

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

**THE BENEFICIAL OWNERSHIP (MISCELLANEOUS AMENDMENTS) (GUERNSEY) LAW,
2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Beneficial Ownership (Miscellaneous Amendments) (Guernsey) Law, 2022", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

EXPLANATORY MEMORANDUM

This Law amends the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 ("the Beneficial Ownership Law") in several ways.

Section 1 contains amendments that enlarge the functions of the Registrar of Beneficial Ownership ("the Registrar") to include ensuring the accuracy of information relating to nominee relationships, specify the type of beneficial ownership information that must be provided in the case of corporate beneficial owners, remove the reference to a legal person having no beneficial owners, and specify the factors that the Registrar should take into account when deciding whether to make a resident agent disqualification order.

The amendments at section 1 also revise the definition of "relevant legal person", introduce prohibitions in relation to the use of bearer securities, and give the Revenue Service the power to inspect the beneficial ownership register.

In addition, the amendments at section 1 extend the information gathering powers of the Registrar to deal with the assessment of risk, and to cover the situation where a legal person is in administration or liquidation, to enable information to be obtained from a liquidator, administrator or equivalent person.

Section 2 makes amendments to the Foundations (Guernsey) Law, 2012 to ensure consistency with other commercial legislation, in particular in respect of the resignation of the resident agent.

Section 3 makes amendments to the Companies (Guernsey) Law, 2008 to extend the

information gathering powers of the Registrar of Companies to deal with the assessment of risk, in line with the corresponding amendment to the Beneficial Ownership Law.

Section 4 makes amendments to the Limited Partnerships (Guernsey) Law, 1995 to ensure consistency with other commercial legislation with regard to the functions and powers of the Greffier.

Sections 5 and 6 deal respectively with citation and commencement.

PROJET DE LOI

ENTITLED

The Beneficial Ownership (Miscellaneous Amendments) (Guernsey) Law, 2022

THE STATES, in pursuance of their Resolutions of the 16th day of February, 2017^a and the 4th day of June, 2020^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendment of the Beneficial Ownership Law.

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

(2) In section 3 -

(a) at the end of paragraph (g)(iii) omit "and",

(b) at the end of paragraph (h)(ii) for "." substitute ", and",
and

^a Article IV of Billet d'État No. V of 2017.

^b Article X of Billet d'État No. XI of 2020.

^c Order in Council No. VI of 2017. This enactment has been amended.

(c) after paragraph (h) insert -

"(i) to ensure the accuracy of information relating to nominee relationships in respect of non-regulated relevant legal persons."

(3) After section 10(3), insert -

"(3A) The "**required particulars**" in any other case means the beneficial owner's -

(a) name,

(b) date of incorporation, and

(c) place of incorporation."

(4) Section 10(5) is repealed.

(5) After section 26(1), insert -

"(1A) In deciding whether or not to make a resident agent disqualification order under this section and, if so, the terms thereof, the Registrar must take into consideration the following factors -

(a) whether the contravention was brought to the attention of the Registrar by the person concerned,

- (b) the seriousness of the contravention,
- (c) whether or not the contravention was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of publishing a statement,
- (f) the action taken by the Registrar under this section in other cases, and
- (g) any other matter the Registrar considers relevant."

(6) After section 37, insert -

"Bearer securities.

37A. (1) Without prejudice to section 77(e) of the Companies Law, an application to register or incorporate a company, foundation, limited liability partnership or other legal person in Guernsey (including an application to register or incorporate in Guernsey a legal person presently registered or incorporated outside Guernsey) must be refused if its constitutive documents empower it to issue bearer securities.

(2) For the purposes of this section, "**bearer securities**" means shares, warrants and any other form of instrument entitling the holder to subscribe for or convert their interest into shares where, in each case, ownership of such shares, warrants or instruments and the right to exercise the rights attaching thereto is determined solely by possession of the physical certificate or instrument relating thereto."

(7) For section 41(3), substitute -

"(3) In this Law, a "**regulated relevant legal person**" means a relevant legal person which -

(a) is administered, controlled or operated by a regulated person in the course of his or her activities, or by a person acting in the course of his or her duties as an employee of a regulated person, or

(b) otherwise has a resident agent which is a regulated person or which is a person acting in the course of his or her duties as an employee of a regulated person,

and a "**non-regulated relevant legal person**" means a relevant legal person which is not a regulated relevant legal person (including, for the avoidance of doubt, a relevant legal person which was, but is no longer, a regulated relevant legal person)."

(8) In paragraph 3 of Schedule 2, for the paragraph heading substitute "Power of Commission, Director of Revenue Service and Economic Crime Division to inspect Register.", and in paragraph (1) for "the Commission and the Economic Crime Division", substitute "the Commission, the Director of the Revenue Service and the Economic Crime Division".

(9) In paragraph 4(1) of Schedule 2, for "may reasonably require" to the end, substitute -

"may reasonably require -

- (a) for the performance of his or her functions, or
- (b) to enable him or her (of his or her own volition or at the request of the Committee or any authority within the Bailiwick with functions in respect of financial crime) to obtain information relating to legal persons so that he or she can identify, assess and understand risks to the Bailiwick of money laundering, terrorist financing and all other forms of financial crime."

