

Transparency International UK – Response to the Bermuda’s consultation on providing legitimate interest access to beneficial ownership data

SUMMARY

Transparency International UK is the UK-based chapter of Transparency International, the world’s leading non-governmental anti-corruption organisation. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK. We base our advocacy on robust research, and, as a UK registered charity, are independent and non-political.

We welcome Bermuda’s consultation on enhancing its beneficial ownership regime and its proposal to introduce legitimate interest access to its register. The consultation indicates that Bermuda is moving in the right direction by establishing a standalone beneficial ownership framework and considering access for journalists and civil society organisations.

The recent revisions to Financial Action Task Force (FATF)’s Recommendation 24 will require Bermuda to make significant changes to its approach to beneficial ownership. Our response provides practical recommendations and identifies key areas for Bermuda to ensure alignment with these updated international standards.

To secure its status as a financial centre of excellence, Bermuda should also establish an effective legitimate interest framework, in line with international standards. While Bermuda acknowledges the Court of Justice of the European Union’s (CJEU’s) ruling as the impetus for introducing legitimate interest registers, it fails to fully align with the standards outlined in the 6th Anti-Money Laundering Directive (6AMLD), which was introduced specifically to address issues raised by that ruling. This approach not only seems contradictory but could also be ineffective given the EU has been leading much of the research and analysis on what a good regime should look like.

Our key concerns include:

- Bermuda’s definition of beneficial ownership, which does not currently meet FATF or European Union (EU) standards
- limitations on access to the register
- a lack of clarity on usability, safeguarding, and operational procedures

all of which present opportunities for improvement.

By simplifying access for individuals and organisations with a legitimate interest, Bermuda can lead efforts to implement international standards for corporate registers aligned with the EU’s 6AMLD. Enhancing its beneficial ownership register would also strengthen its competitive business environment and reinforce its commitment to combatting money laundering, terrorism financing, and other criminal misuse of legal structures.

Finally, the consultation raises concerns around timeline for implementation. The document references a schedule that differs from Bermuda's commitments made at the UK Joint Ministerial Council (JMC) alongside its Overseas Territory counterparts. Given past delays, Bermuda should adhere to the commitments it has made to the UK and other Overseas Territories at the JMC.

Key Recommendations:

- 1. To enhance corporate transparency, Bermuda should introduce a standalone beneficial ownership framework**, enhancing its definition of beneficial owners in line with FATF's standards and ensuring that its register is independent, well-resourced and able to deliver legitimate interest by June 2025, as announced during the JMC.
 - a. Define beneficial ownership clearly:** Adopt a multi-pronged approach to define beneficial ownership, in-line with UK, EU and FATF standards.
 - b. Deliver to agreed timelines:** Adhere to the June 2025 deadline, as committed to during the JMC in November 2024.
 - c. Future-proof the register:** Allow those with a legitimate interest to access information about the parties to trusts controlling Bermudan companies.
 - d. Introduce unique identifiers:** Enhance the accuracy, transparency, and interoperability of Bermuda's beneficial ownership register by introducing unique identifiers for beneficial owners.
 - e. Ensure registry independence and resourcing:** Ensure that the Registrar of Companies (RoC) is independent, well-resourced and capable of effectively verifying beneficial ownership information submitted to the register.

- 2. To strengthen the effectiveness of its register and protect it against legal challenges, the Bermuda Government should:**
 - a. Broaden the policy purpose of the register** to include wider benefits such as enhancing corporate transparency, facilitating economic growth and tackling the misuse of companies.
 - b. Provide quick and meaningful access to those with a legitimate interest including by:**
 - clearly defining users with a presumed legitimate interest, and their access rights
 - streamlining access to the register to minimise financial, administrative and time related burdens
 - enhancing data usability to make it easily searchable and downloadable

- c. Protect the identity of those accessing and using beneficial ownership data** by introducing adequate safeguards to maintain user confidentiality and prevent tipping off individuals whose information is being accessed, while also providing legal protection for those using the data for public interest purposes, such as journalism or research.

CONTEXT

Although the Transparency International movement welcomes Bermuda's progress towards legitimate interest registers, we firmly believe that company ownership information should be publicly accessible.

Businesses provide a crucial role in open, international markets, providing the jobs, goods and services that power the global economy. When doing so, they benefit from a range of privileges, including access to the courts to solve commercial disputes, property rights to protect their assets, and limited liability for their directors and shareholders. With these rights come responsibilities.

Global markets must be open and accountable to operate efficiently and effectively. Knowing your customer or supplier is crucial to building and maintaining the trust that encourages commerce. Conversely, corporate secrecy fuels mistrust and enables abuse of legal entities for a range of nefarious purposes, including corruption, fraud, money laundering, sanctions evasion, arms trafficking, drug smuggling and nuclear proliferation. Legal entities are not meant to hide the people behind them.¹

Financial secrecy in the British Overseas Territories, including Bermuda, is no exception and is facilitating crimes around the world. Our research has identified hundreds of global corruption and money laundering schemes enabled by shell companies registered in these jurisdictions. Together, these cases amount to over £250 billion in economic damage – more than the whole of the UK's foreign aid budget over the last two decades.²

Although Bermuda's industry is more focused on insurance, evidence shows that the island plays a disproportionately large role in facilitating international business for Politically Exposed Persons (PEPs), including kleptocrats and oligarchs around the world.³ Below we provide some examples from our research and publications by investigative journalists.

