TREASURY

Summary of Responses to the Consultation on the Beneficial Ownership Bill 2017

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Contents

1. Introduction

1.1 The draft Beneficial Ownership Bill was issued for consultation by the Treasury on 4 November 2016 with responses requested by 16 December 2016.

1.2 The Bill will give effect to the Island's obligation arising from an Exchange of Notes with the UK to introduce a central database of beneficial ownership of the widest possible range of corporate and legal entities incorporated in the Isle of Man by 30 June 2017.

1.3 The consultation exercise was concerned with the draft Beneficial Ownership Bill itself rather than broader developments in the beneficial ownership space.

1.4 The consultation document stated that a summary of the responses received would be published within 3 months of the closing date for the consultation. Given the timeframe within which the Bill has had to be progressed, this response document has been published as soon as possible.

1.5 The document outlines some key themes emerging from the consultation and sets out some of the amendments which have been made to the draft Bill. The document also discusses in a bit more depth some other issues, including the retention of the nominated officer structure (Section 4) and the security of the database (Section 6).

2. Overall responses – some key themes[1]

2.1 The consultation document was issued to all Government Departments, Statutory Boards, Offices, Local Authorities, industry representatives and published on the Government's website. The consultation attracted responses from 14 respondents who made over 160

[1] Inclusion or otherwise in this section does not infer significance; the overview is intended to provide the reader with a flavour of some of the responses which were received. Please refer to Appendix A for the detail of all responses.

comments on the draft Bill which are listed, by clause, in Appendix A. A list of respondents is included at Appendix B.

2.2 The Treasury welcomed the responses and considered each comment when preparing the final draft of the Bill. On the whole the responses received were supportive of the need for a central register; however a number of issues were raised which, having been further reviewed, led to an amended Bill being introduced into the House of Keys.

2.3 Respondents mostly acknowledged the position of the Government and the pressure it is under in what is a changing international landscape. However, most of the critical comments can be categorised under a broad concern that the Bill exceeded what is required to meet international standards, including the EU's Fourth Anti-Money Laundering Directive and the Exchange of Notes with the UK. Industry respondents expressed concern that the scope of the Bill, and the extent to which some of its provisions exceed what is required for international compliance, could make the Isle of Man a less competitive jurisdiction.

2.4 The clause specific responses generated some industry consensus. One of the most prominent areas of comment was in respect of the framework which contemplated potential future access to the database by 'obliged entities' and 'persons with a legitimate interest'. A recurring concern amongst respondents was that the definitions attached to these provisions were too broad and would leave the door open to a de facto public register in the future, although a charity which responded did state its support for a public register or at the very least register access for NGOs. A number of respondents called for these provisions to be removed, whilst others suggested strict legal oversight and responsibility over the process as a potential compromise.

2.5 Responses also raised concerns about the additional due diligence that would be required, particularly in respect of non-registrable beneficial owners.

2.6 A further area of concern was the role of the nominated officer. Some called into question the need for a nominated officer at all, suggesting instead that the responsibility for investigating, obtaining and maintaining beneficial ownership information should rest with the legal entity. Again, it was noted here that this goes beyond what is required in some other jurisdictions and that the extra burden could make the Isle of Man a less favourable jurisdiction. Respondents also thought the processes that relate to the nominated officer were overly bureaucratic and subject to severe penalties, whilst affording confined timescales for compliance and unsatisfactory protection in some circumstances.

2.7 Other areas of concern included those in respect of data security and the steps that would be taken to protect the database from cyber-attack. Some respondents felt that the definition of 'beneficial owner' was too wide or in other ways deficient. The importance of the guidance on this and other terms was highlighted. Respondents also questioned the lack of obligations on beneficial owners to provide information to allow legal owners and nominated officers to fulfil their statutory obligations. Unease was also expressed over how the submission of information to the database via the annual return would work in practice and how subsequent access to the database by nominated officers and/or legal entities would work.

3. Amendments to the Bill

3.1 Following a review of the consultation responses and further internal review, a number of amendments have been made to the Bill.

3.2 In summary, the main changes are as follows:-

a. Removal of provisions for potential future access by obliged entities and persons with legitimate interest;
b. Recasting of the definition of 'external intelligence or law enforcement agency' to align it to jurisdictions with which the Isle of Man has a beneficial ownership sharing agreement (at the present time, only the United Kingdom);
c. Changes so that the legal owner now only has to provide the required details of the beneficial owner of their interest to the nominated officer *upon request.* The effect of this amendment will be to permit regulated persons to utilise existing AML/CFT compliance measures to satisfy the Bill's requirements in respect non-registrable beneficial owners;
d. Removal of the Office of Fair Trading's rights to direct access to the database, replaced with gatekeeper access through a competent authority (with inclusion of the OFT's statutory responsibility in respect of the registration of moneylenders);
e. Amendment to the definition of Beneficial Ownership (removal of the phrase 'or its assets' and a change from '25% or more' to 'more than 25%' in the definition of registrable beneficial owner);
f. Recasting of the definition of 'permitted purpose' and provisions on the further disclosure of beneficial ownership information;
g. Removal of the exemption for Collective Investment Schemes;
h. Amendment of the provisions on the further consequences of failure to disclose beneficial ownership information to provide a process for a legal owner to make representations prior to any action being taken;
i. Inclusion of a 'reasonable steps' defence for a legal owner charged with an offence under clauses 9 and an intermediate or beneficial owner charged with an offence under clause 10;
j. Inclusion of an obligation on beneficial owners to assist legal owners;
k. Strengthening of the provision on the preservation of details and verifying information (new powers for the Department of Economic Development to issue directions on preservation post dissolution etc. and to increase the preservation period beyond 5 years);
l. Inclusion of registered agents (under Companies Act 2006, Limited Liabilities Companies Act 2006 and Foundations Act 2011) in the savings provision to allow relevant officers to act as nominated officers under the Bill without the need for separate notification to the DED;
m. The removal of the requirement for the FSA to lay the guidance on beneficial ownership before Tynwald;
n. The inclusion of clarification that a legal entity formed, incorporated or established outside the Island 'whether or not registered under the Foreign Companies Act 2014' is exempt from the Bill;

o. The inclusion of access to the database by Cabinet Office (GTS) employees for the purposes of maintaining the database and required website;
p. The removal of reference to a specific website address for the submission of beneficial ownership information to the DED;
q. Clarification on the vires for the FSA and the DED to make regulations under the Bill;
r. Amendment to the relevant clauses on submission of information to the database to permit the DED to make regulations to allow for the provision for the bulk upload of beneficial ownership information;
s. The extension of the 'other provisions concerning beneficial ownership not affected' provisions to replicate the Companies (Beneficial Ownership) Act 2012 ("the 2012 Act");
t. The addition of a new clause to make explicit that the operation of a power or duty to disclose information does not affect the operation of any other power or duty to disclose information or any restriction on such disclosure (to ensure that no existing sharing arrangements are affected);
u. Addition of 'where it differs from the residential address' after the 'a service address' in the required details;
v. Deletion of the clause on annual returns for companies intended to help facilitate the future online filing of annual returns but outside the beneficial ownership regime (and able to be addressed non-legislatively); and
w. A small number of drafting clarifications and modification.

4. Retention of the nominated officer structure

4.1 As noted at 2.6 above, the role of the nominated officer was raised in the consultation. The Bill replicates the 'nominated officer' structure established by the 2012 Act. As there is nothing within Isle of Man companies or associated legislation requiring a resident director, secretary etc., a new class of officer was required to ensure that an individual or corporate service provider *on the Isle of Man* would be responsible for responding to notices for beneficial ownership information from competent authorities and, if necessary, be sanctioned for non-compliance.

4.2 The policy imperative behind the 2012 Act remains in place for those companies covered by it. Furthermore, as the Exchange of Notes creates new obligations – primarily the creation of a central database of beneficial ownership information – the rationale behind the exemptions to the 2012 Act has largely fallen away. There are no duplicate or similar requirements to submit beneficial ownership information onto the register other than under the Bill and there is a policy imperative to have an Isle of Man based person responsible for meeting these obligations.

4.3 The consultation responses on this point have been carefully, and sympathetically, reviewed. There are clear advantages to replicating the practice found elsewhere for placing obligations on the legal entity rather than the nominated officer. However, the policy imperative outlined above, together with the lack of duplicate requirements elsewhere, particularly in respect of some of the new obligations created by the Bill, are considered to outweigh these advantages.

4.4 There have been changes to the Bill to (see 3.2 l. above) to ease the appointment process for nominated officers. Also, the timetable for submission of beneficial ownership information to the database has been slightly changed to acknowledge the obligations which entities have prior to being in a position to submit the information.

5. Data Protection Issues

5.1 Some respondents raised the data protection implications of the Bill, particularly in respect of the apparent absence of provisions for consent from the beneficial owner and potential future requirements of the EU's General Data Protection Regulation.

5.2 The inclusion of a duty for the beneficial owner to assist the legal owner when ascertaining beneficial ownership information has helped to clarify the obligations on beneficial owners.

5.3 The Information Commissioner has been consulted at different stages during the Bill's drafting and has confirmed that he is content with its provisions from a Data Protection compliance perspective. There are internal implications for Government which will be addressed but there has been no requirement to amend the Bill.

