

Beneficial Ownership Registers now implemented for British Virgin Islands Companies

This advisory has been prepared as a summary of the law as at July 2017 and is for general guidance only. It is not intended to be, nor should it be used for, a substitute for specific legal advice on any particular transaction or set of circumstances.

New legislation has been enacted in the British Virgin Islands (the “**BVI**”) to require registered agents to establish and maintain a beneficial ownership database (“**UBO Database**”) and the Government of the British Virgin Islands to establish and maintain a search platform, referred to as Beneficial Ownership Secure System (“**BOSS**”), enabling each licensed registered agent to establish such database and a limited number of designated persons to access each database established by a registered agent.

By way of background, a “registered agent” is a person who either holds a licence to conduct company management business under the Company Management Act, 1990 or a licence under the Banks and Trust Companies Act, 1990. Our affiliate, Campbells Corporate Services (BVI) Limited, is licensed as a registered agent under the Banks and Trust Companies Act, 1990 and provides company formation and maintenance services.

The date of implementation was 30 June 2017, coinciding with the Fourth EU Money Laundering Directive, which also requires centralised beneficial ownership registers to be implemented by EU members.

The new regime codifies the agreement made between the governments of the British Virgin Islands and the United Kingdom by way of an Exchange of Notes in April 2016 for the provision and exchange of certain information relating to beneficial ownership of certain entities (the “**Regime**”).

Key Points Summary

1. Each registered agent shall establish and maintain a UBO Database containing information on the ultimate beneficial ownership information in relation to the entities to which it provides registered agent services.
2. The UBO Database maintained by the registered agent will be kept on an electronic platform maintained by the BVI Financial Investigation Agency.
3. Only designated persons will have access to a UBO Database of a registered agent. Designated persons will be appointed by the BVI Minister responsible for finance. A designated person will conduct a search upon receiving a request from either the BVI Financial Investigation Agency, the BVI Financial Services

Commission, the BVI International Tax Authority or the BVI Attorney General Chambers.

4. Law enforcement authorities of designated countries that have entered into an agreement with the British Virgin Islands may, acting in furtherance of their functions only, through the BVI Financial Investigation Agency, the BVI Financial Services Commission, the BVI International Tax Authority or the BVI Attorney General Chambers request a search on BOSS. A search request made must be proper and lawful and in compliance with the legislation governing the affairs of the authority making the request and any international agreement administered by it. Currently, only the United Kingdom is a designated country.
5. Registered agents will assist BVI companies to comply with their obligation to provide updated beneficial ownership information.
6. There will be a grace period of six months following the implementation of the Regime during which penalties referenced to in the new legislation will not apply.
7. Partnerships and foreign companies are not required to maintain UBO Registers, nor are certain out of scope companies, such as any company regulated by the BVI Financial Services Commission such as funds, fund managers and companies listed on a recognised stock exchange, as well as subsidiaries of such companies.

Entities Affected

Companies incorporated, registered by continuation or re-registered under the BVI Business Companies Act excluding those that are out of scope (“**In-Scope Entities**”) must comply with the Regime.

The following is a broad summary of companies that are “out of scope”:

1. companies, the securities of which are listed on a recognised stock exchange and its subsidiaries;
2. companies holding a licence specified in Schedule 1 of the Regulatory Code, 2009, for example a licensed investment fund manager; and
3. companies which are either recognised, registered or otherwise approved as a mutual fund under the Securities and Investment Business Act, 2010 including an approved fund, an incubator fund, a public fund, a professional and a private fund and their subsidiaries.

Mechanics to Identify Beneficial Owners and Relevant Legal Entities

“Beneficial ownership” under the Regime is ascertained in a different manner to that contained in standard anti-money laundering regulations.

A beneficial owner is an individual who ultimately owns or controls a corporate or legal entity including an individual who:

1. holds directly or indirectly 25% or more of the shares in the company;

2. holds directly or indirectly 25% or more of the voting rights in the company; or
3. otherwise exercises control over the management of the company.

Each “registrable legal entity” also has to be identified. A “registrable legal entity” is any legal entity which:

1. would be the beneficial owner of the company if it were an individual; and
2. one or more of the following applies to it:
 - it is an exempt person (as set out above);
 - it is a foreign regulated person; or
 - it is a sovereign state or wholly owned subsidiary of a sovereign state.

Content of the UBO Database

The UBO Database will contain the following prescribed information:

1. for each company, the name, including alternative names, the incorporation number or its equivalent, the date of incorporation, the status of the company and the registered address;
2. for each beneficial owner of the company, his or her name, residential address, date of birth and nationality;
3. for each registrable legal entity, the details of the registrable legal entity as outlined for companies above at 1., the jurisdiction in which the registrable legal entity is formed, the basis upon which the legal entity is designated as a registrable legal entity, where the registrable legal entity is a foreign regulated person, the name of the jurisdiction of regulation and the name of the foreign regulator or where the registrable legal entity is a sovereign state or a wholly owned subsidiary of a sovereign, the name of both the sovereign state and the wholly owned subsidiary thereof; and
4. for each exempt person, the details of the exempt person as outlined above at 1., the basis or bases upon which the exempt person is designated as an exempt person.

A company is also required to notify its registered agent of any change in any of the prescribed information.

Action by BVI Companies

All BVI companies will need to determine whether or not they are In-Scope Entities. Out of scope entities should take steps to document that they are outside the Regime.

In-Scope Entities are required to identify any person who is a beneficial owner or a registrable legal entity of that company and notify the registered agent accordingly.

In-Scope Entities should contact any person(s) they know or have reasonable cause to believe is a beneficial owner or registrable legal entity under the Regime, requesting the prescribed information. Failure to comply with the requirement to identify the beneficial owner or registrable legal entity without reasonable cause may be a criminal offence.

A registered agent is not required to collect and maintain prescribed information for companies that ceased to be a corporate entity or have been struck-off the Register of Companies before 1 January 2016.

Practical Steps

Where Campbells Corporate Services (BVI) Limited provides registered agent and registered office services to a BVI company, it will contact the company if prescribed information is outstanding. Where Campbells Corporate Services (BVI) Limited has all the prescribed information it will enter it in the UBO Database.

Further Information

Campbells can advise and assist on these matters. For further information on the matters referred to in this advisory, please contact your usual Campbells contact or visit our website for contact information.



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