Bermudan companies have been used to hide assets belonging to family relatives of the Russian political elite.⁴ Documents in the Paradise Papers show that Olga Shuvalov – the wife of the former deputy Russian Prime Minister, Igor Shuvalov – was the beneficial owner

¹ TI EU, *Transparency International EU's assessment of the adopted Anti-Money Laundering Package* (April 2024) <https://transparency.eu/wp-content/uploads/2024/09/AML-package-briefing.pdf>

² Transparency International UK, *The cost of secrecy: The role played by companies registered in the UK's Overseas Territories in money laundering and corruption* (December 2018) <https://www.transparency.org.uk/publications/cost-of-secrecy>

³ Haberly, D., Shipley, T., and Barrington, R. (2023). *Corruption, shell companies, and financial secrecy: providing an evidence base for anti-corruption policy*. Centre for the Study of Corruption, University of Sussex. p.3 https://dev-gi-ace.pantheonsite.io/wp-content/uploads/2023/06/GI-ACE_FinancialSecrecyReport_Haberly.pdf

⁴ Transparency International UK, *The Cost of Secrecy* (2018) <https://www.transparency.org.uk/publications/cost-of-secrecy>

of a Bermudan company that owned a private jet.⁵ The private jet, a Bombardier BD-700-1A10, retails at around £36.7 million when fully equipped.⁶ Information from the Paradise Papers corresponds with a 2016 investigation by Alexey Navalny, who claimed the Shuvalovs used this jet for business and private use.⁷ It is unclear how Shuvalov could have afforded this asset given his official wealth declarations for him and his wife in 2014 reported assets just over £600,000.⁸ Shuvalov did not respond when questioned about the jet by the Organized Crime and Corruption Reporting Project (OCCRP). In March 2022, the UK Government designated Igor Shuvalov⁹ and Olga Shuvalova¹⁰ for sanctions in response to Russia's full-scale invasion of Ukraine.

Oligarchs designated under western sanctions have attempted to use Bermudan trusts to avoid having their assets frozen. Reports from 2023 show how Alisher Usmanov, a Russian businessman close to the Kremlin, had appealed to the EU courts to release an asset freeze against several properties, including a villa in Sardinia and several luxury cars worth a combined \$90 million. In his appeal, Usmanov's lawyers claimed that the companies holding these assets were controlled by a Bermudan trust company, Pauillac Property Ltd., originally formed for Usmanov, but which since February 2022 has not included him as a beneficiary.¹¹

In 2023, The Times reported that Andrey Melnichenko, a Russian oligarch and chemical magnate allegedly part of Putin's inner circle, had used a company registered in Bermuda to hide his ownership of a luxurious property in the UK. The property, worth an estimated £10 million, is at the heart of Belgravia in London.¹² A spokesman for Melnichenko said that he was contesting all sanctions against him and denied that he was or had been a close associate of Putin. In March 2022, the UK Government designated Andrey Melnichenko for sanctions in response to Russia's full-scale invasion of Ukraine.¹³

A. ENHANCING BERMUDA'S BENEFICIAL OWNERSHIP DEFINITION

We welcome Bermuda's proposal to enhance Bermuda's current beneficial ownership regime. Consolidating the framework under a single Act of Parliament will bring more clarity, consistency and efficiency to Bermuda's corporate register. However, shortcomings remain which could be addressed in this new legislation.

⁵ <https://www.occrp.org/en/paradisepapers/profiles/igor-shuvalov> [accessed: 13 November 2018]

⁶ <https://www.av8jet.com/aircrafts/global-express-xrs-bd-700-1a107325757> [accessed: 13 November 2018]

⁷ <https://themoscowtimes.com/articles/navalny-russian-deputy-prime-minister-uses-undeclared-lavish-private-plane-54589> [accessed: 19 December 2024]

⁸ <http://declarator.org/person/528/> [accessed: 13 November 2018]

⁹ <https://search-uk-sanctions-list.service.gov.uk/designations/RUS0265/Individual> [accessed: 2 January 2025]

¹⁰ <https://search-uk-sanctions-list.service.gov.uk/designations/RUS0811/Individual> [accessed: 2 January 2025]

¹¹ David Fox, *Bermuda entity cited in oligarch's sanction fight*, The Royal Gazette (2023)

https://www.royalgazette.com/international-business/business/article/20230710/bermuda-entity-cited-in-oligarchs-sanction-fight/?utm_source=chatgpt.com

¹² George Greenwood, The Times, *Oligarch Andrey Melnichenko owns world's biggest yacht and £10m house in London* (February 2023) <https://www.thetimes.com/article/oligarch-andrey-melnichenko-owns-worlds-biggest-yacht-and-10m-house-in-london-tn7qcs587>

¹³ <https://search-uk-sanctions-list.service.gov.uk/designations/RUS0774/Individual> [accessed: 2 January 2025]

Define beneficial ownership clearly

Currently, Bermuda's definition of beneficial ownership is based off the 'cascading approach' set out by FATF.¹⁴ However, FATF only proposes this cascading approach in the context of Recommendation 10, which sets out how financial institutions and other supervised entities are supposed to conduct due diligence.¹⁵ It is important to note that FATF's guidance explicitly states that this approach should not supersede the usual beneficial ownership definition:

*"This provision of Recommendation 10 does not amend or supersede the definition of who the beneficial owner is, but only sets out how CDD should be conducted in situations where the beneficial owner cannot be identified."*¹⁶

Consequently, Bermuda's current approach misapplies the FATF guidance, which makes it easy to hide who ultimately controls the company from public view. Once a specific individual is identified under this cascading approach, subsequent steps are disregarded even if they could identify other beneficial owners. In particular, this would likely result in those exerting significant control over companies not being identified as a beneficial owner, with nominee shareholders being reported instead.

