

Consultation:

Bermuda's Central Register of Beneficial Ownership Information of Legal Persons



GOVERNMENT OF BERMUDA
Ministry of Finance

REGISTRAR OF COMPANIES DEPARTMENT
November 2024

The Registrar of Companies Department, Ministry of Finance, Government of Bermuda, is consulting on the proposals to (a) enhance Bermuda’s current beneficial ownership regime in accordance with the revised Financial Action Task Force Recommendation 24 and consolidate the regime under the framework of a single Act, (b) extend access to the central register of beneficial ownership information to obliged entities as well as persons that can demonstrate a legitimate interest having regard to the European Union Sixth Anti-Money Laundering Directive and international best practice, and (c) transfer the central register from the Bermuda Monetary Authority to the Registrar of Companies.

Responses may be submitted with the subject, “Consultation: Beneficial Ownership Register” to the Regulatory, Enforcement and Policy Division, Registrar of Companies Department, at ROCPolicy@gov.bm.

Closing date: 8 January 2025.

Background

1. This consultation follows the Government of Bermuda’s public commitment on the 12th July, 2020 to bring forward to its Legislature proposals to establish public access to beneficial ownership information on companies held on its central register (“Public Register”) within 12 months of the European Union (“EU”) publication of an Implementation Review of the Fifth Anti-Money Laundering Directive (“5AMLD”)¹.
2. The impetus behind Bermuda’s public commitment to establish a Public Register is its high-level political commitment by letter dated 28th December, 2018 to the EU Code of Conduct (Business Taxation) Group as part of communication related to the EU requirements being imposed on low tax jurisdictions, as set out in its scoping paper on criterion 2.2 of the EU listing exercise. In this letter, the Government of Bermuda confirmed its commitment to work with the EU:
 - a. to achieve its objective on beneficial ownership;
 - b. to implement a beneficial ownership regime in a time frame similar to the time frame given to the EU Member States to implement the 5AMLD; and
 - c. in the examination of all options that may be of interest to the EU including the current UK and Crown Dependencies and Overseas Territories beneficial ownership agreement.
3. At the time of this commitment, Article 1(15)(c) of the 5AMLD required EU Member States to ensure that beneficial ownership information of corporate entities be made accessible in all cases to any member of the public. This requirement, however, has since been invalidated by the European Court of Justice (“ECJ”) in its landmark decision of C-37/20 and C-601/20 WM and Sovim SA v Luxembourg Business Registers on the basis that it is inconsistent with the fundamental privacy and data protection rights enshrined in Articles 7 and 8 of the European Charter of Fundamental Rights.
4. As a result of the ECJ ruling, on the 19th June, 2024, the EU, in order to limit interference with the right to respect for private life and protection of personal data, published its Sixth Anti-Money Laundering Directive (“6AMLD”) requiring that access by the public to beneficial ownership information held on the central registers of EU Member States be made conditional on the demonstration of a legitimate interest.
5. The Government of Bermuda is also aware that the right to protection of personal data is further guaranteed by the right to respect for private life under the European Convention on Human Rights (“ECHR”) which has been extended by the UK Government to most OTs, including Bermuda. This right has been reaffirmed by the European Court of Human Rights (“ECtHR”) in its recent decision of L.B. v Hungary² in which the ECtHR, recognising the principles in Sovim, found that the Legislature had failed to strike a balance between the

¹ This Implementation Review was published on the 11th March, 2024.

² Application No. 36345/26.

competing public and private interests at stake and therefore had violated privacy and data protection rights enshrined under the ECHR.

