

# GUERNSEY STATUTORY INSTRUMENT

ENTITLED

## **The Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* G.S.I. No. 102 of 2017; as amended by the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017 (G.S.I. No. 120 of 2017); Beneficial Ownership of Legal Persons (Nominee Relationships) (Amendment) Regulations, 2023 (G.S.I. No. 119 of 2023).

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## **The Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017**

### ARRANGEMENT OF ARTICLES

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(Made on 5th December, 2017.)

## **The Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017**

**THE POLICY & RESOURCES COMMITTEE**, in exercise of the powers conferred on it by sections 37, 39 and Schedule 2 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017<sup>a</sup> and all other powers enabling it in that behalf, hereby makes the following Regulations: –

### **Duty of resident agent in respect of nominees on incorporation or registration.**

**1.** (1) Subject to regulations 2 and 3, before an application is made for the incorporation or registration of a relevant legal person, the proposed first resident agent must take reasonable steps to ascertain the identity of any nominees in relation to that relevant legal person, and when such an application is made the proposed first resident agent must –

(a) provide a statement to the Registrar confirming whether or not any nominees have been identified in respect of the relevant legal person, and if they have, provide a statement to the Registrar –

(i) in respect of any nominee who is the proposed first resident agent confirming that fact, and in respect of any other nominee setting out the nominee's –

(A) name,

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<sup>a</sup> Order in Council No. VI of 2017; as amended by the Beneficial Ownership of Legal Persons (Guernsey) (Amendment) Ordinance, 2017.

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- (B) nationality (or jurisdiction of incorporation or registration in the case of a legal person),
  - (C) date of birth (or date of incorporation or registration, and registration number, in the case of a legal person), and
  - (D) principal residential address (or address of the registered office in the case of a legal person),
- (ii) identifying the nature of the nominee relationship and, in the case of any nominee relationship entered into after the coming into force of the Law, the date on which it was entered into,
- (iii) either confirming that the nominator is a beneficial owner and identifying that person, or, if that is not the case, setting out the nominator's
- - (A) name,
  - (B) nationality (or jurisdiction of incorporation or registration in the case of a legal person),

- (C) date of birth (or date of incorporation or registration, and registration number, in the case of a legal person), and
  - (D) principal residential address (or address of the registered office in the case of a legal person),
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the proposed first resident agent has taken reasonable steps to verify the information, and
- (c) serve copies of the statements on –
- (i) the relevant legal person,
  - (ii) upon request, the proposed first directors, members, general partners or foundation officials (as the case may be).

(2) For the avoidance of doubt, where two or more persons act as nominators jointly, the particulars listed at paragraph (1)(a)(iii) should be provided in respect of each of them.

**Specified nominees.**

2. Where the proposed first resident agent of a relevant legal person ascertains that there is a nominee in respect of the relevant legal person, and that nominee is a post-trade services provider listed in Schedule 1 to these Regulations (a "**specified nominee**"), regulation 1 applies save that in place of the particulars set out at regulation 1(1)(a), the particulars to be included in the statement provided to the

Registrar under that regulation in respect of that nominee are –

- (a) the nominee's name, and
- (b) confirmation of the nominee relationship and of the fact that the nominee is a specified nominee.

**Guernsey licensed fiduciaries.**

3. (1) Where the proposed first resident agent of a relevant legal person ascertains that there is a nominee in respect of the relevant legal person and either the nominee or nominator is a Guernsey licensed fiduciary (a "**fiduciary**"), regulation 1 applies save that in place of the particulars set out at regulation 1(1)(a), the particulars to be included in the statement provided to the Registrar under that regulation in respect of that nominee are –

- (a) the fiduciary's name, and
- (b) confirmation of the nominee relationship and of the fact that the fiduciary is the nominee or the nominator (as the case may be).

(2) A fiduciary must, on demand, make available to the proposed first resident agent (or any subsequent resident agent of the relevant legal person) upon request a record of the particulars, together with verifying information, set out in paragraph (3).