In order to enhance its definition of beneficial ownership, Bermuda should adopt a multi-pronged approach to identifying as used by the UK and EU and recommended by FATF.

This involves identifying beneficial owners using multiple criteria rather than relying on a step-by-step process, as is the case with the cascading approach.

To align with international standards from the UK, EU and FATF, Bermuda's definition of a beneficial owner should be expanded to include individuals who meet any of the following criteria, broadly aligning with the UK's definition of a person with significant control (PSC). Any of the following natural persons should qualify as beneficial owner:

- **directly or indirectly owning more than 25% of shares in the company**
- **directly or indirectly owning more than 25% of voting rights in the company**
- **having the right to appoint or remove the majority of the board of directors**
- **otherwise exerting significant control**
- **ownership via a trust, which should include but not limited to settlor, trustee and beneficiary**

These criteria ensure that all persons with meaningful control over a company and/or benefiting from it are captured, thereby addressing the flaws in the current system. In doing

¹⁴ FATF, *International standards on combating money laundering and the financing of terrorism & proliferation: The FATF Recommendations* (November 2023) pp.67-68 <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>

¹⁵ <https://www.cfatf-gafic.org/index.php/documents/fatf-40r/376-fatf-recommendation-10-customer-due-diligence> 19 December 2024]

¹⁶ <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf> [accessed: 19 December 2024]

so, Bermuda will strengthen its alignment with FATF's guidance and other international standards and reduce the risk of individuals using corporate structures to conceal illicit activities.

Future proof the register

The legislation as currently written leaves the register open to those seeking to avoid naming a beneficial owner using trust structures, with only the identity of trustees required. This will result in other parties to trusts, such as settlors and beneficiaries, being missed and will likely result in the increased use of trusts to hide ownership of Bermuda companies.

There is growing evidence that, as corporate transparency increases, those intent on hiding their identity for malign purposes are gravitating towards the use of complex trust structures. The speed at which trusts can secretly shift ownership of companies and their underlying assets is reminiscent of bearer shares. We have found these to be particularly attractive to those seeking to avoid or evade sanctions.¹⁷ Recognising this threat, both the UK Government¹⁸ and EU¹⁹ have adopted arrangements that would allow legitimate interest access to parties to trusts operating within their territories. In particular, we note that EU regulations require that 'the widest possible range of legal entities and legal arrangements created or set up in the territory of Member States should be covered by beneficial ownership rules. That includes corporate entities, which are characterised by the possibility to hold ownership interest in them, as well as other legal entities and legal arrangements similar to express trusts'.²⁰

To avoid Bermuda's beneficial ownership register becoming a *de facto* register of opaque trusts controlling companies, it should also allow those with a legitimate interest access to obtain information about the parties to trusts either created in Bermuda or controlling companies incorporated there.

¹⁷ Harry Davies, *Leak reveals Roman Abramovich's billion-dollar trusts transferred before Russia sanctions*, The Guardian, (January 2023) <https://www.theguardian.com/world/2023/jan/06/roman-abramovich-trusts-transfer-leak-russia-sanctions>.

¹⁸ For example: Section 23(2), Economic Crime (Transparency and Enforcement) Act <https://www.legislation.gov.uk/ukpga/2022/10/section/23> ; Regulation 45ZB, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 <https://www.legislation.gov.uk/uksi/2017/692/regulation/45ZB> ; Consultation <https://www.gov.uk/government/consultations/transparency-of-land-ownership-involving-trusts-consultation> [accessed: 29 October 2024] ; Transparency of land ownership involving trusts consultation (December 2023), <https://www.gov.uk/government/consultations/transparency-of-land-ownership-involving-trusts-consultation> [accessed: 29 October 2024]

¹⁹ Article 12(1)(e), Directive (EU) 2024/1640 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401640

²⁰ Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, Preamble (112), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1624>

Introduce unique identifiers

We strongly support Bermuda’s expansion of the scope of its beneficial ownership register, and its intention to capture beneficial ownership information for all companies except for entities listed on the Bermuda Stock Exchange.²¹

However, based on learnings from the UK register, **we recommend that Bermuda introduces unique identities and associated identifiers for natural persons in its beneficial ownership register.** Natural and legal persons have similar or sometimes identical names which makes it hard to determine the exact entity or person to which a given piece of information is attributed.²² Ensuring individuals on the register have only one unique identity and an associated unique identifier would make it easier for Bermudan authorities and register users to identify all entities associated with individuals.

