

THE GOVERNMENT OF THE VIRGIN ISLANDS

PUBLIC CONSULTATION PAPER ON BENEFICIAL OWNERSHIP INFORMATION

OCTOBER 2013

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Forward

The British Virgin Islands recognises its pivotal role as an international financial centre and the obligations and responsibilities that come with operating a financial services industry. The Territory's financial services industry has grown and matured over the years since 1984 with the introduction of the International Business Companies Act (now repealed and replaced by the BVI Business Companies Act, 2004). At the same time we have witnessed over the same period, but more so in recent years, the growth and sophistication of business entities and structures which has necessitated a continual review and reform of the appropriate legislative and administrative frameworks to keep in tune with developments and guard against activities considered inimical to the financial services sector and the reputation of the Territory. In addition, international standard setters (such as the FATF, OECD, IOSCO, IAIS and BCBS) have, through elaborate cooperative measures, devised appropriate standards for universal adoption and implementation in order to protect the global financial system and put brakes on the tide of criminality, especially in relation to persons who seek to use and abuse legitimately established business structures.

Successive Government administrations in the British Virgin Islands (including my present Government) have always given due regard to the developing global trends which impact or have the potential to impact the Territory's financial services sector. We believe that compliance with established standards of regulation, law enforcement, international cooperation and, most recently, effective exchange of information in the areas of tax, is essential to the global effort to maintain sound and robust economies for the greater good of all. My Government fervently believes that good regulation is good for business growth and a robust international cooperation regime will demonstrate the British Virgin Islands' status as a serious partner in ensuring global financial stability.

The British Virgin Islands always prides itself in maintaining a good record of international cooperation and standards compliance. Like other jurisdictions, we do not claim to be perfect, but our policy initiatives are always supportive of the need for compliance. It is in that context that we always welcome international reviews of our legislative and business regimes to identify areas of strength and weakness. This gives us the opportunity to review our regimes and carry out necessary remedial measures. Consequently, the British Virgin Islands has over the years been reviewed by KPMG in 2000 under a joint UK/Overseas Territories initiative for regulatory compliance, in 1999 and 2008 by the CFATF for AML/CFT compliance, in 2000 by the FATF in determining the Territory's level of cooperation under the NCCT criteria, in 2004 and 2010 by the IMF for prudential compliance, and in 2008 by the UK Government to identify current and future risks and mitigation strategies to the Overseas Territories' and Crown Dependencies' long term financial services sector. Most recently in 2011 the British Virgin Islands underwent a peer review process to assess the Territory's level of compliance with its obligations in relation to tax information exchange matters. In all of these reviews and assessments, the British Virgin Islands fared very well. Where recommendations were made for strengthening existing laws and systems, these were adhered to and implemented.

It is to be noted that as an Overseas Territory the British Virgin Islands very much values its relationship with Her Majesty's Government in the United Kingdom. It is in that context that my Government fully supported Prime Minister Cameron's G8 Agenda on Tax, Trade and Transparency and developed and published an Action Plan in July 2013 outlining my Government's commitment to review its current laws and systems to embody the 2012 revised FATF Recommendations, in particular in relation to beneficial ownership. My Government further undertook to seek a public consultation on the UK proposal for the creation of a central register of beneficial ownership information that could be made available to law enforcement and tax collectors.

The British Virgin Islands' current legislative regime requires the keeping and maintenance of beneficial ownership information. Such information is available for domestic regulatory and law enforcement purposes and is also accessible for legitimate mutual legal assistance requests from foreign regulatory, law enforcement and tax authorities. Periodic inspections are carried out on business entities to ensure compliance with the laws, and a robust administrative and criminal sanctions regime exists to strengthen compliance.

This Consultation Paper therefore, apart from fulfilling my Government's undertaking in relation to seeking public opinion on the issue of a central registry of beneficial ownership information, is also designed to seek opinion on varying related matters which, altogether, should assist with the formulation of appropriate policies on the way forward. In turn this will be translated in due course into appropriate legislative and administrative frameworks to ensure the British Virgin Islands' continued path along the compliance road and in strengthening existing regimes for the growth and development of the Territory's financial services industry and fostering greater international cooperation. I therefore encourage members of the public and, in particular, our key financial services stakeholders to weigh in on the issues identified (including related issues that have not been specifically identified) and share their reasoned opinions. All contributions will be collated and properly assessed to guide the formulation of appropriate policies which will be fed into a broader review and revision of the Territory's entire AML/CFT regime in line with the revised FATF Recommendations.

Together we can build a stronger financial services industry that strongly adheres to established international standards and secures the interests of all stakeholders and thus strengthen the development of the British Virgin Islands as a responsible partner and leader in global financial stability.

