



GUERNSEY STATUTORY INSTRUMENT

2017 No. 38

**The Beneficial Ownership (Definition)
Regulations, 2017**

Made 25th July, 2017
Coming into operation 15th August, 2017
Laid before the States, 2017

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 31 and 39 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017^a and all other powers enabling it in that behalf, hereby makes the following Regulations:-

PART 1

MEANING OF BENEFICIAL OWNER, ETC.

Beneficial owner, etc.

1. (1) Subject to the provisions of this regulation and regulation 2, for the purposes of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 ("the Law"), the beneficial owner in relation to a relevant legal person is -

^a Order in Council No. VI of 2017.

- (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,

and "beneficial owner" and related expressions shall be construed accordingly; and for the avoidance of doubt, references in the Law to circumstances where a resident agent has ascertained that there are "no beneficial owners in relation to a relevant legal person" are to circumstances where no beneficial owners in relation to a relevant legal person can be identified by the resident agent of that relevant legal person.

- (2) In any case where –
 - (a) the natural person who controls the relevant legal person through ownership has been identified,
 - (b) there are reasonable grounds to believe that the relevant legal person is also ultimately controlled by another natural person through other means, and
 - (c) that other natural person can be identified,

then the beneficial owners in relation to the legal person are the persons described in (a) and (b).

(3) In any case where a listed company, States trading company or another relevant legal person controls the relevant legal person through ownership, that company or other relevant legal person shall –

- (a) be treated as a natural person for the purposes of these regulations, and therefore (for the avoidance of doubt) as the beneficial owner of the relevant legal person, and
- (b) be referred to as a "corporate beneficial owner".

(4) For the purposes of paragraph (3), a "listed company" means a company listed on a recognised stock exchange and subject to disclosure requirements which enable its beneficial owners to be identified, or a majority owned subsidiary of such a company.

Trusts and other legal arrangements.

2. (1) In circumstances 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 of the trust is a Guernsey corporate

trustee –

(i) that trustee, and

(ii) any director, or person in an equivalent position, of that trustee,

(d) if any trustee of the trust is a non-Guernsey corporate trustee –

(i) the natural persons who would be the beneficial owners of that trustee if the trustee were a relevant legal person, and

(ii) unless the Registrar directs otherwise in any case or in respect of any category of cases, any director, or person in an equivalent position, of that trustee,

(e) any person who has, under the trust deed of the trust or any similar document, power to –

(i) appoint or remove any of the trustees of the trust,

(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, and
- (f) any other person who the resident agent of the relevant legal person knows or believes is exercising control over the trust.

(2) In circumstances where a legal arrangement other than a trust controls a relevant legal person through ownership, the beneficial owner in relation to the relevant legal person is any person who is in a position in relation to that legal arrangement that is equivalent to the position of any of the persons set out at (1)(a) to (f).

Control through ownership.

3. For the purposes of regulation 1(a) and regulation 2, a natural person, corporate beneficial owner, trust or other legal arrangement ultimately controls a relevant legal person through ownership if –

- (a) in relation to a company, the person, trust or legal arrangement –
 - (i) holds, directly or indirectly, more than 25% of the company's shares,
 - (ii) holds, directly or indirectly, more than 25% of the voting rights in the company, or

- (iii) holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company,
- (b) in relation to an LLP, the person, corporate beneficial owner, trust or legal arrangement holds, directly or indirectly, more than 25% of the voting rights in the conduct and management of the LLP (whether pursuant to the members' agreement or section 14(3) of the LLP Law), and
- (c) in relation to a foundation, the person, corporate beneficial owner, trust or legal arrangement -
 - (i) holds, directly or indirectly, more than 25% of the voting rights in the conduct and management of the foundation,
 - (ii) holds the right, directly or indirectly, to appoint or remove a majority of the officials of the foundation,
 - (iii) is a beneficiary in whom an interest has vested,
 - (iv) is the default recipient of the assets of the foundation in the event of its termination, or
 - (v) any other person who benefits from that foundation.

PART 2
INTERPRETATION OF PART 1

Joint interests.

4. If two or more persons each hold a share or right in a relevant legal person or other legal entity jointly, each of them is treated as holding that share or right.

Joint arrangements.

5. (1) If shares or rights in a relevant legal person or other legal entity held by a person and shares or rights in the same person or other entity held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

(2) A "joint arrangement" is an arrangement between the holders of shares (or rights) in a relevant legal person or other legal entity that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement.

(3) "Arrangement" includes—

- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
- (b) any convention, custom or practice of any kind.

(4) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

Calculating shareholdings.

