

Wilbur Welcome
Senior Policy Analyst, Financial Services Secretariat
Ministry of Financial Services
Government Administration Building
133 Elgin Avenue, Box 126
Grand Cayman KY1-9000
Tel: 244-2246
e-mail: wilbur.welcome@gov.ky

January 31 2014

Dear Mr. Welcome

We welcome this opportunity to input into the ongoing public consultation on beneficial ownership information in the Cayman Islands. We underscore that this consultation will have an impact much wider than in the Cayman Islands alone. Indeed, we write as members of the Transparency International movement whose countries of residence have already been directly impacted by corrupt individuals using companies incorporated 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 by using corporate vehicles offering disguise, concealment and anonymity.

In Peru, for example, it was found that a significant amount of proceeds of corruption in the Fujimori-Montesinos case had ended up in offshore bank accounts, including in the Cayman Islands. Although a part of these funds were later recovered, global detection rates of illicit funds by law enforcement are estimated to be as low as 1 per cent for criminal proceeds and the seizure rate is thought to be even lower, at 0.2 per cent (2011)¹.

In Argentina, in-depth investigations by journalists have recently uncovered evidence of millions of USD in public funds being diverted by allegedly corrupt businessmen with links to political power to offshore jurisdictions. These funds were originally intended for much needed infrastructure projects and instead ended up outside of our country in bank accounts held by shell companies, including in the Cayman Islands.

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

¹ UNODC, "Illicit Financial Flows" 2011.

1. Is the establishment of a central register of the beneficial ownership and control of companies in the Cayman Islands the most appropriate and effective way to ensure transparency?

Public information about who has ultimate control and ownership of a company (the beneficial owner) is vital to fight financial crime and corruption effectively. Companies involved in money laundering typically rely on being able to deposit their assets with a bank. Without knowing the beneficial owner it is impossible for a bank to conduct a risk-based assessment and determine the legitimacy of the assets. Many studies have shown how anonymous shell companies and other corporate vehicles (such as trusts and foundations) are used as the conduit for the proceeds of corruption, tax evasion and other crimes.

A central register provides an effective and efficient way to access beneficial ownership information.

2. Is there a need for enhancement of the current system, by which the information is already held by licenses service providers and made accessible to appropriate authorities? If so, how?

Yes. The information should be held in a publicly available central registry.

4. If pursued, what types of companies and legal entities should be in the scope of the registry?

What do you expect to happen if, as suggested by some parties, these registries are limited to companies and exclude other entities like trusts?

After companies, trusts are the second most important vehicle used for corruption purposes, as identified by the World Bank and UN Office on Drugs and Crime.² This number is likely to be even higher as the misuse of trusts may be underreported. Any initiatives which would seek to shed light on beneficial ownership but fail to include trusts, foundations and other legal structures would leave open a significant money laundering loophole. As companies become more transparent, money launderers could exploit other corporate vehicles and simply reallocate their cash.

Therefore, trusts should also be included in their registry. By their very nature, “ownership” is not a concept easily applied to trusts. Trusts lend themselves ideally to money laundering as they explicitly separate ownership from control. Given the myriad of forms that trusts can take, several different people could qualify as the beneficial owner depending on the case.

² Stolen Asset Recovery Initiative, ‘Puppet Masters: how the corrupt use legal structures to hide stolen assets and what to do about it.’ 2011.

This makes it essential that for purposes of anti-money laundering compliance, beneficial ownership information for trusts is understood to embrace the widest possible scope and include all those persons relevant to the trust.

5. Should there be exemptions for certain types of company? If so, which?

No.

7. Should beneficial owners be required to disclose their beneficial ownership of the company to the company?

Yes.

8. Are there other requirements that the Cayman Islands could apply to continue to ensure that information on all companies' beneficial ownership is obtained and improve the availability of such information? If so, what?

The Cayman Islands should collect beneficial ownership information in public registers that are freely available and in machine-readable formats.

9. Should trustee(s) of express trusts be disclosed as the beneficial owner of a company?

By their very nature, "ownership" is not a concept easily applied to trusts. Trusts lend themselves ideally to money laundering as they explicitly separate ownership from control. Given the myriad of forms that trusts can take, several different people could qualify as the beneficial owner depending on the case.

This makes it essential that for purposes of anti-money laundering compliance, beneficial ownership information for trusts is understood to embrace the widest possible scope and include all those persons relevant to the trust.

10. Is it appropriate for the beneficiary or beneficiaries of the trust to be disclosed as the beneficial owner as well? Under what circumstances?

Publicly available information for each beneficial owner of a trust should include the identity of: the settlor (who donates the assets), the trustee (who manages the arrangement and is the legal owner), the protector (who may act as an intermediary between the settlor and the trustee), and the beneficiaries (who are to receive the funds).

Where directors or shareholders are fronted by nominees, this must be disclosed on record, including the name of the beneficial owner behind the nominee. Failure to do so should be grounds for criminal and civil penalties, including the possibility of imprisonment.

13. Should companies be required to update beneficial ownership information at fixed intervals, or as the information changes?

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

14. Should beneficial owners be required to disclose changes in beneficial ownership information proactively to the company?

Yes, changes in beneficial ownership should be disclosed proactively to ensure the greatest accuracy of information at any given moment. Failure to do so should result in sanctions.

15. What are appropriate timeframes for notification of changes to the company or ROC?

Any changes to the information required should be clearly indicated in the register without delay and at the latest within 30 days.

16. Should information in a registry (if such were to be created) be made available publicly? Please explain your answer.

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

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.

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 2011³ and the European Commission in 2012⁴ 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.

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

17. If yes to the previous question, should a framework of exemptions from a public record be put in place? If yes, which categories of beneficial owners might be included? How might this framework operate?

Any exemptions framework should operate under strict, time-bound and well-defined criteria and be limited to cases where there are legitimate security concerns surrounding the publication of personal details. Information should be available to law enforcement and tax authorities without exemption.

18. Should any beneficial ownership information held by the company be made publicly available? How?

The Cayman Islands should collect beneficial ownership information in public registers that are freely available and in machine-readable formats.

Publicly available information for each beneficial owner of a company, trust or other legal arrangements should include: full name, birth date, nationality, address of the registered office and the principle place of business (if different), as well as a description of how the ownership or control is exercised (such as the per cent of shares held).

³ 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>

⁴ 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

20. What are your opinions on the costs and benefits of this change for companies, beneficial owners, regulated entities, DNFPBs and other organisations.

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 Cayman 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,

Pablo Secchi, Executive Director, Poder Ciudadano (Transparency International's chapter in Argentina)

Robert Barrington, Executive Director, Transparency International UK

Cecilia Blondet, Executive Director, Proética (Transparency International's chapter in Perú)

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

Copied to:

Governor's office, email: staffoff@candw.ky fax: (+1 345) 945 4131