(10) In paragraph 4(2) of Schedule 2 -

- (a) for "on a person other than a regulated person or a regulated relevant legal person" substitute "on an administrator, provisional liquidator or liquidator appointed in respect of a company, on an equivalent

person appointed in respect of another legal person,
or on any other person other than a regulated person
or a regulated relevant legal person", and

(b) for "reasonably required" to the end, substitute -

"reasonably required by the Registrar -

(i) for the performance of his or her
functions, or

(ii) to enable him or her (of his or her
own volition or at the request of the
Committee or any authority within
the Bailiwick with functions in respect
of financial crime) to obtain
information relating to legal persons
so that he or she can identify, assess
and understand risks to the Bailiwick
of money laundering, terrorist
financing and all other forms of
financial crime."

Amendment of the Foundations Law.

2. (1) Schedule 1A to the Foundations (Guernsey) Law, 2012^d is
amended as follows.

^d Order in Council No. I of 2013. This enactment has been amended.

(2) For paragraph 2(1)(b) substitute -

"(b) in the case of a resident agent who is a corporate services provider -

(i) its corporate or firm name, and

(ii) its address.".

(3) In paragraph 4 -

(a) in subparagraph (3) delete from "; and" up to and including "offence",

(b) in subparagraph (4), after "the Registrar may" insert ", if he or she thinks it proportionate and appropriate in all the circumstances,", and

(c) after subparagraph (5), insert -

"(5A) A resident agent who fails to comply with the duty under subparagraph (3), and a foundation which fails to comply with or give effect to restrictions placed on rights attaching to a beneficiary's interest under subparagraph (4), is guilty of an offence.".

(4) After paragraph 4, insert -

"Resignation of resident agent.

4A. (1) A resident agent of a foundation may give notice stating that he or she intends to resign from his or her position as resident agent.

(2) A notice under subsection (1) shall be served on -

(a) the Registrar,

(b) the Registrar of Beneficial Ownership,

(c) each foundation official at -

(i) his or her service address, and

(ii) his or her usual residential address
where that address is different from
his or her service address, and

(d) the foundation.

(3) The notice must state -

(a) the foundation's name and incorporation
number,

(b) the date from which the resignation of the
resident agent shall be effective, and

(c) if regulations made by the Committee under

paragraph 30 of Schedule 2 so provide, that the foundation may be struck off the Register if it does not appoint a new resident agent.

(4) If regulations made by the Committee under paragraph 30 of Schedule 2 so provide, a foundation which does not appoint a new replacement agent on the resignation of the resident agent becoming effective following a notice under this section is liable to be struck off the Register."

Amendment of the Companies Law.

3. In the Companies (Guernsey) Law, 2008^e, after section 500(1), insert -

"(1A) The Registrar may also, without limitation, exercise the power at subsection (1)(a) for the purpose of enabling him or her (of his or her own volition or at the request of the Policy & Resources Committee or any authority within the Bailiwick with functions in respect of financial crime) to obtain information relating to companies so that he or she can identify, assess and understand risks to the Bailiwick of money laundering, terrorist financing and all other forms of financial crime."

Amendment of the Limited Partnerships Law.

4. (1) The Limited Partnerships (Guernsey) Law, 1995^f is amended as follows.

^e Order in Council No. VIII of 2008. This enactment has been amended.

^f Ordres en Conseil Vol. XXXVI, p. 264. This enactment has been amended.

(2) In Part V, before section 33 insert -

"Functions of Greffier.

32I. (1) The functions of the Greffier as regards limited partnerships are -

(a) to establish and maintain the Register, and otherwise to exercise the powers and undertake the duties conferred on him or her by this Law,

(b) to communicate with -

(i) any authority appearing to the Greffier to exercise, in a place outside Guernsey, functions corresponding to his or hers, and

(ii) such other persons as he or she thinks fit,

for the purposes of assisting them and promoting and enhancing the Register,

(c) to exercise, subject to the terms and conditions of his or her appointment, such other functions as may be assigned or transferred to him or

her by or under this Law or any other enactment.

(2) Subsection (1)(b) does not authorise the Greffier to disclose confidential information.

Ancillary powers of Greffier.

32J. (1) The Greffier has power to do anything that appears to him or her to be necessary or expedient for the purpose of exercising his or her functions under this Law including, without limitation, power -

- (a) to request the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as he or she thinks fit,
- (b) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents, and
- (c) to request advice from Her Majesty's Procureur in relation to the exercise of any of his or her functions.

(2) The Greffier may also, without limitation, exercise the power at subsection (1)(a) for the purpose of enabling him or her (of his or her own volition or at the request of the Policy & Resources Committee or

any authority within the Bailiwick with functions in respect of financial crime) to obtain information relating to limited partnerships so that he or she can identify, assess and understand risks to the Bailiwick of money laundering, terrorist financing and all other forms of financial crime.

Disclosure and publication of confidential information.

32K. Any confidential information held by the Greffier shall not be disclosed or published by him or her except in accordance with the provisions of this Law, any other enactment or any rule of law.

Disclosure and publication of non-confidential information.

32L. Any information held by the Greffier, other than confidential information, may be disclosed or published by him or her —

- (a) in accordance with the provisions of this Law, any other enactment or any rule of law, or
- (b) if no such provision is made, in such manner, subject to such conditions and for such purposes as he or she thinks fit."

(3) In section 41 (interpretation), in subsection (1) after the definition of "**the Committee**", insert -

""**confidential information**" means a person's residential address, and any other information prescribed for this purpose in regulations made by the Committee under section 43,".

Citation.

5. This Law may be cited as the Beneficial Ownership (Miscellaneous Amendments) (Guernsey) Law, 2022.

Commencement.

6. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.