6. Security of the Database

6.1 The Government takes the security of the database extremely seriously indeed. A security/risk impact assessment has been carried out to look at potential vulnerabilities in respect of technology; process and procedures; and personnel to enable all practical and realistic steps to be taken to ensure that the Isle of Man is protected from the risk of a data breach.

6.2 The database will be provided through existing online services which routinely (and securely) handle large quantities of sensitive data. The infrastructure will be subject to an independent annual penetration test and regular vulnerability and compliance scans with appropriate encryption applied. Access to the database will be fully auditable.

7. Next Steps

7.1 A revised Bill entered the House of Keys on 7 February 2017. The Bill and supporting documentation, including an impact assessment, can be found on the Tynwald website.

7.2 Subject to a successful passage through the Branches of Tynwald, it remains the Government's intention to have a central database of beneficial ownership established by 30 June 2017.

Appendix A

Ref No	Clause	Comment
1	2	Does the date need to be amended to reflect the 5th AMLD which is 27/6/17? Should it therefore be for accounting periods starting on or after 1 January 2017?
2	3(1) – Definition of "competent authorities"	NGOs should have access to the database
3	3(1) – Definition of "external intelligence agency"	Page 4 of the Consultation seems to suggest that it is only UK agencies that could access the information on the beneficial ownership database but the definition of external intelligence or law enforcement agency seems to extend that to equivalent bodies outside of the Isle of Man generally. Clarity is needed as to whether it is any equivalent agency anywhere in the world that can access information in the database. There is also nothing within the Bill about the protocols for requests and exchanges of information.
4	3(1) – Definition of "legal entity" (and s. 5)	The Bill expressly does not apply to trusts, so individuals who are concerned about privacy or who are concerned about the security of the IOM Government's central database may restructure their corporate interests so that their companies are ultimately owned by a trust, with a trust corporation as trustee, and therefore their personal details won't be on the central register. Having said that, the trust corporate service provider ("TCSP") would have to hold due diligence information on the client anyway, so if an investigation was launched into the individual, the TCSP would be able to provide the required information.
5	3(1) – Definition of "legal owner"	The definition of "legal owner" is very wide. It seems to go beyond direct ownership to 'control' of a company. Surely the issue of 'control' raises questions of whether that person is actually legal owner or not and then the distinction between the "legal owner" and intermediary / beneficial owners becomes blurred and you could potentially have more than one legal owner at different levels. The concept of a legal owner also needs to be considered more explicitly for hybrid companies so that the "or other ownership interest" piece in the definition of a legal owner deals specifically with this point.
6	3(1) – Definition of "registrable beneficial owner"	The 25% *or greater* threshold differs from the Exchange of Notes, which appears to contemplate *more than* 25%, as does the 4MLD; having said that it is consistent with the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015.
7	3(1) – Definition of "registrable beneficial owner"	We note the term "registrable beneficial owner" does not refer to the meaning given by section 4 (whereas "beneficial owner" and "beneficial ownership" do). We suggest that a reference to section 4 be included in order to avoid confusion.

		The same term states that a beneficial owner owns or controls 25% or more of a legal entity. That contradicts the Exchange of Notes, the 4AML Directive and the UK's Small Business Enterprise and Employment Act 2015 (SBEE), all of which state "more than 25%". We presume this is a drafting error. In our opinion, the IOM should be consistent with both the UK and EU.
8	3(1) – Definition of "permitted purpose"	This definition appears to be wider than it needs to be. Paragraph (a)(ii) in particular seems to go further than is necessary under the Exchange of Notes.
9	3(2)	Section 3(2) states that the Treasury can by Order amend the definition of registrable beneficial owner as well as the percentage referred to within that definition. The 25% ownership derives from AML regulation and any change to it would impact on information to be collected for AML purposes. It would be preferable for there to be consultation on any proposed change so that the impact on industry could be assessed.
10	4(1)	The definition of "beneficial owner" appears to us to be flawed. References to "control of a part of a legal entity" seem only to confuse; what is or not "control" of a legal entity is a matter for legitimate debate. However, "control" of a part of a legal entity is meaningless if that part does not itself confer control (by whatever definition). In addition the reference to "or its assets" is both novel and inappropriate.
11	4(1)	The Bill defines 'beneficial owner' as a natural person (i.e. singular). The definition according to FATF and 4AMLD is 'natural person(s)' (i.e. plural). Line 4 includes the words "or its assets". Those words are not included in the 4AMLD, SBEE or FATF definitions. The definition also extends to a person 'who exercises control via other means'. The term 'other means' should be defined. Furthermore we suggest that the words "of a sufficient percentage" (i.e. to determine beneficial ownership) are included in this section - that will ensure consistency with the 4AMLD. According to the Bill, the FSA may issue guidance on the meaning of "beneficial ownership" ,"ownership" , "control", "legal ownership" and "registrable beneficial ownership'. In our opinion, guidance should be issued in order to ensure consistency and overall compliance.
12	4(1)	The consultation refers to a threshold for inclusion on the database of a beneficial ownership or control of 25% or more. This percentage is not actually referenced in clause 4. Is it intended that this will addressed by a supplementary order as provided for under clause 4?
13	4(1)	The guidance that is intended to be issued will be key. For example, some companies' shares may be held as assets of trusts with a corporate trustee and no natural persons as beneficiaries (such as special purpose trusts) and the guidance will need to deal with this type of scenario, amongst others. Proposed guidance should, we suggest, itself

		be the subject of a consultation exercise.
14	4(1)	We need clarification regarding the definition of beneficial owner when it comes to having an IOM company owned by a Trust since the Trustee has the control and possibly a protector has limited control, but not a Settlor or beneficiary unless there is a trust where the Settlor has reserved powers.
15	4(1)	The definition of "beneficial owner" in section 4(1) is also very wide and (whilst it is appreciated that this is the purpose of the legislation) it appears to put a significant burden on nominated officers and legal owners. For example, what does "exercises control via other means" mean. What does "control" mean? What about private arrangements whereby one person "controls" another.
16	4(1)	Agreed.
17	4(2)	How does section 4(2) regarding joint owners work is practice. For example, if 30% is held on trust for 2 people then are they joint owners?
18	4(4)	We assume that guidance contemplated under this clause will address the more complex ownership structures that can be encountered amongst the client base of CSPs on the Island. The application of the beneficial ownership concept to foundations seems particularly problematic.
19	4(5)	Typo; "regard must be had to guidance".
20	4(5)	There is a missing "to" – "regard must be had <u>to</u> guidance"
21	4(8) [& 2(2)]	The ability to expand key defined terms by order seems to be inappropriate in the context of the Bill. As these provisions have the ability to change fundamentally the scope of the legislation we think that they should be subjected to the primary legislation process and changed by executive act.
22	4(8)	We also note that Treasury may, according to 4(8), revise the meaning of "beneficial owner". "Treasury" is not defined in section 3, and we seek further clarification as to why Treasury would revise the meaning of the term. We are also concerned that any amendment to the definition does not require public consultation. This aspect of the legislation is very important and any amendments to the definition of the primary term (i.e. meaning of beneficial owner) must be subject to public consultation. It is imperative that the "goal posts" are not moved at a later date – the Isle of Man needs stability and clear government policy with regards to these matters.
23	4(8)	Not sure of the wording of this clause, under what circumstances would they amend the wording.
24	4(8)	Treasury can revise the meaning of 'beneficial owner' and 'registrable beneficial owner' and change the relevant percentage ownership – what would be the motivators for such revision?
25	5	Certain companies were exempt from the 2012 act by virtue of the Companies (Beneficial Ownership) (Exemptions Order) 2013. How likely is it that a similar order will be made under the 2017 Act?
26	5	Why doesn't it apply to ALL listed companies - there are listed companies who will have owners with greater than 25 % (or 10% under the new 5th AMLD guidelines)?