***Dr. The Honourable D. Orlando Smith, OBE
Premier of the British Virgin Islands***

GOVERNMENT OF THE VIRGIN ISLANDS

Public Consultation on Beneficial Ownership Information

Introduction:

On 15th June, 2013, the British Virgin Islands (BVI) along with the other Overseas Territories (OTs) issued in London a press release outlining their commitment to continue upholding universally established standards on transparency, beneficial ownership and a host of other international cooperation issues. This followed a meeting with the Prime Minister of the United Kingdom, the Rt. Hon. David Cameron, at which the OTs leaders “had a very clear agreement and constructive exchange of views on the practical steps needed to tackle the global problem of tax evasion and how the UK and the Overseas Territories will continue to apply our high standards of regulation to address this”. While acknowledging the high level of compliance by their Territories with established international standards and their continued commitment in fostering international cooperation, the OTs leaders recognised the need, and committed, to playing a leading role in ensuring the delivery of a fair, responsible and effectively regulated global business environment. Consequently, the OTs leaders undertook, amongst other things, “to prepare Action Plans setting out the concrete steps, where needed, to fully implement the Financial Action Task Force standards to further increase our already high standards of transparency on beneficial ownership information and to ensure that this information is available to law enforcement and tax authorities in accordance with our established mutual legal assistance cooperation regimes”.

Pursuant to the commitment by the OTs leaders, the BVI developed and issued on 5th July, 2013 an Action Plan to prevent the misuse of legal persons and legal arrangements. The Action Plan recognised the fact that the BVI has “established fit-for-purpose gateway provisions for the receipt and provision of assistance on a mutual legal assistance basis in the areas of law enforcement, regulation, tax and judicial” and therefore committed to lending support to international initiatives designed to ensure greater transparency on an equitable and universal basis. In that context, the Action Plan outlined the BVI’s commitment to undertake the following actions relevant to the issue of beneficial ownership information:

- (a) Review its legislation and systems, in consultation with its stakeholders, to ensure that where shortcomings exist on beneficial ownership information on account of the revised FATF Recommendations 24 and 25 on legal persons and legal arrangements respectively, steps are taken to remedy those shortcomings;*
- (b) Develop a national risk assessment framework (considered essential for measuring effectiveness and adequately preparing for the fourth round of mutual evaluation on AML/CFT compliance) in consultation with the Joint Anti-money Laundering and Terrorist Financing Committee (JALTFAC) and the Inter-Governmental Committee on Money Laundering and Terrorist Financing (IGC); this is expected to be undertaken and completed in 2014 to be followed by appropriate training to enable the conduct of a proper and effective national risk assessment on a periodic basis;*

- (c) *Further strengthen the current supervisory and inspection regime to ensure that beneficial ownership information is being maintained and properly tested in a manner that assures timely availability to competent authorities; this will be on an ongoing basis;*
- (d) *Lend support to international initiatives in relation to any development of new or additional standards on company transparency, including measures to strengthen international cooperation on beneficial ownership information; in this respect, the British Virgin Islands will encourage and support initiatives to promote the adoption of the (OGBS) Statement of Best Practice for Trust and Company Service Providers.*

Accordingly, this Consultation Paper is being published to gauge and receive opinions from members of the public, including the private sector, law enforcement agencies and other key institutions and stakeholders in the AML/CFT field, on the issues and questions raised. The consultation is for a period extending to 31st January, 2014. Written opinions may be submitted by post, fax or email as follows:

Addressed to: Permanent Secretary
Premier's Office
Central Administration Complex
Road Town
Tortola, VG1110
Email: premieroffice@gov.vg
Fax: 494-6413

Copied to: BVI Financial Services Commission
P. O. Box 418
Road Town
Tortola, VG1110
British Virgin Islands
Email: commissioner@bvifsc.vg
Fax: 494-6191

All opinions should give due regard to the Government's Action Plan issued on 5th July, 2013 and appended to this Consultation Paper. It will also be helpful to consider the following:

- (a) The role of the BVI as an international finance centre and its shared responsibility in shaping and promoting international standards relative to financial services matters;
- (b) What role the BVI can and should play in ensuring the delivery of a fair, responsible and effectively regulated global business environment, both within and outside;
- (c) The need for, and importance of, creating a balance between compliance with established international standards and promoting and enhancing the interests of the BVI in relation to the attraction and promotion of financial services business;

- (d) The nature and scope of trade transparency vis-à-vis the relevance of ensuring the sourcing and maintenance of adequate, accurate and current information on beneficial ownership both as a measure to foster international cooperation and to prevent and detect any activity of money laundering, terrorist financing, tax evasion and other forms of financial crime; and
- (e) The best mechanisms that can and should be employed by the BVI to achieve the objectives of ensuring the keeping of beneficial ownership information.

2. Objective of the Consultation

The objective of this Consultation Paper is to gauge public opinion which will assist the Government of the BVI in developing an appropriate policy on beneficial ownership, consistent with its international obligations and the need to promote and strengthen financial services business in the Territory, and translating that policy into a properly revised legislative regime on money laundering, terrorist financing and other forms of financial crime. It is recognised at the same time that a properly and effectively developed regime on beneficial ownership will equally address cooperation initiatives in other areas of BVI's international obligations, such as in the area of tax information exchange.

3. The Current Regime on Beneficial Ownership

3.1 What beneficial ownership relates to

In simple terms, “beneficial ownership” relates to the collection and keeping of identity information concerning a natural person behind a legal entity or the individual who has a controlling interest in a legal entity. It includes a legal person who may own a company, for instance, but goes beyond to identify the ultimate natural person behind that legal person (referred to normally as the “ultimate beneficial owner”). The Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (“the Code of Practice”) specifically defines a “beneficial owner” as *“the natural person who ultimately owns or controls an applicant for business or a customer or on whose behalf a transaction or activity is being conducted and includes, though not restricted to,*

- (a) *in the case of a legal person other than a company whose securities are listed on a recognized stock exchange, a natural person who ultimately owns or controls, whether directly or indirectly, ten or more per cent of the shares or voting rights in the legal person;*
- (b) *in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person; or*
- (c) *in the case of a legal arrangement,*

- (i) *the partner or partners who control the partnership;*
- (ii) *the trustee or other person who controls the applicant; and*
- (iii) *the settlor or other person by whom the legal arrangement is made”.*

The essence therefore of beneficial ownership is to establish the natural person who owns or has an interest in a legal person or legal arrangement.

