii) FATF

The Isle of Man has already been collecting beneficial ownership data for over a decade, in line with FATF standards. It has also consistently supported law enforcement agencies in obtaining information when requested.

On 27 October 2014, FATF published a specific Guidance Booklet on Transparency and Beneficial Ownership⁵. FATF Recommendations in the guidance set out measures which address the transparency and beneficial ownership of legal persons (Recommendation 24) and legal arrangements (Recommendation 25). Countries are advised to take measures to prevent legal persons and arrangements from being misused for criminal purposes, including by:

- assessing the risks associated with legal persons and legal arrangements;
- making legal persons and legal arrangements sufficiently transparent; and
- ensuring that accurate and up-to-date basic and beneficial ownership information is available to competent authorities in a timely fashion.

While the transparency and beneficial ownership requirements of the FATF Recommendations are aimed at fighting money laundering and the financing of terrorism, they also support efforts to prevent other serious crimes such as tax evasion and corruption.

The FATF's leading role in setting standards on beneficial ownership was echoed in the actions taken by global leaders, e.g., the G20 leaders have repeatedly expressed commitment to implement the FATF standards on beneficial ownership.

(iv) Trust Service Providers (TSPs) – Emerging Developments

It is recognised that the position of TSPs is an emerging issue for discussion in the wider international discourse surrounding beneficial ownership. As stated above, on 16 November 2015, the UK published its Implementation Plan for the G20 High Level Principles on Beneficial Ownership Transparency⁶.

Concerning trusts, Point 5 of the Implementation Plan notes that the UK:

5) Will hold in a central register the beneficial ownership information of trusts that generate tax consequences in the UK. Domestic competent authorities will be able to access this information.

Point 4 also notes that the UK:

4) Will ensure trustees of express trusts obtain and hold adequate, accurate and current beneficial ownership information for their trusts, including the settlor(s), trustee(s) and

⁵ <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

⁶ <https://www.gov.uk/government/publications/uk-g20-beneficial-ownership-implementation-plan>

beneficiaries. Mechanisms will be put in place to ensure that domestic competent authorities have access to this information.

Commentators have suggested that trusts are sometimes perceived in Continental Europe as potential instruments for money laundering and tax evasion, whereas in the UK and other common law jurisdictions they are employed mainly for the purpose of family-oriented asset-holding structures.

Additionally, the Implementation Plan provides as follows:

Unless otherwise stated, these commitments will be implemented in 2017 through new UK Money Laundering Regulations, which will transpose the requirements of the 4th EU Anti-Money Laundering Directive. This Directive reflects the 2012 revised FATF Recommendations.

(v) National Risk Assessment (NRA) – A Wider Review

Since publishing the consultation on Beneficial Ownership, the Isle of Man Government has initiated a wide ranging anti-money laundering and combating the financing of terrorism (AML/CFT) National Risk Assessment (NRA), led by the Cabinet Office. Part of this comprehensive exercise will reflect on the efficacy of information requests by law enforcement agencies regarding beneficial ownership information.

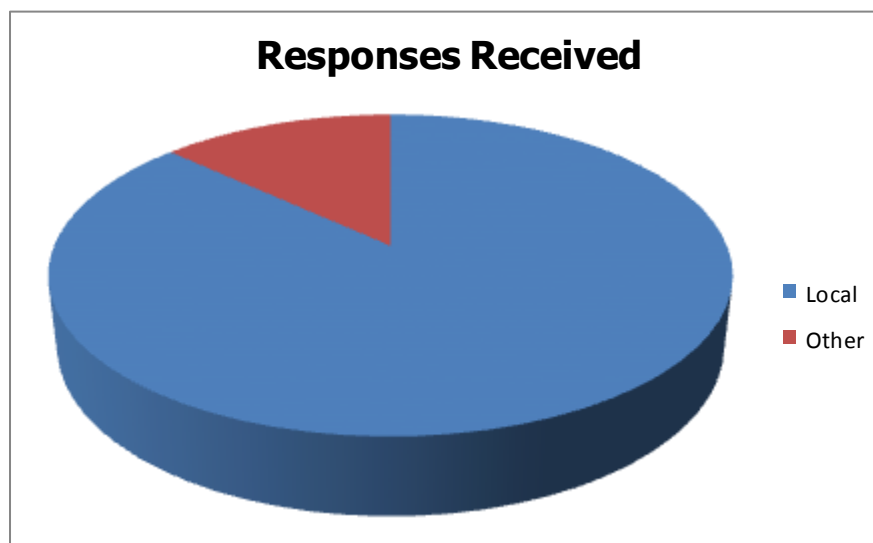
The Isle of Man is scheduled for full assessment against revised FATF Recommendations by MONEYVAL in April 2016. The production of the NRA is required in advance of a full assessment.

Recommendation 1 of the revised FATF Recommendations requires the conduct of an NRA involving a process of identifying and evaluating AML/CFT risks, analysing the main sources and drivers of such risks in order to develop effective policies and risk based regulations, and allocating available resources in the most effective way to eliminate, control and mitigate any identified risks.

The Isle of Man Government is seeking a consistent procedure and criteria to achieve recognition and endorsement of its own equivalent standards and is committed to engaging positively. This reflects the Government's established and ongoing commitment to international standards on AML and CFT.

C. RESPONSES

(i) Overview of Responses



The Cabinet Office received a total of 38 responses to the public consultation on beneficial ownership. These included submissions from individuals, non-governmental organisations (NGOs), and local companies, including those with international reach.

The majority supported the effectiveness of the Island's existing regulatory regime. A minority of responses in favour of a public register were noted, alongside acknowledgements of no comment.

