

The Guernsey Register of Beneficial Ownership - what you need to know

Insights - 15/08/2017

Introduction

The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the **Law**) finally received Royal Assent on 25 July 2017 and is scheduled to come into force on 15 August 2017.

Anyone following the progress of the Law will be aware that it was originally expected to take effect from 30 June 2017. Whilst commencement has been delayed it is important to note that the original timeline for compliance with the Law remains unchanged. All new incorporations will have to comply with the new requirements from the outset (i.e. 15 August 2017), and all existing legal persons need to ensure compliance by 30 November 2017 (or, for companies, 28 February 2018). The Guernsey Registry will be accepting submissions in respect of all legal persons from the commencement date.

This note is intended to be a brief overview to assist in identifying the beneficial owners of legal persons but is not exhaustive on the provisions of the Law.

What is a legal person?

The Guernsey Register of Beneficial Ownership (the **Register**) is intended to include information in respect of all legal persons incorporated or created in Guernsey and includes:

1. Companies registered in Guernsey;
2. Foundations registered under Guernsey law; and
3. Limited Liability Partnerships registered under Guernsey law.

(in this article we refer to each of the above as a **Guernsey Entity**)

From 15 August 2017, the incorporation or creation of any Guernsey Entity will require submission of details of its beneficial owner to the Guernsey Registrar of Beneficial Ownership of Legal

Persons (the **Registrar**). Existing Guernsey Entities will need to do the same by 30 November 2017 with the exception of companies which will have until 28 February 2018 (to coincide with the requirement for annual validations).

The Beneficial Ownership (definition) Regulations, 2017 (the **Regulations**), made on 25 July 2017, define the persons or classes of persons (whether legal or natural) who will be a registrable person in respect of a Guernsey Entity. We now consider what "ownership" means and what "beneficial owner" means for the purposes of the Register.

What does "ownership" mean?

Companies

Owners are all persons that hold, directly or indirectly:

1. more than 25% of the company's shares;
2. more than 25% of the voting rights in the company; or
3. the right to appoint or remove a majority of the board of directors of the company

Foundations

Owners are all persons that:

1. hold, directly or indirectly, more than 25% of the voting rights in the conduct and management;
2. hold, directly or indirectly, the right to appoint or remove a majority of the officials;
3. are a beneficiary with a vested interest;
4. are the default beneficiary in the event of the foundation's termination; or
5. are any other person that benefits from the foundation.

LLPs

Owners are all persons that hold directly or indirectly more than 25% of the voting rights in the conduct and management of the LLP.

Note that in all cases, "ownership" may be indirect and in some cases identifying owners may entail investigation back through a chain of entities.

What is a beneficial owner?

Test 1: The Ownership Test

The starting point is that the beneficial owner of a Guernsey Entity will be the natural person, beneficial corporate owner or trust that "ultimately owns" the Guernsey Entity. A beneficial corporate owner is the owner of a Guernsey Entity that is itself a Guernsey Entity or is listed on a recognised stock exchange.

If a natural person or corporate beneficial owner is an owner in accordance with the "ownership" requirements detailed in the table above, then they are registrable as the beneficial owner. If a trust meets the ownership requirements then there are specific requirements which we consider below.

If no registrable person can be identified under Test 1 or if the resident agent has reason to believe that natural persons (other than a natural person or corporate beneficial owner identified under Test 1) may have control of the Guernsey Entity, Test 2 also needs to be considered.

Test 2: The Control Test

The second test requires the identification of the natural persons that ultimately controls the Guernsey Entity by means other than ownership. This would include instances where, for example, a person holds more than 25% of the voting rights of a Guernsey Entity but the exercise of such voting rights is controlled by another. This latter person is a beneficial owner in respect of the Guernsey Entity.

It is important to note that if, in relation to a Guernsey Entity, there are natural persons who satisfy Test 2 in addition to natural persons/corporate beneficial owners that satisfy Test 1, then all are registrable in respect of that Guernsey Entity.

Test 3: The Management Test

Test 3 only applies if no registrable owners have been identified under Test 1 or Test 2 and stipulates that all natural persons who hold the position of a senior managing official of the Guernsey Entity will be registrable as a beneficial owner. No definition is provided for "senior managing official" but guidance suggests that directors would be included.



Joint Arrangement Test

If there are a number of persons who individually would not satisfy the ownership or the control test but together do, and there is in place a joint arrangement whereby such persons have agreed to exercise their rights jointly then all those persons will be registrable as beneficial owners in respect of the Guernsey Entity. In such cases, these persons will be registrable under the conditions of Test 1 or Test 2 (as applicable) and thereby negate the need to consider Test 3.



