

Guernsey's beneficial ownership register: an overview

October 2017

Introduction

The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the **Law**) came into force on 15 August 2017. In keeping with Guernsey's ongoing commitment to international standards and as part of co-ordinated initiatives between the UK and British Crown Dependencies and British Overseas Territories, it establishes a centralised non-public register of beneficial ownership of Guernsey legal persons (the **Register**).

The Register is maintained by the Office of the Registrar of Beneficial Ownership of Legal Persons (the **Registry**), although it is physically located within Guernsey's Financial Intelligence Service (**FIS**) premises. The Register can only be accessed by specified individuals from the Guernsey Financial Services Commission (**GFSC**), the FIS and the Registry for the purposes of discharging their statutory duties.

The Law requires resident agents in Guernsey to identify and collect specified information about the beneficial owners of entities that fall within the scope of the Law for which they act as resident agent, and to submit the information to the Registry. It also imposes duties on beneficial owners to supply information to resident agents and to update them of any changes.

Who falls within the scope of the Register?

The Law applies to the following types of Guernsey legal persons (a relevant legal person):

- Guernsey incorporated companies;
- Guernsey registered limited liability partnerships (**LLPs**); and
- Guernsey registered foundations,

but excludes certain types of Guernsey legal persons, including:

- companies listed on a stock exchange recognised for this purpose;
- companies and LLPs regulated by the GFSC as collective investment schemes (whether open or closed ended); and
- companies supervised by the GFSC.

Who is a beneficial owner?

The Beneficial Ownership (Definition) Regulations, 2017 (the **Regulations**) follow Financial Action Task Force standards of a three-tiered approach to beneficial ownership.

Tier 1

The first step is to identify whether there is a natural person(s), corporate beneficial owner,¹ trust or other legal arrangement with ultimate control of a relevant legal person through ownership.

In respect of a company, this would be a person(s) holding, directly or indirectly:

- more than 25 per cent of the shares or voting rights in the company; or
- the right to appoint or remove a majority of the board of directors.

In respect of an LLP, this would be a person(s) holding, directly or indirectly more than 25 per cent of the voting rights in the conduct and management of the LLP.

In the case of a foundation, this would be a person(s) holding, directly or indirectly:

- more than 25 per cent of the voting rights;
- the right to appoint or remove a majority of the officials of the foundation; or
- certain types of person who benefit or may benefit from the foundation (as more particularly set out in the Regulations).

Where shares or rights in a relevant legal person are held jointly or subject to a joint arrangement, each joint owner must be treated as holding the entirety of the share or right.

Chains of ownership should be looked through to ensure that all natural persons (including corporate beneficial owners) above the relevant threshold are identified.

Where there is more than one Guernsey legal person within an ownership chain, guidance notes issued by the Registrar (the **Guidance**) indicate that only the first legal person should be treated as the beneficial owner in order to avoid duplication.

Separate rules apply where a trust controls a relevant legal person through ownership. In these circumstances the beneficial owners are **each** of the following:

- a trustee of the trust who is a natural person;
- if the trust is a fixed trust (for example a unit trust, or bare trust, but not a discretionary trust), any beneficiary of the trust;
- if the trustee is a Guernsey corporate trustee, the trustee and its directors or other person in an equivalent position;
- if the trustee is a non-Guernsey corporate trustee, the natural persons who would be the beneficial owners of the trustee if the trustee was the relevant legal person and any director or person in an equivalent position;
- any person to whom the trust deed or other formal document relating to the trust grants certain powers (as more particularly set out in the Regulations); and
- any other person who the resident agent knows or believes is exercising control over the trust.

Tier 2

If no person exists or can be identified under Tier 1, the natural person(s) who ultimately controls the relevant legal person through means other than ownership should be identified. Ultimate control is not defined within the Regulations, but the Guidance indicates that it is likely to include decision or veto rights over the business of a relevant legal person or where, in practice, an individual otherwise exercises decisive control. Note that even if a person has been identified under Tier 1, but the resident agent considers on reasonable grounds that a Tier 2 person can additionally be identified, both persons are treated as beneficial owners.

¹ In the case of certain specified companies – namely those listed on certain recognised stock exchanges, States of Guernsey trading companies and other relevant legal persons – the Regulations specify that they are to be considered the beneficial owner and therefore the ownership chain is treated as stopping with the corporate beneficial owner as if it were a natural person.

