

BVI beneficial ownership legislation

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Introduction

The Beneficial Ownership Secure Search System Act, 2017 (the **Act**) of the British Virgin Islands 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 and has been subsequently amended. The most significant amendments came into effect on 1 October 2019, pursuant to section 16 of the BVI Economic Substance (Companies and Limited Partnerships) Act, 2018 (as amended, the **Substance Act**)¹ and on 31 October 2019, to reflect the Rules on Economic Substance in the Virgin Islands issued by the BVI International Tax Authority. The information in this Guide includes the details of those amendments and consequent reporting requirements.

Which vehicles does the Act apply to?

Subject to certain exemptions, the Act applies to "corporate and legal entities" (**CLEs**) which includes:

- companies incorporated, continued or re-registered as BVI business companies under the BVI Business Companies Act, 2004 (as amended, the **BCA**);
- foreign companies registered in the BVI pursuant to the BCA;
- BVI limited partnerships with legal personality registered, re-registered or consolidated in the BVI pursuant to the BVI Limited Partnership Act, 2017 (as amended, the **LPA**); and
- foreign limited partnerships which have continued in the BVI as BVI limited partnerships with legal personality under the LPA.

The Act does not apply to any BVI vehicle, or foreign vehicle registered in the BVI, which does not have legal personality, including partnerships, limited partnerships without legal personality or trusts.

Not all CLEs are subject to the beneficial ownership regime as the Act provides for "exempt persons". Such exempt persons (and their registered agents) are not required to provide details of beneficial owners. However,

¹ Please see our [Guide](#) on the BVI's economic substance regime for more information.

exempt persons are subject to the reporting requirements where they conduct one or more relevant activities². The definition of **exempt person** includes a CLE which:

- is recognised, registered or otherwise approved as a mutual fund under the BVI Securities Investment Business Act, 2010 (including an approved fund, an incubator fund, a public fund, a professional fund and a private fund);
- has securities listed on a recognised stock exchange;
- is a subsidiary³ of an entity which falls within the two exemptions listed above; or
- holds a license under the Regulatory Code, 2009 (a **licensee**).

Obligations to identify beneficial owners and registrable legal entities

The Act places a duty on RAs to identify and collect specified "prescribed information" (see 'What information is recorded?' below) in relation to the beneficial owners and registrable legal entities of each CLE for which it acts as RA.

Each in-scope CLE is required to:

- identify its parent(s), beneficial owners and registrable legal entities (or, if it is listed on a recognised stock exchange, provide details of that exchange);
- identify whether it carries on one or more relevant activities and, if so, which ones;
- provide details of any applicable stock exchange listing where its securities are listed on a recognised stock exchange; and
- where the CLE carries on a relevant activity and is not a non-resident, provide certain additional information regarding its parent (if any).

A CLE must notify its RA of the details of the parents, beneficial owners and registrable legal entities within 15 days of identifying them. The time limit for submission of the prescribed information regarding the carrying on of a relevant activity or listing on a recognised stock exchange has now be set by the Beneficial Ownership Secure Search System (Time Limit for Filing Prescribed Information) Regulations, 2019, as the period of six months following the end of the financial year in question. CLEs must, therefore, notify their RAs of such information in a timely fashion to allow for filing within the time limit.

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 change(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.

The failure of a CLE or RA to comply with the obligations to identify parent(s), 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 being the natural person who ultimately owns or controls a CLE, including:

² The **relevant activities** are defined in the Substance Act as banking business, insurance business, fund management business, finance and leasing business, headquarters business, shipping business, holding business, intellectual property business and distribution and service centre business.

³ 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.

- in the case of a legal person other than a CLE whose securities are listed on a recognised 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 BVI 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 with securities listed on a recognised stock exchange;
 - it is a licensee or a foreign regulated person⁴; or
 - it is a sovereign state or a wholly owned subsidiary of 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?