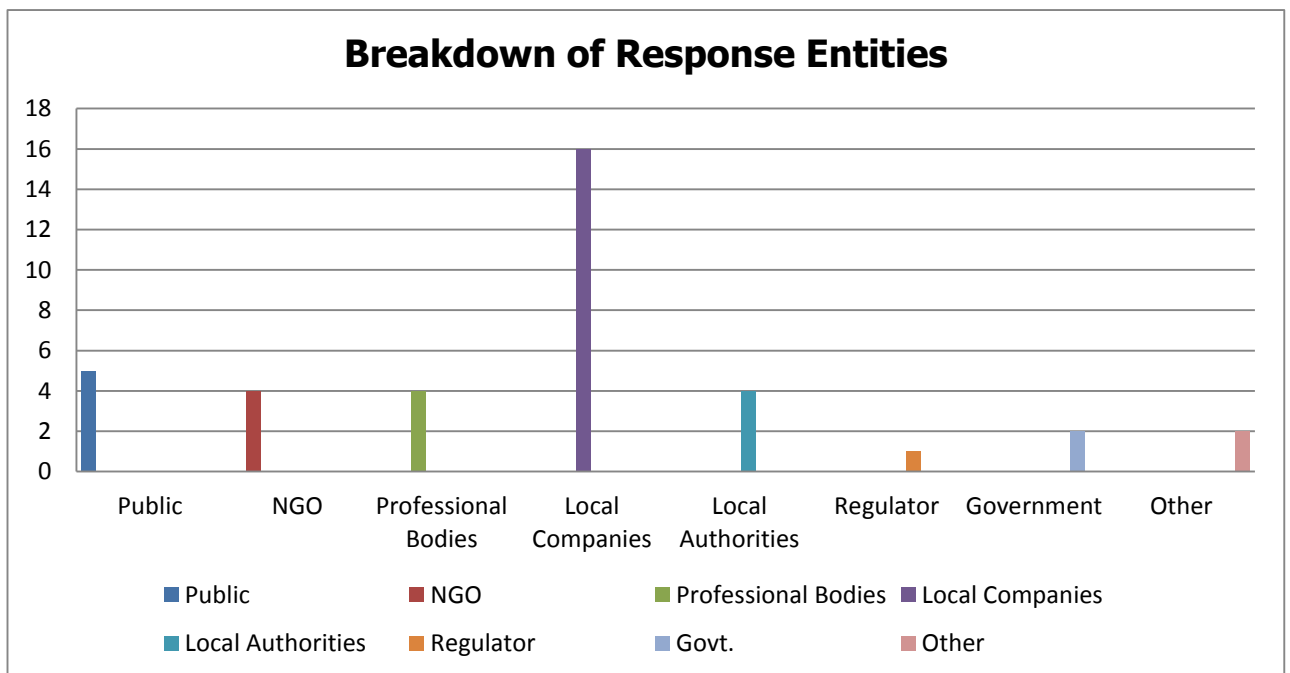
Responses were received from the following individuals or organisations:

1. IoM Department of Infrastructure
2. Positive Action Group
3. Integrated Capabilities
4. Cayman National IoM
5. IoM Department of Home Affairs
6. Barclays Private Clients International (IoM)
7. Mr Dennis Aram
8. ONE Campaign
9. Zurich International
10. Abacus IoM
11. Company/comments request confidentiality
12. Christian Aid
13. Joint UK Parliamentarian & Civil Society response (forwarded by Christian Aid)
14. Chartered Institute of Taxation
15. Mrs Anne Kelly
16. IQE
17. International Financial Centres Forum
18. AON IoM
19. First Names Group
20. Association of Corporate Service Providers IoM
21. Optimus Fiduciaries

22. Crowe Morgan
23. IoM Society of Chartered Accountants
24. Member of the public – name withheld as requested
25. IoM Financial Supervision Commission
26. Axa IoM
27. Cains Fiduciaries
28. Marrown Commissioners
29. Patrick Commissioners
30. Douglas Borough Council
31. Ramsey Town Commissioners
32. PWC IoM
33. Mr Dan Johnson
34. Mr Phil Craine & Others
35. Manx Insurance Association
36. Aston International
37. Boston Limited
38. Transparency International

(ii) Breakdown of Response Entities

The chart below provides a summary of the responses, according to type:



(iii) Overview of responses in favour of a publicly accessible central registry of beneficial ownership

The Consultation attracted responses from: Transparency International; Christian Aid; the ONE Campaign; a joint submission from certain UK Parliamentarians and civil society organisations (Oxfam, Global Witness and others); the Isle of Man’s own Positive Action Group; and a joint submission from Mr Phil Craine and others.

These non-governmental organisations (NGOs) and individuals are, generally speaking, anti-corruption activists and/or motivated by internationalist views on human rights. The common position set out in their responses was in essence that, in order to comply with FATF Recommendation 24, governments should require information on the natural persons who ultimately own and control companies to be available onshore to relevant authorities, without providing an opportunity for the beneficial owners to be alerted pre-emptively allowing them to shift assets before legal action can be taken. They suggested that the most efficient and effective way to collect beneficial ownership information is to establish central registers of the beneficial owners of companies. This renders beneficial ownership information readily accessible and governments then have a mechanism to check that the appropriate information has been collected.

These respondents generally argued that making these registers publicly available would have significant benefits. It would be a low-cost solution helping businesses easily identify who really owns the companies they are dealing with and thereby promoting a level playing field. It would allow investors to have easy access to information on which to base their risk assessment of the companies they choose to invest in. Having a publicly accessible register would facilitate recovery of information by law enforcement agencies and tax authorities internationally much quicker than having to lodge formal requests under time-consuming formal channels laid down by information exchange arrangements. This would particularly benefit resource-poor developing countries. It would also allow citizens to have better information on the companies they buy from and to hold them to account for any wrongful behaviour. A central register would facilitate the duty on financial institutions to identify the owner of funds, as well as the source of those funds, and to undertake enhanced due diligence with regard to Politically Exposed Persons.

