

UPDATE

BVI beneficial ownership regime: application of new rules to trusts

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The BVI Business Companies (Amendment) Act, 2024 (as supplemented by the Business Companies and Limited Partnerships (Beneficial Ownership) Regulations, 2024 (the **Regulations**)) has amended the statutory regime for the registration and maintenance of beneficial ownership information (the **Regime**). This update focuses on how the changes will affect trustees holding shares in BVI business companies. The BVI Financial Services Commission has also released detailed guidance on the Regime (the **Guidance**). Our general guide on the Regime can be found [here](#).

Introduction of new beneficial ownership regime

As part of a commitment to ensure that beneficial ownership information in the BVI is adequate, accurate and up to date, the BVI Financial Services Commission will now maintain registers of beneficial ownership for all registered BVI business companies and limited partnerships.

As of 2 January 2025, beneficial ownership information will be held by and filed with the Registrar of Corporate Affairs (the **Registrar**) via the online VIRRGIN platform. Previously, the information was stored on databases maintained by the relevant registered agent in the BVI under the Beneficial Ownership Secure Search System Act (Revised 2020) (as amended).

Who is required to establish a beneficial ownership register?

BVI business companies, limited partnerships and trustees must collect, keep and maintain beneficial ownership information.

Save for certain exceptions, BVI business companies and limited partnerships must file the necessary beneficial ownership information with the Registrar within 30 days of incorporation, registration or continuation (as the case may be).¹

Where a trust is involved in the ownership structure of a legal entity, the beneficial owners of that trust must be identified when determining beneficial ownership of the legal entity. A 'relevant trustee' is also required to collect, keep and maintain beneficial ownership information in relation to trusts of which it is a trustee, which is accurate and up to date.² The relevant trustee is not required to file beneficial ownership information, but must be able to provide the information on request from the Registrar (see further below).

Who are beneficial owners?

A beneficial owner for these purposes is any natural person who ultimately owns or controls a company or limited partnership. In the case of a trust, the beneficial owners include:

- the trustee;

¹ BVI Business Companies Act (as revised) (BCA) section 96A(2).

² **Relevant Trustee** means – (a) a company incorporated in the BVI; (b) a foreign company registered under Part XI of the BCA; (c) an individual resident in the BVI; or (d) any other person who is a trustee of a trust administered (in whole or in part) in or from within the BVI: Trustee Act (Revised 2020) (as amended), section 92A.

- the settlor or other person by whom the trust is made;
- the protector (if any);
- the beneficiaries or class of beneficiaries with a vested interest in the trust at the time of or before distribution of any trust property or income; and
- any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership).³

Application to trusts owning shares in BVI companies

The obligation on BVI companies to file beneficial ownership information applies to companies whose shares are held on the terms of a trust. However, that requirement does not apply where the trustee is licensed under the BVI Banks and Trust Companies Act (Revised 2020) (as amended, the **BTCA**)⁴ if:

- the company's beneficial ownership information is held by such trustee;
- the name of the trustee is filed with the Registrar;⁵ and
- the beneficial ownership information can be provided by the trustee to the Registrar within 24 hours of a request.⁶

The company's BVI registered agent will need to submit an exemption filing in the online VIRRGIN system providing relevant information to demonstrate that it is held by a licensed trustee. This will include particulars of the name of trustee and the nature of the interest in, or control over, the legal entity.⁷ While the licensed trustee is not required to file the name of the settlor, protector and beneficiaries with the Registrar, it must collect, keep and maintain that information in accordance with the required AML/CFT customer due diligence measures and section 92B of the Trustee Act (Revised 2020).⁸

The exception for licensed trustees does not apply to unregulated trustees (whether corporate or natural persons) or to trustees that are regulated in other jurisdictions, and a BVI private trust company that is registered under the Financial Services (Exemptions) Regulations (Revised 2020) is not treated as regulated for these purposes, so will have an obligation to file the relevant information on the beneficial owners.

Other obligations on relevant trustees

A relevant trustee is required to:⁹

- collect, keep and maintain adequate, accurate and up to date information on the beneficial owners;
- take reasonable steps to verify the identities of beneficial owners and their beneficial ownership information to ensure that they are adequate, accurate and up to date;
- update the beneficial ownership information where any change occurs in relation to a beneficial owner or a beneficial owner's interest in a trust within 30 days of becoming aware of the change; and
- maintain the beneficial ownership information for a period of a least five years from the date from the date of the applicable trust's termination.

A relevant trustee is also obliged to cooperate with a competent authority and a law enforcement agency in relation to their beneficial ownership functions, which may include requiring the relevant trustee to disclose information, produce documents and provide any other material (unless legal professional privilege applies).¹⁰

³ Reg. 2 of the Regulations: definition of 'beneficial owner'.

⁴ Ibid. Reg. 11(3).

⁵ Ibid. Reg. 11(3)(d).

⁶ BCA s. 96A(4)(b) as amended by Reg.11(3)

⁷ Guidance, paragraph 104.

⁸ Guidance, paragraph 105.

⁹ Trustee Act, s. 92B.

¹⁰ Ibid. s. 92B(7).

What are the penalties for failure to comply with the Regime?

A relevant trustee who, without reasonable excuse, contravenes any of its beneficial ownership obligations or provides a competent authority or law enforcement agency with any false, inaccurate or misleading information, commits an offence and is liable on conviction to a fine not exceeding \$75,000.¹¹

Contacts

If you have any questions or would like further information on the Regime, please do not hesitate to contact us.



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¹¹ Ibid. s. 92B(14).

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