



The Governance
Institute

Beneficial Ownership Register

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The Bailiwick of Guernsey branch
of the Institute of Chartered Secretaries
and Administrators

Current International Framework

“A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity”

- G8 Action Plan Principles (2013)
- G20 high-level principles (2014)
- World Bank / UNODC StAR Initiative (*The Puppet Masters*, 2011)
- OECD taxation initiatives: Global Forum on Transparency and the Common Reporting Standard
- FATF 2014 Guidance on Transparency and Beneficial Ownership

FATF Recommendation

□ **R.24:**

Countries to ensure that there is adequate, accurate and timely information on BO and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities

□ **IO.5:**

To ensure that legal persons and arrangements are prevented from misuse for ML/FT, and BO information is available to competent authorities without impediments

Why are we doing this?

European Commission View

Help business to know who they are doing business with

Help businesses and consumers protect themselves

Protect civil and environmental rights

Save money

Level the playing field

Detect crime

Source – presentation by Alexandra Jour-Schroeder of the EC to Corporate Registers Forum 2017

What is the EU doing?

Current EU Framework 4th AML / CTF Directive

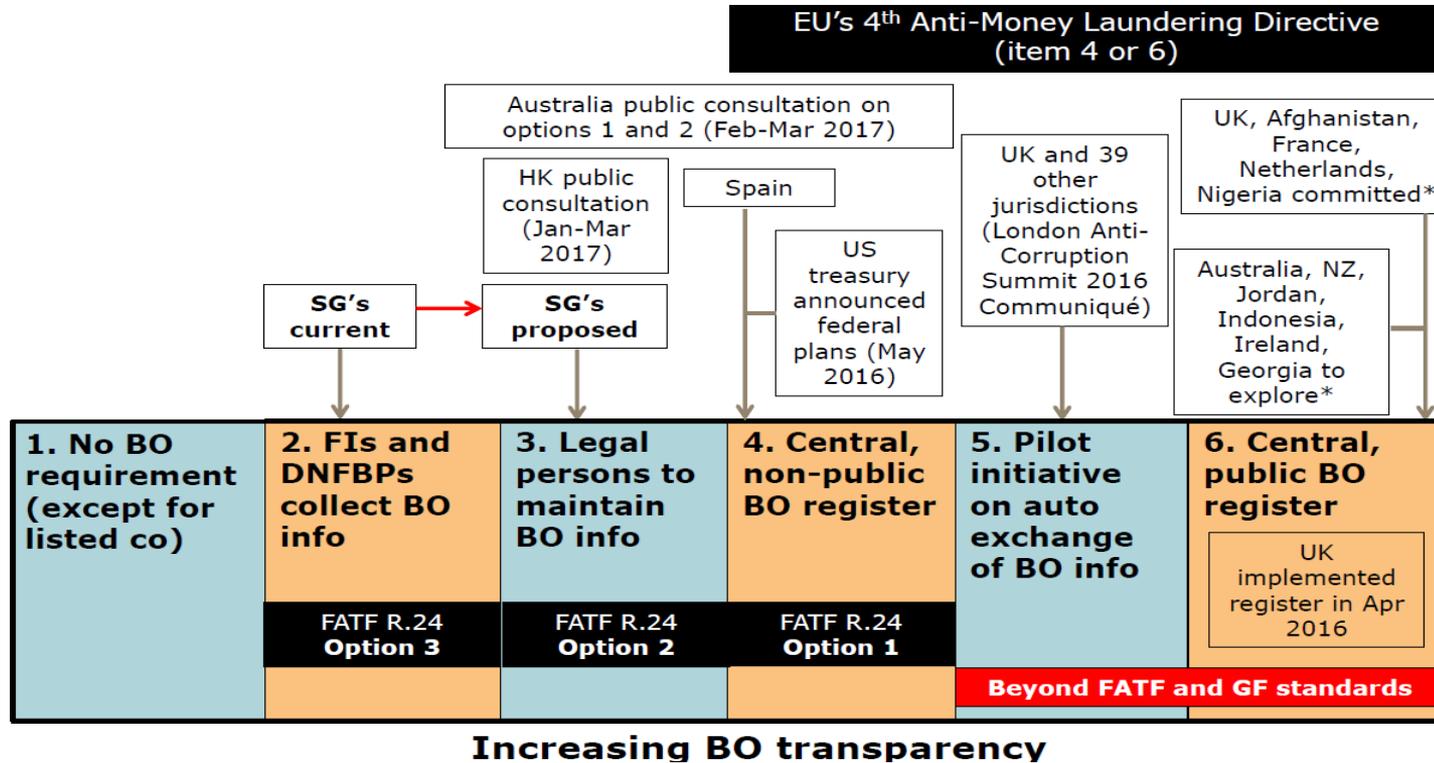
Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (4th AML Directive)