3.2 Beneficial ownership as a component of CDD/ECDD

The process of acquiring and maintaining beneficial ownership information in respect of individuals, legal persons (such as companies) and legal arrangements (such as partnerships and trusts) forms part of the obligation of conducting customer due diligence (CDD). CDD measures essentially entail the steps required to be taken when establishing a business relationship with a customer or an applicant for business in order to identify and verify that customer or applicant for business. In circumstances where a business relationship with a customer or an applicant for business or a business transaction presents a higher risk, then enhanced customer due diligence (ECDD) has to be performed; this relates to the steps additional to the normal CDD measures that must be taken.

These requirements, which have their offshoot from the Financial Action Task Force (FATF) Recommendations, are embedded in BVI law through the following enactments:

- (a) Proceeds of Criminal Conduct Act, 1997;
- (b) Anti-money Laundering Regulations, 2008;
- (c) Anti-money Laundering and Terrorist Financing Code of Practice, 2008; and
- (d) Non-financial Business (Designation) Notice, 2008.

The Code of Conduct obligates every person caught under the AML/CFT regime to engage in CDD or ECDD, as the case may be, in order (amongst other things) to identify and verify the beneficial owner with whom a business relationship is established and to make an assessment of the risk that may be associated with the establishment of such a relationship. Explanatory Note (iii) to the Code of Practice specifically provides that:

“It is also important that, in respect of a legal person, the entity or professional identifies the beneficial owner thereof and verifies his or her identity through the use of relevant data or other information obtained from a reliable source with which the entity or professional is satisfied. The entity or professional must seek to understand the ownership and control structure of the applicant for business by establishing the actual persons who hold a controlling interest in the applicant’s business or who direct the mind of the applicant in terms of the actual management of the company. It is therefore imperative that in any business relationship the entity determines upfront whether the customer is acting on his or her own behalf or on behalf of another person and then take the necessary CDD.”

The obligation to conduct CDD or ECDD, as the case may be, resides with the entity or professional in an existing, or accepting a, business relationship. The Anti-money Laundering Regulations, 2008 define the scope of “relevant business” and thus those entities and professionals that have CDD/ECDD obligations under the anti-money laundering and terrorist financing laws of the BVI.

3.3 *Verifying beneficial ownership*

3.3.1 General verification

In order to advance the objective of beneficial ownership identification, the Code of Practice provides a general verification process in section 23. The requirements for individual verification of identity are outlined in section 24, for verification of a legal person and a partnership in section 25, for verification of an underlying principal in a legal person in section 17, and for verification of a trust in section 28.

3.3.2 Verification of individual

The beneficial ownership information in relation to an individual relates to the individual’s full legal name (including any other names and aliases the individual may have or might have had), gender, date of birth and principal residential address.

3.3.3 Verification of legal person

In identifying and verifying a legal person, information must be obtained in respect of the legal person’s full name, registration or other identification number, date and place of incorporation, registration or formation, address of the registered office (including mailing address), registered agent’s address (where applicable), principal place of business and type of business engaged in, and the identity of each director and individual who owns at least ten per cent or more of the legal person. The underlying principal of the legal person must also be identified and verified and any change of the underlying principal or beneficial owner or controller of the underlying principal must be properly recorded; this includes the recording of any new underlying principal, beneficial owner or controller of the principal.

3.3.4 Verification of partnership

In order to identify and verify individuals connected to a partnership, it is imperative to source and obtain the relevant partnership agreement, full name and residential address of each partner and manager, and the date, place of birth, nationality, contact numbers, occupation, employer and specimen signature of each partner or other senior officer within the partnership.

3.3.5 Verification of trust

The required identification and verification information with respect to a trust relate to the name of the trust, establishment date of the trust (including jurisdiction of establishment), name and address of the trust’s agent (where such agent is appointed), nature and purpose of the trust, and

any identifying information relative to any person appointed as trustee, settlor or protector of the trust. In circumstances where “a relationship with a trust or the product or service channels in relation to the trust presents a normal or a higher level of risk”, the identities of all the beneficiaries with a vested right in the trust at the time of or before distribution of any trust property or income must be obtained and verified.

4. Maintaining Beneficial Ownership information

4.1 *Obligation to maintain beneficial ownership information*

Information sourced and obtained through the CDD/ECDD process (or otherwise) is required to be maintained for a period of at least five years following the termination of a business relationship. The duty to maintain such information resides in every relevant business (as defined in the Anti-money Laundering Regulations, 2008). This would include the person who accepts a business relationship from a customer or an applicant for business. In the BVI context such a person would normally be a registered agent (who under the law represents incorporated companies and registered partnerships), a financial institution such as a bank, a designated non-financial business and profession such as a precious metal or precious stone dealer, real estate agent, legal practitioner, notary public or other independent legal professional, and an accountant.

