

**CONSULTATION PAPER ON AMENDMENTS TO LEGISLATION
ADMINISTERED BY THE GUERNSEY REGISTRY
2 DECEMBER 2022**

About this consultation

This consultation paper is seeking views from stakeholders on proposed changes to several pieces of legislation administered by the Guernsey Registry. It is issued by the Guernsey Registry (“Registry”) on behalf of the States of Guernsey Committee for Economic Development (the “Committee”).

A series of streamlining changes to legislation is proposed to introduce more clarity, simplicity and uniformity in the oversight of legal persons administered by the Registry. In practice, the changes are aimed at providing greater accuracy and consistency in the information available to the Registrar, creating operational efficiencies at the Registry and contributing to Guernsey’s continued dedication as a jurisdiction committed to transparency and to meeting international standards. The proposals also seek to further enhance and harmonise the Registry’s enforcement measures, and more widely, seek to achieve greater consistency in the information gathering and sharing powers of the Bailiwick of Guernsey (“Bailiwick”) authorities.

This consultation paper seeks views on the proposed changes.

How to submit comments to the consultation

If you have any comments you wish to submit to this consultation, these can be made by emailing a response to economicdevelopment@gov.gg by the close of business on **23 January 2023**.

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Background

1. All Guernsey companies, limited partnerships, limited liability partnerships (“LLPs”) and foundations (“entities”) must be registered at the Registry. The Registrar of Companies (“Registrar”) administers several Offices¹ and maintains a suite of registers² (“registers”) in accordance with statutory responsibilities. The Registrar has a vital role in enabling, encouraging, and providing oversight of, compliance with local and international legal frameworks and standards. In recent years, the Registry’s responsibilities have increased significantly, with its varied functions and powers spanning across several pieces of legislation.
2. The time is therefore right for a review of the legislation that the Registrar administers with respect to legal persons namely, the Companies (Guernsey) Law, 2008 (“Companies Law”), the Limited Partnerships (Guernsey) Law, 1995 (“Limited Partnerships Law”), the Limited Liability Partnerships (Guernsey) Law, 2013 (“LLP Law”) and the Foundations (Guernsey) Law, 2012 (“Foundations Law”) (together “the Commercial Laws”).
3. The aim of the review is to achieve consistency in both legislation and practice, address points that have come to the Registry’s attention and apply recognised good practice. A series of streamlining changes³ to the Commercial Laws are therefore proposed below to introduce more clarity, simplicity and uniformity in the oversight of entities administered by the Registry, further enhance and harmonise the application of the Registry’s enforcement measures and introduce greater operational efficiencies in practice. In addition, further harmonisation of information gathering and sharing powers across the Bailiwick’s authorities is recommended to ensure consistency in practice. In undertaking this review, standardisation and clarification of the enforcement measures and information and gathering powers across the Commercial Laws, the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (“Beneficial Ownership Law”), and the Charities etc. (Guernsey and Alderney) Ordinance, 2021 (“Charities Ordinance”) has also been sought in the interests of consistency and effectiveness.
4. The proposals are categorised into the following three areas: (A) Record keeping; (B) Enforcement measures; and (C) Information gathering and sharing powers.

Proposals

A. Record keeping

5. The following set of streamlining changes are proposed to ensure consistency to the greatest extent possible in the record keeping provisions across the Commercial Laws. The proposals also

¹ Including the Office of the Registrar of Companies, the Office of the Registrar of Foundations, the Office of the Registrar of Limited Liability Partnerships, the Office of the Registrar of Beneficial Ownership of Legal Persons, the Office of the Registrar of Charities and Other Non Profit Organisations as well as acting as Deputy Greffier with respect to limited partnerships.

² The registers maintained by the Registry which are the subject of this consultation paper are the Register of Companies, Register of Limited Liability Partnerships, Register of Foundations, the Register of Limited Partnerships (this register is maintained by the Registrar of Companies in the Registrar’s capacity as Deputy Greffier), the Register of Beneficial Ownership of Legal Persons and the Register of Charities and Other Non Profit Organisations.

³ The revisions proposed in this consultation paper to legislation may also contain any consequential, incidental, supplementary, savings, transitional and other ancillary provisions that may appear to be necessary or expedient.

seek to provide greater accuracy and consistency in the information available to the Registrar, create operational efficiencies and reduce the administrative burden on the Registry.

Information recorded at the Registry

6. The following proposals aim to achieve consistency across the Commercial Laws in respect of the information recorded by the Registry.

