GUIDE

BVI's beneficial ownership legislation

July 2017

Introduction

The British Virgin Islands (BVI) enacted the Beneficial Ownership Secure Search System Act, 2017 (the Act) in June 2017. The Act requires registered agents (each, an RA) in the BVI to create a database of beneficial ownership information relating to in-scope entities for which they act as RA. The RA databases are private but may be searched upon request from certain authorities via the beneficial ownership secure search (BOSS) system.

The Act came into force on 30 June 2017.

Which vehicles does the Act apply to?

- Subject to certain exemptions, the Act applies to "corporate and legal entities" (CLEs), which are entities incorporated, continued or re-registered as BVI business companies under the BVI Business Companies Act, 2004. The Act does not apply to foreign companies or to BVI partnerships, limited partnerships or trusts.

- Not all BVI business companies will be subject to the new beneficial ownership regime as the Act provides for "exempt persons". These include a CLE which:
  - is recognised, registered or otherwise approved as a mutual fund under the Securities Investment Business Act, 2010 (including approved funds, incubator funds, public funds, professional funds and private funds);
  - has securities listed on a recognised stock exchange;
  - is a subsidiary of an entity which falls within the two exemptions listed above; or
  - holds a license under the Regulatory Code, 2009 (a licensee).

Identification of beneficial owners and registrable legal entities – role of RAs and CLEs

- The Act places a duty on RAs to identify, and to collect specified information in relation to, the beneficial owners and registrable legal entities of each CLE for which it acts as RA.

- Likewise, each in-scope CLE is required to identify its beneficial owners and registrable legal entities and to notify its RA of those persons within 15 days of identifying them.

- A CLE who becomes aware of a change in the prescribed information relating to a beneficial owner or registrable legal entity must, within 15 days of becoming aware of the change, notify its RA of the changes(s) and the date(s) on which it or they took place. The RA must then cause the updated information to be included on the RA database within 15 days of being notified or otherwise becoming aware of a change.

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1 A CLE is a subsidiary of another CLE (the parent) for the purposes of the Act if the parent holds, directly or indirectly, (i) a beneficial interest in 75% or more of the shares in the subsidiary or (ii) more than 75% of the voting rights in the subsidiary.
• The failure of a CLE or RA to comply with the obligations to identify beneficial owners and registrable legal entities, establish an RA database (in the case of an RA) and keep the beneficial ownership information up-to-date will constitute an offence under the Act, punishable by the imposition of a fine and/or imprisonment.

**Who is a beneficial owner or registrable legal entity?**

• The Act defines beneficial owner as the natural person who ultimately owns or controls a CLE, including:
  ◦ in the case of a legal person, other than a CLE whose securities are listed on a recognized stock exchange, a natural person who ultimately owns or controls, whether directly or indirectly, 25% or more of the shares or voting rights in the legal person;
  ◦ in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person;
  ◦ in the case of a legal arrangement:
    – the partner or partners who control the partnership;
    – the trustee or other person who controls the legal arrangement; or
    – the settlor or other person by whom the legal arrangement is made;
  ◦ in the case of a CLE which is in insolvent liquidation, administration or administrative receivership under the Insolvency Act, 2003, the natural person who is appointed as liquidator, administrator or administrative receiver of the CLE;
  ◦ in the case of a receiver being appointed over 25% or more of the shares or voting rights in a CLE, the creditor who appoints the receiver; or
  ◦ in the case of a shareholder in the CLE who would otherwise be a beneficial owner but is deceased, the natural person acting as executor or personal representative of the deceased’s estate.

• Where two or more persons hold any qualifying interest jointly, each joint owner shall be a beneficial owner for the purposes of the Act.

• A registrable legal entity is defined as a legal entity which:
  ◦ would be a beneficial owner of the CLE if it were an individual; and
  ◦ one or more of the following applies to it:
    – it is a legal entity which is an exempt person;
    – it is a legal entity the securities of which are listed on a recognized stock exchange;
    – it is a licensee or a foreign regulated person; or
    – it is a sovereign state or a wholly owned subsidiary or a sovereign state.

• If the beneficial owner of a CLE is identified by an RA as a registrable legal entity, the RA does not need to look further up the chain of ownership to identify the beneficial owners of the registrable legal entity.

**What information is recorded and for how long?**

• An RA must obtain the following information in relation to beneficial owners and registrable legal entities for each CLE for which it acts as RA:-
  ◦ For each beneficial owner:
    – name;
    – residential address;
    – date of birth; and
    – nationality.

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2 As defined under the Anti-money Laundering Regulations, 2008.
For each registrable legal entity:
– name (and any alternative names);
– incorporation number or equivalent;
– date of incorporation;
– status;
– registered address;
– the jurisdiction in which the entity is formed;
– the basis upon which the entity is designated as a registrable legal entity;
– where the registrable legal entity is a foreign regulated person, the jurisdiction of regulation and the name of the foreign regulator; and
– where the registrable legal entity is a sovereign state or wholly owned subsidiary of a sovereign state, the name of the sovereign state and (where applicable) the name of the subsidiary.

• Information on an RA database must be retained for five years following the dissolution of the CLE or the entity ceasing to be a CLE.
• The provision of false information by a CLE or RA is an offence under the Act punishable by the imposition of a fine and/or imprisonment.

Using the BOSS system; who may request a search?

• The RA databases will not be public, but will be accessed via the BOSS system by one or more designated persons. A designated person will be subject to security vetting tests and will be required to provide an oath of confidentiality prior to being designated by order of the BVI Minister for Finance.
• A search may be formally requested by a senior officer of any of the following authorities:
  ◦ the Financial Investigation Agency;
  ◦ the Financial Services Commission;
  ◦ the International Tax Authority; or
  ◦ the Attorney General’s Chambers,
  and must be accompanied by certification that the search is:
  – proper and lawful and in compliance with the legislation governing the affairs of the requesting authority and any international agreement administered by it; or
  – is in response to a request from a designated law enforcement authority.3
• The RA databases connected to the BOSS system will be capable of being searched simultaneously by reference to either the name of an individual or the name of a CLE.

Security and confidentiality

• The data maintained on the RA databases may only be accessed by the RA to whom the RA database relates or via the BOSS system. The BOSS system may only be accessed by the designated persons through a secure IT system and from a physically secure location within the BVI. It is an offence punishable by fine and/or imprisonment to access data on an RA database other than in accordance with the Act.
• All matters relating to a search request made under the Act are to be treated as confidential and a designated person who is aware of a request is prohibited from disclosing the fact that a request has been made, or that information has been supplied, to any person other than in accordance with the Act. A breach of these confidentiality requirements is an offence punishable by the imposition of a fine and/or imprisonment.

3 Currently, the sole law enforcement authority designated by the Act is the National Crime Agency – Financial Intelligence Unit of the United Kingdom.
If you have any questions or would like further information on this topic, please do not hesitate to contact us.

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