These respondents argued that making beneficial ownership information publicly available would be cost-effective, on the basis that simply adding information on beneficial owners to existing reporting obligations would be the most efficient course of action. Moving to a public register would reduce the costs of state resources being applied to dealing with requests. Public company registers are already the main source of information for investigations by national authorities and for due diligence by financial institutions. Benefits would include savings in police time and making it easier to trace and recover stolen assets, as well as alleviating the pressures on businesses to respond to enquiries on a case by case basis. Transparency International cited two cost-benefit analyses by the European Commission (2007) and the UK's Companies House (2002) in support.

These respondents argued that a central register should be available to authorities, to financial institutions and the general public. They said such a central register would be an efficient way of providing access and facilitating investigations by avoiding lengthy request procedures. Financial institutions would benefit from public registers to carry out their research for their due diligence obligations. Law enforcement authorities would be able to access critical information discreetly and on short notice. Public registries would enable better informed business decisions within a healthy, functioning market economy in accordance with the principle that markets operate best

where there is perfect information. Preventing actors in the market from obtaining information as to the true ownership of a company leads to market distortion and inefficiency. Civil society would be able to scrutinise who owns companies and to identify false or incomplete information, as well as detecting crime and corruption. Access to a public register would avoid potential difficulties where it is government corruption that is being investigated.

As regards privacy concerns, these respondents generally argued that, given the scale of financial crime made possible through corporate vehicles, privacy concerns needed to be balanced against the need to prevent crime. They said that full transparency should be the default and that exemptions should be a last resort.

As regards reporting updates, these respondents were generally of the view that there should be a minimum annual duty to verify the accuracy of existing information, but that there should be a further duty to report changes as and when they occur.

For these reasons, the respondents generally took the view that the current regime is inadequate and that only the introduction of a public register of beneficial ownership information could remedy the situation.

(iv) Overview of responses against a publicly accessible central registry of beneficial ownership

The Consultation attracted responses from: the Association of Corporate Service Providers Isle of Man; many of the Island's trust and corporate service providers (TCSPs); representatives of the insurance industry; various insurers; the Chartered Institute of Taxation; banks; the Isle of Man Society of Chartered Accountants; the International Financial Centres Forum; some individual Island residents in their private capacity; and members of the Island's legal and accounting professions.

These responses overwhelmingly opposed any proposal to create a central registry of beneficial ownership of companies whether or not such a registry is a public one.

The respondents argued that the current licensed gatekeeper system that has operated in the Isle of Man over several years via the strict regulation of fiduciary service providers, coupled with the Island's regime of anti-money laundering legislation and regulations, is effective in terms of the beneficial ownership information actually held and accessible by the relevant authorities in the Isle of Man. They argued that this system has shown itself to work well for both internal and external law, regulatory, tax enforcement and information sharing purposes. Against the background of FATF Recommendations 24 and 25, the prime purpose of the various international initiatives should be for tax, regulatory and law enforcement agencies to have access to complete and verified information in timely fashion and to disseminate this information internationally through recognised gateways. It was argued that the Isle of Man currently achieves these objectives through the fiduciary services network.

It was argued that a public register of beneficial ownership may well address collateral issues, such as the agenda of NGOs, at great expense and at the loss of legitimate privacy, but that it would not in any meaningful way advance the prime purpose of the international initiatives in the absence of verified data, nor would it make the Isle of Man any more effective in averting the misuse of companies by persons engaged in criminal activities than it already is. A common view was that compelling disclosure of beneficial ownership information to a central register would be a costly and pointless exercise in administration for the sake of it.

A commonly expressed view was that the Isle of Man should strive to avoid any additional competitive disadvantages in attracting corporate business, particularly at a time when the expenses and consequences of FATCA are still being incurred and experienced. At a time when no jurisdiction aside from the UK (and, in particular, the US and the G8 countries) appears poised to introduce such a register*, it would be "disastrous" for the Isle of Man to put itself in the vanguard on this matter. In particular, it is argued that a proposal to establish a central register would materially damage the Isle of Man Government's efforts to attract business from certain foreign jurisdictions (such as China, India and Africa) which lack a requirement to disclose details of their ownership of corporate vehicles, since it would be anathema to them, from a cultural and business point of view.

A further commonly expressed view is that, since only the UK and France are currently proposing to introduce a register of beneficial ownership, it cannot on any basis be said that this has become an international standard, least of all when the overwhelming majority of member states of the EU, the OECD and the G20 have until very recently shown no intention of signing up to a register⁷. Even if a central register were introduced, it was stated that this should only be accessible to foreign authorities if there is full reciprocity.

A further commonly expressed view was that investors in companies have a reasonable and entirely legitimate expectation that their interests will be kept private. It is a fundamental principle of Isle of Man (and English) law and natural justice that people should be entitled to privacy, unless there is an overriding public interest issue that requires otherwise. References were made to Article 8 of the European Convention on Human Rights and its provisions covering the right to a private life. Examples of persons who might be affected adversely by a loss of privacy would include: investors in companies which carry out activities which are legitimate, but may be controversial; wealthy individuals who might be targeted for extortion or other criminal purposes; companies seeking to invest in competitors or potential acquisition targets; investors concerned that their interest in a company may trigger market speculation; and family corporate vehicles. There would also be a risk of increased criminal activity in other areas, such as identity theft and blackmail.

Another commonly expressed view was that, if a central register were established, information should only be available to governmental, regulatory

⁷ It should be noted that these views were provided prior to ongoing developments. See Part B for more details.

and taxation authorities, including overseas ones, via the existing competent authorities. The responsibility for reporting the beneficial ownership of a company should lie with the Isle of Man registered agent or nominated officer of that company.

The Isle of Man Financial Supervision Commission (FSC)⁸ stated in its response to the Consultation that the “current system of retention of beneficial ownership details of companies by nominated officers or licensed managers and agents is reasonably effective in preventing the criminal use of companies”, although it could always be improved. A major concern would be ensuring the accuracy of the information included in any such register. The FSC stated that making the register public may have a positive impact on this, but any benefit could be outweighed by undesirable implications in terms of privacy of the individual. As to whether any such central register should be public, the FSC was of the view that the potential disadvantages of a public registry more than outweigh the advantages and their preference was for a non-public registry accessible to law enforcement bodies and competent authorities. This would deal with concerns relating to privacy.

