



Statement and Potential Q&As Chief Officer, Dr Dax Basdeo Exchange of Notes and Technical Protocol Agreement with the UK

11am Monday, 11 April 2016 | GIS Conference Room

Last week the Ministry issued a statement referring to two sets of work in relation to the sharing of beneficial ownership information.

The first set commenced in September 2015, when work began on a series of enhancements to further strengthen Cayman's legislative and regulatory framework.

The second set commenced this past February, when Cayman and the UK began negotiating the Exchange of Notes and Technical Protocol. These negotiations were initiated in relation to the UK's request for Cayman to either establish a public, central register; or to prove that its proposed enhancements to its framework would provide a similarly effective system.

Now, with the Premier's signing last Friday, the 8th of April, of the notes and the protocol, Cayman and the UK agree that Cayman's proposal to enhance its system, by establishing a centralised platform of non-public beneficial ownership information, will indeed provide a similarly effective system for the sharing of information.

For clarity, the Exchange of Notes states the nature of the agreement between Cayman and the UK. In addition to noting both parties' continuing commitment to global initiatives against serious crime and reaffirming the quality of the information, it outlines the parameters for our enhanced collaboration. These include that the competent authorities in both countries should be able to quickly identify all companies that a particular beneficial owner has a stake in, and that companies or their beneficial owners must not be alerted to the fact that a law enforcement or tax authority investigation is under way.

The Technical Protocol complements the Exchange of Notes, in that it further details the obligations of the participants – for example, response times; the process for amending the protocol; and importantly, the monitoring of the practical application of this agreement.

Getting to this point of agreement has required significant time and effort.

Government has often said that the Ministry of Financial Services works closely with industry to facilitate the sharing of beneficial ownership information with partner jurisdictions, and that we have done so for many years. However, to provide a quick timeline, this engagement took on a different focus in 2013, when the UK made the sharing of beneficial ownership information a key element of the agenda as part of its presidency of the G8, and said that a public, central register was its preferred approach to accomplishing this.

The following year, in 2014, we conducted a consultation exercise to determine the views of industry, regulators, and the general public, both locally and internationally, on the sharing of this information. The response clearly showed that our present regime is adequate to meet international standards, but that several enhancements were appropriate to ensure that we kept in line with these evolving standards.

In response to the consultation, much work was done in early 2015 by the Ministry and its stakeholders to develop Cayman's strategy for enhancing our system. We were encouraged to do so in part by the UK's recognition in March 2015 that there are similarly effective arrangements to their approach of a public, central register.

In September 2015 the Ministry established a working group, which included representatives from industry, to delve into the specific details of amendments to the relevant laws that provide the framework for our regime. The working group has focused specifically on the international standards as expressed by the Financial Action Task Force Recommendations, and the recent changes to this standard.

Throughout the Working Group's process, as discussions with the UK continued, Cayman considered how to accomplish three distinct objectives: One, alignment with global regulatory standards; two, robustness to support the jurisdictions that have joined or are joining the fight against serious crimes; and three, appropriateness for our jurisdiction. This last point, appropriateness for Cayman, means that we understandably and rightfully took into account the fact that our business model consists primarily of institutional clients.

This is important to note because, in developing our framework, we must account for the set of risks that are relevant to Cayman and our clients. Although it's obvious, it's worth acknowledging that there are many different business models among the many jurisdictions that participate in global finance. Precisely for this reason the FATF standards cannot be, and therefore are not, prescriptive. It is more effective for these standards to express the principles to which all jurisdictions should adhere, which allows each jurisdiction to meet these principles while developing the framework that is appropriate for its particular regime.

That said, a milestone in our discussions occurred in February this year, when the Ministry provided a demonstration of the concept of a centralised platform for beneficial ownership information to senior officials from the Foreign and Commonwealth Office and the UK's National Crime Agency. This satisfied the UK officials that Cayman's enhanced system would indeed be equivalent to their system; and this resulted in the negotiations of the Exchange of Notes and Technical Protocol. As we informed the public

last week, the UK has negotiated similar Exchanges of Notes and Technical Protocols with each Overseas Territory and Crown Dependency.

