

Beneficial Ownership and Control – Ongoing Obligations Arising from Jersey's new Regime

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Background

Following the introduction in the United Kingdom of a Register of People with Significant Control, the Crown Dependencies, including Jersey and Overseas Territories signed up to an equivalent and reciprocal agreement to enhance the exchange of beneficial ownership and control (BO&C) information between law enforcement authorities. To this end Jersey, immediately prior to the London Anti-Corruption Summit in May 2016, made an international commitment to have an up-to-date centralised register (albeit one that is non-public) by 30 June 2017.

The deadline for submitting BO&C information with the Jersey Financial Services Commission (JFSC) expired on 30 June 2017. All C17S forms (or equivalent, depending upon the entity) needed to be filed by midnight on that date.

The entities affected are companies, limited partnerships (including incorporated and separate limited partnerships), limited liability partnerships and foundations (together 'Entities') registered in Jersey and administered by Jersey trust and company service providers (TCSPs) albeit that the requirement to file for foundations will not come into force until later in the year.

Jersey's Pre-existing Register

With the exception of foundations, this is not a new requirement. Entities registered in Jersey were already required to provide details of beneficial ownership on incorporation. Indeed, a central register of beneficial ownership has been in place in Jersey since 1989 and relied upon TCSPs to retain full details of beneficial ownership and control and to make such information available to the Companies Registry or the JFSC upon request.

What Actions Were and Will Be Required?

Following recent changes to legislation in Jersey there are now two mandatory requirements, which enhance the position on the provision of BO&C information:

- Before 30 June 2017 all TCSPs administering Entities (save for foundations) should have refreshed and verified information ensuring that up to date information was transmitted to the central register at the JFSC by completion of a C17S (or equivalent depending upon the Entity).
- There is now an ongoing requirement for all Entities to notify the Companies Registry within 21 days of knowledge of a change to BO&C information in such manner as may be specified by the JFSC.

For the purposes of the first bullet point, notwithstanding that there may have been no change to BO&C information since incorporation, all Entities (save for foundations) should have filed a C17S (or equivalent depending upon the Entity). Non-submission of the C17S (or equivalent depending upon the Entity) will likely constitute a breach of the relevant consent pursuant to the Control of Borrowing (Jersey) Order 1958 (COBO). Existing legal entities (save for foundations) should have been issued with a new COBO as of 1 January 2017. These COBOs included an ongoing requirement to notify the Companies Registry on every change in BO&C. Newly incorporated entities will be issued with COBOs with this condition.

In respect of the obligation to file on any change in BO&C, whilst the obligation and requirement is on the relevant Entity to notify the Companies Registry of a change in BO&C, the practical reality is that this requirement will fall upon the regulated TCSP to provide this information. For certain structures, the TCSP will therefore be reliant upon this information being provided to them by the client.

In respect of foundations, it is envisaged that similar requirements will apply on a change of BO&C once the legislation relating to foundations has been amended.

It is anticipated that a new law will be introduced later this year or early in 2018 to cover these requirements for all Entities.

Who Can Access the Register?

The BO&C information stored on the register is not publicly available and the JFSC has confirmed in the FAQs for TCSPs that the information collected will be stored on a secure and private register held by the Companies Registry.

Pursuant to Jersey's agreement with the United Kingdom, BO&C information will only be exchanged with law enforcement authorities (which includes tax authorities) for the law enforcement 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. In other words, the parameters for exchange are limited to these matters.

Who is a Beneficial Owner and Controller?

This is not always a straightforward question. Jersey follows the Financial Action Task Force (FATF) standards and interpretation in respect of BO&C as outlined in section 4 of the AML Handbook applicable to all TCSPs.

The aim of the register is, where possible, to drill-down to individuals. For beneficial owners, whilst a case-by-case risk assessment is always required, a general threshold of a holding of 25 per cent or more may be applied to Entities assessed as representing a lower risk. However, where the TCSP views the relationship as high risk (this is 'high risk' from an AML perspective), the TCSP should consider registering the beneficial owner on the central register even though his or her interest is less than the 25 per cent threshold.

For controllers, although there are a number of interpretations, in Jersey the 'three tier' approach documented in the AML Handbook is applied in all cases (notably tiers two and three for controllers). For ease of reference we set out below the three tier test for companies:

- 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 of the company through other ownership means.
- 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 company through other means (e.g. control over the appointment and removal of directors).
- 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).

For many structures, the analysis and completion of the C17S (or equivalent depending on the Entity) was straight forward and this will also be the case for the completion of the C17A on any change in BO&C going forward. However, for other structures the position was and may continue to be more complex, requiring an analysis of the factual position relating to controllers and positions held.

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