Ensure registry independence and resourcing

We note the Government’s intention to streamline the beneficial ownership regulatory regime by designating the RoC as the authority responsible for collecting, verifying, and maintaining the central register of beneficial owners. This consolidation is a welcome step that should enhance consistency, clarity, and operational efficiency.

However, **for the RoC to effectively fulfil its expanded mandate, it should be adequately resourced and operationally independent.** In particular, its role in verifying beneficial ownership data will require access to independently sourced documents, data, and information. This verification process is critical for ensuring the integrity of the beneficial ownership register, but it will also place additional demands on the RoC’s capacity.

To meet these demands, **the RoC will likely need to recruit additional staff and investigators, particularly in its compliance unit.** The need for additional resourcing is evident when considering Bermuda’s 2020 Mutual Evaluation Report, which found that the RoC’s compliance unit had only five staff members responsible for monitoring over 15,000 entities at the time of the evaluation.²³ At the time, FATF noted that it was unclear whether staffing capacity would be sufficient to monitor the register.²⁴ Given the RoC’s new proposed duties, we would recommend the Government to review its resources and staffing capacity.

²¹ FATF, *Bermuda Mutual Evaluation Report: Anti-Money Laundering and Counter-terrorist financing*, (January 2020) <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-bermuda-2020.html>

²² <https://www.openownership.org/en/principles/> [accessed: 19 December 2024].

Maria Constanza Castro Orduna and Adriana Fraiha Granjo, Transparency International U4 Anti-Corruption Helpdesk, *The uses and impact of beneficial ownership information*, March 2023.

²³ FATF, *Bermuda Mutual Evaluation Report: Anti-Money Laundering and Counter-terrorist financing*, (January 2020), p.120 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-bermuda-2020.html>

²⁴ FATF, *Bermuda Mutual Evaluation Report: Anti-Money Laundering and Counter-terrorist financing*, (January 2020), p.120 <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-bermuda-2020.html>

Deliver to agreed timelines

The implementation timeline outlined in this consultation states that Bermuda will only deliver legitimate interest access in Q3 2026. Subsequently, Bermuda committed in the 2024 JMC communique to delivering legitimate interest access to its beneficial ownership registers by June 2025 or earlier.²⁵ **We assume Bermuda will honour the commitment it made to the UK and its fellow Overseas Territories at the JMC and not deliver legitimate interest access to its beneficial ownership register later than June 2025.**

The CJEU ruling, which Bermuda cites as the reason for limiting public access to its beneficial ownership registers to only those with a legitimate interest, was issued in 2022. By June 2025, Bermuda would have had three years to make adequate preparations for a legitimate interest regime, and seven years since the UK Parliament made clear its intent that the Territory's register be open to public access.²⁶

B. LEGITIMATE INTEREST ACCESS

Broaden the purpose of the register

The ruling by the CJEU on beneficial ownership transparency provides an important learning about the scope and purpose of beneficial ownership registers. Analysis by Transparency International's Secretariat and Open Ownership found that the *narrow scope* of the EU's Directive on beneficial ownership registers contributed to the findings that privacy infringements were *unnecessary and disproportionate* for the purposes set out in the EU's 5th Anti-Money Laundering Directive (5AMLD).²⁷ The courts argued that there was an imbalance between the amount of information provided in public registers and the narrow purpose of the registers, which were to identify and combat money laundering and its predicate offences.²⁸

In contrast, the UK's PSC register is framed around much broader policy aims. Its objectives include enhancing corporate transparency, facilitating economic growth and tackling the

²⁵ <https://www.gov.uk/government/publications/uk-and-overseas-territories-joint-ministerial-council-2024-communique/b71f1ac8-d55c-44fb-b6a3-365f07a98689> [accessed: 2 January 2025]

²⁶ See Sanctions and Anti Money Laundering Act (2018), Part 2
<https://www.legislation.gov.uk/ukpga/2018/13/contents> [accessed: 7 January 2025]

²⁷ <https://www.openownership.org/en/news/statement-on-court-of-justice-of-the-european-union-cjeu-judgement-on-public-beneficial-ownership-registers-in-the-eu/> [accessed: 7 January 2025]
<https://www.transparency.org/en/news/access-beneficial-ownership-after-cjeu-legitimate-interest-6th-amld#:~:text=%5BB%5Doth%20the%20press%20and,accessing%20information%20on%20beneficial%20ownership.&text=Transparency%20International%20believes%20that%20this,reflected%20in%20EU%2Dwide%20rules> [accessed: 7 January 2025]

²⁸ Tymon Kiepe, *Striking a balance: Towards a more nuanced conversation about access to beneficial ownership information*, Open Ownership (October 2023) <https://www.gov.uk/government/publications/people-of-significant-control-psc-register-review-of-implementation> ; Transparency International, *Legitimate interest 2.0: Enabling journalists and activists to follow the money in the European Union*, (August 2023) <https://www.transparency.org/en/news/access-beneficial-ownership-after-cjeu-legitimate-interest-6th-amld#:~:text=%5BB%5Doth%20the%20press%20and,accessing%20information%20on%20beneficial%20ownership.&text=Transparency%20International%20believes%20that%20this,reflected%20in%20EU%2Dwide%20rules>.

misuse of companies.²⁹ This broader policy framing has helped the UK register remain compliant with the European Convention on Human Rights (ECHR), which Bermuda is also subject to. The UK Government’s review of the PSC register, in light of the CJEU court ruling concluded that ‘the intrusions [of privacy rights] were limited and necessary in a democratic society for the prevention and detection of crime and in for the economic well-being of the country.’³⁰

This context highlights the importance of establishing a beneficial ownership register aligned with broad policy objectives rather than narrow, single-purpose goals. Experience drawn from the EU and the UK indicates that a broader framing of policy goals should mitigate privacy concerns and strengthen its legal grounding.

