



**Isle of Man
Government**

Reiltys Ellan Vannin



Responses Received

Consultation on the Transparency of the Beneficial Ownership of Companies

Cabinet Office

Oik Coonceil ny Shirveishee

February 2016

Consultation on the Transparency of the Beneficial Ownership of Companies

Full text of responses to the consultation

Set out in this document are the full responses received to the Consultation on the Transparency of the Beneficial Ownership of Companies. A total of 38 responses were received and accepted¹.

For reference the eighteen questions in the consultation were:

- 1.** 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?
- 2.** How should beneficial ownership be defined; for instance, should the FATF definition apply?
- 3.** How do you think the introduction of a central registry of beneficial ownership would affect your business?
- 4.** If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?
- 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?
- 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?
- 7.** Who should be responsible for reporting the beneficial ownership of a company?
- 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? What would be the most efficient way for the company to report the information to a central registry?
- 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? What would be the most efficient way for a regulated entity to report the information to a central registry?

¹ One response requested their identity remain confidential. This response is provided however the name has been redacted.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?
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?
12. Who should be responsible for maintaining and controlling access to a central register?
13. What information should a central registry collate with respect to beneficial ownership?
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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?
15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?
16. How much time should be given for disclosure of beneficial ownership to a central registry?
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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?
18. Do you think that any concerns 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?

Responses were received from the below 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 – requests confidentiality**
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

FULL COPIES OF RESPONSES RECEIVED FOLLOW THIS PAGE

NB: Personal telephone numbers and email addresses are omitted to meet Data Protection principles within the Data Protection Act 2002.

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Cains

Acknowledged:
OK Aug. ✓

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Mr Carlos Phillips
Crown and External Relations
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CABINET OFFICE	
23 JUL 2014	
READ BY <i>CS. CP</i>	
FILE AWAY	✓
TO RELEVANT OFFICER ON FILE	
SCANNED	

22 July 2014

Dear Mr Phillips,

Consultation on the transparency of the beneficial ownership of companies

Further to the issue of the consultation document in respect of the above in June 2014, I enclose the response thereto on behalf of Cains Advocates Limited and Cains Fiduciaries Limited.

I hope that our response will be of interest and would be happy to discuss any particular aspects thereof, should the same be of assistance.

Regards,

Yours sincerely,

Richard Vanderplank

CAINS ADVOCATES LIMITED

Directors:

A J Corlett, R V Vanderplank, J R G Walton, S F Caine, P B Clucas, M T Edwards, T M Shepherd, R I Colquhitt, G Q Kermean, T D Head, L J Birmingham.

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Registered office: Fort Anne, Douglas, Isle of Man IM1 5PD.

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CONSULTATION ON THE TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES

RESPONSE OF CAINS ADVOCATES LIMITED AND CAINS FIDUCIARIES LIMITED TO THE ISLE OF MAN GOVERNMENT CONSULTATION DOCUMENT DATED JUNE 2014

INTRODUCTION

The opportunity to respond to the Consultation Document referenced above is appreciated. Given the potential effects of the introduction of a central registry of beneficial ownership of companies on business in the Isle of Man, and in light of the emphasis placed on the subject by Her Majesty's Government in London, we consider this consultation to be amongst the most significant to be conducted in recent years.

Our responses below are divided into two sections, the first being our general observations and the second being our responses to each of the specific questions set out in the Consultation Document. The responses are provided on behalf of both Cains Advocates Limited and Cains Fiduciaries Limited.

A. GENERAL OBSERVATIONS

1. We firmly oppose any proposal to create a central registry of beneficial ownership of companies whether or not any such registry is a public one.
2. In our opinion the licensed "gatekeeper" system that has operated in the Isle of Man over several years via the regulation of fiduciary service providers and the sophisticated Isle of Man anti-money laundering legislation and regulations is effective in terms of beneficial ownership information being held, and accessible by relevant authorities, in the Isle of Man. Such system has shown itself to work well for both internal and external law, regulatory and, legitimate tax enforcement and information sharing purposes (and we would observe that collection of information by fiduciary service providers is regarded by the World Bank and other expert studies as the best means of collecting accurate data on beneficial owners). We consider that the UK proposals for a public registry will be of extremely limited utility given (in contrast to the Isle of Man position) the absence of regulated intermediaries/nominated officers to take responsibility for data collection and maintenance (we note that a FATF report issued in October 2010 indicated that the UK had some 2197 fiduciaries, vastly more than the combined total for the Crown Dependencies and the British Offshore Territories which provided figures for the report).
3. Tracking accurate and timely beneficial ownership data is a widely agreed international standard (under FATF recommendations 24 and 25), and the prime purpose of the various international initiatives must be that tax, regulatory and law enforcement agencies have access to complete and (critically) verified information in a timely fashion and can disseminate the data internationally through recognised gateways; everything else, including a public register of beneficial ownership (which is certainly not a widely agreed international standard), is essentially collateral. In our opinion, the Isle of Man achieves this prime purpose through the fiduciary services network. Conversely, the UK's approach may address collateral issues (such as NGO agendas), at great expense and at the loss of legitimate privacy, but does not meet in any meaningful way the prime purpose of the international initiatives in the absence of verified data. We consider that the Isle of Man should be robust in articulating this distinction.

4. The ability of the Isle of Man to attract corporate business is arguably under greater threat now than at any point previously. With the expenses and consequences of FATCA already being incurred and experienced, the Isle of Man can ill afford to be subject to any additional competitive disadvantages, and we must, therefore, strive to avoid the same. We compete globally and should not introduce a registry at a time when no jurisdiction aside from the UK (in particular, the US and G8 countries) appears to be doing so; if we put ourselves in the vanguard on this matter and ahead of our competitor jurisdictions, our view is that it would be disastrous for the Isle of Man's economy.
5. Developing the theme in paragraph 4 a little further, we would anticipate that a number of institutional clients outside the UK would be most uncomfortable with a proposal that details of their ownership of Isle of Man vehicles be maintained on a central registry, when the home jurisdictions of those clients do not have any such requirement. Accordingly, our view is that a proposal to establish of a central registry would materially damage the Isle of Man Government's efforts to attract business from such jurisdictions (including China) since, from a business and cultural perspective, it would be anathema to them. We would suggest that, even those institutional clients that may be more relaxed about a central registry of beneficial ownership, would balk at the extra cost in terms of time and fees likely to be associated therewith. Whatever pronouncements might be made to the contrary, we believe that any non-public central registry of beneficial ownership would be likely to be viewed by clients as an interim step to a public registry of beneficial ownership, would still result in extra costs and would still alienate the commercial constituency.
6. There are numerous practical issues arising with a central registry of beneficial ownership. Amongst these, given the increasing complexity of the corporate structures that we see and the volume of material that is collected by fiduciaries' compliance departments, we think that it would be materially problematic to distill the same into a size and order that might be accommodated within a public registry. The costs associated with the establishment and operation of a central registry, and with compliance with reporting obligations to such a registry, would be material and also of serious concern.
7. We cannot see any upside for the Isle of Man from the establishment of a central registry. Such establishment is unlikely to appease the NGO agenda and the attitude of the UK Treasury to the Crown Dependencies in relation to ring fencing would seem to manifest that any political capital the Crown Dependencies may consider they have built up post the G8 agenda commitments does not translate into material gains in terms of evidencing the supposed symbiosis between the UK and the Crown Dependencies. Even a non-public central registry of beneficial ownership (giving rise to the client issues identified above) would be unlikely to result in any abatement of the NGO pressure or to satisfy the UK Government; thus, in our opinion, a non-public register should not be viewed as a pragmatic compromise because it would satisfy no one.
8. In addition to the above, there are a range of other issues that make us question seriously the appropriateness and utility of any central registry of beneficial ownership of companies, especially one that is available to the public, including those noted below:-
 - (a) We are wholly unconvinced that a central registry of beneficial ownership would make the Isle of Man any more effective in averting the misuse of companies by persons engaged in criminal activities than it already is, by virtue (amongst other things) of its fiduciary services licensing and nominated

officer systems. Imposing additional obligations on Isle of Man companies themselves or on their service providers will achieve no material additional benefits.

- (b) Investors in companies often have a reasonable and entirely legitimate expectation that their interests will be kept private. Even if the registry is not publicly accessible, there will always be a risk (and, certainly, a perceived risk) of leaks which may well be sufficient to put off legitimate investors from using Isle of Man companies. In our view 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 (and, with the existing gatekeeper and gateway provisions that we have in the Isle of Man, we struggle to see that any such overriding public interest exists). There are particular reasons why beneficial owners of companies may legitimately wish to keep their identities private. By way of example, such privacy may be sought:
- (i) by investors in companies that carry out activities which are legitimate but may be controversial. Beneficial owners could be open to harassment and/or physical harm if their identities were revealed;
 - (ii) by wealthy individuals who may be targeted for possible kidnapping or extortion;
 - (iii) by companies which are seeking to invest in competitors or potential acquisition targets; and
 - (iv) by investors who may be concerned that their interest in a particular company may trigger market speculation.

Furthermore, some families and other persons may have particular arrangements as to ownership. In the absence of evidence of illegality, individuals should be able to own assets directly or indirectly without having to make the information publicly available which may then lead to questioning of those arrangements by other interested parties.

There is also a risk that, if this information is made publicly available, it will be used to assist identity theft and other criminal activities.

- (c) Recent developments in Isle of Man companies legislation (and in the companies legislation of other jurisdictions, including the United Kingdom) have aimed to reduce the administrative burdens imposed on business; this was one of the drivers behind the introduction of the Isle of Man Companies Act 2006. The imposition of central registry reporting obligations would run contrary to these aims.
- (d) We query why beneficial ownership of companies should be disclosed to a central registry when the beneficial ownership of other types of assets (for example, land) is not required to be disclosed. We would not suggest that disclosure of interests in other types of assets should also be required, just that a difference in treatment would appear somewhat illogical.
- (e) In our view, it would be extremely difficult to arrive at an appropriate definition of beneficial ownership and then apply the same consistently across all relevant Isle of Man legislation and regulation. Numerous issues of interpretation will arise and we would anticipate there being particular

difficulties where trusts are involved in an ownership structure.

B. RESPONSES TO QUESTIONS

In this section of our response we have provided answers to all of the questions set out in the Consultation Document with a view to engaging constructively with the consultation, but the fact that we have answered certain questions about the operation of a register should not be taken as our support for such a register.

We respond to the specific questions set out in the Consultation Document as follows:-

- 1. *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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?***

We consider that 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. Having a central register would not, in our opinion, 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.

- 2. *How should beneficial ownership be defined; for instance, should the FATF definition apply?***

A consistent definition needs to be applied across the relevant Isle of Man legislative and regulatory provisions, and such definition should be one that has general international acceptance and usage, notably in the United Kingdom.

We suspect, however, that any definition will give rise to difficult interpretation issues in practice given, for example, that 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).

- 3. *How do you think the introduction of a central registry of beneficial ownership would affect your business?***

Our fiduciary client base is predominantly institutional and a limited number of our clients might be relatively unperturbed by their information being held in a central registry. There will, however, be a significant number of existing and future clients who, for entirely legitimate reasons, will not wish to have their information held centrally, and be extremely concerned by any prospect of it being held in a public registry. Accordingly, our view is that the introduction of a central registry of beneficial ownership would have a material negative impact on the Isle of Man's attractiveness as a jurisdiction and on our professional services business.

- 4. *If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?***

If a central registry was established, information held should, in our opinion, be available only to governmental, regulatory and taxation authorities, including overseas ones via the existing gateways that, in our view, operate efficiently and effectively.

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?***

In the unfortunate event that a central registry was established, we would consider that all types of body corporate established or registered under Isle of Man law (including overseas companies that have established a place of business in the Isle of Man) should, in principle, be subject to the disclosure requirements of that registry, problematic as the same might be.

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?***

If a central registry was established, we would be in favour of a framework of exemptions being put in place. In particular, regulated entities and companies listed in London on the Main Market or AIM and on other recognised stock exchanges would seem appropriate for exemption. However, we reiterate our firm opposition to any central registry.

7. ***Who should be responsible for reporting the beneficial ownership of a company?***

Given the existing obligations to which they are subject and the experience that exists in the fiduciary services sector, the responsibility for reporting should rest with the Isle of Man registered agent or nominated officer of a company.

Any register would only be as accurate as the information inputted into it. Clearly a person with criminal intent would be expected to input false details. If the obligation rests with an Isle of Man person of good standing, the input is likely to be more accurate and of a higher quality.

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 interests to that company? What would be the most efficient way for the company to report the information to a central registry?***

We think that 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. We believe that the principle that trusts should not be entered on a register of members is an important one to preserve. See also response to question 7.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?***

Given the experience and systems available to a regulated entity, our view is that the information would be likely to be more accurate if provided by such an entity rather than by the company itself. However, in light of the complexity of certain ownership structures, developing an efficient method for the reporting of information would be highly challenging and expensive.

10. ***Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?***

Such access would be of limited assistance in our view. Each financial organisation is likely to have its own specific client acceptance protocols and information

requirements so, at best, a search of a central registry would serve purely as a supplementary verification device rather than a primary due diligence resource.

- 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?***

See response to question 10. We see little justification for regulated entities (as opposed to regulators) having access to this information for the same reasons as outlined elsewhere in this response.

There is also potential risk that regulated entities might erroneously construe the information in the register as government sanctioned or audited, leading to them taking it at face value and failing to ask considered and nuanced questions as part of their due diligence.

- 12. *Who should be responsible for maintaining and controlling access to a central register?***

Either the DED's Companies Registry or, perhaps, the Isle of Man Financial Supervision Commission. In either case, significant additional costs will be involved; passing these costs on in whole or part to local fiduciary service providers and/or their clients would impact extremely negatively on the sector.

- 13. *What information should a central registry collate with respect to beneficial ownership?***

We would anticipate that the information should be consistent with that required to be obtained by Isle of Man fiduciary service providers (but please note also our general observations at A.6 and our response to question 9 above).

- 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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?***

It is difficult to conclude that any methods would effectively prevent information being used for criminal purposes and still have any utility for legitimate public purposes. Any registry that may be established (and we would again reiterate our firm opposition thereto) should not be publicly accessible.

- 15. *Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?***

Changes would need to be reported on a fixed period basis in our view, perhaps quarterly.

- 16. *How much time should be given for disclosure of beneficial ownership to a central registry?***

If changes were required to be reported as and when they arose, we would suggest the reporting be made within 30 days of the change coming to the knowledge of the relevant registered agent/nominated officer.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?*

We are not aware of material difficulties being encountered with the current system. In our view, the existing gateway channels provide appropriate checks and balances and should be retained.

18. *Do you think that any concerns 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?*

Certain concerns might be diminished but we expect that most would continue to apply.

CLOSING

We hope that the views expressed herein will be of assistance, and would be pleased to discuss the same in further detail as required.



**Cains Advocates Limited
Cains Fiduciaries Limited
22 July 2014**



MAROWN PARISH COMMISSIONERS

Clerk to the Commissioners
Mr I. J. MAULE BSc DipLaw
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For the attention of Mr Carlos Philips, Crown and External Relations

Isle of Man Government
Chief Secretary's Office,
Government Office,
Bucks Road,
DOUGLAS
Isle of Man

ACKNOWLEDGED: ^{NO COMMENT} N/A

CABINET OFFICE	
18 JUL 2014	
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FILE AWAY	✓
TO RELEVANT OFFICER ON FILE	✓
SCANNED	n/a

July 17, 2014

Dear Sir,

BENEFICIAL OWNERSHIP OF COMPANIES

The Commissioners considered the consultation document in respect of the above at their meeting on Wednesday last. They resolved to make no comment.

Thank you for consulting this authority. Please contact the undersigned if you require further information,

Yours Faithfully

IAN MAULE
Clerk to the Commissioners

11/11/14

PATRICK PARISH COMMISSIONERS

Barrantee Skyll Bherick

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For the attention of Mr. Carlos Phillios Crown and External Relations
Isle of Man Government
Cabinet Office
Government Office
Bucks Road
Douglas
Isle of Man

July 15, 2014

Dear Sir,

CABINET OFFICE	
16 JUL 2014	
READ BY G.S. C.P.	21/07/14
FILE AWAY	✓
TO RELEVANT OFFICER	✓
SCANNED	N/A

TRANSPARENCY OF BENEFICIAL OWNERSHIP OF COMPANIES

The Commissioners considered the above at their meeting on Monday last. They do consider that many of the matters are unnecessary given current protections. Further, the idea of a register of trusts does not find favour as being a simple disincentive for persons to do their business on the Isle of Man - more bureaucracy!

The Commissioners thank you for consulting them on this matter. Please contact the undersigned if you require further information.

Yours Faithfully

IAN MAULE
Clark to the Commissioners

Acknowledged: 04 Au

Phillips, Carlos

From: Paul Cowin <PCowin@douglas.gov.im>
Sent: 28 July 2014 11:25
To: Phillips, Carlos
Subject: Consultation - Beneficial Ownership of Companies

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: IOMBO Interest

Dear Mr. Phillips,

At the direction of Douglas Borough Council's Executive Committee, I write to advise you that the Committee has considered the consultation document in relation to the beneficial ownership of Companies and feels that the proposed new legislation is unnecessary.

Members took the view that there is adequate control as to beneficial ownership within the Companies (Beneficial Ownership) Act 2012.

Paul Cowin
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Acknowledged: 4 Aug

Phillips, Carlos

From: Peter Whiteway <peter.whiteway@rtc.gov.im>
Sent: 21 July 2014 10:54
To: Phillips, Carlos
Subject: Consultation on the Beneficial Ownership of Companies

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: IOMBO Interest

Dear Mr Phillips

The Ramsey Commissioners discussed the above consultation at their public meeting on 18th July 2014. The Commissioners, whilst understanding the commitment given by the Island, expressed concern that the Island is promoting more stringent financial regulation ahead of its industry competitors many of whom are already far behind the Island in this regard. The Commission supports the principle of transparency however feels that the Island should not be seen to be jumping the gun in relation to further regulation as this may place the industrial and the Island at a disadvantage.

In summary the Commission felt that the Island should consider carefully and changes and take heed of the advice of specialists in the industry in regard to the impact of further regulation ahead of competitors.

Regards

Peter Whiteway

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From: Phillips, Carlos [mailto:Carlos.Phillips@cs0.gov.im]

Sent: 30 June 2014 15:45

To: All Tynwald Members and Contacts; GenReg, Tribunals; Arbory Commissioners ; Quinn, John; Barr, Ronald; Black, Nick; Braddan Commissioners; Bride Commissioners ; Castletown Commissioners; Chamber of Commerce; Charters, Mark; Greenhow, Will; McLaughlin, Carmel; Couch, Malcolm; Council of Voluntary Organisations ; Mellor, Yvette; Douglas Corporation; Corlett, Chris (DED); Lole, Richard; Aspden, John; DHA, Fire; Brennan, Steve; Cregeen,



Mr Carlos Phillips
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IM1 3PN

12 August 2014

Reference: ZY113/KC/cc

Dear Sir

Consultation on the transparency of the beneficial ownership of companies

Published in June 2014

We thank you for giving us the opportunity to comment on this matter. We set out below our response to the above consultation.

General comments

We note as follows:

- This consultation follows only a few days after the United Kingdom published draft legislation to introduce a register there. Our comments as set out below are based on the assumption that this is not a coincidence.
- We do not know the extent to which the UK intends to police compliance with its registry but we can draw some inference from existing practice within Companies House, which does not appear to properly ensure that all information filed with them is accurate and HMRC which, as a matter of policy, assumes that all newly established companies are dormant and not required to make any tax filings or payments at all unless the company itself informs them otherwise.
- To the best of our knowledge, no other country has a register of beneficial ownership of companies. Only the UK and France are proposing to introduce such registers. As such, the 'International Standard' for maintaining a register of beneficial ownership of companies could not under any basis be said to exist.

As part of a stated policy objective, the Isle of Man has made every effort possible to cooperate fully and enthusiastically with every international initiative on tax transparency and every UK government requirement in this area. This has sometimes resulted in Isle of Man businesses being required to carry higher compliance costs than equivalent businesses elsewhere and this has made it either difficult or impossible for them to compete internationally.

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Members: I G Ciegue, K M Cowley, P C Craig, A D Dunn, N M Halsall, N J Shepherson, M Simperon.



INVESTOR IN PEOPLE

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13 AUG 2014	
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Acknowledged:

It has been suggested that there is reciprocity in this and that the UK might look upon the Island more favourably as a result. However, whilst this may be beneficial to the Island in managing its relationship with the UK Treasury, there is little, if any, tangible evidence to support the position. The most obvious opportunity for some form of reciprocity was the introduction of the recent FATCA-style IGA between the UK and the Island. There needed to be a treaty between the two countries enabling the respective governments to enter into the IGA. The sensible thing to do would have been to replace the existing double tax treaty with a more modern one based on the OECD Model Convention. Unfortunately, this was not done and the existing treaty, which in practice is not fit for purpose in the modern business environment was amended to include such enablement.

In view of the foregoing, our responses set out below are based on the premise that the Isle of Man should continue to do what is responsible and internationally compliant but always in its own best interests. This may not always coincide with being first to leap at all new initiatives that are in the political interests of the UK government. In particular, the issue at hand is one which has gained little momentum in the international arena despite it being championed by the UK. This is largely because there are valid, inherent risk issues to address before any register could sensibly operate and, potentially, a very significant loss of business to those jurisdictions who lead on this matter without due consideration.

The IoM has a close relationship with the UK, of course, but it also has much wider international relationships which are also important. Our view is therefore that in this instance, the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

Responses to the specific questions asked

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?*

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

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.

- b) *Do you think a central register would further prevent the criminal use of companies?*

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

Current regulations ensure that in the vast majority of cases there is someone (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.

So long as it is clear from the Companies Registry who is responsible for maintaining the information (and in particular where that person is a regulated person) the information can be readily accessed

when needed. Bringing it all together into a central register will therefore be a pointless and costly exercise in administration for the sake of it.

There will, however, be some companies that do not have, need or wish to have a relationship with an IoM licensed entity. Alternative arrangements could be introduced for these entities if required. For example, The Companies Registry could operate and charge for maintaining a register for these entities. This could be termed a 'central register' but it would not be a complete register; it would simply be a register of those entities that are not registered with a regulated entity. The information within this register should not be publicly available but rather available when an appropriate request is made to the Companies Registry.

c) What effect would making the register public have?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

We recognise that various well-meaning individuals and organisations would like to have public access and we do not underestimate the contribution that the fourth estate makes to ensuring that governments and societies act in a responsible and accountable fashion. Unfortunately however, there are many others who are rather less well-meaning but would also like to have public access for essentially the same reasons. These include malicious litigants, character assassins, identity thieves, blackmailers, kidnappers and gangsters of all descriptions.

We are not human rights lawyers but we understand that the right to a private life is a key part of the European Convention on Human Rights. Would a public register breach this right? The Isle of Man government may want to take legal advice on this point.

In view of the above, we suggest that the Isle of Man should not have a public register until this becomes a genuine international norm, i.e.

- at least 80% of EU member states
- at least 80% of OECD members,
- at least 80% of G20 members and
- all countries that are members of all three of these organisations

have such public registers and effectively police their accuracy. The word 'have' here is crucial; making an open-ended commitment to introduce a register is not the same as having and operating one.

2. How should beneficial ownership be defined; for instance, should the FATF definition apply?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

Businesses in the Isle of Man are already overburdened with lots of different definitions of different things that apply for different purposes. The FATF definition of beneficial ownership is already well known within the financial services sector and is currently used for regulatory purposes. If it's good enough for FATF it should be good enough for this. In the unfortunate event that a central register is established, it should simply reference whatever the FATF definition is for the time being.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

In the unfortunate event that a central register is established, it would have no direct effect on this firm's business but a mandatory central register, laid on top of the records that regulated entities are already required to maintain, would burden many of the businesses with which we do business with yet another pointless and costly administrative burden. This would make them less able to compete on cost with other, less over-burdened jurisdictions. They would lose business as a result and this firm would therefore get less business from them.

There would be an overall contraction in the Isle of Man's financial services sector. This would benefit the real tax havens, secrecy jurisdictions and money-laundering centres, most of which are members of one or more of the organisations mentioned under 1 (c) above, that would win legitimate business that would otherwise come to the Isle of Man. It would not improve international compliance but detract from it by driving business away from a well-regulated, compliant jurisdiction.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

We understand why it is necessary for appropriate authorities to have access to beneficial owner information in order for the proper investigation of tax evasion and other criminal activity. It is therefore appropriate that, subject to certain formalities, these authorities should have access to the information held by regulated entities or if there has to be one, a central register. This would apply to all Isle of Man government bodies. It would also apply to foreign government bodies so long as that foreign government has:

- enacted and effectively polices equivalent legislation in its country requiring registers to be maintained and
- entered into an international arrangement with the Isle of Man for reciprocal access to each other's registers.

This requirement is not in order to be awkward. It is in order to demonstrate the Island's commitment not only to it having a register that can be made available, which would achieve little, but to other countries doing the same, which could achieve quite a lot towards detecting tax evasion and other criminal activities.

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?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

In the unfortunate event that a central register is established, it should be kept simple. Beneficial ownership information should be retained for all businesses registered on the Isle of Man Companies Registry, including foreign companies doing business in the Isle of Man and registered business names. If there is a case for applying the requirements to any of them, we cannot see a case for excluding any of them.

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?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

In the unfortunate event that a central register is established, it should apply without favour. Complexity is unhelpful and discourages business activity. Furthermore, any such framework would lay the Island open to accusations of there being one set of rules for the well connected and a different set for the rest.

7. Who should be responsible for reporting the beneficial ownership of a company?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

The person responsible for recording the information will be the person who is responsible for checking that all proper processes have been followed in order that it should be reported (i.e. adherence to an international arrangement etc.) and then reporting it.

If a company has no Isle of Man directors, it should be required to engage a regulated entity in the Isle of Man (e.g. its Registered Agent) to record the information. 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.

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? What would be the most efficient way for the company to report the information to a central registry?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

If someone is to be made responsible for doing something, they should be given the power to do it.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

It is pointless duplication and a waste of time and money making regulated entities responsible for reporting information to a central registry. Regulated entities either will or will not 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.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

Financial intermediaries are already able to obtain this information for legitimate businesses and individuals through existing channels as required.

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?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

We do not see how increasing access to information improves the accuracy of that information. It just increases the number of people able to use, or misuse, the information that is there.

12. Who should be responsible for maintaining and controlling access to a central register?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

Regulated entities are currently responsible for maintaining and controlling access to their KYC/DD data. They do this effectively because their business faces being utterly destroyed if they don't. In the unfortunate event that a central register is established, whoever is responsible for maintaining and controlling access to it should be similarly motivated.

13. What information should a central registry collate with respect to beneficial ownership?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

In the unfortunate event that a central register is established, it should use the same KYC / DD information that is required for FATF purposes.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

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.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

In the unfortunate event that a central registry is established, the information on it is of no use unless it is contemporaneous. Regulated entities are currently required to maintain contemporaneous information on beneficial ownership. We see no reason to change this.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

Since information will be maintained contemporaneously, it can be provided quite quickly. For delivering information to Isle of Man government bodies, something like ten business days from service of the appropriate order. For delivering information to foreign government bodies, time frames should be as set out in the international arrangement.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.



Providing open access to law enforcement and tax authorities from all over the world would be a far more efficient way to provide this information to just about everyone who wants it, including those who want it for nefarious purposes. To imagine that you can provide access but only to the good guys is absurd. The only realistic way to provide information where appropriate but to restrict it where not is to provide the information only upon request under a proper process set out in an international arrangement similar in form to a Tax Information Exchange Agreement.

18. Do you think that any concerns 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?

Our view is that the IoM should resist the implementation of a central registry of corporate beneficial ownership and strongly resist the making public of any such registry until such public registers have become the international norm.

The introduction of the Common Reporting Standard will do nothing to diminish these concerns.

Conclusion

The Isle of Man already requires beneficial ownership information to be collated and maintained for the vast majority of companies established or carrying on business in the Isle of Man.

Relatively minor changes could ensure that this applies to all such companies.

This being the case, the information will already exist and can be made available if appropriate. There is no need for a central register to duplicate records already maintained by and available from regulated entities.

Information should be made available to Isle of Man government bodies. Information should also be made available to organs of foreign governments that have and effectively police equivalent measures and have entered into a reciprocal arrangement with the Isle of Man. In both cases, the information should only be made available upon request and each request should be subject to some form of due process.

A publicly accessible register would be wholly inappropriate unless and until this become the established international norm.

Yours faithfully

Kevin Cowley – Tax Partner
For and on behalf of PricewaterhouseCoopers LLC

Phillips, Carlos

From: Dan Johnson [REDACTED]
Sent: 01 July 2014 09:15
To: Phillips, Carlos
Subject: BO consultation

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: ~~IOMBO~~ Interest

Hi Carlos

I have provided my feedback to the recent consultation on Beneficial Ownership below. Please let me know if you need more.

Dan

1. 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?

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. A central register will only assist the press and the public obtain details of HNWI's who may wish to remain private.

2. How should beneficial ownership be defined; for instance, should the FATF definition apply?

Yes, this is the International standard by which MONEYVAL will measure the island.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

This would cause a significant number of clients who wish for their affairs to remain private, to leave the jurisdiction to another where a public register is not required. Many of these cases relate to privacy and security rather than money laundering and tax evasion as the popular press would have us believe.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

This should be made available to the competent authorities only as per the FATF recommendations. Many of the clients of an offshore centre such as ourselves require the privacy of an offshore structure to minimise the threat from criminal gangs who may be able to obtain details of net worth, or home addresses (where a company owns a residential property) and use this information for extortion. The Island has a huge level of business from Africa where this a real and present threat.

