

The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (Amendment – Enforcement etc) Ordinance, 2023

THE STATES, in pursuance of their Resolution of the 20th July, 2023^a, and in exercise of the powers conferred on them by sections 8 and 39 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Beneficial Ownership Law.

1. (1) The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 is amended as follows.

(2) In section 3, in paragraph (e) before "administration" insert "regulation, governance," and before "practice and procedures" insert "law,", and after paragraph (e), insert-

"(ea) to make to the Committees such recommendations as the Registrar thinks for improving -

(i) the Registrar's effectiveness,

(ii) the adequacy and effectiveness of the

^a Article XIX of Billet d'État No. XII of 2023.

^b Order in Council No. VI of 2017; this enactment has been amended.

functions conferred on the Registrar by this Law or any other enactment,

(iii) the adequacy and effectiveness of the provisions of this Law or any other enactment relating to the Registrar,

(eb) to advise the Committee and other authorities within the Bailiwick in relation to the nature and activities of legal persons that may be linked to Guernsey, and the extent to which such nature or activities affect or are likely to affect the Bailiwick, including but not limited to identifying, assessing and understanding the risks to the Bailiwick of, and exposing the Bailiwick to the risks of -

(i) money laundering,

(ii) bribery and corruption,

(iii) the financing of terrorism,

(iv) the financing of the proliferation of weapons of mass destruction, or

(v) any other form of financial or non-financial crime,

(ec) to co-operate and communicate with -

- (i) any Bailiwick authority or authority appearing to the Registrar to exercise, in a place in or outside Guernsey, functions corresponding to the Registrar's, and
- (ii) such other persons as the Registrar thinks fit,

for the purposes of -

- (A) assisting any Bailiwick authority in its functions (or, in the case of any authority appearing to the Registrar to exercise, in a place outside the Bailiwick, functions corresponding to the Registrar's, assisting that authority with those corresponding functions),
- (B) assisting the Registrar in the exercise of his or her functions,
- (C) assisting them or the Registrar in the prevention, detection, investigation or prosecution of money laundering, bribery and

corruption, the financing of terrorism, the financing of the proliferation of weapons of mass destruction, and any other form of financial or non-financial crime,

(D) promoting or enhancing the Register, or

(E) promoting or enhancing this Law (including any subordinate legislation made under it),

and, for the avoidance of doubt, such communication and co-operation may include obtaining information, and disclosing information for any of the purposes set out in paragraph 2(1) or 2(2) of Schedule 2."

(3) For subparagraph (1) of paragraph 2 (disclosure of information by the Registrar) of Schedule 2, substitute –

"(1) Subject to the provisions of this section, the regulatory Laws and any contrary provision in this Law or any Ordinance or subordinate legislation made under it in respect of any specific case or category of case, information obtained by the Registrar-

- (a) under this Law or any other enactment, or
- (b) in connection with the carrying out of any of the Registrar's functions,

may only be disclosed if the disclosure is -

- (i) to enable the discharge of the Registrar's functions (including, where the Registrar considers it necessary to seek advice relating to the exercise of those functions from a qualified person on any matter of law, accountancy or valuation or other matter requiring the exercise of professional skill, for the purpose of ensuring that the qualified person is properly informed on all matters on which that person's advice is sought),
- (ii) in connection with any proceedings under this Law,
- (iii) to comply with an order of a court, or
- (iv) for any purposes set out in subsection (2)."

(4) In subparagraph (2) of paragraph 2 (disclosure of information

by the Registrar) of Schedule 2 –

(a) at the beginning of each of items (c), (d), (e), and (k), insert "assisting or enabling", and

(b) after item (j) insert -

"(ja) assisting or enabling His Majesty's Procureur, His Majesty's Sheriff, His Majesty's Sergeant and the Greffier within the meaning of the Government of Alderney Law, 2004 to carry out their functions,

(jb) assisting or enabling the Director of the Economic and Financial Crime Bureau to carry out his or her functions,

(jc) assisting or enabling the Financial Intelligence Unit to carry out its functions,

(jd) assisting or enabling the Data Protection Authority to carry out its functions,

(je) assisting or enabling the Overseas Aid Commission to carry out its functions,

(jf) assisting or enabling any person with functions relating to the Social Investment Fund to carry out those functions,

(jg) assessing, or assisting another authority within the Bailiwick to assess the risks of money laundering, bribery and corruption, the financing of terrorism, the financing of the proliferation of weapons of mass destruction and any other form of financial or non-financial crime,"

(c) for items (l) to (n) substitute -

"(l) assisting or enabling any of the Registrars to carry out their functions", and

(d) after item (1), insert -

"(m) promoting the public interest or the reputation of the Bailiwick as a finance centre."

(5) After subparagraph (2) insert -

"(2A) For the purposes of subparagraph (2)(l), the Registrars are -

(a) the Registrar of Companies, including in his or her capacity as the Registrar of Foundations and in his or her capacity under the Limited Partnerships (Guernsey) Law, 1995,

- (b) the Registrar of Limited Liability Partnerships,
- (c) the Registrar for the purposes of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (d) the Registrar for the purposes of the Companies (Alderney) Law, 1994,
- (e) the Registrar of Charities and other Non Profit Organisations appointed under the Charities etc. (Guernsey and Alderney) Ordinance, 2021, and
- (f) the Registrar of Non Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010."

(6) After subparagraph (5) of paragraph 2 of Schedule 2 insert -

"(6) Any person to whom information may be disclosed for a purpose within subparagraph (2) may disclose information to the Registrar for the purposes of -

- (a) ensuring that the Registrar is properly informed on all matters in respect of which information from the Registrar is being requested or provided, or

(b) enabling the carrying out of the Registrar's functions.