27	5(1)	We are concerned that the Bill extends to Limited Liability Companies, Limited Partnerships and Foundations. It should be noted that the UK's PSC register does not include Limited Partnerships. According to HM Treasury's paper "Consultation on the transposition of the Fourth Money Laundering Directive" published in September 2016, the UK has no plans to extend the scope of the PSC register to include English Limited Partnerships. Furthermore, we note that the IOM Foundation has no equivalent in UK law. A fundamental cornerstone of the UK SBEE and 4AMLD is that an entity must be constitutionally capable of legitimately having a beneficial owner. It is unclear from the consultation document and the Bill how beneficial ownership of limited partnerships and foundations will be determined.
28	5(2)	The Act does not apply to a legal entity which is formed or incorporated in another jurisdiction unless it is placed on the F Register. We need clarification of what the position is if we have an IOM company that is owned by a legal entity in another jurisdiction which is not on the IOM F Register. I presume we still look through the legal entity in the other jurisdiction to the UBO. Also, what if the other jurisdiction has similar Beneficial Ownership Bill – do both jurisdictions need to file Return with their own authorities?
29	5(2)	What about "foreign" (F register) companies. The obligations on foreign companies generally under IoM law are less but presumably obligations will be significantly increased as a result of the Act.
30	5(2)(a)	In respect of the list of entities to which the Act will not apply, could IOM Authorised Insurers be added to the list?
31	5(2)(a)(ii)	The Act does not apply to a legal entity which is listed on a stock or investment exchange recognized by the Treasury for the purposes of this section. In light of this, would it not appropriate to exempt an Isle of Man entity which is a 100% subsidiary of the above?
32	6	The Bill requires a legal entity to appoint a Nominated Officer who must be a resident of the IOM or a CSP. It follows that the Nominated Officer is responsible for collecting, verifying and submitting beneficial owner information, and faces severe penalties for failure to comply. These are specific duties which were not considered by, and far exceed, the obligations contemplated under the Companies (Beneficial Ownership) Act 2012. Furthermore, both the 4AMLD and S BEE require those functions to be undertaken by the legal entity. It is our view that it should be the responsibility of the legal entity, rather than the NO, to investigate, obtain and maintain information.
33	6(2)(b)	The specific reference to the Class 4 provision is not stated – does this refer to all sub classes of class 4.
34	6(6)	Should there be reference to a "legal person" rather than just a "person" in the section relating to the punishments on conviction, as a legal entity could be the nominated officer not just an individual. This is the case for other sections of the Bill where a similar reference appears.
35	7	The process regarding the appointment and notification of Nominated Officers seems overly bureaucratic, particularly

		in the case of entities that already have Nominated Officers appointed under the Act and those with licensed CSPs.
36	7	The vast majority of IoM companies are required to submit a notice of appointment of nominated officer within one month of the Act coming into force, but the means of doing so is not defined. If this is to be done by written notice, does the DED have capacity to deal with the large number of documents they will receive?
37	7 & 8	There are 3 steps to the appointment of the NO: Resolution of the legal entity to appoint a NO; The NO's written consent; and then Notice of the NO's appointment to be submitted to the Department. There are serious penalties for failure to comply (fines not exceeding £5000 in respect of each offence). If the role of NO is retained, it is our view that the steps above should be simplified, particularly in respect of legal entities managed by CSPs.
38	8	The AR form should have sufficient space for recording the NO
39	9	Does legal owner cover the use of a KYC Utility function?
40	9(1) & 9(3)	The Bill requires the legal owner (i.e. registered shareholder) to ascertain the beneficial owner in respect of their registered shareholding, and to provide that information to the Nominated Officer. Failure to do so could result in a prison sentence and/or a fine. As stated above (section 6), it is our view that the legal entity rather than the legal owner of the registered shares should be responsible for investigating and obtaining information regarding beneficial ownership. This would ensure consistency with EU and UK laws. The UK's SBEE states that persons who are responsible for investigating and obtaining beneficial ownership information should only be required to take "reasonable steps". The same provision should be included in this Bill. Insofar as the corporate service provider industry is concerned, the legal owner - normally a nominee company of a CSP - must give notice to the legal entity's nominated officer - this would presumably be the CSP - of the required details in respect of each Beneficial Owner (including persons who hold LESS than 25%) . Clause 9(6) provides that this is to be accompanied by information "from a reliable and independent source which verifies the required details". Due diligence will already have been undertaken by the CSP on the Beneficial Owner on the majority of the information. If it has to be verified by a reliable independent source this will add to the burden of due diligence. Furthermore, how will a reliable and independent source verify a date on which the Beneficial Owner acquired an interest in the legal entity, and the nature and extent of the Beneficial Owner's interest in the legal entity? The enhanced duties placed on the nominated officer, particularly when that officer is a Corporate Service Provider, should be re- considered. The Bill effectively creates a further regulatory function for the CSP and establishes a new criteria for client due diligence which overrides current and accepted AML/CFT requirements. Our members expect this

		will create additional costs. It should be noted that the legal owner, if a corporate entity, may not be incorporated in the IOM and may therefore not be familiar with this legislation. Similarly ultimate beneficial ownership may be held through a complex structure of legal entities. The Bill should in our opinion require the legal owner or preferably the legal entity, to give notice to any natural person where the entity has "reasonable cause to believe" that he or she is a beneficial owner. The addressee would be required to state if he or she is a beneficial owner, to confirm or correct any details set out in the notice, and supply any that are missing. The addressee should be given a period of time to comply, say one month. It follows that the Bill should also include a provision which requires beneficial owners to provide information to the legal entity (or NO) if they consider themselves to be registrable. Furthermore the Bill should require the beneficial owner(s) to confirm/verify their information before being included in the "register". In the absence of this, a beneficial owner may be unaware that they need to keep the legal entity or nominated officer advised of any change in their details. There are also data protection issues to consider which are referred to below. The Bill, as drafted, requires the Nominated Officer to maintain and preserve the beneficial owner's details (section 13). The NO would therefore be required to maintain contact with the beneficial owner(s). We believe that is wrong - it should be the beneficial owner's responsibility to keep the Nominated Officer advised if their details change. As alluded to above, there are data protection issues to consider. EU Regulations require natural person(s) whose personal data are held in a national register to be informed of the publication of their personal data. The Bill should include a statutory mechanism whereby a natural person can confirm and verify their information and status as a beneficial owner. The consultation document does explain that the Bill doesn't override any of the protections on personal information established by the Data Protection Act 2002. However, the EU General Data Protection Regulation (GDPR) provides that every EU citizen has the right to protection of their personal data and requires that they provide their consent with regards to processing of that data. The Bill should therefore be compliant with GDPR. Furthermore the Bill does not include a provision which would enable the register to be amended following, for example, an administrative error by the Nominated Officer. This must be considered in the context of the Data

		Protection Act, particularly in cases where incorrect information has been submitted to the Department.
41	9(6)	In our view, this creates an unnecessary burden on small private companies, particularly those which are not managed by TCSPs. The Bill should not require TCSPs to collect more information than is currently required under existing AML/CFT legislation.
42	9(6)	We assume that the guidance to be issued will assist with the interpretation of "reliable and independent source" (for example, to confirm that regulated entities will be permitted to utilise pre-existing (i) AML/CFT CDD/ID&V, and (ii) FATCA/CRS information requirements).
43	9(6)	Requires the nominated officer to verify the beneficial ownership information via 'a reliable and independent source' (similar wording is used in s12(3)) but it is not clear what that means. We would suggest that this is clarified within the Bill for the avoidance of any doubt.
44	9 & 10	Although these clauses impose duties upon "legal owners" and "intermediate owners" to ascertain/assist in ascertaining ultimate beneficial ownership, the Bill does not seem to contain a direct obligation upon the beneficial owner himself/herself to provide the necessary information.
45	9 & 10	Sections 9 and 10 put the onus on the legal owner and the intermediate owners to notify the nominated officer of the required details. We are concerned in respect of the practical implications of that for CSPs where the required detail is information that they already have to collect for AML/CFT purposes, yet the responsibility is being turned back to their clients. There are offences for the legal owner and the intermediate owner if the information is not supplied or is incorrect and so a CSP would have an obligation to make the client aware of that. There is also the question of how enforceable those offences are and also the various powers that the FSA will have in respect of legal/intermediate owners where those persons or entities are not on the Isle of Man. The same is true in terms of the provisions for assessing compliance by beneficial owners - how is that going to happen if they are not on the Isle of Man?
46	10	What expectation is there to enforce this clause for non-IOM intermediaries?
47	10	Agreed, but what details should be provided? Just UBO or information about all intermediate companies?
48	10(1)	The example refers to "nominee", what does this mean? Are we talking strictly about a situation where shares are held on trust for another?
49	11	We believe it may be worth considering including a tax identification number for non-IoM beneficial owners, as TSCPs will most likely have to obtain this anyway as part of their FATCA and CRS obligations.
50	11	Why is occupation required? Should a worldcheck (or similar) search be specified.
51	11(1)	Neither the 4AMLD nor SBEE require the beneficial owner to provide their place of birth, occupation or gender. It is our view that these should be removed from the Bill. Statutory guidance should be published which defines and explains the term "nature of control". With regards to the term "extent of control", Government should consider whether that will be recorded in bands (i.e. more than 25% to 50%, more than 50% to 75% and more than 75%).