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?

No company should be forced to reveal information publically. At present all companies (foreign and domestic) are required to hold the BO details and this is regularly checked.

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?

Further details would be required before commenting. However an exception for licenced CSP's and TSP's would be acceptable in the same way as the Beneficial Ownership Act currently requires.

7. Who should be responsible for reporting the beneficial ownership of a company?

The company itself or a regulated CSP/TSP where applicable.

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? What would be the most efficient way for the company to report the information to a central registry?

This would be almost impossible to enforce. Those who wish to remain hidden for clandestine reasons will find a way round this by using friends, family or associates as nominee beneficial owners. This would also be outside the competent authorities remit to supervise.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

No as this information must be made available to an intermediary anyway under the MLTF Code 2013.

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?

This is effectively a public register.

12. Who should be responsible for maintaining and controlling access to a central register?

Company's registry or the regulators

13. What information should a central registry collate with respect to beneficial ownership?

Name, address and DoB. This should not be made public

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

This would be logistically impossible, which is why it should not be made public.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

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 company's registry, would be impossible. There would be no way to verify the accuracy of the information, or whether something has actually been updated but not notified.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

30 days is reasonable, see above re policing.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

This could be more effective than a public register. The data security would need to be significant as this would pose a serious target for organised criminals, fraudsters, journalists, and German tax authorities...

18. Do you think that any concerns 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?

Providing information in response to a TEIA is very different to providing this information to the public at large.

Other comments:

As noted above, maintaining the accuracy of the information on the register will be almost impossible. This is much more logistically feasible where the CSP/TSP knows their client and is responsible for the accuracy of a few hundred entities and is subject to a periodic review under the MLTF Code 2013. However to require this of tens of thousands of companies, a handful of individuals in Company's Registry will stand no chance.

For those who are using structures for illicit purposes (or even sensitive but completely legitimate purposes) to disguise their ownership, they will simply use a "nominee beneficial owner" to go on the record as the BO while the individual in control is subject to no AML or CFT oversight.

Finally, while newly incorporated companies can make it a condition that details are made public, how will existing companies meet the requirements under the Data protection Act? You will be required to seek permission to post names, addresses and other personal details on a public register, what will you do if this is declined?

I hope your consultation goes well, and if you wish to discuss any of my points above, please give me a ring on [REDACTED]

Kind regards

Dan Johnson

Acknowledged: 19/08/14 ✓
Reviewed: " " "

Consultation on the transparency of the beneficial ownership of companies

1. 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?

We believe the current system is inadequate. Simply requiring Corporate Service Providers (CSPs) to know the identity of the beneficial owners, and to inform the authorities if requested, lacks openness and public accountability. Its continuation would risk exposing the Island to criticism, especially now that the UK is committed to such a reform.

In the UK there are 20 people for every registered company. Some 28,000 companies are registered on the Island – one for every three people. It might be comforting to conclude that we are a nation of dynamic entrepreneurs but sadly the majority of these Manx companies have never engaged in a day's trade; rather they are client companies of Corporate Service Providers (CSPs) and many exist for the sole purpose of avoiding tax elsewhere.

This is done in different ways. Sometimes an offshore company simply bills its sister onshore company for spurious admin or management fees, thus shifting profits offshore, to be charged at a low (or zero) corporate tax rate. Starbucks, Amazon and Google have all been exposed for such profit-shifting. Another common scheme (now being tackled by the UK authorities) involves Manx companies offering payroll services to self-employed workers living in the UK (or elsewhere) to avoid UK tax or National Insurance, with no connection whatsoever to the IoM. Although not all such activities are criminal, all are unacceptable. Attitudes to aggressive tax avoidance have shifted markedly over the past decade, as governments everywhere have become desperate to prevent revenue leaks offshore.

Other cases do not relate to tax avoidance, but highlight where openness is in the public interest. For example, last year it was reported in the local press that an IoM company, Manx Quick Cash Ltd, with apparently no links to the Island beyond incorporation, was offering payday loans at interest rates of up to 1,737% per year with a local CSP listed as its registered agent. The Manx Independent's attempts to investigate were frustrated because it was unable to trace its real owners.

A public register disclosing the true ownership of companies would be a significant breath of fresh air in bringing such abuses to light – as well as providing a deterrent against future tax avoidance, and improving our reputation. If everything is above board, why not? Our society confers on companies the benefits of limited liability and zero tax, and it is right and proper that we can see who owns them.

2. How should beneficial ownership be defined; for instance, should the FATF definition apply?

In layman's terms 'beneficial ownership' should mean the person (ie human, not another company or trust) who has real control over the company. In some cases a company will be owned by another company (and so on), in which case disclosure of the ultimate (ie human) owner(s) will be necessary. It will be important to adopt an internationally-recognised definition in order to ensure a level playing-field, and as such the FATF definition would be appropriate.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

Not applicable.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

To all. Public accessibility is vital for reasons given in 1 above.

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?

All companies, including foreign ones. The concern is that foreign-owned IoM-registered companies will artificially shift profits into their IoM subsidiary. A public register of beneficial ownership would be one tool in discovering such tax avoidance. Public country-by-country accounts would also help, but that is beyond the scope of this consultation.

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?

Yes. Concerns over genuine confidentiality and/or personal security may be legitimate in some cases, and exemptions should be allowed. It is likely that UK legislation will allow these, and it would seem sensible to follow suit here.

7. Who should be responsible for reporting the beneficial ownership of a company?

The company itself. This may be done through a CSP, though the legal duty should fall on the company itself.

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? What would be the most efficient way for the company to report the information to a central registry?

Yes, if necessary the company should be given such statutory powers. Of course, in the vast majority of cases the beneficial owners will be known. The Annual Return would seem the simplest and most cost-effective way for the company to report the information to a central registry.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?

See 7 and 8 above.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

Yes. Information required may be name and contact details of beneficial owner.

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?

Yes – see 1 above.

12. Who should be responsible for maintaining and controlling access to a central register?

The IoM Government's Companies Registry would seem the logical choice.

13. What information should a central registry collate with respect to beneficial ownership?

Information required may be name and contact details of the ultimate (and intermediate, if relevant) beneficial owner.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

See 6 above.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

A fixed period, such as an Annual Return, would be acceptable and cost-effective.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

Until the next Annual Return is due.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

It would be a move towards openness, but foreign tax authorities would need to be included. However, this falls short of the requirement for public transparency. It is in the public interest that non-state actors – media, NGOs, charities, as well as the general public – have the right to access too.

18. Do you think that any concerns 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?

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 different in kind and subject to the public interest. Of course both measures aim to tackle tax avoidance and evasion, but it would be unrealistic to believe that the introduction of public registries of corporate ownership would offset political pressure for parallel reform on automatic exchange of tax information.

SUBMITTED JOINTLY BY:

Ian Costain

Phil Craine

Maurice Gotrel

Andrew Jessopp

Michael Manning

Jean McKenzie

18 August 2014



Acknowledged: 21/07/14 ✓
Added to Mailing list.

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CABINET OFFICE	
17 JUL 2014	
READ BY <i>CS. C-P</i>	21/07/14
FILE AWAY	✓
TO RELEVANT OFFICER ON FILE	✓
SCANNED	n/a

Acknowledgement sent + added to Consultees

15 July 2014

Dear Mr Phillips,

CONSULTATION ON THE TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES

Could you please add the Manx Insurance Association (MIA) to the list of Consultees.

We would also appreciate it if you could include the Association on any future Financial Services consultations or notifications.

Best Wishes,

Yours sincerely

Peter H Ashton DipPFS
MIA Secretariat

cc Gill Marples MIA Deputy Chair



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CABINET OFFICE	
(x received 25 Sept. by email.)	
26 SEP 2014	
READ BY C.S.	--
FILE AWAY	
TO RELEVANT OFFICER ON FILE	C.P
SCANNED	

Acknowledged
25/09.
By email. ✓

24 September 2014

Dear Sir

Consultation on the transparency of the beneficial ownership of companies

I refer to the above consultation exercise. The comments set out below represent the views of the Committee of the Isle of Man Branch of the Chartered Institute of Taxation.

We have grave reservations about the Island making any decision to implement a central register of beneficial ownership, whether a publicly accessible register or otherwise, at this stage. The key points that we would draw out in making this statement are as follows.

- The Island is a highly regulated jurisdiction that has for many years been at the leading edge of international initiatives relating to anti-money laundering and exchange of information.
- However, there is clearly not yet a consensus within Europe, never mind the rest of the globe, on this issue. It makes no sense for the Island to take a position (other than the *status quo*) on this issue until a settled EU position is reached.
- A public register would put information into the public domain that individuals have every right to keep private. In many situations such a register would allow the "curious" to examine the register, perhaps fairly harmlessly, but what about those with criminal intents? And some of the beneficial owners listed might be vulnerable persons – what protections will be offered to them?
- A private register (ie accessible only to Government Tax Authorities and law enforcement agencies) would add little to the information that such authorities can already access through existing channels.

We strongly believe that there is no advantage to the Isle of Man of being one of the first to sign up to such a public register. If the Isle of Man were to implement a public register initiative that did not, very quickly, become the internationally accepted standard, then significant commercial disadvantages to the Island would result.

If, in due course, a new global standard does emerge (as I would predict may well be the case), then at that point we would urge the Cabinet Office to consult on proposals based upon that new international standard.

We would welcome the opportunity to meet with you to discuss our response in more detail.

Yours faithfully

David Parsons
Chairman
IOM Branch of the Chartered Institute of Taxation

Phillips, Carlos

From: Anne <[REDACTED]>
Sent: 24 September 2014 17:27
To: Phillips, Carlos
Subject: Beneficial ownership

Acknowledged

After the sefton farce the answer must be yes we need a central register of beneficial owners of companies to stop the fraud against the tax-payers.
kindest regards
anne kelly



This email is free from viruses and malware because avast! Antivirus protection is active.

Phillips, Carlos

From: Nathan Holden <Nathan.Holden@abacusiom.com>
Sent: 26 September 2014 11:51
To: Phillips, Carlos
Subject: Consultation on the Beneficial Ownership of Companies
Attachments: Consultation on Beneficial Ownership of Companies.docx

Acknowledged:

Dear Mr Phillips

Please find attached the views of Abacus Trust Company Limited and Abacus Financial Services Limited on the Beneficial Ownership of Companies Consultation. Please let me know if you have any queries.

Yours sincerely

Nathan Holden BA (Hons), FICA, ACSI
Manager – Compliance and Risk

Abacus Trust Company Limited
Abacus Financial Services Limited
1st Floor, Sixty Circular Road, Douglas,
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*Abacus Trust Company Limited is licensed by the Financial Supervision Commission of the Isle of Man.
Abacus Financial Services Limited is licensed by the Financial Supervision Commission of the Isle of Man.*



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Abacus Trust Company Limited and Abacus Financial Services Limited responses to the consultation on the transparency of the beneficial ownership of companies

- 1. 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?**

If the primary, overriding principle is that beneficial ownership information on companies should be accessible to law enforcement, tax administrators and other relevant authorities then there should be no need for beneficial ownership information to be made public. In our view no changes need to be made to the regulated sector as such institutions have to comply with Anti-Money Laundering 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.

- 2. How should beneficial ownership be defined; for instance, should the FATF definition apply?**

The definition used should be one which is both internationally accepted and adopted by our peer countries.

- 3. How do you think the introduction of a central registry of beneficial ownership would affect your business?**

Our business obtains and retains beneficial ownership information to comply with regulatory requirements, therefore we already hold the information that would be included in a central registry. It therefore would very much depend on how reporting is to be made to determine the cost and impact on us. There would however be one immediate cost as a result of the change which would be that we would have to ensure the client and beneficial owner is aware as under data protection rules we have to set out in what circumstances personal information can be passed on to a third party. We would also advise that anonymity is sometimes the reason for ownership of a structure through the 2006 Act company and creation of the register would likely impact on the number of persons doing business with the Isle of Man.

- 4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?**

As noted in point 1, if the overriding principle is that the information on beneficial ownership should be made available to relevant authorities, we consider that there is no need for a central registry.

Should one be established it should only be available to relevant authorities only, not the general public or other bodies.

- 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?**

As noted in point 1, if the overriding principle is that the information on beneficial ownership should be made available to relevant authorities, we consider that there is no need for a central registry.

Should a central registry be required then it should apply to all types of company established in or operating from the Isle of Man. It should also prohibit companies domiciled in jurisdictions which are not transparent i.e. central register of beneficial owners, from being accepted onto the Isle of Man's register of companies. However if allowance is to be made for foreign companies then the Registry should require them to disclose beneficial ownership information as a condition of being accepted.

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?

As noted in point 1, if the overriding principle is that the information on beneficial ownership should be made available to relevant authorities, we consider that there is no need for a central registry.

Should a central register be required then a framework of exemptions should be considered and should include companies which are traded on a recognised stock exchange as beneficial ownership information would already be available, and Collective Investment Schemes with more than 50 shareholders where no person holds a controlling interest.

7. Who should be responsible for reporting the beneficial ownership of a company?

A nominated officer of the company or if it is administered by a regulated institution then a nominated officer of that regulation institution.

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? What would be the most efficient way for the company to report the information to a central registry?

As a regulated institution ourselves we would argue that it would be better if reporting were undertaken by a licensed institution such as ourselves who have undertaken verification of the company's ownership.

The easiest way to report the information would be document the information on incorporation of the company with the Companies Registry, thereafter should there be a change in beneficial ownership then it should be reported via a standard form to the Companies Registry.

Clearly though, capturing the information at the outset would be a major undertaking and would have to be considered. The number of companies having to report beneficial ownership information to be added to a central registry would be thousands and would require significant resource and cost to whomever is responsible for creating the register.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?

It should not impact on accuracy as a regulated institution would undertake verification of ownership.

The easiest way to report the information would be to document the information on incorporation of the company with the Companies Registry, thereafter should there be a change in beneficial ownership then it should be reported via a standard form to the Companies Registry. See point eight.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

No. Anti-money laundering requirements require verification of identity information and it would not be possible for a regulated intermediary to rely on information submitted to a central registry without themselves undertaking their own verification checks. Therefore we consider that if a central register were to be any use to financial intermediaries it would be limited and outweighed by the loss of privacy to customers, risks of frauds being perpetrated using the personal information made available, and costs in complying with the requirements of a central register.

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?

It should not have any bearing on the accuracy of beneficial ownership information.

12. Who should be responsible for maintaining and controlling access to a central register?

Should a central register be established then it should be maintained and controlled by the Companies Registry in close coordination with the Office of the Data Protection Supervisor.

13. What information should a central registry collate with respect to beneficial ownership?

Should a central register be established then it should hold basic identification details such as full name, date and place of birth, residential address and a personal number such as passport or national insurance number as that is the type of information which a relevant authority would require to know.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

It is our view that should a central register be deemed necessary it should not be made public. The type of information that would need to be held on such a register for it to be useful to authorities would make frauds or other criminal acts easier to perpetrate should it be obtainable by any means. In our view this outweighs any benefit in giving the public access.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

It would be more useful to authorities if it was kept up to date, therefore it would be better reported as and when changes occur. However as some persons responsible for reporting might forget to notify of changes, then a report at regular intervals would also be required.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

Within one month of becoming aware of a change would be reasonable.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

We consider that information on beneficial ownership should only be provided to those who absolutely require it. Provided the authorities are satisfied that the information is readily available should they require it, then access on request provides the best approach in terms of safeguarding the interests of the individual. It prevents "fishing" for information and better protects against misuse of data.

18. Do you think that any concerns 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?

It should.

Mr Carlos Phillips
 Crown and External Relations
 Cabinet Office
 Government Office
 Bucks Road
 Douglas
 Isle of Man, IM1 3PN

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Our reference

Date 25 September 2014

**Consultation on the transparency of the beneficial ownership of companies
 Zurich Isle of Man Legal Entities (Zurich) Response**

Zurich International Life
 Limited

43-51 Athol Street
 Douglas
 Isle of Man
 IM99 1EF
 British Isles

Telephone +44 1624 662266
 Telefax +44 1624 662038

Dear Mr Phillips,

Zurich welcomes the opportunity provided by the Cabinet Office to respond to the Consultation on the transparency of beneficial ownerships of companies.

Our response to specific questions laid out in the paper is detailed below.

Question 4 – If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

If a central registry was implemented, Zurich does not agree that it be open to the general public, due to paragraph 18 – “law enforcement, tax collection agencies and other relevant authorities in accordance with confidentiality legal requirements”. In addition, Zurich agrees with the concerns raised in paragraph 47 and 49.

Question 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?

If a central registry was implemented, Zurich agrees that an exemption process should be put in place and with the categories of beneficial owners which have been mentioned in paragraphs 47 to 50, e.g. vulnerable individuals and charities. Zurich believes that this point should be explored in more detail before we could comment on such a framework.

Question 7 – Who should be responsible for reporting the beneficial ownership of a company?

Zurich believes that the responsibility for reporting beneficial ownership information on companies should lie with the Company Secretarial function.

Zurich International Life Limited
 provides life assurance and
 investment
 products and is authorised by the
 Isle of Man Government Insurance
 and
 Pensions Authority.

Registered in the Isle of Man
 number 20126.

Registered Office: 43-51 Athol
 Street
 Douglas
 Isle of Man
 IM99 1EF

Page 2

Question 8 – If the company is responsible for reporting, then should that company be given statutory powers to require beneficial owners to disclose their beneficial interest to that company? What would be the most efficient way for the company to report the information to a central registry?

Zurich believes that if a company is required to report their beneficial ownership information, then yes, the company should be given statutory powers to obtain beneficial interest information. If this was not to be the case, then the process would not be effective, especially if fines/penalties were in place for non-compliance.

Question 9 – If a regulated entity were responsible for reporting the information to a central registry rather than a company, how would this affect the accuracy of the information held in a central registry? What would be the most efficient way for a regulated entity to report the information to a central registry?

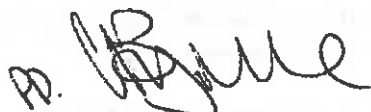
As Zurich's Company Secretarial function is currently responsible for reporting company information, we believe that the most efficient way for us to report the information is through the Companies Registry via the company's Annual Return, as per the current process.

Question 13 – What information should a central registry collate with respect to beneficial ownership?

Zurich agrees with the information detailed in paragraphs 33 to 35 – opting for option (b) with the FATF Methodology – companies should take reasonable measures to obtain and hold up to date information on the company's beneficial ownership.

I hope that these comments are useful however if you have any queries on anything detailed above, please feel free to contact me.

Yours sincerely,



Claire Cope
Head of Compliance

Phillips, Carlos

From: Sam Karran <sam.karran@zurich.com>
Sent: 26 September 2014 12:02
To: Phillips, Carlos
Cc: Claire Cope; Laurine Douglas; Regulatory Correspondence
Subject: Zurich Response: Consultation on Transparency of the Beneficial Ownership of Companies
Attachments: Transparency of Beneficial Owner Consultation Reponse - Final - 25.09.14; ATT00002.txt

Acknowledged:

Dear Carlos,

Please find attached Zurich's response to the above Consultation.

I have also sent the original to you in today's post.

Kind regards
Sam



Sam Karran
Compliance Adviser
Conduct of Business
Zurich International Life Limited
Tel : +44 (0) 1624 696906
Email : sam.karran@zurich.com

Mr Carlos Phillips
Crown and External Relations
Cabinet Office
Government Office
Bucks Road
Douglas
Isle of Man, IM1 3PN

Your reference

Our reference

Date 25 September 2014

**Consultation on the transparency of the beneficial ownership of companies
Zurich Isle of Man Legal Entities (Zurich) Response**

Zurich International Life
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Telephone +44 1624 662266
Telefax +44 1624 662038

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Question 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?

Zurich International Life Limited provides life assurance and investment products and is authorised by the Isle of Man Government Insurance and Pensions Authority.

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Registered in the Isle of Man
number 20126.

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Page 2

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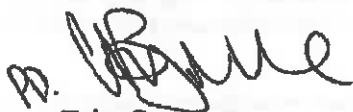
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Question 18 – What information should a central registry collate with respect to beneficial ownership?

Zurich agrees with the information detailed in paragraphs 33 to 35 – opting for option (b) with the FATF Methodology – companies should take reasonable measures to obtain and hold up to date information on the company's beneficial ownership.

I hope that these comments are useful however if you have any queries on anything detailed above, please feel free to contact me.

Yours sincerely,



Claire Cope
Head of Compliance



IQE Limited
 14 Athol Street
 Douglas
 Isle of Man
 IM1 1JA

24 September 2014

Mr Carlos Phillips
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 IM1 3PN

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 email: mail@iqe.im
 www.iqe.im

Acknowledged: 25/09/14
 CP

Dear Carlos

Consultation beneficial ownership

We are writing in response to the consultation on the transparency of the beneficial ownership of companies and to the specific questions raised as requested. We are pleased to have the opportunity to provide the views of IQE Limited to the consultation which is in response to the UK Prime Minister's public and much reported proposal of publicly available registers of beneficial ownership.

Whilst we are supportive of any proposals which will reduce criminal activity through corporate structures we are firmly opposed to a public register of beneficial ownership for the many reasons noted below. This would represent a seismic change in the current reporting.

The Isle of Man has extensive legislation supported by regulation and guidance to ensure that information relating to the beneficial ownership of companies (and trusts, partnerships, foundations etc.) is maintained. The beneficial ownership information is disclosed to relevant authorities when permitted by law and we believe that this system is robust and reliable and provides access to verified information.

The maintenance of verified identity and due diligence records by corporate service providers will not prevent the criminal use of companies but it is a deterrent. Organised criminals with easy access to false but apparently genuine documents are unlikely to find the requirements of proof too much of a burden. Making company ownership public will not alter the position if false identities have been used.

The main concern with making ownership public is the lack of protection for those individuals who have genuine reasons to keep their affairs private. These reasons include competitive threats, and for ultra-high net worth or publicly and politically exposed persons and their families it can be to avoid the threat of kidnap, extortion, bribery, theft and identity theft.

The right to privacy is supported by Human Rights Article 8 which provides respect for private and confidential information, particularly the storing and sharing of such information. The right to privacy is limited but any limitation must have regard to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole.

The Isle of Man has an existing system which provides access to verified ownership information which delivers a good balance of ensuring that the information is accessible but not public.

Making the beneficial ownership public does not provide any benefits but does introduce threats to individuals and their right to privacy (as opposed to secrecy). This is further supported by the fact that the Isle of Man has legislation and regulations in place which are rigorous and sophisticated in relation to anti money laundering and combatting terrorism and all crimes.

The introduction of the OECD Common Reporting Standard means that there will be automatic exchange of information to home jurisdictions so there will be no lack of transparency necessitating a register as proposed.

The Isle of Man should not consider such a public register before other jurisdictions (such as the US, G8 and G20 countries). To be at the forefront of such changes would place our industry at a major commercial disadvantage in terms of additional costs of compliance and would be a deterrent to both existing and new clients for whom confidentiality is important.

International Fiduciary Services

The Isle of Man must continue to maintain its standards in relation to regulation and legislation and one area to consider is the current ability for an individual to walk into Companies Registry and form a company (under the 1931 Companies Act) without providing any information regarding the beneficial ownership. This should be addressed to ensure there are no gaps in our system.

We have set out below our responses to the specific questions bearing in mind that our overriding response is that we do not agree that there should be a central register for beneficial ownership:-

1. The present system of retention of beneficial ownership details of companies by nominated officers or licensed managers and agents in preventing the criminal use of companies is effective in so far as it facilitates the application of due diligence research on and assessment of the beneficial owner.

In terms of preventing the criminal use of companies it is suggested that understanding the purpose of the structure and monitoring of activity and transactions by the corporate service provider plays a greater role in forestalling use for criminal purposes. We do not anticipate that a public register would reduce criminal activity and to the contrary, is more likely to increase it due to the risks of identity theft, extortion, bribery, kidnap etc. as noted above.

2. The definition of beneficial owner needs to be a standard single definition and we support the definition as included in the EU draft Fourth Money Laundering Directive which accords with the definition of a beneficial owner set out in the Isle of Man's Money Laundering and Terrorist Financing Code. The threshold at 25% plus one share is sensible as it is the point at which an owner could have a blocking position.

We anticipate difficulties with interpretation in some situations such as complex structures and companies which are held by a Purpose Trust or Discretionary Trust. Ownership issues are often complicated and it is difficult to conceive a register which could accommodate all but the simplest arrangements and difficult to see how the information could be verified and trusted to be correct. The absence of a single internationally accepted definition of beneficial ownership will affect the quality and consistency of the data and thus its accuracy.

3. The introduction of a central register would have a negative impact on the financial services industry in that many of the beneficial owners would fall into the categories noted above for whom privacy is important. They would thus move their structures to another jurisdiction which would provide the privacy they require.

It is impossible to quantify the level of business loss but we anticipate it would be significant and a threat to the industry as a whole. In addition the introduction of a central registry will increase administration and filing requirements and therefore the business cost will increase.

4. We do not believe a central registry should be established but in the event that it were, it should only be available to the authorities under specific circumstances where there was a genuine reason for the information to be accessed under a due legal process (i.e. to regulators, tax authority and FCS/Constabulary).
5. We do not believe any companies should be required to disclose beneficial ownership to a central registry. People should be entitled to their privacy unless there is an overriding public interest reason. However should disclosure be required it should apply to all companies that register with IOM Companies Registry.

Where foreign companies are registered in the Isle of Man the data should be held and filed with the home jurisdiction registry to avoid duplication or differences of interpretation and to ensure consistency.

In terms of company type, careful consideration and definition of who is defined as a beneficial owner will need to be determined. For example for collective investment schemes, hybrid companies, private investment companies, publicly listed companies (on regulated stock exchanges and AIM etc.).

6. There should be exemptions and those referred to in the response to question 5 above should be included.
7. The Nominated Officer / Registered Agent, or in the absence of the regulated entity exemption continuing, the licence-holder on behalf of the Company should be responsible for reporting.

8. Reporting should be by a variant of the annual return filing arrangements. It is important to preserve the absence of any trusts on a register of members.
9. As above, reporting should be by the extension of current reporting using annual returns. Accuracy should not be an issue in straightforward cases, however where structures are complex it could lead to ambiguities. Developing a system of reporting in complex cases would be arduous and costly.
10. Access to a central register of beneficial ownership would permit a comparison of the information received and address any differences. However, our view is that any help would be marginal given that financial intermediaries are subject to the AML Code and will need to independently confirm and verify data held in the register.
11. We do not believe the accuracy of the information will be improved by access to the register by local or regulated international financial intermediaries. On the contrary, the data will never be entirely up-to-date and it could lead to intermediaries relying on the information rather than making their own independent verifications.
12. The information should be held by Isle of Man Companies Registry as there are already systems in place for reporting member / shareholder information this could be extended. Electronic filing should also be introduced to create further efficiencies.
13. The information should be sufficient to comply with the identification and address verification required by the Isle of Man AML Code and Handbook.
14. Protection needs to be in place to avoid potential criminal use of the data and this is one of the fundamental flaws with the proposal of a central register. Information should only be provided to the authorities under specific circumstances where there is a genuine reason for the information to be accessed under a due legal process (i.e. to regulators, tax authority and FCS/Constabulary).
15. Disclosure should be made with the annual return filing.
16. As above – annual updates with the annual return together with the date the change was effective.
17. We do not believe access to a central register would provide a more efficient method of providing beneficial ownership information. At present, access to information is effective and subject to a series of legal checks and balances and in our view it is imperative that it should be retained.
18. There are concerns regarding the rationale for the requirement in the Isle of Man given that the information is already available. The present approach to documenting the beneficial ownership information works well with access to such information by external parties being controlled via a series of legal checks and balances.

The development of new international standards on automatic exchange should allay the concerns of external parties and the UK Prime Minister David Cameron. In any event, our recommendation would be that the UK adopts the Isle of Man practices rather than vice versa as it provides a tried and tested model.

In summary we are opposed to the introduction of a public central register for beneficial ownership for the many reasons stated above and believe that it will be detrimental to the financial services sector without providing any benefit.

We trust you find our feedback useful. Should you wish to discuss any of the comments please let me know.

Yours sincerely
For IQE Limited



Anne Couper Woods
Director

Phillips, Carlos

From: Joseph Stead <JStead@christian-aid.org>
Sent: 25 September 2014 15:13
To: Phillips, Carlos
Subject: Joint response to submission on beneficial ownership
Attachments: 140926 Joint Response to Isle of Man.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Acknowledged:

Dear Mr Phillips,

Please find attached a joint submission from UK Parliamentarians and Civil Society Organisations in response to the consultation on beneficial ownership.

Should you require any further information or clarification on this submission please do not hesitate to contact me.

We look forward to the results of this consultation in due course,

With best regards,

Joe

Joseph Stead
Senior Adviser Economic Justice

email: jstead@christian-aid.org
tel: +44 (0)207 523 2314
skype: caid-jstead

Christian Aid
35 Lower Marsh
Waterloo
London SE1 7RL

www.christian-aid.org.uk

----- Gaza Emergency Appeal As the death toll continues to rise, we have launched an emergency appeal to help the terrified people of Gaza. Our medical partner, PMRS, is already on the ground providing vital treatment and healthcare to more than 8,000 Palestinians every day. Please help our partners to do even more to respond to the desperate humanitarian needs emerging. <http://www.christianaid.org.uk/emergencies/current/gaza-emergency-appeal/index.aspx> -----

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Joint response to Isle of Man consultation on Beneficial Ownership Information

All of the undersigned share a desire to stamp out fraud, tax evasion, corruption and money laundering in all countries, including the UK and the Overseas Territories and Crown Dependencies. Both developed and developing countries alike face criminals who steal, engage in corruption and distort a fair business environment. For developing countries, this can mean the loss of much-needed resources which should be invested in the fight against poverty. Too often these criminals can cheat legitimate businesses, evade the law and hide their illicit funds through anonymous shell companies.

