



Remarks
by
Senator, the Honourable Carl Bethel, QC
Attorney-General and Minister of Legal Affairs
on the occasion of the
Industry Briefing and Consultation
on the
Register of Beneficial Ownership Bill, 2018
and the
Multinational Entities Financial Reporting Bill, 2018

Meliá Nassau Beach

Nassau, NP, The Bahamas
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REGISTER OF BENEFICIAL OWNERSHIP BILL, 2018

Hon. K. Peter Turnquest, Deputy Prime Minister;

Hon. Brent T. Symonette, Minister of Financial Services and Immigration;

Ladies and Gentlemen,

Good morning.

It is my pleasure to speak to you this morning on the legislative overview of the Register of Beneficial Ownership Bill, 2018. The purpose of this session is to guide stakeholders through the key provisions, objects, and reasons for the Register of Beneficial Ownership Bill, which was tabled in the House of Assembly on Wednesday 25th April, 2018. Further, we regard it as important that as a jurisdiction, we need to determine what actions should be taken rather than have measures imposed upon us; thus, proactively addressing global regulatory pressures as oppose to reacting to them.

In 2014, the G20 endorsed the international importance of financial transparency, particularly the transparency of beneficial ownership of legal persons and legal arrangements, to prevent the misuse of corporate entities. Subsequently, the Finance Ministers and Central Bank Governors requested that the G20 Anti-Corruption Working Group (ACWG) provide concrete actions that the G20 could take in order to lead by example in respect of beneficial ownership transparency and the implementation of relevant Financial Action Task Force (FATF) standards.

This example took the form of the G20 High-Level Principles on Beneficial Ownership Transparency which set out definitive steps which G20 countries would take in order to prevent the misuse of and ensure the transparency of legal persons and legal arrangements.

Further steps were taken in October 2014, when the Financial Action Task Force (FATF) published a guidance report entitled '*Transparency and Beneficial Ownership*' reflecting the standards set forth in Recommendations 24 & 25. One of the key features of the report stated that corporate vehicles such as companies, trusts, and other types of legal persons and arrangements conduct a variety of commercial and entrepreneurial activities which may be used for both legitimate and illicit purposes.

It was declared that this misuse can be significantly reduced if information pertaining to the beneficial owner and the companies' activities were readily available to the designated investigative and regulatory authorities. Subsequently, the FATF established standards on transparency aids and required countries to ensure that the adequate, accurate, and timely information on beneficial ownership is available and can be accessed in a timely fashion thus assisting in deterring and preventing the misuse of corporate vehicles.

Additionally, it was acknowledged that in order to prevent the misuse of beneficial ownership for illicit purposes; such as bribery and corruption, insider dealings, tax avoidance, tax evasion, money laundering, and terrorist financing, it is imperative that the transparency of legal persons and arrangements be

established internationally. This implementation will assist in protecting the integrity and transparency of the global financial system.

As a result of this guidance report, the G20 considered that transparency of beneficial ownership of legal persons and arrangements as well as the implementation of the Financial Action Task Force (FATF) standards on this topic as high priority. Subsequently, during the G20 Summit which was held in November 2014, new '***High Level Principles on Beneficial Ownership and Transparency***' ('Principles') were adopted which are built on the existing international instruments and standards.

There are three important structures these Principles encourage countries to implement with regards to the transparency of beneficial ownership of legal persons and arrangements.

Firstly, each country must have a definition of '*beneficial owner*' that captures the natural person(s) who ultimately own or control the legal person or legal arrangement. Secondly, to ensure that beneficial ownership and control information is adequate, accurate, current, and accessible; and lastly, to have a legal framework that enables national authorities such as law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units, to participate in information exchange on beneficial ownership both domestically and internationally.

These principles were also emphasized in the G20/OECD Principles of Corporate Governance which was published in September 2015. Further, in

October 2016, Part II of the OECD Secretary-General Report to the G20 Finance Ministers and Central Bank Governors expressed that '*a coordinated and comprehensive approach to beneficial ownership information is essential...*'.

Thus each country is required to take concrete actions to implement the Principles and improve the effectiveness of their legal, regulatory, and institutional framework.

In July 2017, the Mutual Evaluation Report (MER) on The Bahamas was publicized. In this report The Bahamas was rated as partially compliant in Recommendations 24 and 25 which address transparency and beneficial ownership of legal person and arrangements by the assessors.

