

# UBO reporting obligations for BVI companies and limited partnerships (January 2023 update)

Under the Beneficial Ownership Secure Search System Act (the **BOSS Act**), all companies and limited partnerships registered in the British Virgin Islands (**BVI**) are required to report information regarding their beneficial ownership. The information must then be uploaded by their registered agent (**RA**) on to a confidential secure database, which is only accessible by competent regulatory authorities. There are exemptions for certain investment funds and listed companies (and their subsidiaries) and licensees under financial services legislation.

## Introduction

The BOSS Act originally came into effect on 30 June 2017 and, broadly, created a secure database of beneficial ownership interests in companies incorporated in the BVI to be accessible by certain BVI competent authorities to enable the BVI to comply with commitments made to the UK in April 2016.<sup>1</sup>

Since then, the BOSS Act has been amended on numerous occasions – most notably, to expand the beneficial ownership reporting obligations to other forms of “corporate and legal entity” (**Entity**), which now includes all companies and limited partnerships registered in the BVI, and also to introduce the reporting regime under the Economic Substance (Companies and Limited Partnerships) Act 2018 (the **ES Act**). Whilst the BOSS Act can be relatively simple to apply to direct ownership structures, applying the legislation to corporate groups or complex ownership structures such as trusts and understanding the precise interaction with the economic substance reporting regime can be complex.<sup>2</sup>

As a result, all BVI companies and limited partnerships are subject to certain obligations under the BOSS Act. The practical impact of those obligations varies widely depending on the Entity’s business activities, tax status and ownership structure.

From a client’s perspective, it is important to note that the key obligations under the BOSS Act fall on an Entity rather than its registered agent (**RA**) – although RAs still have an important role to play in submitting the information onto the database and verification against the information they hold for AML/CTF purposes. Entities and their directors (or general partners) and operators should be aware of their obligations under the BOSS Act, as the potential penalties for non-compliance are significant.

## Is beneficial ownership information disclosed under the BOSS Act publicly accessible?

No, information on beneficial ownership disclosed in the BVI under the BOSS Act is not publicly accessible.

Alongside the other UK Overseas Territories and Crown Dependencies, the BVI has also committed to work in collaboration with the UK government towards a publicly accessible register of beneficial ownership for companies, in line with international standards and best practices as they develop globally and, at least, as implemented by EU Member States at some point in 2023 in furtherance of the EU’s fifth Anti-Money Laundering Directive. Those developments are beyond the

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<sup>1</sup> Harneys’ original guide published around the introduction of the BOSS Act is available [via this link](#).

<sup>2</sup> Except where otherwise stated, this guide is generally concerned with beneficial ownership information reporting requirements and does not deal with economic substance reporting. Harneys’ guides to the ES Act and related reporting obligations are available [via this link](#).

scope of this guide but it seems likely that beneficial ownership reporting will be an increased area of regulatory scrutiny in future and it is therefore timely to revisit the existing requirements under the BOSS Act.

## Who is required to report beneficial ownership information?

Broadly, the BOSS Act imposes continuing obligations on all Entities to identify and report certain information regarding their beneficial ownership, subject to certain exemptions.<sup>3</sup>

An Entity which is an “exempt person” and its RA are broadly exempt from such obligations, provided that the Entity does not carry on any “relevant activity” for the purposes of the ES Act. The exempt person definition includes an Entity that:

- is (or is a subsidiary of an Entity that is) recognised, registered or approved under the Securities and Investment Business Act 2010 (the **SIBA**), which includes all open- and closed-ended funds regulated by the BVI Financial Services Commission (**FSC**);<sup>4</sup>
- has (or is a subsidiary of an Entity that has) its securities listed on a “recognised exchange”; or
- is a “licensee” for the purposes of the Regulatory Code 2009 or the Financial Services Commission Act 2001, which includes holders of financial services licenses issued by the FSC.

The majority of investment funds regulated under the SIBA should fall within limb (a) of this exemption, as there is an express carve-out from the definition of relevant activity in the ES Act for “investment fund business”.

However, as of 1 October 2019, any licensee which was previously an exempt person but which carries on any relevant activity (for example, “banking business”, “fund management business” or “insurance business”) will no longer qualify as an exempt person.

## What information does my Entity need to identify?

Unless it is exempt, an Entity must:

- identify whether it carries on one or more relevant activities for the purposes of the ES Act and if so which relevant activities (and in practice an exempt person must also consider this question as if it carries on a relevant activity it ceases to qualify for exemption, as discussed above);
- identify any “parent”, “immediate parent”, “ultimate parent”, a “beneficial owner” or “registrable legal entity” (**RLE**) of that Entity (or, if it is registered on a recognised exchange, give details of its stock exchange registration);<sup>5</sup> and
- ascertain:
  - with respect to any immediate or ultimate parent, the name (including alternative names) and incorporation number (or equivalent), taxpayer identification number (**TIN**) or other identification reference number and

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<sup>3</sup> “Corporate and legal entity” means (a) a company as defined under section 3 of the BVI Business Companies Act, 2004 (the **BC Act**); (b) an existing limited partnership as defined under section 2 of the Limited Partnership Act 2017 (the **LP Act**); (c) a limited partnership as defined under section 2 of the LP Act; (d) a foreign company as defined under section 3 of the BC Act; and (e) a foreign limited partnership as defined under section 2 of the LP Act. This guide focuses on companies incorporated under the BC Act, as the most common form of BVI corporate vehicle.

<sup>4</sup> For these purposes, an Entity is a subsidiary of another Entity (the “parent”) if the parent (a) holds, directly or indirectly, a beneficial interest in 75% or more of the shares in the subsidiary; or (b) holds, directly or indirectly, more than 75% of the voting rights in the subsidiary. A special 75% test is applied because the default percentage interest for a beneficial owner is set at 25% or more (as discussed below).