6. Bermuda as a jurisdiction remains committed to the global fight against the misuse of corporate vehicles for money laundering (“ML”), terrorist financing (“TF”) and proliferation financing (“PF”) as evidenced by its highly effective and independently verified beneficial ownership regime. However, the Government continues to recognise that any commitment made towards achieving greater beneficial ownership transparency as a means of detecting and deterring financial crime must be compatible with the fundamental rights of individuals as guaranteed by the Bermuda Constitution and protected by its domestic privacy and data protection laws³, and international obligations, including its obligations under the ECHR.
7. In light of the above legal developments, and based on legal advice obtained, the Government of Bermuda considers it necessary to revise its policy position, and by extension its public commitment to establish a Public Register. The Government is now of the view that a Public Register is incompatible with Bermuda’s privacy and data protection laws and its international obligations and on that basis, intends to instead progress a central register of beneficial ownership information of companies accessible to persons and organisations that can demonstrate a legitimate interest having regard to the 6AMLD and international best practice.
8. In line with its political commitment, the Government therefore anticipates delivery of Bermuda’s legitimate interest beneficial ownership register in a time frame consistent with that afforded to the EU Member States to implement the 6AMLD, that is by 10th July, 2026.⁴
9. Moreover, Bermuda remains committed to meeting its international obligations under the recently revised Financial Action Task Force (“FATF”) international standards on beneficial ownership and transparency. The Government therefore intends to facilitate timely access to the central register by financial institutions (“FIs”) and designated non-financial business persons⁵ (“DNFBP”), collectively referred to as obliged entities, to facilitate compliance with customer due diligence (“CDD”) obligations, and to support any supplementary verification efforts, subject to adequate data protection and privacy safeguards.
10. As Bermuda moves towards the establishment of the necessary legislative and operational framework to support these policy initiatives, the Government envisions a phased approach to extending access to the central register of beneficial ownership of companies to obliged entities and persons with a legitimate interest. The Government is therefore targeting Q2

³ This includes the Personal Information Protection Act 2016 which will come fully into force on the 1st January, 2025.

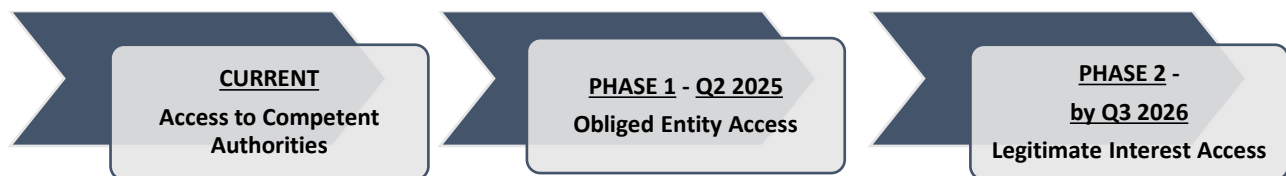
⁴ Article 76 of the 6AMLD provides that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 10 July 2027. By way of derogation, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 11, 12, 13 and 15 by 10 July 2026.

⁵ As identified under section 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

2025 for implementation of obliged entity access, followed by the implementation of legitimate interest access by Q3 2026.

11. Beyond access to the central register, this consultation also seeks to put forward proposals to ensure that Bermuda satisfies its further obligations under the revised FATF international standards on beneficial ownership and transparency, and addresses any key recommended actions identified by the Caribbean Financial Task Force (“CFATF”) as part of Bermuda’s fourth round mutual evaluation.⁶
12. As Bermuda enhances and streamlines its beneficial ownership regime in response to the continually evolving global standards, the Government considers it necessary to introduce a single Act to govern Bermuda’s beneficial ownership regime. This proposal will have significant legislative consequences as it requires the repeal of several legislative provisions, including the relevant parts of the Companies Act 1981 and related Acts⁷, and the Exchange Control Regulations 1973⁸, with the appropriate provisions, on repeal, consolidated under the framework of the single Act. The Government intends for the single Act to be in place by Q1 of 2025, with Regulations⁹ governing, in the first instance, access to obliged entities by Q2 2025.
13. The Registrar of Companies (“RoC”) therefore seeks the feedback of industry and all relevant stakeholders on the proposals intended to give effect to these policy positions as set out in this paper. The RoC has initiated this engagement on the basis that, as part of revised policy initiatives aimed at streamlining and further enhancing Bermuda’s existing beneficial ownership regime, it is the intent of Government that the central register of beneficial ownership of legal persons be transferred from the Bermuda Monetary Authority (“BMA”) to the RoC.

Extending Access to the Central Register of Beneficial Ownership of Companies: Bermuda Phased Approach



⁶ The CFATF recommendations on alternate directors, bearer shares and bearer share warrants, as noted in the 2020 Bermuda Mutual Evaluation Report, will form part of subsequent legislative amendments.

⁷ The Limited Liability Company Act 2016, the Limited Partnership Act 1883, the Exempted Partnership Act 1992 and the Partnership Act 1902.

⁸ Regulations 12, 13, 13A and 13B of the Exchange Control Regulations 1973.

⁹ The proposed Regulations will also be consulted on.