6. A reference in these Regulations to holding shares in a relevant legal person or other legal entity is to holding a right to share in the capital or, as the case may be, profits of that person or other entity, and a reference to holding "more than 25% of the shares" in that relevant legal person or other legal entity is to holding a right or rights to share in more than 25% of the capital or, as the case may be, profits of that person or other entity.

Voting rights.

7. (1) A reference to the voting rights in a relevant legal person or other legal entity is to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members or officers) to vote at general meetings of the relevant legal person or other entity on all or substantially all matters.

(2) In relation to a relevant legal person or other legal entity that does not have general meetings at which matters are decided by the exercise of voting rights -

- (a) a reference to exercising voting rights in the relevant legal person or other legal entity is to be read as a reference to exercising rights in relation to a person or entity that are equivalent to those of a person entitled to exercise voting rights in a company, and
- (b) a reference to exercising more than 25% of the voting rights in the relevant legal person or legal entity is to be read as a reference to exercising the right under the constitution of the relevant legal person or entity to

block changes to the overall policy of the entity or to the terms of its constitution.

(3) In applying these Regulations, the voting rights in a relevant legal person or other legal entity are to be reduced by any rights held by the person or entity itself.

Rights to appoint or remove members of the board.

8. A reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.

Shares held by nominees.

9. A share held by a person as nominee for another is to be treated for the purposes of these Regulations as held by the other (and not by the nominee).

Rights treated as held by person who controls their exercise.

10. (1) Where a person controls a right, the right is to be treated for the purposes of these Regulations as held by that person (and not by the person who in fact holds the right, unless that person also controls it).

(2) A person "controls" a right if, by virtue of any arrangement between that person and others, the right is exercisable only—

- (a) by that person,
- (b) in accordance with that person's directions or instructions, or

- (c) with that person's consent or concurrence.

Rights exercisable only in certain circumstances, etc.

11. (1) Rights that are exercisable only in certain circumstances are to be taken into account only—

- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
- (b) when the circumstances are within the control of the person having the rights.

(2) But rights that are exercisable by an administrator, administration manager or by creditors while a relevant legal person or other legal entity is in relevant insolvency proceedings are not to be taken into account even while the person or other entity is in those proceedings.

(3) For the purposes of paragraph (2), a relevant legal person or other legal entity is in "relevant insolvency proceedings" if -

- (a) a liquidator (provisional or otherwise) has been appointed to act,
- (b) in the case of a company,
 - (i) an administration order has been made under section 374 of the Companies Law or an administration order has been made under the Protection of Investors (Administration and

Intervention) (Bailiwick of Guernsey)
Ordinance, 2008^b, or

- (ii) a delegation to creditors or a committee of creditors has been made by special resolution under section 401 of the Companies Law, or
- (c) in the case of an LLP, an administration order has been made under section 70 of the LLP Law,
- (d) in the case of a foundation, there has been a winding-up event under Part III of Schedule 2 to the Foundations Law, or
- (e) it is in proceedings under the insolvency law of another country or territory during which the entity's assets and affairs are subject to the control or supervision of a third party or creditor.

(4) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

Rights attached to shares held by way of security.

12. Rights attached to shares held by way of security provided by a person are to be treated for the purposes of these Regulations as held by that person—

- (a) where apart from the right to exercise them for the

^b Ordinance No. LII of 2008; as amended by Ordinance No. XXIX of 2016.

purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions, and

- (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests.

Interpretation.

13. (1) In these Regulations, expressions have the same meanings as in the Law, and –

"**fixed trust**" means a trust in respect of which the beneficiaries of the trust, and the interests of those beneficiaries, are certain,

"**Guernsey corporate trustee**" means a trustee which is a body corporate incorporated in Guernsey,

"**non-Guernsey corporate trustee**" means a trustee which is a body corporate incorporated outside Guernsey, and

"**States trading company**" means a States trading company for the purposes of the States Trading Companies (Bailiwick of Guernsey) Law, 2001^c.

^c Order in Council No. XII of 2001.

(2) In these Regulations "recognised stock exchange" means one of the following stock exchanges:

- (a) any regulated market within the meaning of the European Directive on Markets in Financial Instruments 2004/39/EU,
- (b) the Channel Islands Stock Exchange,
- (c) the Alternative Investment Market,
- (d) the Specialist Funds Market,
- (e) the Australian Stock Exchange,
- (f) the New York Stock Exchange,
- (g) the National Association of Securities Dealers Automated Quotation System ("the NASDAQ"),
- (h) the Cayman Islands Stock Exchange,
- (i) the Bermuda Stock Exchange,
- (j) the Hong Kong Stock Exchange,
- (k) the Johannesburg Stock Exchange, and

impose a 25% ownership threshold before a person becomes a beneficial owner of a legal person for the purposes of that Law.

These Regulations come into force on 15th August, 2017.

Lyndee Tett 26/7/17