52	11(1)(a)(ii)	There needs to be some provision for a company whereby we have lost all contact and they are in effect in free fall. In these circumstances, we likely cannot provide their usual address.
53	11(1)(a)(iii)	We need clarification as to what this means, not every client will have a service address. Suggest adding "where appropriate" or "where different from residential address".
54	11(1)(a)(vii)	There may be occasions where we cannot establish or do not know the occupation of the beneficial owner or they might not have one.
55	11(1)(a)(ix)	In certain instances we could be dealing with ownership interests dating back many years. It may not be possible to state the date of acquisition of such interest with any degree of certainty; some allowances may need to be made for this. In particular given the requirements of Clause 20.
56	11(1)(a)(x)	The meaning of beneficial owner in Clause 4 includes those "who exercise control via other means" in such circumstances it might not be possible to state with certainty the extent of such interest in percentage terms. We suggest that the words "where possible" be inserted before "extent".
57	11(2)	Provides that if the class of beneficial owners is so big it is not reasonably practical to identify each owner, details to describe the class are sufficient. This is very vague. Are we talking about a class of beneficial owners all at the same level? Who will enforce/monitor reliance on this?
58	12	This clause imposes obligations to update information on legal owners, but this does not apply to either beneficial or intermediate owners. In any event criminal sanction against any person who is not resident on the Island is likely to be a particularly hollow penalty.
59	12(3)	Where a change as detailed in 12 (1) has taken place the notice containing details of the changes is to be "accompanied by information from a reliable and independent source which verifies the changes" – please clarify what information you are expecting and what is determined as an independent source.
60	13	The Bill does not provide a format for the maintenance of non-registrable beneficial ownership information in accordance with clause 13. We can see arguments for requiring this to be maintained in a particular manner, in order to ensure consistency. On the other hand, we can also see that having a shadow register maintained in formal fashion runs against the grain of traditional company law regarding the sanctity of the register of legal holders (as to which see more below). Have these considerations been taken into account in formulating the Bill?
61	13(1)	The requirement for verification of required details effectively imposes AML/CFT type obligations upon entities that are not (by reason of not being regulated etc.) subject to the requirements of the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015.
62	13(1)	In our opinion, beneficial ownership information should be kept in a prescribed register; this will ensure consistency. Furthermore the Bill does not state where the information should be kept. At the registered office of the legal entity? Or only at the address of the Nominated Officer? We are also concerned that the Bill does not determine when an entry can be removed for a person who has ceased to be a beneficial owner.
63	13(1)	What does the "information that verifies the details" mean? Is it the same standards as apply under AML? Do they

		have to be certified copies? What documents/information can be relied upon?
64	13(5)	Refers to a legal entity being wound up/dissolved/struck off/removed from register. These are all different stages, e.g. company could be struck off first and then later dissolved.
65	14	Section 14 requires the Nominated Officer to take certain steps if a person fails to disclose beneficial ownership. As per comments made above, we consider that this should be the responsibility of the legal entity rather than the NO.
66	14	We foresee difficulties potentially arising from the operation of this provision, particularly with respect to: (i) the manner in which the nominated officer may arrive at the opinion described in clause 14(1), (ii) the potential litigation risks to which he may be subject by virtue of the issue of a notice under clause 14(2), and (iii) the material ramifications of such a notice arising from actions that a legal entity may take pursuant to Clause 14(5) (being actions which effectively disregard general Isle of Man law in respect of companies, partnerships and other entities). In our view, it would be appropriate to obtain an opinion from a leading QC as regards the potential interaction of, and conflicts between, the proposed legislation and relevant existing Isle of Man legislation.
67	14	Surely the legal owner of the legal entity has the responsibility
68	14(3)	Deals with nominated officers delivering a notice to the legal entity if it has failed to comply. The legal entity must then give notice to the DED as to what action it has taken. But how will DED know that notice has been issued by the nominated officer? How will DED enforce when it appears to be the FSA with overall oversight of the Act?
69	14(5)	Sets out the steps the legal entity may take in respect of a legal owner's interest. We would question the practicalities of taking these steps in reality. It would be necessary to consider CSP relationships with their clients – and to look at T&Cs.
70	14(6)	Provides redress to the High Court but this is very wide – it does not say on what grounds the legal owner can apply / the process / the Court's powers (other than any order it thinks fit). The Court could be embroiled in a very unclear dispute on a legal entity's ability and right to take such steps.
71	15	Is the "information" to be delivered pursuant to a notice under clause 15 intended to be confined to the "required details". If so, this is fairly clear. If it is intended to extend to verification information then it may be more difficult for Nominated Officers to comply; the verification process may use multiple sources.
72	15(2)	This section requires the NO to disclose "any information" held in respect of the beneficial owner, which, according to the consultation document, includes "verifying information from a reliable and independent source which has been supplied to the officer by the legal owner". It is our opinion that disclosed information should be limited to that stated in section 11.
73	15(3)	Should make it clear that notices may only be given for a "permitted purpose".
74	15(3)	NGOs should have access to the database.
75	15(3)(g)	This provision appears very wide and gives rise to concerns as to the persons who may be afforded access to information held in a private database. What parameters will apply to its application? Is the provision actually needed?

76	15(4)	The Bill requires a 'notice' (to disclose information) to include the 'particular permitted purpose for which the information is required'. We note that the document entitled "International Request for Beneficial Ownership Information" which forms part of the Exchange of Notes does not require any reason to be given.
77	15(4)	The 14 day period for nominated officers providing information is very tight. What about in circumstances where they may be on holiday or some other reason? There are no grounds for leeway in the Bill.
78	17(1)	According to the Exchange of Notes, UK law enforcement agencies, acting only in furtherance of their functions, will be able to request beneficial ownership information contained in the Isle of Man from the FIU. Yet sections 17 and 28 do not restrict disclosure of information to the UK only; they extend the protocol to ANY external intelligence or law enforcement agency. We are particularly concerned that this could result in beneficial ownership information being shared with agencies worldwide - that could include non-reciprocating jurisdictions. Sensitive information must be withheld from jurisdictions which have poor human rights records and high levels of corruption.
79	17(1)	Allows information to be passed on to external agencies, but there is no requirement that this is only countries/agencies who have in place proper data protection regulation etc. Otherwise the information could be going anywhere with no protection for the details of the beneficial owners.
80	18(3)	We appreciate the requirement within Clause 18 (1) (b) relating to disclosures which may prejudice an investigation or proceedings, nonetheless 18 (3) permits an advocate to discuss matters with his client or any other person, the clause doesn't appear to permit a person such as a nominated officer to discuss similar matters with their advocate or are we interpreting this incorrectly?
81	18(3)	Provides that advocates will not tip off by disclosing information to a client but what about the other way around. Surely nominated officers can seek to obtain legal advice on disclosure requests?
82	20	Subsection 4 requires beneficial ownership information to be provided by the earlier of the next annual return date or 30 June 2018. If the annual return date falls soon after this section comes into force, legal entities and their NOs will have very little time to collect and file information. Government should reconsider this aspect of the timetable. The nominated officer is required to update the central register within 1month of any changes. In our opinion, that period of time is too short – in the UK, companies are required to update the central register once every 12 months (although that may be reduced to once every 6 months).
83	22	Noting that aside from Mossack Fonseca/Panama Papers, files leaked from the Bahamas Companies Registry in September and other high- profile hacking attacks highlight the need for secure systems and databases capable of withstanding cyber-attacks. Government needs to ensure that their web based platforms comply with international security standards particularly with regards to encryption and end-to-end protection. It must be recognised that the Database will become a specific target for persons with malicious intent, hackers and

		criminals. The Government has already experienced several high profile data breaches - it will not be sufficient to simply rely on professional assumptions that the data is secure. DED must absolutely ensure that that the Database is secure and protected from internal leaks, hackers and cyber-attacks. Furthermore, Government must ensure that beneficial owners and members of our industry have complete confidence in the system and the level of security it offers. Noting that the impact assessment estimates costs to Government in the region of £100,000 for software development, £10,000 for hardware and £10,000 for on-going maintenance. We expect these costs have been underestimated and will rise significantly given the level of security required.
84	22	We note that the intention is to file the required beneficial ownership information online and this will broadly coincide with the date of a company's annual return due date. Can you confirm if the intention is that the filing of this information will become part of the annual return in place of the current Nominated Officer section, or will it be separate from the annual return? We would also be grateful if you could advise us of any proposed changes that are to be made to the Annual Return as soon as they are available to allow us sufficient time to update our systems accordingly. Is a fee to be charged for the filing of beneficial ownership information or upon any changes to the required beneficial ownership details?
85	22	Will the government portal be used or will a separate login be required?
86	22(8)	Should a very specific web link which may be changed in the future be included in the Bill?
87	23	Will edit access allow reading of other entities details?
88	25	This means that the quality of information may be impaired. What about including verification provisions?
89	26	According to the Bill, the IOM Gambling Supervision Commission and IOM Office of Fair Trading will also be given access to the Database. Those departments are not 'competent authorities' according to the 4AM LD. It is therefore unclear as to their relevance and inclusion. With regards to the OFT, the consultation document states that this would be "in relation to matters relating to consumer protection and trading standards". For the GSC it is for the "purpose of the Commission's functions under any other enactment". Considering the definition of "Permitted Purpose" (clause 3), the Bill is primarily dealing with criminal matters. The remit and primary catalyst for the Bill is the Exchange of Notes which in headline terms commits the Isle of Man and the UK to provide corresponding law enforcement agencies with adequate, accurate and current beneficial ownership information. Both jurisdictions are required to hold adequate, accurate and current beneficial ownership information in