Phase 1: Obligated Entity Access

14. The revised FATF international standards¹⁰ on beneficial ownership and transparency require countries to now consider facilitating access by financial institutions and DNFBPs to beneficial ownership information on legal persons to facilitate compliance with CDD obligations, and support supplementary verification efforts, such as discrepancy reporting.¹¹
15. In keeping with its progressive nature and in the spirit of its continued efforts to combat ML, TF and PF, the Government of Bermuda is proposing that its central register of beneficial ownership information be extended to obligated entities for CDD purposes. It is also intended that a complementary discrepancy reporting framework be introduced into the provisions of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to require obligated entities to report any material discrepancy¹² between the information available to them and that on the central register.
16. On an application having been made through the RoC's online portal¹³ and the payment of the requisite administrative fee¹⁴, access may be permitted to an obligated entity by the RoC to the following beneficial ownership information: (i) name of the beneficial owner, (ii) month and year of birth, (iii) country of residence, (iv) nationality or nationalities of the beneficial owner, and (v) the nature and extent of the beneficial ownership interest held. However, in order to mitigate the risk of misuse and improper disclosure of beneficial ownership information, additional safeguards are considered necessary, both at the legislative and operational level.
17. Legislatively, the proposed Act would seek to restrict access to the central register by obligated entities for a legitimate purpose only (namely, CDD or discrepancy reporting), with the RoC empowered with the discretion to restrict or prohibit access to the beneficial ownership information held as he considers appropriate. To complement these measures, it is intended that the Act introduce a requirement prohibiting third parties to whom access has been granted from disclosing the beneficial ownership information obtained to another

¹⁰ Revised in March 2022.

¹¹ FATF Interpretive Note to Recommendation 24, paragraph 11. See also *the FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations* (updated November 2023) and the FATF (2023) *Guidance on Beneficial Ownership of Legal Persons*, FATF, Paris, pg. 42, para. 108.

¹² Consideration is being given to the definition of the term material discrepancy as found in Schedule 3AZA of the UK Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. According to these Regulations, "material discrepancy" is a discrepancy that, by its nature and having regard to all the circumstances, may reasonably be considered to be connected to money laundering or terrorist financing, or to conceal details of the business of the customer such as difference in name, an incorrect entry for nature of control, an incorrect entry for date of birth, an incorrect entry for nationality, an incorrect entry for correspondence address, a missing entry for a registrable person, or an incorrect entry for the date the individual became a registrable person.

¹³ On the transfer of the beneficial ownership register from the BMA to the RoC.

¹⁴ As prescribed.

person or for any purpose other than that for which access was granted. Breach of this obligation would carry a criminal sanction on summary conviction.

18. Operationally, it is intended that a number of security and privacy controls be implemented. Access to the RoC's electronic database will be monitored and audited, ensuring that only persons with the authority to access the system can do so. The system will also offer, amongst other features, support for multifactor authentication thereby adding an extra layer of security, the monitoring and logging of operational performance and the ability to therefore alert the RoC's administrators to unusual activity.
19. Further, access by obliged entities would also be limited to beneficial ownership information that is not prohibited from disclosure and therefore suppressed from the register pursuant to an application having been made to the Registrar by a beneficial owner or any person living with them at serious risk of exposure to harm, such as fraud, kidnapping, blackmail, extortion, harassment, violence and intimidation, or some other harm.¹⁵

Phase 2: Legitimate Interest Access

20. The Government recognises that the development and implementation of legitimate interest registers are still at an embryonic stage within the EU, considering that the 6AMLD entered into force on the 19th June, 2024 and provided that EU Member States enact Article 12, which deals with legitimate interest access, into national law by the 10th July, 2026.
21. From inception, the Government of Bermuda's public commitment has been premised on Bermuda having a full appreciation of the practicalities of developing and implementing a beneficial ownership register accessible to the public prior to implementation in its own jurisdiction. For this reason, the Government previously committed to bring forward to its Legislature proposals to establish public access to its beneficial ownership register within 12 months of the Implementation Review of the 5AMLD.
22. In the absence of an international standard and evidence-based practices to guide and inform the development and implementation of a compatible legitimate interest register of companies, the Government maintains this position as it seeks to ensure that it strikes a balance between competing public and private interests at stake, and therefore does not violate the privacy and data protection rights of beneficial owners. As Bermuda continues to monitor global developments in its efforts to work towards establishing a legitimate interest register, the feedback of industry on the definition of legitimate interest and the appropriate approach to facilitating access in the Bermuda context is a crucial part of this process.
23. Under Article 12 of the EU 6AMLD, Member States are required to ensure that persons that can demonstrate a legitimate interest in the prevention and combating of ML, its predicate offences and terrorist financing have access to beneficial ownership information held on

