

HOW GUERNSEY'S BENEFICIAL OWNERSHIP REGISTRY WORKS

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With the introduction of Guernsey's central registry of beneficial ownership of legal persons, Guernsey Registry staff have issued guidelines on the subject. [Appleby](#) Partners Kate Storey and Alison MacKrell talk to [Compliance Matters](#) about how it works.

The Beneficial Ownership of Legal Persons (Guernsey) Law 2017 came into force on 15 August and should be read together with the Beneficial Ownership (Definition) Regulations 2017. All companies, foundations and limited liability partnerships (legal persons) now 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. For companies, compliance is required by 28 February. This latter period is to coincide with the submission of the annual validation, which companies have to complete by the end of February.

Who is a beneficial owner?

A company that is exploring its own beneficial ownership ought to take 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 who:

- 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 it through a chain of entities. If there is more than one Guernsey legal person in an ownership chain, only the first legal person down should be treated as the beneficial owner for registration purposes. The Guernsey Registry has issued an overview in relation to the beneficial ownership of companies in simple structures.

If two or more persons hold a share or a right jointly, each of them is treated as holding that share or right. If 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. If nominees hold shares for someone else, it is he who holds the shares, not the nominees. If someone else controls the exercise rights, it is he who is said to hold 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 though he holds the rights. The registry will issue separate regulations on the subject of nominee relationships in

due course.

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 human being;
- if the trustee is a Guernsey corporate trustee, that trustee and any director (or equivalent person) of the trustee;
- if the trustee is a non-Guernsey corporate trustee, the people 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 whom 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, the company has not identified anyone (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 finds that there are no beneficial owners in relation to a legal person, this must be recorded in the register.

How does one submit the information?

In relation to a new legal person, one has to submit the information online at the registry as part of the incorporation process. For an existing legal person, one should submit the information online at www.greg.gg, perhaps selecting a "create submission form." In both cases, one ought to send the registrar information about any change in relation to beneficial ownership with within 14 days of knowing about it.

The particulars to be filed include name, nationality, date of birth, principal residential address, the date on which 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 named people at the registry, plus the Guernsey Financial Services Commission and the Guernsey Financial Intelligence Unit. People can only ask for information for permitted purposes, which really limits its disclosure to local and foreign law enforcement agencies, financial regulators, intelligence services and tax authorities. Nobody who holds a fiduciary licence will be able to view the information on the registry system after submission. It is therefore important for him to print and save the confirmation PDF that the system generates at the time of submission. This PDF is not saved anywhere on the system and cannot be retrieved at a later date.

If the company changes its service provider, the new service provider may wish to file the information itself to ensure its accuracy.

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