Bermuda’s 1981 consolidated Companies Act (and associated legislations), which established Bermuda’s company register, does not articulate a clear purpose or a policy aim for its register.³¹ The Government of Bermuda has however acknowledged in its consultation that the impetus to launch a beneficial ownership register was partly driven by a broader policy context related to transparency and tax agreements with the EU.

We welcome the Government of Bermuda’s proposal to introduce a single Act to govern its beneficial ownership regime. Having a standalone primary legislation will be an opportunity to provide a consistent and coherent definition of beneficial ownership transparency across different types of entities, as well as clarifying access modalities. This approach will increase certainty for businesses and other users of the register.

Importantly, a standalone law could also be an opportunity to define the policy objectives underpinning the Bermuda register. **By ensuring that the beneficial ownership register adopts broad transparency aims, such as enhancing the integrity of its financial system, increasing trust in its business environment and strengthening the use of public funds, Bermuda would establish a stronger legal basis for its registers whilst remaining compliant with the ECHR.**

Clearly define users with a presumed legitimate interest, and their access rights

1. Access to the entirety of the register

²⁹ Department for Business and Trade, *People of Significant Control (PSC) Register: review of implementation*, (August 2019) <https://www.gov.uk/government/publications/people-of-significant-control-psc-register-review-of-implementation#:~:text=The%20objective%20of%20the%20register,register%20in%20promoting%20corporate%20transparency.>

³⁰ Policy Paper, *Supplementary ECHR memorandum: amendments made to parts 1-3 Economic Crime and Corporate Transparency Bill (BEIS measures)*, (October 2023) <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-echr-memoranda/supplementary-echr-memorandum-amendments-made-to-parts-1-3-economic-crime-and-corporate-transparency-bill-beis-measures#:~:text=Impact%20of%20recent%20CJEU%20ruling%20on%20beneficial%20ownership%20registers%20on%20ECHR%20analysis%20of%20the%20Bill.>

³¹ https://www.conyers.com/wp-content/uploads/2024/08/Companies_Act_1981_Compendum-BDA.pdf [accessed: 20 December 2024]

In its consultation, Bermuda proposes to follow the EU's 6AMLD by granting access to individuals and entities that can demonstrate a legitimate interest in the prevention and combatting of money laundering, predicate offences, and terrorism financing.³²

What is not clear, however, is whether Bermuda will grant these groups access to the **entirety of the platform**. Contrary to what is stated in the consultation, Article 12 of the 6AMLD *does not* require those who have legitimate interest in beneficial ownership data to access it on a case-by-case basis.³³

In fact, quite the opposite. In 6AMLD, the EU is clear that these pre-defined groups should be able to consult the data on the register freely and in full, without being required to justify their reasons for scrutinising a specific entity:

*"In order to enable such categories to carry out their activities effectively and avoid risks of retaliation, they should be able to access information on legal entities and legal arrangements **without demonstrating a link with those entities or arrangements.**"³⁴*

To maximise the effectiveness of its register, Bermuda should clearly commit to allow groups with presumed legitimate interest *complete access to the register*, rather than requiring them to submit requests on a case-by-case basis. Full access should also be granted to obliged entities, which is not currently clear in the text of the consultation.

In addition to those granted full access to beneficial ownership registries, the 6AMLD requires that Member States *also* ensure that any persons who can demonstrate that they are acting for the purposes of preventing and combatting money laundering and its predicate offences are granted access to beneficial ownership information on a *case-by-case basis*.³⁵

2. Categories for which Bermuda recognises legitimate interest

To ensure effective use of Bermuda's beneficial ownership register and enhance its alignment with international standards, it is critical that Bermuda defines clear categories of individuals and entities with a 'presumed' legitimate interest in accessing the register. Pre-defining these groups not only strengthens transparency and accountability but also reduces administrative burdens and increases efficiency.

Bermuda has currently identified four key categories of individuals and entities with presumed legitimate interest:

³² Paragraph 40, Official Journal of the European Union, *Directive (EU) 2024/1640 Of The European Parliament And Of The Council*, (May 2024) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401640

³³ See (23) https://rgb-prod-public-pdfs.s3.us-east-2.amazonaws.com/nep1ulgi9Nvc1yJ_9NjnG5Wmz6U.pdf [accessed: 20 December 2024]

³⁴ Paragraph 41, *Directive (EU) 2024/1640* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640>

³⁵ Article 12, *Directive (EU) 2024/1640* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640>

- 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 combatting of money laundering, its predicate offences or terrorist financing.
- b) **Civil society organisations, including non-governmental organisations (NGOs) and academia**, that are connected with the prevention or combatting 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) **Public authorities in the context of procurement**. The consultation suggests that Bermuda intends to include public authorities at the national level who engage who procure goods and services for the State.