¹⁵ The legislative framework supporting the process to suppress beneficial ownership information from the register (in specified cases) on an application having been made to the RoC by a beneficial owner will be provided for in the accompanying Regulations. The application would be subject to a prescribed fee.

their central registers on a case-by-case basis. Apart from this general requirement, Article 12 also contains a deeming provision by which certain categories of persons, which are listed below, are presumed to have a legitimate interest and therefore do not have to demonstrate it:

- a. persons acting for the purpose of journalism, reporting or any other form of expression in the media, that are connected with the prevention or combating of money laundering, its predicate offences or terrorist financing.
- b. civil society organisations, including non-governmental organisations and academia, that are connected with the prevention or combating of money laundering, its predicate offences or terrorist financing.
- c. natural or legal persons likely to enter into a transaction with a legal entity or legal arrangement and who wish to prevent any link between such a transaction and money laundering, its predicate offences or terrorist financing.
- d. entities subject to AML/CFT requirements in third countries, provided they can demonstrate the need to access the information referred to in paragraph 1 in relation to a legal entity or legal arrangement to perform customer due diligence in respect of a customer or prospective customer pursuant to AML/CFT requirements in those third countries.
- e. third-country counterparts of Union AML/CFT competent authorities provided they can demonstrate the need to access the information referred to in paragraph 1 in relation to a legal entity or legal arrangement to perform their tasks under the AML/CFT frameworks of those third countries in the context of a specific case.
- f. Member State authorities in charge of implementing Title I, Chapters II and III of Directive (EU) 2017/1132, in particular the authorities in charge of the registration of companies in the register referred to in Article 16 of that Directive, and Member State authorities responsible for scrutinising the legality of conversions, mergers and divisions of limited liability companies pursuant to Title II of that Directive.
- g. programme authorities identified by Member States pursuant to Article 71 of Regulation (EU) 2021/1060, in respect of beneficiaries of Union funds.
- h. Public authorities implementing the Recovery and Resilience Facility under Regulation (EU) 2021/241, in respect of beneficiaries under the Facility.
- i. Member States' public authorities in the context of public procurement procedures, in respect of the tenderers and operators being awarded the contract under the public procurement procedure.

- j. providers of AML/CFT products, to the strict extent that products developed on the basis of the information referred to in paragraph 1 or containing that information are provided only to customers that are obliged entities or competent authorities provided that those providers can demonstrate the need to access the information referred to in paragraph 1 in the context of a contract with an obliged entity or a competent authority.
24. The Government considers categories a, b and c relevant to the Bermuda context and welcomes proposals from industry on how those provisions, as well as the general provisions of the Article as a whole, can be refined to better fit and work for Bermuda. Given that legitimate interest access will be dealt with primarily by way of Regulations, the Government anticipates further engagement with industry in the upcoming months.

Competent Authority Access – Public Procurement

25. Beyond the above third-party access, the Government also intends to include in the scope of competent authorities to which the central register of beneficial ownership information is accessible, public authorities at the national level, and others as appropriate, in the course of public procurement in accordance with the revised FATF standards.¹⁶ Access to the central register therefore will be extended to the Office of Project Management and Procurement and Government Ministries and Departments engaged in the procurement process for the purposes of facilitating the exercise of their due diligence functions.

Revisions to FATF Recommendation 24 and Recommended Actions from Bermuda CFATF Fourth Round Mutual Evaluation

26. As of March 2022, the revised FATF Recommendation 24 now requires that countries (a) use a multipronged approach for the collection of beneficial ownership information to ensure that adequate, accurate and up-to-date information on the beneficial ownership of legal persons is available and can be accessed by competent authorities in a timely manner, (b) follow a risk-based approach and consider the risks of legal persons in their countries, not only those posed by legal persons created in their countries, but also by foreign-created legal persons with sufficient links with their country, (c) ensure that access to information by competent authorities is timely, and information adequate for identifying the beneficial owner, accurate based on verification, and up-to-date, (d) implement stronger controls to prevent the misuse of bearer shares and nominee arrangements having regard to the broadened FATF definition of the terms “nominator”, “nominee”, “nominee shareholder” and “nominee director.”¹⁷

¹⁶ Paragraph 10 of the Interpretive Note to Recommendation 24: the *FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations* (updated November 2023) pg. 96.

¹⁷ The *FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations* (updated November 2023) pgs. 132-133

27. In addition to ensuring that it satisfies the revised requirements, Bermuda is also required to take the necessary steps to address all recommended actions identified by the CFATF as part of its fourth round mutual evaluation. The following legislative proposals therefore are aimed at ensuring that Bermuda is technically compliant¹⁸ and further enhancing the current beneficial ownership regime.

