



**Ministry of Finance and Ministry of Economic Development with the Bermuda
Monetary Authority**

CONSULTATION PAPER

Proposed Revisions to Beneficial Ownership Disclosures

5 May, 2017

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The financial services industry and other interested parties are invited to submit their views on the proposals set out in this Paper. Comments should be sent to the Bermuda Monetary Authority and addressed to policy@bma.bm or to the Ministry of Economic Development to mbinns@gov.bm no later than 22 May, 2017.

I. INTRODUCTION

1. Bermuda has undertaken identification of beneficial ownership of corporate and legal entities for over 70 years. Although the collection of this information was driven by other statutory purposes, including for exchange control purposes and identification of owners of local companies, the outcome has been that Bermuda has developed and maintained a registry of information about beneficial ownership pertaining to legal entities formed in Bermuda.
2. With this experience, Bermuda has evolved transparency policies related to legal persons and arrangements, and has become a leader in this area, which has been a key factor in developing and maintaining our reputation as a premier international financial centre.
3. As part of our work to ensure that Bermuda continues to be a well-regarded and desired domicile for quality business, Bermuda has made a commitment to, among other things, implement international standards to combat money laundering and terrorist financing, and to enhance transparency. The key requirements in these areas include those adopted by the Financial Action Task Force (“FATF”) and the OECD Global Forum on Tax Transparency which incorporates key FATF requirements on beneficial ownership matters into its methodology.
4. Notwithstanding the significant work that Bermuda has already done in this area, we have identified gaps in the Bermuda regime which must be addressed to achieve the level of compliance required to protect our economic and business interests.
5. Furthermore, on 9 April, 2016, the Bermuda Government and the United Kingdom (UK) Government signed the UK Exchange of Notes Agreement (the “UK Exchange Agreement”), in respect of the sharing of beneficial ownership information via a central registry, which has defined key requirements in relation to the information required in terms of the FATF standards. The effective date for implementing the terms of this agreement is 30 June, 2017. It is the shared goal of the Ministry of Economic Development (“MoED”), the Ministry of Finance (“MoF”) and the Bermuda Monetary Authority (the “Authority”), to ensure that the registry requirements, as set out in the UK Exchange Agreement, are fulfilled. Hence the need to progress the proposals in a time sensitive manner.
6. This consultation paper therefore outlines proposals to address the identified gaps and further enhance Bermuda’s established beneficial ownership disclosure regime. Together, the MoED and MoF with the Authority are proposing legislative amendments which will: (i) enhance the present regime to ensure that comprehensive beneficial ownership information is retained on all legal entities formed in Bermuda; (ii) impose a duty on all entities to maintain a register of

- beneficial owners at the registered office, or other place, in Bermuda; (iii) introduce a registry for filing comprehensive information on local owners; (iv) expand the scope of beneficial owners to include controllers for the purposes of the register; and (v) ensure that information that is not otherwise required to be filed is readily available in Bermuda. The end result will be to further assist competent authorities who may request information from Bermudian authorities.
7. As well, this paper will propose that additional information gathering powers, and administrative sanctions and criminal penalties be adopted. These measures are necessary so as to deter non-compliance with obligations and to enable authorities to effectively manage an ownership registry.

II. CURRENT BENEFICIAL OWNERSHIP DISCLOSURE REQUIREMENTS

1. At the time of incorporation, in agreement with the MoF, the Authority vets all persons wishing to hold shares, interests or voting rights in a Bermuda legal entity.
2. As Exchange Controller, the Authority gives permission to legal entities to issue or transfer equity shares with voting rights or rights to appoint a director to non-resident persons. Where ownership results in an aggregate of 10% or more, the Authority vets the owners including the ultimate beneficial owners.
3. Not all issuances or transfers require express permissions as set out in the notice published by the Authority on June 1, 2005¹. For any issue or transfer of voting shares that is less than 10% or of non-voting shares, the Authority has given general permission for free transferability of such shares or interests. As well, any company listed on a recognised stock exchange and investment funds are given permission for free transferability of shares. Going forward, general permission will also be given in respect of those companies that engage corporate service providers (“CSP”) which are licensed with an unlimited licence, with the condition that those CSPs file such information with the Authority forthwith.
4. Similar arrangements have been made for the registration of partners who have an interest in partnerships formed under the Exempted Partnerships Act 1992 (“EPA”), general partners of partnerships under the Limited Partnership Act 1883 (“LPA”), or become members of those entities formed under the recently adopted Limited Liability Company Act 2016 (“LLC Act”).

¹ Summary of Notice to the Public June 2005 <http://www.bma.bm/company-matters/SitePages/Issue.%20Transfer.%20Redemption%20and%20Purchase%20of%20Securities.aspx>

5. For local companies, beneficial ownership information is provided at the time of incorporation. Thereafter, local companies are required to make annual filings of shareholdings to verify that those companies continue to meet the 60/40 requirement (i.e. 60% beneficial ownership resident/Bermudian and 40% beneficial ownership non-resident/foreign) imposed under the Companies Act 1981("CA 1981") or LLC Act.