We are pleased that, following the focus on this issue at the G8 in 2013, the Isle of Man has launched a consultation on whether to create a public register of beneficial owners. All of the groups and individuals who have signed this submission agree that there should be a public registry. This is in line with Chief Minister Allan Bell's statement, alongside other leaders of the Crown Dependencies, that 'tackling tax evasion and fraud is a global responsibility in which we will continue to play our full part'¹. Prime Minister Cameron made it clear in his leadership of the G8 agenda that he hopes that 'the whole world will move towards public registers of beneficial ownership', now is a chance for the Isle of Man to support the UK in this leadership.

We note that legitimate businesses themselves are often victims of shell companies established purely for the purposes of defrauding other businesses and citizens. Businesses and citizens deserve a higher degree of confidence in the authenticity and ownership of the businesses they may interact with.

It is only through making the registry public that its full benefits will be realised. These benefits are many, and will occur in the many countries where Isle of Man registered companies operate, including: reducing the cost of law enforcement investigations, improving banks' ability to carry out checks on their customers; giving businesses information on their partners, suppliers and competitors; allowing many eyes from around the world to see who really owns and controls the companies operating in their societies, to check for any inaccuracies and to root out corruption.

A public registry should be established in close dialogue with all stakeholders, to ensure that the system is as simple and user friendly as possible, and provides reliable and accessible open data to all who wish to use it.

We strongly urge the Isle of Man government to make the register of company ownership public, and to advocate for such registries in other countries. This will ensure that those who seek to abuse the privilege of company ownership for secrecy purposes are left with nowhere to hide.

Signed

P.T.O

¹ <http://www.gov.gg/article/107970/Crown-Dependencies-support-G8-initiative-on-tax-trade-and-transparency>

UK Parliamentarians

Gavin Shaker MP
Sir Peter Bottomley MP
Lord Browne of Ladyton
Mark Durkan MP
Anas Sarwar MP
Catherine McKinnell MP
Nic Dakin MP
Eric Joyce MP
Ann McKeichin MP
Yasmin Qureshi MP
Naomi Long MP
Paul Blomfield MP
Martin Horwood MP
Lord Judd
Fiona O'Donnell MP
John Mann MP
Pauline Latham MP
Baroness Stern
Roger Godsiff MP
Tessa Munt MP

Civil Society Organisations

Christian Aid
Oxfam
Global Witness
Publish What You Pay - UK
Financial Transparency Coalition
Action Aid UK
Global Integrity
Tax Justice Network
Transparency International UK
OpenCorporates
Tax Research UK
War on Want
Corruption Watch
CAFOD

Phillips, Carlos

From: Joseph Stead <JStead@christian-aid.org>
Sent: 25 September 2014 16:43
To: Phillips, Carlos
Subject: Christian Aid Submission to Beneficial Ownership Consultation
Attachments: 140926 Christian Aid Isle of Man.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Acknowledged:

Dear Mr Carlos Phillips,

Please find attached a submission from Christian Aid in response to the consultation on beneficial ownership of companies.

Should anything in this submission be unclear, or require further clarification please do not hesitate to contact me,

We look forward to the results of the consultation,

With best regards,

Joe

Joseph Stead
Senior Adviser Economic Justice

email: jstead@christian-aid.org
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Christian Aid
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----- Gaza Emergency Appeal As the death toll continues to rise, we have launched an emergency appeal to help the terrified people of Gaza. Our medical partner, PMRS, is already on the ground providing vital treatment and healthcare to more than 8,000 Palestinians every day. Please help our partners to do even more to respond to the desperate humanitarian needs emerging.

<http://www.christianaid.org.uk/emergencies/current/gaza-emergency-appeal/index.aspx> -----

----- Save paper, save trees and only print this email if you have to. -----

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Christian Aid Submission

Response to the Isle of Man

**Review of Transparency of Beneficial Ownership of Companies – Consultation
Paper**

September 2014

Introduction

Christian Aid is a Christian organisation that insists the world can and must be swiftly changed to one where everyone can live a full life, free from poverty. We work globally in over 40 countries for profound change that eradicates the causes of poverty, striving to achieve equality, dignity and freedom for all, regardless of faith or nationality. We are part of a wider movement for social justice. We provide urgent, practical and effective assistance where need is great, tackling the effects of poverty as well as its root causes.

We welcome the opportunity to respond to this consultation; for over 60 years Christian Aid and our partners around the world have been advocating for economic and financial systems that help create sustainable societies free from poverty. Changes to the transparency of companies can play a significant role in achieving these aims. Should further information be required please contact Joseph Stead - jstead@christian-aid.org / 020 7523 2314.

It is clear that there are obligations and responsibilities that come with being an international financial centre such as the Isle of Man, obligations and responsibilities that extend beyond the shores of the Isle of Man. It is pleasing to see acknowledgement in the consultation document that the Isle of Man has an ethical as well as economic interest in preventing the finance sector from being undermined¹. Isle of Man registered and administered companies operate in many countries, including developing countries, around the world; the regulations in the Isle of Man therefore have impacts in many other countries. According to IMF statistics the Isle of Man is the 80th largest provider of FDI in the world². In this context, and with the Isle of Man's aspirations to continue to grow as a financial centre it seems clear that any regime for beneficial ownership in the Isle of Man should be one that has a positive impact, or at least does not have a negative impact, in all countries.

The World Bank STAR (Stolen Assets Recovery Initiative) programme clearly identifies that hidden ownership of companies, trusts and foundations are a feature of 'nearly all cases of grand corruption.' In the database assembled by the STAR initiative the Isle of Man was the joint 18th most common jurisdiction of incorporation for entities involved in grand corruption³. Furthermore the Isle of Man's ratio of cases of grand corruption per company is 24 times higher than the UK, as well as higher than the Cayman Islands and British Virgin Islands showing Isle of Man companies are more frequently abused for corruption than most other jurisdictions⁴.

¹ Para 28 of the consultation document

² See <http://www.christianaid.org.uk/Images/Invested-Interests-Christian-Aid-tax-report.pdf>

³ <http://star.worldbank.org/star/publication/puppet-masters>

⁴ Jersey has a ratio of 0.00037 compared to 0.00024 for Isle of Man, 0.00020 for BVI, 0.00016 for Cayman, 0.00062 for Bermuda and 0.00001 for the UK. Data from the STAR initiative and each jurisdictions own statistics

These abuses of company and other legal structures are just some examples that show that alongside the many benefits of globalisation, there are costs. We have created an international financial system in which money is able to move at the click of a button while the information needed to monitor and regulate the system is not even required to be recorded.

Developing countries suffer especially as a result, as the gap between the complexity of possible financial transactions and structures and the capacity of their authorities to respond is even greater. This has led to the situation in which developing countries are suffering a huge drain on their resources. Illicit financial flows are costing developing countries over \$850bn a year, far more than they receive in aid⁵.

In this context, and especially when the Isle of Man is seeking to consolidate and improve its status as an international financial centre, and attract more business, it is vital that there be transparency and trust in the activities taking place both in the Isle of Man, and by Isle of Man registered and administered entities elsewhere, especially as regards developing countries. It is primarily with these considerations in mind that Christian Aid has formulated responses.

A summary of the points we make are as follows:

- 1. The register should be public**
- 2. A public register is the only way to ensure the many benefits can extend to all the countries where Isle of Man registered and administered companies are operating**
- 3. Automatic Exchange of Information is not an adequate alternative to a public register**
- 4. The information required, and provided, needs to be up to date and sufficient to meaningfully identify the beneficial owner**
- 5. A public register is an Open Data register**
- 6. Exemptions for certain individuals requires a careful balance of the public interest**
- 7. The costs to the Isle of Man in providing a public register would be low, and benefits high**

We would also like to highlight that support for public registers comes from a range of stakeholders, not just civil society. For example the following have expressed support for public registers of beneficial ownership: the Institute of Directors⁶, the World Economic Forum⁷, the European Bankers Federation⁸, the Extractive Industries

⁵ *Illicit Financial Flows from Developing Countries 2001-2010* Global Financial Integrity

⁶ http://www.telegraph.co.uk/finance/yourbusiness/10246151/Government-has-anti-enterprise-undercurrent.html#disqus_thread

⁷ <http://reports.weforum.org/global-agenda-council-2012/councils/organized-crime/>

⁸ http://www.ebf-fbe.eu/uploads/EBF_001279-2013%20-%20EBF%20Position%20on%20the%20EC%20Proposal%20for%20a%204th%20OEU%20AML%20Directive.pdf

Transparency Initiative⁹, the chair of the CBI tax committee¹⁰ and over 20,000 businesses around the world¹¹

Question by Question responses:

1. *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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?*

There are three ways in which the current regime is inadequate, especially when looked at from the developing country perspective.

- i. Keeping the *current* beneficial ownership information with the trust and company service providers (TCSP) provides an opportunity for the beneficial owners to be pre-emptively alerted to investigations and shift assets away before authorities can catch up with them.

For the authorities to obtain the current beneficial ownership information of a company they have to approach the TCSP. This gives rise to a risk that the TCSP could informally alert the beneficial owner to a request being made, and provide time for assets to be moved to avoid action by the requesting authorities. This risk has been shown as alerting of account holders of requests for information has been identified as an issue in Jersey by the French government¹².

The provision of an up-to-date register, and so the removal of the extra step in approaching the TCSP to confirm the beneficial owner would resolve this problem. However there would remain two further problems.

- ii. For the current regime to work well for the authorities in all countries where Isle of Man companies are operating, there needs to be exchange of information agreements, but these do not exist for many countries, especially developing countries (the Isle of Man has only 7 information exchange agreements with developing countries¹³).

While the Isle of Man has become party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters this does not fully resolve this problem. The Multilateral Convention on Mutual Administrative

⁹ <http://www.trust.org/item/?map=eiti-board-raises-bar-on-global-standards-to-report-natural-resource-revenues>

¹⁰ <http://www.ft.com/cms/s/0/7f1d3e2a-d5e6-11e2-9dbd-00144feab7de.html>

¹¹ http://www.avaaz.org/en/business_signon_letter/

¹² See <http://www.performance->

publique.budget.gouv.fr/farandole/2013/pap/pdf/Jaune2013_reseau_conventionnel.pdf section 3.2

¹³ Data from the OECD Exchange of Information Portal

Assistance in Tax Matters (and the Isle of Man's TIEAs) only provides, as of right, information on request. This standard suffers from many problems, not least that being able to make a request often requires substantial information before a request may be made¹⁴, it also requires the request to be answered satisfactorily. Also only a further 15 developing countries are covered by the Multilateral Convention on Mutual Administrative Assistance in Tax Matters¹⁵. There remain many countries, predominately developing countries, and especially least developed countries, which remain outside of this convention, and may do for some time as capacity is developed to meet the reciprocity requirements. As it currently stands this means that only 22/139 (16%) developing countries have access to information from the Isle of Man and none of the Least Developed Countries have any access. These countries therefore lack the access to information available to those with information exchange agreements.

Part of the challenge for developing countries is the requirements for reciprocity in information exchange agreements. While in the long term reciprocity is needed to make the system work, there ought to be a consideration for flexibility in the short term. Many of the developing countries, especially the least developed and lower middle income countries are unlikely to have significant information of use to other countries. As such options for transitional asymmetry should be explored, allowing developing countries to benefit from receiving information while they build up the capacity to reciprocate. This could prove especially useful as the move towards automatic information develops¹⁶.

Offshore centres such as the Isle of Man are perhaps especially well-suited to provide such asymmetry as the structure of the tax system in many offshore centres is such that they have very little requirement for information from other jurisdictions.

- iii. Even with effective information exchange there would still be problems and inefficiencies in the system. Without public access to the system there are two significant problems.
 - a. Cases of government corruption will remain unresolved. Where access to the information is restricted to the authorities it will be possible for investigations into abuse of power by those in political power to be restricted. Where public access is available then the public will be able to identify those in power behind shell companies and be able to demand action. Public access will not only reduce the risk of genuine government

¹⁴ See 11, especially section 3.3

¹⁵ http://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf

¹⁶ See http://www.christianaid.org.uk/Images/Automatic_information_exchange_briefing.pdf

corruption, it can also help to eliminate any inaccurate public assumptions or perceptions of corruption

- b. There are considerable benefits for the public and companies to be able to see who they are doing business with. Companies occupy a huge, and growing, part of our society - we buy from them, sell to them, work for them, invest in them and partner with them on a daily basis. Given their significance to the operation of our societies, it seems unjust that we currently have no right to know who is ultimately in control of companies. Even without taking into account justice issues, on a narrower and purely economic view, markets work at their best where there is perfect information, but where the true owner of a company (or other entity) in a market is unknown this denies other actors in the market information on which to base their decisions, and so is likely to lead to market distortion and inefficiency.

For these three key reasons Christian Aid is clear that the current regime in the Isle of Man is inadequate, and that it is only through the introduction of a public register of beneficial ownership information that this situation can be remedied.

2. *How should beneficial ownership be defined; for instance, should the FATF definition apply?*

The FATF definition focus on control is one that Christian Aid supports; control can be exerted in various ways and so it cannot necessarily be simply reduced to shareholding percentages. As regards to the information held by the registry we therefore believe it is important that the registry not only has the details of the beneficial owner, but also the details of how that control is exercised. This will enable proper transparency of both the person and the means of beneficial ownership.

3. *How do you think the introduction of a central registry of beneficial ownership would affect your business?*

N/A

4. *If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?*

As made clear in the answer to question 1 we believe that the registry should be made available to the public.

Making the register public will **maximise its utility**, both in terms of allowing all those interested to have access and also ensuring higher quality of information.

A public register will allow not only the full range of non-state actors with an interest to access the register, but also ensure easy access for the authorities of other countries.

This is especially important for developing countries; for them to be able to benefit and tackle corruption and tax evasion, they must be able to access the information held on the register. If it is public, then this will be a simple and easy process. Without public access, the process will be much more complicated, and costly. While there would be scope for developing countries to access information via information sharing agreements, there are serious concerns about relying on this method of access.

As already highlighted many developing countries, especially the least developed countries, lack information exchange agreements with the Isle of Man (out of 139 developing countries only seven have information exchange agreements with the Isle of Man, and only a further 15 are covered by the Multilateral Convention on Mutual Administrative Assistance in Tax Matters¹⁷)

- Even where information exchange exists, this would not provide the same level of benefits to developing countries as having a public register.
 - o There would be a significant increase in time to obtain information if a request has to be made, compared with accessing a register.
 - o If the information were required for tax purposes, then it is likely that before a request could be made for information from the register, a direct request would have to have been made to the company to satisfy the terms of treaties¹⁸. This would amount to giving the company a tip-off that an investigation was being conducted and likely compromise any investigation.
 - o In cases where government corruption is involved, it is highly unlikely that a request would be made. But with a public register, non-state actors could obtain information needed to challenge corruption, which would not be possible with private registers.
 - o The request system consumes significantly more resources; this results in fewer investigations being made possible by developing countries and also increased cost to the Isle of Man in having to respond to requests from developing countries. By having public access to beneficial ownership information, state resources can be better used by allowing investigations to proceed faster and restricting requests to when investigations are further advanced.

- The world is currently engaged in a significant move away from on-request information exchange, towards automatic information exchange. The principle

¹⁷ Data from the OECD Exchange of Information portal

¹⁸ Most tax information exchange treaties require 'all means available in its own territory' to have been pursued before a request will be accepted – see for example Article 19 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It is likely that this would be interpreted as requiring requests to have been made to the local representatives of overseas based companies before a request could be made for information from the register.

that authorities should have much greater and easier access to relevant information from other jurisdictions has been accepted at both G8 and G20 level. This is surely as necessary for beneficial ownership information as it is for other tax information, but it will not necessarily be covered by automatic information exchange¹⁹, so there should be an alternative way to ensure countries can access beneficial ownership information to the same, or better, terms that automatic information exchange would provide. Public registers are the only way to do this.

There are also wider benefits of allowing public access to a register. Businesses and investors would gain thorough access to information on their partners, investors, suppliers and customers. Citizens, journalists, NGOs and others in society would also have access to the information to hold companies to account. Companies occupy a huge, and growing, part of our society - we buy from them, sell to them, work for them, invest in them and partner with them on a daily basis. Given their significance to the operation of our societies, it seems unjust that we currently have no right to know who is ultimately in control of companies. The lack of transparency over the ownership of football clubs in the UK is a recent example of where civil society has had a clear interest in knowing who was ultimately controlling their football clubs, but was unable to access the information, not least from offshore jurisdictions²⁰. Indeed, the public antipathy for keeping corporate ownership secret is clear. In a poll conducted by ComRes for Christian Aid²¹ only 9% of the British public thought that company owners had a right to privacy.

Making the register public will ensure the quality of data is higher than if it is kept private. The registry institution itself, and the government agencies with access, are likely to have limited resources to monitor the quality of information. By making the register public, there will be many eyes looking at and using the information, increasing the chance that errors are spotted and fixed. It also provides the opportunity for those listed as beneficial owners to be able to see if they have been either inaccurately or fraudulently listed on the register.

Both access to and quality of the information are vital to ensuring that a register of beneficial ownership is able to provide for the increase in transparency and trust envisaged in the discussion document. A public register is clearly the best route by which to achieve this. This is acknowledged by a wide range of stakeholders, not just civil society. For example the following have expressed support for public registers of beneficial ownership: the Institute of Directors²², the World Economic Forum²³, the

¹⁹ E.g. Companies may not have bank accounts or be registered for tax purposes in the countries where they are registered.

²⁰ <http://www.christianaid.org.uk/images/blowing-the-whistle-caweek-report.pdf>

²¹ <http://www.christianaid.org.uk/images/christian-aid-beneficial-ownership.pdf>

²² http://www.telegraph.co.uk/finance/yourbusiness/10246151/Government-has-anti-enterprise-undercurrent.html#disqus_thread

²³ <http://reports.weforum.org/global-agenda-council-2012/councils/organized-crime/>

European Bankers Federation²⁴, the Extractive Industries Transparency Initiative²⁵, the chair of the CBI tax committee²⁶ and over 20,000 businesses around the world²⁷

To ensure the maximum utility of a public register it should conform to Open Data standards. This means a register that is simple and free to access and which provides machine-readable data that can be effectively utilised by the full range of stakeholders who wish to use the data. It is only by ensuring that the public are able to effectively use the register that it will in practice be a public register.

Making company registry information, including new information on beneficial owners, open data appears to be entirely consistent with the G8 Open Data Charter. Many countries including the UK and G8 have acknowledged, there are clear benefits to open data - 'access to data allows individuals and organisations to develop new insights and innovations that can improve the lives of others and help to improve the flow of information within and between countries'²⁸.

Those benefits are clear with respect to access to the register.

- Open data will make it easier for developing countries, not only by providing quick and simple access to useable data but also by facilitating the development of tools for capacity-limited authorities to use the data systematically. The more countries adopt open data registers, the more this benefit will be realised.
- Other institutions (and individuals) who could benefit from access to the register would similarly benefit and tools could be developed to maximise the gains from access – for instance in the due diligence that banks are required to undertake on customers.
- 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.

The Isle of Man has an Open Data score of just 445, less than half that of the UK, and only slightly higher than Russia (425), China (415) and Indonesia(415)²⁹. Adopting Open Data principles in a public register is a perfect opportunity for the Isle of Man to begin to improve this performance.

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?*

²⁴ http://www.ebf-fbe.eu/uploads/EBF_001279-2013%20-%20EBF%20Position%20on%20the%20EC%20Proposal%20for%20a%204th%20EU%20AML%20Directive.pdf

²⁵ <http://www.trust.org/item/?map=eiti-board-raises-bar-on-global-standards-to-report-natural-resource-revenues>

²⁶ <http://www.ft.com/cms/s/0/7f1d3e2a-d5e6-11e2-9dbd-00144feab7de.html>

²⁷ http://www.avaaz.org/en/business_signon_letter/

²⁸ G8 Open Data Charter - <https://www.gov.uk/government/publications/open-data-charter>

²⁹ <https://index.okfn.org/country>

It is important that exemptions are not created that would create potential routes for structures to continue to be misused and abused by unscrupulous individuals. To this end, we recommend that *all* legal entities that can be incorporated in the Isle of Man should be included in the register.

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?*

Some have sought to raise concerns that the public disclosure of individuals being beneficial owners of companies may place individuals at risk, especially where the company they own is engaged in high risk sectors such as animal testing. This risk does not seem to be as great as anticipated. In many countries (the UK for e.g.) the directors of companies already have to be disclosed, with a very limited exemptions regime. The directors are arguably at as much risk as the owners of the company, for those seeking to target the company, so it would appear that the threshold to allow exemptions for certain individuals ought to be on a similar basis to the exemptions that are granted to a limited number of directors in the UK.

Should any exemption system be introduced we would recommend the following features:

- Exemptions should have to be applied for – those seeking to abuse company structures are much less likely to actively apply for an exemption and risk scrutiny.
- The register should make it clear that an exemption has been granted, and on what basis.
- There should be a process whereby the exemption can be challenged by those with a legitimate interest in accessing the information.

7. *Who should be responsible for reporting the beneficial ownership of a company?*

There are several options available to the Isle of Man in this regard, and it may be useful to consider not just who is responsible for reporting the beneficial ownership information but also who has obligations to report and collect information.

We believe that Companies should have an obligation to collect information on their beneficial ownership, and to maintain a record of this information. Companies need to be sufficiently empowered to collect this information from their owner(s). However we also believe that beneficial owners should have an obligation to declare their interest in a company.

There should be sufficient penalties for individuals that do not disclose their interest in a company or submit fraudulent information. These should also apply to companies that provide fraudulent information.

Given the use of both company service providers and nominated officers in the Isle of Man there are some further potential options. It should certainly remain the case that, where used, company service providers are required to do due diligence and maintain records on the beneficial owners. Given the extensive use of CSPs it may therefore be practical for the CSPs to be responsible for reporting the beneficial ownership information to the register, and so to effectively utilise the current system. Where a CSP was not used the nominated officer should be required to provide the information. This would appear to be the most efficient way of transitioning from the existing system to a register system as those who are already supposed to have the beneficial ownership information accessible should be in a position to provide it to the register quickly and efficiently.

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? What would be the most efficient way for the company to report the information to a central registry?*
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? What would be the most efficient way for a regulated entity to report the information to a central registry?*

As detailed in the answer to question 7 above it may be that this is the most efficient way forward for the Isle of Man, indeed because beneficial ownership information is already supposed to be held, it should be relatively simple, and low cost, to provide the information to a public register. There are obviously potential concerns that the registered entities may not undertake sufficient due diligence to ensure the accuracy of the information. By also creating an obligation on the company to collect the information and on the beneficial owners to provide it this should help mitigate those risks. The most efficient way to report the information would be for it to be included in the information when the company is incorporated and then to follow the pattern that currently exists for directors, where the updated information should be provided once the change has taken place.

10. *Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?*

Yes, the European Banking Federation, for example, has stated how public registries would assist with their due diligence obligations³⁰. To enable due diligence to be properly carried out we believe all the information highlighted in our answer to question 13 should be provided.

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?*

³⁰ http://www.ebf-fbe.eu/uploads/EBF_001279-2013%20-%20EBF%20Position%20on%20the%20EC%20Proposal%20for%20a%204th%20EU%20AML%20Directive.pdf

We believe that public access would certainly help improve the accuracy, as many eyes would have the opportunity to view the information and would help spot errors and omissions. Through public access financial intermediaries would of course also have access and would have the opportunity to be part of the process of improving the accuracy of beneficial ownership information.

12. Who should be responsible for maintaining and controlling access to a central register?

The companies register would appear to be the most sensible institution for this, similar to the plans for Companies House in the UK to take the responsibilities there.

13. What information should a central registry collate with respect to beneficial ownership?

The registry aims to be able to identify who is really controlling companies. Sufficient information needs to be collected to ensure that this aim is met. This requires collecting sufficient information to be able to distinguish between other people with the same name, to provide a means of contacting the beneficial owner and to enable users to understand how control is being exercised.

To this end we would recommend the following details be required to be submitted:

- Name
- Date of birth
- Occupation (this could be an optional field, as it currently is for directors in the UK),
- Nationality
- Home address – and if it is different – a business address. As with the current rules for the disclosure of information on directors in the UK, it could be decided to keep information on the beneficial owner's home address confidential.
- Their means of control over the company, which should include the names of any intermediate companies or individuals and the proportion of their shareholding.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

We don't see the need for there to be significant protections, beyond those already mentioned in this submission, to protect the data. The Companies Registry would appear to be well placed to maintain the register. We would be concerned about having too restrictive access to a public register as it may restrict the use of it; given we see potential uses for those in developing countries there are potential problems with placing either a monetary or residence barrier to access. Similarly we call for the register to be Open Data, and to enable the data to be machine readable so that it can be used effectively. In designing a register we would encourage close collaboration with those who wish to use the register to ensure the result is fit for purpose.

15. *Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?*

Changes should be disclosed when they occur, this will ensure the accuracy of the registry when requests are made of it.

16. *How much time should be given for disclosure of beneficial ownership to a central registry?*

We believe that the information should be both public and current, therefore we believe that changes should be disclosed when they occur. 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.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?*

As indicated above we believe that the register should be made public and this would be the best way to access the information. Even with a public register however 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 to this information. As indicated below relying on automatic exchange of information does not provide a quick and simple solution in this regard.

Should the Isle of Man decide against making the register public then there is clearly a need for such a provision as this. We do have concerns that the conditions should not be such that it is difficult for developing countries to obtain access to such a site; the conditions should be proportionate to the risk of data leaks³¹, and compliance with conditions should be on objective rather than subjective conditions³². If developing countries were still denied open access to such a site processes should be put in place for rapid access on request to be available (either directly through Isle of Man authorities, or through a third country that did have open access to the site).

18. *Do you think that any concerns 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?*

³¹ Given we believe the data (or a majority of it at least) on such a site should be public the risks to leaks are likely to be small

³² It should be noted that many developed countries have had recent scandals on data loss and so the assumption that appears to exist that developing countries are those most likely to fall to comply with confidentiality may be more subjective than objective.

It is unclear to us that there is reason for such confidence.

The main challenge for developing countries with a reliance on AEOI as a solution is that it is unlikely that very many developing countries will be party to AEOI for some time. Christian Aid and many other NGOs have been making the case for ways to be sought to ensure that developing countries can benefit from AEOI as quickly as possible³³, and we hope that these calls will be heeded, but it remains the case at the moment that many developing countries are many years away from being able to participate in AEOI.

Beyond this there is the challenge that AEOI covers information about accounts from financial providers, rather than from a company register or company service providers. This would seem to mean that it will only provide details on accounts held in the Isle of Man, rather than all companies registered in the Isle of Man.

It also appears from the common reporting standard that the information to be exchanged will not include details on how the beneficial ownership is exercised, this is a key piece of information we are calling to be in the register, and if this is not going to be part of the information exchanged it could make it very difficult to effectively take action against individuals whose control is through complex structures.

It is also notable that one of the arguments against AEOI for developing countries has been that it will generate a lot of data with which developing countries will struggle to deal. Given this it seems strange that there is discussion to contrast a vast amount of data in public registers with more manageable data through AEOI. With Open Data³⁴ public registers it will be possible to create programmes that will be able to interrogate the data on public registers effectively. As the data will be public it will be much easier for such programmes to be created collaboratively and so reduce the burden on individual countries to devise their own custom systems as is likely for data received confidentially through AEOI.

Furthermore while AEOI data may be effective in providing details on an annual basis³⁵ on individuals that can then be interrogated against tax returns, it is clearly significantly less effective than a public register in enabling rapid investigation into a foreign company undertaking activities. The speed and ease of access differential is clear. With a public register if enquires are sought on a company the beneficial owner, and how that control is exercised can be obtained immediately through an online search. In contrast relying on AEOI would require waiting for up to a year to receive information from other jurisdictions. If the company had a bank account in the same jurisdiction where the company was registered then a search of data received via AEOI should reveal the beneficial owner (assuming the beneficial owner is a national/resident of the country seeking to make enquiries), if the bank account is held in another jurisdiction it would then require a search of all the AEOI data received from

³³ See http://www.christianaid.org.uk/Images/Automatic_information_exchange_briefing.pdf

³⁴ See answer to question 4 above on the characteristics of an Open Data register

³⁵ The common reporting standard states annual exchange of information

all jurisdictions to find the account for the foreign company. This is clearly a much more time consuming and laborious process than a simple online search.

The final problem with relying on AEOI data is its use will be restricted to tax matters, and information will only be provided on nationals/residents of the receiving country. Both authorities and other stakeholders in a society can have legitimate concerns beyond tax that to be addressed require the knowledge of the beneficial owner (e.g. corruption concerns), but it is likely AEOI data will be restricted in its availability for such uses. Similarly there can be legitimate concerns over foreign nationals that are beneficial owners in foreign companies operating in a territory (again corruption is an example), but as the beneficial owners are foreign nationals/residents there will be no AEOI data provided.

For all these reasons we believe that 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.

