

**Beneficial Ownership - Action Plan 2019
Guernsey**

Summary

- 1) This paper sets out the 2019 Beneficial Ownership Action Plan for Guernsey. Legal entities incorporated in Guernsey¹ are already required to obtain, hold and supply to a central register adequate, accurate and current information on their beneficial ownership. This action plan details the steps Guernsey will take to further develop the accessibility and transparency of our central register of that beneficial ownership information (“BOI register”).

- 2) Guernsey has committed to a beneficial ownership strategy that leads to the implementation of a register of beneficial ownership of companies on an essentially equivalent basis to the fourth Anti-Money Laundering Directive: 2015/849 as amended by the fifth Anti-Money Laundering Directive: 2018/843 (‘The EU Directive’). This means a register which is:
 - a) interconnected with the EU Member States’ registers and accessible to designated competent authorities and Financial Intelligence Units (FIUs);
 - b) accessible to ‘obliged entities’ such as those defined by the EU Directive² for due diligence purposes;
 - c) open to the public in a manner consistent with the principles of the EU Directive.

- 3) This voluntary commitment will be delivered through a stepped approach. This Action Plan sets out the milestones as Guernsey further strengthens the transparency of its register of beneficial ownership over a reasonable timeframe as global norms in these standards develop set out below:
 - a) During 2021, to work collaboratively with the EU on the interconnection of Guernsey’s central register of the beneficial ownership of companies with the registers in the EU. This is part of existing political commitments made to the EU to ensure that, on a reciprocal basis, legal and beneficial ownership information can be shared with EU designated competent authorities and Financial Intelligence Units (FIUs). The subsequent stages

¹ Companies, Limited Liability Partnerships and Foundations.

² Obligated Entities are defined in Article 2 of the EU Directive and include, *inter alia*: credit institutions, financial institutions and certain professional activities such as auditors, accountants, legal services, estate agents, company service providers. In Guernsey, the equivalent to obliged entities is: financial service businesses (‘FSBs’), non-regulated financial services businesses (‘NRFBSs’), and entities engaged in prescribed businesses.

will follow in sequence and rely on the same infrastructure developed to meet this commitment.

- b) To enable access to our central register of beneficial ownership of companies to obliged entities for due diligence purposes as soon as reasonably practicable following this interconnection referenced in (a) above and, in any event, before the end of 2022.
 - c) The EU is due to publish an Implementation Review of the EU Directive in January 2022. Within 12 months of that publication, the government of Guernsey will bring forward to its parliament legislative proposals to establish public access to beneficial ownership data of companies held on a central register, in line with the principles of the EU Directive.
- 4) The staged approach will be informed by global best practice and will benefit from progress on implementation of the EU Directive by EU Member States. It will enable Guernsey to review global developments in respect of public registers, particularly in respect of registers of beneficial ownership of legal entities. Our own approach is timed both to enable us to consider the EU's Implementation Review report (due January 2022, as above) and to keep pace with global developments.
 - 5) This will assist Guernsey in its ongoing engagement as part of our 'good neighbour' policy, including with the EU's Code of Conduct Group (Business Taxation) and will help facilitate the Island's future partnership with the EU following the UK's exit³.

A stepped approach

- 6) Guernsey has a beneficial ownership strategy that will lead to a public register of the beneficial ownership of companies and is committed to adopting legislation that is in line with the principles of the EU Directive (in essence it will have the equivalent effect to Article 30 of the EU Directive). The text of Article 30 is set out in Appendix 1 to this Action Plan.
- 7) Guernsey will further develop its own register of the beneficial ownership of companies in a stepped approach, which reflects the EU Directive and the steps taken by EU Member States. The steps to be taken by Guernsey reflect the prevailing global norms of developing clear national action plans, including by those countries and subnational governments participating in the Open Government Partnership on anti-corruption. The milestones in this action plan enable Guernsey to build on its political pre-existing commitments on this policy area made to the UK and G20 in 2016 and to the EU in 2018.
- 8) Guernsey agrees with the EU that there is a need for accurate and accessible beneficial ownership information as part of international tax and anti-money laundering standards. The EU Directive, which applies from January 2020, is ambitious and exceeds current international standards. The EU Directive is yet to be implemented by Member States. The EU's wider strategy is to improve access to beneficial

³ The UK's EU political declaration on its future partnership
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759021/25_November_Political_Declaration_setting_out_the_framework_for_the_future_relationship_between_the_European_Union_and_the_United_Kingdom_.pdf

ownership information through: (i) the interconnection of Member State BOI registers; and (ii) public access under defined circumstances.

