

Ongoing responsibilities under Jersey's Register of Beneficial Ownership and Control

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At midnight on 30 June 2017, the deadline passed for legal entities to file details of beneficial ownership and control to Jersey's Companies Registry. Under the revised rules, even if there had been no change to the relevant information since incorporation, legal entities were still required to file the relevant form before the deadline. The legal entities affected were companies, limited partnerships (including incorporated and separate limited partnerships), limited liability partnerships and foundations, although it is anticipated that the requirement to file in respect of foundations will not come into force until later in the year. Fundamentally there was no requirement to file in respect of trusts, given that trusts are not legal entities.

The new register is the product of Jersey's agreement with the UK government, made last year, to take measures to improve the exchange of information about the ownership and control of companies and other legal entities.

The requirement to submit information of this kind is not a new concept. A register has existed in Jersey, in one form or another, since 1989. Jersey registered legal entities have, since this date, been required to provide details of beneficial ownership upon their incorporation. Furthermore, trust company service providers (TCSPs) are obligated to retain full details of beneficial ownership and control and to provide such details to the Jersey Financial Services Commission (JFSC) on request.

In contrast to the UK's Register of People with Significant Control, the new register in private and will not be open to public access. The data on the register will only be shared with law enforcement and tax authorities of the UK for the purposes of the prevention of corruption, money laundering, terrorism financing, financing of the proliferation of weapons of mass destruction and other serious and organised crime.

Whilst the deadline for the initial disclosure may have now passed, there are ongoing compliance obligations to keep in mind. Any changes to beneficial ownership and control will have to be notified to the Companies Registry within 21 days. Although such obligations fall on

the entity itself, the practical reality is that it will be the relevant TCSP, which provides administration services to the entity, who will make the notification. Where the TCSP provides limited services (such as the provision of a company's registered office only) then the TCSP will likely be reliant upon their client to provide details on any changes to beneficial ownership and control. To this extent, TCSPs may need to amend their terms and conditions of business so that this information is provided by the client.

In addition, whilst "beneficial ownership" is relatively simple to define, "control" can be more difficult. Accordingly, for more complex structures, legal advice may be needed to clarify what the obligations are.

The Companies Registry applies the Financial Action Task Force standards in respect of beneficial ownership and control. The register's model relies on the "three-tier" approach, as set out in the JFSC Anti-Money Laundering Handbook. This defines individuals with "control" of companies as set out below.

1. Each individual with a material controlling ownership interest in the capital of the company (through direct or indirect holdings of interests or voting rights) or who exerts control through other ownership means
2. To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control over the person through other means
3. Where no individual is otherwise identified under this section, individuals who exercise control of the company through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions).

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