This approach is a step in the right direction. **We welcome Bermuda’s approach to presume these categories of organisations and individuals have a legitimate interest in beneficial ownership data, and therefore do not have to apply for access.** This is consistent with the EU’s approach under 6AMLD and provides the fairest and most cost-effective solution. We particularly welcome the inclusion of civil society organisations (including academics) and journalists as having legitimate interest by default. Both the UK Government³⁶ and EU³⁷ recognise the invaluable contributions of civil society organisations and journalists in identifying money laundering, corruption and other crimes.

3. Additional Categories for Legitimate Interest

While we support the inclusion of the above groups, **we recommend that the following categories should also be presumed to have legitimate interest, in line with the 6AMLD.**³⁸ These groups play a critical role in tackling illicit finance, ensuring effective cross-border cooperation, and maintaining financial integrity.

- **Entities subject to AML/CFT requirements in third countries:** Financial institutions, legal professionals, and other service providers outside Bermuda that are subject to Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) requirements should be granted legitimate interest access. These organisations play a vital role in detecting and flagging suspicious activities. Given the international nature of illicit financial flows, allowing these entities to access the Bermuda register will allow them to conduct faster and more reliable checks. This will be critical for professional services to perform due diligence and identify PEPs, designated entities, or suspicious activities. It has the additional benefit of enabling them to report any discrepancies, which should help improve the accuracy of the register.

³⁶ <https://www.gov.uk/government/news/uk-government-to-tackle-global-financial-corruption>

³⁷ Paragraph 41, Directive (EU) 2024/1640 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640>

³⁸ Article 12 (2), Directive (EU) 2024/1640 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640>

- **Competent authorities in third countries which need to perform AML/CFT checks:**
Due to the inherent cross-border nature of money laundering, law enforcement agencies and other competent authorities in third countries should be included in the list of entities presumed to have legitimate interest. Our research shows that complex ownership structures may pose an obstacle to law enforcement bodies seeking to identify the ultimate beneficial ownership of a company who they suspect of engaging in criminal activities or sanctions evasion.³⁹ This provides an undue burden on foreign law enforcement agencies for which there does not seem to be a clear rationale. For instance, in the UK, this would mean that competent authorities would not have direct access to beneficial ownership data and would instead have to continue relying on bilateral *Exchange of Notes*. This process allows UK authorities to make case-by-case requests for access to beneficial ownership information about Bermudan companies, with a view to prevent and tackle economic crime.⁴⁰
- **Authorities in charge of the register/ company registration in third countries:**
Competent authorities in charge of registers in third countries should have presumed access, in line with the EU 6AMLD. Given the complex nature of global corporate ownership, companies registered in Bermuda often own or are linked to entities in other jurisdictions, such as the UK. It is vital that third-country corporate registrars, such as the UK's Companies House, are able to verify beneficial ownership information when onboarding companies. Access to the Bermuda register would allow them to triangulate and verify the information provided by UK entities with Bermuda connections. By allowing these registers access, Bermuda would facilitate cross border cooperation, improve the accuracy of register data, and bolster its reputation for corporate transparency.
- **Providers of AML/CFT products:** Third party providers of AML/CFT products (such as firms offering screening, due diligence, PEPs and designated lists, etc) should also be presumed to have a legitimate interest. These providers support businesses – such as banks, law firms, estate agents – comply with their AML obligations. These services can offer a bird's eye view of risks, allowing businesses to make informed decisions before engaging with a customer, and allowing them to adopt mitigation measures where necessary. These providers may be especially relevant for smaller businesses who do not have dedicated compliance/AML departments and purchase these services as a substitute. Presuming legitimate interest for AML/CFT providers would allow these professionals to offer more accurate risk assessments and promote better compliance with Bermuda's AML commitments.
- **Public authorities in charge of procurement in third countries:** Although the Government of Bermuda suggests it will grant access to public authorities in charge

³⁹ See <https://www.transparency.org.uk/publications/cost-of-secrecy> [accessed: 20 December 2024]; <https://www.transparency.org.uk/partners-in-crime-UK-LLP-Limited-Liability-Partnership-money-laundering> [accessed: 20 December 2024].

⁴⁰ <https://www.gov.uk/government/publications/statutory-review-of-the-exchange-of-notes-arrangements/statutory-review-of-the-implementation-of-the-exchange-of-notes-on-beneficial-ownership-between-the-united-kingdom-crown-dependencies-and-overseas-te> [accessed: 20 December 2024].

of procurement at a national level, it makes no mention of third countries. Doing so would help third country public authorities conduct due diligence on potential suppliers, which would have been particularly helpful for the UK during the COVID-19 pandemic.

Where Bermuda chooses not to include specific categories listed in the 6AMLD, it should justify why thoroughly. For instance, we can see there is an argument to say that categories (g) and (h) are not relevant to the Bermuda context, as they refer to EU supranational institutions in charge of investigating fraud, corruption and other crimes, particularly in relation to funds received from the Union. However, this could have been clearer in the consultation document.

Streamline access to the register

To ensure Bermuda’s beneficial ownership register operates efficiently and supports global efforts to combat money laundering and its predicate offences, it is essential to minimise financial, administrative, and time-related burdens on legitimate interest applicants. Streamlining the process will facilitate access for eligible groups, reduce operational costs for Bermuda’s registrar, and support the broader policy aim of increasing transparency. The 6AMLD, as well as Open Ownership’s research⁴¹, provides important guidance on how to achieve this goal.