Basic governing powers

7. For consistency across the Commercial Laws, to ensure proper oversight of entities and to keep pace with developing international standards, it is proposed that the basic governing powers for all entities should be recorded by the Registry and made publicly available. This is already the case for companies, where a company's memorandum and articles of incorporation, which provide details of the governance of the company, are filed with the Registry and publicly available.
8. It is well understood that for other entities, as well as details of basic governing powers, the constitutional documents may contain commercially sensitive information or information relating to individuals which should properly remain private. To address any legitimate concerns about confidentiality, it is proposed that for limited partnerships, LLPs and foundations, rather than the full constitutional documents being provided to the Registry, only abridged documentation will be required. Further, no commercially sensitive information or personal information that may identify a person will need to be included in the abridged documentation. In order to ensure that the proposals are as user-friendly as possible, the Committee looks forward to input from industry as to whether it would be practical to prescribe a standard form to capture the relevant information, which could be designed so that it is simple to complete and tailored to each entity type.
9. It is also proposed that, like companies, limited partnerships, LLPs and foundations would have a similar duty to notify the Registrar of any changes to abridged documentation filed at the Registry.
10. The Committee looks forward to input from the various industry sectors in order to understand the implications of these proposals for limited partnerships, LLPs and foundations and to help ensure that the proposals are straightforward to implement in practice. For entities that are already registered, it is anticipated that a transitional period would be appropriate to allow time for them to comply with this requirement.

Name and address of a foundation's registered agent

11. Information regarding the identity of the resident agent is publicly available in respect of companies, limited partnerships and LLPs. Although it is clear who a foundation's resident agent is at the time of the annual validation, in the interest of consistency with the other entities, it is proposed that the name and address of a foundation's resident agent appears in Part A, the public section of the Register of Foundations so that it is publicly accessible (rather than in Part B, which is not publicly accessible).

Records maintained by entities

12. In practice, entities keep and maintain their registration and ownership records at their registered office. This includes information filed with the Registrar. The following proposals aim to achieve consistency in respect of the records maintained by entities –

Location of company records

13. With respect to companies, it is proposed that it is clarified that, in addition to the registers of directors and shareholders, it will be a requirement for other basic company information to be kept and maintained at the company's registered office, namely information legally required to be filed with, or issued by, the Registrar⁴ together with evidence of the company's legal form and status⁵.

Content of records

14. *Proof of incorporation and legal form and status*: In practice, entity records tend to include their proof of incorporation or registration, and their legal form and status⁶. From an external perspective, it would provide greater clarity if a requirement to keep such proof at the registered office was expressly stated across the Commercial Laws and it is therefore proposed that the legislation is amended accordingly.
15. *Record of beneficiaries (foundations)*: In the interests of good practice, it is proposed that foundations should be required to keep a record of beneficiaries at their registered office. It is anticipated that the record of beneficiaries should include a list of the foundation's known beneficiaries⁷ together with basic information on each beneficiary's interest in the foundation (e.g. whether or not the beneficiary (a) is enfranchised or disenfranchised; (b) has received any benefits as a beneficiary; or (c) has disclaimed, or has any restrictions on the rights attaching to, their interest). This will not require the record of beneficiaries to be publicly available, due to the confidential nature of this information, but a record needs to be maintained for good practice and to ensure it is available and accessible to Bailiwick authorities if and when needed.
16. *Register of members (LLPs)*: For consistency, it is proposed that LLPs must record the nature and extent of each member's interest in the LLP in their register of members.

Inspection of a company's shareholder register

17. In the interests of consistency across the Commercial Laws, it is proposed that persons wishing to inspect the company's register of shareholders are no longer required to disclose the purpose for which the information will be used or whether the information will be disclosed to any other person.

Access to information upon a company's liquidation or administration

18. When a company enters into liquidation, or administration, a director's powers generally cease. In such cases, it is sometimes the case that directors resign and no directors are left in office, or the current directors are no longer willing to act as a resident agent. This can result in there being no resident agent in place, which means there is no longer a person appointed on behalf of the company to maintain and file the requisite company information or deal with information requests from the Registry. In such cases, the Registrar tends to list the company for strike off but defers the actual strike off for a reasonable time so the liquidation, or administration, may be completed. However, during that time, there may be inadequacies of information on the register. Liquidators and administrators are not generally eligible to be a resident agent as they must be either a director of the company being liquidated or a corporate service provider. To address this

⁴ This will include the company name, registered office address, memorandum of incorporation and articles of incorporation.