Conclusion

To conclude, Christian Aid reiterates the following key points:

- 1. The register should be public**
- 2. A public register is the only way to ensure the many benefits can extend to all the countries where Isle of Man registered and administered companies are operating**
- 3. Automatic Exchange of Information is not an adequate alternative to a public register**
- 4. The information required, and provided, needs to be up to date and sufficient to meaningfully identify the beneficial owner**
- 5. A public register is an Open Data register**
- 6. Exemptions for certain individuals requires a careful balance of the public interest**
- 7. The costs to the Isle of Man in providing a public register would be low, and benefits high**

We are encouraged that the Isle of Man is undertaking this consultation, and we welcome the statement of Chief Minister Allan Bell, alongside other leaders of the Crown Dependencies, that 'tackling tax evasion and fraud is a global responsibility in which we will continue to play our full part'³⁶. We hope this support will extend to Prime Minister Cameron's call on his G8 agenda that he hoped 'the whole world will move towards public registers of beneficial ownership'³⁷. There is a real opportunity to

³⁶ <http://www.gov.gg/article/107970/Crown-Dependencies-support-G8-initiative-on-tax-trade-and-transparency>

³⁷ <http://www.bbc.co.uk/news/uk-politics-22915954>

move forward on this issue now, but it will require leadership and political will. There is an opportunity for Jersey to lead and show the political leadership that has been acknowledged as one of the main barriers to creating a public register³⁸.

A survey of G8 countries, the UK Overseas Territories and Crown Dependencies showed that 2013 built some very positive momentum towards public registers, with many jurisdictions either committing to, or considering, such a move³⁹. Should the Isle of Man decide to move forward with a public register it would help lock in this progress and help give other jurisdictions the confidence to join. However should the Isle of Man after having decided to consult on this issue decide to pull back from committing to a full public register, then it will negatively impact the chance that other countries will even consider the option for many years to come. This is why the argument that the Isle of Man should not adopt a public register until other countries have committed is especially dangerous, without some countries willing to lead others will not follow. We support the aim of a global standard, but the way to get there, fast enough to help those suffering with the impact of illicit financial flows now, is not to wait and move at the pace of the slowest, but to move quickly, bring more to a new gold standard that will bring the necessary changes faster.

Christian Aid is committed to working with the all other countries stakeholders with an interest in improving the transparency and trust of businesses in all countries. As such, we would be happy to further discuss any of the points raised in this submission and to support the development and introduction of a public register of beneficial ownership in the Isle of Man in any way we can.

³⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0021:FIN:EN:DOC> page 82

³⁹ See http://www.christianaid.org.uk/images/company%20ownership%20paper_download2.pdf for a summary.

Phillips, Carlos

Acknowledged

From: David McNair <david.mcnair@one.org>
Sent: 26 September 2014 12:27
To: Phillips, Carlos
Cc: David McNair
Subject: Consultation on the transparency of the beneficial ownership of companies
Attachments: ONE response to Isle of Man consultation on beneficial ownership.pdf

Dear Mr Phillips,

Please find attached a submission on behalf of The ONE Campaign to the Isle of Man's consultation on the transparency of the beneficial ownership of companies.

Many thanks,

David

David McNair | Director, Transparency and Accountability
ONE | +44(0)20 74346931 | +44 (0) 7557265484
@david_mcnair S: davidmcnair



Response to Isle of Man consultation on Beneficial Ownership Information

The ONE Campaign is campaigning to end the corruption in developing countries that results in as much as \$1 trillion being syphoned from these countries every year. Developed and developing countries face criminals who steal, engage in corruption and distort a fair business environment. Too often these criminals can cheat legitimate businesses, evade the law and hide their illicit funds through anonymous shell companies.

We welcome the Isle of Man's consultation on whether to create a public register of beneficial owners. We welcome Chief Minister Allan Bell's statement, alongside other leaders of the Crown Dependencies, that 'tackling tax evasion and fraud is a global responsibility in which we will continue to play our full part'.¹ Prime Minister Cameron made it clear in his leadership of the G8 agenda that he hopes that 'the whole world will move towards public registers of beneficial ownership', now is a chance for the Isle of Man to support the UK in this leadership.

Legitimate businesses themselves are often victims of shell companies established purely for the purposes of defrauding other businesses and citizens. Businesses and citizens deserve a higher degree of confidence in the authenticity and ownership of the businesses they may interact with.

It is only through making the registry public that its full benefits will be realised. These benefits are many, and will occur in the many countries where registered companies operate, including: reducing the cost of law enforcement investigations, improving banks' ability to carry out checks on their customers; giving businesses information on their partners, suppliers and competitors; allowing many eyes from around the world to see who really owns and controls the companies operating in their societies, to check for any inaccuracies and to root out corruption.

A public registry should be established in close dialogue with all stakeholders, to ensure that the system is as simple and user friendly as possible, and provides reliable and accessible open data to all who wish to use it.

We strongly urge the Isle of Man government to make the register of company ownership public, and to advocate for such registries in other countries. This will ensure that those who seek to abuse the privilege of company ownership for secrecy purposes are left with nowhere to hide.

¹ <http://www.gov.gg/article/107970/Crown-Dependencies-support-G8-initiative-on-tax-trade-and-transparency>

We also believe that information on the beneficial ownership of trusts, which can equally be used to hide the legal identities of criminals and tax evaders from law enforcement authorities, should be made public. While it is beyond the scope of this consultation, not addressing beneficial ownership transparency of these legal vehicles undermines the fight against corruption.

Signed

David McNair

Director of Transparency and Accountability

The ONE Campaign

Acknowledged: 26/09
C.P

Phillips, Carlos

From: [REDACTED]
Sent: 26 September 2014 14:01
To: Phillips, Carlos
Subject: Consultation - Beneficial Ownership of Companies
Attachments: Beneficial Ownership Consultation Submission.docx

Carlos,

Please find attached my submission in response to the above consultation.

Please note that this response is a personal one and not on behalf of any organisation.

Please acknowledge safe receipt by return email. [✓] Thanking you in anticipation.

Regards

Dennis Aram

Consultation on the Transparency of the Beneficial Ownership of Companies

- 1) *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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?*

The current system is inadequate in certain regards. Simply requiring Corporate Service Providers (CSPs) to know who the beneficial owners are, and to inform the authorities if requested, lacks openness and public accountability. However, I think we need to concentrate on what is of benefit to the people of the Isle of Man, for example consumer protection, rather than trying to put the world to rights. I would prioritise allowing public availability of **ultimate** beneficial ownership information (note the word **ultimate**) in the following order: -

- a) Companies trading in the Isle of Man.
- b) Companies trading outside the Isle of Man.
- c) Non trading companies, i.e. companies having no beneficial interest in a trading company.

In view of all the various arguments that will be put forward by CSPs and others against regulation (including some legitimate concerns), e.g. too complicated, unnecessary, danger of personal kidnap or extortion, etc; I think that by concentrating on the first group as a priority and keeping things simple, the chances of a speedy and satisfactory outcome would increase.

I really can't see why anybody in the Isle of Man should have any objection to companies trading in the Isle of Man having to disclose their ultimate beneficial ownership. I think it is reasonable for a consumer buying goods or putting a deposit down for a new house; for a contractor undertaking work for another company; or for someone considering working for an employer, to know exactly who ultimately they are dealing with. For example, would people want to have got involved with a company that Graham Lacey was involved with (very pleasant gentleman that he is), given the information about his past history on the internet.

With regard to the second group, i.e. companies trading outside the Isle of Man, I think that this is more a matter for bi-lateral or international agreement. Why should consumers outside the Isle of Man have that protection against Isle of Man companies when Isle of Man consumers don't have that protection against foreign companies? Therefore, I think the emphasis should be to press for international agreements, e.g. through the EU, G8 and/or G20; and there must be no exemptions for Luxembourg, Lichtenstein or Delaware!

With regard to the third group, I am not sure what use or business it is of the ordinary citizen to have that information. Obviously, if the company has beneficial ownership rights in relation to a trading company, they will be in the first or second category. With regard to matters of tax avoidance and proceeds of crime, those are issues for the applicable tax and police authorities and I think effective anti money laundering and anti corruption enforcement is much more relevant and effective. This is what we should be pressing for internationally. I also agree with the stance of the Law Society of England and Wales; which argues that 'it is a fundamental principle of English law and natural justice (which would also apply in the Isle of Man) that people should be entitled to privacy, unless there is an overriding public interest issue that requires otherwise'.

- 2) *How should beneficial ownership be defined; for instance, should the FATF definition apply?*

Beneficial ownership is already defined in the Companies (Beneficial Ownership) Act 2012, which makes it clear that it is the **ultimate** beneficial ownership that matters and I would suggest that this is

the definition that should apply as it is already enshrined in Manx law. Under the Companies (Beneficial Ownership) Act 2012, it is the identity of the ultimate beneficial owner that the Nominated Officer (which must be specified on company Annual Returns due from September 2013) must be aware of, but it doesn't currently need to be disclosed. The Annual Return is the obvious place for that information to be given, presumably with an additional sheet for each company ownership layer until all ultimate beneficial owners are specified.

3) *How do you think the introduction of a central registry of beneficial ownership would affect your business?*

Not Applicable

4) *If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?*

It should be available to all but, for the reasons given in answer to Q1, only initially for companies trading in the Isle of Man.

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?*

All companies trading in the Isle of Man. I will give two examples to illustrate the issues involved: -

- a) In its latest Annual Return made up to 08/01/2014, Heritage Homes Ltd had two shares in issue, one held by Daniel Tynan and the other by Dandara Holdings Ltd. If my proposal from Question 2 were adopted, there would need to be an additional shareholder sheet in the Heritage Homes Annual Return to cover Dandara Holdings. Dandara Holdings' Annual Return made up to 23/04/2014 specifies 100 shares in issue, one held by Gary Leeming and the other 99 by Pulley Investments S.A. c/o a CSP in Panama - and there the beneficial ownership trail currently ends! I think this is wrong. If a trader wants the protection of limited liability, which is reasonable enough, there should be an obligation of disclosure. From this example, it isn't excessively onerous to add an additional sheet to the return for each layer of holding company. On most occasions, the filing of an Annual Return is a very simple process, usually just changing a few digits from the previous year's return. In the case of a nominee shareholder, the same process could be followed as with a corporate shareholder. Matters could be more complicated in the case of trustees, for example trustees of a company pension scheme or executors of an estate. Would it be necessary to list every employee and their spouse/issue that had a potential beneficial interest in the pension scheme and every residuary legatee in the case of the estate? Maybe some thought needs to be given to that. Matters could get complicated with a company like the Sefton Group, which has a few hundred shareholders. But apparently the Companies (Beneficial Ownership) Act 2012 does not apply to a public company. But surely this would leave a vacuum. Should there not be an ownership threshold of say 1% or 3% above which full ultimate beneficial ownership (not just beneficial ownership) should be disclosed?
- b) The second example relates to 2006 Act Companies, or Manx Vehicles, using the example of the Isle of Man Steam Packet Company Ltd. As previously stated, for the reasons given in answer to Question 1, I feel strongly that if a company is trading in the Isle of Man, beneficial ownership information should be in the public domain; but in the case of 2006 Act companies, their Annual Returns do not contain shareholder information. This is something that needs to

be changed. The IoMSPCo is (or was) controlled through a complex web of companies and a few years ago, the companies re-registered as 2006 Act companies, so since then the public do not know by who or how it is controlled - and Government has been very tight-lipped. We do know that in the past, extensions to the User Agreement resulted shortly afterwards by sales of the company and/or its parents at greatly increased prices. We also know that those prices, and the amount of 'goodwill' in the balance sheet as a result of the User Agreement are well in excess of the cost of 'breaking' the User Agreement (i.e. by building an additional link-span) so the opportunity for bribery and corruption is enormous. I understand from media reports that the Government has been talking to the IoMSPCo about extending the User Agreement again! From memory, I thought that the IoMSPCo were ultimately controlled by Banco Espirito Santo; I also thought that it was announced a while ago that their debts had been restructured and/or refinanced and/or reduced, but there is no detail in the public domain. It was also in the media very recently that Banco Espirito Santo are still in major financial difficulty and are being restructured into good and bad banks. If that isn't an argument for greater transparency in such matters as concerning the Island's vital 'lifeline', I don't know what is.

- 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?*

I would be concerned about exemptions for some people and not others and how that may be abused. I suggest that rules should be established that can be applied to all people without exceptions; also noting that 'it is a fundamental principle of English law and natural justice (which would also apply in the Isle of Man) that people should be entitled to privacy, unless there is an overriding public interest issue that requires otherwise'.

- 7) *Who should be responsible for reporting the beneficial ownership of a company?*

The company itself and its directors should have joint and several responsibilities for reporting. The reporting itself may be done through a CSP, the Nominated Officer, the Company Secretary or a Director.

- 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? What would be the most efficient way for the company to report the information to a central registry?*

Yes - the company should be given such statutory powers, including the power to disenfranchise shareholders that refuse to disclose their ultimate beneficial ownership. The Annual Return would be the simplest and most cost-effective way for the company to report the information to a central register. The company would need to add additional sheets to the basic Return for each company ownership layer, going back to the ultimate beneficial owner.

- 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? What would be the most efficient way for a regulated entity to report the information to a central registry?*

See answers to Questions 7 and 8, above

10) Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

It would be largely irrelevant for the purposes of CDD. The financial intermediary would request necessary information from the potential new client and if they refused, the intermediary would not deal with them. If the information was supplied, the intermediary would also collect other information from the public domain and using professional knowledge check and cross reference the information supplied for consistency and credibility.

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?

Probably not.

12) Who should be responsible for maintaining and controlling access to a central register?

The Isle of Man Company Registry would be the logical choice.

13) What information should a central registry collate with respect to beneficial ownership?

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. See also answer to Question 8.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

See answers to Questions 1, 6 and 12. 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.

15) Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

To minimise cost, it would be reasonable to report with the Annual Return only.

16) How much time should be given for disclosure of beneficial ownership to a central registry?

See answer to Question 15.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

To a certain extent, as it could speed up the process, but there would need to be safeguards with regard to the privacy of the individual(s) concerned. For example, 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.

18) Do you think that any concerns 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?

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 different in kind and subject to the public interest in certain situations, as previously described.

Dennis Aram 26 September 2014

N.B. – This response is a personal one and not on behalf of any organisation

Phillips, Carlos

From: lesley.corlett@barclays.com
Sent: 26 September 2014 14:57
To: Phillips, Carlos
Cc: lesley.corlett@barclays.com
Subject: Consultation on the Beneficial Ownership of Companies

Acknowledged:

Dear Mr Phillips,

Barclays would like to thank you for the opportunity to provide feedback on the above consultation. Having reviewed the consultation paper I can confirm on behalf of Barclays that they have no comments to make on the proposals therein.

Kind regards

Lesley

Lesley Corlett | Vice President | PCB Compliance
Tel + 44 (0) 1624 684584 | Blackberry + 44 (0) 7624 201106 | Email: Lesley.Corlett@barclays.com
Barclays, Eagle Court, 25 Circular Road, Douglas, Isle of Man, IM1 1AD

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Phillips, Carlos

Acknowledged:

From: Cubbon, Karl
Sent: 26 September 2014 15:14
To: Phillips, Carlos
Subject: Consultation on beneficial ownership
Attachments: 2014-09-26 Response to consultation on beneficial ownership.pdf

Dear Mr Phillips

Please find attached the DHA response to the above consultation. Please do not hesitate to contact me if you have any queries regarding this response.

Yours sincerely

Karl Cubbon
Legislation and Policy Officer

Department of Home Affairs
Rheynn Coashyn Sthle
"Homefield", 88 Woodbourne Road, Douglas, Isle of Man, IM2 3AP

Tel: (01624) 694323 E-mail: kari.cubbon@dha.gov.im



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www.gov.im/dha

Contact: Kari Cubbon

26 September 2014

Dear Mr Phillips

Re. Consultation on beneficial ownership

Thank you for including the Department in the circulation of the above consultation, to which this letter is a response. In drafting this letter I have sought the views of senior officers from the various Services within the Department before preparing this response (in blue) to the questions raised in the Consultation document. The response reflects the particular concerns and perspective of the Financial Crime Unit of the Isle of Man Constabulary.

1. 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?

Whilst the concealed nature of the information held must assist to some degree in "hiding" sensitive material from criminals, it also obstructs legitimate queries being raised by law enforcement agencies (LEAs) seeking ultimate beneficial ownership (UBO) data for domestic or international use, without re-course to court orders.

Do you think a central register would further prevent the criminal use of companies?

Whilst on its own a central register wouldn't prevent the criminal use of companies, it would set data standards and allow for cross referencing and analysis of that data, and provide for legitimate standardised access arrangements.

What effect would making the register public have?

An increase in public confidence in the transparent nature of financial regulation and conduct of business on the IoM, and greatly assist LEA's in targeting court orders or other agreed methods of applying for data needed to further investigations.

2. How should beneficial ownership be defined; for instance, should the FATF definition apply?

As FATF is the standard MONEYVAL benchmark us against, this seems the most appropriate.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

The centralising of a register of UBOs would greatly assist in our business of investigating crime, ensuring that applications or orders were going to the correct, single, recipient.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

A "gatekeeper" would be required. The decision as to levels and grounds for access would need to be the subject of further consultation. There are risks to have a truly open register, not least of which would be the fraudulent selling of companies or shares. However, it would seem reasonable to allow local regulators and police to have unrestricted access in furtherance of their core duties.

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?

All companies registered in the IoM. The difficulty will be where the UBO is outside our jurisdiction; how can they be compelled to disclose their identity? A further question must be, does the IoM refuse to register any company, IoM or foreign, if the UBO isn't disclosed?

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?

No view.

7. Who should be responsible for reporting the beneficial ownership of a company?

The person registering the company. Such responsibilities may fall to a Money Laundering Reporting Officer (MLRO) type role within the registering organisation, with the regulated responsibilities such a role brings.

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? What would be the most efficient way for the company to report the information to a central registry?

It would be easier for the compulsion to come from the requirement that without a listed UBO, there will be no registration. Thereafter there would be no need for companies to regulate on behalf of the Government. The most efficient way would be on line reporting, in much the same way as regulated entities currently interact with the FSC, GSC and IPA.

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?

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.

What would be the most efficient way for a regulated entity to report the information to a central registry?

On-line, as per the response to question 8 above.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence?

Undoubtedly, 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.

What information would need to be available?

The same information as is required for customer due diligence (CDD) in the compliance function.

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?

No view.

12. Who should be responsible for maintaining and controlling access to a central register?
Companies Registry within the FSC.

13. What information should a central registry collate with respect to beneficial ownership?
The same as is required for CDD within the compliance function.

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?

If it is made truly public, it is difficult to see how the information contained therein wouldn't be vulnerable to use for criminal purposes; this is a risk that true transparency brings.

Who should be responsible for maintaining and controlling access to a public register if it were allowed?

Companies Registry within the FSC.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

Changes should be disclosed as they occur; companies may also wish to consider if they should have a review period whereby they check with the registered UBO that they remain the UBO, much as CDD is undertaken on a risk basis.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

As it is suggested this is done on-line, the time should be minimal, measured in days or even 48 hours.

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 information to domestic and foreign investigators than the current system of access on request?

Inevitably this must be the case; additionally, 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.

What additional protections or checks and balances could apply?

Oversight by a gatekeeper or authorising officer, with supervision by a further independent person or small body, much like the Surveillance Commissioner under the Regulation of Surveillance, etc. Act 2006. If a gatekeeper is envisioned, then the controls will have to be fairly strict; as above, at the moment we rely on court orders, and to move from this position to a more relaxed regime is likely to be resisted.

18. Do you think that any concerns 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?

No view.

I trust that you find this response of assistance, if you have any further queries please do not hesitate to contact me.

Yours sincerely



Karl Cubbon
Legislation and Policy Officer

Phillips, Carlos

Acknowledged:

From: Richard Quine - Cayman National (Isle of Man) <Richard.Quine@cnciom.com>
Sent: 26 September 2014 15:08
To: Phillips, Carlos
Subject: Consultation on the Transparency of the Beneficial Ownership of Companies

Dear Carlos

In response to your consultation document I submit the following views on behalf of Cayman National Bank and Trust Company (Isle of Man) Limited

First of all a general observation. We were surprised that the 'list of direct consultees' included the IOM Trade Union Council and the Positive Action Group, but not the FSC, ACSP, STEP, ICSA etc. This is probably inadvertent, but could suggest a bias in approach. In this regard, We are also concerned that many of the questions posed on pages 15 onwards are operational issues; asking such questions suggests that a decision has already been taken in this regard. The way the consultation has been undertaken appears disconcertingly predicated towards a preconceived outcome. Notwithstanding this concern we have reviewed the document with an open mind and in the spirit in which we believe it was intended

Our strategic view is that for the Isle of Man to take any approach in this area which would put it on a faster or different track than its immediate competitors would be significantly negative for the entire finance sector, fiduciary in particular. Of persuasive support in this regard, we note that (para 34) there is no compulsory requirement in the FATF recommendations for a central register of beneficial owners, and (para 61) that "no public registry yet exists anywhere". The Isle of Man should not be taking the lead on this.

In specific response to the questions from page 15 onwards:

1. a) How effective is the current position?: we suggest that in situations where licensed TCSPs 'control' the activities of such companies, the regime is very effective already, given in particular the personal fiduciary (and other) risk being run by the employees of such TCSPs.

b) Would a central register prevent criminal use?: it is unlikely that it would to any great extent, but it might help in its detection.

c) What effect would making register public have?: if in isolation, 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. There would also likely be a proliferation of fairly simple arrangements which would be used to circumvent any such measures.
2. See below - we would propose that the same definition as is used for FATCA would be preferable.
3. If a public register, then we would expect our business to be impacted negatively, unless similar measures were being introduced across all our competitor territories, and in the same timeframe
4. The most acceptable solution would be to have additional fields against each company's data record at the companies registry, setting out for each beneficial owner that information collected for FATCA purposes. This info would be provided - online - by the CSP or by the nominated agent under the beneficial ownership legislation, and would only be available to that person, to the companies registry and to the financial crime unit.
5. Logic would suggest IOM companies and those on the F register; but if this measure is not introduced across all territories, the number of F register companies would probably decline as company administration was moved elsewhere.
6. In broad terms we would say no. There may be a case for exempting certain wholly charitable companies which we have been established by wealthy philanthropists for example and who may not want or need to have their involvement exposed. Overall it would likely that any exceptions could be open to abuse and may undermine the purpose of a public register
7. As per the Companies (Beneficial Ownership) Act provisions.

8. First question - from our perspective, given that TCSP's are already required under the FSC's Rule Book and the AML regime to 'know their customer', we do not see the need for any additional powers. Second question - see above
9. First part - see above - the regulated entity is already required to know who is the beneficial owner(s), and we do not see why such would affect the accuracy of the information held, which should be no less reliable. Second part - see above -online and by way of additional fields on each company's register record.
10. This would depend upon whether associated regulations allowed them to place reliance on this information. In our view it should not be available to them
11. No. Regulated TCSP should have accurate information which would simply be duplicated in the Register.
12. The Companies Registry, as currently.
13. See above - this should be linked to information already collated for FATCA purposes. There may be a case for not making addresses available if release of such information could cause a risk to person
14. Simply, it should not be made public. There is a very real danger than information might be trawled and used for criminal purposes, which aside from the normal and proper privacy aspects, supports the rationale for not making the information public. If such a Register was to exist then control should be in the hands of the Companies Registry
15. To help to reduce bureaucracy it would be preferable for it be submitted as part of an annual return. The impact of this would be that the Register may not be 100% accurate
16. For a regulated TCSP this information should be available at the time the company is established (or transferred to the client if a shelf company is used) and so reporting of beneficial ownership should be done alongside any other Company Registry filings. If a time limit is required this should be no more than 30 days
17. We simply don't see the need - those countries which require automatic exchange of information will be able to achieve this goal through the CRS. Information should not be available to other foreign tax authorities unless and until they have entered into appropriate treaties/other agreements with the IOM.
18. This depends on whether the information is disclosed to the public or not. Some information will not be communicated via the CRS or the FATCAs. FATCAs will not, for example, capture most trading companies

I should re-iterate our overall view that the Isle of Man should not take any action in this area which would adversely impact our competitive position

We would be happy to answer any questions which you may have

Regards

Richard

Richard Quine
Compliance Manager

Email Richard.Quine@cnciom.com
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Phillips, Carlos

Acknowledged:

From: Rob Cannell <rob.cannell@665665.com>
Sent: 26 September 2014 16:11
To: Phillips, Carlos
Subject: Transparency of the Beneficial Ownership of Companies
Attachments: Transparency of the beneficial ownership of companies (submit).docx

Dear Carlos

Please find attached a submission for the above named consultation.

Regards
Rob

Rob Cannell

Integrated-Capabilities Ltd
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Directors: P K Perry, N A Z Bowrey, K J Perks, R A Cannell, A M Dawson

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**Integrated
Capabilities**

Cabinet Office
Government Office
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Your ref:
Our ref:

26 September 2014

By email: Carlos.phillips@gov.im

Dear Sirs

CONSULTATION ON THE TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES ("THE CONSULTATION")

In response to this consultation we have made a brief submission to the Isle of Man Association of Corporate Service Providers. We also considered it appropriate to make a more detailed response directly to you.

We are against a central register and even more strongly against third party/public access and the Isle of Man Government committing us to an international standard that does not exist.

This consultation seems to be in a format which is geared to how a central registry will operate rather than should we do it.

We are very concerned that the Isle of Man Government seems intent on acting out of step with the Island's competitors and placing the Island at a major commercial disadvantage by pursuing a central registry on beneficial owners (however they may be defined) for third parties.

We believe that clients with legitimate business have a right to confidentiality, without fear of how their details may be used by authorities with differing agendas, or by lawful and unlawful organisations, press, family or the general public and do not believe, nor would our clients believe, that sufficient safeguards would be in place. We would consider reorganising and establishing offices in more favourable jurisdictions and building upon presences we already have overseas in order to protect our Group if we cannot operate within a level playing field from the Isle of Man.

You may be aware of the UK Government's Department for Business, Innovation & Skills response report on Transparency & Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf extract as follows:

P. K. Perry MBA ACIS TEP, N. A. Z. Bowrey, K. J. Perks B.Eng ACIS TEP, R. A. Cannell TEP, A. M. Dawson FCIS

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(5) Making information publicly accessible

A key question in the paper was whether information held in the central registry should be publicly accessible, only accessible to enforcement agencies and regulated entities such as banks and accountants, or only accessible to enforcement agencies. The discussion paper noted the potential for concern around public access but outlined the Government's initial view that public access would help derive maximum benefit from the information.

Views received

"A significant minority in industry were opposed to a public register, including representative bodies such as ICSA, the Law Society and the ICAEW. They argued that there was no clear reason why this information should be made public. Nor did they think that the perceived benefits of public access outweighed the general right to privacy in the matter of property ownership or potential risks to individuals' welfare and safety: "[...] this could over expose the financial position of potentially vulnerable individuals such as children [...]" (Deloitte). They also raised various commercial concerns, including the potential negative impact on UK competitiveness and inward investment as a result of public access – particularly if the UK were to be a 'first mover' in this space"

Also the Law Society response to the original discussion paper is at available at <http://www.lawsociety.org.uk/representation/policy-discussion/transparency-and-trust-law-society-response/> and a relevant extract is:

"19. Whether information in the registry should be made available publicly. Why? Why not?"

Information in the registry is publicly available (save for some directors' residential addresses). We assume this refers to beneficial ownership information. If so, we are strongly of the view that it should not be made publicly available. The argument for it being made publicly available appears to be that it will assist with verification, but we do not understand this viewpoint. In our view it is a fundamental principle of English law and natural justice that people should be entitled to privacy, unless there is an overriding public interest issue that requires otherwise."

Turning to section G. of the Consultation our responses are as follows: -

- 1. 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?**
 - 1.1 As an agent, we currently invest in systems such as World-Check and Pythagoras to form a part of our due diligence processes and we also make use of external due diligence service providers such as KPMG to enhance our own processes where appropriate. We are satisfied that our retention of beneficial ownership details is effective in preventing the criminal use of companies.**
 - 1.2 We don't think a central register would further prevent the criminal use of companies being serviced by licenced FSPs. If say the Financial Supervision Commission maintained such a register we expect they are likely to be obliged to run that data against similar systems to those that we have invested in and at a significant cost for the systems and staffing to process all the relevant and irrelevant information "hits".**

1.3 The effects of making a central register public would be wide ranging: ~

1.3.1 Benefits

- (a) The only benefit we see is that the Isle of Man would be the first to do so.
- (b) The Consultation makes reference to the following benefits and our comments follow thereafter: -

- (i) Making it easier to identify – and therefore prove – who ultimately owns and controls companies which would have a positive impact on the efficiency and effectiveness of law enforcement investigations, and a positive outcome in terms of successful prosecutions and confiscation orders.

Comment: We think it is fair to say the FSC and licenceholders already assist law enforcement investigations resulting in successful prosecutions and confiscation orders.

- (ii) Investors would have access to more complete, current and accurate information in order to remove uncertainty and enable them to make informed decisions in relation to specific companies.

Comment: This isn't a significant issue for private companies as they do not solicit investment from the general public. Even where it is appropriate an investor would reasonably be expected to undertake due diligence and ask for supporting evidence.

- (iii) Making the information publicly accessible would allow greater scrutiny of the information, not least by members of civil society, increasing the likelihood of errors and inaccuracies being spotted and weeded out and enhancing the integrity and transparency of the information held in the registry.

Comment: In our view it is highly unlikely that a significant number of material errors and inaccuracies would be brought to light from public access and don't understand the basis of the comment. The implication is that those currently holding the information aren't competent but they are licenced fiduciaries.