4.2 *Where to maintain beneficial ownership information*

Under the current laws of the BVI there is no legal obligation to maintain beneficial ownership information at a central public location, such as the Registry of Corporate Affairs (“the Registry”). However, certain information in relation to companies is always publicly available at the Registry. These include the name of a company as well as its status and legal form, evidence of its incorporation, constitutional documents, its registered agent, address of registered office, and address of registered agent.

Any other due diligence information, such as those relating to the names of shareholders and members, number of shares held by each and the categories of shares, and the names and addresses of directors, are required to be maintained by the registered agents or other relevant businesses. Such information must be maintained in such manner that it can be readily accessible whenever required for regulatory, law enforcement or international cooperation purposes.

5. The Revised 40 Recommendations on Beneficial Information

5.1 *General*

Recommendations 24 and 25 of the revised Recommendations deal with transparency and beneficial ownership issues relative respectively to legal persons and legal arrangements. The thrust of the Recommendations require taking appropriate measures to prevent the misuse of legal persons and legal arrangements for money laundering and terrorist financing purposes. It is the requirement therefore to have in place mechanisms that would “ensure that there is adequate,

accurate and timely information” regarding the beneficial owner and controller of legal persons and express trusts (including information in relation to the settlor, trustee and beneficiaries). Such information must be accessible and obtainable by competent authorities in a timely fashion to discharge their domestic and international obligations.

5.2 Transparency and beneficial ownership of legal persons

It is a matter for each country to determine which mechanism it will employ to ensure it has access to, and is able to obtain in a timely manner, “accurate and current information on the beneficial ownership and control of companies and other legal persons”. A combination of mechanisms may also be employed where considered necessary.

5.2.1 Identification and verification of beneficial ownership

For a legal person, establishing beneficial ownership requires the identification of the natural persons who have the ultimate controlling ownership interest in the legal person. What constitutes a controlling interest will depend on the company’s ownership structure. The example provided in relation to Recommendation 10 is “any person owning more than a certain percentage of the company (e.g. 25%)” (the percentage provided under the Code of Practice is 10% which represents a much higher threshold). Where there is doubt whether the person(s) with a controlling interest in the company is indeed the beneficial owner(s) or where there is an absence of a natural person who exerts control through ownership interest, then the identity of the natural person(s) who exercises control of the legal person must be established. Where identification cannot be established by either means, then it is incumbent on the entity concerned to take reasonable steps to identify and verify the natural person in charge of the legal person (such as a managing director, general manager, chief executive officer, managing partner, or by whatever name called).

For a legal arrangement, the identification and verification processes outlined in respect of a legal person would equally apply. In the case specifically of a trust, the settlor, trustee(s), protector (if any), beneficiaries or class of beneficiaries, must be established. This would apply to any other natural person who in some way exercises ultimate control in respect of the trust. For any other type of legal arrangement, the identity of the person that is in a similar or equivalent position must be established and verified.

5.2.2 Exception to the identification and verification of beneficial ownership requirement

The identification and verification of beneficial ownership does not apply in relation to a company that is listed on a stock exchange that has disclosure obligations “or is a majority-owned subsidiary” of such company.

5.2.3 Minimum requirements

In order to ensure adequate transparency, whatever mechanism is employed must ensure that the following minimum requirements are achieved:

- (a) identification and description of the different types, forms and basic features of all legal persons (currently these are comprised in the BVI Business Companies Act, 2004 in relation to companies, and in the Partnership Act, 1996 in relation to limited partnerships);
- (b) identification and description of the processes by which
 - (i) the legal persons are created (the BVI Business Companies Act, 2004 and Partnership Act, 1996); and
 - (ii) basic and beneficial ownership information is obtained and recorded (the Anti-money Laundering Regulations, 2008 and Anti-money Laundering and Terrorist Financing Code of Practice, 2008);
- (c) the information outlined in sub-paragraphs (a) and (b) above must be publicly available (these are comprised in the laws which are publicly available) ; and
- (d) a proper assessment of the money laundering and terrorist financing risks that may be associated with the different types of legal persons (the legal framework is provided for in the Code of Practice and requires a practical assessment by each entity and professional subject to AML/CFT compliance, but this new element goes beyond the entity and the professional and requires an assessment at the national level).

5.2.4 What constitutes Basic Information

To assist in establishing the beneficial ownership of a company, the information sourced and obtained must, at a minimum, include information regarding the legal ownership and control structure of the company. Such information would include status and powers of the company, including its shareholders and directors.

Every company that is established must be incorporated or registered in a company registry (as is the case with the Registry of Corporate Affairs). Each company is required to obtain and record the following information:

- (a) the name of the company, its proof of incorporation, its legal form and status, the address of its registered office, its basic regulating powers (memorandum and articles of association) and a list of the company's directors (these are requirements under the BVI Business Companies Act, 2004, in addition to the requirement to provide information on a company's registered agent and address); and
- (b) the company's register of its shareholders or members, comprising the names of its shareholders and members and the number of shares held by each shareholder (this includes every nominal owner of all registered shares) and the categories of shares (a BVI business company establishes its own register of shareholders pursuant to the BVI Business Companies Act, 2004).