		a secure central electronic database, ensuring that law enforcement authorities have the automatic right to unrestricted, secure, confidential and timely beneficial ownership information held in the other jurisdiction. The Technical Protocol only refers to law enforcement agencies as opposed to other regulators and the like. It is absolutely necessary for the good reputation of the Isle of Man that the scope of access is NOT extended to wider government, and is not used for purposes other than intended.
90	26	Need to keep it to a small group - only the OFT directly apart from the regulators
91	26(2)	Seems to go further than is necessary under the Exchange of Notes; it does not appear necessary for the GSC or the OFT to have access to the Central Register.
92	26(2)(c)	The Department of Environment, Food and Agriculture is pleased to see that its officers, in support of the Office of Fair Trading, will be able to access the database. DEFA requests that this facility is not removed from the Bill.
93	26(2)(c)	We are unclear why the OFT would need access to beneficial ownership information. This could leave the door open to vexatious people contacting the OFT as a means of trying to find out information about the beneficial ownership of companies, even if those people do not have a legitimate dispute with the company in question.
94	26(2)(d)	See comment in respect of clause 15(3)(g)
95	27	Weak section - perhaps have higher fines/imprisonment terms
96	26, 30 and 32	Our primary concern in response to the Bill is in regard to the proposed access to information held in the Central Registry. We note that the information held in the Central Registry will not be available for public inspection, and currently the proposed access will be restricted to competent authorities and other governmental agencies. However, the Bill does set out a framework for access by "persons with a legitimate interest" in the future albeit further regulations would need to be approved before any such access would be permitted. The Bill states that guidance may be issued on this matter but it would be helpful if you could provide some indication as to who else might be considered to have a legitimate interest in an Isle of Man company who does not already have access to the Central Registry?
97	28	According to the Exchange of Notes, UK law enforcement agencies, acting only in furtherance of their functions, will be able to request beneficial ownership information contained in the Isle of Man from the FIU. Yet sections 17 and 28 do not restrict disclosure of information to the UK only; they extend the protocol to ANY external intelligence or law enforcement agency. We are particularly concerned that this could result in beneficial ownership information being shared with agencies worldwide - that could include non-reciprocating jurisdictions. Sensitive information must be withheld from jurisdictions which have poor human rights records and high levels of corruption.
98	30	Whilst we note the observations within the consultation document, we are firmly of the opinion that this provision should be removed from the Bill; its inclusion may of itself cause legitimate concerns for clients and result in them considering alternative jurisdictions for their structures. We feel that it would be imperative for appropriate consultation to take place in the event that any regulations are proposed to be made in the future, and for any regulations not to come into effect unless and until approved by Tynwald.

		The consultation document acknowledges that Government has no intention to extend access to the database, but external parties will see this provision and be concerned. The attached House of Commons Hansard materials demonstrate how strongly a public register is sought by Labour and NGOs and how the UK Government views the Crown Dependencies' current positioning as being a "step along the way". We believe that NGOs, media groups and others will consider their organisations to be persons with a legitimate interest and will seek to exert material and sustained pressure on the Department to confirm the same, including potentially through judicial processes. We would urge the deletion of this and related provisions.
99	30	Whilst at first glance the idea that "obliged entities" may have recourse to the Central Register is beguiling in terms of its potential to alleviate the burdens associated with CDD on legal entities, this is insignificant when compared with the adverse perception associated with the implication that it is only a matter of time before the Central Register becomes a public register. Flexibility in this regard might be some comfort for licensed entities, if – ultimately – a more open Central Register were to arise. However, any such proposal should only be enacted at that point and should be accompanied by a clear policy from the relevant regulator regarding the extent to which licence holders can rely upon such records as discharging their regulatory obligations.
100	30(1)	The Department may by regulations define/specify persons with a legitimate interest by name or describe them generically by reference to their business. This, we consider, should be subject to public consultation.
101	31	The definition of this term is far too broad, and extends beyond the scope of the Exchange of Notes and the 4AMLD. With regards to the 4AMLD, the term applies to entities such as banks and financial institutions and enables them to apply enhanced customer due diligence measures when doing business in high risk third jurisdictions.
102	31	Definition of "obliged entities" is restricted to those which are required by law "to carry out customer due diligence". We consider this needs to be widened to "compelled by law" e.g. by Court Order. For example, what if there is a requirement to disclose information under a freezing injunction?
103	31	'Obliged entities' are defined as including all persons that are required to conduct customer due diligence. This is a very large category, including not only financial institutions, but also lawyers, accountants, estate agents, bookmakers, jewellers and auctioneers, and non-profit organisations that receive funding from any of more than 60 higher-risk countries. This group is so large as to make giving it access tantamount to making the information public.
104	32	The stated intention of the Exchange of Notes was that the Central Register should not be publicly accessible. The Bill provides a mechanism for ultimate access to the Central Register by persons with a "legitimate interest". The implementation of these provisions is dependent on further enactment by regulation. However, the very existence of the provision son the statute book sends a signal to the market that it is only a matter of time before they are enacted. Parliamentary procedures in respect of the approval of regulations do not allow for scrutiny. A change of this magnitude should be subject to the rigour of the primary legislation process or a transparent procedure allowing for interested parties to challenge a proposed extension to the class of persons having a "legitimate interest".

105	32	Definition of a person with a legitimate interest - given this is such a crucial element of the legislation it may be pertinent to address this outside of this consultation and focus solely on it as a separate matter.
106	32	We are particularly concerned by the broad definition of "a person with legitimate interest". The open-ended nature of this provision raises many important questions regarding its exact scope and application. For the reasons set out below, the definition of the term must be strict and should clearly identify the threshold for what constitutes a 'legitimate interest'. The (current) loose definition of the term would, in our considered opinion, create an 'open door' to the central register thus creating a quasi 'public register'. The legislative framework must be sufficiently robust to ensure that requests for information are (1) lawful, (2) sufficiently explicit, and (3) represent a real and present interest (i.e. not be speculative) . The Bill should not permit access to the register to be expanded beyond law enforcement, tax and regulatory authorities. The Bill must safeguard the fundamental rights and freedoms of a beneficial owner, notably their right to privacy - the cornerstone of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Individuals must not be deprived of the protection to which they are entitled. In our opinion, DED should not provide any beneficial owner information to an "obliged entity" or a "person with a legitimate interest" unless the beneficial owner has given their written consent. In addition, we note the Department may issue guidance about the meaning of a person with a legitimate interest and can revise such guidance. Whilst this must be approved by Tynwald this could readily permit the register to be expanded beyond law enforcement, tax and regulatory authorities, and should therefore be subject to public consultation. Finally, it must also be considered whether the Department is suitably qualified to determine whether a person has a 'legitimate interest'. The responsible officer must review the nature and source of those interests, and consider whether access to the register is necessary to pursue those interests. That must be balanced against the impact on the beneficial owner. We consider this to be a role which the Attorney General should undertake. In our opinion, the determination of a legitimate interest should not be under-estimated and requires strict legal oversight (i.e. AG). With respect, DED are not qualified to make the assessment. The Isle of Man risks seriously damaging its reputation if disclosure is challenged on application to the Courts.
107	32	Please see our comments above regarding clause 30. If included (which we do not suggest), we believe that "legitimate interest" should be narrowly defined to make it clear that it is to be interpreted through the prism of law

		enforcement, tax and regulatory engagement, and that the process to determine if someone is a person with a legitimate interest must be quasi-judicial, conducted (for example) by the Attorney General or High Bailiff or another person with significant experience of making determinations between competing interests.
108	32	"Person with a legitimate interest" – this is extremely vague and basically subject to the DED's discretion. What right of appeal is there for a person who disagrees with the DED?
109	32	The primary motivation for putting the Register in place is the Exchange of Notes with the UK. The Notes focus on the cooperation between the UK and IoM re law enforcement and specifies law enforcement agencies as being the entities with access to the beneficial ownership information. Section 32 of the proposed Bill is very broadly drafted and allows any person or body to apply to the DED to be a person with legitimate interest and have access. The DED must be satisfied that the person is such, but it could potentially be anyone – the Bill should be specified now to law enforcement and Government agencies to avoid spurious claims and enquiries from journalists etc. If the definition of a person with legitimate interest is the current definition, will the DED have capacity to deal with the potentially many applications from anybody who fancies applying to get information? The journalistic fall-out from not responding in a timely manner could have very negative reputational consequences for the IoM.
110	33(1) & 33(2)	The Department of Economic Development (or a Tribunal in the in the case of appeal) will be required to determine whether a person is at risk of fraud, kidnap, blackmail, violence or intimidation. Such risks can only be determined following detailed consultation with law enforcement agencies. It follows that a provision should be included in the Bill. We also note according to section 33(2) that if a beneficial owner believes he/she is entitled to have their information protected, that person is required to submit an application to the Department. Please note our comments regarding section 9 - the beneficial owner may not be aware that their information is included in the Database.
111	33(2)(b)(i)	The cross reference in clause 33(2)(b)(i) should be to subsection (4)
112	33(2)(b)(i)	Incorrect reference to subsection (3), should be (4).
113	33(2)(b)(i)	Section 33(B)(2)(b) refers to (3) - should this be a reference to (4)?
114	34	The Exchange of Notes provides that the FSA will be responsible for overseeing the Database of Beneficial Ownership. The definition of "overseer" appears to have been extended significantly by this section, and gives the FSA the perceived role of "enforcer/verifier". Such powers would enable the FSA to assess compliance by legal entities, nominated offices, legal owners, beneficial owners and intermediate owners. This, we consider, goes beyond the scope of the Exchange of Notes, SBEE and 4AMLD.