1.3.2 Disadvantages

- (a) The register would 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 or dictatorships, conflict zones, family members all with little respect for ethics or data protection.
- (b) We do not see how realistic safeguards can be put in place. The UK mentioned they would consider a framework of exemptions for vulnerable individuals. Our idea of a vulnerable individual will be much broader, indeed vastly different. Attractions of the Isle of Man to clients include its stability, rule of law and a perception of it being a safe place to do business often unlike the jurisdiction in which they are based. Arguably, all beneficial owners from certain countries would be regarded by FSPs as potentially vulnerable.
- (c) Existing clients came to the Isle of Man with the understanding that this information would not be open to public review.

- (d) The Isle of Man will lose existing business, the amount of which does not appear to have been quantified in any way. We suggest based on our own client base, that competing jurisdictions are likely to benefit.
- (e) The Isle of Man will lose new business opportunities to other jurisdictions.
- (f) Service provider groups in the Isle of Man will invest in other jurisdictions or move their business.
- (g) We shouldn't allow such data to be viewed by other jurisdictions. The Islands Data Protection Principles include "Personal data shall not be transferred to a country or territory outside the island unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data." We see that as a recognition that information held open via a central register to access by third parties/public could impinge upon the rights and freedoms of those concerned.
- (h) An individual is entitled to seek compensation from an organisation if they have suffered distress or damage as a result of contravention by the organisation of "any requirements of the Data Protection Act, and there is no definition of what "damage" constitutes and per the Data Protection office should not be viewed as being limited to financial damage alone.

2. How should beneficial ownership be defined; for instance, should the FATF definition apply?

We don't believe the FATF definition should apply and believe that we should have the opportunity to comment on whatever definition the Isle of Man Government proposes to use for this purpose, but that it should be linked to ultimate control of voting rights.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

We strongly expect that such a registry would have an adverse impact on our business due to the cost of compliance and the foreseen flow of existing business and new business opportunities to jurisdictions that would not have such a system in force.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

If a central registry was established we are of the strong opinion that no third party other than our regulator should have access to it. Data could actually end up being sold on and used for spam/other marketing or criminal activity for example.

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?

We strongly don't believe any company should be required to disclose beneficial ownership to a central registry as proposed.

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?

We don't view a framework of exemptions being workable from an Isle of Man perspective. Some FSP clients have an arguably rational fear of kidnap as one example. Anyone could

argue that but some will be genuine and there could be serious ramifications for them if their details are accessible. We know of a client who was kidnapped in the EU due to her father's wealth. Any known beneficial owner could be in danger in some jurisdictions, that's why they do business in the Isle of Man because it is a trusted, respected jurisdiction with high standards of regulation and application of law.

In the UK consultation, The Law Society of England and Wales was of the view that, even with a framework of exemptions from public disclosure, there would always be a risk of leaks. The Law Society argues that it is a fundamental principle of English law and natural justice (which would also apply in the Isle of Man) that people should be entitled to privacy, unless there is an overriding public interest issue that requires otherwise.

7. Who should be responsible for reporting the beneficial ownership of a company?

We don't believe anyone should be under such an obligation.

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? What would be the most efficient way for the company to report the information to a central registry?

We don't believe statutory powers should be used in this manner.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?

We don't support a central registry under any circumstances.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

Not unless you regulate that it can, and even then only locally. Otherwise no financial intermediary worldwide will accept information from a central registry in place of any existing due diligence requirements. 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.

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?

Not in our view.

12. Who should be responsible for maintaining and controlling access to a central register?

Alan Bell

13. What information should a central registry collate with respect to beneficial ownership?

There isn't any information on beneficial ownership that we would be comfortable with providing to a central registry.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

If you let the public have access then the criminals will have access as they are members of the public and sadly in some cases, members of foreign regulators and Governments. We don't see how there can be acceptable control of access to a public register.

15. **Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?**

No

16. **How much time should be given for disclosure of beneficial ownership to a central registry?**

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.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?**

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.

18. **Do you think that any concerns 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?**

No, and the Isle of Man should not scrape the barrel on whom it is willing to exchange information with and pursue exchange agreements for the sake of building up numbers.

Yours faithfully

Rob Cannell

* ANNEX TO EXISTING SUBMISSION

Phillips, Carlos

From: Rob Cannell <rob.cannell@665665.com>
Sent: 06 October 2014 11:38
To: Phillips, Carlos
Subject: RE: Transparency of the Beneficial Ownership of Companies
Attachments: STEP article.pdf

Categories: IOMBO Interest

Dear Carlos

Further to our previous submission on the above named consultation, you may be interested in the attached article from the October issue of the STEP Journal regarding beneficial ownership information in the US.

Regards
Rob

From: Rob Cannell
Sent: 26 September 2014 16:11
To: 'carlos.phillips@gov.im'
Subject: Transparency of the Beneficial Ownership of Companies

Dear Carlos

Please find attached a submission for the above named consultation.

Regards
Rob

Rob Cannell

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FATCA

CANADA

GOVERNMENT SUED OVER FATCA

Two Canadian-American dual citizens are challenging the Ottawa government's acquiescence as regards the US Foreign Account Tax Compliance Act (FATCA).

Canada signed a FATCA agreement with the US in February, and since then has enacted a law requiring banks to report the affairs of their American clients to the Canada Revenue Agency (CRA). The CRA will automatically forward this information to the US Internal Revenue Service.

This agreement is seen by some Canadians as compromising the country's sovereignty and breaching the privacy of its residents, especially those with either sole or dual US nationality, of whom there are at least a million living in Canada.

Two Canadian-resident dual nationals are now suing federal Justice Minister Peter MacKay in the Canadian Federal Court. Gwen Deegan and Virginia Hillis allege that the FATCA legislation exposes them to 'deprivation of their liberty and security of their person', in contravention of the *Constitution Act*. It also breaches various sections of the country's *Charter of Rights and Freedoms* by 'failing to protect them from unreasonable search and seizure and by discriminating against them on the grounds of their country of birth'.

Both plaintiffs were born in the US but moved to Canada at the age of five. They have never lived in the US since then or even obtained a US passport, but have not renounced their US citizenship.

UNITED KINGDOM

SURPRISE MOVE AGAINST UK NON-DOMS' LOANS

Non-domiciled UK residents must in future pay UK tax on offshore income used as security for a loan, following an unexpected change of HM Revenue & Customs policy.

Overseas funds used as collateral have been regarded as outside the UK tax net since the introduction of the remittance basis in 2009. But HMRC says it is seeing large numbers of such

loans repaid from non-foreign income or gains that are not charged as a remittance, despite foreign income or gains collateral having been used in the UK.

Accordingly, it has scrapped the concession with immediate effect, although non-doms are being given a grace period to refinance their existing borrowings.

UNITED KINGDOM

GENERAL DISMAY AT HMRC ACCESS TO BANK ACCOUNTS

Proposals to allow HM Revenue & Customs to take money directly from debtors' bank accounts have met with fierce opposition from many organisations, including the British Bankers' Association, Law Society, Institute of Chartered Accountants in England and Wales, and Low Incomes Tax Reform Group. Most critics say HMRC makes too many mistakes to be allowed such licence, and a government agency should not be allowed to be judge in its own cause.



The Canada-US FATCA agreement is seen by some Canadians as breaching their privacy



UNITED KINGDOM

TOUGH OFFSHORE EVASION PENALTIES PROPOSED

HM Revenue & Customs has launched its promised consultation on a new strict liability criminal offence of offshore tax evasion.

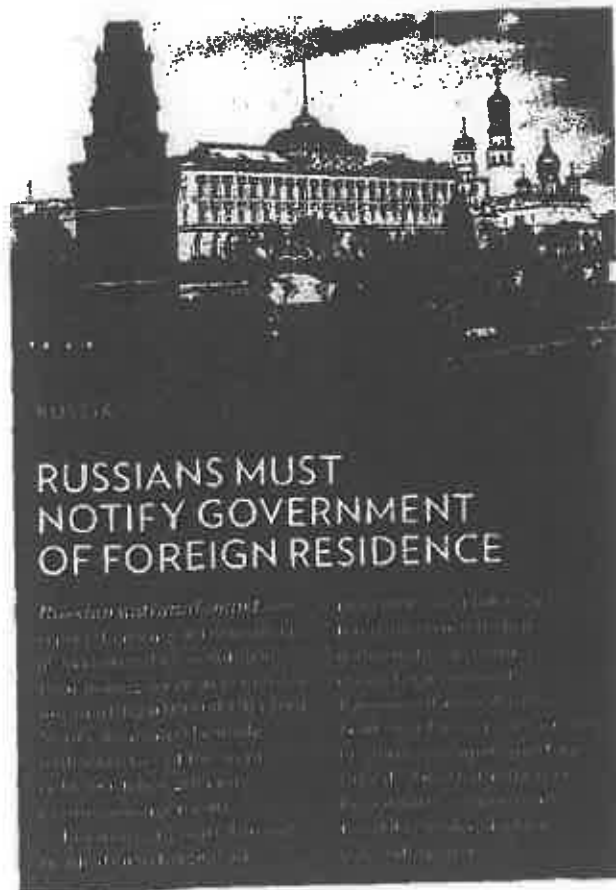
The new offence would be made out by failing to declare taxable offshore income and gains, without the need for the prosecution to prove dishonest intent. This is the most controversial part of the proposals, although it applies only to private individuals and not companies.

The existing penalties regime for offshore evasion of income tax and capital gains tax will also be extended to cover inheritance tax. HMRC further wants to abolish the 20-year limit on the period over which certain offshore tax evaders can be investigated.

UNITED STATES

US BANKS TO CHECK COMPANY BENEFICIAL OWNERSHIP

US banks and other financial institutions will soon have to collect beneficial ownership information for new corporate accounts, under recently issued regulations. The new rules allow institutions to establish ownership through a self-certification form, rather than forcing them to verify owners' identities.



RUSSIANS MUST NOTIFY GOVERNMENT OF FOREIGN RESIDENCE

Phillips, Carlos

From: wilfred tomlinson [REDACTED]
Sent: 28 September 2014 15:43
To: Phillips, Carlos
Subject: PAG SUBMISSION to the Consultation on the transparency of the beneficial ownership of companies - ATTACHMENT
Attachments: PAGsubBenOwnsCosFIN280914.rtf; ATT00001.txt

Carlos - The PAG submission is within this document.

Positive Action Group (PAG)

Submission to the Consultation on the transparency of the beneficial ownership of companies

A) Introduction

1. Positive Action Group (PAG) is a political lobby group, not a political party. It is a not for profit Association the objectives being to promote an awareness and understanding of politics and citizenship.

One of its core principles is open accountable government. It is not unsurprising then that PAG broadly supports the the proposition of transparency surrounding the beneficial ownership of companies.

2. The Consultation document is especially helpful in explaining the background and overall context of the subject.

3. The core element is "whether a centralised registry would improve transparency of the ownership and control of companies in the Isle of Man".

B) Response to questions within the consultation document

1. 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?

Answer: Corporate Service Providers (CSPs) have knowledge of beneficial ownership and only if justifiably requested will disclose the information to the relevant authority.

The preponderance of so many registered companies in the IOM (30,000?) may be interpreted that the economy is dynamic, but the likelihood is that the majority are merely clients of CSPs. It is surmised that many exist in order to avoid paying tax elsewhere.

The continuation of such a regime condemns the IOM to international criticism at a time when there is global pressure to stamp out tax evasion and money laundering.

The IOM government has made great strides in recent years trying to shake off the long held title of being a tax haven. It has entered into

many disclosure agreements with other countries so it the logical next step is for the complete disclosure of beneficial ownership.

The creation of a register may deter taxation abuse and even be instrumental in allowing abuse to be investigated.

Creating a register will aid countries which strive to retain tax revenues at the point of transactional inception.

The benefits of a public central registry of beneficial ownership are clearly explained in paragraphs 44 to 50 of the Consultation document.

PAG is particularly supportive of accessible information being made available, to enable civil society to play its part in ensuring greater scrutiny, transparency and integrity of the information.

2. How should beneficial ownership be defined; for instance, should the FATF definition apply?

Answer: Simply put it should be the actual person who has real control of the company. The FATF definition is appropriate.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

Answer: Not at all. PAG is not a business.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

Answer: It ought to be open to all.

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?

Answer: To all companies

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?

Answer: Yes - there may be considerations of personal security which may require exemption.

7. Who should be responsible for reporting the beneficial ownership of a company?

Answer: The legal duty needs to lie with the company.

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? What would be the most efficient way for the company to report the information to a central registry?

Answer: Yes, this is a vital consideration. The company could most conveniently report via its Annual Return.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?

Answer: PAG does not consider itself competent to answer this.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

Answer: Yes, with at least the name/contact details of the beneficial owner.

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?

Answer: Yes PAG believes it would.

12. Who should be responsible for maintaining and controlling access to a central register?

Answer: The Isle of Man Companies Registry, which has been in existence since 1865.

13. What information should a central registry collate with respect to beneficial ownership?

Answer: Name and contact details of the beneficial owner.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

Answer: 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.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

Answer: Suggest a fixed period of say 12 months, inline with an Annual Return.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

Answer: In accord with an Annual Return

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

Answer: PAG considers it most certainly would, but is not as all embracing as total transparency and therefore not as effective.

In recent years public monitoring of governmental information systems may have caused some temporary embarrassment but in the longer term it is in the overall public and jurisdictional interest to allow access.

18. Do you think that any concerns 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?

Answer: No and the two issues ought not to be confused. Each is complementary to the other in attempting to fulfil the international strategy of tackling cross-border tax evasion, tax avoidance, corruption, money laundering and other crimes.

C) Conclusion

The Executive Summary of the Consultation document succinctly explains the current critical international perspective of corporate behaviour. PAG supports the disclosure of beneficial ownership of companies, believing it to be in the long term interest of the Isle of Man.

Positive Action Group

www.positiveactiongroup.org

September 2014

Phillips, Carlos

From: Harris, Ian
Sent: 26 September 2014 17:28
To: Phillips, Carlos
Cc: Radcliffe, Erica
Subject: Consultation on the Beneficial Ownership of Companies

Dear Mr Phillips,

After careful consideration of the consultation the Department does not have any views which it would like to be considered as part of the consultation.

Thank you for inviting the DOI to take part.

Regards,

Ian Harris
Ian FT Harris BA ACMA CGMA
Director of Finance
Department of Infrastructure
Sea Terminal Building
Douglas IM1 2RF
Tel: 01624 686936
Email: ian.harris@gov.im

Phillips, Carlos

From: Angela McClellan <amcclellan@transparency.org>
Sent: 06 October 2014 13:55
To: Phillips, Carlos
Subject: Response to the "Transparency and Trust discussion paper"
Attachments: Letter to Mr Carlos Phillips 26 Aug 2014.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: IOMBO Interest

Dear Mr. Phillips,

Please find attached Transparency International's response to the "Transparency and Trust discussion paper". We are very sorry for the delay and hope that it can still be taken into consideration. Thank you.

Kind regards,

Angela McClellan
Senior Programme Coordinator
Global Advocacy and Policy

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Mr Carlos Phillips
Crown and External Relations
Cabinet Office
Government Office
Bucks Road
Douglas
Isle of Man
IM1 3PN
Sent via email to carlos.phillips@csso.gov.im

Response to the 'Transparency and Trust discussion paper'

26 August 2014

Dear Carlos Phillips,

We welcome this opportunity to input in the consultation on whether a centralised registry would improve transparency of the ownership and control of companies in the Isle of Man.

Transparency International is a global civil society organisation representing more than 100 national chapters worldwide. We work with partners in government, business and civil society to put effective measures in place to tackle corruption.

As you state in your consultation document, "a financial centre dedicated to attracting quality, legitimate business, the Isle of Man has an economic as well as an ethical interest in preventing its finance sector and reputation from being undermined by criminals". Corruption around the world is facilitated by people's ability to launder and hide the proceeds of corruption. Dirty money enters the financial system and is given the semblance of originating from a legitimate source through the use of corporate vehicles offering concealment and anonymity.

With respect to a select number of questions in your consultation, we therefore give the following responses:

- 1. 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?*

In order to meet FATF's Recommendation 24, governments should require that information on the natural persons who ultimately own and control companies is available onshore to relevant authorities, without having to tip off the company itself that the information is being sought. This should also include relevant foreign authorities.

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. In this way, beneficial ownership information is readily accessible and governments have a mechanism to check that the appropriate information has been collected.

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.

Making these registers publicly available has significant benefits. It is a low-cost solution that will help businesses (especially small businesses) to easily identify who really owns the companies they are dealing with, promoting a level playing field and protecting themselves from being complicit in crime. Furthermore, it will help investors to have easy access to information to inform their risk assessment about the companies they choose to invest in. In addition, it would make it easier for law enforcement agencies and tax authorities around the world to have easy access to such critical information without needing to go through time-consuming formal channels which may also provide advance warning of an investigation to money launderers allowing them to shift their assets. Finally, it would allow citizens to have better information on the companies they buy from and hold them to account for any wrongful behaviour.

Furthermore, 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). A central register would facilitate financial institutions' investigations.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

A central, independently held location for the collection of beneficial ownership information would alleviate the pressures placed on businesses to respond to inquiries on a case by case bases by authorities, including law enforcement.

Making beneficial ownership information publicly available is not only a means to improve the accuracy of the information; there is also evidence that it would 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.

Although most countries rely on service providers and financial institutions to collect data on beneficial ownership, public registers of companies remain the main source of information both for investigations by national authorities and for due diligence by financial institutions (Stolen Asset Recovery Initiative, Puppet Masters). Adding information on beneficial owners to existing reporting obligations would therefore be the most cost-effective and efficient choice.

According to a recent study including beneficial ownership information in a register that is searchable and updated as ownership changes would cost the UK government £11m a year (with an initial outlay of £0.5m to set up) and for the UK private sector, the costs would be £4m a year (with an initial outlay of £24m). The 2002 UK study estimated the savings in police time alone

from having a public registry of beneficial ownership to be £30m a year. In addition to this there would be other benefits including making it easier to trace and recover stolen assets.¹

Were the Isle of Man to take a leading role in adopting new, strong transparency measures, it would position itself as a clean jurisdiction in which to do business, reducing reputational risk for honest companies wishing to incorporate there.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

Yes, it should be available to the authorities, to financial institutions and to the general public for the following reasons:

For both domestic and foreign law and tax authorities a public register is an efficient way of providing access and facilitates investigations by avoiding lengthy request procedures which might also send warning signals to culprits at an early stage.

Financial institutions would benefit from public registers to inform their research for their due diligence duties on the owner and legitimate source of funds. Recent consultations by FATF in 2011² and the European Commission in 2012³ have found leading banking associations broadly in favour of increased transparency around beneficial ownership as a way to facilitate their due diligence obligations.

Public registers can also enable government institutions to do their work better. For law enforcement, having critical information on beneficial ownership accessible, discreetly and at short notice, would greatly aid cross-border investigations. Public registers act as a disincentive to anyone wanting to use secrecy for illegal or corrupt purposes.

There is also a business case for public information on ownership. While financial institutions are obliged to identify and verify the identity of their clients through due diligence procedures, they often fail to do so. Recent consultations by FATF in 2011⁴ and the European Commission in 2012⁵ have found leading banking associations broadly in favour of increased transparency

¹ Global Witness, Costs of beneficial ownership declarations, A report by John Howell & Co. Ltd., April 2013, <http://www.globalwitness.org/sites/default/files/library/Cost%20of%20Beneficial%20Ownership%20Declaration%20Report.pdf>

² Financial sector responses to the FATF consultation on proposed changes to the FATF standards (7/01/2011): <http://www.fatf-gafi.org/media/fatf/documents/publicconsultation/First%20public%20consultation%20document%20responses%20financial%20sector%20part%201.pdf>

³ European Commission Cost Benefit Analysis of Transparency Requirements in the Company/Corporate Field and Banking Sector Relevant for the Fight Against Money Laundering and Other Financial Crime, http://transcrime.cs.unipn.it/it/fo/publicazione/AP/CBA-Study_Final_Report_revised_version.pdf

⁴ Financial sector responses to the FATF consultation on proposed changes to the FATF standards (7/01/2011): <http://www.fatf-gafi.org/media/fatf/documents/publicconsultation/First%20public%20consultation%20document%20responses%20financial%20sector%20part%201.pdf>

⁵ Responses received by DG Internal Market, European Commission, on the application report for the review of the 3rd EU Anti-Money Laundering Directive (31/07/2012): http://ec.europa.eu/internal_market/company/financial_crime/received_responses/index_en.htm



around beneficial ownership as a way to facilitate their due diligence obligations. This advantage, however, should not exempt financial institutions from meeting their anti-money laundering obligations. For beneficial ownership registers to be meaningful the information they contain must be constantly verified. One effective option would be to cross-check financial institutions due diligence information with the information in public registers.

Public registers will also enable the business community to identify who owns the companies they are trading with, and thus better inform investment decisions within a healthy, functioning market economy.

Public registers of beneficial ownership would allow civil society, academics, journalists and ordinary citizens to scrutinise who owns companies and other legal structures, as well as to identify false or incomplete information and detect crime and corruption.

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?

We believe that full transparency must be the default. Exemptions open up additional loopholes that can be exploited.

7. Who should be responsible for reporting the beneficial ownership of a company?

Companies should be required to update beneficial ownership information both during the formation of a company and as the information changes, to ensure the greatest accuracy of information collected. Failure to do so should result in sanctions.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

The beneficial ownership information collected should be limited to what is strictly necessary: full name, birth data, business address, nationality, and a description of how the ownership or control is exercised. Financial institutions would benefit from this information for their compliance checks on the owner and legitimate source of funds they are obliged to perform before entering into a business relationship.

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?

As mentioned before, public registers could assist financial institutions in their due diligence duties. One effective option for keeping data on beneficial ownership up to date and accurate would be to cross-check financial institutions' due diligence information with the information contained in public registers.



12. Who should be responsible for maintaining and controlling access to a central register?

As explained above, making these registers public would be the most cost-effective solution according for example to two cost-benefit analyses carried out by the European Commission in 2007 and by the UK Companies House in 2002.

13. What information should a central registry collate with respect to beneficial ownership?

The beneficial ownership information collected should be limited to what is strictly necessary: full name, birth data, business address, nationality, and a description of how the ownership or control is exercised.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

Privacy has been raised as a legitimate concern for the creation of public registries of beneficial ownership. This is particularly the case for trusts which are often used to hold money in trust for family members and for estate planning purposes. However, given the scale of financial crime made possible through companies, trusts and other corporate vehicles, privacy concerns need to be balanced against the need to prevent crime. As stated in the European Convention on Human Rights (article 8), interference from state authorities may be justified if provided by law and necessary in a democratic society to prevent crime and promote the economic well-being of the country.

The beneficial ownership information collected should be limited to what is strictly necessary: full name, birth data, business address, nationality, and a description of how the ownership or control is exercised. Important precedents already exist in many countries where information is publicly reported for the general interest, including political donations, lobbying activities and salaries of public officials.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

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. In order to ensure that the information remains up to date there should be an enforcement mechanism for delays or failure to comply by companies.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

For both domestic and foreign law and tax authorities a public register is an efficient way of providing access and facilitates investigations by avoiding lengthy request procedures which



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might also send warning signals to culprits at an early stage. As mentioned above, according to a recent study including beneficial ownership information in a register that is searchable and updated as ownership changes would bring savings in police time of £30m a year. In addition to this there would be other benefits including making it easier to trace and recover stolen assets.⁶

We once again welcome this opportunity to input into your consultation. We hope that the Isle of Man will decide to become a leader amongst offshore jurisdictions by adopting public beneficial ownership registries to make it harder for criminals and the corrupt to enjoy the proceeds of their ill-gotten gains. We believe that should the Isle of Man wish to market itself as a clean business destination, this would be a very welcome step forward.

Kind regards,

A handwritten signature in black ink, appearing to read 'Robin Hodess'.

Robin Hodess

Director of Research and Advocacy

⁶ Global Witness, Costs of beneficial ownership declarations, A report by John Howell & Co. Ltd., April 2013, <http://www.globalwitness.org/site/default/files/library/Cost%20of%20Beneficial%20Ownership%20Declaration%20Report.pdf>



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25 September, 2014

Dear Sirs

**Re: Consultation on the transparency of the beneficial ownership of companies, Isle of Man
Cabinet Office, June 2014**

As of this month, Aston International Limited ("Aston International") has been in the business of providing accounting, trust and corporate services for 35 years.

The introduction of "offshore" companies in the 70s, with subsequent variations on that theme, have resulted in significant revenues being generated for the Island and this has proved extremely good for the business of "Isle of Man plc", and, of course, Aston International.

The Isle of Man has benefitted not only from the perspective of the amount of entities that have been created but also from the multiplier effect on livelihoods, family incomes and ancillary revenues generated throughout the Island.

In our view, a public register of beneficial ownership is more than likely to damage the hard work done over the past four decades in developing our corporate and trust services industry.

Our overall position is as follows:

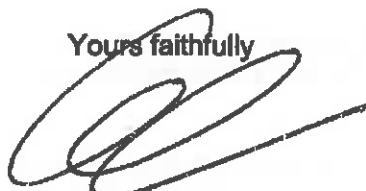
- The Isle of Man should not implement any public or private register of beneficial ownership until it has become a global norm.
- We believe there would be a wholesale "flight to confidentiality" away from the Isle of Man to those jurisdictions that are slowest to implement such registers.
- The Isle of Man has been and continues to be an excellent global citizen in respect of AML/CFT, signature of TIEAs, etc.
- With the excellent record of the Island's professionals in responding to legitimate requests for information, through proper channels, there is no real justification for the implementation of a register of beneficial ownership here on the Isle of Man.
- Only two of the G8 (UK, France) have made a commitment to the implementation of registers of beneficial ownership. There does not appear to be any global impetus to follow the UK and France's example. Leading UK bodies such as the Confederation of British Industry and the Law Society have been fighting a rearguard action against the register since April's announcement.

- Delaware has already declared that it has no intention of implementing such a register. It will certainly not be the only jurisdiction to assert its independence and we think that the Isle of Man should stand strongly alongside Delaware in maintaining the same position.
- We are concerned that any move by the Isle of Man to be at the leading edge of this initiative will have a massive cost to both the corporate and fiduciary services industries of the Isle of Man.
- We believe there will be major first mover disadvantages to such implementation and in particular that the risks of crime from "data mining" of any such register would increase exponentially.
- Some might say that the Isle of Man's signature of IGAs with USA and UK, in spite of the pressure to do so, was too quick. Particularly now that New Zealand has been able to negotiate a "watered down FATCA", making it a very interesting alternative jurisdiction for trust and corporate services.
- If there is to be a register, it would need to be highly confidential and the only basis on which we and our major clients would be happy would be the holding of the register securely and separately from the companies registry, perhaps by the FCU. This register and the data contained therein would need the best levels of protection available in the technological world.
- Many of the wealthiest individuals in the world have assets in the Isle of Man. For them, personal security, as well as financial security, depends on confidentiality. Any move by the Isle of Man to reduce that confidentiality, will, we are certain, jeopardise the Island's status as an international financial centre and would, most likely, reverse the 30 years of uninterrupted growth that we have experienced as a result.

We urge you to be extremely cautious in following the UK down this path simply to palliate a few media pundits and pressure groups. In our view, their claims that the public "has a right to know" is more about the media's prurient interest in wealthy individuals and how they hold their wealth. In our view this interest is based on envy rather than any real commercial imperative.

Following down that path could cost the Island an entire industry said to be responsible for between 8 and 10% of the Island's GDP. We urge caution and perspicacity at this vital time for the Island's economy.

Yours faithfully



David K. Griffin
Managing Director

ENC.

Consultation on the transparency of the beneficial ownership of companies, Isle of Man Cabinet Office, June 2014.

Formal response from Aston International Limited, 25th September 2014.

All financial services businesses operating in the Isle of Man have to know their clients and effectively "vet" these clients according to a risk-based approach before taking them on. This vetting is on behalf of itself as licenceholder but also on behalf of the Isle of Man plc. We would hope this vetting serves as a deterrent to criminals and, in any event, they are now clearly identified and this information is available to the Financial Crimes Unit through appropriate legal channels.

As the Government Action Plan (18 June 2013) notes, *"the comprehensive supervisory regime ... already requires all intermediaries to know the ultimate beneficial ownership behind all company and trust vehicles with whom they transact business"*. Every CSP works very hard to ensure that they know their clients and the individuals behind corporate ownership of client entities.

The implementation of the Companies Act (Beneficial Owner) Act in 2012 has reduced the risk of 1931 companies being misused, requiring a designated person to know the ultimate beneficial owner of shares in a company.

UK Prime Minister Cameron says *"a lack of knowledge about who ultimately owns and controls companies facilitates illicit domestic and crossborder money laundering, corruption, tax evasion and other crimes."*

He continued that *"a publicly accessible registry provides the best outcome for sound corporate behaviour; more effective law and tax enforcement; and for helping authorities, including those in developing countries, prevent misuse of companies for illicit purposes."*

In the Guardian, 21 April 2014, Mr Vince Cable, Secretary of State for Business, Innovation and Skills (BIS), claimed to be ending *"the darker side of capitalism"* by announcing he will press ahead with a new public register on company ownership to track the ultimate owners of UK companies, so making it more difficult for firms to evade tax or funnel corrupt funds.

We are not convinced, in any way, that it is not already *"more difficult for firms to evade tax or funnel corrupt funds"* in the Isle of Man than it is in the UK. We have been among the world leaders in implementing procedures and processes that identify the individuals using the Isle of Man as the home for their companies, their trusts and their wealth.