Transfer of Central Register and Gatekeeping Functions to the RoC

28. Bermuda has proven its reputation as a jurisdiction committed to sound financial regulation, compliance with international standards on beneficial ownership and transparency, and international cooperation. It continues to be recognised as having one of the most effective anti-money laundering and anti-terrorist financing regimes in the world, and a longstanding beneficial ownership record keeping and vetting framework.

29. Bermuda's central register is currently held and maintained by the BMA which receives beneficial ownership information from legal persons through filings made pursuant to their statutory obligations under the corporate legislation. Under the Companies Act and related Acts, entities are required to obtain information on their beneficial ownership¹⁹, maintain an up-to-date and current beneficial ownership register at their registered office²⁰, file such information with the BMA and notify it of any changes.²¹ Monitoring and enforcement of non-compliance with these obligations are conducted by the RoC.

30. In addition to these obligations under the corporate legislation, the BMA also captures beneficial ownership information on legal persons under its Exchange Control regime, which is vetted at the time of incorporation and from Exchange Control permissions²², and under the controller provisions found in the various regulatory Acts.²³

¹⁸ See also the CFATF GAFIC Anti-money laundering and counter-terrorist financing measures, *Bermuda Mutual Evaluation Report*, January 2020, pg. 185, para. 243

¹⁹ Sections 98F of the Companies Act, 65D of the Limited Liability Act and 4P of the Partnership Act.

²⁰ Sections 98H and 98I of the Companies Act, 65F and 65G of the Limited Liability Company Act, 4S and 4R of the Partnership Act, 8AA of the Limited Partnerships Act 1883 and 13G of the Exempted Partnerships Act 1992.

²¹ Sections 98L of the Companies Act, 65J of the Limited Liability Company Act and 4V of the Partnership Act.

²² The Exchange Control Act 1972 and the Exchange Control Regulations 1973 apply in relation to beneficial ownership for the purposes of exchange control. Beneficial ownership is defined under Regulation 2 as any individual who ultimately owns 10% or more of the shares, voting right or interests in the company through direct or indirect ownership thereof. Under Regulations 12 and 13, the transfer of securities of a Bermuda company to or from a non-resident resulting in a beneficial ownership position of 10% or more must have the prior approval/permission of the Controller. Subsequent changes of ownership are required to be submitted and approved if they relate to a transfer from or to non-residents and reach the threshold of 10% unless general permission is available via a notice to the public. Any changes to the UBO are also required to be notified to, and filed, with the Controller. Such information must be accurate, current and up-to-date: CFATF GAFIC Anti-money laundering and counter-terrorist financing measures, *Bermuda Mutual Evaluation Report*, January 2020, pg. 180, para. 214

²³ Shareholders and controllers of all regulated financial institutions are required to file and appropriately update beneficial ownership information with the BMA, which the BMA monitors. This includes information about controllers as per the FATF definition of beneficial owners: National Anti-Money Laundering Committee

31. However, with continually evolving global standards on combatting ML, TF and PF, and the additional measures and mechanisms that countries are required to put in place to achieve greater transparency, the Government is now considering streamlining its beneficial ownership regulatory regime in order to maximise efficiencies, ease administration and maintain compliance. To give effect to this proposal, Bermuda’s central register of beneficial ownership information therefore would be transferred from the BMA to the RoC, with the RoC designated as the authority to collect, verify²⁴ and maintain on the central register beneficial ownership information on legal persons operating from and within Bermuda. To support this anticipated transfer, the RoC has developed a standalone, fit for purpose and secure database on which the central register will be held.²⁵ Entities would therefore be required to file their beneficial ownership information with the RoC instead of the BMA, with the RoC empowered to prohibit a legal person from registering where it fails to provide adequate, accurate and up-to-date beneficial ownership information.
32. As part of this streamlining process, the gatekeeping function currently performed by the BMA will also be transferred to the RoC, with vetting²⁶ and approval of beneficial owners to be conducted prior to incorporation and on change of ownership. The Government considers it necessary that Bermuda maintains the integrity of the gatekeeping function and in support of that process intends to create in the proposed Act a framework empowering the RoC to object to a beneficial owner where adverse information has been uncovered about the relevant beneficial owner. It follows that the Act would also empower the RoC to take the appropriate compliance measures where an individual becomes a beneficial owner or remains a beneficial owner of the relevant legal entity notwithstanding the RoC’s objection.