D. CONCLUSION

The beneficial ownership regime in the Isle of Man has been considerably ahead of that of many jurisdictions in the EU and elsewhere. The Island has ensured and verified the integrity of the company beneficial ownership information that is collected, in particular, through taking a leading role in the regulation of trust and company service providers. It has provided, and continues to provide, effective access to overseas law enforcement and tax collecting authorities.

The Isle of Man Government’s present system of licensed gatekeepers, through the strict regulation of fiduciary service providers, in conjunction with the Island’s regime of anti-money laundering legislation and regulations, meets international standards as they currently have effect. Furthermore, it currently provides an effective and efficient means for tax and law enforcement authorities to have access to relevant information and data. In particular, the Isle of Man Government is satisfied that this regime satisfies FATF Recommendations 24 and 25.

A publicly accessible register may well advance collateral issues, such as the internationalist objectives of various NGOs and individuals, but it does not add significantly to the current system of access to beneficial ownership information that already exists on the Isle of Man. Although not unsympathetic to the issues raised by those NGOs and individuals who responded to the Consultation, it is the responsibility of the Isle of Man Government to consider the broader picture and protect the national interests of the Isle of Man.

The Isle of Man Government has a duty towards those who create wealth in the Island, provide jobs for its residents and contribute to its tax revenues. The Isle of Man is already absorbing the costs and consequences of FATCA

⁸ Isle of Man Financial Supervision Authority since 01/11/15, (IOMFSA).

and needs to ensure it considers any cost implications and any additional competitive disadvantages. Taking into account the above, the Isle of Man Government has therefore concluded that a public register of beneficial ownership is not an appropriate option for the Island.

However, the Isle of Man Government is committed to maintaining domestic legislation, policies and procedures which ensure effective compliance with international standards, and, where necessary, progressing further measures in the future to implement evolving international standards and best practice. As outlined in section B of this document, subsequent to the Isle of Man consultation, there have been a number of developments and, whilst to date there is no new international standard, the adoption of the 4AMLD points to an emerging international consensus on the issue. Moreover, recent events have again demonstrated the importance of the Island playing its part in the fight against the financing of terrorism and money laundering activities – as the Isle of Man has been committed to doing for a number of years.

Therefore, whilst concluding that a public register will not be introduced, the Isle of Man Government has been carefully considering ways in which the Island's current beneficial ownership systems could be improved to provide more timely and relevant information whilst keeping essential safeguards in place.

E. NEXT STEPS

After careful assessment of a number of options, the Isle of Man Government has identified a preferred way forward considering the ever increasing need to ensure the Island is not used for money laundering or the financing of terrorism, while at the same time being mindful of the needs of the Isle of Man's economy.

The Isle of Man Government will be working with industry on the way this can be achieved.

Cabinet Office
February 2016

Question Response Extracts

NB: Several replies might have been received on one issue; therefore the following extracts refer to a **summary** of key points.

Question	Submissions	Response
<p>1. a) How effective do you think the current system of retention of beneficial ownership details of companies by nominated officers or licensed managers and agents is in preventing the criminal use of companies?</p>	<p>Majority:</p> <p>The IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making of any such registry until such public registers have become the international norm.</p> <p>The current system works well. People with whom the Island would prefer not to do business know that the Island is not a sensible jurisdiction for them to do business with.</p> <p>The current system is materially effective by virtue, amongst other things, of the strict licensing policies and the developed AML and other systems that fiduciary service providers have in the Isle of Man.</p> <p>Rigorous licensing policies and time proven support systems, now well understood by Manx service providers, mean the current system works effectively.</p> <p><i>"Having a central register would not... enhance - to any significant extent - the current system for the prevention of the criminal use of companies and we believe that making any such register public would in fact, have the potential to increase levels of criminal activity."</i></p> <p>A central register will only assist the press and the public obtain details of HNWI's who may wish to remain private.</p> <p>CSPs already hold all information on the beneficial owners of entities. This applies to all financial institutions on the Isle of Man. This is much more effective than the implementation of a potentially sporadically updated public or private register.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>In one response, the IOM Government’s Action Plan⁹ is quoted –</p> <p><i>"The Isle of Man already has legislation in place to ensure that:</i></p> <ol style="list-style-type: none"> <i>1. Companies know who owns and controls them and that this information is accurate and readily available to the authorities, financial institutions and other regulated businesses;</i> <i>2. Full and accurate details on the true ownership and control of every company is freely available to law enforcement and tax collectors;</i> <i>3. Trustees of express trusts known the beneficiaries of their trusts, and that trustees’ status is disclosed to regulated financial institutions; and</i> <i>4. Competent authorities have access to information on trusts and can share this information with foreign counterparts."</i> <p>It is highly unlikely that a significant number of material errors and inaccuracies would be brought to light from public access — the implication is that those currently holding the information aren’t competent.</p> <p>The register could be trawled by local, national and international press, criminals, a variety of commercial ventures selling on information for marketing and other purposes, competitors, foreign governments, dictatorships, conflict zones, family members etc. all with little respect for ethics or data protection — do not see how realistic safeguards can be put in place.</p> <p>Any benefit could be outweighed by undesirable implications in terms of privacy of the individual.</p> <p>The emphasis should be to press for international agreements, e.g. through the</p>	<p>*see Section C (Assessment of Responses)</p>

⁹ Isle of Man Action Plan to Prevent the Misuse of Companies and Legal Arrangements
www.gov.im/lib/docs/cso/actionplan.pdf