Business interests including the CBI, the Institute of Directors and the Law Society, have mounted a rearguard action to kill off the plan for a register of beneficial ownership, saying that unilateral action would leave British firms at a competitive disadvantage. We have to agree that in our view the same competitive disadvantage would apply to the Isle of Man corporate services sector, together with the fiduciary sector which is so closely aligned to it.

The CBI had told BIS that it would prefer a multilateral but private register. It had also warned of *"foreseeable concerns around the security and use of publicly available data, such as the 'profiling' of individuals based on their company holdings or the targeting of individuals with holdings in certain companies."* This certainly applies to possible boiler room schemes and other scams attempting to steal valuable data.

We find ourselves totally aligned with the CBI from an Isle of Man perspective. We are constantly being "spammed" for data – receiving emails and facing other attempts to garner information from us. De facto, this means that data is valuable to criminals and the storage of that information on a government database does not guarantee the security of that data.

That said, however, we would consider it most unlikely that a public register on the Isle of Man could reasonably be seen as a deterrent to any individual or group of individuals attempting to commit fraud.

The Law Society had warned the *"proposals may damage the attractiveness and competitiveness of the UK as a jurisdiction for the incorporation of companies."* They continue, *"we believe that the effect of introducing the proposals will be to drive investors to form companies outside the UK and that the UK could therefore lose a considerable amount of business as a result."*

We believe that this would also apply in the Isle of Man and that business would be adversely effected by the implementation of a public register. We are at a very early stage in the process of creation of registers of beneficial ownership and that process is not yet guaranteed to be global.

The Law Society also said that *"the government should wait for details of the EU third money laundering directive, adding that the premier US tax haven, Delaware, had no intention of introducing a requirement for a beneficial ownership register."* If, as the Law Society states, Delaware has *"no intention"* of introducing a beneficial ownership register, is there any reason why the Isle of Man, arguably a much more highly regulated jurisdiction, should introduce a public register before Delaware does?

Deloitte suggested in their response to the transparency consultation (in particular about Trusts, but in our view a point that is equally valid in regard to companies) that a public register would discourage foreign investors in UK property and *"over-expose the financial position of potentially vulnerable individuals such as children who are the beneficiaries of trusts, or indeed any beneficial owner who has valid reasons to want to protect their privacy"*.

In summary, we believe that the Isle of Man would be highly misguided to be an early adopter of this option. At present, only the UK and France have declared their intention to have publicly accessible registers of beneficial ownership. The Isle of Man has been an excellent global citizen, in terms of signature of multiple tax information exchange agreements (TIEAs), and has gained OECD and other international accolades for being an early adopter in that area. Isle of Man *"where you can"* and *"freedom to flourish"* campaigns have shown the Isle of Man as both a business-friendly and pragmatic jurisdiction.

We would strongly recommend that this particular Crown Dependency should wait to see if public registers of beneficial ownership become the global norm before signing up to what we believe would be the end of one of the cornerstones of the Island's incorporation industry. Privacy.

There are completely legitimate reasons to separate legal and beneficial ownership. In our view, removing privacy, which many consider to be one of the key remaining competitive advantages, without all other jurisdictions having done the same, would be a "bridge too far".

Deloitte observes that the UK is being driven by a *"desire to restore confidence in the relationship between business and society. This needs to be done in a way that will support investment and growth and offer longer*

terms benefits to society as a whole.” However, we do not believe that, as Deloitte continues, “transparency can lead to trust.”

We would assert that it is privacy that leads to trust, confidence and a sense of security.

We have many clients, including a large number of high net worth individuals, some of whom live in dangerous countries. Many of these people cannot make their travel arrangements public without putting their personal security at risk.

Ownership of a property through a company, for example, is a completely legitimate protection of their personal security. The only purpose of the corporate structure is to protect the owner and their family from risk of “public disclosure”.

In our view, the UK government continues to pander to the popular press and a small number of vocal pressure groups who seem to believe that they have some right to know who owns every asset. We believe that the Isle of Man should avoid being caught up in the media hysteria and stand firm against this knee-jerk reaction by a jurisdiction (the UK) which is, in reality, much less regulated than the Island!

As soon as every member of the OECD implements public registries of beneficial ownership of companies in their respective jurisdictions; and on the same day that all of our competing jurisdictions have implemented legislation that will result in a public register of beneficial ownership, Aston will be happy for the Isle of Man to follow suit.

We strongly believe that the implementation of a register will damage our business and many of our clients have indicated that they would either close or remove their structures from the Island. The burden of compliance is already a threat to our industry. The move towards registration of beneficial ownership, if it is to succeed, must be multilateral and not unilateral and any such process must also be rigorously confidential.

In many cases, we as corporate service provider (CSP) choose the jurisdictions that we recommend to our clients. The Isle of Man government itself now produces a comparison table. It is likely that a major consequence of the implementation of a public register before it was universally accepted would be that we, as Island-based CSPs, could no longer recommend our home jurisdiction to our clients.

If this register is to be implemented, whether public or private, we would also recommend that the Island should equalise the fees for change of domicile to the lower of the two charges. It cannot be seen as reasonable to charge entities a penal rate for moving from their Isle of Man domicile to another jurisdiction if the departure is a consequence of the unilateral actions of the Government.

Such a register would also be an invitation to foreign law enforcement and intelligence agencies to fish for information in the Isle of Man's pond rather than follow their investigations through proper channels.

A publicly accessible register is also an “invitation to treat” for criminals. They currently pay significant sums of money for lists of credit card details. They will surely pay bigger money to find lists of potential candidates for more extreme crimes (burglary, extortion, kidnapping, blackmail, etc.).

The CSPs will also need to extend their insurance covers to protect themselves further against the cost of being called as witnesses or providing information to multiple bodies in respect of potential criminal cases.

We explore these matters further in our answers to the specific questions posed in the consultation.

Response to questions posed (questions repeated below in bold).

We offer our answers in line with the Questions posted in the consultation (in bold below):

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?**

In our view, the Isle of Man is already one of the most highly regulated jurisdictions in the world. The fact that England considers that it should be "the cutting-edge benchmark" (according to David Cameron) is because it is far behind the Crown dependencies in terms of knowing its clients. Experience often shows that the cutting-edge or leading-edge is often the "bleeding-edge" in terms of costs. In many cases later, smarter solutions are more effective.

Who remembers AOL/Compuserve as email providers? They were the leading edge firms in the early days of public access to the Internet in the late 1980s. Now both firms are long forgotten except as academic case-studies. Unilateral action will certainly be a high risk strategy for the Isle of Man and, in our view, Isle of Man PLC should be very careful not to be among first movers in this case.

We believe that the current system of retention of beneficial owner details by licenced entities is totally fit for purpose as the Government's Action plan states –

"The Isle of Man already has legislation in place to ensure that:

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;*
2. *full and accurate details on the true ownership and control of every company is freely available to law enforcement and tax collectors;*
3. *trustees of express trusts know the beneficiaries of their trusts, and that trustees' status is disclosed to regulated financial institutions; and*
4. *competent authorities have access to information on trusts and can share this information with foreign counterparts."*

CSPs therefore already hold all information on the beneficial owners of entities. This applies to all financial institutions on the Isle of Man. We believe that this is much more effective than the implementation of a potentially sporadically updated public or private register.

- b. **Do you think a central register would further prevent the criminal use of companies?**

We'd be most interested to know what the statistics are for the proven criminal use of Isle of Man companies.

We do not believe that the implementation of a central register would have any inhibiting effect on criminal use of Isle of Man companies. If anything it may generate more crime than it prevents, by providing data that may facilitate attempted frauds against registered beneficial owners.

We would need to see convincing evidence that implementation of a publicly accessible registry of beneficial ownership is not just another case of international Governments using a sledgehammer to crack a nut (e.g. FATCA). Furthermore, the additional burden of external registration would need to be absorbed by the corporate service providers and would likely result in another increase in costs to users of Isle of Man companies. This too would be likely to make the Island's offering increasingly uncompetitive.

c. What effect would making the register public have?

We are most concerned that making the register public will result in a flight of clients, client entities, client assets and business generally to jurisdictions where there is no public register and where a public register is a most unlikely consequence of this precipitate action taken in the UK.

We in the British Isles already provide ample public information about our corporate structures. Many of our International clients struggle to understand why we on the Isle of Man require them to provide significantly more information than they are required to provide in their home jurisdiction.

At present only two countries in the World, the UK and France, have made a firm commitment to a public register. We believe that there will be a significant first mover disadvantage to this action.

Researching opinions from other jurisdictions, we found an interesting article published in the British Virgin Islands [BVI] in the BVI Beacon (20 May 2014, Jason Smith) where a number of very good points were raised (Mr Smith's article is in italics below):

"It would be bad," said Kenneth Morgan, a director of the VI office of the trust company Rawlinson & Hunter. "A lot of the people who use the BVI to structure private wealth, quite legally, legitimately, would be undermined."

Michael Riegels, QC, one of the founding partners of the VI law firm Harneys, spoke similarly, calling any move to publicise beneficial ownership an "economic disaster" for the VI.

"The BVI is already suffering loss of market share as users of offshore companies gravitate towards less well regulated jurisdictions," Mr. Riegels wrote in an e-mail. "Introducing a register of beneficial ownership would turn the trickle into a flood."

The article continues by discussing the USA, which regulates these matters at a state level, *"President Barack Obama pledged to compel the states to regulate registered agents and create central registries of beneficial ownership open to law enforcement and tax authorities.*

"Although all states currently make some basic information available through public registries, states may choose to make beneficial ownership information publicly available," the US action plan states.

However, previous efforts by the US Congress to pass laws requiring the states to create registers of beneficial ownership open only to the authorities have failed repeatedly in recent years.

Meanwhile, it's unclear if the UK model will ever be adopted as the global standard to combat money laundering and other crimes: Such international rules are traditionally made by the Financial Action Task Force, not the G8.

Mr. Briant, of the law firm Conyers, doubts that the UK standard will be adopted globally, mainly because he believes that the FATF will eventually realise that licensing company formation agents and allowing authorities, but not the public, to investigate will prove to be a more effective method of regulation."

The article goes on to publish comments by Mr Martin Crawford CEO of the OV Group the parent company of Offshore Incorporations Limited, who thinks that there "are formidable challenges to creating a central registry, public or private." He also noted that the Virgin Islands "may be able to use its traditionally strong links to China, which is not a G8 member, to exert influence as the global rules on central registries are drafted.

"I think what the BVI should be saying is 'Yep, the minute Delaware [creates a public registry] we will do it,' and using that tactic for as long as it can get away with it," he said. "The BVI has done everything it possibly can by international standards and I think it's just unfair."

We would heartily echo those comments and would suggest that the Isle of Man has done its duty as a first class global citizen, leading the way in the fight against terrorist financing and money laundering and general transparency (e.g. FATCA).

It is "unfair" to force this Island to be at the forefront of another piece of ill-conceived, unilateral legislation to register beneficial ownership which has not yet gained any traction globally. Within the G8 only a quarter of the members have made a commitment to public registration. In our view this is, in itself, an indication that patience should be seen as a virtue in this particular situation.

There are very valid commercial reasons to keep legal and beneficial ownership separate and we cannot see that a register, public or otherwise will add any value at this point.

2. How should beneficial ownership be defined; for instance, should the FATF definition apply?

The FATF definition of beneficial ownership would be acceptable as it has broad acceptance.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

We think it is an unnecessary duplication of information already held by us as regulated CSPs. To our knowledge, no valid request for information by the Isle of Man regulators or authorities relating to a company has ever been denied or declined by the recipient thereof. Implementation of a register would add another layer of bureaucracy.

The periodicity of the updating (say annually, as part of the annual return process) will make the information valuable only at that moment in time. This will be much like the value of the list of shareholders, officers, registered agent or other parties currently publicly available at the companies' registry.

We cannot see that annual updating will add value to any legal, tax or regulatory authority who would simply approach the CSP and ask for the information.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

If industry views are ignored and a register is enforced, we would definitely want that to be kept private and available only to the authorities.

There is a risk of poaching that would be created with the creation of a register. Regulated entities might be inclined to approach the clients of other entities based on information held in either a public or a private register. This would mean that access to each entity's information would need to be restricted to the registered agent or the nominated person (or both, if applicable).

Fundamentally, we do not agree that a register should be kept, as there is always a risk of leaks or self-appointed "whistle-blowers" breaching the confidentiality of this highly private and, clearly, financially valuable information.

5. a. What types of company should be required to disclose beneficial ownership to a central registry?

We do not consider a central registry as a necessary or desirable step. However, if a registry is implemented all types of company would need to be covered.

b. Should foreign companies be included and, if so, what link would they need to have with the Isle of Man?

Companies incorporated in another jurisdiction should be exempt.

6. a. Should a framework of exemptions be put in place?

Yes. UK has exempted Listed Companies and that would be advisable given the level of information they are already required to hold.

b. If yes, which categories of beneficial owners might be included?

All.

c. How might this framework operate?

No comment.

7. Who should be responsible for reporting the beneficial ownership of a company?

We do not consider a central registry to be a necessary or desirable step. However, if a registry is implemented the registered agent or the company secretary (if a non-CSP managed entity) should be required to report the information. There should be no sanction against a nominated person if the non-CSP company secretary fails to register information.

8. a. **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?**

YES

- b. **What would be the most efficient way for the company to report the information to a central registry?**

As part of the annual return process. Confirmed on the AR form and then filed with the Financial Supervision Commission and/or Financial Crimes Unit.

9. a. **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?**

It would be accurate to the extent that the nominated person was kept up to date by the secretary of the 1931 company and to the extent that the registered agent was kept up to date by the directors.

- b. **What would be the most efficient way for a regulated entity to report the information to a central registry?**

As part of the annual return process perhaps by confirmation of submission of a form to the Financial Supervision Commission and/or to the Financial Crimes Unit on the annual return.

10. a. **Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence?**

We do not consider that it is likely to add value in that way.

- b. **What information would need to be available?**

No comment.

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?**

We do not consider that it is likely to add value in that way. As noted we have serious concerns in relation to data mining and in particular in jurisdictions where professionals are not held to as high a standard of regulation as professionals are in the Isle of Man.

12. **Who should be responsible for maintaining and controlling access to a central register?**

The Financial Supervision Commission and the Financial Crimes Unit.

13. What information should a central registry collate with respect to beneficial ownership?

The absolute minimum acceptable to meet international standards.

14.

- a. 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?**

We do not believe there are any circumstances under which this register should be made public.

- b. Who should be responsible for maintaining and controlling access to a public register if it were allowed?**

We do not believe there are any circumstances under which this register should be made public.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

Annual.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

We would recommend a lead-time of no less than 24 months in the implementation of any register.

17.

- a. Would access to a central register of beneficial owners by law enforcement and tax authorities be a more efficient way of providing beneficial ownership information to domestic and foreign investigators than the current system of access on request?**

No, as it would result in fishing expeditions, which have already been rejected by the Manx courts in recent case law. Access on request is entirely more reasonable and professional approach and will avoid data mining.

- b. What additional protections or checks and balances could apply?**

Unique reference numbers to allow access only to the information relating to a specific company to be available to those persons submitting the information and to the regulators and the financial crime authorities in the Isle of Man.

18. Do you think that any concerns 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?

Again, until all countries around the globe have signed up to and implemented automatic exchange of information, we would not consider there to be any commercial benefit to the Isle of Man to implementation of any further individual information exchange mechanisms. Even then, there is no reason why that information should be publicly available, as long as the owners are properly identified to the satisfaction of the regulators and the financial crime authorities in the Isle of Man.

JMG/DKG 25.09.14

Phillips, Carlos

From: Kerry Smith <KSmith@boston.co.im>
Sent: 02 October 2014 09:32
To: Phillips, Carlos
Subject: Transparency of Beneficial Ownership Consultation

Categories: IOMBO Interest

Dear Mr Phillips

I note that the deadline for submission of comments has passed. However we were wondering whether it is still possible to submit our response? If so I would be able to provide a response to you today. Apologies for any inconvenience this may cause.

Kind regards

Kerry


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Response from Boston Limited on the Transparency of Beneficial Ownership Consultation:

1. *How effective do you think the current system of retention of BO details of companies by nominated officers or licensed managers/agents in preventing the criminal use of companies? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?*

Under IOM AML legislation all licensed entities must hold documentary CDD on the BO of all structures it manages. This system is audited periodically by the FSC through licenceholder visits, and there do not appear to be any significant issues with licenceholders being able to adhere to these requirements.

It is unclear how a public register would reduce the criminal use of companies in this regard. If a criminal is using an alias or a 'dummy owner' to front a company, it would be difficult to see how a public register would be a deterrent when the information is already accessible by law enforcement agencies on a licenceholder's files.

There can be genuine instances where an individual genuinely wants privacy and a public register could deter such individuals from using those jurisdictions that enforce a public register and encourage a move towards less regulated jurisdictions.

2. *How should beneficial ownership be defined; for instance, should the FATF definition apply?*

FATF's definition refers to the 'natural person(s)' who ultimately owns or controls a customer...and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

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 there would be no objection to expanding the definition in accordance with FATF.

3. *How do you think the introduction of a central registry of beneficial ownership would affect your business?*

It would be an administrative burden to ensure a central registry is updated which does not appear to support the direction the IOM Government has taken in introducing the 2006 Act Company which aimed to lessen the administrative burden.

From a data protection point of view, would the consent of the client be needed to enable their information to be publicly held? For those clients that would not want their information and details of their assets held in the public domain there would likely be a transfer of business away from IOM Plc to other less regulated jurisdictions.

4. *If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?*

If a central registry were established, we would recommend that it only be made available to the authorities and not the general public. There are a number of reasons why individuals do not want details of their assets publicly held including security reasons. Whilst we believe 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.

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 IOM?*

If a central registry were established, and this was a policy implemented globally then it would be a duplication of information sharing unless the scope was restricted to IOM incorporated companies. Unfortunately however it would seem likely that there would not be a level playing field and it could possibly deter foreign companies from choosing to register on the IOM foreign register as it will be an additional administrative task that would have to be charged for.

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?*

If a central registry were established, a reasonable compromise would be to exempt all fiduciary licenceholders from needing to register the beneficial owners of the structures they manage. This would otherwise be a duplication of work, an additional administrative task for no added benefit but with an unrecoverable cost.

7. *Who should be responsible for reporting the beneficial ownership of a company?*

It would only be feasible for the directors of the company to report on the beneficial ownership on behalf of the company.

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? What would be the most efficient way for the company to report the information to a central registry?*

Presumably statutory powers would be required in order to ensure compliance in this area? The most pragmatic way of reporting would be to amend the annual return form and for this information to be updated only on an annual basis. It is noteworthy however that should there be an inter-governmental enquiry that the agency in question would likely ask the financial institution for up to date information and to confirm the information on the public register. This would support the argument that the public register would only be effective if it was updated on a real time basis as otherwise it would be an ineffective process.

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? What would be the most efficient way for a regulated entity report the information to a central registry?*

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.

10. *Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?*

No. A register may show the name and address of a beneficial owner but it would not provide the verification required to comply with the AML requirements on CDD.

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 IOM?*

No- regulated entities are required to hold accurate and up to date information so a central public registry should not affect this position.

12. *Who should be responsible for maintaining and controlling access to a central register?*

If a public register were implemented, the Companies Registry would have to maintain this; otherwise there would be a significant duplication of corporate reporting.

13. *What information should a central registry collate with respect to beneficial ownership?*

The basic level of information required to satisfy the requirement to ensure compliance with data protection law.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?*

This is a key concern with information being held in the public domain. I do not believe there are adequate safeguards to prevent the misuse of personal information. For example, a criminal would know the name of the licenceholder, the name of the entity and as a minimum the name (and probably the address) of the beneficial owner. Financial Institutions could introduce greater use of passwords or security tools but it would be a weak form of defence and leave organisations and their clients in a vulnerable position.

15. *Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?*

If the process for disclosure is to be achievable and not administratively cumbersome then fixed reporting or reporting within a set period would be necessary. However as stated above, any law enforcement agency in 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. This would suggest that anything other than 'real time' reporting would be meaningless.

16. *How much time should be given for disclosure of beneficial ownership to a central registry?*

As above

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?*

No- as above. They would still contact the regulated Institution regardless to ensure the accuracy of the information and as it would be likely that additional information would be required for the purpose of the enquiry. This would be a duplication of efforts.

18. Do you think that any concerns 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?

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.

Financial Supervision Commission

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Contact: David Griffin
Your Ref: Beneficial Ownership
Consultation
2 September 2014

CABINET OFFICE	
03 SEP 2014	
READ BY C.S.	
FILE AWAY	
TO RELEVANT OFFICER ON FILE	Carlos
SCANNED	
ACKNOWLEDGED	3 SEP 14

Dear Mr Phillips

Consultation on Beneficial Ownership

The Financial Supervision Commission ("the Commission") is pleased to have an opportunity to comment on this important topic, and is happy to meet with you to discuss any of the responses below in more detail.

Answers to the specific questions can be found below, and further general comments then follow.

SPECIFIC QUESTIONS

1. 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?

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, but could be improved and to this end a central register could further prevent the criminal use of those companies. 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.

In the Isle of Man, beneficial ownership information in respect of client companies and trusts is required to be held by financial institutions and designated non-financial businesses ("DNFBPs") under paragraph 6 of the Money Laundering and Terrorist Financing Code 2013 ("MLTF Code"). The powers under section 15 and Schedule 2 of the Financial Services Act 2008, ("FSA 2008") and section 36 and Schedule 5 of the Insurance Act 2008 provide the Financial Supervision Commission and the Insurance and Pensions Authority with compulsive powers to obtain that ultimate beneficial ownership information from those financial institutions and DNFBPs. Compliance with the requirement to maintain this information is supervised by the appropriate regulators and failure to comply is an offence.

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Other competent authorities (such as Income Tax Division of Treasury, Customs and Exercise Division of Treasury, the Attorney General) and the police also have access to this information although it must be emphasised that this access is not automatic and requires the use of compulsive powers (in some cases involving application to court for a court order) which can be challenged by, for example, judicial review/doleance procedure.

2. How should beneficial ownership be defined; for instance, should the FATF definition apply?

Beneficial ownership is defined in the MLTF Code and this definition has been deemed compliant with the FATF standard by the International Monetary Fund ("IMF") in 2008 and also by MONEYVAL in 2013. It is important to establish what the desired effect of a central registry would be. The current FATF standard, looks at beneficial ownership from the perspective of money laundering risk and therefore focusses on control of the company ie ownership of more than a threshold (typically 25% shareholding or more of a company) as it is deemed that control is necessary in order to use the company for money laundering purposes. If only this information were recorded, persons who held a lesser shareholding would not be caught. Transparency for the purposes of tax evasion, however may require identification of all shareholders of a company. It is important that the definition focusses on the ultimate beneficial owner and penetrates through intermediary and nominee structures.

3. How do you think the introduction of a central registry of beneficial ownership would affect your business?

A central registry of ultimate beneficial ownership information could certainly make investigations easier. However the key issue is whether the information is fully up-to-date and accurate. If accurate information could be accessed by competent authorities and the police without the need for invoking compulsive powers or making application to court, it would certainly be a speedier process and would minimise the risk of the ultimate beneficial owner being "tipped off" which can sometimes occur when the information is held by a private sector institution.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

The real purpose of the central registry must be examined here before this question can be properly answered. If the purpose is purely to prevent the criminal use of companies, then in most cases this purpose would be adequately served by a central registry holding beneficial ownership information accessible only by domestic competent authorities and police. Competent authorities and law enforcement agencies in other jurisdictions would still have to make formal application to the relevant domestic competent authority which would, provided that application followed the correct form and procedure, then be able to access the central registry, obtain the relevant information and forward it to the requesting authority.

There are arguments for allowing extended access to the central registry by foreign competent authorities and specified persons in domestic financial institutions. Allowing access by foreign competent authorities and law enforcement would speed up their investigations and would, in many cases, enable them to access relevant information at a far earlier stage of the investigation (current legislation often requires a foreign investigation to have reached quite a late stage before a request can be made to the Isle of Man for assistance). If specified persons (for example Money Laundering Reporting Officers) in domestic financial institutions were allowed access to the registry, then this could assist them in performing customer due diligence.

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The main argument for allowing unfettered public access to such a registry would be one of demonstrating ultimate transparency. It cannot be denied that investigative journalism has, on occasion, exposed criminality and research by certain non-profit organisations has uncovered corruption, tax evasion and money laundering. A public registry would make such tasks far easier as it would permit anyone to pierce the so-called corporate veil and find out who was ultimately behind a corporate entity, but a public registry would raise issues about privacy. Wealthy individuals may use companies to hold assets such as their home to ensure that these do not become known to criminals, thus reducing the risk of kidnap and so on. Persons holding shares in companies which undertake controversial activities (involving, for example vivisection) may wish to conceal that ownership from pressure groups, activists or even terrorists.

There are potential Article 8 European Convention of Human Rights issues which could be raised in any challenge to the establishment of the public registry. Such challenges have been made on a number of occasions when compulsive powers have been used to acquire beneficial ownership information from corporate service providers on the Island. The challenges have never succeeded because Article 8, which provides for the right to respect for private and family life, home and correspondence, is a qualified right and may legitimately be overridden in appropriate circumstances.

In addition, when a registry is made public, there is a perception among those members of the public accessing it that the information held in the registry is up-to-date and accurate. There would be great difficulties in maintaining up-to-date and accurate information in any central registry (public or private), but members of the public may not be aware of that with resulting reliance on information which could be out-of-date and inaccurate.

The Commission's current view is that the potential disadvantages of a public registry more than outweigh the advantages and our preference would therefore be for a non-public registry accessible to law enforcement bodies and competent authorities.

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?

If a central registry were established 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.

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?

If the central registry were non-public with beneficial ownership information only available to competent authorities and law enforcement agencies, then there should be no exemptions as it is highly likely that criminals would seek to hide behind any exemptions and thus defeat the object of the registry.

If the registry were public, then again it should hold beneficial ownership information for all companies with unrestricted access to that information made available to competent authorities and law enforcement agencies, but with restricted access made available to the general public in order to give protection for individuals in respect of those concerns raised in subparagraph 3 of the response to question 4 above.

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7. Who should be responsible for reporting the beneficial ownership of a company?

Responsibility should lie with the nominated officer. There should not be a requirement placed on any regulated intermediary.

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? What would be the most efficient way for the company to report the information to a central registry?

The company should be given statutory powers requiring beneficial owners to disclose their beneficial interest to the company, although this may be difficult to enforce if a shareholder was a nominee (holding the shares on behalf of another) residing in another jurisdiction and chose not to disclose that they were a nominee. The most efficient way for a company to report and update information to the registry would be by way of an annual return, although this would only give a snapshot of the ownership of a company on an annual basis.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?

If a regulated entity were responsible for reporting the information, much would depend on the role of the regulated entity. If the regulated entity were a corporate service provider, providing directors and company secretary then there should be no effect on the accuracy of the information. In other situations, this could adversely affect the accuracy of the information as it may impose an additional tier in the transmission of beneficial ownership information from the Company Secretary through the regulated entity to the central registry.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

This may assist some intermediaries in respect of due diligence screening, particularly where an internal disclosure in relation to a potentially suspicious transaction has been made and the Money Laundering Reporting Officer ("MLRO") is investigating whether to make a disclosure to the Financial Crime Unit. However, security and access control of such a system would need to be high in order to protect the details of those on it from public disclosure.

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?

Access to such information by financial intermediaries could aid in the accuracy of the information held, particularly where the beneficial owner has accounts and business relationships with more than one institution, however, a potential issue with allowing intermediaries to amend data is reconciling conflicting or out of date information.

12. Who should be responsible for maintaining and controlling access to a central register?

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Companies Registry should have the responsibility, as it already has the infrastructure and the expertise, but Companies Registry 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. In addition, given the onerous task of maintaining accurate and up-to-date beneficial ownership information this is likely to require considerable additional resources.

13. What information should a central registry collate with respect to beneficial ownership?

The following identification information would be required as a minimum:

- 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.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

If the registry were public, restricted access should be given to the general public in order to give protection for individuals in respect of those concerns raised in subparagraph 3 of the response to question 4 above. This could include preventing public access to beneficial ownership information in respect of certain asset-holding companies (for example holding a principal private dwelling, inhabited by the beneficial owner,), companies that undertake controversial activities and so on. The Companies Registrar should be responsible for maintaining and controlling access to a public registry.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

To be of any practical use, the information in a central registry would need to be updated as changes occur rather than after a fixed period. However, in practice this is unlikely to be complied with and policing compliance from a central registry would be reactive and not proactive, indeed if it were possible at all. It is not considered that the accuracy of the information could be verified.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

30 days would seem reasonable.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

This would be more effective than the current system (see answer to question 4 above), but there would need to be checks and balances to prevent information being accessed for inappropriate purposes (for example political). It may be preferable to allow access only to

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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.

18. Do you think that any concerns 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?

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.

GENERAL COMMENTS

The Commission does have reservations about maintaining the accuracy of any information on a central register and more serious concerns about a public register which are set out above. Maintaining the accuracy of the information on any register will be problematic. The FATF Report: "*Money Laundering Using Trust and Company Service Providers*" dated October 2010 noted the limitations of a central register:

137. Vulnerabilities of Direct Incorporation / Central Registry - the following vulnerabilities were identified:

- Registry may be under-resourced to perform supervisory functions in the absence of a regulated environment;
- Registry does not conduct CDD and EDD where applicable, or verify the accuracy and completeness of data; and.
- CDD information may become outdated and incorrect, which may also impede investigations where the need arises.

