

**ADVISORY**  
Industry Information

# Guernsey's Beneficial Ownership Register

## - What you need to know

January 2018

### Introduction

On 15 August 2017 the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the "Law") came into operation. The effect of the Law is, amongst other things, to create and establish Guernsey's first centralised but non-public register of beneficial owners for Guernsey entities (the "Register").

The purpose of this note is to outline requirements and implications for Guernsey legal entities, their resident agents and beneficial owners as a result of the Law and Register coming into effect.

### Who is under the duty to disclose information?

The Law places duties on the resident agents and beneficial owners of "Relevant Legal Persons" to disclose the "required particulars" of the "beneficial owners".

In that regard, the required particulars of a natural person are his or her name, nationality, date of birth, principal residential address, when he or she became a beneficial owner and the grounds on which he or she is considered to be a beneficial owner (see more on this below).

The required particulars of a corporate beneficial owner to be recorded on the Register are, the Relevant Legal Person type, name, registration number, jurisdiction of incorporation, registered office address and percentage of shares or voting rights held.

### Who is a "Relevant Legal Person" for the purposes of the Law?

Under the Law a "Relevant Legal Person" is a Guernsey company, limited liability partnership ("LLP"), foundation or a limited partnership that has elected to have separate legal personality (each a "Relevant Legal Person").

### Who is a beneficial owner of a Relevant Legal Person for the purposes of the Law?

The Beneficial Ownership (Definition) Regulations, 2017 as amended (the "Definition Regulations") set out who is a "beneficial owner" of a Relevant Legal Person for the purposes of disclosure under the Law. The identification process is broken down into three "tiers".

The first tier or "Tier 1" is to identify the individual who ultimately controls the company, LLP, foundation or limited partnership through ownership. If no such person exists or can be identified in Tier 1 or a person has been identified in Tier 1 but there is reason to believe that another person is ultimately exercising control over the Relevant Legal Person, then that person needs to be identified and this is Tier 2. Finally, if no person can be identified or exists in Tier 1 or Tier 2, then the natural person (or persons) who hold the position of a senior managing official of the Relevant Legal Person is the beneficial owner and this is referred to as Tier 3.

In the case where a listed company or States of Guernsey trading company or another Relevant Legal Person controls the Relevant Legal Person through ownership, that company or other Relevant Legal Person shall be treated as the natural person and the beneficial owner and be referred to as a "corporate beneficial owner".



The Definition Regulations and the Guidance on the Meaning of Beneficial Owner issued by the Guernsey Registry (the “Beneficial Owner Guidance”) give guidance on who is a “beneficial owner” and in that regard, what constitutes “control through ownership” (Tier 1), “control by other means” (Tier 2) and who is considered to be a “senior managing official” (Tier 3) and this is discussed below.

## Tier 1 - Control through ownership

In the case of a company, the beneficial owner is the person who:

- » holds directly or indirectly 25% of the company’s shares; where the employee needs to work to maintain their public profile, such as an artist or performer; and
- » holds, directly or indirectly, more than 25% of the voting rights in the company; or
- » holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company.

In the case of an LLP, the beneficial owner is the person who (whether pursuant to the member’s agreement or section 14(3) of the Limited Liability Partnerships (Guernsey) Law, 2013 (the “LLP Law”)):

- » holds directly or indirectly more than 25% of the voting rights in the conduct and management of the LLP;
- » holds the right directly or indirectly, to appoint or remove a majority of the managing officials of the LLP; or
- » is entitled to more than 25% of the assets of the LLP in the event of the winding up or dissolution of the LLP.

In the case of a foundation the beneficial owner is the person who:

- » holds directly or indirectly more than 25% of the voting rights in the conduct and management of the foundation;
- » holds the right directly or indirectly, to appoint or remove a majority of the officials of the foundation;
- » is a beneficiary in whom an interest has vested;
- » is the default recipient of the assets of the foundation in the event of its termination; or
- » any other person who benefits from that foundation.

In the case of a limited partnership with legal personality the beneficial owner is the person who:

- » holds directly or indirectly more than 25% of the voting rights in the conduct or management of the business of the limited partnership;
- » holds the right directly or indirectly to appoint or remove a majority of the officials of the foundation;
- » holds the right directly or indirectly to appoint or remove a majority of the general partners of the limited partnership; or
- » is entitled to more than 25% of the assets of the limited partnership in the event of the dissolution of the limited partnership.

Where a trust controls a Relevant Legal Person through ownership, the beneficial owners in relation to the Relevant Legal Person are each of the following:

- » only if the trust is a fixed trust, any beneficiary of the trust;
- » any trustee of the trust who is a natural person;
- » if any trustee is a Guernsey corporate trustee (i) that trustee and (ii) any director, or person in an equivalent position, of that trustee;
- » any person who has power to (i) appoint or remove any of the trustees, (ii) direct the distribution of funds or assets of the trust, (iii) direct investment decisions of the trust, (iv) amend the trust deed or (v) revoke the trust.