Scope of Legal Persons

33. All legal persons in Bermuda, unless statutorily exempted, are required to comply with the requirements to obtain beneficial ownership information, maintain an up-to-date and current beneficial ownership register at their registered office, file such information with the BMA and notify it of any changes.
34. Under the existing legislative framework, therefore, permit companies, closed-ended investment vehicles²⁷, financial institutions²⁸, companies, limited liability companies and partnerships listed on the Bermuda Stock Exchange (“BSX”) or an appointed stock

(2023). *Bermuda – Report on 2020 Money Laundering and Terrorist Financing Risk Assessments*. Ministry of Finance, Government of Bermuda, pg. 33.

²⁴ The proposed legislation will provide that the RoC, on the submission of beneficial ownership information by a legal person and on a regular basis thereafter, is required to verify that such beneficial ownership information is adequate, accurate and up-to-date using reliable, independently sourced documents, data and information.

²⁵ For a minimum period of five years after the date on which the legal person is dissolved or otherwise ceases to be associated with the registered entity.

²⁶ Vetting of beneficial owners will be conducted by the RoC throughout the life cycle of the legal person.

²⁷ Managed or administered by a person licensed under the Investment Business Act 2003 or the Investment Funds Act 2006 or registered, authorised or licensed by a foreign regulator recognised by the BMA.

²⁸ As defined in the Third Schedule of the BMA Act 1969.

exchange²⁹ and any other type of company, limited liability company, partnership or entity exempted by order of the Minister of Finance are not required to comply with the beneficial ownership requirements. In addition, those Private Act companies (“PACs”) that are not required to register with the RoC³⁰ also fall outside the scope of the beneficial ownership legislative regime.

35. Based on the results of Bermuda’s most recent legal persons vulnerability assessment, which concluded that exempted companies, overseas partnerships and PACs are high risk for ML while exempted limited liability companies are medium risk, the continued exclusion of many of the entities currently out of scope is simply untenable. To mitigate those risks identified, all legal persons in Bermuda, with the exception of those that are publicly listed on the BSX or an appointed stock exchange, will now be subject to the beneficial ownership disclosure and reporting requirements under the proposed legislation.
36. Moreover, as maintaining the integrity and accuracy of the beneficial ownership register and enhancing the RoC’s ability to effectively carry out its compliance and enforcement activities remain a priority, publicly listed entities exempted from complying with the beneficial ownership requirements would be required to disclose their exempted status to the RoC and file proof of exemption.

Definition of Beneficial Owner

37. In the context of legal persons, the FATF defines a beneficial owner as “the natural person(s) who *ultimately*³¹ owns and controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise *ultimate effective control* over a legal person. Only a natural person can be an ultimate beneficial owner, and more than one natural person can be the ultimate beneficial owner of a given legal person.”³² Legal persons, according to FATF, can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.³³
38. Currently, Bermuda adopts, in line with the FATF standard, a cascading approach to identifying beneficial owners which is embedded in its various statutory provisions³⁴. This approach focuses on first identifying beneficial owners with ownership control, with those

²⁹ Pursuant to section 2(9) of the Companies Act.

³⁰ PACs, which are not required to register with the RoC except where limited by shares unless otherwise provided for in the incorporating Act, currently fall outside the scope of the beneficial ownership regime.

³¹ According to FATF, reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

³² See FATF Glossary, *FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations* (updated November 2023), pg. 123.

³³ See FATF Glossary, *FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations* (updated November 2023), pg. 132.

³⁴ Sections 98E of the Companies Act, 65C of the Limited Liability Company Act and 40 of the Partnership Act.

exercising control by other means only being identified in circumstances where there is doubt as to whether the person(s) with the controlling interest are the beneficial owners or where no natural person exerts control through ownership interests.

39. In the application of its standards, the FATF however requires that countries take into account the different forms and structures of legal persons, and the level of ML and TF risks associated with each type of legal person with a view to achieving the appropriate levels of transparency.³⁵
40. As companies and partnerships operate differently, specifically as it relates to control since control in companies is linked to capital contribution while in partnerships it flows from the partnership agreement³⁶, a simultaneous approach to identifying beneficial owners is considered appropriate. This approach ensures that the persons who are controlling the legal persons through means other than ownership would be identified together with the persons controlling the company through ownership interests.
41. Moreover, to ease the administration of the regime, the ownership threshold of “more than 25%” will be replaced with the threshold “25% or more.”