(3) The particulars referred to in paragraph (2) are –

- (a) information demonstrating whether the fiduciary is the nominee or the nominator,

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- (b) where the nominee is a specified nominee, that fact and the name of the specified nominee,
- (c) in respect of any party to the nominee relationship other than the fiduciary (or the specified nominee if applicable), that person's –
  - (i) name,
  - (ii) nationality (or jurisdiction of incorporation or registration in the case of a legal person),
  - (iii) date of birth (or date of incorporation or registration, and registration number, in the case of a legal person), and
  - (iv) principal residential address (or address of the registered office in the case of a legal person), and
- (d) the nature of the nominee relationship and, in the case of any nominee relationship entered into after the coming into force of the Law, the date on which it was entered into.

(4) The particulars set out in paragraph (3), together with verifying information, must be maintained by the fiduciary for the duration of the nominee relationship, and for a period of at least five years starting from the date on which that relationship ceased, and while they are so maintained the fiduciary must take reasonable steps to ensure that they remain accurate and up to date.

**Existing relevant legal persons.**

4. (1) On or before 28<sup>th</sup> February 2018 the resident agent of a relevant legal person that was incorporated or registered (as the case may be) before the coming into force of these Regulations must take reasonable steps to ascertain whether there are any nominees in respect of that relevant legal person, and take the steps set out in regulations 1 to 3 as those regulations apply in relation to that relevant legal person.

(2) On or before 28<sup>th</sup> February 2018 any fiduciary who is a nominee or nominator in respect of a relevant legal person that was incorporated or registered (as the case may be) before the coming into force of these Regulations must establish and thereafter maintain a record of the particulars set out at regulation 3(3), and must make that record available to the resident agent of the relevant legal person upon request.

**Ongoing powers and duties of resident agent in respect of nominees and nominators.**

5. (1) Sections 9 to 13 and 15 to 16 of the Law shall apply in respect of nominees and nominators, as set out in Schedule 2 to these Regulations.

(2) The resident agent of a relevant legal person must keep the required particulars of nominees in a separate part of the record of beneficial owners in respect of that relevant legal person; and references to a relevant legal person's record of beneficial owners shall, as sections 9 to 13 and 15 to 16 apply by virtue of these Regulations, be construed accordingly.

**Failure to comply with information duties.**

6. (1) A proposed first resident agent who fails to comply with regulation 1, 2 or 3, and a resident agent who fails to comply with regulation 4(1) or 5(2), or with a duty under sections 9 to 13 of the Law as those provisions apply to the resident agent by virtue of regulation s, is guilty of an offence.

(2) A person who fails to comply with a notice served under section 9 or 11 of the Law, or with a duty under section 15 or 16 of the Law, as those provisions apply to the person by virtue of regulation 5, is guilty of an offence.

(3) A fiduciary who fails to comply with regulation 3(2) or (4), or regulation 4(2), is guilty of an offence.

(4) It is a defence for a proposed first resident agent charged with an offence under paragraph (1) of failing to comply with regulation 1, 2 or 3, and for a resident agent charged with an offence under that paragraph of failing to comply with regulation 4(1) or 5(2), or with a duty under sections 9 to 13 of the Law as those provisions apply to the resident agent by virtue of regulation 5, to prove that he or she took all reasonable steps to attempt to comply with the regulation or duty.

(5) It is a defence for a person charged with an offence under paragraph (2) of failing to comply with a notice served under section 9 or 11 of the Law, or with a duty under section 15 or 16 of the Law as those provisions apply to the person by virtue of regulation s, to prove that the person took all reasonable steps to attempt to comply with the notice or duty (as the case may be).

(6) It is a defence for a fiduciary charged with an offence under paragraph (3) of failing to comply with regulation 3(2) or (4), or regulation 4(2), to prove that he or she took all reasonable steps to attempt to comply with the regulation.