- 9) Guernsey is already committed to ensuring that companies created in the island are subject to enhanced transparency requirements, which mean that verified and up-to-date company beneficial ownership information is available and accessible in a timely, accurate and electronically searchable manner. In 2018, as part of the work with the EU Code of Conduct Group (Business Taxation) on tax cooperation and to implement legal economic substance requirements, Guernsey agreed with the EU to implement enhanced access to company beneficial ownership information in a staged manner to ensure: (i) the greatest quality and usability of the data; (ii) the effectiveness of access agreements; and (iii) through the participation in the interconnection of EU Member State BOI registers.⁴

The Milestones

- 10) This Action Plan will be delivered as set out below. The sequencing is consistent with the EU's approach, with milestones which reflect the fact that Guernsey is a third country. Guernsey requires similar lead-in times that the EU Member States have benefitted from in order to make the necessary technical and legislative changes. The approach meets Guernsey's desire to keep pace with international developments, including EU Member States' progress in implementing the EU Directive.
- 11) Step 1 – Interconnected Registers
- a) **In 2019/2020**, the European Commission will draft the technical specifications for the EU interconnection platform for registers of beneficial ownership. The government of Guernsey will liaise with the Commission to ensure that it fully understands the legal and technical basis on which the EU Member States will share beneficial ownership information held in their BOI registers with designated competent authorities and FIUs. This will ensure that the Guernsey register will be able to connect in the manner envisaged.
- b) The government of Guernsey will develop the necessary technical and legal infrastructure to enable:
- i. the interconnection of Guernsey's BOI registers with EU Member State registers;
 - ii. access to beneficial ownership information held on Guernsey's BOI registers without any restriction for designated competent authorities and FIUs.
- c) **During 2021**, the government of Guernsey will work collaboratively with the EU on the interconnection of Guernsey's central register of the beneficial ownership of companies with the registers in the EU. This is part of existing political commitments made to the EU⁵ to ensure that, on a reciprocal basis, legal and beneficial ownership information can be shared with EU designated competent authorities and Financial

⁴ EU Code of Conduct Group (Business taxation) scoping paper for 2.2 jurisdiction

https://www.consilium.europa.eu/register/en/content/out?&typ=ENTRY&i=ADV&DOC_ID=ST-10421-2018-INIT

⁵ Made to the EU's Code of Conduct Group (Business Taxation) in 2018 as part of its review of cooperation on tax matters.

Intelligence Units (FIUs). The subsequent stages will follow in sequence and rely on the same infrastructure developed to meet this commitment.

d) **This step is essentially equivalent to Article 30 paragraph 5(a) of the EU Directive.**

12) Step 2 – Access for Obligated Entities for customer due diligence purposes

a) The government of Guernsey will enable access to our central register of beneficial ownership of companies to obliged entities for due diligence purposes as soon as reasonably practicable following the interconnection referenced in Step 1 (above) and, in any event, **before the end of 2022.**

b) **This step is essentially equivalent to Article 30 paragraph 5(b) of the EU Directive.**

13) Step 3 – Public Access

a) The beneficial ownership information held on Guernsey’s BOI register will be made available to other persons or organisations, including any member of the general public, under similar conditions to Article 30 of the EU Directive.

b) The register could be made available to those with a legitimate interest, to be defined by domestic law as soon as reasonably practicable following establishment of the interconnected register (Step 1) and access for obliged entities (Step 2).

c) The EU is due to publish an Implementation Review of the EU Directive in January 2022. **Within 12 months of that publication,** the government of Guernsey will bring forward to its parliament detailed proposals to establish public access to beneficial ownership data of companies held on a central register, in line with the principles of the EU Directive. The report will cover, *inter alia*:

- i. lessons learned and a review of effectiveness from the implementation of steps 1 and 2;
- ii. global developments in respect of public registers, including progress in the OECD and FATF on the G5/G20 initiative ;
- iii. progress on the implementation of the EU Directive by each EU Member State as set out in the Commission’s Implementation Review report, due by 11 January 2022;
- iv. global best practice including the progress being made in EU Member States to introduce processes to verify, vet and regulate trust and company service providers and the submission of beneficial ownership information;
- v. experience within the EU, in Guernsey and elsewhere of ensuring consistency between public access to the registers and applicable data protection law⁶; and
- vi. progress in negotiations between the UK and the EU on economic and security partnerships following the UK’s withdrawal from the EU⁷.

