

Dr. The Honourable D. Orlando Smith, OBE
Premier of the British Virgin Islands
Central Administration Complex
Road Town
Tortola, VG1110
Email: premieroffice@gov.vg
Fax: 494-6413

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To The Honorable D. Orlando Smith,

We welcome this opportunity to input into the ongoing public consultation on beneficial ownership information in the British Virgin Islands (BVI). We underscore that this consultation will have impact much wider than the BVI alone. Indeed, we write as interested parties whose countries of residence have already been directly impacted by corrupt individuals using companies located in your territory.

Corruption around the world is facilitated by people's ability to launder and hide the proceeds of corruption. Dirty money enters the financial system and is given the semblance of originating from a legitimate source through the use of corporate vehicles offering concealment and anonymity.

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

- a) *Do you consider the current BVI AML/CFT regime on beneficial ownership to be adequate save for the necessary review and revision to incorporate the new elements of the revised 40 Recommendations?*

We do not believe that the current regime is adequate.

Millions of dollars have been leaked out of Korea, facilitated by corporate secrecy. The Korea Customs Service uncovered evidence that the family of former dictator Chun Doo-Hwan had engaged in illegal offshore transactions.¹ Forty companies are involved, worth approximately 940

¹ http://www.arirang.co.kr/News/News_View.asp?nseq=151976

million US dollars. The eldest son of Chun, Jae-kook, is suspected of money laundering via a paper company in the British Virgin Islands, set up in 2004. He also used “borrowed names”, presumably to mask the fact that he was the beneficial owner.²

Meanwhile, the International Consortium of Investigative Journalists reported that the daughter of the late dictator, Ferdinand Marcos was a beneficiary of a BVI trust, which she did not report on her asset disclosure statements.³

In Indonesia we fear that many millions of dollars have been illegally channelled out of the country into secret companies held in the British Virgin Islands. Many of these companies have links to the regime of the late dictator Suharto.

We believe that secrecy jurisdictions permit and facilitate the non-reporting of assets. Public registers of beneficial ownership would allow ill-gotten gains to be more easily traced and make it more difficult and less attractive for people to benefit from the proceeds of corruption and crime.

b) Should the BVI seek to establish a central register on beneficial ownership information?

Yes. A central register provides the most effective and efficient way to access beneficial ownership information.

d) Would you support the idea of establishing a restricted central register on beneficial ownership whereby some information may properly form part of such a register and some kept by the company or registered agent but readily accessible for regulatory, law enforcement and international cooperation purposes?

A restricted register would not facilitate quick and efficient identification of beneficial owners. This is especially important for law enforcement purposes; investigators may wish to have access to information without needing to make inquiries which may alert beneficial owners.

Privacy has been raised as a legitimate concern for the creation of public registries of beneficial ownership. This is particularly the case for trusts which are often used to hold money in trust for family members and for estate planning purposes. However, given the scale of financial crime made possible through companies, trusts and other corporate vehicles, privacy concerns need to be balanced against the need to prevent crime. The beneficial ownership information collected should be limited to what is strictly necessary: full name, birth data, business address, nationality, and a description of how the ownership or control is exercised. Important precedents already exist in

² http://www.arirang.co.kr/News/News_View.asp?nSeq=150942

³ <http://www.icij.org/offshore/philippine-government-probe-marcos-daughters-offshore-trust>

many countries where information is publicly reported for the general interest, including political donations, lobbying activities and salaries of public officials.

f) If the BVI were to establish a central register on beneficial ownership information, to whom should the register be made available?

(i) Should the register be accessible by the public generally?

Yes.

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

Public registers can also enable government institutions to do their work better. For law enforcement, having critical information on beneficial ownership accessible, discreetly and at short notice, would greatly aid cross-border investigations. Public registers would have allowed us in the Philippines and in South Korea to have greater access to information relating to public officials in our country. They would act as a disincentive to anyone wanting to use secrecy for illegal or corrupt purposes.

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

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

(ii) Should the register be directly accessible to all law enforcement and tax authorities, both domestic and foreign? If your answer is no, state which of those authorities the register should be available to and why.

A public register is an efficient way of providing access to both domestic and foreign law and tax authorities.

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

⁵ Comments received by DG Internal Markt, European Commission, for the review of the 3rd EU Anti-Money Laundering Directive: http://ec.europa.eu/internal_market/company/financial-crime/received_responses/index_en.htm

(j) If the BVI were to establish a central register on beneficial ownership information, considering BVI's business model, what costs (human, financial or otherwise) do you expect would arise?

Making beneficial ownership information available to the public is not only a means to improve the accuracy of the information; there is also evidence that it would be cost-effective, according for example to two cost-benefit analyses carried out by the European Commission in 2007 and by the UK Companies House in 2002.

We once again welcome this opportunity to input into your consultation. We hope that the British Virgin Islands will decide to become a leader amongst offshore jurisdictions by adopting public beneficial ownership registries to make it harder for criminals and the corrupt to enjoy the proceeds of their ill-gotten gains.

Yours sincerely,

*Dr Geo-Sung Kim, Chairperson, **Transparency International - Korea***

*Dr. Cleo Calimbahin Executive Director, **Transparency International - Philippines***

*Dadang Trisasongko, Secretary-General, **Transparency International Indonesia***

*Robert Barrington, Executive Director, **Transparency International UK***

*Dr. Robin Hodess, Director of Advocacy and Research, **Transparency International – Secretariat***

Copied to:

BVI Financial Services Commission, Email: commissioner@bvifsc.vg

Governor's office, e-mail: govoffice.tortola@fco.gov.uk