A fixed trust is defined as one in respect of which the beneficiaries of the trust and the interests of those beneficiaries are certain. The Beneficial Ownership Guidance states that the requirement to disclose the beneficiary does not apply to discretionary trusts, because their only right is to be considered for the exercise of the trustee’s discretion, so they have no rights over any defined part of the trust assets. In the case of mixed trusts (i.e. those that are partly fixed and partly discretionary) only the beneficiaries of the fixed part need to be treated as beneficial owners.



## Tier 2 - Control by other means

As noted above the starting point is always whether or not any person in Tier 1 exists or can be identified. If that is the case, then that person (or persons) must be treated as the beneficial owner.

The Definition Regulations and Beneficial Ownership Guidance state that Tier 2 must be looked at in two situations.

The first situation is where no person in Tier 1 exists or can be identified.

The second situation is where a person within Tier 1 has been identified but there is reason to believe that another natural person is also “ultimately exercising control over the Relevant Legal Person by other means”. For example, although there is a person who has been identified as exercising the voting rights in the Relevant Legal Person, there is reason to believe that this controlling ownership interest does not reflect the full extent of actual control of the Relevant Legal Person in practice. In that case, both the person with the controlling interest is the beneficial owner and the other person exercising the control through the other means.

The Beneficial Ownership Guidance states that a person is likely to have “ultimate control” of a Relevant Legal Person “by other means” in two ways.

First, is where an individual has absolute decision or veto rights over the running of the business of the Relevant Legal Person. Examples are where a person has absolute decision or veto rights over:

- » the adoption or amendment of the legal person’s business plan;
- » changes to the nature of the legal person’s business;
- » making any additional borrowing from lenders;
- » the appointment or removal of the CEO;
- » the establishment or amendment of any profit sharing bonus or other incentive scheme of any nature for directors or employees; or
- » granting options under a share option scheme or other share based incentive scheme.

The second way in which an individual is likely to have ultimate control over a Relevant Legal Person is where in practice that individual controls the decisions that affect the activities of the Relevant Legal Person and examples provided are:

- » where the individual’s relationship with the Relevant Legal Person or with particular individuals connected with it means that the individual regularly directs or influences the decisions of board members or the way in which shareholders vote (for example, where a father has founded a company in which he is no longer officially involved but whose directors or shareholders include family members who invariably defer to his views about decisions relating to the company);
- » where the individual acts as a “shadow director” in respect of a majority of the board or otherwise directs or influences board decisions;
- » where the individual uses ownership of certain rights or assets relevant to the running of the business of the Relevant Legal Person (e.g. factory premises) as a means of controlling the running of that business; or
- » where the individual owns or controls an entity that holds decision or veto rights over the Relevant Legal Person in the respects listed above, and may use those rights to control the activities of the Relevant Legal Person.

## Tier 3 - Control by official position

If there is no person who can be identified under Tier 1 or Tier 2, the beneficial owner is the person (or persons) who are the senior managing official(s) of the Relevant Legal Person.

The Beneficial Ownership Guidance states that this will depend on the constitution of the Relevant Legal Person, but that as a general rule, will be someone who exercises strategic decision making powers in respect of the Relevant Legal Person (for example company director), but that this would not normally include a person who does not have executive functions such as a non-executive director.



## Disclosure obligations and duties

Under the Law, the resident agent of the Relevant Legal Person must:

- » take reasonable steps to ascertain the identity of the beneficial owners in relation to the Relevant Legal Person;
- » keep a record of the “required particulars” of the beneficial owners of the Relevant Legal Person on a “Record of Beneficial Owners” which must be maintained at the registered office of the Relevant Legal Person or such other place as approved and consented to in writing by the Registrar;
- » keep such record updated and in that regard, serve notice on:
  - any person who the resident agent has reasonable grounds for believing is a beneficial owner of a Relevant Legal Person; or
  - any person who the resident agent knows or has reasonable cause to believe that the person knows the identity of any beneficial owner of the Relevant Legal Person or knows the identity of someone who is likely to have that knowledge,
 requiring that person to state if he/she is a beneficial owner or knows the identity of the beneficial owner, as the case may be, and provide details;
- » give notice to the Registrar of any change of particulars of a beneficial owner within 14 days of becoming aware of the change;
- » serve copies of the information provided to the Registrar on the Relevant Legal Person and upon request, officers of the Relevant Legal Person;
- » take all steps to ensure security and confidentiality of information disclosed under the Law and the relevant legal person Laws (i.e. Companies (Guernsey) Law, 2008, the LLP Law, the Foundations Law and the Limited Partnerships (Guernsey) Law, 1995) and must not disclose such information; and
- » retain the “required particulars” in respect of any Relevant Legal Person that has been dissolved, terminated or struck-off for a minimum retention period of 5 years from the relevant date.

