

NEWS

Beneficial Ownership Regime in the BVI

Nerine Trust Company (BVI) Limited

20 June 2017

As we have communicated before, the BVI is introducing a confidential register of beneficial owners for BVI companies. This register is due to go live on 1st July 2017.

The legislation (as amended) enacting this was assented on 17 June 2017 and is called The Beneficial Ownership Secure Search System Act, 2017 (the 'Act').

The purpose of this fact sheet is to highlight the main features of the Act, and how it may affect you and your clients who have BVI entities. It should be noted that the views expressed in this fact sheet are Nerine's, and as with all new legislation it is likely that different interpretations may be expressed by others.

What is the Beneficial Ownership Secure Search System ('BOSS')?

The BVI signed an exchange of notes with the United Kingdom whereby they confirmed that they would introduce a system that would allow the BVI to provide the UK with beneficial owner information within 24 hours, or for urgent cases within 1 hour upon receipt of a valid request.

In introducing this the BVI were very wary of the right to privacy for individual or corporate beneficial owners, and thus the importance of holding the data securely and protected from unauthorized access or theft from external hackers. The BVI Government has engaged BDO in the BVI and Canada to design and implement the system, and they have done so with the key priority being to maintain confidentiality and the integrity of the system. Whilst no web based system is impenetrable, the BVI Government and BDO are very confident with what has been implemented, and a program of continued testing and development will be undertaken to ensure that the security is maintained.

BOSS provides a confidential register of beneficial owners, but the beneficial ownership information entered by each BVI registered agent is kept segregated. Each BVI registered agent, such as Nerine, will have its own web based portal through which their beneficial ownership information will be input, and as it is segregated the information cannot be seen by other BVI registered agents.

The BVI Financial Investigation Agency has been designated as the only body authorized to carry out searches of the register. The searches they can carry out can only be done by a designated person, although it is our understanding that two people will be approved for this, and searches can only be undertaken from a designated secure location, which we understand will be a standalone computer within a BVI Government building. The designated person(s) will be able to undertake a search across the whole database (i.e. across all BVI registered agents) either by the name of the individual or the name of the BVI entity. All searches will be logged and reviewable through an audit trail, and any abuse of the process will lead to heavy penalties and sanctions being levied against the designated person(s).

What information needs to be uploaded on BOSS?

We have previously requested, or have, the information that needs to be uploaded on BOSS from our clients. Previous drafts of the Act required additional information to be provided but fortunately they have not made the final draft.

The Act classifies a beneficial owner as a party that controls 25% or more of an entity. For a company, this is straightforward and ignores nominee shareholders. For a partnership, it is the partner or partners who control the partnership. For trusts or other legal arrangements which hold shares in a BVI company it is either the trustee or such other person that controls the legal arrangement, or the settlor or such other person by whom the legal arrangement was made.

Our interpretation of this is that it is possible to list the trustee of the trust as the beneficial owner rather than the settlor, providing the trustee is a licensee in the BVI or a foreign regulated person.

If the company is in liquidation, then the liquidator is considered the beneficial owner, and if the beneficial owner is deceased, then the executor or personal representative of the deceased will have to be listed.

Subject to a few exemptions, the basic requirements for all companies are:

- The name of the company or partnership;
- The incorporation number;
- The date of incorporation;
- Its status;
- The registered office address; and
- Any other particular the Minister designates by order.

For each beneficial owner (25% or more):

- Name;
- Address;
- Date of birth; and
- Nationality.

If the company is owned by a registrable legal entity (in our opinion this includes an exempt person, a listed entity, a licensee or foreign regulated person – such as a regulated corporate trustee, or a sovereign state).

Registrable legal entity requirements:

- The corporate information required above;
- The jurisdiction where it is formed;
- Why it is a registrable legal entity; and
- Where a foreign regulated entity the name of the jurisdiction where regulated and the foreign regulator or
- Where a sovereign state the name of that sovereign state.

Exempt person includes funds in the BVI, listed companies, BVI regulated licensees and subsidiaries of funds and listed companies.

Exempt person requirements:

- The corporate information required above; and
- Why they are an exempt person.

What is the deadline for uploading BOSS?

BOSS will go live on 1 July 2017, and therefore we will be uploading the required information during June 2017. If there are any changes to the beneficial ownership information (including change of name or address) this should be communicated to the registered agent within 15 days of the change, and the registered agent then has 15 days to upload the information on to BOSS.

If a company fails to provide the registered agent with details of changes of its beneficial owners, it can be fined \$5,000 on summary conviction or \$10,000 on indictment. The fines for a registered agent failing to comply within the 15 day period, having been provided the information by the company, are \$20,000 and \$40,000 respectively.

If false information is intentionally given, the fine for both the company and the registered agent is \$40,000 and/or two years imprisonment on

summary conviction, and \$75,000 and/or five years imprisonment on indictment.

Where a company fails to identify the beneficial owner, the fines are \$40,000 and/or six months imprisonment on summary conviction, and \$250,000 and/or five years imprisonment on indictment.

Where the registered agent fails to upload information they face a fine of \$20,000 on summary conviction or \$40,000 on indictment.

As can be seen with these penalties, the Government will not tolerate any failure of compliance with the Act.

What does this mean for clients?

We are hopeful that with the establishment of BOSS, a clear message is being sent to the UK, the OECD and other relevant authorities as to our commitment to global transparency whilst protecting the rights to privacy of our clients. We would expect other jurisdictions to implement similar models to provide pertinent information to law enforcement agencies to assist them in investigating and convicting perpetrators of financial crime.

As with most new regulation, additional work has to be undertaken to comply and unfortunately these costs will be passed on to clients. We will be informing clients in the next few months as to our fees for registered office services for 2018.

It should also be noted that the fee increases for BVI companies highlighted at the start of the year have been postponed to 1 January 2018. From then government license fees for BVI companies will be \$450 and \$1,200, and PTC license fees will be \$1,250 to \$1,350.

Whilst the requirement under BOSS is for beneficial owners with 25% or more the AML Regulations in the BVI still require us to obtain beneficial ownership information on UBOs with 10% or more and this does not change that requirement.

If you have any questions about the implementation of BOSS in relation to your entities please do not hesitate to contact your usual adviser.