1. Clear guidelines on evidence for eligibility

In addition to verifying the identity of applicants, Bermuda will need to provide clear guidelines on the evidence required to justify an applicant’s eligibility and status as part of a pre-defined category.

Bermuda should publish a guidance on the registrar’s website, which should be clear enough to reduce confusion and avoid unnecessary delays, but not too cumbersome. Requiring organisations to supply excessive documents or information that can be hard to source, would deter legitimate users and undermine the impact of the register. We also warn against having categories of accepted evidence that are too prescriptive. **Where possible, Bermuda should adapt and review the evidence considered acceptable and leave an option for applicants to submit relevant bodies of work or explain their affiliation to a group through written submissions.** This approach is the fairest, as it provides flexibility for diverse groups with informal structures, such as grassroots movements and freelance journalists.

- **Independent persons acting for the purpose of journalism, reporting or any other form of expression in the media:** in considering access to beneficial ownership information to journalists worldwide, Bermuda should provide a wide scope. It

⁴¹ <https://www.openownership.org/en/blog/striking-a-balance-towards-a-more-nuanced-conversation-about-access-to-beneficial-ownership-information/> [accessed: 6 January 2025].

should ensure that media/press organisations, affiliated and independent journalists, bloggers or any other individuals who enhance/facilitate access to information that is in the public interest are covered, regardless of whether this person has formal press accreditation or affiliation to a media association (especially because, in certain countries, this is not a requirement to work as a journalist).⁴² The Bermudan registrar could also provide an *option* to submit published work (e.g., articles, reports, multimedia content) or projects where it can be more difficult to justify their affiliation to this category. This approach recognises the realities of freelance and independent journalism around the world.

- **Civil society organisations, including non-governmental organisations and academia, that are connected with the prevention or combatting of money laundering, its predicate offences or terrorist financing:** In considering access to beneficial ownership information to civil society, Bermuda should equally provide a wide scope. Defining civil society organisations can be challenging due to some groups being registered as companies (for instance, if they sell goods whilst also being a charity), or having a different status if they are grassroot or activist groups. As such, we would encourage Bermuda to adopt a broad definition, covering associations, think tanks, charities, NGOs, activist groups – so long as their work relates to identifying or combatting money laundering and its predicate offences. Again, for organisations that don't have a status that easily identifies them as members of this categories, a free text box could allow them to share their on-going work, projects or publications which would justify their affiliation.

2. Establish transparent timelines and appeals processes

To create more certainty and clarity, there should be clear timelines for decision-making on applications. The 6AML D specifies that Member States' competent authorities should conduct verification over credentials and/or legitimate interest and provide a response to the applicant within **12 working days**. Successful applicants should retain access for a reasonable and clearly defined period – ideally **no less than three years**, in line with the 6AML D.⁴³ Once the time lapses, they should also be able to renew via a simplified application.⁴⁴ This approach would reduce the operating cost for the registrar, but also create more clarity and certainty for users. If access is denied, the Bermuda register **should**

⁴² Maria Constanza Castro Orduna and Adriana Fraiha Granjo, Transparency International U4 Anti-Corruption Helpdesk, *The uses and impact of beneficial ownership information*, March 2023. [Policy-position-Access-to-beneficial-ownership-registers-under-EU-AMLD6-May-2023.pdf](#)

⁴³ Maria Constanza Castro Orduna and Adriana Fraiha Granjo, Transparency International U4 Anti-Corruption Helpdesk, *The uses and impact of beneficial ownership information*, March 2023. [Policy-position-Access-to-beneficial-ownership-registers-under-EU-AMLD6-May-2023.pdf](#)

⁴⁴ Official Journal of the European Union, *Directive (EU) 2024/1640 Of The European Parliament And Of The Council*, (May 2024) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401640

provide specific reasons and offer the opportunity to appeal decisions, with clear guidance on how to do so.

3. Reasonable costs

The EU's 6AMLD clearly states that the fee 'shall be limited to what is strictly necessary to cover the costs of ensuring the quality of the information held in those registers and of making the information available', and that the fees should not 'undermine the effective access to the information held in the central registers.'⁴⁵ **The UK experience shows that providing free access to company information can provide substantial financial benefits and can complement paid-for products provided to commercial clients.⁴⁶ We think there is a strong argument to adopt a similar approach to the UK.** This would help strike a balance between not imposing undue barriers to those investigating financial crime, while providing a sustainable income stream for the company register.

4. Mutual recognition

Finally, financial crime knows no borders, and it is not uncommon for kleptocrats and criminals to use multiple jurisdictions to obtain and launder their ill-gotten gains. Recognising this threat, the EU's 6AMLD makes provision to facilitate the mutual recognition of legitimate interest to access beneficial ownership across the different Member States.⁴⁷ This helps avoid a situation whereby someone who proves they have a legitimate interest in one jurisdiction is denied access in another for no good reason, hampering cross-border investigations. **By following the EU's approach and recognising the legitimate interest granted by the EU, Bermuda can limit the financial and administrative costs associated with processing a high number of applications while maximising the impact of its register.**

Enhance data usability

To be a valuable tool in the fight against money laundering, data on the Bermuda register must be accessible in a way that is **easily usable, downloadable and searchable**. The validity of academic research, investigations or policy analysis will depend on the quality and accuracy of the data contained in the register. In particular, the data contained on the register should **be up-to-date, ideally live, to enable investigations to be timely and relevant**.