A beneficial owner of a Relevant Legal Person is under a duty to supply the required particulars to the Relevant Legal Person and keep these updated by providing the information as required to the resident agent.

## Resident agent of Limited Partnerships (with personality) for the purposes of the Law

The Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017 came into force on 31 December 2017 (“LP Regulations”). Amongst other things, they provide that the “resident agent” of a Guernsey limited partnership (with personality) under the Law, is the general partner of that LP (if there is only one such general partner). If there is more than one general partner, then the LP Regulations permit the general partners, on or before 14 February 2018, to elect a nominated partner to take on the duties under the Law and LP Regulations. If no such general partner is elected by 14 February 2018, then all of the general partners are jointly and severally responsible for complying with the Law.

In that regard, the general partner or nominated general partner (as the case may be) must, in respect of any limited partnership registered before 31 December 2017, take reasonable steps to ascertain the identity of the beneficial owners in relation to that limited partnership. For the purpose of the LP Regulations, limited partnerships that are collective investment schemes are exempt for compliance with the Law.

## Nominee relationships

The Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017 came into operation on 11 December 2017 (the “Nominee Regulations”). In broad terms, the obligations in respect of nominees under the Nominee Regulations mirror those in relation to beneficial owners under the Law, save that, nominees may include legal persons.

For the purpose of the Nominee Regulations:

- » a “Nominee” means a legal or natural person in a nominee relationship in which that person is registered as the legal owner of a share or right in a company (or of an equivalent interest in a foundation, limited partnership or LLP) which is held or is exercisable by that person on behalf of a beneficial owner of that company, foundation, limited partnership or LLP as the case may be, whether directly or indirectly (other than as the trustee of a trust);
- » a “Nominator” means a legal or natural person who has appointed, requested or instructed a nominee to act as a nominee on his behalf or on behalf of another person.



The Nominee Regulations provide that, before the incorporation or registration of a Guernsey company, foundation or LLP, the first proposed resident agent must:

- » identify any person who is a nominee, that is, who holds shares or rights in the company (or equivalent interest in the case of a foundation or LLP) on behalf of a beneficial owner;
- » obtain and verify details about the nominee and the nominator (these details broadly mirror those required for beneficial owners under the Law, modified as necessary to include legal persons);
- » enter the details of the nominee and nominator in the record of beneficial ownership;
- » give the Registrar a statement containing the details of the nominee and nominator, identifying the nature of the nominee relationship and giving the date on which it began, if that was after the Law came into force and before a verification statement;
- » serve copies of the statements on the relevant company, foundation or LLP and, on request, upon its first proposed directors, members or officials as the case may be.

The Nominee Regulations also contain ongoing obligations on resident agents to keep the information on nominees and nominators up to date, as well as obligations on nominees to supply information about the nominee relationship to resident agents and to inform resident agents about any changes to the information. These obligations are directly based on corresponding obligations in relation to beneficial ownership under the Law.

## Consequences of non-compliance

A beneficial owner who fails to comply with his or her or duties under the Law is liable to a civil penalty. A resident agent who fails to comply with its obligations is guilty of an offence.

Where a beneficial owner (or suspected beneficial owner) has failed to supply their required particulars (despite notice being served on them by the resident agent requiring them to do so) such person is liable to a civil penalty of an amount not exceeding £20,000. Where a beneficial owner (or suspected beneficial owner) provides false or misleading information, they are guilty of an offence and liable (i) on summary conviction to a fine not exceeding £10,000, imprisonment for a term not exceeding 3 months or both and (ii) on conviction on indictment to a fine, imprisonment for a term not exceeding 2 years or both.

## What to do next

Beneficial ownership information has been collected for new entities formed from establishment of the Register on 15 August 2017.

For existing entities, however, each resident agent must give notice to the Registrar of any change in beneficial ownership information recorded in its own record of beneficial owners and of the date on which it occurred. Beneficial ownership was required to be filed by 30 November 2017 for LLPs and foundations and by 28 February 2018 for companies.

In relation to existing entities resident agents must provide the requisite information on the nominees of such entities to the Registrar and maintain a record of nominators and nominees by no later than 28 February 2018.

## Contacts

For further information please speak with your usual contact at Walkers or contact:



**Matt Sanders**  
Group Partner, Guernsey  
T: +44 (0)1481 748 914  
E: matt.sanders@walkersglobal.com



**Sam Shires**  
Partner, Guernsey  
T: +44 (0)1481 748 916  
E: sam.shires@walkersglobal.com

### Disclaimer

The information contained in this advisory is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.



**Kim Paiva**  
Senior Counsel, Guernsey  
T: +44 (0)1481 748 906  
E: kim.paiva@walkersglobal.com



**Stephen Ozanne**  
Senior Associate, Guernsey  
T: +44 (0) 1481 748 913  
E: stephen.ozanne@walkersglobal.com