5.2.5 Where Basic Information must reside

By virtue of the Interpretive Note to Recommendation 24, all the basic information outlined in paragraph 5.2.4 (a) above must be recorded at the company registry. Under the BVI Business

Companies Act, 2004, this basic information is available in the Registry, save for the list of directors which is not imperative for filing purposes (section 231 of the Act makes it optional for such a list to be either filed with the registry or maintained by the company) and may therefore not necessarily be available at the Registry.

With respect to the basic information outlined in paragraph 5.2.4 (b), this must be maintained by the company within the country where the company is established. The information must be kept either at the company's registered office or at another location of which the Registry is notified. However, in circumstances where the company or the Registry holds the required beneficial ownership information within the Territory, the register of shareholders need not be held in the Territory so long as the company will be in a position to provide that information promptly upon request.

5.2.6 The essence of beneficial ownership information

The essence of requiring beneficial ownership information is to ensure that such information is readily available to competent authorities should it be required. That is the rationale for requiring companies or company registries to obtain and hold up-to-date information on company beneficial ownership, or develop mechanisms to determine the beneficial ownership of a company in a timely fashion. Every company is obligated to cooperate with competent authorities to determine the beneficial owner(s) of a company. This may be achieved by any or a combination of the following measures:

- (a) the company may authorise a natural person or a trust and company service provider within the Territory who is accountable to the competent authorities by providing all basic and beneficial ownership information;
- (b) the company may adopt other comparable measures as authorised by domestic law to facilitate and ensure effective cooperation.

6. Transparency and beneficial ownership of legal arrangements

The rules with regard to the need for identifying and verifying the natural person behind a legal person equally apply in relation to a legal arrangement; the rules are essentially the same. Accordingly, in the case of trusts, trustees are required to obtain and hold basic information on, for example, service providers to the trusts, including investment advisors or managers, accountants, and tax advisers. Potential sources of information with respect to trusts, trustees, and trust assets have been identified as:

- (a) registries, such as a central registry of trusts and trust assets, or asset registries for land, property, vehicles, shares or other assets;
- (b) information on trusts and trustees held by other competent authorities, such as tax authorities; and
- (c) information residing in and held by trust and corporate service providers, including investment advisors or managers and legal practitioners.

Any system established must be designed to ensure that beneficial ownership information is available and can be accessed in a timely fashion in accordance with the rules established by the Recommendations.

7. Beneficial ownership and reliance on third parties

7.1 *Reliance on third parties/ ~~and~~ introducers*

The revised 40 Recommendations enable countries to permit their financial institutions to rely on third parties to perform the CDD measures outlined in elements (a), (b) and (c) of Recommendation 10. These elements are:

- (a) the need to identify and verify a customer, “using reliable, independent source documents, data or information”;
- (b) the need to identify and verify a beneficial owner to ensure the financial institution in fact knows who the beneficial owner is; and
- (c) the need to understand and, where considered appropriate, to obtain information with regard to the purpose and intended nature of the business relationship established or to be established with the financial institution.

In addition, a country may also permit their financial institutions to introduce business. However, both for reliance on third parties and introduced business, the following criteria must be met:

- (i) where a financial institution is relying on a third party, it must immediately obtain information on elements (a), (b) and (c) of Recommendation 10 (the three subparagraphs outlined above);
- (ii) it is the duty of the financial institution to take adequate steps to ensure that copies of identification data and other relevant information is available and can be readily accessed from a third party upon request without delay;
- (iii) the third party must be regulated, supervised or monitored for CDD and record keeping compliance and must have in place appropriate measures to ensure such compliance; and
- (iv) the level of country risk must be considered to establish which countries would be acceptable for recognising third party presence.

The Code of Practice outlines these criteria, save that in relation to (i) it permits reliance on third parties to ensure compliance therewith. In other words, the financial institutions are not required to obtain the requisite information at the time of establishing a business relationship. This will now need to be appropriately modified in the review and revision of the AML/CFT regime.

However, it should be noted that the guidelines in the Code of Practice require that financial institutions relying on third parties/introduced business must test the accuracy and adequacy of the beneficial ownership information maintained by the third parties/introducers on a periodic basis. While this element would still be relevant (especially considering the fact that ultimate responsibility

for ensuring the adequacy, accuracy, currency and reliability of beneficial ownership information resides with the financial institution or other person relying on the third party/introducer) for any reliance on third party introductions to be valid the financial institution or other person relying thereon must meet the criteria set out in sub-paragraphs (i) - (iv) above.

7.2 *Layering introduced business*

The concept of introduced business is essentially founded on the principle that an agent (normally the domestic financial institution) may rely on a third party (who may be based within or outside the BVI) to introduce business to the agent with the third party carrying out all the necessary CDD/ECDD measures. This process is facilitated by a formal agreement between the agent and the introducer whereby the introducer acknowledges carrying out the requisite CDD/ECDD measures and undertaking to provide information relative to the introduced business in the event that such information is required by the regulator or law enforcement or otherwise for mutual legal assistance matters. The practice, though very limited, had been observed whereby the person purporting to be the introducer of business is itself the second third party and the actual introducer with the requisite CDD/ECDD information resides with a first third party. This effectively establishes a layering of introducers, and the second introducer (who may have structured agreements that frustrate international cooperation) is normally unable to provide the agent with the required information whenever requested as such information resides elsewhere and the agreement entered into would not usually cover the first third party with the information.