III. INTERNATIONAL STANDARDS – RE: BENEFICIAL OWNERSHIP DISCLOSURE REQUIREMENTS

1. As noted previously, Bermuda is fully committed to implementing international standards as set out by the OECD Global Forum, the revised FATF Recommendations and incorporated into the UK Exchange Agreement, in order to improve transparency of beneficial ownership and control of legal persons and legal arrangements.
2. The goal of these international standards regarding beneficial ownership is to establish legal and regulatory regimes that deter and prevent the misuse of legal persons and legal arrangements.
3. Specifically, FATF Recommendation 24 is concerned with transparency of the ownership and control of legal persons (companies, limited liability companies ("LLC"), and other types of legal persons and legal arrangements such as partnerships).
4. Recommendation 24 states:

“Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.”
5. Meeting this requirement is therefore a three-limb test - that is, the information collected must be (1) adequate, (2) accurate and (3) timely.
6. A central register based on information obtained under various Acts - for example, the Exchange Control Act 1972 ("ECA"), CA 1981, LLC Act and partnership legislation - which is maintained by the Authority, along with statutory requirements to retain relevant information not required to be filed, is the model Bermuda has utilised ensuring compliance with FATF Recommendation 24.

IV. PROPOSED ENHANCEMENT TO BERMUDA'S BENEFICIAL OWNERSHIP DISCLOSURE REQUIREMENTS

Automatic updating of the register of beneficial ownership upon change of beneficial ownership

A. Adequate, Accurate Information

1. Bermuda has had no difficulty in fulfilling the requirements that the information be adequate and accurate at registration. Beneficial ownership information is required to be disclosed to the Authority at the time of incorporation of a company or formation of an LLC or partnership. The Authority's registry holds and records this information in a central register, as well as information on any subsequent issuance, transfer or change of members.
2. To date, this registration process is staffed by experts within the Authority. This process not only calls for information on beneficial ownership on incorporation and formation of partnerships through the statutory forms filed, but also requires additional independent checks to be carried out on beneficial owners. The Authority may refuse to approve a foreign owner of a company or partner as provided under the ECA and its regulations, the EPA, LPA, and LLC Act.
3. The Authority's review process of beneficial ownership information has enabled the jurisdiction to protect the integrity of Bermuda when reviewing the proposed owners of companies or partners.
4. Going forward, there will be adjustments to the regime with the licensing of CSPs. Specifically, legal entities which engage a CSP with an unlimited licence will have general permission to issue or transfer interests in the entity. However, such entities will still be required to file beneficial information with the Authority forthwith. As all CSPs will be subject to requirements to obtain and vet information on the beneficial ownership of the legal entities they administer to be adequate, accurate and current, this change will continue to ensure that the information provided on beneficial ownership filed in the central register is adequate, accurate and can be produced from the register in a timely manner.
5. However, in order to meet the international requirements relating to adequacy of beneficial information, it is proposed that the disclosure requirements under Bermuda legislation be expanded to include information about "controllers". This requirement not only refers to persons who own shares, interests or voting rights in a legal entity but also to any person who effectively has control over a legal entity, although they may not specifically own any shares, interests, or voting rights. Such persons may hold such control where they have the right to:
(i) exercise influence over the company, or (ii) appoint or remove directors; or
(iii) vote by way of shareholder, partnership or operating agreements and gain

control. This concept is embedded in the definition of beneficial owner adopted by FATF and is replicated in the Proceeds of Crime Regulations 2008. As well, the concept of “controller” is a key element of the definition of persons who control financial service entities licensed by the Authority. Although there are provisions in place under the Exchange Control Regulations 1973 (“EC Regulations”) that deal with disclosure of such controllers, these provisions are not comprehensive enough to capture the wider definition of controllers as beneficial owners now set out in international standards.

6. With this recommendation, the scope of information to be maintained and filed on legal entities formed in Bermuda will include controllers as beneficial owners.

B. Timely Information on beneficial ownership and control of legal person

1. Currently, information on beneficial ownership is obtained at the time of formation or when there is a change in the ownership by way of transfer. However, there are limitations on the completeness of this information recorded on the register. Firstly, there may be changes in the chain of beneficial ownership which are not triggered by a transfer. This is especially important in a multi-lateral ownership structure that lands the “ultimate beneficial owner” further up the organisational chain. It is proposed that such changes must be identified and filed as part of the beneficial ownership registry.
2. Secondly, for local companies, the beneficial ownership registry only covers ownership information for review purposes at the time of incorporation. However, to date, any change to the beneficial owner of local companies is not required to be filed as they happen. To complete the beneficial ownership registry regime, there will be a new requirement for local companies to file any change in beneficial ownership or control of 10% or more with a central registry as and when it happens.

C. Obtained or accessed in a timely fashion by competent authorities

Finally, in order for Bermuda to meet international requirements that information on ownership of any legal entity (including information that is not required to be filed may be obtained) is accessible and readily obtained, it is proposed that the CA 1981, LLC Act and relevant partnership legislation be amended. This amendment will mandate that all legal entities must take reasonable measures to know the beneficial owners of the entity and that such information be accessible either through a CSP engaged by the entity or a designated representative of the entity. This obligation will reinforce Bermuda’s ability to access any and all information related to beneficial ownership when required, by competent authorities.

Conclusions:

The Registry system developed by Bermuda has been recognised as effective and largely compliant with international standards. However, these additional adjustments will ensure that a national regime is robust by:

- implementing comprehensive filing on beneficial owners of local companies;
- expanding the disclosure requirements to include other types of controllers other than members with voting rights;
- monitoring changes in the “ultimate beneficial owners” of persons holding 10% or more, and filing such changes as part of the beneficial ownership registry;
- imposing a duty on all entities to take reasonable measures to identify and maintain information about their beneficial owners;
- imposing a duty on all entities to specifically maintain a register of beneficial owners at the registered office, or other place, in Bermuda; and
- introducing additional statutory powers to request information and to impose civil sanctions.

It is intended that the Ministries along with the Authority will have an outreach session to be held in May to discuss these proposals.