⁴⁵ Official Journal of the European Union, *Directive (EU) 2024/1640 Of The European Parliament And Of The Council*, (May 2024) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401640

⁴⁶ Companies House/BEIS, *Valuing the user benefits of Companies House data* (September 2019) <https://assets.publishing.service.gov.uk/media/5d8a299aed915d5cff89a4a1/valuing-benefits-companies-house-data-policy-summary.pdf>

⁴⁷ Official Journal of the European Union, *Directive (EU) 2024/1640 Of The European Parliament And Of The Council*, (May 2024) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401640

In line with the 6AMLD, **Bermuda should hold information on a central register which should be 'accessible in a readily usable and machine-readable format'**.⁴⁸ The UK's PSC regime provides a useful model. It allows for bulk downloads of data and offers a user-friendly search interface. In our previous research, bulk access to UK Companies House data has allowed us to expose the systematic and widespread abuse of Scottish⁴⁹ and Limited⁵⁰ Liability Partnerships in high-end money laundering cases. This analysis enabled us to identify key weaknesses in the law, which we were able to share with policy makers, supervisors and law enforcement agencies. This resulted in the introduction of a new law to close some of the loopholes that our investigations identified.⁵¹

In addition to bulk data, **the registrar should provide access to associated documents in a searchable format, such as accounts and annual returns, incorporation documents, charges and capital, as well as appointment of new officers and beneficial owners.** This approach is critical, as most investigations require access to beneficial ownership information for multiple interconnected entities and the ability to verify the information through original documents, signatures and stamps.

The Bermuda register should also keep historical information available for public access, as this can help uncover links that are not immediately evident from current information. Keeping and publishing historical records prevents an entity from obscuring its identity by changing its name, or a beneficial owner to hide by reincorporating. In the 6AMLD, the EU requires Member States to ensure access to beneficial ownership data that have been dissolved or ceased to exist in the preceding five years.⁵² In the UK, the registrar retains company information for 20 years after a company is dissolved,⁵³ with the UK Government recognising views from across the public, private and third sectors that this information is important for investigations.⁵⁴ **Based on our experience, we think the UK's approach of retaining historical records for 20 years is preferable given the length of time it can take to uncover corruption and associated crimes.** We note that in the UK, this data is also passed on to the National Archives after the 20-year retention period, making these records available to the public indefinitely.

⁴⁸ Paragraph 23, Directive (EU) 2024/1640 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640>.

⁴⁹ Transparency International UK, *Offshore in the UK*, (June 2017) <https://www.transparency.org.uk/publications/offshore-in-the-uk>

⁵⁰ Transparency International UK, *Partners in Crime*, (October 2022) <https://www.transparency.org.uk/sites/default/files/pdf/publications/Partners%20in%20Crime%20-%20Transparency%20International%20UK.pdf>

⁵¹ <https://www.legislation.gov.uk/ukxi/2017/694/contents> [accessed: 7 January 2025]

⁵² Paragraph 36, Directive (EU) 2024/1640 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024L1640>.

⁵³ <https://www.gov.uk/guidance/your-personal-information-on-the-public-record-at-companies-house>

⁵⁴ BEIS, *Corporate transparency and register reform: Government response to the consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities* (September 202) pp.50-51 <https://assets.publishing.service.gov.uk/media/5f7ed12ad3bf7f019966930f/corporate-transparency-register-reform-government-response.pdf>

Protect those accessing and using beneficial ownership data

Bermuda's approach to protecting users of its beneficial ownership register should reflect international standards for legitimate interest access, as set out in the EU's 6AMLD. Investigative journalists, civil society organisations and researchers may face significant risks when accessing beneficial ownership data. Ensuring **confidentiality of users' identities** and allowing them to publish findings without restrictions is essential to fostering a safe, open environment for public interest research and journalism.

As an international NGO, we are particularly concerned about user confidentiality. **To avoid tipping-off or any type of retribution, the identify of those accessing beneficial ownership data should always be kept confidential and at no point made available to those whose records have been accessed.** This could result in criminals moving or liquidating their assets, as well as legal intimidation of those investigating them. The 6AMLD explicitly prohibits registrars in Member States from sharing the identities of data users with the beneficial ownership of the entity for which information was queried.⁵⁵

Groups with legitimate interest should also have a clear understanding of the terms of use, including the extent to which the information they obtain may be re-published in line with the relevant objectives underpinning the register. **We recommend that Bermuda keep its terms and conditions lightweight, so as not to deter small organisations looking to publish information in the public interest.** In particular, imposing non-disclosure agreements or other confidentiality clauses would not be appropriate, as it would restrict the value of granting legitimate interest to these groups, as well as undermining AML efforts overall.

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⁵⁵ Article 12, paragraph 4, Official Journal of the European Union, *Directive (EU) 2024/1640 Of The European Parliament And Of The Council*, (May 2024) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401640