This amounts to a circumvention of the legal obligations outlined under the Code of Practice and compromises the objective of a sound mutual legal assistance regime.

8. Beneficial ownership and tax information exchange

The BVI has signed a significant number of tax information exchange agreements which require the exchange of information, including beneficial ownership information, with counterpart foreign competent authorities. It has similar obligations of exchanging information pursuant to the automatic information exchange arrangement under the European Union Directive on the Taxation of Savings Income. In addition, the BVI has agreed to negotiate an inter-governmental agreement with the US Government to facilitate reporting obligations by domestic financial institutions to US tax authorities pursuant to the Foreign Accounts Tax Compliance Act (FATCA); similar arrangements are expected to be negotiated and concluded with the UK and four other EU countries (France, Germany, Italy and Spain) under the Pilot Multilateral Automatic Exchange of Tax Information. Initiatives are ongoing within the Organisation for Economic Cooperation and Development (OECD) to develop a new framework that would put in place rules regarding the automatic exchange of information on tax matters.

As there is no need to establish separate regimes on beneficial ownership – one for tax and another for all other purposes, including combating money laundering and terrorist financing pursuant to the revised 40 Recommendations – it is important that the BVI ensures that its regime on beneficial ownership is sufficiently comprehensive to serve both purposes.

9. Whether or not to establish a central registry on beneficial ownership

While the revised Recommendations do not make it a requirement that a central registry be established in which should reside beneficial ownership information, they do not prohibit it either. As

already noted, the essence of the relevant Recommendations is to ensure that beneficial ownership information is collected, maintained and readily accessible through the identified legal and administrative processes. Such information must be adequate, accurate and current.

Prior to its assumption of the Presidency of the G8, the United Kingdom (UK) had put forward a proposal for the creation of a central registry on beneficial ownership which will be accessible to law enforcement and tax authorities. The establishment of such a registry would thus ensure that all information on beneficial ownership is placed in one location and can be readily accessed whenever required. It is, however, unclear as to whether the reference to the availability of beneficial ownership information to law enforcement and tax authorities relates to direct access by such authorities or whether it relates to availability of the information through the domestic competent authorities in accordance with the current rules pertaining to mutual legal assistance.

In properly dealing with this subject, it is important to consider the advantages of, and the obligations that come with, the establishment of a central registry, noting that the principal driver in this connection is the facilitation of international cooperation. The BVI is a key player in the global financial services sector and its role in building appropriate and effective legal and administrative frameworks to ensure the timely response to requests (or delivery) on mutual legal assistance is fundamental.

It is equally important to identify the disadvantages (if any) and costs that may be associated with such an establishment. Yet still consideration should be given as to whether the facilitation of international cooperation can be effectively achieved by other means. In addition, it is important to consider the various options afforded under the revised 40 Recommendations to ensure a good level of consistency between those options and the option of creating a central registry on beneficial ownership.

Another consideration worth bearing in mind is that, while establishing and maintaining a central register on beneficial ownership has not as yet emerged as an international standard and therefore of equal application universally, does the BVI stand to gain by moving ahead with such a registry and what such gain might be; or does the BVI stand to lose by moving ahead of the “rest” of its competitors and what such loss might likely be. A delicate balance is imperative here, but ultimately serious consideration must be given to establishing appropriate mechanisms to enable the BVI to efficiently and effectively discharge its international obligations.

10. Questions and Issues for Consideration

Having regard to the above information (provided as background for a better understanding of the issues at stake and to obtain balanced and objective views), the public’s opinion is sought on the following matters:

- (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? Please provide the reasons for your answer.
- (b) Irrespective of the response to question (a), should the BVI seek to establish a central register on beneficial ownership information? Please provide the reasons for your answer.

- (c) If you do not support the idea of establishing a central register on beneficial ownership information, how do you think the BVI regime may be improved or strengthened to ensure timely access to such information in order to adequately discharge its international obligations?
- (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? Identify which information should form part of the restricted register and which should not (that is, if you support the idea at all).
- (e) If, in the context of the questions outlined in paragraphs (b) – (d), you do not believe that the BVI should subscribe to the idea of a central register of beneficial ownership information, would your views change if the establishment of such a central register were an internationally established standard and therefore of universal application to all countries?
- (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?
 - (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.
 - (iii) Should the register be accessible only to the BVI regulator of financial services business, and law enforcement (including judicial) and competent tax authorities, in the discharge of their duties under domestic law and for international cooperation purposes (including rendering appropriate mutual legal assistance)?

Please explain the reasons for your answers.

- (g) In relation to a central register on beneficial ownership information, if access to such a register were to be restricted to the regulator of financial services business, and law enforcement (including judicial) and competent tax authorities for purposes of performing their functions and discharging their international obligations with respect to mutual legal assistance matters, would you agree then that the BVI should establish such a central register?
- (h) If a central register on beneficial ownership information were to be established, do you think there should be specific higher thresholds (not identified in question (g) and not being inconsistent with the BVI's international cooperation obligations) for access to the register and what might those thresholds be
- (i) Given that the establishment of a central register on beneficial ownership would remove the options provided in the revised 40 Recommendations whereby certain basic information must reside in the Registry and other basic information may reside with the company, would you then support the idea of a central registry?