David Griffin
Director – Enforcement & Authorisations

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Acknowledged: 10/09/14

Phillips, Carlos

From: [REDACTED]
Sent: 10 September 2014 14:21
To: Phillips, Carlos
Subject: Consultation on the Transparency of the Beneficial Ownership of Companies

Dear Carlos

I am an individual who is the beneficial owner of a Manx company. I have read the consultation document and am responding as an individual not a regulated company.

For some years my sister and I have jointly held a portfolio of investments [REDACTED] [REDACTED] it has always been a problem to change the financial institutions we used for investment, to obtain better returns, because of getting her CDD.

Recently we decided to transfer the assets into a Manx company with a local CSP which provides the directors. I thought that as long as they had the relevant CDD for us and reported as required to the relevant authorities this would enable us to make better use of investment opportunities as we would not have to obtain CDD for every change.

I now find, to my dismay, that because of all the discussions about delegated authorities, we still have to provide our CDD to the financial institutions in addition to the CSP providing all the relevant company information – more hassle not less and we are incurring additional costs for the company and the CSP.

In my view the control should be at the highest level of regulated organisation and it should be this organisation which should ensure that the relevant information is provided to the authorities. So if there is a regulated CSP then financial institutions they use should only need identification from the CSP not the beneficial owners. In cases where the beneficial owners run the company then the financial institutions should seek their CDD. Where there are issues with non-disclosure then the authorities should deal with the transgressors not make it more difficult for everyone.

For non-trading companies such as ours I certainly don't agree that there should be a public record of beneficial ownership. Provided that information is provided to the relevant authorities this should be sufficient.

Recently I have started to have involvement with companies registered in the UK and their Companies House requirements are far less stringent than those of the Isle of Man. If trying to appease the demands of the UK why should the IOM go further than UK requirements?

One solution would be for a register of beneficial owners retaining

- Passport Number and expiry date. To be updated when the passport is renewed.
- Address which only has to be updated when it changes not every time a significant transaction is undertaken.

This register to be available to regulated entities but not the public as some people may not want the public to have access to their private address. Annual returns for companies should be signed to confirm the beneficial owners and that their CDD is correct and up to date.

I don't know what impact your potential changes would make overall but certainly having legitimate business with the Isle of Man has gradually become too difficult to make it a financial centre of choice.

I would appreciate it if you would keep my [REDACTED] confidential. *

Yours sincerely

CONSULTATION ON THE TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES - ISSUED BY THE ISLE OF MAN GOVERNMENT JUNE 2014

CROWE MORGAN MANAGEMENT LIMITED RESPONSE

PROPOSAL:

Acknowledged: 12/09/14

"The Isle of Man Government now wishes to consult and invite comment as to whether a centralised registry would improve transparency of the ownership and control of companies in the Isle of Man. It is important to stress that the Isle of Man Government has not made up its mind on the suitability or otherwise of this proposal and all views will therefore be taken into account."

C.P

GENERAL COMMENTS:

- a) We strongly oppose the proposal to create a centralised registry of beneficial ownership. The Isle of Man already has a robust regime in place to ensure the identification of beneficial ownership and to ensure that this information is available to the authorities. We do not see any benefit to the Isle of Man following this proposal and we believe it would result in unwelcome additional cost to local businesses and their clients.
- b) A publicly available register of beneficial ownership information would negate the benefits of using nominee companies. The use of regulated nominee shareholders allows the rightful owner to remain anonymous, which is important when it is necessary to be formally detached from the company, to protect assets against third parties and to allow confidential participation in other companies. It also affords protection from boiler room frauds. The ability to use regulated nominee companies, for the above reasons, is highly attractive to certain clients. Without this service, we would lose existing and potential new clients, who would go to other jurisdictions to satisfy their CSP requirements.
- c) Individuals are entitled to their privacy and are used to having it. If a client is from a jurisdiction without such a registry they are likely to take their business to another jurisdiction without such a registry. Access to details of their interest in an entity may make an individual feel at risk. Investors may refuse to involve themselves with Isle of Man companies, in case their legitimate interests are exposed.
- d) There is a risk that publicly available ownership information could be misused. For example:
 - Wealthy / high profile individuals could be the target for extortion or harassment.
 - Companies and/or beneficial owners carrying out legal, but perhaps controversial business activities, or belonging to certain groups or social standings could be subject to harassment should their identities be revealed.
- e) Updating the central registry with ownership changes would prove costly and time consuming. The reporting obligations placed on compliance departments and fiduciary organisation will increase, at a time when FATCA is also of pressing

importance. Fiduciary Institutions are already struggling to recover the cost of compliance from their clients.

- f) Under the FATF Recommendations, it is not compulsory to have a central registry containing beneficial ownership information and as there is no foreseeable benefit to the Isle of Man, no further action should be taken. The Isle of Man should not take action which may damage its finance sector when other jurisdictions are not forced to and may not choose to take similar action.
- g) Legitimate investors and companies will choose to operate in jurisdictions where beneficial ownership information is not public. Individuals will not be attracted to a country which publicises information, when it is not a requirement in their home country. This will disadvantage the Isle of Man against its competitors and we would expect to lose both new and existing business as a direct result should a registry be implemented.
- h) Implementing ownership transparency is unlikely to completely prevent tax evasion, tax avoidance, corruption and money laundering. The Isle of Man already has robust anti-money laundering and prevention of terrorism measures in place through its regulated businesses.

RESPONSES TO CONSULTATION QUESTIONS:

We have responded below to the specific points raised in the consultation document however our responses should not be taken in any way to mean we are supportive of the proposed central registry.

- 1. *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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?***

The current system of the Companies Registry is extremely effective and is supported by a robust, regulated fiduciary service provider sector.

We fail to see how a central registry of beneficial ownership could prevent criminal use of companies.

The principal effect of making the register public would be to deter potential investors into the Isle of Man and to lose those existing clients who have legitimate reasons for wishing to keep their interest in an entity confidential.

- 2. *How should beneficial ownership be defined; for instance, should the FATF definition apply?***

The FATF definition could be applied as it clearly states that those who own or control an entity, are classified as a beneficial owner. However, a definition should only be necessary if it is agreed and introduced by all jurisdictions including the IOM's competitors and the UK.

- 3. *How do you think the introduction of a central registry of beneficial ownership would affect your business?***

We anticipate that the implementation of a central registry will have a negative impact on our business. Whilst clients understand they have to comply with CDD requirements and are happy to disclose the required information to enable them to become our clients, a registry would be a step too far and we would lose some clients to a competitor jurisdiction. We believe that whilst transparency is an advantage in attaining new business, excessive and unnecessary transparency, is a clear deterrent and would put off future clients who have a choice of jurisdiction.

- 4. *If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?***

As stated we are opposed to a central registry however, if implemented, the central registry should only be available to IOM Governmental authorities. Any requests for information from any other party could then be considered in accordance with the exchange of information agreements we are committed to. The register should not be made available to the general public.

- 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?**

As stated we are opposed to the establishment of a central registry however, if established, then all companies registered under Isle of Man law and those with an established place of business here should be required to report to the central registry.

- 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?**

All beneficial owners should be treated equally; however Trusts should not be included in the register as this would be legally impossible to define – for example where there is a discretionary trust where no benefit has yet been distributed to potential beneficiaries and exactly who is to benefit and how has not been established.

- 7. Who should be responsible for reporting the beneficial ownership of a company?**

As stated we are opposed to the establishment of a central registry however, if established, a regulated entity should be responsible for reporting.

- 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? What would be the most efficient way for the company to report the information to a central registry?**

As a TCSP licence holder we require information regarding beneficial ownership at the start of the business relationship and therefore we fail to see why statutory powers would be necessary. Anyone failing to provide the information would not be taken on as a client.

The most efficient way of reporting the information would be via the annual return followed by changes in a notification form similar to the Change in Directors form 9N.

- 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? What would be the most efficient way for a regulated entity to report the information to a central registry?**

The information should be reported by a regulated entity as it is more likely to be submitted accurately and in a timely manner. However, it would create an additional cost of compliance burden on both the client and the TCSP at a time when businesses are already suffering with the implementation of FATCA.

- 10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?**

No. Access to the central register would identify owners and controllers of a company, however CDD would still be required. CDD differs greatly between institutions as procedural differences exist, therefore the register is of very limited assistance.

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?*

No. Having access to a register would not necessarily improve the accuracy of information, unless inaccuracies are identified and up to date information is then requested. With the proposed register, ownership information is unlikely to ever be 100% accurate, therefore this access could increase time and effort spent trying to amend errors and keeping it up to date.

12. *Who should be responsible for maintaining and controlling access to a central register?*

As stated we are opposed to the establishment of a central registry however, if one were introduced responsibility for maintaining the register should fall on the Financial Supervision Commission or Companies Registry (Department of Economic Development).

13. *What information should a central registry collate with respect to beneficial ownership?*

As stated we are opposed to the establishment of a central registry however, in the event that there is international agreement that such a register is necessary, the name, address, date of birth and percentage of shareholding should be held for beneficial owners. A list of the individuals other shareholdings and directorships should also be available.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?*

As stated we are opposed to the idea of a central register and also of the idea of the information being made publicly available. If this information were made public, it would be impossible to protect it from misuse. This is the principal reason for restricting the information to access by Government only.

Even with protections in place, criminals will find weaknesses in the system and find an alternative method of undertaking illegal activities.

15. *Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?*

If changes are only recorded on an annual basis, the information at the registry will not be reliable. A system similar to the 9N change in Director form could be established.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

As stated we are opposed to the idea of a central register, however if imposed on all jurisdictions by international agreement, disclosures could be made to the registry within 30 days of the registered agent/nominated officer being informed.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

No. The existing system of access is sufficient in providing ownership information. Changing this would increase the effort and cost.

18. Do you think that any concerns 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?

No. The 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. Although automatic exchange of information will allow ownership details to be accessed with greater ease, the central registry is still going to prove costly to the licence holder, time consuming, and there is still a risk of information being misused and criminals using companies to carry out their illegitimate activities.

Conclusion

We are against the proposal to introduce a Central Register of beneficial ownership as we believe it will be highly detrimental to the Fiduciary Service Provider Sector on the Island. It will increase the cost of compliance, costs which we would be unable to recover, and will result in the loss of both existing and future business to rival jurisdictions that on the balance of probabilities will not follow the same procedures.

The Isle of Man already has a robust regime in place to ensure the identification of beneficial ownership and to ensure that this information is available to the authorities. Quite simply, the old adage seems to have been forgotten here, if it isn't broken, don't fix it.

Phillips, Carlos

To: Darryl Cregeen
Subject: RE: Consultation - Beneficial Ownership

Acknowledged
22.09.14

C.f

From: Darryl Cregeen [mailto:Darryl@OFL.CO.IM]
Sent: 22 September 2014 14:36
To: Phillips, Carlos
Cc: Maureen C. Quayle; Brent Thomas
Subject: Consultation - Beneficial Ownership

Good Afternoon Carlos,

In response to the questions raised in the above named consultation we have drafted a response which is attached.

Please feel free to contact me if you wish to discuss any of our comments.

Regards

Darryl Cregeen (MICA) | Senior Compliance Administrator | **Optimus Fiduciaries Limited**

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| Optimus Fiduciaries Limited is a correspondent to the RSM network |

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Consultation Questions	Answers	Comments
<p>1 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>Do you think a central register would further prevent the criminal use of companies?</p> <p>What effect would making the register public have?</p>	<p>The current system keeps sensitive information out of the public domain - which must be more open to abuse than private systems. The BO is more protected in the smaller arena - and criminals are more likely to pick a larger database to hack.</p> <p>No. In the same way that known criminals are unlikely to open bank accounts in their own name for criminal use, it's highly unlikely they'd choose to register their name on a legal entity. The existence of a register is largely irrelevant</p> <p>Security, hacking, social attacks, personal attacks on BO's all possible if their details are public. 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 and the likely loss of business and impact of that on economy generally.</p>	<p>The UK Law Society argue that it's a fundamental principle of English law & natural justice (which would apply to ICM) that people should be entitled to privacy, unless there is an overriding public interest issue that requires otherwise. This will lead to business leaving the Island</p>
<p>2 How should beneficial ownership be defined; for instance, should the FATF definition apply?</p>	<p>Unclear as to whether it is intended to extend to trusts - which opens a whole new can of worms</p>	<p>FATF - Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer (This definition also applies to the beneficial owner of a beneficiary under a life or other investment linked insurance policy) and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement." The references to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.</p>
<p>3 How do you think the introduction of a central registry of beneficial ownership would affect your business?</p>	<p>A serious negative effect, loss of business and jobs. We have built our business on exceptional service, confidentiality and trust - this will disappear.</p>	<p>People have the right to privacy and would seek this in other jurisdictions with less robust legislation and an inferior compliance environment</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>Authorities only - we would love to obtain our competitors' client lists!</p>	<p>Authorities will have this information under the FATCA disclosure requirements by June 2016 and this information can be shared as we understand it throughout the UK authorities as they see fit, so wont they already have access to it? If we are correct there should be no need to have a public register as it will just create a negative market place on the IOM</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>If it is introduced, there should be no exceptions - including privately owned local companies If any connection with the IOM at all, such as officer, registered office, bank account it should be included.</p>	<p>If all F regs aren't included then this will present an easy way to circumnavigate the legislation.</p>
<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>Why - this would only be open to abuse. All or nothing prevents this.</p>	<p>Some legitimate company owners could be put at risk if their personal information is put on the public record; for example, the beneficial owners of companies that operate domestic violence shelters or carry out animal testing.</p>
<p>7 Who should be responsible for reporting the beneficial ownership of a company?</p>	<p>Company Secretary/registered agent</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>Surely they would have this information to comply with existing regs???</p>	<p>In the current regulatory environment where the onus is on the license holder to ensure they have the correct policies and procedures in place when taking on new business this can't happen! Can it?</p>
<p>What would be the most efficient way for the company to report the information to a central registry?</p>	<p>Depends on frequency of updating - annual return or more frequent?</p>	<p>FATCA reports provided to ITD on June 2016 and annually thereafter.</p>

<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>It would be more accurate - but puts yet another layer of reporting on regulated entity - which is just going through the FATCA process</p>	<p>Fiduciary industry is regulated and monitored and one of its core functions is collecting beneficial owner due diligence. This information can be obtained by relevant authorities. Therefore the creation of a beneficial owner register would suggest the current form of licensing and monitoring regulated entities isn't working</p>
<p>What would be the most efficient way for a regulated entity to report the information to a central registry?</p>	<p>As above, there is an associated cost which must be passed on to the client. Is this really necessary when FATCA is such a huge information gathering exercise?</p>	
<p>10 Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence?</p>	<p>No - we are responsible for collecting our own DD and have excellent systems and processes in place to do this. We would not rely on the public register.</p>	<p>Are there any data protection issues here? Maybe not if full disclosure is explained</p>
<p>What information would need to be available?</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>Not at all - indeed it would give us access to competitors most sensitive information - the identity of their clients - and opportunity to approach those clients.</p>	
<p>12 Who should be responsible for maintaining and controlling access to a central register?</p>	<p>Attorney General or similar</p>	
<p>13 What information should a central registry collate with respect to beneficial ownership?</p>	<p>We would strongly disagree that their needs to be a central registry at all ...</p>	
<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>We don't think it would be possible to put sufficient protections in place, depending on information held - it must be a prime source of sensitive information for criminals</p>	
<p>Who should be responsible for maintaining and controlling access to a public register if it were allowed?</p>	<p>Again, we don't think it should be allowed, and again, AG.</p>	

<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>For it to be useful it would have to be real time capture of data.</p>	<p>This would incur significant costs for all reporting entities. In addition there would be a cost for creating, maintaining and securing any such register which would be likely to fall on the financial sector.</p>
<p>16 How much time should be given for disclosure of beneficial ownership to a central registry?</p>	<p>28 days.</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 information to domestic and foreign investigators than the current system of access on request?</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>What additional protections or checks and balances could apply?</p>		
<p>18 Do you think that any concerns 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>No - we have tax agreements in place to deal with this - why do we need another level of data capture and reporting?</p>	

**FIRST / NAMES
GROUP**

Acknowledged: 24/09/14

24 September 2014

FAO: C. Tushingham

C.P.

Mr Carlos Phillips
Crown and External Relations
Cabinet Office
Government Office
Bucks Road
Douglas
Isle of Man IM1 3PN

Dear Mr Phillips

Consultation on the Transparency of the Beneficial Ownership of Companies

Attached is a copy of our response to the above mentioned consultation. Note this has also been sent to you via email.

Kind regards
Yours sincerely ✓



Chris Tushingham
Operations Director

Enc.

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CONSULTATION ON THE TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES

RESPONSE OF FIRST NAMES GROUP TO THE ISLE OF MAN GOVERNMENT CONSULTATION DOCUMENT DATED JUNE 2014

INTRODUCTORY REMARKS

We recognise that this may be one of the most important consultations of recent years and welcome the opportunity to respond. At the outset we wish to state that it is our firm belief that a central register of beneficial owners would not be in the best interest of the Isle of Man and would absolutely not be in the best interest of the clients of the licensed entities falling within the First Names Group located in the island.

We do not support a register in any form.

It is fanciful to think that by simply creating a register of company beneficial ownership information (publicly accessible or not), misuse of companies and arrangements will cease. Added to this, the pronouncements made by the G8, G20 groupings as well as those of David Cameron seem to fail to recognise a fundamental principle, which is the right to privacy and confidentiality. They also seem to fail to recognise developments made in a number of jurisdictions (especially the Crown Dependencies) where for many years, anti-money laundering requirements have meant that regulated institutions must currently identify and verify the beneficial owners of the entities to which they provide services.

In the Isle of Man, there is an advanced system of regulation developed over many years, including regulation of financial and fiduciary service providers, and sophisticated anti-money laundering legislation and regulations. This is the correct way to ensure that misuse of companies does not occur and it is absolutely imperative that the Isle of Man Government recognises this and resists any attempt to create a beneficial owner register of any type. Any discussion must educate countries in the standards set in the Isle of Man and distinction must be drawn to those jurisdictions where the provision of corporate services are not regulated, or have light touch regulation (like the United Kingdom).

Added to this, it is now law that every company is required to ensure it knows who its beneficial owner is, and this information must be held by a nominated officer or registered agent.

The rhetoric surrounding this issue must be clear, so that those countries pushing for the register understand that the current framework already allows for the exchange of information through gateways "supervised" by an independent judiciary. This is important because it allows for information to flow, but also helps protect an absolute fundamental principle of law in most democratic countries; that of innocence until proven guilty.

There are many legitimate reasons why beneficial owners have particular reason to keep their identities private. In addition to the situations mentioned in the consultation document, there are commercial reasons for maintaining confidentiality (consider the speculation and subsequent volatility in land price if it became known that the Disney Corporation were acquiring land to set up a theme park in a particular area), as well as personal safety reasons where beneficial owners may be targeted for possible kidnapping or extortion, or even indeed state sponsored harm.

In the absence of evidence of illegal activity, it is right that individuals should be able to own assets directly or indirectly without having to make the information publicly available.

A technical point is related to the difficulty in defining ownership, beneficial ownership and ensuring there is consistency in all legislation. We make further comments on this below.

Finally, introducing a registry at a time when no jurisdiction apart from the UK appears to be doing so

(and it would seem that some of the island's low tax competitors, being Singapore, Hong Kong and Switzerland have specifically stated that they will not be doing so) would seriously damage the island's ability to compete on the global stage. We can see no logic that making a central registry (whether or not publicly available) is in the public interest.

RESPONSES TO QUESTIONS BY NUMBER

- 1. 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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?**

Rigorous licencing policies and time proven support systems, now well understood by Manx service providers, mean the current system works effectively. We do not see how a central register offers any extra prevention to the potential criminal use of companies.

- 2. How should beneficial ownership be defined; for instance, should the FATF definition apply?**

If indeed a registry is to be set up, there does need to be a consistent definition, not only recognised by the Isle of Man, but also internationally to at least include all G20 countries. The definition needs to take into account the various types of companies, as well as complex holding structures and trusts.

- 3. How do you think the introduction of a central registry of beneficial ownership would affect your business?**

We have no doubt that a significant number of our clients would be very concerned and would reconsider using the Isle of Man as their preferred offshore centre, particularly when regulation in competing jurisdictions does not require such information to be made public.

- 4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?**

We feel that sufficient mechanisms already exist which allow the details of beneficial owners to be disclosed to relevant authorities who have obtained legitimate authority for the information. However if a central registry was imposed access to it should be firmly restricted to Isle of Man governmental, regulatory and taxation bodies. Foreign authorities should be required to obtain the appropriate authority from the Isle of Man Courts before accessing any registry.

- 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?**

Though it could cause major disruption, should such a registry be established, all bodies corporate established or registered under Manx law be subject to the new disclosure regime, together with companies on the "F" register.

- 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?**

Exemptions must be put in place if any registry is created. It is clear we are strongly opposed to any registry but exceptions will need to consider situations of commercial sensitivity, situations where there is the potential for physical harm, regulated entities and entities quoted on any recognised stock exchange.

7 Who should be responsible for reporting the beneficial ownership of a company?

Responsibility should rest with a company's nominated officer or Isle of Man registered agent. Ensuring that information comes only from a well regulated Isle of Man person of proven good character would, in our opinion, be the best guarantee of accuracy and defence against criminal intent.

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 interests to that company? What would be the most efficient way for the company to report the information to a central registry?

Even with statutory powers, identifying and complying with an obligation to disclose beneficial ownership may be a lengthy, prohibitively expensive, process for some companies. Also, the principle that trusts are not entered on a register of members must not be surrendered.

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? What would be the most efficient way for a regulated entity to report the information to a central registry?

We feel that information provided directly from a regulated entity is more likely to be accurate than information received from the company, based on the vast experience and protocols already followed by regulated entities in the Isle of Man. We also stress that developing an efficient reporting system will be no easy task, and will involve significant cost to implement.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

The only benefit we can see from having a central, not open to public scrutiny register, is a possible framework that would allow recipients of introductions to provide reliance on the register which could reduce the amount of due diligence currently required. For example, provision could be made that a bank servicing a CSP could rely on the register and so streamline account opening.

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?

No - our view is that a register in a jurisdiction like the Isle of Man would be accurate because we have been living in an environment of regulation for many years. It is also clear that common law principles have applied for many years to fiduciary service providers in the Isle of Man.

12. Who should be responsible for maintaining and controlling access to a central register?

Should this become reality, it is our view that it would become a role of the Companies Registry. Clearly there would be cost implications that would be unwelcome and would have a negative impact on the Isle of Man as place to do business (bearing in mind we already have to deal with the impact of VAT).

13. What information should a central registry collate with respect to beneficial ownership?

We would expect it to provide information consistent with the current standard required by a corporate or trust service provider. Again, we would refer the reader to our response at question 9.

- 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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?**

Any information placed in the public domain for legitimate (if sometimes casual) public scrutiny will, as a result, become available not only to the criminal but also oppressive regimes around the world who might use it to persecute their own people. We are therefore strongly opposed to any public access.

- 15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?**

A fixed period basis is more practical than an instant reporting regime. We would suggest annual reporting, as perhaps part of the annual return.

- 16. How much time should be given for disclosure of beneficial ownership to a central registry?**

We refer to our answer to question 15. Any other position would result in significant cost and loss of business.

- 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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?**

To our knowledge, the current system has not delayed or hindered any legitimate enquiry by a law enforcement body or tax authority. In addition certain countries in the world could use the powers conferred on them through their tax system to pursue their own political agendas and campaigns against individuals. Allowing external law enforcement and tax authorities direct access into such information, separate to the gateways that are in existing tax agreements, would appear to make the somewhat naïve assumption that this information will not be abused in any way. We are of the strong view that the current well established system offers the correct checks and balances.

- 18. Do you think that any concerns 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?**

We see no legitimate argument for a register of any kind, it appears that rather it is a mechanism for certain countries to pursue an agenda of anti-tax avoidance, however misguided. We would hope that the Isle of Man government will be able to use the argument of the island's compliance initially with the EU savings directive, and more recently FATCA, to demonstrate our determination not to be a "tax haven" but rather a low cost jurisdiction, albeit "offshore" that facilitates growth in "onshore" economies by providing vehicles for inward investment.

Acknowledged: 29/09/14

CP

Phillips, Carlos

From: Hannah Darnill <hannah.darnill@aon.co.im>
Sent: 24 September 2014 11:05
To: Phillips, Carlos
Subject: Consultation on the transparency of the beneficial ownership of Companies

Carlos

Please find below the comments received from one of our clients in respect of their views on whether a centralised registry of such (beneficial ownership) information would improve transparency.

This matter has been considered by the Shareholder and their comments are detailed below.

"Q2. definition of "beneficial owner" (BO)

I prefer a relaxed approach similar to the definition in the EU directive (para 42), so that BO information of the listed companies' can be carved out from the definition. That means, in the case of Spaciom, only information of Swire Pacific Limited, but not the shareholders of Swire Pacific, would be required.

Q7 and Q8. Responsibility for reporting the BO

It would be an onerous burden on the company to report BO information beyond its parent listed company.

Listed companies are being notified of the shareholders' interests in shares under the Securities and Futures Ordinance (SFO) in Hong Kong, though the listed company is given statutory power under the SFO to investigate ownership of interests in shares.

For your information, the notifiable percentage level under the SFO is 5% of the number of issued voting shares".

Regards
Hannah

Hannah Darnill | Associate Director
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Acknowledged: 29/09/14
CP



IFC FORUM RESPONSE

ISLE OF MAN GOVERNMENT

CONSULTATION ON THE TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES

24 September 2014

The International Financial Centres Forum ("the Forum") is a member-funded, not-for-profit organisation. The Forum advocates responsible cross-border financial intermediation in support of trade and investment as a means of promoting economic growth and enhancing development prospects. Members of the Forum include professional service firms and businesses headquartered in Bermuda, the British Virgin Islands (BVI), the Cayman Islands, Guernsey and Jersey, with offices in a number of the other leading IFCs.¹

1. INTRODUCTION

- 1.1. The Forum notes the Isle of Man Consultation on the transparency of the beneficial ownership of companies published in June 2014. We appreciate the opportunity to comment.
- 1.2. Forum members have considerable experience in collection of beneficial ownership information. Given that expertise, the Forum is closely following the various international initiatives on disclosure of beneficial ownership information currently underway.
- 1.3. In particular, the Forum submitted a response (attached as Appendix 1) to the Department of Business, Innovation and Skills ("BIS") consultation paper "Transparency and Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business" issued on 15 July 2013 ("the BIS Consultation Paper"). Our submission noted that the UK Government should pursue proper supervision for Corporate Service Providers ("CSPs"), currently in place in the Crown Dependencies and the Overseas Territories, as a means of conducting effective data collection *and particularly verification* of client identity. We also noted reservations on making the information public.
- 1.4. The Forum has participated and continues to participate in bilateral and roundtable discussions with relevant UK government and civil service officials in relation to the proposed policy in this area.
- 1.5. [The Forum has also taken the opportunity to comment in relation to the States of Jersey Review of Transparency of Beneficial Ownership Consultation (response

¹ Members are professional services firms and financial institutions including Appleby, ASW Law, Bedell Group, Butterfield Group, Conyers Dill & Pearman, Harneys, Maples and Calder, Mourant Ozannes, Ogier, Rawlinson & Hunter and Walkers.

attached as Appendix 2), The Government of the Virgin Islands Public Consultation Paper on Beneficial Ownership Information (response attached as Appendix 3) and the Cayman Islands Government Public Consultation: Beneficial Ownership of Cayman Islands-Registered Companies (response attached as Appendix 4).]

- 1.6. Industry groups, including the Law Society of England and Wales and the Institute of Chartered Accountants in England and Wales, made submissions of a similar nature that broadly support the Forum's position. These are attached as Appendices 5 and 6, respectively.

2. SUMMARY

- 2.1. As noted in paragraphs 6 and 7 of the Isle of Man Government Consultation, the G8 countries have endorsed a set of core principles which are fundamental to the transparency of ownership and the control of companies and legal arrangements. These are consistent with the Financial Action Task Force (FATF) standards which are the benchmark for internationally agreed standards on tracking client identity. Specifically, FATF Recommendations 24 (Transparency and Beneficial Ownership of Legal Persons)² and 25 (Transparency and Beneficial Ownership of Legal Arrangements)³ are in point.
- 2.2. We note that neither FATF Recommendation 24 nor 25 make any provision or recommendation for centralised or public registers of client identity data.
- 2.3. There are a number of current global initiatives on the collection of, and access to, information about the beneficial ownership of companies and other relationships. However, none of these plans is in final form and there is no international consensus as to the best approach. In these circumstances it would be premature for the Isle of Man to commit to any one developing standard, and the Isle of Man should therefore resist attempts to alter its system, which is already compliant with FATF standards.
- 2.4. Data should continue to be collected by regulated and supervised private sector CSPs (the regulated "gatekeeper" model) as a means of ensuring routine professional checking of data accuracy at the time it is lodged in the system. This approach, followed in the Isle of Man and other British offshore centres, is likely to produce more reliable data than that which would be elicited through self-reporting directly to a government agency. Accordingly, we recommend that the Isle of Man adheres to its existing model.

² FATF Recommendation 24: Transparency and Beneficial Ownership of Legal Persons - Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

³ FATF Recommendation 25: Transparency and Beneficial Ownership of Legal Arrangements - Countries should take measures to prevent the misuse of legal arrangements for money laundering or terrorist financing. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries should consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking the requirements set out in Recommendations 10 and 22.