		Schedule 1provides the FSA with statutory powers to enter premises, investigate, inspect and take possession of books, accounts and other relevant documents. Furthermore, the FSA will have oversight over private companies and individuals who are not managed by regulated entities; the FSA may have limited experience in this regard. It is not clear from the Bill whether this extension of the FSA's role and responsibilities is intentional. It should also be noted that this legislation could be used by the FSA to identify unlicensed persons providing corporate services. We welcome that FSA's role in combatting that industry problem, but consider that the appropriate framework already exists within current legislation. The Database should not be seen as a tool which the FSA and other Government departments/agencies could use for purposes other than which it is intended.
115	34 (and Sch. 1)	Schedule 1 – Oversight by the Authority in paragraph 1 (2) – the Authority is empowered to inspect the "books, accounts and documents of a relevant person", however in paragraph 1 (5) the Authority may extend this power this power to "any other person authorised by the Authority" which may result in independent firms being permitted to come into our offices and inspect our documents. We think this is too broad, we recognise this may be used sparingly; however we suggest the wording is revised.
116	37	We suggest that to charge for the appointment of a nominated officer is excessive. We would also like clarification as to what level the fees referenced are.
117	37	Should be included with annual return fee
118	37(3)	Unnecessary space in the middle of this section.
119	38	Needs to be wider to allow appeals to the Tribunal on any matters arising under the Act given the roles played by both the DED and the FSA and the vague/discretionary nature of a number of the provisions.
120	39	If an offence is committed by a legal entity and it is proved that an officer of that legal entity authorised, permitted, participated in, or failed to take all reasonable steps to prevent the offence, then the officer as well as the legal entity is guilty of an offence. The definition of "officer" includes the Registered Agent. In our opinion, the Registered Agent should be excluded.
121	39	Inclusion of the reference to registered agent as an 'officer' may give rise to confusion and concern. We would suggest its deletion.
122	39(3)(d)	We do not see the rationale for registered agents to be brought within the scope of the offences.
123	41	The interaction with the data protection regime does not appear to have been given adequate consideration; the proviso at clause 41 is simplistic. Given the onerous personal responsibilities imposed upon the Nominated Officer under this Bill, those discharging those duties should have clarity as to where they stand under that legislation. Also, has an assessment of the impact on the Bill of any introduction of measures equivalent to the EU General Data Protection Regulation been considered?

124	41	New consideration of GDPR needed.
125	43	"But an advocate or other legal adviser may be required to give the name and address of any client." – We consider that some detail as to how advocates could be required is necessary, i.e. if the FIU serves a notice etc.?
126	45	According to the Bill, the annual return must be countersigned by the nominated officer. That may cause delays in their submission. The signature by one officer (director or secretary) should be sufficient. The Bill needs to ensure that the responsibilities and duties of directors, company secretaries and registered agents are not undermined, and that criminal offences which can be attributed to ALL officers of a company (eg Medicines Act 2003), do not extend to the "Nominated Officer". We are particularly concerned that the role of "Nominated Officer" establishes a new "responsible person" in terms of company law. It is our strongly held view that the role is unnecessary and undermines the existing framework of officers established under the CA 1931.
127	46	This is a further complication of section 45, and is likely to cause further confusion, errors and penalties. It directly undermines the directors' and secretary's role and responsibilities.
128	General – Wide scope of the Bill	The wide scope of the Bill seriously undermines confidence in the Isle of Man as a jurisdiction for conducting business and could be detrimental to the Isle of Man's economy. The stated position of the Isle of Man has been to create a central register, not a public register. There is no certainty as to where this Bill may lead, particularly as the definition given to the parties who can access the register is so wide and can be changed without further consultation (as indeed can the definition of beneficial owner). A key assumption is made in the Impact Assessment that public registers will become the norm. We seriously challenge that assumption based on evidence and opposition in other jurisdictions. That statement and the flexibility that exists within the Bill to extend the scope at any time may cause some parties to query why the Isle of Man is not creating a public register now, and put pressure on the Isle of Man to do so. Such assumptions do not provide the required certainty or stability for business to choose the Isle of Man. Indeed, any perceived possibility of movement towards a public register is not consistent with Isle of Man Government policy. Chief Minister Bell's comments in respect of a why a central register would not be public should be duly noted: *"During the consultation on the sharing of beneficial ownership information it was noted that investors in companies*

		have a reasonable and entirely legitimate expectation that their interests will be kept private. It is a fundamental principle of Isle of Man (and English) law and natural justice that people should be entitled to privacy, unless there is an overriding public interest issue that requires otherwise. Examples of persons who might be affected adversely by a loss of privacy would include investors in companies which carry out activities which are legitimate, but may be controversial; wealthy individuals who might be targeted for extortion or other criminal purposes; companies seeking to invest in competitor s or potential acquisition targets; investors concerned that their interest in a company may trigger market speculation; and family corporate vehicles. There would also be a risk of increased criminal activity in other areas, such as identity theft and blackmail." [Tynwald, 19 April 2016] "That a public register would simply drive owners to other countries that did not require disclosure, including the US. [FT, 24 January 2016].
129	General – Bill exceeds what is required	The Bill exceeds what is required particularly with regards to how the register will be implemented. In some respects, the Bill also transcends what is required by both the Exchange of Notes and the Fourth Money Laundering Directive. Indeed, we cannot see that any comparison with other jurisdictions has been conducted and the Isle of Man is in danger once again of moving first and running ahead of the pack. By creating a 'gold-plated' register, the Isle of Man would not only undermine those in other jurisdictions by setting a higher than necessary standard, but will also deter people from choosing the Isle of Man as a place to do business when its requirements exceed those of other jurisdictions. Furthermore, there is no evidence that a material ML/TF risk exists which would justify gold-plating the legislation.
130	General – The Nominated Officer	We are aware of the general trend in the regulated sectors in metropolitan jurisdictions to seek to impose direct personal accountability on named individuals, particularly in relation to compliance matters. We are also cognisant of the fact that the Companies (Beneficial Ownership) Act 2012 did introduce the concept of the Nominated Officer. However, we are not sure that it is appropriate to load so much responsibility onto a particular individual outside the regulated sectors. The Bill expands radically the entities that will become subject to the requirement to appoint a Nominated Officer and we are wary of the unintended consequences that may flow from the creation of a new officer of these entities. The primary responsibility for compliance with legal obligations of an entity should lie with its board of directors or equivalent. So far as the CSP sector is concerned, the FSA has its own regulatory and supervisory regime to address the performance of these functions within the CSP sector.
131	General – The Nominated Officer	We are particularly concerned that the Bill creates a new "responsible person" in respect of Company Law - the Nominated Officer - of which there is no equivalent under EU or UK law (again, a jurisdictional comparison should have been conducted). The Nominated Officer, rather than the legal entity, will be responsible for collecting, verifying and submitting beneficial owner information, and faces severe penalties for failure to comply. The role undermines the duties and responsibilities of the company directors and company secretary.

		When that officer is a Corporate Service Provider, the Bill creates a further regulatory function for the CSP and establishes a new criteria for client due diligence which overrides current and accepted AML/ CFT requirements and imposes new penalties.
132	General – The Nominated Officer	There doesn't appear to be much protection within the Bill for a nominated officer who discloses the required information which is then used by a competent authority and which could result in the nominated officer being sued by registrable beneficial owners, particularly if the 25% or more calculation hasn't been applied correctly.
133	General – The Nominated Officer	We would be grateful if you could clarify the security that will be in place in regards to access to the Central Registry by the Nominated Officer. Will access to information for specific Isle of Man registered entities be password protected by the appointed Nominated Officer, this being the holder of a licence issued under section 7 of the Financial Services Act 2008 in our instance, or will security be in another form, for instance access being granted by an activation code?
134	General – The Nominated Officer	The requirement for each company to have a nominated officer and the extensive duties of that company/person mean extra work for CSPs and split responsibilities between the NO and the company's directors. This will likely increase costs to clients, making the IoM less favourable as a jurisdiction.
135	General – The Nominated Officer	What recourse will there be for NO's to appeal to the FSA or Registry if the UBOs of companies refuse to give details of ownership changes etc - currently the NO is personally liable for the failings of others?
136	General – Role of the IOMFSA	The Bill extends the role of the Financial Services Authority. According to the Exchange of Notes, the FSA is responsible for overseeing the register of beneficial ownership. However, the Bill extends the role of "overseer" to "enforcer/verifier" by making the FSA responsible for assessing compliance by any relevant person (i.e. legal entities, legal owners, beneficial owners and intermediate owners). The Bill also gives the FSA statutory powers to enter premises, investigate, inspect and take possession of books, accounts and other relevant documents. Those powers will apply in respect of illegal entities, including those which do not receive services from a licensed corporate service provider.
137	General – Data security	The Bill raises grave concerns regarding data security. Government must recognise that the register will be a specific target for persons with malicious intent, hackers and criminals. Government has already experienced multiple high profile data breaches; DED must absolutely ensure that the database is secure and is protected from internal leaks, hackers and cyber-attacks. Furthermore, we note that no reference has been made in the Consultation to the EU General Data Protection Regulation (GDPR). Given the scope of that Regulation and its impact on every organisation and legal entity that processes EU residents' information, we feel that the Bill must be fully compliant with all aspects of the Regulation.
138	General – Data security	The Central Register will provide a very attractive data-rich target for those who would wish improperly to obtain, and to abuse, beneficial ownership information. Based on recent experiences in the private sector globally, it is a moral certainty that the systems supporting the Central Register will be subject to frequent, sustained and sophisticated