(7) Nothing in this paragraph prejudices any power to disclose which exists apart from this paragraph.

(8) In this paragraph -

(a) "**Overseas Aid Commission**" means the body responsible for distributing funds voted by the States for aid and development overseas (howsoever titled),

(b) "**information**" includes documents, and

(c) "**Social Investment Fund**" means the company incorporated by the States to provide support and guidance to charitable organisations and others."

(7) In Schedule 2, in subparagraphs (1) and (2) of paragraph 4 (power of Registrar to request and obtain information and documents) delete "other than a regulated person or a regulated relevant legal person" wherever it appears.

(8) In Schedule 2, in subparagraph (7) of paragraph 4 delete "state the grounds of the Registrar's decision to serve the notice and", and after paragraph 4 insert -

"Site visits.

4A. (1) The Registrar may, at such times, intervals and places as the Registrar deems fit, and -

- (a) in exercise of the performance of the Registrar's functions, or
- (b) if it is considered desirable to do so by the Registrar for the protection of the interests of the public or any class thereof, or any particular persons, or the reputation of the Bailiwick as a finance centre,

make arrangements with any non-regulated relevant legal person for the making, in such manner and for such purposes as may be mutually agreed, of site visits to the offices of the non-regulated relevant legal person.

(2) Site visits may take place at any or all of the premises where the activities of the non-regulated relevant legal person are conducted or records are maintained by or on behalf of the non-regulated relevant legal person.

(3) Where a non-regulated relevant legal person fails to cooperate with the Registrar when exercising or attempting to exercise functions for the purposes of this paragraph (whether by declining to reach agreement as to the making, timing or scope of a site visit, or by failing to provide any information or document or to answer any question, or otherwise), that failure may be taken into account by the Registrar in deciding whether and in what manner to exercise functions arising otherwise than under this paragraph.

Request for information during site visits.

4B. (1) If the Registrar makes a site visit under paragraph 4A the Registrar may require the officers, servants and agents of the non-regulated relevant legal person -

- (a) to produce for examination (whether at the premises of the non-regulated relevant legal person or at the offices of the Registrar) any documents held by them,
- (b) to produce copies of any documents in a legible form for the Registrar to take away,
- (c) to answer questions for the purpose of verifying compliance with this Law.

Power of Bailiff to grant a warrant.

4C. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting -

- (a) that a request or requirement under paragraph 4 or 4B has not been complied with,
- (b) that any information or document furnished pursuant to such a request or requirement is false, misleading, inaccurate or incomplete,
- (c) that if such a request or requirement were made

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- (i) it would not be complied with,
- (ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or
- (iii) the making of the request or requirement or any attempt to enforce it might significantly prejudice any inquiry to which the request or requirement would relate,

the Bailiff may grant a warrant.

(2) A warrant under this paragraph authorises any police officer, together with any other person named or described in the warrant (including, without limitation, the Registrar or any person authorised by the Registrar under paragraph 4D) -

- (a) to enter any premises specified in the warrant using such force as may be reasonably necessary,
- (b) to search the premises and, in relation to any documents or other information appearing to be relevant for the purpose of establishing whether a non-regulated relevant legal person

has complied with any of the provisions of or under this Law, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents or other information,

(d) to require any person named in, or of a class or description specified in, the warrant -

(i) to answer any questions (asked pursuant to the exercise of the Registrar's functions) relevant to establishing whether a non-regulated relevant legal person has complied with any of the provisions of or under this Law,

(ii) to state to the best of that person's knowledge and belief the whereabouts of any documents or other information described in item (b),

(iii) to make an explanation of any such documents or other information.

(3) A warrant under this section ceases to be valid on the

expiration of 28 days immediately following the day on which it was issued.

(4) Any documents or other information of which possession is taken under the powers conferred by a warrant under this paragraph may be retained-

- (a) for a period of four months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents or other information are relevant are commenced against any person, until the conclusion of those proceedings.

Exercise of the Registrar's powers.

4D. The Registrar's powers under paragraphs 4 and 4A to 4C may also be exercised by any person who has been authorised by the Registrar to do so.

Lien.

4E. Where a person claims a lien on a document, its production pursuant to a request or requirement under this Schedule or by or under a warrant granted under paragraph 4C is without prejudice to that person's lien.

Failure to comply with request or requirement under paragraphs 4 to 4D.

4F. Any person who, without reasonable excuse, obstructs or fails to comply with a request or requirement of a person exercising or purporting to exercise any power conferred by paragraphs 4 to 4D is guilty of an offence

and liable to a civil penalty."

(9) In Schedule 2, after paragraph 6 insert –

"Co-operation with foreign authorities.

6A. (1) The Registrar shall take such steps as he or she considers appropriate to co-operate with any person or body -

(a) who or which appears to the Registrar to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the Registrar, for the purpose of the exercise of such functions, or

(b) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings,

and co-operation under this paragraph may, without limitation, take the form of sharing or gathering any information which the Registrar may lawfully disclose or obtain.

(2) For the avoidance of doubt, the duty to co-operate imposed under subparagraph (1) is without prejudice to any other duties, and any powers, of the Registrar, including (but not limited to) powers to disclose or obtain information."

Citation and commencement.

2. This Ordinance may be cited as the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (Amendment – Enforcement etc) Ordinance, 2023, and shall come into force on the 29th day of July, 2023.