Question	Submissions	Response
	<p>EU, G8 and/or G20; and there must be no exemptions for Luxembourg, Lichtenstein or Delaware.</p> <p>Institutions have to comply with AML obligations which require due diligence to be undertaken on beneficial ownership and records retained, should a report need to be made to the authorities or should an enquiry by an authority be made. It is therefore already made available to relevant authorities where necessary.</p> <p>Minority: <i>"...We believe the current system is inadequate. Its continuation would risk exposing the Island to criticism, especially now the UK is committed to such a reform."</i></p> <p>IOM Government has made great strides in recent years. It has entered into many disclosure agreements with other countries so it the logical next step is for the complete disclosure of beneficial ownership.</p> <p>The creation of a register may deter taxation abuse. Creating a register will aid countries which strive to retain tax revenues at the point of transactional inception.</p> <p>Easier for law enforcement agencies and tax authorities to have easy access to such critical information without needing to go through time-consuming formal channels.</p> <p>On its own a central register wouldn't prevent the criminal use of companies; it could set data standards and allow for cross referencing and analysis of that data, providing for legitimate standardised access arrangements.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>1. b) Do you think a central register would further prevent the criminal use of companies?</p>	<p>Majority: It is unlikely that it would to any great extent, but it might help in its detection.</p> <p>The FSC and licence holders already assist law enforcement investigations resulting in successful prosecutions and confiscation orders.</p> <p>Current regulations ensure that in the vast majority of cases there is someone</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>(usually a licensed entity) in the Isle of Man responsible for maintaining contemporaneous records of who the beneficial owners of companies are. If considered necessary, relatively minor changes could ensure that this applies to all companies.</p> <p>The current system allows competent authorities access to the beneficial ownership details of the ultimate clients. This is enshrined in law (Money Laundering and Terrorist Financing Code 2013) and is further supported by the Financial Services Rule Book 2013. Compliance with both sets of legislation is supervised by the regulators.</p> <p>At present only two countries in the world, the UK and France, have made a firm commitment to a public register – there will be significant first mover disadvantage to this action.</p> <p>Fail to see how a central registry of beneficial ownership could prevent criminal use of companies – is more likely to encourage an increase in criminal activity.</p> <p>Minority: Highlights that openness is in the public interest: - <i>"Governments should also consider ways of verifying the information collected, for example by requiring financial institutions to flag any discrepancies between the information that they hold on their clients and the information on the register".</i></p> <p>Financial institutions should be mandated to comply with their duties to identify the owner of funds and whether the source is legitimate and to undertake enhanced due diligence with regard to Politically Exposed Persons (PEPs) as per the UN Convention Against Corruption (UNCAC).</p>	<p>*see Section C (Assessment of Responses)</p>
<p>1. c) What effect would making the register public have?</p>	<p>Majority: Very negative for IOM sector. There would be a likely loss of business elsewhere, for the simple reason that clients want and expect privacy and normal commercial confidentiality.</p> <p>There are a number of commercial reasons for keeping ownership private - rather than tax driven - and these must be understood by the Isle of Man Government.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>Security, hacking, social attacks, personal attacks on BO's — all possible if their details are public.</p> <p>The UK Law Society argues a fundamental principle of English law & natural justice (which would apply to IOM) is that people should be entitled to privacy, unless there is an overriding public interest issue that requires otherwise.</p> <p>Minority: A public register disclosing the true ownership of companies would be a significant breath of fresh air in bringing abuses to light – as well as providing a deterrent against future tax avoidance, and improving our reputation.</p> <p>The most efficient and most effective – in terms of facilitating access to law enforcement - way of collecting beneficial ownership information is to establish central registers of the beneficial owners of companies.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>2. How should beneficial ownership be defined; for instance, should the FATF definition apply?</p>	<p>Majority:</p> <p>FATF definition of beneficial ownership is already well known within the financial services sector and is currently used for regulatory purposes. If good enough for FATF it should be good enough for this.</p> <p>The FATF definition should apply - as otherwise - there will be the potential risk the Island will not be aligned with the international standards that we will be assessed against by evaluators such as Moneyval.</p> <p>Any definition will give rise to difficult interpretation issues in practice, e.g. some companies will not have beneficial owners either at all (for example, those held by a special purpose trust) or beneficial owners all of whom are readily identifiable (for example, certain types of beneficiaries under a discretionary trust).</p> <p>FATF's definition is reasonable and is helpful for fiduciary companies when making requests for CDD. The terminology of 'beneficial owner' in itself is narrow, so no objection to expanding the definition in accordance with FATF.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
<p>3. How do you think the introduction of a central registry of beneficial ownership would affect your business?</p>	<p>Minority: N/A</p> <p>Majority: There would be overall contraction in the Isle of Man’s financial services sector. This would benefit ‘real’ tax havens, secrecy jurisdictions and money-laundering centres.</p> <p>Any extension to cover legal arrangements, such as trusts, would have a significant impact, particularly if there are extensive filing requirements.</p> <p>This would cause a significant number of clients who wish for their affairs to remain private, to leave the jurisdiction.</p> <p>It would be an administrative burden to ensure a central registry is updated — does not appear to support the direction the IOM Government took in introducing the 2006 Company Act aimed at lessening administrative burden.</p> <p>From a data protection point of view, would the consent of the client be needed to enable their information to be publicly held?</p> <p>Minority: There is evidence that it could be cost-effective, according for example to two cost-benefit analyses carried out by the European Commission in (2007) and by the UK Companies House in (2002).</p>	<p>*see Section C (Assessment of Responses)</p>
<p>4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?</p>	<p>Majority: If a central registry were established, it should only be made available to the authorities, not the general public.</p> <p>The process in the IOM already satisfies the G20 objective, the purpose would be for transparency of ownership to avoid tax evasion and it is only government authorities who would need (quicker) access to this information.</p> <p>No third party other than our regulator should have access to it. Data could end up being sold on and used for spam/other marketing or criminal activity for example.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>A "gatekeeper" would be required. The decision as to levels and grounds for access would need to be the subject of further consultation.</p> <p>Foreign authorities should be required to obtain the appropriate authority from the Isle of Man Courts before accessing any registry.</p> <p>Could be considered in accordance with the exchange of information agreements already committed to. The register should not be made available to the general public.</p> <p>Minority: A public register will allow not only the full range of non-state actors with an interest access the register — but also ensure easy access for the authorities of other countries.</p> <p>Open data from the registry could also be combined with other data sets to check for accuracy, and so facilitate improvements in the quality of the data.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>5. What types of company should be required to disclose beneficial ownership to a central registry? Should foreign companies be included and, if so, what link would they need to have with the Isle of Man?</p>	<p>Majority:</p> <p>All companies should be required to disclose ultimate beneficial ownership information to that registry, including any foreign companies that are administered from, hold assets on or do business in the Island.</p> <p>If introduced, there should be no exceptions - including privately owned local companies.</p> <p>All established or registered under Manx law should be subject to the new disclosure regime, together with companies on the "F" register.</p> <p>At present all companies (foreign and domestic) are required to hold BO details and this is regularly checked. No company should be forced to reveal information publically.</p> <p>Minority: Where foreign companies are registered in the IOM, that data should be held and filed with the home jurisdiction registry to avoid duplication, or</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	differences of interpretation, and to ensure consistency.	