		attempts to penetrate security defenses and view and/or download information held therein and/or systems failure. The amount budgeted for building and maintaining IT security of the required integrity is too low. A disseminated, but centrally accessible, register would represent a slightly less attractive target and would provide greater resilience.
139	General – Data security	We note that the Bill proposes preserving the requirement to retain information for five years after the dissolution of a company or the end of a person's interest in the company. This period of five years is recommended by the 2016 Terms of Reference for the Global Forum and the 2012 FATF Recommendations. This five-year rule has hitherto worked for Isle of Man's regulated and supervised CSP sector, and been well observed and enforced, allowing law enforcement and tax authorities access to sufficient information for their rightful purposes. We note that other jurisdictions are considering extending this period to up to 20 years. We note that the UK registrar, Companies House, has encountered challenges under the UK Data Protection Act 1998 to retaining information for longer than six years, prompting Companies House to propose a six-year limit on data retention. These challenges have derived from the Fifth Data Protection Principle, which is identically-enshrined in the Isle of Man's Data Protection Act 2002: "Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes." As such, extension of the period for data retention may breach the Isle of Man's Data Protection Act. Accordingly, we endorse retention of the five-year limit on data retention.
140	General –Data security	What assurance can the Government provide our industry and the beneficial owners that the information held is secure, when the government has already had a number of data security issues?
141	General – Registrable beneficial owner thresholds	Taken together with the fact that it is only in relation to "registrable beneficial owners" that any substantive or numerical determination of ownership or control arises it appears that there is no level of economic interest or control below which it becomes necessary either to maintain a record of the required details or verify the same using a reliable and independent source. It appears to us that this effectively expands the ambit of the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015. Arguably this effect also arose under the Companies (Beneficial Ownership) Act 2012, but the considerable expansion of that regime in the Bill increases its significance. If it is policy to impose full identification and verification obligations on all legal entities in respect of beneficial ownership of any level and irrespective of whether they are covered by the Code, then the arguments for this policy should, in our view, be clearly set out in the consultation.
142	General – Registrable beneficial owner thresholds	Guidance will be needed as to how the 25% or more beneficial ownership calculation applies in practice when there are multiple layers and a 25% ownership is diluted up through those layers so that a UBO ends up with less than 25%. The whole application of the 25% or more may be halted when you get to a trust (which the ITD acknowledged when the same % was used for FATCA) because you can't actually determine the % ownership of a

		trust
143	General – Discrepancies with the 2015 Code	There are discrepancies with the requirements under the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015. The 2015 Code requires regulated businesses to identify beneficial owners and to take "reasonable measures" to verify this information. The required details are also more extensive than the information required by the 2015 Code and FSA's AML/CFT Handbook. Under the Handbook, information as to "occupation" is only mandatory for high risk relationships. The required details go further than the requirements of the Code.
144	General – Discrepancies with the 2012 Act	We are not clear why section 14 of the Companies (Beneficial Ownership) Act 2012 has not been replicated in the Bill. It remains of fundamental importance to the jurisdiction that the register of members of a company retains its integrity as the means for determining ownership and that the veil of incorporation is maintained. If the reason for its omission is simply that the application of the Bill to a wider range of entities made the drafting of the provision more complex, then this is plainly unsatisfactory. If there is an underlying policy reason then it should be ventilated in the consultation.
145	General	Compliance with the legislation will inevitably result in some increased administration time and, therefore, costs for the Cains group. However, on the basis that the database will be private and access tightly controlled, and if all credible jurisdictions that may be considered to be competitors of the Isle of Man have legislation in place that operates in materially the same manner and to the same standards, we consider that the financial impact will be manageable. If the above is not accurate, the impact could be material due to the loss of client confidence, jurisdictional credibility and, consequently, revenue for the Isle of Man's financial services and related sectors. It will, of course, be imperative that the database is secure from an IT perspective, and that the Department's systems are tested to the highest current standards by internationally recognised cyber security professionals. The Isle of Man cannot afford to have the confidentiality of the database compromised by a leak of the nature that took place from the Bahamas corporate registry; such a leak would have dire consequences for the financial services sector and the Isle of Man generally. As a further general observation, the Isle of Man should, of course, be cognizant of its international responsibilities and endeavour to preserve its reputation as a well-regulated and co-operative jurisdiction. However, given the acknowledged problems in respect of the coherent implementation of the Third Anti-Money Laundering Directive across the EU (and noting that such directive mandated all Member States to regulate corporate service providers, which requirement has not been met), it is difficult to see what the Isle of Man has to gain in introducing and operating the principles of the Fourth Anti-Money Laundering Directive within its regulatory system ahead of a clear, harmonised and effective cross-border approach being evidenced in the EU (including the UK). We must not put ourselves at a competitive disadvantage purely in order to gain regulatory brownie points from persons with no interest in our community's economic survival. We have particular concerns in respect of the inclusion of the provisions of clause 30 (et seq) within the Bill and would

		advocate strongly for their deletion.
146	General	Christian Aid are supportive of having a beneficial owners register made public. However, we are also aware of the practical implications with this and are supportive of the register being made available to those with 'legitimate interests' if the definition of 'legitimate' interests includes NGO's seeking to protect the vulnerable. This is an essential step in the post Panama Papers world in responding to EU and its very serious consideration of revising the AMLD 4 Directive to make the registers fully public in future – so the IoM (and other CDs and OTs) is in danger of getting left ever further behind if we don't act.
147	General – Burden on CSPs	The impact of the Bill is likely to cause a huge amount of work for local corporate service providers ("CSP's") in year one and the timetabling of this within the same timeframe generally as the GDPR and compliance with CRS is going to be a big resource strain on CSPs and will probably lead to further consolidation. The Bill also brings CSPs under further powers of the FSA including civil penalties. There should be clear defences to any such actions.
148	General – Guidance to be issued	There are a number of references to guidance having to be laid before Tynwald. Does this change its status from only guidance which is not mandatory to follow? By contrast, the FSA's AML/CFT Handbook does not have to go before Tynwald and the FSA repeatedly state that this means that it is only guidance which is not mandatory.
149	General – Enforceability of offences	Will the offences actually be enforceable, particularly for persons outside the IoM? There could be numerous legal owners and intermediaries who are subject to the obligations.
150	General – Tracing beneficial ownership	Page 8 of the Consultation refers to tracing beneficial ownership and finding the "person who exercises ultimate effective control over a trust" or a foundation. This is something that was raised in relation to FATCA/CRS reporting and really does not make sense or fit at all with the legal reality of a trust or foundation. A trustee's discretion cannot be fettered and someone having control would effectively mean that the trust is not actually a trust at all under the law. Similarly, a foundation will be run by its Council, and it is incorrect to describe 'beneficial ownership' in these terms and this should be considered carefully.
151	General – 'Persons with legitimate interests'	'Legitimate interest' is not defined in the Bill. However, as a reference point, one may look at the European Commission's proposal for a Fifth Anti-Money Laundering Directive (AMLD5). The Commission has suggested at various points during debate over that Directive that the category of those with a 'legitimate interest' includes journalists and campaigning NGOs. AMLD5 has now been halted, due in part to concerns over compliance with EU data protection laws. The European Council has also recognised that wide access to groups outside law enforcement is unnecessary to combat money laundering. As with 'obliged entities', the number of persons with a "legitimate interest" is so expansive that affording them access would be tantamount to making it public.
152	General – Access to database by 'obliged entities' and 'persons with a legitimate interest'	The consultation notes that the catalyst for the Bill is the Exchange of Notes in respect of sharing beneficial ownership that the Chief Minister signed with the UK Government on 12 April 2016. The Exchange of Notes provides for access to the proposed database of beneficial ownership information by UK law enforcement authorities through the Isle of Man government.