Now that Cayman and the UK have signed our agreement, the working group's main task is to complete the design of the enhancements. We expect that the final report of the group will be ready in the next two to three weeks, and it is the Ministry's intention to solicit the wider views of our industry on the proposed enhancements.

It's been three years since the G8 Summit, and during this time Cayman, the UK, the CDs and our fellow OTs have invested significant time, energy and effort on this subject. Far from a delayed response, the time spent was necessary to reach understanding. For our part, once we had developed our proposals and demonstrated our system to the UK; and once they recognised that it met their criteria, the remaining negotiations happened rather quickly. The main complexity that we faced was the UK's desire to have similarities in the agreement among the OTs and CDs.

Regarding the design of our centralised platform, we have been assured by several IT professionals that the concept can be made reality. Not only can we design and build the system, it is likely to be a key competitive advantage for our jurisdiction, as part of an e-business solution that will provide significant value to our clients in terms of convenience and responsiveness to their needs.

The Exchange of Notes and Technical Protocol recognise that Cayman's proposals are both viable and effective. As the UK has given its support for our enhanced system, this should be taken as a positive signal by our international stakeholders, including media and NGOs, that the Cayman Islands is maintaining its commitment to international standards and to combatting serious crime through the exchange of information between law enforcement and tax authorities.

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Q&As

Q: What were the sticking points in the negotiation?

A: The Exchange of Notes and Technical Protocol were drafted by the UK to be a template for use with all Overseas Territories and Crown Dependencies. The difficulty that arose was the drafting of language that accounted for the differences between the legal frameworks of these jurisdictions. A significant amount of time was spent to explain Cayman's business model, and how our legal framework supports the sharing of beneficial ownership information currently. One of the major points for us was to ensure that appropriate safeguards were referenced. In particular, we felt it important to recognise the Constitutional responsibility to uphold the right to privacy of individuals.

Q: Previous statements suggest that the UK was satisfied with Cayman's approach. Why the change in attitude?

A: We have been proactive in engaging with the key UK agencies to explain our system and the plans for its enhancement. The visit by the National Crime Agency followed our invitation in December of last year. We have also had some discussion with HMT and HMRC. Every indication from these agencies has been positive, especially once we describe the enhancements that the Ministry has been developing with the assistance of industry stakeholders.

It is clear that the Prime Minister has been under continuous pressure from certain NGOs (such as Global Witness and Transparency International) to take a tough stance on the relevance of a public register of beneficial ownership information. Awareness and understanding of the Cayman regime may be an issue, but certainly the NGO agenda is such that they are unlikely to be satisfied with anything short of a public register despite the challenge this may pose when balanced against privacy as a basic human right.

Q: Given recent cases, is Cayman's system flawed?

A: Cayman has been successful when assessed against international standards in the past. There have also been several changes over the last decade that have improved Cayman's regulatory regime and compliance with international standards.

We are aware that there have been at least four other jurisdictions that have successfully demonstrated adherence to FATF standards in regards to their beneficial ownership information regime, and that these jurisdictions have done so without having implemented central registries. We are therefore confident in our approach and the enhancements that will allow us to continue to meet international standards.

Q: Why was such an 'ambitious' timeline set by the UK?

A: We have been told that the timeline was set so that the Prime Minister would be able to make certain announcements at the Anti-Corruption Summit that he has announced for May.

Q: How can the UK impose its preferred regime on Cayman?

A: The Government has retained Sir Jeffrey Jowell QC as lead counsel in this matter. We are therefore confident that we can take appropriate action no matter what the UK decides to do.

Q: Has the Government yielded to pressure from the UK and changed its position?

A: We have been very clear from the start of discussions on beneficial ownership with the UK that Cayman has met and will continue to meet international standards. We have developed a system that is appropriate for our jurisdiction, and while we will continue to refine and enhance this system as international standards evolve, this is being done on our own terms and with appropriate consultation with our industry stakeholders.

Q: Why has there been so much secrecy with these discussions with the UK?

A: In order to allow a free and frank exchange of views, not all matters are discussed in the public domain. The public has been informed of all major developments, and key industry stakeholder have been more involved as appropriate for the technical aspects of our discussions with the UK.

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