

Consultation – Transparency of Beneficial Ownership of Companies in Guernsey

Insights - 05/05/2015

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In response to global initiatives, on the 30 April 2015 the States of Guernsey commenced consultation on the introduction of a central register of beneficial ownership.

International pressure for transparency has emanated from various sources, including the G20, the EU money laundering directives and the Financial Action Task Force (**FATF**).

The G20 countries have already agreed high level principles on transparency, which include countries having to ensure that competent authorities have “timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, *for example*, [emphasis added] through central registries of beneficial ownership...”.

The 4th AML EU Directive is also likely to include a requirement for corporate bodies to obtain and hold information on their beneficial ownership, with a requirement for a central register available to competent authorities, “entities subject to CDD requirements” and other persons who can demonstrate a “legitimate interest”.

In addition, the FATF Recommendations of 2012 require that countries should “take measures to prevent the misuse of legal persons for money laundering or terrorist financing” and “ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities”. However, FATF does not mandate the creation of a central register and does not require the information to be publicly available.

The crucial questions are whether a central registry is necessary or appropriate, and if so who

should have access to the register?

Existing position in Guernsey

Since 2000, trust and company service providers (TCSPs) have been regulated in Guernsey by the GFSC. Over time, the regulatory requirements have evolved but crucially, TCSPs who incorporate companies and provide ongoing services are obliged to record and verify the identity of the beneficial owners, controllers and others with “effective control”. The documentation and information obtained for these purposes must be kept in a readily retrievable format and made available promptly to persons such as the GFSC or law enforcement agencies. Criminal and regulatory sanctions underpin these obligations.

Statistics contained in the consultation document indicate that approximately 72% of Guernsey incorporated companies are administered by licensed TCSPs. The remaining 28% are said to be local businesses or holding companies for persons with a local connection. However, in accordance with the Companies (Guernsey) Law 2008, subject to a few exemptions, all Guernsey companies are required to have a “resident agent” appointed whose obligations include taking reasonable steps to ascertain the identity of all beneficial owners and maintain appropriate registers which are open to inspection by the authorities. Again criminal sanctions underpin these obligations.

In addition inter-governmental agreements such as US and UK FATCA and the OECD Common Reporting Standard (of which Guernsey was one of the early adopters) will shortly lead to automatic disclosure of information between Guernsey and over 50 countries, for the purpose of collection and enforcement of taxation arising in those countries.

A number of local commentators have therefore questioned the need for a central registry. Supported by anti-money laundering laws, rendering involvement in non-Guernsey tax offences a crime locally, and anti-bribery and corruption laws with similar extra territorial application, some have suggested that a central registry may even detract from the current regime and so undermine its effectiveness.

By contrast the existing legal and regulatory framework in respect of Guernsey companies has been endorsed by the relevant international bodies and has been shown to be effective in collecting good quality information and making it available to authorities in other jurisdictions.

Public Scrutiny

However the question remains – should information on beneficial ownership be available to the public? A further advantage for a central register is said to be that “public scrutiny of the information ... will add another level of examination”. Clearly those wishing to further a criminal purpose under the auspices of an opaque company should have no place to hide; but in

a society where the rule of law is fundamental, and the right to a private life is recognised, some commentators suggest that it is inappropriate, and a potential injustice, to allow public access to this information. There are also concerns as to whether the information, if known to be made public, will be provided as fully and as accurately as is currently the case under the existing regime.

Summary

Guernsey is a well developed, well regulated finance centre with a strong reputation for the prevention and detection of financial crime. The existing regime should and no doubt will continue to adapt to the changing challenges it faces. However, maintaining an appropriate balance between privacy, in respect of personal financial affairs, and the public interest in knowing who owns what, is likely to be at the forefront of this debate.

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