In the assessors conclusion of the weighting with regards to Recommendations 24 and 25 it was noted that,

'The Bahamas has some mechanisms in place that would allow information on the [beneficial ownership] BO of legal person to be obtained in particular BO information maintained by [Financial Corporate Service Providers] FCSPs for all [International Business Companies] IBCs. However, the Registrar General is not required to collect BO information and legal entities are not obliged to retain the same. There are no measures for nominees directors on IBCs nor for nominee shareholders and directors of any other legal entities. There is no requirement for BO information to be kept five years after the

company is dissolved or cease to exist. There are no specific measures or process in place to monitor the quality of assistance received from other countries with regard to basic and BO information.'

It was further noted by the assessors that,

'[While] there is a direct obligation for trustees in The Bahamas to obtain and hold information on BO. There are no powers for law enforcement authorities to access BO and other information on trusts. Some competent authorities can use investigative powers to obtain information on behalf of foreign authorities through, for the most part, they are able to share information they already possess.'

Based on these observations by the CFATF assessors, global perspective of the importance of beneficial ownership transparency well as the international mandate to implement the Principles, The Bahamas' drafted the Register of Beneficial Ownership Bill, 2018 ('the Bill').

There are several sections of the Bill which I will like to outline as particularly important as these sections prove that The Bahamas is taking concrete actions to implement the *'High Level Principles on Beneficial Ownership and Transparency'*.

It is vital that law enforcement, prosecutorial authorities, supervisory authorities, tax authorities, and financial intelligence units have timely access to

adequate, accurate, and current information regarding the beneficial ownership of legal persons. Hence, the establishment of the electronic ownership database as stipulated in section 4 of the Bill.

This electronic database will be secure and accessible only by a designated person from a designated secured location within our jurisdiction. Section 13 of the Bill provides that each *'registered agent shall designate one or more persons who shall have access to the electronic database from a physically secure premises and a secure IT system'*. This electronic database represents a major expansion in international cooperation in preventing and detecting illicit activity and increased transparency. Further, section 13 also mandates that each designated person *'pass security vetting tests, be a fit and proper person, and subscribe to the Oath of Confidentiality'*.

Section 5 of the Bill, defines *'beneficial owner'* in accordance with all international standards. The subsections under this section clearly provide a definition for a *'beneficial owner'* as it relates to various corporate structures and various legal arrangements. It also captures the natural person(s) who ultimately own or control the legal person or legal arrangement.

A section of particular note is section 9 which specifically addresses the issue of regular Bahamian Companies not being required to have a registered agent and keep the record of the beneficial owner(s). As I mentioned earlier, this was noted as deficiency by the CFATF assessors in The Bahamas' Mutual Evaluation Report which was published in July 2017. Identifying and having the ability to enforce the same is an important to element of transparency; for

this reason, it is now a legal obligation and failure to provide the same may lead to the striking off of that company.

Under the Bill, legal persons are required to maintain beneficial ownership information that is adequate, accurate, and current, in accordance with sections 10 and 12. However, it should be noted that the Bill provides exemptions for certain types of entities which are listed in section 7.

Section 10 of the Bill outlines the particulars each registered agent is required to enter into the electronic database on the beneficial ownership of every corporate and legal entity for which it acts as a registered agent. If a registered agent fails to comply with this requirement, without reasonable cause, an offence is committed which can result in a substantial fine.

Section 12 of the Bill requires each registered agent to keep beneficial ownership information up to date within fifteen days of becoming aware of a change of any of the required particulars relating to beneficial owners or registrable legal entities. The fines as a result of a breach of this section vary according to whether it is a corporate and legal entity or a registered agent that fail to keep the information up to date.

Further, considerable fines are also imposed where a registered agent intentionally provides false or misleading information relating to a corporate and legal entity in accordance with section 16.

As stated earlier, the CFATF assessors also noted that, '*[t]here is no requirement for BO information to be kept five years after the company is dissolved or cease to exist.*' Consequently, the retention period of five years for information maintained by a registered agent, administrator, liquidator or other person involved in the dissolution of the company is now a requirement in accordance with section 11 of the Bill.

It is important to note that confidentiality is an integral part of the Bill. The particulars of and all matters pertaining to a request are treated as confidential in accordance with section 14. Subsequently, a person who contravenes this section may be fined or imprisoned for disclosure of information, production of documents, and/or prohibited access to the data.

It should also be noted that searches of the database by the designated persons are only to be conducted if formally requested by a senior officer of one of the specific authorities which are outlined in section 13 subsection 6. Additionally, a record of all searches must be maintained by the designated person.

Ladies and Gentleman, the Register of Beneficial Ownership Bill, 2018 is part of a worldwide movement of countries enacting domestic laws to increase disclosure of beneficial ownership of legal corporate entities. Hence, it is necessary to enact this Bill so that The Bahamas will stay competitive while simultaneously complying with international standards and obligations.

Thank you for your attention and I look forward to the remainder of this industry briefing.

