

UPDATE

Changes to Guernsey's beneficial ownership regime

Update prepared by Frances Watson (Partner, Guernsey) and Jonathan Stevens (Associate, Guernsey)

The States of Guernsey has approved proposals to amend the legal framework relating to beneficial ownership. These amendments provide much needed clarity in certain areas, and 'plug' any gaps, which have been identified in the current beneficial ownership regime since the Law was enacted

Background

The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the **Law**) introduced a centralised, non-public register of beneficial ownership of Guernsey legal persons (the **Registrar**) in 2017. The Law placed obligations on resident agents to identify and collect information on beneficial owners of entities within scope of the Law and placed separate obligations on beneficial owners to supply said information to resident agents and update them of any changes.

The key changes

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The key changes are, as follows:

- **Clarification that licensees are not subject to the Registrar's administrative enforcement powers.** Under the Law, the Registrar of Beneficial Ownership's (the **Registrar**) administrative enforcement powers do not apply to entities that are controlled, administered or operated by a "regulated person" (as defined in the Law). However, this does not currently extend to a licensee acting as resident agent which does not control, administer or operate the entities it acts for. This has led to an unintended system of dual administrative enforcement whereby resident agents licensed by the Guernsey Financial Services Commission (**GFSC**) can fall within the remit of both the Registrar and the GFSC.
- **Requirement that resident agents record that there are no beneficial owners of a relevant legal person is to be removed.** This information was initially required to ensure that there were no gaps in the Register. However, it has become apparent since the Law has been in force that there is always a beneficial owner of a legal person and as such, this requirement is redundant.
- **The Registrar's enforcement powers are to extend to nominees.** Amendments to the Law will clarify that the Registrar's oversight and enforcement powers extend to those requirements relating to nominee relationships that are governed by the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017.
- **A requirement for certain criteria to be considered by the Registrar before imposing a disqualification order.** These factors will be set out in the Law in line with those currently applicable to imposing a penalty or making a public statement, ie the seriousness of the failure, whether it was inadvertent and the potential financial consequence of imposing it. The rationale for this is that the consideration of

these factors will reflect the likelihood of disqualification having at least as much impact on the subject as would a public statement or financial penalty.

- **Information required on corporate beneficial owners to be specified in the Law.** The wording of the Law currently anticipates that beneficial owners will be natural persons (which in the vast majority they are) and so requires that information such as date of birth and nationality is provided. There are however instances where a legal person may have a corporate beneficial owner and the Law has therefore been revised accordingly.
- **The Registrar's information gathering powers to be extended.** This will enable the Registrar to obtain information relating to legal persons, either by the Registrar independently or at the request of another relevant authority, such as the GFSC, the Revenue Service or the States of Guernsey's Policy & Resources Committee. The Registrar will also be empowered to obtain information from administrators or liquidators who have control over a legal person in certain situations. This will ensure that the Registrar will be able to obtain information about a legal person even where its officers have resigned. Amendments will also be made to each of the Foundations (Guernsey) Law, 2012, the Companies (Guernsey) Law, 2008, the Limited Partnerships (Guernsey) Law, 1993 and the Limited Liability Partnerships (Guernsey) Law, 2013 to introduce corresponding information gathering powers.
- **Reciprocal information disclosure provisions to be included in the Income Tax Law.** The Law includes provisions to enable the Registrar to exchange information with the Revenue Service so that the Revenue Service may ensure the accuracy of beneficial ownership information provided as part of its supervisory role under the Income Tax (Guernsey) Law, 1975 (the **Income Tax Law**). There is no such reciprocal provision under the Income Tax Law, and so it will also be amended to enable the Revenue Service to share information with the Registrar (and the Alderney Registrar).

The proposals provide much needed clarity in certain areas, and 'plug' any gaps which have been identified, in the current beneficial ownership regime since the Law was enacted. In particular, the remit of the Registrar's enforcement powers will provide some comfort to licensees who are currently subject to the enforcement powers of both the Registrar and the GFSC.

These proposals also extend the Registrar's information gathering powers, consistent with the commitment given by the States of Guernsey in 2019 to further increase the transparency and accessibility of information on beneficial owners in line with the EU's fifth Money Laundering Directive (2018/843) - see our legal update on this [here](#). This will allow the Registrar to further identify, assess and understand risks of economic crime, money laundering and terrorist financing to the Bailiwick of Guernsey.

We will continue to monitor this and will provide an update once it is known when the proposals will be brought forward as draft legislation.

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