**False or misleading information.**

7. (1) A person to whom paragraph (2) applies who –

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) This paragraph applies to a person on whom a notice is served under section 9 or 11 of the Law or who is subject to a duty under section 15 or 16 of the Law as those provisions apply to the person by virtue of regulation s, or who is a fiduciary to whom a request is made under regulation 3(2), and who makes any statement or provides any information or document in response to that notice or request, or in the purported discharge of that duty (as the case may be).

**Penalties.**

8. (1) A person guilty of an offence under these Regulations is liable on conviction on indictment to a fine, imprisonment for a term not exceeding 6

months, or both, and on summary conviction to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months, or both.

(2) Section 24 (Criminal liability of officers, etc.) of the Law applies in respect of offences under these Regulations as if they were offences under the Law.

**Limited partnerships with legal personality.**

9. (1) References to a resident agent in these Regulations, or in sections 9 to 13 and 15 to 16 of the Law as applied by these Regulations, should be construed in relation to a limited partnership with legal personality registered under the Limited Partnerships (Guernsey) Law, 1995<sup>b</sup> as references to the general partner of that limited partnership.

(2) In the case of a limited partnership with more than one general partner, the first proposed general partners may upon registration of that limited partnership [or any time thereafter] nominate a general partner for the purposes of these Regulations and the provisions of the Law referred to in paragraph (1) as applied by these Regulations ("**the nominated partner**"), and inform the Registrar of the nominated partner's identity, and in such a case the provisions of the Law as applied by paragraph (1) shall apply in respect of the nominated partner; and those provisions and paragraph (1) shall be construed accordingly.

(3) In the case of a limited partnership with more than one general partner, if the Registrar has not been informed upon registration of the limited partnership of the identity of a general partner nominated under paragraph (2) for the purposes of these Regulations and the provisions of the Law referred to in paragraph

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<sup>b</sup> Ordres en Conseil Vol. XXXVI, p. 264; amended by Ordres en Conseil Vol. XXXVI, p. 571; Vol. XLI, p. 158; Order in Council No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008; and G.S.I. No. 51 of 2016.

(1) as applied by these Regulations, the provisions of the Law as applied by paragraph (1) shall apply in respect of all the general partners of the partnership jointly and severally [unless and until the Registrar is informed of the identity of a general partner nominated under paragraph (2), from which time they shall apply only in respect of the nominated partner]; and those provisions and paragraph (1) shall be construed accordingly.

(4) In the case of a limited partnership with more than one general partner that was registered before the coming into force of these Regulations, the general partners may before 14<sup>th</sup> February 2018 nominate a general partner for the purposes of these Regulations ("**the nominated partner**") and inform the Registrar of the nominated partner's identity, and in such a case references in these Regulations to a resident agent should be construed as references to the nominated partner.

(5) If, in the case of a limited partnership with more than one general partner that was registered before the coming into force of these Regulations, the Registrar has not been informed by 14<sup>th</sup> February 2018 of the identity of a general partner nominated under paragraph (2) for the purposes of these Regulations, references in these Regulations to a resident agent should be construed as references to all the general partners of the partnership jointly and severally.

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**NOTE**

*Regulation 9 was revoked by the Beneficial Ownership of Legal Persons (Nominee Relationships) (Amendment) Regulations, 2023, regulation 1, with effect from 15th November, 2023 save that, in accordance with the provisions of regulation 3(2) of the 2023 Regulations, regulation 9 shall continue to have effect in respect of a limited partnership falling within regulation 3(3) of the 2023 Regulations until the limited partnership appoints a resident agent.<sup>1</sup>*

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**Interpretation.**

**10.** (1) In these Regulations words and expressions have the same

meaning as in the Law, and –

**"Guernsey licensed fiduciary"** means a person who is licensed under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000<sup>c</sup>,

**"the Law"** means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,

a **"nominator"** means a legal or natural person who has appointed, requested or instructed a nominee to act as a nominee on his behalf or on behalf of another person, and

a **"nominee"** means a legal or natural person in a nominee relationship in which that person is registered as the legal owner of a share or right in a company (or of an equivalent interest in a foundation, limited partnership or LLP) which is held or is exercisable by that person on behalf of a beneficial owner of that company, foundation, limited partnership or LLP as the case may be, whether directly or indirectly (other than as the trustee of a trust),