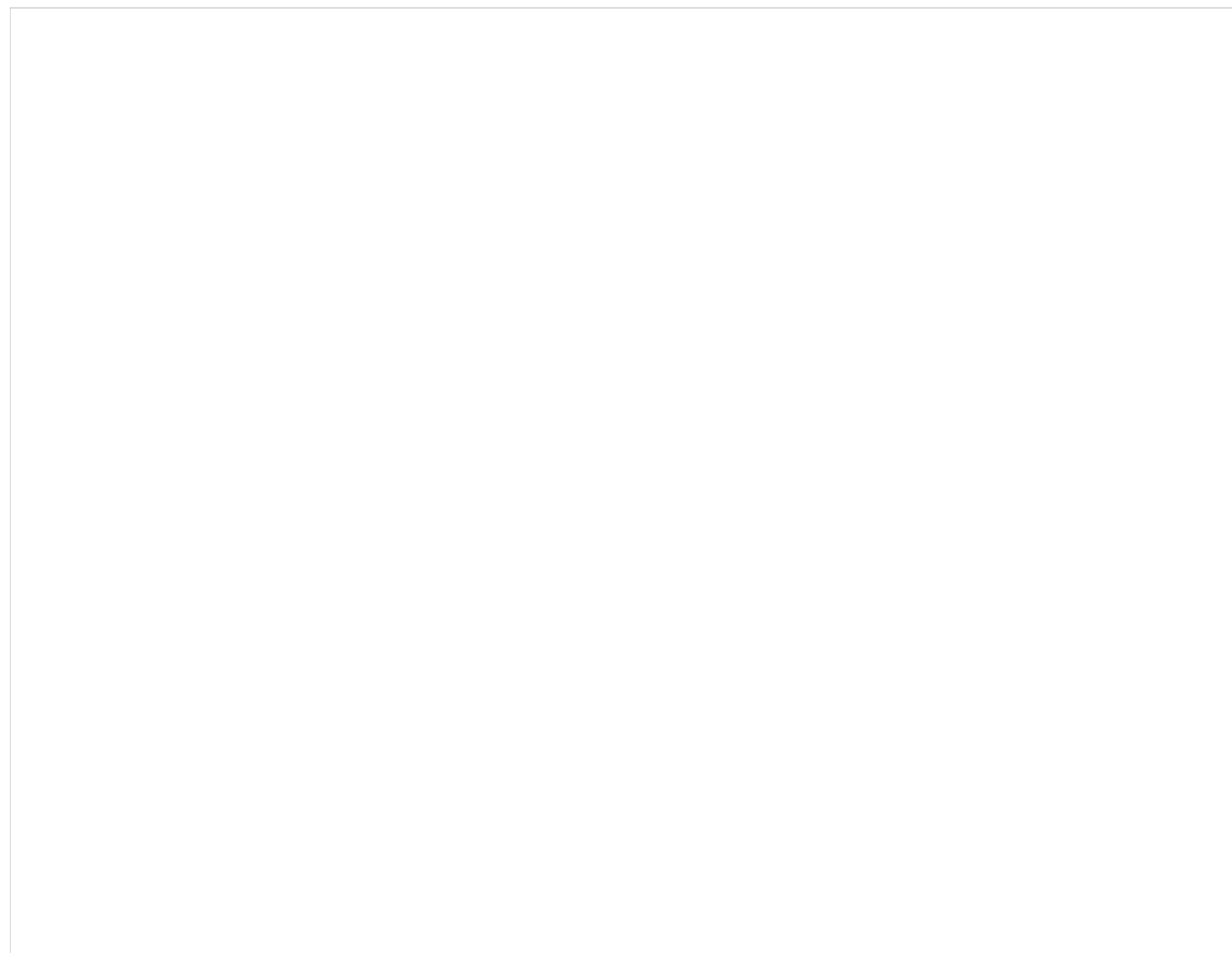
What if the trustees of a trust own the Guernsey Entity?

There are additional formalities where the Guernsey Entity is owned or controlled within a trust arrangement. In such cases, the beneficial owners of the Guernsey Entity will include all of the following that apply:

1. a beneficiary (if the trust is a fixed trust);
2. any trustee who is a natural person;
3. any trustee that is a Guernsey corporate (currently together with its directors or persons of equivalent position, although it is proposed that this requirement will be removed);
4. the natural persons who would be the beneficial owners of a non-Guernsey corporate trustee if that trustee were a Guernsey Entity (together with its directors or persons of equivalent position);
5. any person who, under the terms of the trust, has the power:
 - a. to appoint or remove trustees;
 - b. to direct the distribution of funds or assets of the trust;
 - c. to direct investment decisions;
 - d. to amend the trust deed; or
 - e. to revoke the trust deed; and
6. any person that the resident agent of the Guernsey Entity knows or believes is exercising control over the trust.