<p>6. Should a framework of exemptions be put in place? If yes, which categories of beneficial owners might be included? How might this framework operate?</p>	<p><i>"Further details would be required before commenting."</i></p> <p>Yes: In favour of a framework of exemptions, in particular for regulated entities, companies listed in London on the Main Market, or AIM and on other recognised stock exchanges —reiterate firm opposition to any central registry.</p> <p>Concerns over genuine confidentiality and/or personal security may be legitimate in some cases, and exemptions should be allowed. Likely that UK legislation will allow these, so it would seem sensible to follow suit here.</p> <p>No:</p> <p>Should apply without favour. Complexity is unhelpful and discourages business activity.</p> <p>Open to accusations of there being one set of rules for the well-connected and another for the rest.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>7. Who should be responsible for reporting the beneficial ownership of a company?</p>	<p>The company itself (or a regulated CSP/TSP where applicable).</p> <p>If a company has no IOM directors, it should be required to engage a regulated entity in the Island (e.g. its Registered Agent) to record the information.</p> <p>If a company has at least one Isle of Man director, the Isle of Man director(s) should be required to record the information either with a regulated entity in the Isle of Man or with the fall-back central register maintained by Companies Registry.</p> <p>Any register would only be as accurate as the information inputted into it. A person with criminal intent could be expected to input false details. If the</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>obligation rests with an Isle of Man person of good standing, the input is likely to be more accurate and of a higher quality.</p> <p>With the Isle of Man registered agent or nominated officer of a company.</p> <p>Other:</p> <p>Companies should be required to update beneficial ownership information both <i>during the formation</i> of a company and <i>as the information changes</i>. Failure to do so should result in sanctions.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>8. If the company is to be responsible for reporting, then should that company be given statutory powers to require beneficial owners to disclose their beneficial interest to that company?</p> <p>What would be the most efficient way for the company to report the information to a central registry?</p>	<p>If someone is to be made responsible for doing something, they should be given the power to do it.</p> <p>Adding beneficial ownership reporting to the annual Companies Registry filing requirements would appear to be the most efficient manner to achieve this, preferably by electronic filing.</p> <p>It would be expensive and time consuming for certain companies to identify and comply with an obligation to disclose their beneficial owners, even if statutory powers are created.</p> <p>Yes. The company should be given such statutory powers. In the majority of cases beneficial owners will be known. The Annual Return would seem the simplest and most cost-effective way to report information to a central registry.</p> <p>Other:</p> <p>Almost impossible to enforce. Those who wish to remain hidden for clandestine reasons will find a way round this (using friends, family or associates as nominee beneficial owners). This would also be outside the competent authorities remit to supervise.</p> <p>Public register would only be effective if it was updated on a real time basis otherwise it would be an ineffective process.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
<p>9. If a regulated entity were responsible for reporting the information to a central registry rather than the company, how would this affect the accuracy of the information held in a central registry?</p> <p>What would be the most efficient way for a regulated entity to report the information to a central registry?</p>	<p>Regulated entities either <i>will</i> or <i>will not</i> be responsible for sourcing this information. If they are, then they can store it, maintain it and as and when appropriate (and consistent with proper legal process) report it. There is no need for a central register to get involved.</p> <p>In light of the complexity of certain ownership structures, developing an efficient method for the reporting of information would be highly challenging.</p> <p>Information would likely be more accurate if provided by such an entity rather than by the company itself.</p> <p>For fiduciary companies it should not make a difference for the regulated entity or the company itself to report the information to a central registry.</p> <p>Most efficient way: online and by way of additional fields on each company's register record.</p> <p>Each time information is re-recorded there is the risk of copy errors; nonetheless there is a strong business on the IoM providing such a service so a pragmatic view may be needed.</p> <p>Where structures are complex, it could lead to ambiguities. Developing reporting systems for complex cases would be costly and arduous. Costs will be passed on to clients.</p> <p>Other:</p> <p>Entities may not undertake sufficient due diligence to ensure information accuracy. By creating an obligation on the company to collect the information (and on the beneficial owners to provide it) this should help mitigate those risks.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
<p>10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence?</p> <p>What information would need to be available?</p>	<p>Financial intermediaries are <i>already</i> able to obtain this information for legitimate businesses and individuals through existing channels as required.</p> <p>Could play a part in due diligence checks, do not believe it could form the sole element. Whilst can see such a register allowing identification of an individual—do not see how it could enable the ‘verification aspect’ of customer due diligence (normally carried out through obtaining certified identity documents).</p> <p>Yes, the European Banking Federation, for example, has stated how public registries would assist with their due diligence obligations.</p> <p>Yes, this may well be a real economic development opportunity for the IoM in terms of ease of operation for the compliance function within regulated entities.</p> <p>Security and access control of such a system would need to be high to protect details from public disclosure.</p> <p>Other:</p> <p>No, such access would be of limited assistance. Financial Organisations likely have their own specific client acceptance protocols.</p> <p>No, as this information must be made available to an intermediary anyway under the MLTF Code 2013.</p> <p>A central registry search would be supplementary verification rather than a primary due diligence resource.</p> <p>Limit information to what is strictly necessary: full name, birth data, business address, nationality, and a description of how the ownership or control is exercised.</p> <p>No. A register may show the name and address of a beneficial owner but it would not provide the verification required to comply with AML requirements on CDD.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>It will only create problems for beneficial owners with another layer of work, delay, cost, frustration, and turning of heads to other jurisdictions. The existing legislative framework is robust.</p> <p>This would depend upon whether associated regulations allowed them to place reliance on this information.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>11. Would access to a register of beneficial owners by local or recognised international regulated financial intermediaries improve the accuracy of the beneficial ownership information held in the Isle of Man?</p>	<p>Do not see how increasing access to information improves the accuracy. Increases the number of people able to use, or misuse, the information.</p> <p>Potential risk that regulated entities might erroneously construe register information as government sanctioned or audited, leading to them taking it at "face value" and failing to ask considered/nuanced questions as part of due diligence.</p> <p>No, regulated entities are required to hold accurate and up to date information so a central public registry should not affect this position.</p> <p>Not likely to add value.</p> <p>Concerns about 'date mining'.</p> <p>Other:</p> <p>Yes - to keep data on beneficial ownership accurate, cross-checks between financial institutions' due diligence info and the information contained in public registers could be done.</p> <p>Public access would aid accuracy - many eyes would have the opportunity to view information and spot errors and omissions.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