⁶ The Islands have adopted essentially equivalent legislation to the EU GDPR and Law Enforcement Directive. They are recognised by the European Commission as “adequate” third countries for data protection purposes.

⁷ The draft EU/UK Political Declaration from November 2018 states that “the Parties agree to go beyond FATF standards with regard to beneficial ownership transparency”: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759021/

- d) The report to Guernsey's parliament will include legislative proposals to establish public access to categories⁸ of beneficial ownership information held in Guernsey's central BOI register. The timetable for bringing this legislation into force will be determined by the global best practice at the time. The development of this best practice will include improvement of verification arrangements in the EU and elsewhere. Guernsey stands ready to assist those countries develop verification arrangements in line with our own standards.
- e) **This step is essentially equivalent to Article 30 paragraph 5(c) of the EU Directive.**

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[25 November Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom .pdf](#)

⁸ We envisage these categories being the same guaranteed minimum information as specified in Article 30 of AMLD V (i.e. at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held).

Appendix 1 – Background – Guernsey’s constitutional relationship with the Crown and Guernsey’s existing standards and commitments relating to beneficial ownership of companies

1. Guernsey is a self-governing dependency of the Crown, with its own elected legislature, administrative, fiscal and legal system and its own courts of law. It is not represented in the United Kingdom (‘UK’) Parliament.
2. Guernsey is not, and never has been, part of the UK and has never been a colony of the UK. The constitutional relationship between Guernsey and the UK is through the Crown, which, acting through the Privy Council, is ultimately responsible for ensuring good governance. This differs from the constitutional relationship that the UK has with its Overseas Territories.
3. The Island’s legislature is responsible for enacting domestic legislation, with principal legislation requiring Royal Assent or sanction. Fundamental to the relationship between Guernsey and the UK is the mutual recognition that the UK Parliament does not legislate for the Island on domestic matters without their prior consent.
4. Guernsey is not part of the EU, except to the limited extent provided for in Protocol 3 of the UK’s Treaty of Accession (essentially customs and agricultural goods). For the purposes of tax cooperation and fighting financial crime, Guernsey is a third country to the EU.
5. Guernsey has a long, independently verified, track record and ongoing commitment to be at the forefront of transparency; international cooperation, including tax cooperation and the exchange of tax information; fighting financial crime, money laundering and terrorist financing; and regulation in the interests of national and international security.
6. Guernsey is already committed to:
 - i. compliance with Financial Action Task Force (FATF) Recommendations 24 and 25 on transparency and beneficial ownership of legal persons and legal arrangements;
 - ii. develop and implement a new global standard for the automatic exchange of beneficial ownership information, an initiative which was launched by the G5 countries in April 2016 and which is being taken forward by the OECD⁹ and FATF at the request of the G20;
 - iii. work with the EU to ensure, on a reciprocal basis, that legal and beneficial ownership information in relation to bodies corporate is able to be appropriately shared with EU tax and law enforcement authorities (a political commitment made in December 2018). This is part of the EU Directive.
 - iv. promoting and assisting in the development of international policy and standards in regard to registers of beneficial ownership. This includes responding to shifts in prevailing best practice and new global norms.

⁹ In March 2019 the OECD published “*A Beneficial Ownership Implementation Toolkit*” which recognised the ongoing debate about publicly accessible registers.

