

Beneficial Ownership Act 2017

The Database *Foreign companies [Secondary legislation]*

*Adequacy:
Legal Entities
to which
BOA17
applies*

1. The Registry, in conjunction with Treasury, is proposing to bring forward an Order under s.5(4) of BOA17 to extend the remit of the Act to foreign legal entities within the meaning of s.5(1)(a)-(b) of FCA14. I.e. foreign legal entities that:
 - a) carry on, or hold themselves out as carrying on, business from an established place of business in the Island,
 - b) hold land in the Island (other than by way of security).

The Database *Definition of 'Registrable Beneficial Owner' [Secondary legislation]*

*Adequacy of
BOI*

1. The Registry, in conjunction with Treasury and the FSA, is proposing to bring forward an Order under s.3(2)(d) of BOA17 to amend the definition of 'registrable beneficial owner' to:
 - a) Align the % threshold to the FATF standard, which states that where a % threshold is applied it must not exceed a maximum of 25%.
 - b) Adopt the cascading approach to determining RBO,
 - c) Dis-apply the % threshold (which is only relevant where a natural person has a material ownership interest) where a person is considered a beneficial owner because of their ability to exercise control by some other means.
2. To accompany the revised definition of RBO the FSA is proposing, under s.4(6) to issue revised Guidance.

**Nominated
Officer**

Record of nominated officer maintained by the legal entity

1. The Registry is proposing to update the particulars that a legal entity must keep with regards to a nominated officer who is a natural person (s.8(1)(a)). Where the nominated officer is a natural person, a legal entity must keep a record of the following:

<i>Adequacy of basic information</i>	<i>Natural person (s.6(2)(a))</i> a) Title or pronoun b) Full legal name (including any previous names) c) Residential address d) Country of residence e) Nationality (including any joint nationalities) f) Business occupation g) Date of Birth 2. Secondly, the legal entity must keep a record of the date: a) a person was appointed as a nominated officer, b) a person ceased to be a nominated officer (where relevant). 3. To insert a provision requiring legal entities to ensure that records, maintained under s.8, are accurate and kept up to date.
Nominated Officer <i>Up to date information</i>	<i>Notifying Companies Registry of the nominated officer's appointment</i> 1. The Registry is proposing to amend section 7(1) to clarify when a legal entity, formed after the coming into operation of that section, must notify the Registrar as to who the first nominated officer of the legal entity is. 2. Proposal: a legal entity must notify the Registrar of the proposed first nominated officer upon application for incorporation/ formation.
Beneficial Ownership: The Database <i>Up to date information</i>	<i>Submitting registrable beneficial ownership to the Registrar</i> 1. The Registry is proposing an amendment to the timeframe within which a legal entity (nominated officer) must first inform the Registrar of registrable beneficial ownership information. 2. Presently, pursuant to section 9(3)(a) a legal owner has 21 days from the date of the legal entity's incorporation to notify the entity's nominated officer of each natural person who is a beneficial owner of their legal interest. Subsequently, upon receipt, a nominated officer then has 21 days to submit registrable beneficial ownership information (see section 20(5)) to the Registrar.

	3. The Registry is proposing that registrable beneficial ownership information must be notified to the Registrar as a part of the application to incorporate.
Changes to Beneficial Ownership:	1. The Registry is also proposing an amendment to the timeframe within which a nominated officer must notify the Registrar of a change in registrable beneficial ownership information.
The Database	2. Presently, under section 12(2), a legal owner must notify the nominated officer of a change in BOI within 21 days from when the legal owner learnt of the change (or had reasonable cause to believe that it had occurred). In turn, if this results in a change to registrable beneficial ownership information, the nominated officer has 21 days to submit that information to the Registrar.
<i>Up to date information</i>	3. Proposal: The Registry is considering two options. a) Firstly, the feasibility of the nominated officer being under a duty to notify the Registrar of a change in registrable beneficial ownership information within one month of its occurrence. b) Secondly, to shorten the timeframe that a legal owner has to give notice to the nominated officer, under s.12(2) to 14 days and that a nominated officer has, under s.20(6)(b) / 20(7)(b)(ii) to 7 days.
Notice regarding Beneficial Ownership	<i>Powers of the nominated officer</i>
<i>Up to date information</i>	1. The Registry is proposing to insert/ revise the following timeframes: a) the timeframe within which a legal owner must respond to a notice from the nominated officer (under s.9(5)/ s.20(2)) to 14 days, b) the timeframe within which a beneficial or intermediate owner must respond to a notice from a nominated officer (under s.20(2)) to ‘as soon as reasonably practicable, but in any event within 14 days’, c) the timeframe within which the nominated officer must, pursuant to having issued a notice, submit RBO information (if required) to 7 days.
Competent Authority	1. Presently, a nominated officer is required to disclose to a competent authority, BOI in accordance with a s.15 notice. Under s.15(4)(c) the nominated officer must provide that information as soon as reasonably practicable, but in any event within 21 days (where it’s non-registrable beneficial ownership information).
<i>Timely access to information</i>	2. The Registry is proposing to shorten the 21 day timeframe to 14 days.

**Statement of
Compliance**

Sanctions

1. Prior to the coming into operation of the Beneficial Ownership (Amendment) Act 2021 (13 June 2021) the statement of compliance formed a part of the annual return. As a result, a failure to submit an annual return on time and thus the annual statement of compliance rendered the entity, liable to a late filing fee or to a fine.
2. The Registry is proposing to re-introduce late filing fees and fines where a nominated officer has failed to submit its annual statement by the due date.

**Compliance:
General**

Sanctions

1. The Registry is proposing to insert a provision into BOA17 akin to s.26(4) of the *Companies Act 1992* to explicitly give the Court the power to require a person in default to rectify the default (upon application by the FSA or any other affected person).

Compliance

*International
standards*

1. The Registry is proposing to insert a secondary legislation making power into BOA17 to enable the updating of the Act by regulations where the purpose is to implement into Manx law:
 - a) FATF's Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (including any Guidance or supporting documentation);
 - b) Recommendations made by international bodies (FATF, MONEYVAL and the IMF) involved with the adoption, monitoring or promotion of such obligations or standards.

End.