Beneficial Ownership Obligations of Legal Persons

Identification of Beneficial Owners

42. The existing requirement under the Companies Act and related Acts³⁷ for legal persons to take “reasonable steps” to identify their beneficial owners will be amended to remove the term “reasonable steps” and require that such persons be identified.

Verification of Beneficial Ownership Information

43. The three-fold statutory obligation on legal persons subject to the beneficial ownership regime was enacted to ensure that competent authorities have timely access to adequate, accurate and up-to-date information on their beneficial ownership. As an additional measure to reduce the risk of inaccuracies in the information and allow enforcement of beneficial ownership reporting rules, the revised FATF Recommendation requires legal persons to take reasonable measures to verify the identity and status of their beneficial owners using reliable, independently sourced or obtained documents, data or information, and to do so prior to entering the information in their beneficial ownership registers.

³⁵ The *FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, the FATF Recommendations* (updated November 2023), Interpretive Note to Recommendation 24, pgs. 97-98, paras. 14 and 15.

³⁶ With the default rule being the unanimous consent of all partners.

³⁷ Sections 98F of the Companies Act, 65D of the Limited Liability Act and 4P of the Partnership Act.

44. The proposed legislation will therefore introduce verification obligations on legal persons and require that records of the measures taken and documents used for verification be kept, as such records are necessary for monitoring and compliance purposes.
45. To support these verification obligations, the minimum required information³⁸ that legal persons must collect and enter on their beneficial ownership register will be expanded to include information from the beneficial owner's unexpired and government-issued identity documents such as the name of the beneficial owner, date of birth, nationality(ies)³⁹, identification number, country of issue, date of issue and date of expiry.
46. In the case where the registrable person⁴⁰ is a relevant legal entity ("RLE")⁴¹, the minimum required information will be further expanded to enable the legal person to obtain the following additional information: (i) the registered or corporate name where the registrable person is a legal entity, (ii) the law by which it is governed and (iii) where applicable, the register in which the RLE is entered, including details of the country of registration in that country.
47. Additionally, nominee shareholders will now be required to disclose their status to the RoC, together with the necessary supporting documents.

Additional Obligations and Measures

48. As streamlining the beneficial ownership regime and creating efficiencies remain a priority, the new legislation will seek to introduce a requirement for legal persons, with the exception of those to which a licence under section 114B of the Companies Act have not been granted or that are exempted under the Corporate Service Provider Business Exemption Order 2015, to engage the services of a corporate service provider for the filing of their beneficial ownership information with the RoC.
49. Additionally, annual return filings will now be used by the RoC to conduct further monitoring of compliance with beneficial ownership obligations as legal persons will be required to include a statement confirming that they are in compliance and that the information provided in their beneficial ownership filing is adequate, accurate and up-to-date. The legislation will make provision for a penalty for non-compliance in the form of a suspension of the entity's certificate of compliance, which would only be validated once it is no longer in breach and has paid the prescribed fee.

³⁸ Sections 98H of the Companies Act, 65F of the Limited Liability Company Act and 4R of the Partnership Act.

³⁹ A beneficial owner with more than one nationality will be required to disclose the relevant information and supporting documentation to the RoC.

⁴⁰ Under section 98C of the Companies Act, "registrable person" means a beneficial owner or relevant legal entity. This provision is mirrored in sections 65A of the Limited Liability Act and 4M of the Partnership Act.

⁴¹ Section 98C further provides that "relevant legal entity" in relation to a company means (a) any legal entity that is incorporated, formed or registered (including by way of continuation) in Bermuda or elsewhere; and (b) any legal arrangement, which would be a beneficial owner of the company if it were an individual. The provision is replicated in sections 65A of the Limited Liability Act and 4M of the Partnership Act.

50. Building on the existing safeguards aimed at ensuring the accuracy of the information on the beneficial ownership register, the legislation will also introduce a provision for the Court to direct that notice of any order rectifying the register of a legal person be given to the RoC.

Compliance and Enforcement Framework

51. Bermuda's sanctions regime for non-compliance with beneficial ownership requirements under the corporate legislation is currently bifurcated.⁴² The intention of Government, therefore, is to consolidate the beneficial ownership sanctions regime under the framework of the Registrar of Companies (Compliance Measures) Act 2017 ("Compliance Measures Act") in order to reduce ambiguity and improve ease in administration. This consolidation would therefore involve the repeal of the duplicative-type penal provisions currently found under the Companies Act and related Acts.⁴³

52. Additionally, in light of the proposed extended access to the central register, the Compliance Measures Act will be amended to introduce a new criminal offence where a person is found to have improperly disclosed beneficial ownership information obtained through access granted by the RoC to the central register. The proposed penalty for breach of this offence is a fine not exceeding BD\$50,000 or two years imprisonment or both on summary conviction.