7. In January 2011 the International Monetary Fund published an evaluation report which recognised and commended Guernsey's high standards of financial regulation, supervision and stability along with their robust criminal justice frameworks.
8. In 2016 Guernsey was assessed by Moneyval and received excellent ratings of compliant and largely compliant in 48 standards. Moneyval reported that Guernsey had substantially strengthened the anti-money laundering and combating the funding of terrorism preventive measures to which its financial institutions are subject and that Guernsey has in place a range of measures to facilitate forms of international cooperation.
9. Guernsey's standards of tax transparency are peer-reviewed with the OECD Global Forum and meet required international standards. In 2018 Guernsey received an overall rating of 'compliant'.
10. Guernsey has already demonstrated global leadership in transparency of beneficial ownership, having developed and implemented beneficial ownership action plans in 2013 and 2016. Those earlier action plans recognised the need for accurate, verified, up-to-date and accessible information on beneficial ownership of companies held within a central register. This is an integral part of the Island's domestic and good neighbour policy approaches to: transparency, tax cooperation; the combatting of financial crime and national security.
11. By 2017, Guernsey had established a register of beneficial ownership of legal persons and had put in place arrangements to share information with the UK competent authorities under an agreed standard.¹⁰ These arrangements are reviewed by the UK Government on an annual basis and this report is laid before the UK Parliament.¹¹
12. The steps set out in the Action Plan reflect the progress and commitments already made, as well as international developments including the national action plans of the G20 members and those participating in the Open Government Partnership with a focus on strengthening anti-corruption frameworks.

¹⁰ The Exchange of Notes between the UK Government and Guernsey:

<https://www.gov.uk/government/publications/uk-beneficial-ownership-information-sharing-guernsey>

¹¹ The six-month review of the implementation of the Exchange of Notes on Beneficial Ownership between the United Kingdom, Crown Dependencies and relevant Overseas Territories:

<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2018-05-01/HLWS641/>

Appendix 2 - The EU's fifth Anti-Money Laundering Directive

The consolidated fourth Anti-Money Laundering Directive (2015/849) as amended by the fifth Anti-Money Laundering Directive (2018/8435)

Article 30

1. *Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. Member States shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions.*

Member States shall require that the beneficial owners of corporate or other legal entities, including through shares, voting rights, ownership interest, bearer shareholdings or control via other means, provide those entities with all the information necessary for the corporate or other legal entity to comply with the requirements in the first subparagraph

2. *Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.*
3. *Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council (1), or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.*
4. *Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current, and shall put in place mechanisms to this effect. Such mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In the case of reported discrepancies, Member States shall ensure that appropriate actions be taken to resolve the discrepancies in a timely manner and, if appropriate, a specific mention be included in the central register in the meantime.*
5. *Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:*

(a) competent authorities and FIUs, without any restriction;

(b) obliged entities¹², within the framework of customer due diligence in accordance with Chapter II;

(c) any member of the general public.

The persons referred to in point (c) shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held. Member States may, under conditions to be

¹² Obligated Entities are defined in Article 2 of the EU Directive and include, *inter alia*: credit institutions, financial institutions and certain professional activities such as auditors, accountants, legal services, estate agents, company service providers.

determined in national law, provide for access to additional information enabling the identification of the beneficial owner. That additional information shall include at least the date of birth or contact details in accordance with data protection rules.

5a. Member States may choose to make the information held in their national registers referred to in paragraph 3 available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.

- 6. Member States shall ensure that competent authorities and FIUs have timely and unrestricted access to all information held in the central register referred to in paragraph 3 without alerting the entity concerned. Member States shall also allow timely access by obliged entities when taking customer due diligence measures in accordance with Chapter II.*
- 7. Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of other Member States in a timely manner and free of charge.*
- 8. Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.*
- 9. In exceptional circumstances to be laid down in national law, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, Member States may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. Member States shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. A Member State that has granted exemptions shall publish annual statistical data on the number of exemptions granted and reasons stated and report the data to the Commission.*

Exemptions granted pursuant to the first subparagraph of this paragraph shall not apply to credit institutions and financial institutions, or to the obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.

- 10. Member States shall ensure that the central registers referred to in paragraph 3 of this Article are interconnected via the European Central Platform established by Article 22(1) of Directive (EU) 2017/1132 of the European Parliament and of the Council (*). The connection of the Member States' central registers to the platform shall be set up in accordance with the technical specifications and procedures established by implementing acts adopted by the Commission in accordance with Article 24 of Directive (EU) 2017/1132 and with Article 31a of this Directive.*

Member States shall ensure that the information referred to in paragraph 1 of this Article is available through the system of interconnection of registers established by Article 22(1) of Directive (EU) 2017/1132, in accordance with Member States' national laws implementing paragraphs 5, 5a and 6 of this Article.

The information referred to in paragraph 1 shall be available through the national registers and through the system of interconnection of registers for at least five years and no more than 10 years after the corporate or other legal entity has been struck off from the register. Member States shall cooperate among themselves and with the Commission in order to implement the different types of access in accordance with this Article.

(*) Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).';