⁵ Legal form and status includes in respect of all registered entities (i) the legal entity type (including, for example, in the case of companies the type of company and in the case of a limited partnership whether or not it is a limited partnership with separate legal personality) (ii) the date of registration (iii) registration number and (iv) where applicable, the date of removal from the register.

⁶ Ibid 5.

⁷ As per section 31 of the Foundations Law, a beneficiary means a person so identified in the foundation's Constitution or whose identity is ascertainable as a member of a class or by their relationship to another person.

issue, it is proposed that the Companies Law is amended so that, in future (in respect of liquidations and administrations that commence after the date of the amendment) if in such circumstances there is no resident agent, the liquidator or administrator appointed by the company automatically becomes the resident agent.

Beneficial ownership information for limited partnerships

19. The nominated general partner of a limited partnership with legal personality is responsible for assuming the resident agent information duties in respect of beneficial ownership⁸.
20. In addition, the resident agents for companies, foundations and LLPs are also responsible for ascertaining the identity of the beneficial owners prior to formation. With the exception of limited partnerships, the Commercial Laws also have an additional set of resident agent provisions which include the requirement to have a resident agent, keep a record of the resident agent, notify the Registrar of the resident agent details and any changes to the resident agent, disclose beneficial ownership to competent authorities as well as ancillary provisions including the suspension of interests for failure to disclose beneficial ownership information and tipping off⁹.
21. To ensure consistency across the Commercial Laws, it is proposed that the Limited Partnerships Law is amended so that, as far as practically possible, the equivalent resident agent provisions to companies, foundations and LLPs are applied to limited partnerships with legal personality. In practice, this will mean that the nominated general partner will be required to be an individual or corporate services provider resident or established in Guernsey, and will have to assume the equivalent duties to resident agents of other types of entity (including, the requirement to ascertain the identity of beneficial owners prior to formation and disclose information to competent authorities). In practice, the majority of limited partnerships are established for collective investment schemes and are exempt from the resident agent provisions¹⁰ and will therefore not be impacted by this aspect of the proposals. With respect to those limited partnerships that are exempt from the resident agent provisions, the Committee would be interested to understand what stakeholders consider the best approach to be in order to ensure that information and assistance can be provided to Bailiwick competent authorities as per the proposals set out in paragraphs 37 to 39 below.

B. Enforcement measures

22. It is proposed that the enforcement provisions are further harmonised across the Beneficial Ownership Law, the Charities Ordinance and the Commercial Laws.

Consistency in sanctions

23. Greater harmonisation will provide more consistency in the Registrar's oversight processes and enforcement measures, and a wider set of powers at the Registrar's disposal so that the most appropriate and proportionate sanction can be applied to the individual circumstances in the event of non-compliance with obligations under the Commercial Laws. It is hoped that this will in

⁸ See paragraph 1 of the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017 and Parts 2 and 4 of the Beneficial Ownership Law.

⁹ See Part XXIX Companies Law, Schedule 1A to the Foundations Law, and Schedule 2 to the LLP Law for the principal provisions relating to resident agents.

¹⁰ See paragraph 3 of the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017.

turn further increase the dissuasive impact of the sanctions regime and help ensure that entities and related persons meet their obligations.

24. To achieve greater consistency in the sanctions measures available to the Registrar, it is proposed that equivalent provisions to the following enforcement powers found in the Beneficial Ownership Law and/or Charities Ordinance are incorporated into the Registrar's current suite of statutory powers in the Commercial Laws:
- a. *Private reprimands*¹¹ – Private reprimands would be formal warnings which could be issued by the Registrar to any registered entity, or their officers, in respect of non-compliance with obligations under the Commercial Laws;
 - b. *Financial penalties of up to £20,000*¹² – Financial penalties could be issued by the Registrar to any registered entity, or their officers, in respect of non-compliance with obligations under the Commercial Laws; and
 - c. *Public statements*¹³ – Public statement powers would allow the Registrar to make open public statements about misconduct, in respect of non-compliance with their obligations under the Commercial Laws, as a form of enforcement action against registered entities or their officers.

Publication of sanctions

25. It is also recommended that, in the Commercial Laws and Beneficial Ownership Law, the Registrar should have an equivalent power to that under the Charities Ordinance¹⁴ to publish details of sanctions imposed by the Registrar (including, the name of the entity or person sanctioned, the nature of the applicable sanction etc...)¹⁵.