- (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?
 - (i) Are the costs more likely to fall on the Government or the private sector?
 - (ii) Please explain your views on, and quantify, the costs for both the Government and the private sector.
- (k) Do you consider there to be any security risks in establishing a central registry administered by the Government or any statutory body (such as the Financial Services Commission) and, if so,
 - (i) what are those security risks likely to be? And
 - (ii) how do you think those security risks may be best dealt with?
- (l) If the BVI were to establish a central register of beneficial ownership information, what period (date) in the future would you wish to see such a regime take effect and what would you consider should be the influencing factor(s) in determining the period (date)?
- (m) It is the intention that the layering of third party introducers will be specifically prohibited when the AML/CFT regime is revised. If you believe this practice should be retained,
 - (i) what justifications would you advance for such a retention? And
 - (ii) what measures would you suggest can be properly legislated to ensure that the practice will not detract from the BVI's international obligations to secure timely adequate, accurate and current information on beneficial ownership information?

Irrespective of the position that may be adopted in relation to the issue of the creation of a central register of beneficial ownership information, public opinion is also sought on the following with regard to the register of directors:

- (n) As the law currently stands, it is not imperative to file a company's register of directors with the Registry. However, this is now a requirement under the revised 40 Recommendations and must be complied with. How do you think such a register should be handled – should such information be filed and retained in the Registry, or be filed in the Registry but maintained elsewhere (please identify where)?
- (o) In relation to question (r), should the information be open to public scrutiny or be restricted to lawful purposes only, such as for performing regulatory or law enforcement functions, or for discharging obligations in relation to mutual legal assistance matters (including obligations relative to automatic exchange of information on tax matters)?

Conclusion:

It is important to note that during the review process of the Territory's AML/CFT regime the objective would be to provide the necessary framework to ensure that compliance with the revised 40 Recommendations is attained. This includes the requirement to provide beneficial ownership information that must reside in the Territory and easily accessible whenever required. Such compliance, the need for which is of a universal nature, will demonstrate once again the Territory's role as a serious partner in fostering international cooperation, providing an effective mechanism against the use of the Territory for perpetrating criminal activities both within and outside the BVI, and ensuring appropriate steps to check against any use of the Territory and its corporate vehicles to cheat public revenues. This consultation process should aid the Government in formulating appropriate policies on the best ways to efficiently and effectively implement the new standards with regard to beneficial ownership information and whether or not establishing a central registry of such information is feasible and, if so, what form that might take to ensure effectiveness.

All opinions received will be properly reviewed before a policy position is considered, so it is important that stakeholders and the general public take keen interest in participating in the consultation process. In addition, it will be very helpful for all opinions/responses to be backed up by appropriate reasons, including (where available) relevant evidence to support a particular position.

In order to ensure efficiency and proper management of opinions, firms that submit opinions/responses are kindly requested to consolidate their opinions/responses and make only one submission rather than a multiplicity of submissions. This will aid the review process and enable the reviewers to, where considered necessary, liaise with any firm concerned for further discussion on specific matters raised in their opinions/responses.

28th October, 2013

APPENDIX

THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS

ACTION PLAN TO PREVENT MISUSE OF LEGAL PERSONS AND LEGAL ARRANGEMENTS

The British Virgin Islands recognises and supports the need for transparency in relation to the establishment of corporate entities, including legal arrangements, and is committed to supporting initiatives that seek to establish international standards in that respect. Consequently, the British Virgin Islands has no difficulty in considering and implementing measures that are established as international standards applicable across the board and to all financial centres irrespective of the group or organization they each belong to or are a part of. This approach underscores Prime Minister Cameron's position that there "is no point in dealing with tax evasion in one country if the problem is simply displaced to another".

2. The British Virgin Islands has a good record of international cooperation and this has been confirmed by the IMF in its reviews of the Territory's financial services regime in 2004 and 2010. The Caribbean Financial Action Task Force (which supervises its member countries for compliance with the FATF standards on money laundering and terrorist financing) has also confirmed the British Virgin Islands international cooperation regime and compliance as robust and effective. In these contexts, it is important to note the following:

- (a) The British Virgin Islands is a member of leading international organisations – such as the International Organisation of Securities Commissions (IOSCO), International Association of Insurance Supervisors (IAIS) and Global Forum (GF) – that have as a core of their activity the gathering and sharing of information. Indeed the Virgin Islands was the first jurisdiction admitted to IOSCO membership on the basis of its full compliance with the provisions of that organisation's Multilateral Memorandum of Understanding;
- (b) Various British Virgin Islands legislation¹ have established fit-for-purpose gateway provisions for the receipt and provision of assistance on a mutual legal assistance basis in the areas of law enforcement, regulation, tax and judicial and the respective competent authorities have a good record of collaborating with each other and with international counterparts to facilitate the provision of assistance;

¹ The Mutual Legal Assistance (United States of America) Act, 1990, Drug Trafficking Offences Act, 1992, Criminal Justice (International Cooperation) Act, 1993 and Proceeds of Criminal Conduct Act, 1997 provide for assistance in the area of crime and law enforcement; the Financial Services Commission Act, 2001 provides for assistance in regulatory matters; the Mutual Legal Assistance (Tax Matters) Act, 2003 represents the framework for rendering assistance in tax matters; and the Evidence (Proceedings in Foreign Jurisdictions) Act (Cap. 24) and Foreign Judgments (Reciprocal Enforcement of Judgments) Act (Cap. 27) deal with assistance in judicial matters.

