

NEWS

Beneficial Ownership Register in Guernsey

Nerine Trust Company Limited

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On 15th August 2017 Guernsey's confidential register of beneficial owners (the **Register**) of Guernsey companies, foundations and LLPs (**Relevant Legal Persons**) came into operation. The regime has been implemented in accordance with the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the **Law**).

The purpose of this briefing note is to highlight the main features of the Law and how it may affect our clients who have Guernsey entities.

What is the beneficial ownership register?

The States of Guernsey signed an exchange of notes with the UK Government on 12th July 2016 as part of a wider international commitment to improve access to beneficial ownership information, in accordance with the EU's Fourth Money Laundering Directive, recommendations and guidance published by the Financial Action Task Force and principles agreed amongst G20 members. Guernsey and the UK will exchange beneficial ownership information within 24 hours, or for urgent cases, within 1 hour upon receipt of a valid request.

Guernsey's AML/CFT standards already allow law enforcement authorities access to beneficial ownership information from trust and company service providers. In implementing a central register of such beneficial information, Guernsey has been conscious that such information must be kept as securely as possible. Therefore, the data will be kept in electronic form, encrypted and in a single building. The number of staff with authority to access the data is very restricted in number. The Register will be administered by the Guernsey Registry (the **Registry**) which already maintains registers of Relevant Legal Persons.

Access to the Register is restricted to the Economic Crime Division of law enforcement, nominated individuals within the Guernsey Financial Services Commission and nominated individuals within the Registry. The Economic Crime Division will have power to share beneficial ownership information with Guernsey's revenue and law enforcement bodies as well as with foreign authorities for certain specified purposes, subject to a valid request for assistance being received.

What information needs to be uploaded onto the Register?

The Beneficial Owner (Definition) Regulations, 2017 (the **Regulations**) state that a **beneficial owner** in relation to a Relevant Legal Person is:

- (a) the natural person who ultimately controls the Relevant Legal Person through ownership; or, if no such person exists or can be identified,
- (b) the natural person who ultimately controls the Relevant Legal Person through other means; or, if no such person exists or can be identified,
- (c) the natural person who holds the position of a senior managing official of the Relevant Legal Person.

For the purposes of control through ownership a person is a beneficial owner if they hold:

- (a) directly or indirectly, more than 25% of the Relevant Legal Person's shares (in relation to companies only);
- (b) directly or indirectly, more than 25% of the voting rights in the Relevant Legal Person; or
- (c) the right, directly or indirectly, to appoint or remove a majority of the Relevant Legal Entity's governing body (board of directors for a company, council and guardian in relation to a foundation).

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:

- (a) only if the trust is a fixed trust, any beneficiary of the trust;
- (b) any trustee of the trust who is a natural person;
- (c) if any trustee is a Guernsey corporate trustee (i) that trustee and (ii) any director, or person in an equivalent position, of that trustee;
- (d) 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.

The required particulars of an individual beneficial owner to be recorded on the register are:

- (a) their name (including former names);
- (b) their nationality;
- (c) their date of birth;
- (d) their principal residential address;
- (e) the date on which they became a beneficial owner (15th August 2017 for existing beneficial owners); and
- (f) the grounds on which they are considered to be a beneficial owner (including percentage of shares or voting rights held).

The required particulars of a corporate beneficial owner to be recorded on the register are:

- (a) Relevant Legal Entity type;
- (b) name;
- (c) registration number;
- (d) jurisdiction of incorporation;
- (e) registered office address; and
- (f) percentage of shares or voting rights held.

What is the deadline for uploading information?

Beneficial ownership information has been collected for new entities formed from establishment of the Register on 15th August 2017. For existing entities, Nerine as the resident agent must give notice to the Registry 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 information must be filed by 31st October 2017 for LLPs and foundations and by 28th February 2018 for companies.

What are the penalties for non-compliance?

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 does this mean for clients?

With the establishment of the Register Guernsey is sending a clear message to the international community of its commitment to global transparency whilst protecting the rights to privacy of our clients. 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 administration and registered office services for 2018.

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

Please note that this briefing is intended for general information purposes only. Nerine does not give legal or tax advice and no reliance may be placed on this briefing. Clients are strongly advised to obtain specific legal and tax advice from their advisers. We work with a large number of advisers that we would be happy to recommend to those clients who do not have their own adviser in place.