Strike off powers for limited partnerships

26. Currently, the Registrar only has the power to strike off a limited partnership which has failed to comply with its obligation to file an annual validation¹⁶. It is recommended that this power should be extended to include circumstances where a limited partnership appears defunct.

Consistency in enforcement process

27. To achieve greater consistency and simplicity in the enforcement process, it is recommended that the decision making procedure for enforcement decisions in the Beneficial Ownership Law is aligned with the process under Part V of the Charities Ordinance. Currently, the Beneficial Ownership Law has a complex enforcement process which is administratively burdensome and inconsistent with the Registrar's other enforcement processes. In practice, alignment with the enforcement process under the Charities Ordinance would provide the beneficial ownership regime with a more timely and streamlined decision making procedure whereby –
- a. Sanctions will generally take effect 4 weeks (rather than 6 weeks) following the date of the sanctions notice (during which time the relevant entity or person may apply to the court to have the decision set aside);
 - b. The Registrar can make an application for a court order directing that the sanctions decision has immediate effect where it is in the public interest or in the interests of the reputation of the Bailiwick as a financial centre; and

¹¹ See section 32 of the Charities Ordinance and section 27 of the Beneficial Ownership Law.

¹² See section 25 of the Beneficial Ownership Law.

¹³ See section 33 of the Charities Ordinance and section 28 of the Beneficial Ownership Law.

¹⁴ See section 38 of the Charities Ordinance.

¹⁵ Please note that private reprimands would not be published without the consent of the relevant entity or person.

¹⁶ See the Limited Partnerships (Annual Validations) (Striking Off) Regulations 2022.

- c. There will no longer be a requirement for the Registrar to issue a “sanctions proposal notice” (which provides a 28 day period for the entity or person to make representations) before the Registrar makes an enforcement decision. It is important to note that as a matter of general practice and to ensure fair process, before making an enforcement decision, the Registrar requests input from the entity or person primarily impacted (for example, by asking for an explanation as to why a requirement has not been met). The Registrar is publishing an enforcement policy which involves engaging with potential enforcement subjects before making a decision, other than in exceptional circumstances.
28. It is also proposed that the decision making procedure for enforcement decisions under the Commercial Laws, particularly in respect of any new sanctions introduced under paragraph 24 above, are also aligned with Part V of the Charities Ordinance to the extent practicably possible. It is envisaged that this would provide more clarity and consistency to the enforcement process across the Commercial Laws (including with respect to the considerations that need to be taken into account by the Registrar before making a decision, the notification provisions and the point at which a sanction takes effect).

Consistency in due process

29. All of the above enforcement proposals will be implemented in a manner that ensures due process and fairness and which is as consistent as possible across the various pieces of legislation.

C. Information gathering and sharing powers

30. It is vital that the necessary legal gateways are in place so that the Bailiwick’s authorities have the necessary information gathering and sharing powers to carry out their functions.

Harmonisation in information gathering and sharing powers

31. Currently, the Registrar has a suite of existing information gathering and sharing powers under the Commercial Laws. The extent of these powers vary and the Committee would therefore like to standardise and clarify these powers as much as possible across the Commercial Laws, the Charities Ordinance and the Beneficial Ownership Law. In the interests of consistency, it is proposed that the following streamlining changes are put in place.

Information gathering

32. *Registrar’s power to request/obtain information/visit premises:* It is proposed that the Registrar, across all of the Commercial Laws and the Beneficial Ownership Law should have the equivalent powers to those under Schedule 3 to the Charities Ordinance to request and obtain information and enter into premises for the purposes of or in connection with the exercise of the Registrar’s functions. This includes the power to visit the premises of entities and require information and documents to be provided to the Registrar¹⁷. It is envisaged that the language would be made consistent with the language used in the Charities Ordinance.
33. *Revenue Service’s information gathering powers:* In addition, it is proposed that the Revenue Service has the equivalent power to the Guernsey Financial Services Commission (“Commission”) to seek and receive information from any person (including, ownership information) in the exercise of their functions.

¹⁷ See paragraphs 2 to 6 of Schedule 3 to the Charities Ordinance.

