

THE BENEFICIAL OWNERSHIP REGISTER IS NOW LIVE. ARE YOU PREPARED?

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Guernsey, as part of its commitment to international standards to law enforcement and transparency, has introduced a central registry of beneficial ownership of Guernsey legal persons. This article provides an outline of the beneficial ownership register (**Register**).

The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (**Law**) came into force on 15 August 2017 and should be read with the Beneficial Ownership (Definition) Regulations, 2017 (**Regulations**). From 15 August 2017 all companies, foundations and limited liability partnerships (**legal persons**) have to provide beneficial ownership information at the time of establishment. All existing legal persons will have to comply with the Law within a given period of time. For foundations and limited liability partnerships compliance is required by 31 October 2017 and for companies compliance is required by 28 February 2018. This latter period is to coincide with the submission of the annual validation which has to be completed by the end of February.

WHO IS A BENEFICIAL OWNER?

There is a three-tiered approach for determining who is a beneficial owner. The starting point for beneficial ownership in relation to a legal person is: who owns that legal person? A natural person, a beneficial corporate entity or a trust may all "own" a legal person. A beneficial corporate owner is either itself a Guernsey entity or a company listed on a recognised stock exchange. Details of the second and third tiers will follow later in this article.

WHAT CONSTITUTES BENEFICIAL OWNERSHIP?

In relation to a company, owners are all persons who hold, directly or indirectly:

- More than 25% of the company's shares;
- More than 25% of the voting rights of the company; or
- The right to appoint or remove a majority of the board of directors.

In relation to a foundation, owners are persons that:

- Hold, directly or indirectly, more than 25% of the voting rights in the conduct and management of the foundation;
- Hold the right, indirectly or directly, to appoint or remove a majority of the officials of the foundation;
- Are beneficiaries with a vested interest;
- Are default beneficiaries upon termination; or
- Have a future entitlement to a substantial benefit from the foundation.

In relation to an LLP, owners are all who hold, directly or indirectly, more than 25% of the voting rights in the conduct and management of the LLP.

As "ownership" may be indirect it may be necessary to investigate ownership through a chain of entities. Where there is more than one Guernsey legal person within an ownership chain, only the first legal person down should be treated as the beneficial owner for registration purposes. An overview in relation to beneficial ownership of companies in simple structures has been issued by the Guernsey Registry (Registry) and can be found [here](#). For those who like more detail, full guidance issued by the Registry which follows the order of the three-tiered approach to the definition of beneficial owner mentioned earlier in this article can be found [here](#).

Where two or more persons hold a share or a right jointly, each of them is treated as holding that share or right. Where there is a joint arrangement in relation to shares or rights, each of the persons concerned is treated as holding the combined shares or rights. Where shares are held by nominees for another, it is the other who holds the shares, not the nominees. Where the exercise rights are controlled by another person, it is the other person who is treated as holding the rights, not the person who holds the rights. In relation to security rights granted by way of security by a person, that person is treated as holding the rights. Please note that there will be separate regulations to address nominee relationships and the Registry will issue further guidance.

In relation to a trust, the beneficial owners in relation to the relevant legal person are each of the following:

- A beneficiary of a fixed interest in a trust;
- Any trustee who is a natural person;

- Where the trustee is Guernsey corporate trustee, that trustee and any director (or equivalent person) of the trustee;
- Where the trustee is a non-Guernsey corporate trustee, the natural persons who are the beneficial owners of the trustee and (unless the Registrar directs otherwise) any director (or equivalent person) of the trustee;
- Any person who may exercise certain powers in relation to the trust, including appointing trustees, amending or revoking the trust; and
- Any person who the resident agent of the relevant legal person considers is exercising control over the trust.

If, having gone through the first test mentioned above to find the beneficial owner, no one has been identified or the resident agent considers that persons other than those identified exercise control then the person who ultimately controls a legal person is registerable.

If no registerable persons have been identified by either ownership or control then all natural persons who manage the legal person will be registerable.

If the resident agent ascertains that there are no beneficial owners in relation to a legal person, this must be recorded in the Register.

HOW IS THE INFORMATION SUBMITTED?

In relation to new legal persons, the information is submitted online at the Registry as part of the incorporation process. For existing legal persons, the information is submitted online at www.greg.gg where a "create submission form" may be selected. In both cases any change in relation to beneficial ownership information has to be filed with the Registrar within 14 days of knowledge of the change.

The particulars to be filed include name, nationality, date of birth, principal residential address, the date beneficial ownership commenced (if beneficial ownership occurs after 15 August 2017) and the grounds for beneficial ownership.

No fees are payable at present for submission.

WHO CAN SEE THE INFORMATION?

The Register is not accessible to the public.

Access will be limited to a small number of designated individuals at the Registry, the Guernsey Financial Services Commission (**GFSC**) and the Guernsey Financial Intelligence Unit. The Register has enhanced security features in relation to the onward dissemination of the information. Requests for information can only be made for a permitted purpose. This effectively limits the disclosure of the information to local and foreign law enforcement agencies, financial services regulators, intelligence services and tax authorities. This also has the effect that licence holders will not be able to view the information after submission. It is therefore important that the confirmation PDF generated at the time of submission is printed and saved. The confirmation PDF is not saved anywhere on the Registry system and cannot be retrieved at a later date.

Upon change of service provider, the new service provider may wish to file the information itself to ensure its accuracy.

WHAT DOES IT MEAN FOR GUERNSEY BASED LICENCE HOLDERS?

It is the duty of the resident agent to file the beneficial ownership information so it is likely a Guernsey based licence holder will be involved in the process. Such licence holder will need to have an effective procedure in place to ensure that information is filed timeously.

WHY IS COMPLIANCE IMPORTANT?

A legal person cannot be established without submission of beneficial ownership information.

Any company failing to provide the requisite beneficial ownership information by 28 February 2018 will be prevented from filing its annual validation which will give rise to a penalty. If beneficial ownership information is not filed by April 2018 the company will be listed for strike off and is liable to be struck off from June 2018.

The penalties for non-compliance are severe. A beneficial owner is liable to a civil penalty of up to £20,000. A resident agent who fails to comply can be jailed for up to two years.

The GFSC will be monitoring licence holders for compliance with the Law as part of its regulatory oversight.

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