<p>12. Who should be responsible for maintaining and controlling access to a central register?</p>	<p>Regulated entities are currently responsible for maintaining and controlling access to their KYC/DD data. They do this effectively.</p> <p>The Companies Registry would be best for maintaining and controlling access to a central register.</p> <p>Companies Registry or the Isle of Man Financial Supervision Commission - additional costs will be involved with both; passing these onto service providers and/or their clients would have an extremely negatively impact on the sector.</p> <p>The Financial Supervision Commission with the Financial Crimes Unit.</p> <p>Companies Registry - although it "does not currently police the register for accuracy" and changes to legislation would be required to ensure that it has appropriate powers to do so.</p> <p>Companies Registry (in close coordination with the Office of the Data Protection Supervisor).</p> <p>HM Attorney General, or similar.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>13. What information should a central registry collate with respect to beneficial ownership?</p>	<p>The same KYC/DD information that is required for FATF purposes.</p> <p>The required details as set out in Section 8 of the Companies (Beneficial Ownership) Act 2012 form an appropriate starting point.</p> <p><i>"Consideration must be given to 'look through' requirements in order to prevent the use of legal structures as a cut-out between any natural persons as beneficial owners".</i></p> <p>The basic level of information required to satisfy the requirement to ensure</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>compliance with data protection law.</p> <p>Should be linked to information already collated for FATCA purposes. NB: There may be a case for not making addresses available if release of such information could cause a risk to person.</p> <p>The same information that is on any 1931 Act company's Annual Return - with the addition of an additional sheet on each return for each layer of corporate ownership.</p> <p>Full name, date and place of birth, residential address and a personal number e.g. Passport or national insurance number (as that is the type of information which a relevant authority would require).</p> <p>The information should be sufficient to comply with the identification and address verification required by the Isle of Man AML Code and Handbook.</p> <p>The name, address, date of birth and percentage of shareholding should be held. A list of the individual's other shareholdings and directorships should also be available.</p> <p>The following identification information could be required as a minimum:</p> <ul style="list-style-type: none"> - Full legal name, - Any known aliases - Residential and correspondence address, - Date of Birth, - Nationality, - Country of residence and - The legal persons/arrangements the individual is connected with. 	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
<p>14. If a register were to be made public, what protections would need to be put in place to prevent the information being used for criminal purposes?</p> <p>Who should be responsible for maintaining and controlling access to a public register if it were allowed?</p>	<p><i>"This question is somewhat naïve. If the information is public, it will be public, i.e. out there, in the public domain, available to all. It will be completely impossible to prevent the information being used for criminal purposes and futile to make someone responsible for doing so".</i></p> <p>The Companies Registry would be best suited to the role.</p> <p>Suggest the introduction of "validation processes", whilst recognizing that by the nature of the registry (and with users asking for electronic filing) this may not be easy to achieve.</p> <p>Preventing information criminal misuse would be logistically impossible, which is why it should not be made public.</p> <p>Financial Institutions could introduce greater password use and security tools - but this would be a weak form of defence.</p> <p>If information is made public it is difficult to prevent use of the information for nefarious purposes - guidance should be sought from the IOM Data Protection Supervisor to develop a means to limit this possibility.</p> <p>The information contained therein could be vulnerable to criminal use - <i>"this is a risk that true transparency brings".</i></p> <p><i>"The issues raised by the first part of the question are good justification for restricting the register, at least initially, to companies trading in the Isle of Man".</i></p> <p>Other: In designing a register - close collaboration is encouraged with those who wish to use the register to ensure the result is fit for purpose.</p> <p>Precedents exist in countries where information is publicly reported for the general interest, including political donations, lobbying activities and salaries of public officials.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
<p>15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?</p>	<p>There is a case for an annual declaration in relation to beneficial ownership – but there should also be a requirement to disclose changes when they occur, or otherwise the utility of the register could be impaired.</p> <p>Changes would need to be reported on a fixed period basis, perhaps quarterly. <i>"In practice this would also not work, while there should be a requirement to update when changes occur, policing this from a central location (such as the Company Registry) would be impossible."</i></p> <p>Both. Each company should be required to verify the existing information is correct once a year, but in addition should disclose changes as and when they occur.</p> <p>Any law enforcement agency making an enquiry - irrespective of whether the reporting was monthly or annually in arrears - would seek to contact the regulated entity for up to date information. Suggests that anything other than 'real time' reporting would be meaningless.</p> <p>None – there should be no public register.</p> <p>To reduce bureaucracy it would be preferable for it be submitted as part of an annual return.</p> <p>Not supportive of a central register – if instigated, use methods such as 'change of director form' (9N Form) to notify changes.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>16. How much time should be given for disclosure of beneficial ownership to a central registry?</p>	<p>For information to Isle of Man government bodies: e.g. ten business days (from service of the appropriate order). For delivering information to foreign government bodies: time frames could be set out by international arrangement.</p> <p><i>"If changes were required to be reported as and when they arose, we would suggest the reporting be made within 40 days of the change coming to the knowledge of the relevant registered agent/nominated officer".</i></p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>A period of 30 days is reasonable.</p> <p>Recommend a lead-time of no less than 24 months in the implementation of any register.</p> <p>In accordance with an Annual Return.</p> <p>Re: Time – <i>"Until such time as the Isle of Man is competing on a level playing field with its competitors. First footing in this area will have serious consequences for the Isle of Man and our business as we see it."</i></p> <p>If a time limit is required this should be no more than 30 days.</p> <p>As it is suggested this is done on-line, the time should be minimal, measured in days or even 48 hours.</p> <p>Within one month of becoming aware of a change would be reasonable.</p> <p>A timeframe of 14 days in which to notify the registry of changes would be suitable. This would follow, for example, the requirements on notifying of a change in directors in the UK.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>17. Would access to a central register of beneficial owners by law enforcement and tax authorities be a more efficient way of providing beneficial ownership</p>	<p>Whilst more effective than the current system, there would need to be checks and balances to prevent information being accessed for inappropriate purposes (e.g. political).</p> <p>It may be preferable to allow access only to law enforcement and competent authorities which are on a "white list" of approved jurisdictions or with which the Island has entered into a relevant Memorandum of Understanding, Double Taxation or Tax Information Exchange Agreement.</p> <p>No. The existing system of access is sufficient in providing ownership information. Changing this would increase the effort and cost.</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
<p>information to domestic and foreign investigators than the current system of access on request?</p> <p>What additional protections or checks and balances could apply?</p>	<p>No - in the light of international tax co-operation, as regulated entities we are obliged to disclose this information immediately - and likely to be more accurate from regulated entity.</p> <p>No. To our knowledge, the current system has not delayed or hindered any legitimate enquiry by a law enforcement body or tax authority. The current well established system offers the correct checks and balances.</p> <p>Access on request provides the best approach in terms of safeguarding the interests of the individual. It prevents information "fishing" and better protects against misuse of data.</p> <p><i>"Just because something may be efficient doesn't mean it is a good idea. Streaming sensitive data outside of the Isle of Man gives up on how that data will be used".</i></p> <p>Safeguards required re the privacy of the individual(s) concerned. E.g. domestic investigators should have to disclose legitimate reasons for requiring the information and foreign investigators should need the sanction of the Isle of Man Courts.</p> <p>Yes. It is not currently only a matter of "on request" - a warrant under section 24 of the Criminal Justice Act 1991 may be required on some occasions.</p> <p>Yes - <i>"Even with a public register it may be that some confidential information may not be made public, and we would therefore encourage such provision to enable quick and simple access."</i></p> <p>Yes. This could be more effective than a public register. The data security would need to be significant.</p>	<p>*see Section C (Assessment of Responses)</p>
<p>18. Do you think that any concerns</p>	<p>The introduction of the Common Reporting Standard will do nothing to diminish these concerns.</p>	