- 2.5. The Forum views central and/or public registers as an unwarranted and disproportionate intrusion into personal privacy, not required for the tax and law enforcement rationales for the system. Individuals are less likely to be candid with information intended to be made publicly available. Information should be kept secure within government channels to enhance data accuracy (in the public interest) and limit the necessary compromise to the legitimate right to privacy.
- 2.6. The Forum is concerned that the introduction of a central and/or public register of beneficial ownership in the Isle of Man would risk significant competitive disadvantage, in particular given the lack of global consensus on an appropriate mechanism for identifying and collating information on beneficial ownership.
- 2.7. The Forum believes that the Isle of Man's current systematic vetting of client data by registered and supervised CSPs is the right model to promote a reliable record of client data.

3. PLETHORA OF GLOBAL INITIATIVES ON COLLECTION OF BENEFICIAL OWNERSHIP

- 3.1. We note that there are a number of overlapping and potentially duplicative initiatives underway on collection and access to beneficial ownership data. At this stage there are no settled outcomes on any of the plans. Key initiatives include:
 - UK proposals for a public central register of beneficial ownership;
 - EU register plans in the context of the 4th Anti-Money Laundering Directive;
 - FATCA and the OECD Common Reporting Standard;
 - US proposals for data collection through the IRS; and
 - FATF guidance regarding recommendations 24 and 25.
- 3.2. The Isle of Man, like other British offshore centres, has developed a system for the collection of, and access to, beneficial ownership information that has operated for a decade. The UK government has pressed the British offshore centres to alter their data collection models to reflect emerging UK plans, despite the fact that such plans are not yet settled in definitive form.
- 3.3. At present the global position of the various initiatives is uncertain. It may be, for example, that whilst the UK currently prefers a public register of beneficial ownership, the EU ultimately concludes that the regulated gatekeeper model is preferable. It is also significant that the US, which is by far the largest participant in the market, is extremely unlikely to endorse public or central registers.
- 3.4. We note in particular that the current UK draft legislation includes provision for a review of the system in three years. The framework of the proposed system therefore contemplates revision even at this stage.
- 3.5. Given the uncertain position internationally it is therefore premature for the British

offshore centres to commit to any one developing standard until an international standard is settled. However, once a global consensus has emerged, the Isle of Man will be in a position to respond and develop its regulatory system as appropriate.

4. FEATURES OF AN EFFECTIVE SYSTEM

- 4.1. It is the view of the Forum that the main purpose of the various international initiatives underway in this area must be for regulatory, legal and tax enforcement agencies to have access to "adequate, accurate and timely information on the beneficial ownership and control of legal persons" as required by FATF Recommendation 24. This requirement is widely agreed as the international standard.
- 4.2. In order for the data to be accurate, it must be verified. An effective mechanism for verification of data is essential to ensure the key objective of collection of accurate data is met. A self-reporting regime, as envisaged by the UK government, will not achieve this. There is no provision for verification of data. The suggestion that the public nature of the intended register will act *qua* enforcer is inadequate.
- 4.3. An effective system must also be comprehensive in its application. A system will be rendered largely ineffective unless it is global in its effect. The UK draft bill is not intended to include "foreign entities" in scope. This will undermine the policy objective by (for example) permitting persons to carry on business in the UK with a full branch presence of a foreign corporation with no disclosure objections in the UK.
- 4.4. In general, FATF Recommendations prescribe regulatory goals and not the means for implementation of such standards. FATF provides flexibility to individual jurisdictions to achieve agreed outcomes by means considered locally appropriate.
- 4.5. FATF Recommendations, as updated in 2012, are silent on central and public registers. There is no explicit or implied direction that a register, in any form, is required to achieve effective access to client identity data.
- 4.6. It is the view of the Forum that jurisdictions seeking to comply with currently accepted standards at the international level should focus policy action on meeting the *criteria* ("adequate, accurate and timely" information) laid out in the FATF recommendations as opposed to designing their own mechanisms not yet endorsed by multilateral standard-settlers.
- 4.7. As detailed in the Consultation, the Isle of Man already collects and maintains beneficial ownership information through regulated CSPs.
- 4.8. Collection of information by CSPs is regarded by the World Bank and other expert studies as the best means of collecting accurate data on beneficial owners.⁴

⁴ Professor Jason Sharman, co-author of the World Bank "Puppet Masters" report (the leading global study on shareholder data collection) worked with two other academics to empirically test the effectiveness of the three approaches identified by the OECD, including strong investigative powers, data tracking in corporate registries (as proposed by the UK) and collection by corporate service provided. He

- 4.9. Empirical testing of British offshore centres for UBO data collection indicates that their practices score well on compliance with FATF standards (see Appendix 7), which shows compliance with FATF data collection requirements across 182 countries).
- 4.10. The UK G8 Action Plan⁵ tabled at the conclusion of the Lough Erne Summit promised review of the supervision of CSPs. However, we are not aware of any progress on this.

5. COMPETITIVE IMPLICATIONS

- 5.1. Proposals for a centralised register of beneficial share ownership have little precedent, posing implications for the Isle of Man's competitive position. In the absence of a common standard, business is likely to migrate to other jurisdictions with less burdensome and intrusive regulations.
- 5.2. The transparency culture, whilst enjoying some momentum in the UK's current political climate, is anathema to other jurisdictions, in particular China, India and the post-Soviet States. The deleterious competitive effects of a central and/or public register of beneficial ownership are therefore likely to be particularly profound in relation to these markets. It could seriously damage the economic interests of the Isle of Man if it were not able to take advantage of the increasing economic significance of these jurisdictions.
- 5.3. The cost and time implications of implementing any kind of registry are also likely to be significant. Unless there is universal adoption of parallel regimes globally and according to the same time scale, those countries that move first are therefore likely to suffer competitive disadvantage..
- 5.4. In response, therefore, to the question posed by clause 63.2 of the Consultation, the Forum believes that the introduction of a central registry of beneficial ownership would adversely affect the financial industry in the Isle of Man.

6. POSSIBLE CENTRAL REGISTRY

- 6.1. We urge the Isle of Man Government to push back against pressure to adopt a central register, particularly while the UK declines to invest any practical resources in their system to ensure that data is properly verified. Our concerns with a central registry are as follows:

- Information must be processed, checked and refined to enhance reliability

concluded as follows:

"the first two suggestions [investigative powers and corporate registries] are not feasible and in practice corporate service providers provide the only reliable (though certainly not infallible) route to the real owner". *Michael G. Findley, Daniel L. Nielson and JC Sharman, Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism, Cambridge Studies in International Relations, 2014, p.45.*

⁵ UK Action Plan to prevent misuse of companies and legal arrangements, published 18 June 2013. See

<https://www.gov.uk/government/publications/uk-action-plan-to-prevent-misuse-of-companies-and-legal-arrangements>, Point 6.

by these who manage it. The private sector is better suited to this task than an overburdened public registry.

- The transfer of information by private sector stakeholders to a central register may diminish individual sense of responsibility for the ultimate nature and quality of the data recorded.
- Centralisation of beneficial ownership information brings the publication of the information a step closer. Clients will be conscious of this risk, which is likely to degrade candour and data accuracy. Shareholder and private sector confidence in data integrity and safety underpins truthfulness required in reporting information to government authorities. In the tax context, the OECD describes data security as a "cornerstone" of tax systems:

Confidentiality of taxpayer information has always been a fundamental cornerstone of tax systems. In order to have confidence in their tax system and comply with their obligations under the law, taxpayers need to have confidence that the often sensitive financial information is not disclosed inappropriately, whether intentionally or by accident.⁶

- Data aggregation raises the material risks of data mining and fishing expeditions by any parties with access to the register.
- As a result, and in response to the question posed by clause 63.1 of the Consultation, the Forum does not consider that the creation of a central register would go any way to further preventing the criminal use of companies. Further, and in response to the question set out in clause 63.11 of the Consultation, the Forum does not consider that access to a register of beneficial owners by local or recognised international financial intermediaries would improve the accuracy of the beneficial ownership information held in the Isle of Man. Rather, the converse may be true. That is, the existence of a centralised register of beneficial ownership is likely to degrade the accuracy and quality of that information.
- It is extremely unlikely that the creation of a central but not public register will satisfy the NGO community. Rather, previous experience shows that they are likely to seize the initiative, argue that it is not enough, and press harder and louder for public registers of beneficial ownership in the Isle of Man.

Implications of a public register

- 6.2. Clause 63.14 of the Isle of Man Government Consultation expressly contemplates the possibility of a public register of beneficial ownership information. The Forum is deeply concerned by the possibility of such a development. Specifically, the Forum's concerns on public registers are as follows:

⁶ "Keeping it safe, OECD guide on the protection of confidentiality of information exchanged for tax purposes", 2012, p5.

- Information collected may be exploited by criminals, particularly those engaged in cyber-crime. Data aggregators are likely to comb through corporate registry records to collate, organize and sell data on the ownership of private assets. The transfer of information by private sector stakeholders to a central register may diminish individual sense of responsibility for the ultimate nature/quality of the data recorded.
- Individuals or extremist groups may object to legitimate business activities (e.g. animal rights activists as respects the conduct of life sciences research). A public register will make the owners of companies conducting these legal but controversial activities targets.
- A public register is not required for law or tax enforcement purposes. Making data public is even more likely to reduce reporting candour than creating central registers. This is likely to further degrade data accuracy, defeating the purpose of the system.
- A public register is unnecessary and a disproportionate intrusion on an individual's rights to privacy. The global concern with deterring illicit activity can be met by accessible data without the need for wholesale data capture and storage. Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights state that:

"No one shall be subjected to arbitrary interference with one's privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."
- Public registers would facilitate scurrilous press speculation on the affairs of private individuals with interests in Isle of Man companies with no evidence of wrongdoing.

7. KEY RECOMMENDATIONS

The Isle of Man should:

- 7.1. Continue adherence to the Isle of Man's existing model storing data at private sector level.
- 7.2. Avoid changes to the Isle of Man's current system until a new global model is endorsed by global standard setters, the FATF and the OECD.
- 7.3. Articulate FATF requirements for verification of identity as the reason for remaining with the Isle of Man's current regulatory and supervisory process for CSPs.
- 7.4. Advocate disclosure of, and access to, beneficial ownership information through

appropriate channels, on request, under existing international practice.

We hope that these comments are helpful. Forum representatives would be pleased to discuss these issues with Isle of Man Government officials at any time. Please contact Naomi Lawton at naomilawton@ifcforum.org or Richard Hay at rhay@stikeman.com.



ISLE OF MAN
SOCIETY OF
CHARTERED
ACCOUNTANTS

CABINET OFFICE	
11 SEP 2014	
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FILE AWAY	-
TO RELEVANT OFFICER ON FILE	C.P.
SCANNED	-

*Acknowledged 11 Sept.
C.P.*

CONSULTATION ON THE TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES - ISSUED BY THE ISLE OF MAN GOVERNMENT JUNE 2014

ISLE OF MAN SOCIETY OF CHARTERED ACCOUNTANTS RESPONSE

PROPOSAL:

"The Isle of Man Government now wishes to consult and invite comment as to whether a centralised registry would improve transparency of the ownership and control of companies in the Isle of Man. It is important to stress that the Isle of Man Government has not made up its mind on the suitability or otherwise of this proposal and all views will therefore be taken into account."

GENERAL COMMENTS:

- We oppose the proposal to create a centralised registry of beneficial ownership. Clients have an entitlement to their privacy and are used to having it. If a client comes from a jurisdiction where their interests are private they are very likely to want to maintain a similar level of privacy in any jurisdiction in which they are involved. We anticipate that individuals associated with the markets DED are targeting e.g China, India, Russia, highly value their privacy.
- Clients have legitimate reasons for wishing to protect their interest e.g they may have a public profile or may be seeking to undertake activity without their competitors knowing. If the use of an IoM structure were to impose additional disclosure requirements on them, such clients are likely to be easily able to transfer their business to a competitor jurisdiction.
- The register is likely to result in the loss of existing and future business.
- Financial Institutions are already suffering additional compliance burden with FATCA. This register is likely to result in more compliance costs which those Institutions may struggle to pass on to their clients.
- It is impossible to see how such a register can protect against criminal activity. The IOM is already well regulated and licensed entities have robust procedures in place to adhere to AML and CFT requirements. If such a register were to be made public, it is arguable that if anything it may be open to further abuse by those who are intent on criminal activity.

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- We strongly believe that there is no advantage to being one of the first to sign up to such a register. There is no international norm regarding the operation of such a register. We would argue that the availability of ownership information to those who need to have it is already covered by the existing system and the accelerating move towards automatic exchange of information.

RESPONSES TO CONSULTATION QUESTIONS:

We have responded to the specific points as requested within the consultation document. All comments should be interpreted based on the underlying premise that we strongly oppose the proposed central registry.

- 1. *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? Do you think a central register would further prevent the criminal use of companies? What effect would making the register public have?***

The current system of the Companies Registry is extremely effective and is supported by a robust, regulated fiduciary service provider sector.

We fail to see how a central registry of beneficial ownership could prevent criminal use of companies and is more likely to encourage an increase in criminal activity.

The public register would deter potential investors from using the Isle of Man and threaten relationships with existing individuals who have legitimate reasons for wishing to keep their interest in an entity confidential.

- 2. *How should beneficial ownership be defined; for instance, should the FATF definition apply?***

The FATF definition could be applied however it must be standardised across the Isle of Man and the United Kingdom. We would like to see further clarification on the definition of beneficial ownerships for Trusts as it is clear that some jurisdictions do not understand the concept of a Trust and unhelpful interpretations of 'Trust ownership' can arise as a result.

- 3. *How do you think the introduction of a central registry of beneficial ownership would affect your business?***

We believe that it would result in a loss of both new and existing business across all accountancy service lines with a significant, negative impact being felt by TCSPs.

4. If a central registry were established, should it be made available to the authorities, regulated entities, the general public or any other body?

We do not believe a central registry should be established.

If, despite industry dissent, the registry were implemented, it should be available to authorities and regulatory bodies only. It would be a mistake to make the register available to the general public as we believe this would make it open to misuse.

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?

The register should be consistent and simple to use. It should include all Isle of Man companies registered under Isle of Man law and all entities with an established place of business here. Foreign companies on the IOM F Register should be included.

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?

There should be a consistent approach to include all beneficial owners.

We believe it would be problematic to include Trusts on the register as the definition of beneficial owner is not easily understood in relation to a Trust. At the most, a record of the Trustees could be held.

7. Who should be responsible for reporting the beneficial ownership of a company?

The nominated officer or registered agent should be responsible for reporting.

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? What would be the most efficient way for the company to report the information to a central registry?

Information regarding beneficial ownership is already required to be obtained at the start of a business relationship and therefore we fail to see why statutory powers would be necessary. Further, there are already procedures in place that would allow the authorities access to this information should it be necessary.

The most efficient way of reporting the information would be via the annual return followed by changes in a notification form similar to the Change in Directors form 9N.

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? What would be the most

efficient way for a regulated entity to report the information to a central registry?

The information should be reported by a regulated entity as it is more likely to be submitted accurately and in a timely manner.

We are mindful that any additional reporting requirement on a regulated entity will create an additional cost of compliance burden on both the client and the Financial Institution at a time when businesses are already suffering with the implementation of FATCA.

10. Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?

We believe this would not help any financial institutions. The use of centrally held information seems to go against current AML legislation in the IOM which requires financial institutions to conduct their own CDD and for which all firms have established systems in place to comply. It also does not allow for procedural differences between firms.

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?

No definitely not.

There is a strong risk of a misconception that the information held on the register would be in some way approved by the IOM Government and that inappropriate reliance could be placed on it.

12. Who should be responsible for maintaining and controlling access to a central register?

We are not in favour of the register, however in the disappointing event that it progressed, Companies Registry (Department of Economic Development) should maintain and control it.

13. What information should a central registry collate with respect to beneficial ownership?

Any information held should be in line with IOM current AML legislation.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?

The only protection against misuse of a register by criminals is not to have a register.

15. Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?

We do not favour a central register. If it were implemented, a system similar to the 9N change in Director form could be established.

16. How much time should be given for disclosure of beneficial ownership to a central registry?

Disclosures could be made to the registry within 30 days. However we anticipate there would be difficulty as the registered agent/nominated officer may not be advised on a timely basis of a change and information held at the register would risk being out of date.

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 information to domestic and foreign investigators than the current system of access on request? What additional protections or checks and balances could apply?

We believe the existing system to be robust and suitable for purpose and it should not be changed.

18. Do you think that any concerns 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?

The international standard on automatic exchange is fast moving and negates the requirement for the proposed register. We believe clients and financial institutions would continue to have concerns regarding the cost of maintaining the register and the potential for abuse by criminals.

Conclusion

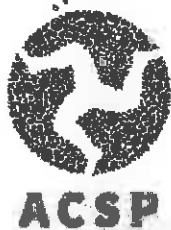
We strongly oppose the proposal to introduce a central register on beneficial ownership.

We hope the above suitably answers the specific points raised, however we would be happy to discuss any points in further detail as required.



**Neil Duggan
Chairman
Isle of Man Society of Chartered Accountants.**

10/9/2014



**The Association of
Corporate Service Providers
Isle of Man**

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22nd September 2014

Mr Carlos Phillips
Crown and External Relations
Cabinet Office
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Bucks Road
Douglas
Isle of Man
IM1 3PN

Acknowledged: 24/06
Email FAO A. Couper-Woods

Dear Carlos

Consultation beneficial ownership

We are writing in response to the consultation on the transparency of the beneficial ownership of companies and to the specific questions raised as requested. We are pleased to have the opportunity to provide the views on behalf of our members to the consultation which is in response to the UK Prime Minister's public and much reported proposal of publicly available registers of beneficial ownership.

Whilst we are supportive of any proposals which will reduce criminal activity through corporate structures we are firmly opposed to a public register of beneficial ownership for the many reasons noted below. This would represent a seismic change in the current reporting.

The Isle of Man has extensive legislation supported by regulation and guidance to ensure that information relating to the beneficial ownership of companies (and trusts, partnerships, foundations etc.) is maintained. The beneficial ownership information is disclosed to relevant authorities when permitted by law and we believe that this system is robust and reliable and provides access to verified information. The verification process is key to ensure accuracy.

Organised criminals with easy access to false but apparently genuine documents are unlikely to find the requirements of proof too much of a burden. Making company ownership public will not alter the position if false identities have been used. The maintenance of verified identity and due diligence records by corporate service providers will not prevent the criminal use of companies but it is a deterrent.

The main concern with making ownership public is the lack of protection for those individuals who have genuine reasons to keep their affairs private. These reasons include competitive threats, and for ultra-high net worth or publicly and politically exposed persons and their families it can be to avoid the threat of kidnap, extortion, bribery, theft and identity theft.

The right to privacy is supported by Human Rights Article 8 which provides respect for private and confidential information, particularly the storing and sharing of such information. The right to privacy is limited but any limitation must have regard to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole.

The Isle of Man has an existing system which provides access to verified ownership information which delivers a good balance of ensuring that the information is accessible but not public.

Making the beneficial ownership public does not provide any benefits but does introduce threats to individuals and their right to privacy (as opposed to secrecy). This is further supported by the fact that the Isle of Man has legislation and regulations in place which are rigorous and sophisticated in relation to anti money laundering and combatting terrorism and all crimes.

The introduction of the OECD Common Reporting Standard means that there will be automatic exchange of information to home jurisdictions so there will be no lack of transparency necessitating a register as proposed.

The Isle of Man should not consider such a public register before other jurisdictions (such as the US, G8 and G20 countries). To be at the forefront of such changes would place our industry at a major commercial disadvantage in terms of additional costs of compliance and would be a deterrent to both existing and new clients for whom confidentiality is important.

The Isle of Man must continue to maintain its standards in relation to regulation and legislation and one area to consider is the current ability for an individual to walk into Companies Registry and form a company (under the 1931 Companies Act) without providing any information regarding the beneficial ownership. This should be addressed to ensure there are no gaps in our system.

We have received feedback from our members who support these views and copy below a few specific comments included in their responses:-

".. we feel strongly that this is totally unnecessary and could be the death knell to our industry".

"We should only consider agreeing to a Public Register when it becomes the international norm".

"We believe that clients with legitimate business rights have a right to confidentiality, without fear of how their details may be used by authorities with differing agendas, or by lawful and unlawful organisations, press, family or the general public and do not believe, nor would clients believe, that sufficient safeguards would be in place"

"We would consider reorganising and establishing offices in more favourable jurisdictions and building upon presences we already have overseas in order to protect our Group if we cannot operate within a level playing field from the Isle of Man".

We have set out below our responses to the specific questions bearing in mind that our overriding response is that we do not agree that there should be a central register for beneficial ownership:-

1. The present system of retention of beneficial ownership details of companies by nominated officers or licensed managers and agents in preventing the criminal use of companies is effective in so far as it facilitates the application of due diligence research on and assessment of the beneficial owner.

In terms of preventing the criminal use of companies it is suggested that understanding the purpose of the structure and monitoring of activity and transactions by the corporate service provider plays a greater role in forestalling use for criminal purposes. We do not anticipate that a public register would reduce criminal activity and to the contrary, may well increase it due to the risks of identity theft, extortion, bribery, kidnap etc. as noted above.

2. The definition of beneficial owner needs to be a standard single definition and we support the definition as included in the EU draft Fourth Money Laundering Directive which accords with the definition of a beneficial owner set out in the Isle of Man's Money Laundering and Terrorist Financing Code. The threshold at 25% plus one share is sensible as it is the point at which an owner could have a blocking position.

We anticipate difficulties with interpretation in some situations such as complex structures and companies which are held by a Purpose Trust or Discretionary Trust. Ownership issues are often complicated and it is

difficult to conceive a register which could accommodate all but the simplest arrangements and difficult to see how the information could be verified and trusted to be correct. The absence of a single internationally accepted definition of beneficial ownership will affect the quality and consistency of the data and thus its accuracy.

3. The introduction of a central register would have a negative impact on the ACSP's members industry in that many of the owners would fall into the categories noted above for whom privacy is important. They would thus move their structures to another jurisdiction which would provide the privacy they require.

It is impossible to quantify the level of business loss but we anticipate it would be significant and a threat to the industry as a whole. In addition the introduction of a central registry will increase administration and filing requirements and therefore the business cost will increase.

4. We do not believe a central registry should be established but in the event that it were, it should only be available to the authorities under specific circumstances where there was a genuine reason for the information to be accessed under a due legal process (i.e. to regulators, tax authority and FCS/Constabulary).
5. We do not believe any companies should be required to disclose beneficial ownership to a central registry. People should be entitled to their privacy unless there is an overriding public interest reason. However should disclosure be required it should apply to all companies that register with IOM Companies Registry.

Where foreign companies are registered in the Isle of Man the data should be held and filed with the home jurisdiction registry to avoid duplication or differences of interpretation and to ensure consistency.

In terms of company type, careful consideration and definition of who is defined as a beneficial owner will need to be determined. For example for collective investment schemes, hybrid companies, private investment companies, publicly listed companies (on regulated stock exchanges and AIM etc.).

6. There should be exemptions and some of those referred to in the response to question 5 above should be included.
7. The Nominated Officer / Registered Agent, or in the absence of the regulated entity exemption continuing, the licence-holder on behalf of the Company should be responsible for reporting.
8. Reporting should be by a variant of the annual return filing arrangements. It is important to preserve the absence of any trusts on a register of members.
9. As above, reporting should be by the extension of current reporting using annual returns. Accuracy should not be an issue in straightforward cases, however where structures are complex it could lead to ambiguities. Developing a system of reporting in complex cases would be arduous and costly.
10. Access to a central register of beneficial ownership would permit a comparison of the information received and address any differences. However, our view is that any help would be marginal given that financial intermediaries are subject to the AML Code and will need to independently confirm and verify data held in the register.
11. We do not believe the accuracy of the information will be improved by access to the register by local or regulated international financial intermediaries. On the contrary, the data will never be entirely up-to-date and it could lead to intermediaries relying on the information rather than making their own independent verifications.
12. The information should be held by Isle of Man Companies Registry as there are already systems in place for reporting member / shareholder information this could be extended. Electronic filing should also be introduced to create further efficiencies.

13. The information should be sufficient to comply with the identification and address verification required by the Isle of Man AML Code and Handbook.
14. Protection needs to be in place to avoid potential criminal use of the data and this is one of the fundamental flaws with the proposal of a central register. Information should only be provided to the authorities under specific circumstances where there is a genuine reason for the information to be accessed under a due legal process (i.e. to regulators, tax authority and FCS/Constabulary).
15. Disclosure should be made with the annual return filing.
16. As above – annual updates with the annual return together with the date the change was effective.
17. We do not believe access to a central register would provide a more efficient method of providing beneficial ownership information. At present, access to information is effective and subject to a series of legal checks and balances and in our view it is imperative that it should be retained.
18. There are concerns regarding the rationale for the requirement in the Isle of Man given that the information is already available. The present approach to documenting the beneficial ownership information works well with access to such information by external parties being controlled via a series of legal checks and balances.

The development of new international standards on automatic exchange should allay the concerns of external parties and the UK Prime Minister David Cameron. In any event, our recommendation would be that the UK adopts the Isle of Man practices rather than vice versa as it provides a tried and tested model.

In summary we are opposed to the introduction of a public central register for beneficial ownership for the many reasons stated above and believe that it will be detrimental to the financial services sector without providing any benefit.

We trust you find our feedback useful. Should you wish to discuss any of the comments please let me know.

Yours sincerely
On behalf of the ACSP



Anne Couper Woods
Director



ISLE OF MAN

redefining / standards

Mr Carlos Phillips
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CABINET OFFICE	
04 AUG 2014	
READ BY C.S	
FILE AWAY	
TO RELEVANT OFFICER ON FILE	Carlos
SCANNED	

Acknowledged: 04/Aug

1 August 2014

Dear Mr Phillips

Consultation on the transparency of the beneficial ownership of companies

On behalf of the AXA Isle of Man group of companies, I wish to provide the following response to this consultation.

AXA Isle of Man fully supports the Government's efforts to ensure that the Island remains a competitive and compliant financial centre. We believe that it is beneficial for the Island to be seen to actively participate at the forefront of the development of such standards.

With respect to the specific questions posed in the Consultation Paper, we believe that we are unable to provide meaningful responses to all the questions, in particular questions 1, 4, 5, 6, 7, 9, 11, 17 and 18; but we would like to provide the following responses in respect of the remaining questions:

- 2. *How should beneficial ownership be defined; for instance, should the FATF definition apply?*

We believe that the FATF definition should apply; as otherwise, there will be the potential risk that the Island will not be aligned with the international standards that we will be assessed against by evaluators, such as Moneyval.

- 3. *How do you think the introduction of a central registry of beneficial ownership would affect your business?*

Such a registry, for companies, will have little impact upon our business. However, an extension to cover legal arrangements, such as trusts, would have a significant impact, particularly if there are extensive filing requirements.

- 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? What would be the most efficient way for the company to report the information to a central registry?*

Statutory powers of disclosure is really a question for the CSP sector. In our insurance and trust businesses, AML requires that we satisfy ourselves regarding beneficial ownership before accepting the business, in which situation a statutory power is superfluous.

AXA Isle of Man

AXA Isle of Man includes a number of companies all of which are limited by shares and registered in the Isle of Man.

Registered Office of all the companies: Royalty House, Walpole Avenue, Douglas, Isle of Man, IM1 2SL, British Isles.

Details of the companies appear overleaf.

Telephone: +44(0)1624 643333 Fax: +44(0)1624 643444 E-mail: helponline@axa-iom.co.im

Telephone calls may be recorded.

With respect to the second part of this question, 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.

10. *Would access to a central register of beneficial owners help financial intermediaries, for example, to complete due diligence? What information would need to be available?*

Whilst a central register of beneficial owners could play a part in customer due diligence checks, we do not believe it could form the sole element of such checks. The reason for this, is that whilst we can see such a register allowing identification of an individual we do not see how it would enable the verification aspect of customer due diligence; such as normally carried out through obtaining certified identity documents.

Since Companies Registry does not validate any amendments passed to it, so changes can be made maliciously by people not associated with the company, we would treat such information with due caution.

12. *Who should be responsible for maintaining and controlling access to a central register?*

We believe that the best fit for maintaining and controlling access to a central register would be the Companies Registry.

13. *What information should a central registry collate with respect to beneficial ownership?*

We believe that the required details as set out in Section 8 of the Companies (Beneficial Ownership) Act 2012 form an appropriate starting point. However, we believe that some consideration must be given to 'look through' requirements in order to prevent the use of legal structures as a cutout between any natural persons as beneficial owners.

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? Who should be responsible for maintaining and controlling access to a public register if it were allowed?*

With respect to the second part of this question, as noted above, we believe the Companies Registry would be best suited to this role. We would also suggest the introduction of validation processes, but recognize that by the nature of the registry and with users asking for electronic filing, this may not be easy to achieve.

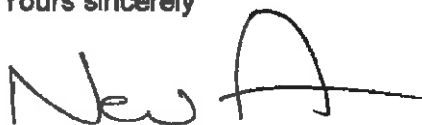
15. *Should beneficial ownership be reported to a central registry on a fixed period basis or should changes be disclosed when they occur?*

Whilst we believe that there is a case for an annual declaration in relation to beneficial ownership, there should also be a requirement to disclose changes when they occur as otherwise the utility of the register could be impaired.

16. *How much time should be given for disclosure of beneficial ownership to a central registry?*

We believe it would be appropriate to maintain consistency with other company filing requirements and as such requiring filing within one calendar month of a change appears to be appropriate.

Yours sincerely



Neill Angus
Finance Director and Head of Business Risk