An RA must obtain certain **prescribed information** in relation to each CLE for which it acts as RA, which includes the information set out below. 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. As detailed above, the prescribed information for CLEs must be filed by the RA on the RA database within six months of the financial year end in question. Details of the parent, beneficial owner and registrable legal entity should be notified to the RA within 15 days.

For each CLE:

- name (and any alternative names);
- incorporation number or equivalent;
- date of incorporation;
- status;
- registered address;

⁴ As defined under the BVI Anti-money Laundering Regulations, 2008.

- whether it carries on a relevant activity and, if so, details of the relevant activities which it carries on;
- if applicable, details of any stock exchange listing where its securities are listed on a recognised stock exchange;
- if the CLE carries on a relevant activity and claims to be outside the scope of the BVI's economic substance regime by virtue of an overseas tax residency, confirmation of the jurisdiction in which the CLE is tax resident, together with evidence to support that tax residence;
- if the CLE carries on a relevant activity and does not claim to be outside the scope of the BVI's economic substance regime by virtue of an overseas tax residency, the following information in relation to each such relevant activity which it carries on during a financial period, and in respect of that period:
 - the total turnover generated by the relevant activity;
 - the total amount of expenditure incurred on the relevant activity worldwide and the amount of that expenditure incurred within the BVI;
 - the total number of employees engaged in the relevant activity worldwide and the number of those employees engaged in the BVI;
 - the address of any premises in the BVI which is used in connection with the relevant activity;
 - where the relevant activity the CLE carries on is intellectual property business, the nature of any equipment located within the BVI which is used in connection with the relevant activity;
 - the names of the persons responsible for the direction and management of the relevant activity, together with their relationship to the CLE and whether they are resident in the BVI;
 - where the relevant activity the CLE carries on is intellectual property business, and in relation to that relevant activity, in addition to the above:
 - whether or not the CLE is a high risk IP legal entity (as defined in the Substance Act);
 - whether the CLE wishes to contest the rebuttable presumption in the Substance Act that it does not comply with the economic substance requirements and, if the CLE wishes to do so, the facts and matters it is relying on for that purpose; and
 - where applicable (including where core income-generating activity is carried out by another entity on behalf of the CLE), details of the name of, and resources used by, any entity or service provider in the BVI to whom certain activities are outsourced in accordance with the provisions of the Substance Act.

For each beneficial owner:

- name;
- residential address;
- date of birth; and
- nationality.

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; and
- where the registrable legal entity is a foreign regulated person, the jurisdiction of regulation and the name of the foreign regulator; or

- 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.

For each parent (if any) of a CLE carrying on a relevant activity and which claims to be outside the scope of economic substance requirements by reason of being a non-resident:

- name (and any alternative names);
- incorporation number or equivalent; and
- the jurisdiction in which the parent is formed.

Information must also be provided to confirm any exemption which applies or any listing on a recognised stock exchange.

For CLEs conducting the relevant activity of holding business⁵, reduced reporting applies requiring only:

- the total number of employees engaged in the relevant activity worldwide and the number of those employees engaged in the BVI; and
- the address of any premises in the BVI which is used in connection with the relevant activity.

How long is information kept?

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.

Who may request a search of the BOSS system?

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 BVI 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 authority⁶.

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.

⁵ Holding business is defined in the Substance Act as the "business of being a pure equity holding entity" (ie a legal entity that only holds equity participations in other entities and only earns dividends and capital gains).

⁶ Currently, the sole law enforcement authority designated by the Act is the National Crime Agency – Financial Intelligence Unit of the United Kingdom.

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.

Further information

To coincide with the implementation of the BVI's economic substance regime, additional amendments to the Act are expected and this Guide will be updated at that time. If you have any questions or would like further information on the BVI's beneficial ownership or economic substance regimes, please do not hesitate to contact us.

Contacts

A full list of contacts specialising in beneficial ownership legislation can be found [here](#).