- *adopted on 20 May 2015;*
- *Transposition by EU – Member States on 26 June 2017.*

Article 3(6): "[...] any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted [...]: (a) corporate entities and (b) trusts.

International Landscape

*Source: UK Govt press release, “PM hosts major summit as part of global drive to expose, punish and drive out corruption” (12 May 2016)
 As presented to Corporate Registers Forum 2017 by Mr Kenneth Yap



Transparency Versus Privacy

The Deal

UK view is that the benefit of limited liability is worth the price of transparency

Have they gone too far?

They currently only offer protection when the activities of certain companies can place their directors and PSCs 2, or someone who lives with them, at serious risk of violence or intimidation. This could be due to their involvement in a particular sector of commerce or industry. e.g. business licenced under the Animal (Scientific Procedures) Act 1986, a director or PSC of a company active in the defence industry including a readily traceable supplier to, or partner of an organisation in the above categories. A company that has been targeted by activists or a member of a particular religious community where company activities conflict with the principles of that religion.

This isn't an exhaustive list, and making an application to restrict access to residential addresses or to all information will depend on individual circumstances.

What have we done?

Agreement with the UK

In **July 2016** there was an Exchange of Notes signed with the Government confirming that Guernsey will establish a central Guernsey database of beneficial ownership information

Project Board

The Project Board established in **Dec 2016** with representatives from Government, Industry, the GFSC, the Registry and Law Enforcement which continues to meet regularly to progress the successful and **secure** implementation of the Register

Legislative developments

Legislation

Following consultation with industry, in **February 2017** the States voted in favour of a joint Policy Letter from the Policy & Resources Committee and the Committee *for Economic Development* for the establishment of a Register of Beneficial Ownership

In **March 2017** The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 was lodged for future debate

What are we doing?

Definition of Beneficial ownership

Following publication of the legislation, a consultation took place on the regulations to define Beneficial Ownership

Where any right or interest comprises the property of an express trust, the trustee or trustees of the trust are to be treated as having the benefit of that interest

Three Tier Test

- Ownership
- Control Through Other Means
- Position Held within the Legal Entity

Exemptions

25% Threshold

Resident Agent Exempt Companies

Who will have access?

Access is restricted to:

The Economic Crime Division of Law enforcement

Nominated individuals within the GFSC

Nominated individuals within the Registry

The Registrar can only disclose information for the purposes of:

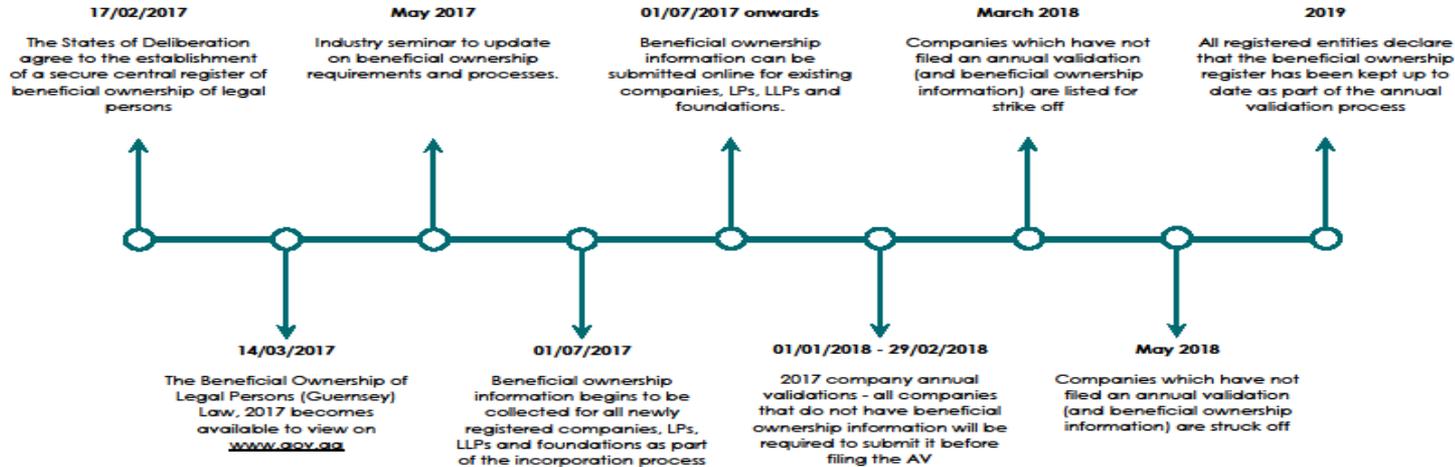
Prevention, detection, investigation or prosecution of criminal conduct or non-criminal penalties, intelligence services, Commission activities, income tax, civil forfeiture, sanctions, gambling control, charity & not for profit obligations