**"uniform scale of fines"** means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>d</sup>.

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<sup>c</sup> Order in Council No. I of 2001 amended by No. XIV of 2003; No. XVI of 2007; No. VIII of 2008; No. XXV of 2008; Ordinance No. XXXIII of 2003 (the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003) and Guernsey Statutory Instrument No. 3 of 2008 (the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008).

<sup>d</sup> Ordres en Conseil Vol. XXXI, p. 278.

(2) The Interpretation (Guernsey) Law, 1948<sup>e</sup> applies to the interpretation of these Regulations.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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**NOTES**

*The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 has since been repealed by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, section 62(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 60 of the 2020 Law.*

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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**Citation and commencement.**

**11.** These Regulations may be cited as the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017 and shall come into force on 11<sup>th</sup> December, 2017.

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<sup>e</sup> Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE 1

Regulation 2.

Specified Nominees

1. Euroclear UK & Ireland Limited.
2. Clearstream.

SCHEDULE 2

Regulation 5.

Application of sections 9 to 13 and 15 to 16 of the Law in respect of nominees and nominators

1. (1) Subject to subparagraph 2, and except as regards the phrase "record of beneficial owners", wherever they appear in sections 9 to 13 and 15 to 16 of the Law for "beneficial owner" and "beneficial owners" substitute "nominee" and "nominees" respectively.

(2) In section 9(1) of the Law, for "ascertain the identity of the beneficial owners", substitute "ascertain the identity of any nominees and their nominators,".

2. For section 10(3) of the Law, substitute –

" (3) Subject to subsections (3A) to (3C), "**required particulars**" means –

(a) in respect of any nominee who is the resident agent, a statement confirming that fact, and in respect of any other nominee, the nominee's –

(i) name,

(ii) nationality (or jurisdiction of incorporation in the case of a legal person),

(iii) date of birth (or date of incorporation and registration number in the case of a legal person), and

- (iv) principal residential address (or address of the registered office in the case of a legal person),
- (b) the nature of the nominee relationship and, in the case of any nominee relationship entered into after the coming into force of this Law, the date on which it was entered into, and
- (c) where the nominator is a beneficial owner, that fact and the name of the beneficial owner in question, or, if that is not the case, the nominator's –
  - (i) name,
  - (ii) nationality (or jurisdiction of incorporation or registration in the case of a legal person),
  - (iii) date of birth (or date of incorporation or registration, and registration number, in the case of a legal person), and
  - (iv) principal residential address (or address of the registered office in the case of a legal person).

(3A) For the avoidance of doubt, where two or more persons act as nominators jointly, the particulars listed at subsection (3)(c) should be

provided in respect of each of them.

(3B) Subject to subsection (3C), where the nominee is a specified nominee, "required particulars" in respect of that nominee means –

- (a) the nominee's name, and
- (b) confirmation of the nominee relationship, and of the fact that the nominee is a specified nominee.

(3C) Where either the nominee or nominator is a Guernsey licensed fiduciary, "**required particulars**" in respect of that nominee means –

- (a) the fiduciary's name, and
- (b) confirmation of the nominee relationship, and of the fact that the fiduciary is the nominee or the nominator (as the case may be),

and in this subsection, a "**Guernsey licensed fiduciary**" means a person who is licensed under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000."

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)\*\**

These Regulations make provision in relation to powers exercisable by, and duties owed by, the resident agents of relevant legal persons in respect of persons who hold interests in those legal persons as nominee for another. They come into force on 11<sup>th</sup> December, 2017.

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**1** Prior to its revocation, regulation 9 was amended by the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017, regulation 5, with effect from 31st December, 2017.

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**\*\*** The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending Statutory Instruments with their own Explanatory Notes.