Question	Submissions	Response
<p>regarding the introduction of a central registry of beneficial ownership of companies may be diminished by the development of the new international standard on automatic exchange of information?</p>	<p>Certain concerns might be diminished but we expect that most would continue to apply.</p> <p><i>"No. These are separate issues. Automatic exchange of information relates to a financial institution – normally a bank – passing details of income (possibly taxable) to a foreign tax authority. It is confidential and the public has no right to that information. Corporate ownership information is clearly a different in kind, and subject to the public interest."</i></p> <p>Providing information in response to a TEIA is very different to providing this information to the public at large.</p> <p>If all jurisdictions work towards a system of automatic exchange of information, including US FATCA, UK FATCA and the Common Reporting Standards; and the processes are simplified; then there should be no need for a central registry. The risk of transparency is not with jurisdictions such as the IOM (who has a significant number of Agreements in place) but with other less regulated jurisdictions where the required information is less easy to obtain.</p> <p>No, and the two issues ought not to be confused. Each is complementary to the other.</p> <p>Regardless, the Isle of Man should not take any action in this area which would adversely impact its competitive position.</p> <p><i>"There are sufficient concerns to state that AEOI is not likely to be a more effective way to meet all the requirements of developing countries over the provision of public registers. It would seem that the combination of AEOI and public registers is likely to be the most effective solution."</i></p> <p>The development of new international standards on automatic exchange should allay the concerns of external parties and the UK.</p> <p>The international standard is fast moving and negates the requirement for the</p>	<p>*see Section C (Assessment of Responses)</p>

Question	Submissions	Response
	<p>proposed register.</p> <p>No. Given the well-established controls in the Isle of Man and the Isle of Man's cooperation on exchange of information, the idea of a Central Register is an unnecessary and costly layer of bureaucracy.</p> <p>Concerns may be allayed, but automatic exchange of information is only relevant in respect of tax whereas a central registry of beneficial ownership has far wider implications.</p>	<p>*see Section C (Assessment of Responses)</p>

ENDS