Note that nominee/bare trust relationships are ignored in respect of ownership of shares in a Guernsey company – in such cases ownership is determined by ascertaining who the bare trustee holds the shares for.

It's not clear under the Regulations what the position is if a non-natural person has any of the powers listed under 5. above; however, it can be assumed that the registrable persons in respect of such entity would be registrable in respect of holding that power over the trust.



Who is required to report to the Registrar?

The resident agent of the Guernsey Entity is required to make reasonable steps to ascertain the identity of beneficial owners in accordance with the provision set out above. In most instances, the resident agent will already have this information but, in more complex structures, further (reasonable) investigation may be required.

Furthermore, where a resident agent has reasonable grounds for believing that a person is or may be a beneficial owner of a Guernsey Entity, they are required to serve a notice on that person requiring that person to state whether they are a beneficial owner and, if so, to confirm any relevant particulars or supply missing data. Only if the resident agent has been informed of a person's status as a beneficial owner (with that person's knowledge), will the requirement to

serve a notice be negated.

In practice, the requirement will likely be most problematic when a resident agent has reasonable grounds to believe that a particular person may be a beneficial owner on the grounds of control of the Guernsey Entity by means other than ownership (i.e. Test 2, above).

Once the resident agent has identified all beneficial owners in respect of the Guernsey Entity, it is required to report the same to the Registrar and record the particulars of such owners in a "record of beneficial owners" to be kept at the registered office of the Guernsey Entity. Unlike annual returns, the resident agent is required to keep the record of beneficial owners up to date on a continuing basis and notify the Registrar of any changes within 14 days.

What must be reported to the Registrar?

In respect of all natural person beneficial owners the Register must include the individual's:

1. name;
2. nationality;
3. date of birth;
4. principal residential address;
5. date of becoming a beneficial owner (if after 15 August 2017); and
6. grounds for being a beneficial owner.

A beneficial owner is under a duty to update the resident agent within 21 days of a change of any of these particulars.

If the beneficial owner is a corporate beneficial owner then the name of that entity shall be reported.

If the resident agent has ascertained that there are no beneficial owners in relation to a Guernsey Entity then this must be recorded in the Register.

A beneficial owner who, without reasonable excuse, fails to comply with their obligations under the Law, is liable to a civil penalty (up to a maximum of £20,000). A resident agent who fails to comply with its obligations, unless that resident agent can demonstrate that it took all reasonable steps to attempt to comply, is guilty of an offence (with criminal penalties and sentences of imprisonment of up to 2 years) and liable to a civil penalty.

Any person who provides false or misleading information to the Registrar for the purposes of the Register, is guilty of an offence (with criminal penalties and sentences of imprisonment of up to 2 years). Where a legal person is found guilty of this offence, an officer who consented to or,

through negligence enabled, the offence, will also be guilty of the offence.

It should be noted that the civil penalties under this Law do not apply to regulated entities on the basis that the GFSC already has wide powers of supervision.

Who has access to the Register?

It has always been the intention that the Register would remain inaccessible to the public and, in fact, the States of Guernsey have gone to extraordinary lengths to limit the accessibility. Data received by the Registrar in accordance with the Law will be centralised and retained in electronic format but on a closed system such that access to the information will require access to the physical building in which the server is held. Furthermore, the number of people with authority to access the data will be limited to an extremely restricted number and even with such authority, the search parameters controlling access will be sufficiently restrictive to ensure that only specific and detailed requests from law enforcement agencies will gain any benefit from the Register.

It is hoped that the extremely limited means of accessing the Register will reassure both the Guernsey financial industry and its clients all over the world that Guernsey remains at the forefront of regulatory controls without compromising on data protection and privacy.

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Meet the Author



Gavin Ferguson

Partner

Guernsey

E: gavin.ferguson@ogier.com

T: +44 1481 752307

Key Contacts



Chris Hards

Managing Associate

Guernsey

E: chris.hards@ogier.com

T: +44 1481 752306



Matt Guthrie

Partner

Guernsey

E: matt.guthrie@ogier.com

T: [+44 1481 752342](tel:+441481752342)



Catherine Moore

Partner

Guernsey

E: catherine.moore@ogier.com

T: [+44 1481 752364](tel:+441481752364)

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