53. As the Compliance Measures Act was designed to provide an overarching framework under which the RoC can better provide for regulation of, and compliance by, entities in Bermuda, the Act will be further amended to include a provision analagous to the current section 16A for non-compliance with the beneficial ownership provisions under the single Act.

54. A general overview of the penalties under the existing regime and those proposed under the Compliance Measures Act is attached to this consultation paper as Appendix I.

Conclusion

55. Bermuda has built an effective beneficial ownership record keeping and vetting framework in partnership with its global counterparts in combatting ML, TF and PF in accordance with the FATF international standards. As the jurisdiction now progresses towards a beneficial ownership register of companies accessible to obliged entities and persons that can demonstrate a legitimate interest having regard to the EU 6AMLD and international best practice, the Government will continue to monitor global developments as it aims to strike a

⁴² The sanctions regime is currently found in both the corporate legislation and the Registrar of Companies (Compliance Measures) Act 2017.

⁴³ Where appropriate, the relevant parts of these provisions, however, will be incorporated into the framework of the Compliance Measures Act. For example, to ensure that there continues to be personal liability, the Compliance Measures Act will be amended to provide that where an offence under sections 14 and 15 committed by a body corporate is proved to have been committed with the connivance of an officer of the body corporate, the officer as well as the body corporate commits the offence.

balance between greater transparency and the individual rights to privacy and data protection.

56. As the Government of Bermuda seeks to navigate these waters in the absence of a global standard and evidence-based best practices, the feedback of industry and all relevant stakeholders is crucial to the way forward.

APPENDIX I

EXISTING PENALTIES UNDER THE COMPANIES ACT 1981, THE LIMITED LIABILITY COMPANIES ACT 2016, THE PARTNERSHIP ACT 1902 AND THE REGISTRAR OF COMPANIES (COMPLIANCE MEASURES) ACT 2017

Statutory Obligation	Corresponding Penalty under the Companies Act 1981 and Related Acts	Corresponding Penalty under the Registrar of Companies (Compliance Measures) Act 2017	Proposed Legislation to be applied under New Regime and Associated Penalty
Failure to comply with beneficial ownership requirements	Fine not exceeding BD\$5,000 on summary conviction ⁴⁴	Fine not exceeding BD\$250,000 for each failure or contravention ⁴⁵	Registrar of Companies (Compliance Measures) Act 2017 Fine not exceeding BD\$250,000 for each failure or contravention
Making a False or Misleading Statement	Fine not exceeding BD\$50,000 on summary conviction ⁴⁶	Fine of BD\$25,000 or imprisonment for two years or both on summary conviction ⁴⁷	Registrar of Companies (Compliance Measures) Act 2017 ⁴⁸ Fine of BD\$25,000 or imprisonment for two years or both on summary conviction

⁴⁴ Sections 98O(1)(a) of the Companies Act, 65M(1)(a) of the Limited Liability Company Act and 4Y(1)(a) of the Partnership Act.

⁴⁵ Section 11(1) of the Registrar of Companies (Compliance Measures) Act 2017.

⁴⁶ Sections 98O(1)(b) of the Companies Act, 65M(1)(b) of the Limited Liability Company Act and 4Y(1)(b) of the Partnership Act.

⁴⁷ Section 14(1) of the Registrar of Companies (Compliance Measures) Act 2017.

⁴⁸ Section 14(1) of the Registrar of Companies (Compliance Measures) Act 2017.

<p>Improper Disclosure of Beneficial Ownership Information</p>	<p>n/a</p>	<p>n/a</p>	<p>Registrar of Companies (Compliance Measures) Act 2017</p> <p>Fine not exceeding BD\$50,000 or two years imprisonment or both</p>
<p>Obstruction of the Registrar</p>	<p>n/a</p>	<p>Liable on summary conviction to a fine of BD\$10,000 or imprisonment for six months or both such fine or imprisonment⁴⁹</p>	<p>Registrar of Companies (Compliance Measures) Act 2017⁵⁰</p> <p>Fine of BD\$10,000 or imprisonment for six months or both such fine or imprisonment</p>

⁴⁹ Section 15(2) of the Registrar of Companies (Compliance Measures) Act 2017.

⁵⁰ Section 15(2) of the Registrar of Companies (Compliance Measures) Act 2017.