Timeline



www.guernseyregistry.com
enquiries@guernseyregistry.com

Beneficial Ownership Register - Timeline



Creating Value Through Technology with Sustainable Insights

 States of Guernsey
Office of the Registrar

What we need you to do

Prepare

From **01 July** any legal entity formed (N.b. LPs are not currently part of the legislation) will need the following Beneficial Ownership to be included:

- Name
- Nationality
- Date of birth
- Principal residential address
- The date on which they became a BO (if post 01 July 2017)
- The basis on which the BO exists

What do we need you to do for your existing legal entities?

Prepare

From **01 July 2017** it will be possible for you to populate the BO Register with information on existing legal entities

Identify the entities you consider will fall below the 25% threshold on a risk basis

We are considering the establishment of a Bulk Upload facility to be available in **Autumn 2017** and would appreciate your input on whether this would be of interest to you

From **January 2018** the BO Register will need to be fully populated and up-to-date to enable the Annual Validation of the company to be filed

We are proposing that the AV period will be extended to the end of **February 2018**

Keeping the Register up-to-date

Maintenance

As soon as an entry appears on the BO Register there will be an obligation, within 14 days of the Resident Agent having been obliged to update the record of beneficial owners, to file that update with the Registry

Sanctions

The sanctions applicable need to be persuasive so as to ensure compliance

The Registry will be responsible for Resident Agents that are not licensed and the GFSC will be ensuring that Licensed Resident Agents are complying

You will need to provide evidence of the filings made

Enforcement

Penalties

Criminal penalties

Criminal Liabilities

Civil penalties

Disqualification Orders

Private Reprimands

Public Statements



Fees and Guidance

Fees

There will be no cost for the initial population of the Register

Subject to consultation, it is proposed that maintenance of the Register will incur a filing fee, in a similar way as fees for updating directors are currently applied

Guidance

We will be issuing detailed guidance to presenters as the project develops

There is an obligation on you to ensure your Presenter Groups are up-to-date and permissions are appropriate for your organisation

Visit www.guernseyregistry.com for guidance

Possible Developments

Possible changes on BO registers being considered by the European Commission

- Lower 25% threshold to 10% (in certain circumstances?)
- Replace access based on legitimate interest with free public access for profit making entities (not "family-trusts")
- Registration of all trusts and public access to BO info of business-like trusts
 - where the trustee is established
 - Binding for EU Member States, including those who do not recognise trusts in their national law
- Interconnection of national registers via the EU Business Registers Interconnection System (BRIS)

What can we learn from others?

Lessons from UK Companies House

Forms have taken longer to process

They have had an increase in incorrect and incomplete filings

Customer contact has increased

Concern that it goes against general Government policy on deregulation

Filers become “tick box happy”

Today's Take-Away!

I'd sum up what you need to do in 3 sentences:

- Understand – the obligations on a Resident Agent
- Plan – for how you will assess what data needs to be provided and how you intend to achieve this
- Test – your systems will make it easy for the GFSC / Registrar to check compliance and for you to keep the Register up to date

If the Registry can offer any help whatsoever please do get in touch!



Other Registry Initiatives

Limited Partnership, LLP & Foundation AVs

APIs

IP Agents



Any Questions

Beneficial Ownership

Registry

IP





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Thank you

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