- (c) To date, the British Virgin Islands has concluded 24 Tax Information Exchange Agreements (TIEAs) and is in the process of negotiation with other countries for more TIEAs; the British Virgin Islands reiterates its commitment to negotiate and conclude TIEAs with any country (OECD and non-OECD) that wishes to enter into such an arrangement;
- (d) In order to ensure better coordination and response to tax information exchange matters, the British Virgin Islands established the International Tax Authority (ITA) within the Ministry of Finance with the primary responsibility of facilitating assistance to foreign tax and law enforcement authorities in tax and tax-related matters;
- (e) The British Virgin Islands was the first jurisdiction to develop and implement a paper on immobilizing bearer shares in order to remove the anonymity associated with bearer share companies and this regime is well-established and enforced under the BVI Business Companies Act, 2004;
- (f) The British Virgin Islands subscribes and adheres to the Statement of Best Practice for Trust and Company Service Providers issued by the then Offshore Group of Banking Supervisors (now transformed into the Group of International Finance Centre Supervisors) and accordingly licences and supervises to high standards all trust and company service providers in the Territory. With this regime in place, no company or legal arrangement can be incorporated, registered or in any way formed unless they do so through a licensed trust and company service provider who is in turn required to obtain and maintain the requisite beneficial ownership information (which requires the identification and verification of the ultimate persons behind the company or legal arrangement). Indeed the British Virgin Islands regime has for many years required licensed service providers to hold information on who really owns and profits from companies and to make that information available to appropriate authorities whenever required;
- (g) All licensed trust and company service providers are supervised for their anti-money laundering and terrorist financing obligations, including the availability of beneficial ownership information, and periodic inspections are carried out in respect of the licensees to establish compliance and, where shortcomings are identified, appropriate enforcement action is taken;
- (h) The British Virgin Islands, in consonance with its long-standing policy of not encouraging or welcoming those who choose to break laws applicable to them, has committed to and is actively engaged in negotiations with the US Treasury in finalizing an Inter-Governmental Agreement (IGA) to facilitate the exchange of tax information;² the British Virgin Islands is similarly engaged with Her Majesty's Treasury and has

² This process has been facilitated by the fact that the US Foreign Accounts Tax Compliance Act under which the IGA is being negotiated is of universal application and will not disadvantage the British Virgin Islands as against other jurisdictions.

committed to the G5 Multilateral Pilot Project on the automatic exchange of tax information;³

- (i) The British Virgin Islands strongly believes in encouraging and developing a solid partnership with the private sector through which many transactions are conducted in order to sensitise them of current and emerging international standards; the private sector has, over the past years and to date, demonstrated maturity and recognises the positive aspects of compliance with those standards so long as they are applied on a universal basis in order to prevent business arbitrage.

3. The British Virgin Islands pledges to continue along the path of assisting with and supporting the development and implementation of international standards on beneficial ownership information that are of universal application, as opposed to selective application which may result in arbitrage and loss of business. In this vein, the British Virgin Islands commits to reviewing its legislative regime to ensure full compliance with the revised 40 Recommendations of the FATF (where this is not already provided for) in relation to the keeping of beneficial ownership information. If at any time in the future this requirement is elevated to a need to maintain such information in a central registry accessible to law enforcement and tax authorities and applied universally, the British Virgin Islands will review its regime accordingly.

4. In recognition of its long-standing policy to support and be a part of promoting international standards to ensure cooperation in all spheres of business and other areas, the British Virgin Islands commits to the following action plan on beneficial ownership information:

- (a) Review its legislation and systems, in consultation with its stakeholders, to ensure that where shortcomings exist on beneficial ownership information on account of the revised FATF Recommendations 24 and 25 on legal persons and legal arrangements respectively, steps are taken to remedy those shortcomings;
- (b) Develop a national risk assessment framework (considered essential for measuring effectiveness and adequately preparing for the fourth round of mutual evaluation on AML/CFT compliance) in consultation with the Joint Anti-money Laundering and Terrorist Financing Committee (JALTFAC) and the Inter-Governmental Committee on Money Laundering and Terrorist Financing (IGC); this is expected to be undertaken and completed in 2014 to be followed by appropriate training to enable the conduct of a proper and effective national risk assessment on a periodic basis;
- (c) Further strengthen the current supervisory and inspection regime to ensure that beneficial ownership information is being maintained and properly tested in a manner that assures timely availability to competent authorities; this will be on an ongoing basis;
- (d) Lend support to international initiatives in relation to any development of new or additional standards on company transparency, including measures to strengthen international cooperation on beneficial ownership information; in this respect, the British

³ Just as with the USA and UK, the Multilateral Pilot Project will be negotiated and implemented bilaterally.

Virgin Islands will encourage and support initiatives to promote the adoption of the (OGBS) Statement of Best Practice for Trust and Company Service Providers;

- (e) Continue active engagement within the Global Forum in shaping and promoting international standards on tax transparency as well as continue to volunteer the services and expertise of the British Virgin Islands by serving in the Peer Review Group and such other organs from time to time; and
- (f) Continue engagement with Her Majesty's Government in relevant areas of international cooperation with a view to both supporting the UK's initiatives and protecting the interests of the British Virgin Islands in a fair and consistent manner.