Information sharing

34. *Registrar's disclosure of information powers:* The Registrar, across all of the Commercial Laws, the Charities Ordinance and the Beneficial Ownership Law, to have the equivalent powers to those under paragraph 2 of Schedule 2 to the Charities Ordinance to disclose information. The disclosure powers would therefore include disclosing public information, non-personally identifiable summary information, information to enable the discharge of the Registrar's functions, together with information in connection with proceedings, a court order or for other specified purposes. The specified purposes would mirror those already in place in the Charities Ordinance and would include the power to share information with other Bailiwick competent authorities (including with other Offices of the Registrar and the Economic and Financial Crime Bureau) as well as with foreign authorities with equivalent functions¹⁸.
35. *Cooperation with foreign authorities:* It is proposed that the Registrar, across all of the Commercial Laws, the Beneficial Ownership Law and the Charities Ordinance should have equivalent power to the Commission¹⁹ to cooperate with foreign competent authorities, which may take the form of information sharing.

Tipping Off

36. It is recommended that equivalent tipping off provisions to those set out under the Beneficial Ownership Law²⁰ are included in the Commercial Laws so that where the Registrar engages their information gathering powers with a third party, it is an offence for that person to disclose information which may prejudice any criminal or regulatory investigations or proceedings.

Cooperation with Bailiwick authorities by resident agents and nominated general partners

37. Resident agents of companies, foundations and LLPs are currently required, on the receipt of a certificate, to provide beneficial ownership information to Her Majesty's Procureur, the Commission, the police, or customs when such information is required for the purposes of criminal or regulatory investigations and proceedings²¹. This certification process dates back to times when the beneficial ownership regime was still in its infancy and the legal gateways available for competent authorities to access information were not as open as they are now. To further enhance and simplify the information gathering powers available to Bailiwick competent authorities, it is proposed that such powers should be available to all Bailiwick AML/CFT and sanctions authorities (including, without limitation, the Revenue Service and the Economic and Financial Crime Bureau) in order to enable them to directly obtain any information or documents and request any assistance necessary to discharge their functions²². Although legal gateways are in place which allow Bailiwick competent authorities to obtain information via the Registrar²³, a simplified and more streamlined process is desirable. It is therefore envisaged that a simple notification process will replace the current certification procedures. Further, as per paragraph 21 above, these resident agent obligations should apply equally to the nominated general partners of limited partnerships with legal personality.

¹⁸ It is envisaged that there will also be a power to amend the list of purposes by regulations to permit the inclusion of any other functions that may necessary in future to keep pace with developing international standards.

¹⁹ See section 21A of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.

²⁰ See paragraph 6 of Schedule 2 to the Beneficial Ownership Law.

²¹ See paragraph 490 of the Companies Law, paragraph 7 of Schedule 2 to the LLP Law, and paragraph 5 of Schedule 1A to the Foundations Law.

²² It is likely that the powers would be framed in a similar manner to the disclosure provisions under paragraph 2 of Schedule 2 to the Charities Ordinance.

²³ See paragraph 2 of Schedule 2 to the Beneficial Ownership Law.

38. Overall, it is proposed that resident agents and nominated general partners will be required to provide information and assistance (including attending at specified premises and answering questions) to a greater number of Bailiwick agencies and in a wider set of circumstances. In addition, the information would no longer be limited to beneficial ownership information but to any information that could be of assistance to Bailiwick authorities in the exercise of their functions. In order for the proposals to work in practice, resident agents and nominated general partners would need to be given the necessary statutory powers to obtain such information from the entity.
39. It is envisaged that the legislation will expressly state that resident agents and nominated general partners are authorised by the relevant entity to provide any information or further assistance required by competent authorities for the purpose of carrying out their functions. In conjunction with these proposals, and as referenced in paragraph 21 above, with respect to those entities that are exempt from the resident agent framework, the Committee would be interested to understand what stakeholders consider the best approach would be to ensure that information and assistance can be provided to Bailiwick competent authorities on behalf of such entities.

Concluding Remarks

Transitional Provisions

40. It is recognised that some of the proposed changes are likely to have an impact on existing registered entities and will require some time to implement in practice. The Committee would be interested to hear views from stakeholders on which proposals would most require transitional provisions and the reasons why.

Invitation for comments

41. The Committee is of the view that the proposed changes provide a real opportunity to provide further consistency in legislation and practice across the Commercial Laws and introduce more clarity and simplicity in the oversight of the entities administered by the Registrar. In practice, this will provide greater accuracy and consistency in the information available to the Registrar, and create operational efficiencies at the Registry. The changes are also important in order to further enhance and harmonise the Registry's enforcement measures, and more widely, achieve greater consistency in the information gathering and sharing powers of the Bailiwick's authorities.
42. The Committee looks forward to receiving comments from stakeholders on the proposed changes set out in this consultation paper.