<sup>5</sup> The concept of a “parent” is discussed at note 4 above. “Immediate parent” means any entity or entities that own(s) directly 25% or more of the ownership or voting interests in the Entity (and the immediate parent may be a corporate or a non-corporate entity, for example a partnership). “Ultimate parent” means an entity that meets the following criteria: (a) it owns directly or indirectly a sufficient interest in the Entity such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of residence, or would be so required if its equity interest were traded on a public securities exchange in its jurisdiction of residence; and (b) there is no other entity that owns directly or indirectly an interest described in paragraph (a) above in the first mentioned entity.

- jurisdiction of formation of such immediate or ultimate parent; and
- details of the Entity's listing on a recognised exchange (if applicable).

The RA's role is more limited – it must take reasonable steps to identify the beneficial owners and RLEs and collect the prescribed information for each Entity for which it acts as RA. This requirement will be satisfied provided the RA takes steps to identify beneficial owners of the Entity under applicable BVI AML/CTF legislation.

The details of an Entity's immediate or ultimate parent are strictly related to the economic substance reporting information but are mentioned here for completeness as, in practice, an Entity is likely to wish to consider such definitions whenever there is a change to its direct or indirect ownership or control.

## Who is a beneficial owner?

A beneficial owner is “the natural person who ultimately owns or controls” the relevant Entity.

A natural person means a real individual, so a company, partnership, trust or other type of legal entity or undertaking cannot be a beneficial owner under the BOSS Act.

The definition includes (but is not restricted to):

- in the case of a legal person (other than an Entity whose securities are listed on a recognised exchange), a natural person who ultimately owns or controls, whether directly or indirectly, 25% or more of the shares or voting rights in the legal person;
- in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person;
- in the case of a legal arrangement:
  - the partner or partners who control the partnership;
  - the trustee or other person who controls the legal arrangement; or
  - the settlor or other person by whom the legal arrangement is made;
- in the case of an Entity which is in insolvent liquidation, administration or administrative receivership under the Insolvency Act 2003, the natural person who is appointed as a liquidator, administrator or administrative receiver of the Entity;
- in the case of a receiver being appointed over 25% or more of the shares or voting rights in an Entity, the creditor who appoints the receiver; or
- in the case of a shareholder in the Entity who would otherwise be a beneficial owner but is deceased, the natural person acting as an executor or a personal representative of the deceased's estate.

Persons holding interests jointly (whether as joint owners or tenants in common) are each treated as a beneficial owner for these purposes. There are also certain carve-outs and special provisions for security interests and exposures to financial performance of an Entity arising under derivatives or similar contractual arrangements or where there is a *bona fide* dispute regarding beneficial ownership which is being adjudicated by a court or tribunal.

## What is a registrable legal entity?

Broadly, an RLE is a type of entity through which it is considered unnecessary to trace beneficial ownership further. The definition is similar to – but slightly wider than – the “exempt person” concept.

An RA is not required to identify any beneficial owner of an Entity holding its interest, directly or indirectly, in the Entity through an RLE (provided it identifies the RLE for that purpose).

An RLE in relation to an Entity is a legal entity which:

- would be a beneficial owner of the Entity if it were an individual; and

- either:
  - is an "exempt person" (as discussed above);
  - has its securities listed on a "recognised exchange";
  - is a "licensee" (as discussed above) or a "foreign regulated person" for the purposes of the Anti-Money Laundering Regulations 2008; or
  - is a sovereign state or a wholly-owned subsidiary of a sovereign state.

Unlike a beneficial owner, an RLE must be an entity. In our view, this means that, in the case of partnerships or other forms of legal arrangement, it is necessary to determine whether the partnership or arrangement has separate legal personality.

## What and when must my Entity report?

Unless it is exempt, an Entity must notify its RA of certain prescribed "beneficial ownership information" (**BO Information**) within 15 days of identifying those matters or becoming aware of any change in its prescribed BO Information regarding its beneficial owner(s) or RLE(s), as applicable. In addition to the

These requirements came into effect for companies from 30 June 2017 but, in the case of limited partnerships:

- for limited partnerships with separate legal personality, the BO Information first had to be reported within 15 days following 1 October 2019; and
- for limited partnerships without legal personality, the BO Information first had to be reported within 15 days following 1 January 2022.

In practical terms, the 15 day deadline may be quite short. Entities should ensure that they are able to identify their beneficial ownership and gather the prescribed information from their owners and controllers promptly – for example, under their constitutional or investment documents.

The potential penalties for non-compliance under the BOSS Act are significant and range up to US\$250,000 and/or 5 years' imprisonment.

## How is my Entity's information stored?

Each RA is required to establish and maintain an RA database. The RA must enter particulars of the BO Information for each Entity for which it acts as RA within 15 days of being notified by an Entity of a change or otherwise becoming aware of a change of any of the prescribed information relating to the beneficial owner(s) or RLE(s). Information maintained by an RA on an RA database shall be maintained for all Entities for five years following the dissolution of the Entity or the Entity otherwise ceasing to be a "corporate and legal entity"

Entities' information is stored on a secure encrypted system and subject to robust procedural safeguards under the BOSS Act. Certain designated persons have access to the system from a physically secure premise and secure IT system. The designated person can be required to search the system if required to do so by a senior officer of the Financial Investigation Agency, Financial Services Commission, International Tax Authority or the Attorney General's Chambers either in compliance with applicable law or in response to a valid request from the UK National Crime Agency Financial Intelligence Unit, although the International Tax Authority also has access to the economic substance information on the system.

## Who can I contact for further information?

If you have any questions or would like further advice regarding the beneficial ownership or economic substance reporting requirements, please contact the author below or your usual Harneys contact.

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