		The Bill permits the Department of Economic Development (DED) to issue regulations to extend access to the database by 'obliged entities' and persons with a 'legitimate interest' (clause 30 of the Bill), although the consultation paper notes that it is 'not the Government's intention to extend access to the database to either of these groups at the present time' (page 15). 'Obliged entities' are defined as including all persons that are required to conduct customer due diligence. This is a very large category, including not only financial institutions, but also lawyers, accountants, estate agents, bookmakers, jewellers and auctioneers, and non-profit organisations that receive funding from any of more than 60 higher-risk countries. This group is so large as to make giving it access tantamount to making the information public. 'Legitimate interest' is not defined in the Bill. However, as a reference point, one may look at the European Commission's proposal for a Fifth Anti-Money Laundering Directive (AMLD5). The Commission has suggested at various points during debate over that Directive that the category of those with a 'legitimate interest' includes journalists and campaigning NGOs. AMLD5 has now been halted, due in part to concerns over compliance with EU data protection laws. The European Council has also recognised that wide access to groups outside law enforcement is unnecessary to combat money laundering. As with 'obliged entities', the number of persons with a "legitimate interest" is so expansive that affording them access would be tantamount to making it public. The Isle of Man Government has repeatedly ruled out a public register of beneficial ownership, saying that it considers public access to be a 'red line' in its policy in this area. The Government has stated in the consultation paper that it is not its intention to extend access to obliged entities and persons with a legitimate interest at the present time. However, the ability to extend access by regulation suggests that it is prepared to do so in the future without further full consideration as primary legislation by Tynwald. This approach goes far beyond the requirements of current international standards and the requirements of the Exchange of Notes signed with the United Kingdom. It is inconsistent with repeated assurances to the Manx financial services client base, which has continued to provide confidential data to local service providers in reliance on the policy stance articulated by the Chief Minister [in response to question from Lord Bishop in 04/16]. Extending access to obliged entities and persons with a legitimate interest would be viewed by clients as evidencing that the Isle of Man is moving away from previous robust statements on accessibility of the register and towards a public register. This may have a significant impact on the competitiveness of, and impair client confidence in, the Isle of Man. Risks from data retrieval by aggregators – who will collect, link and sell such data – and the potential for irresponsible and speculative media stories drawing on such data are serious concerns for clients. In any event, exemptions to protect persons from their details being disclosed to obliged entities and persons with

		legitimate interest, under clause 30(2) of the Bill, are very limited in scope and apply only to those at specific risk of fraud or violence. As the Chief Minster's remarks demonstrate, there are a number of other legitimate reasons one may wish to keep one's information confidential, for which no protection would be provided. A move towards a public or near-public register would be a fundamental change to the character of the legislation and should therefore be the subject of primary legislation. The Forum accordingly believes that the Bill should not confer administrative power to extend access to obliged entities or those with a legitimate interest via delegated legislation unless and until such policy is widely adopted and applied as an international standard. There is no current international applied standard to extend access beyond tax and law enforcement authorities. Furthermore, there is considerable uncertainty surrounding how individual EU Member States will implement AMLD4 in the EU. The Forum accepts that the Isle of Man may need to consider extending access to the database to a broader group should this become a widely-applied international standard. Given the potential impact on the Isle of Man, this should be carefully considered given the facts and circumstances at the time including proper and full consultation with stakeholders. [We recommend that] Provisions allowing the government to make regulations for the extension of access to obliged entities or those with a legitimate interest be removed, to allow any such extension and its terms to be subject to the full scrutiny afforded to primary legislation.
153	General – Access to database by jurisdictions other than the UK	The basis for the proposed Bill is the Exchange of Notes with the UK. However, under clauses 17 and 28 of the Bill, it appears that information may be disclosed to *any* 'external intelligence or law enforcement agency'. The Bill defines such an agency as any that parallels the Manx FIU, Chief Constable, Assessor of Income Tax, or Collector of Customs and Excise, regardless of jurisdiction. The Bill appears to allow for exchange of information with external intelligence or law enforcement agencies in *any* jurisdiction, and not simply the UK. This would represent a considerable extension of the application of the Bill. It is unnecessary and unwarranted, given the Exchange of Notes with the UK is the policy rationale for the Bill. Such extension would unsettle clients and is likely to materially damage the competitive position of the Isle of Man. We would further be concerned that: Unilaterally offering beneficial ownership information might prevent movement towards a level playing field by dissuading those jurisdictions from following suit and from adopting higher regulatory standards as a prerequisite of receiving information; Action by a single jurisdiction reduces the number of parties participating in the design of the new framework, and

		thus increases the risk of assuming onerous and uncompetitive standard, as well as design flaws; and Exchange with all jurisdictions regardless of standards would cede Isle of Man's control over data and undermine its ability to ensure that information is used for proper, lawful purposes. We accordingly recommend that the operation of the Bill be confined to cooperation with the UK and provision of data to other countries should be removed from it. We note that the Cayman Islands Government is performing a concurrent consultation into its legislative proposal to implement its own Exchange of Notes with the UK. The draft Cayman legislation facilitates the exchange of information by including a list of countries with which Cayman may exchange beneficial ownership information in a schedule (Schedule 6), which reads 'United Kingdom'. Although we believe this to have drawbacks, we believe that specifically enumerating jurisdictions in primary legislation would reassure clients that information will not be exchanged with jurisdictions without sufficient safeguards, and full scrutiny.
154	General – Duty of IOMFSA to verify information	We note discussion of the Isle of Man Financial Services Authority's role in independently verifying UBO information. This appears to be based on the Exchange of Notes' requirement for the Isle of Man Financial Services Authority to 'oversee' the register, which will contain 'adequate, accurate, and current beneficial ownership information'. However, this commitment should be read as a continuation of the IOMFSA's current practice of supervising CSPs and conducting checks to ensure they possess and use systems to verify information, not engage in verification themselves. As such, we believe that this would significantly exceed the agreement reached in the Exchange of Notes and would constitute a large commitment in terms of cost and manpower. We recommend that the FSA only takes on obligations that similar authorities take on in other countries, such as the United Kingdom, in light of Isle of Man's superior model of supervised CSPs. While we recognise that it is in the interest of the Isle of Man to ensure that the information on the register is accurate, we also note that the representation of the register as verified and error-free may expose the IOMFSA to legal liability. In *Sebry v Companies House*. UK Companies House was recently found to be financially liable for breaching a duty of care to corporate vehicles for third parties' usage of inaccurate information. If Isle of Man purports to verify information, it may impose a duty of care and expose it to financial liability if any flaws are found. We would suggest that the IOMFSA explores the effect on its legal liability, and is careful not to adopt responsibilities that might expand government costs and exposures to third parties.
155	General – International standards	The Forum acknowledges and endorses the intention of the Isle of Man's government to keep pace with widely-applied international standards. Collection and verification of beneficial ownership information by licensed and regulated corporate service providers (CSPs), together with the proposed central beneficial ownership register accessible by law enforcement authorities, demonstrates the Isle of Man's commitment to international standards.

		The Isle of Man's leading compliance standards with regards to beneficial ownership information collection and exchange are demonstrated by objective assessments: The OECD Global Forum rates Isle of Man as fully Compliant with its standards on transparency and information exchange. Only 21 jurisdictions meet this standard. This top grouping does not include the UK, Germany, or the US. FATF and the IMF found Isle of Man to be 'Compliant' or 'Largely Compliant' with 31 of 40 core Recommendations on combatting money laundering. It was not judged to be 'Non-Compliant' with any of the 40 Recommendations: placing it in the top 10 jurisdictions worldwide. Academics Jason Sharman, Michael Findley, and Daniel Nielson found in a study published in 2014 that Isle of Man-based CSPs abided by FATF requirements to verify beneficial ownership information 94% of the time, placing the Isle of Man in the top ten jurisdictions worldwide: far ahead of the UK (51%), Germany (50%), and the US (25%).
156	General – Recommendations	[We recommend:] Jurisdictions with which the Isle of Man intends to exchange information be limited solely to the UK and other countries in accordance with bilateral exchange protocols pending the adoption of multilateral standards, and that this be done by expressly enumerating such jurisdictions in primary legislation; Data be retained by the Isle of Man registry for no longer than five years after the dissolution of a company or a person ceases to be a registrable beneficial owner, to avoid breaching data protection provisions; and The Isle of Man registry not take on additional duties to verify information beyond those currently undertaken in the UK, to avoid additional costs and liabilities.
157	General – Bill's information requirements	The information requirements of the Bill do not match those of the AML/CFT Handbook – why can't the existing requirements be used?
158	General – Supporting information	There are several references to information supplied by legal/intermediate owners being accompanied by "information from a reliable and independent source which verifies the required details". Much more clarity is needed as to what this means so that the resource and cost implications for CSPs can be assessed.
159	General – Supporting information	There is no definition of the 'supporting information from a reliable and independent source' – this could potentially differ from the existing AML/CFT Handbook requirements
160	General – Complexity of processes	The process is complicated – there are a number of different roles (nominated officer, legal owner, intermediate owners) all with different obligations and potential penalties. The filing of the beneficial ownership information is

		separate to the Annual Return process, though the AR must confirm that the information is correct. Compare this to the UK – the company is responsible for filing an online annual confirmation statement which includes the Persons of Significant Control. The statement has replaced the Annual Return. The UK process is more straightforward and the duty is on the company itself, while the IOM has two separate processes with a number of different parties having duties, obligations and penalties for not complying. The IOM is already heavily regulated and this Bill is overly-complicated and not integrated with our existing requirements. It is in addition to existing regulations, rather than using what is already in place. The compliance burden on our type of business is being increased yet again, putting clients off using the IoM.

Appendix B

Respondents to the Consultation:

1. Aon Insurance (Isle of Man)
2. Appleby (Isle of Man) LLC
3. Association of Corporate Service Providers Isle of Man
4. Cains Advocates Ltd
5. Cayman National Bank and Trust Co.
6. Christian Aid
7. Department of Environment, Food and Agriculture
8. DQ Advocates Limited
9. First Names (Isle of Man) Limited
10. International Financial Centres Forum
11. Mr Paul Beckett
12. PWC
13. RL 360 Group
14. Confidential Response

Bodies Directly Consulted

Departments, Boards and Offices
Tynwald Members
Attorney General
Local Authorities
Chamber of Commerce
Law Society
Industry Representatives
All respondents to the 2014 Cabinet Office consultation on the transparency of the beneficial ownership of companies