Tier 3

If it is not possible to identify a person with control by ownership (Tier 1) or other means (Tier 2), the beneficial owners will be deemed to be a 'senior managing official' of the relevant legal person. Whilst this term is not defined within the Regulations, the Guidance indicates that this generally would be expected to be someone who exercises strategic decision-making powers in respect of the relevant legal person.

What are the duties of resident agents?

A resident agent is responsible for collecting the information relating to beneficial owners (required particulars) and for filing that information with the Registry. In particular, the resident agent of a relevant legal person must:

- take reasonable steps to ascertain the identity of the beneficial owners of the relevant legal person;
- serve notice on any person it believes on reasonable grounds is or may be a beneficial owners of a relevant legal person (unless the beneficial owner has already provided the information), to confirm whether he is indeed a beneficial owner and, if so, to ascertain any required particulars;
- keep a record of the required particulars of beneficial owners at the registered office or some other place in Guernsey approved by the Registrar of the Beneficial Ownership of Legal Persons (the **Registrar**);
- send required particulars for each beneficial owner of a relevant legal person to the Registry;
- notify the Registrar within 14 days of any changes to the required particulars of a beneficial owner; and
- notify the Registrar as soon as reasonably practicable where a beneficial owner:
 - has failed, without reasonable excuse, to comply with a notice served on it by the resident agent under the Law; or
 - has failed, without reasonable excuse, to comply with one of its duties; or
 - has made a materially false, deceptive, or misleading statement about the information he or she is required to provide.

What information is required to be obtained in respect of a beneficial owner?

The required particulars for a beneficial owner are as follows:

- name;
- nationality;
- date of birth;
- principal residential address;
- the date on which he became a beneficial owner, if after 15 August 2017; and
- the grounds on which he is considered to be a beneficial owner.

What are the duties of the beneficial owners?

The Law imposes duties on a beneficial owner of a relevant legal person:

- to supply the resident agent with required particulars within 21 days if he knows (or ought reasonably to know) that the required particulars for a relevant legal person are not on the record of beneficial owners;
- to supply the resident agent with required particulars within 21 days of any relevant change in the required particulars; and
- to comply with any notice served by a resident agent in accordance with the Law.

The duty to supply information to a resident agent only applies where that information has not been previously provided.

Penalties

The Law imposes certain penalties on relevant legal persons, beneficial owners and resident agents. In some instances, non-compliance may result in criminal proceedings.

The Registrar has a number of additional powers, including to:

- issue a disqualification order to a resident agent of a non-regulated relevant legal person;
- issue a private reprimand to a resident agent or, in more serious cases, issue a public statement; and
- place restrictions on a beneficial owner's interests (such as voting rights, dividends and distributions).

Key dates

These dates are based on current available information and guidance. Further regulations and guidance are expected to be issued in due course and we recommend that you consult the Guernsey Registry website for updates.

15 August 2017	existing companies, LLPs and foundations can submit beneficial ownership information online, and must file any changes to beneficial ownership from then onwards in accordance with the Law. Companies, LLPs and foundations registered on or after this date must provide beneficial ownership on incorporation
30 September 2017	anticipated deadline for the provision of information in relation to nominee shareholdings (note that regulations for nominee shareholdings have not been issued and are expected in late August 2017)
31 October 2017	deadline for filing beneficial ownership information for existing LLPs and foundations
1 January to 28 February 2018	2017 company annual validations to be submitted. Companies must have submitted beneficial ownership information in order to submit annual validations
28 February 2018	deadline for filing beneficial ownership information for existing Guernsey companies
April 2018	companies that have not filed an annual validation (and beneficial ownership information) will be listed for strike off and a strike off notice will be sent to the registered office
June 2018	companies that have not filed an annual validation (and beneficial ownership information) will be liable to be struck off

Conclusion

All resident agents, relevant legal entities and their beneficial owners should assess whether they are in-scope and ensure that they meet initial and ongoing filing obligations. The three-tiered approach to determining beneficial ownership requires particular care, and resident agents and beneficial owners will need to analyse their arrangements in light of the Law and Regulations. Regulated businesses will additionally be monitored for compliance with the above by the GFSC.

This guide is only intended to give a summary and general overview of the subject matter and is based on information and guidance available at the date hereof. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual Mourant Ozannes contacts.

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