

British Virgin Islands Beneficial Ownership Regime

Insights - 21/06/2017

The British Virgin Islands (BVI) beneficial ownership regime comes into force on 30 June 2017. It creates a secure, non-public search platform called BOSS (Beneficial Ownership Secure Search System) and gives effect to commitments made to the United Kingdom (UK) to facilitate the sharing of beneficial ownership information.

Other leading international financial centres gave similar commitments to the UK Government and are implementing similar secure platforms or registers.

1. What does the legislation mean?

The Beneficial Ownership Secure Search System Act, 2017 (the Act) comes into force on 30 June 2017. The Act requires that registered agents maintain a database of the corporate and legal entities for whom they act as registered agent (the **RA Database**). The RA Database will be private. It will, however, be searchable by certain BVI Governmental bodies via BOSS, which enables an electronic secure search of each RA Database.

2. Which BVI entities does the Act apply to?

The Act applies to corporate and legal entities, which, for the purposes of the Act, means companies incorporated or existing under the laws of the BVI.

Certain entities are "exempt" from parts of the Act, including funds, entities whose securities are listed on a recognised stock exchange (or any corporate subsidiary of a fund or entity whose securities are listed on a recognised stock exchange, whereby a subsidiary means a company over which the corporate entity has a beneficial interest in seventy-five percent or more of the shares or voting rights), licensees¹, and entities that are exempt by regulations. Information pertaining to beneficial owners of exempt entities will not be required by the Act.

3. Who is a beneficial owner under the Act?

The Act defines a beneficial owner as:

The natural person who ultimately owns or controls a corporate or legal entity and includes:

- (a) in the case of a legal person other than a corporate and legal entity whose securities are listed on a recognised stock exchange, a natural person who ultimately owns or controls, whether directly or indirectly, twenty-five or more percent of the shares or voting rights in the legal person;
- (b) in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person;
- (c) in the case of a legal arrangement:
 - (i) the partner or partners who control the partnership;
 - (ii) the trustee or other person who controls the legal arrangement; or
 - (iii) the settlor or other person by whom the legal arrangement is made;
- (d) in the case of a corporate and legal entity which is in insolvent liquidation, administration or administrative receivership under the Insolvency Act, 2003, the natural person who is appointed as a liquidator, administrator or administrative receiver of the corporate and legal entity;
- (e) in the case of a receiver being appointed over twenty-five or more per cent of the shares or voting rights in a corporate and legal entity, the creditor who appoints the receiver; or
- (f) in the case of a shareholder in the corporate and legal entity who would otherwise be a beneficial owner but is deceased, the natural person acting as a personal representative of the deceased's estate.

However, if the beneficial owner of a corporate and legal entity is a registrable legal entity, provided the registered agent of the corporate and legal entity identifies the registrable legal entity, the details of the natural beneficial owner of the registrable legal entity are not required to be kept on the RA Database.

The Act defines a registrable legal entity in relation to a corporate and legal entity as a legal entity which:

- (a) would be a beneficial owner of the corporate and legal entity if it were an individual; and

(b) one or more of the following applies to it:

(i) it is a legal entity which is an exempt company;

(ii) it is a legal entity the securities of which are listed on a recognised stock exchange;

(iii) it is a licensee or foreign regulated person²; or

(iv) it is a sovereign state or a wholly owned subsidiary of a sovereign state.

4. What information will be held about beneficial owners?

In respect of each beneficial owner to whom the Act applies, registered agents will be required to retain the following information:

(i) name;

(ii) residential address;

(iii) date of birth; and

(iv) nationality.

5. Is the information held about beneficial owners confidential and secure?

Yes. It is the responsibility of registered agents to compile an RA Database containing details of the beneficial owners of the corporate and legal entities for which it is the registered agent. It is the registered agent's responsibility to keep the RA Database confidential and secure. The RA Database will not be made public and can only be searched (via BOSS) by persons designated pursuant to the Act.

The Act requires that any person designated to access BOSS must do so from physically secure premises and a secure IT system. All designated persons must pass security vetting tests and will be required to take an oath of confidentiality prior to being designated by order of the BVI Minister for Finance.

It is an imprisonable offence for any person other than the registered agent maintaining the RA Database and a person designated by the Act to access the information retained on the RA Database.

6. Who may request a search?

The only authorities entitled to request that a search of the RA Database be carried out are:

- (i) the BVI Financial Investigation Agency;
- (ii) the BVI Financial Services Commission;
- (iii) the BVI International Tax Authority; and
- (iv) the BVI Attorney General's Chambers.

7. Will beneficial owners be notified when a search is carried out?

Beneficial owners will not be informed when a search is made via BOSS. This is because one of the goals of the legislation is to assist the UK in combatting international organised crime. To inform a beneficial owner that a search has been requested could, if there were concerns regarding criminal activity, effectively tip-off a beneficial owner.

8. How long will information concerning beneficial owners be retained on the register?

Information held by registered agents will be retained for five years following the dissolution, or other cessation, of the corporate and legal entity.

Should you have any questions, please reach out to your usual Ogier contact or any member of our team included here.

^[1] as defined by the BVI Regulatory Code, 2009.

^[2] as described by the BVI Anti-Money Laundering Regulations, 2008.

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