

STATES OF ALDERNEY



BILLET D'ETAT

WEDNESDAY 19TH APRIL 2017

Price: £2.05

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Members of the States:

I have the honour to inform you that the Meeting of the States will be held at 5:30 pm on Wednesday 19th April 2017. This will be preceded by the People's Meeting, which will be held on Wednesday 12th April 2017 at 7:00 pm in the Island Hall.

W Stuart Trought
President

Item I **Beneficial Ownership**

The following letter was received from Mr Dent, Chairman of the Policy and Finance Committee:-

“Beneficial Ownership of Legal Persons (Alderney) Law, 2017

The States of Alderney is requested to enact the Beneficial Ownership of Legal Persons (Alderney) Law, 2017. This would enable Alderney to continue to meet international standards on transparency of beneficial ownership. It would also enable Alderney to meet its obligations to the UK under an Exchange of Notes on the sharing of beneficial ownership information between the governments of the two jurisdictions that was signed in 2016. This included a commitment to hold adequate, accurate and current beneficial ownership information on a secure central electronic database and the unrestricted and timely provision of this information for law enforcement purposes, including within one hour in urgent cases.

Background

The standards of the Financial Action Task Force (which sets global anti-money laundering and combatting of terrorist financing standards (AML/CFT) require jurisdictions to have timely access to adequate, accurate and current information on beneficial owners of legal persons, that is, the natural persons who ultimately own or control the legal persons created there. G20 initiatives and the EU's fourth money laundering directive have promoted the use of registers of beneficial ownership to achieve this, and their advantages have been widely recognised by the international community. As a result, a large number of jurisdictions have established, or are in the process of establishing, their own beneficial ownership

registers. This includes the UK and Jersey, which have established registers, and Guernsey and the Isle of Man, which are in the process of doing so.

The Current Alderney Position

At present, the only type of legal person that can be established in Alderney is a company under the Companies (Alderney) Law, 1994 (the Companies Law).

The Companies Law contains beneficial ownership obligations that correspond to those currently in place for Guernsey companies. Companies have to appoint a resident agent, who must be either a corporate services provider licensed by the Guernsey Financial Services Commission (GFSC) under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, or a locally resident director. The resident agent must take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests and must keep a record at the company's registered office of specified details of any such beneficial owners. For beneficial owners that are natural persons, these details are the individual's name, usual residential address, nationality and date of birth (although "beneficial owner" is not defined and may include legal persons).

Resident agents have information gathering powers that are exercisable against members and which are underpinned by criminal sanctions. In addition, if a resident agent believes that a member has failed to comply with the notice or has provided false or misleading information, it must report that to the company and the company may impose restrictions on that member's interest including suspension or cancellation. The resident agent must also make beneficial ownership information available to HM Procureur, the law enforcement agencies or the GFSC if requested for the purposes of criminal or regulatory investigations and proceedings in Alderney or elsewhere.

In addition to these obligations, resident agents that are licensed and supervised by the GFSC are obliged to obtain beneficial ownership information in the customer due diligence requirements for corporate service providers under the AML/CFT framework. These obligations differ from those under the Companies Law in respect of what is meant by beneficial owner, as this is defined as the natural person who ultimately owns or controls a legal person and the GFSC's Handbooks state that meeting a 25% ownership threshold will generally be regarded as indicative of ownership or control.

The effect of these various measures is that, although beneficial ownership information is available within Alderney, it is held by individual businesses and there is no central data base. Therefore, if the law enforcement agencies or the other relevant Bailiwick authorities with investigatory functions have reason to believe that several different businesses hold relevant beneficial ownership information, they must make a separate approach to each business. This clearly has the potential to cause delay. In addition, the absence of a central data base means that there is currently no quick way of carrying out a search across all beneficial ownership information to check whether a particular individual or company that is under investigation has an involvement with an Alderney company that has not previously been identified.

Register of Beneficial Ownership

A private, secure, consolidated and locally-accessed register of beneficial owners of Alderney companies should be introduced to enhance the timeliness of access by the authorities to the relevant information. It is envisaged that the register would be administered by the Greffier. In order to ensure consistency across the Bailiwick, the Registrar's role, powers and duties should mirror those currently being introduced for the Guernsey Registrar of Beneficial Ownership, which include monitoring, enforcement and information sharing powers. As in Guernsey, in order to avoid duplication these monitoring and enforcement powers will not

extend to legal persons for whom the provision of beneficial ownership information is already subject to oversight by the GFSC.

This would not involve a major departure from the current position for resident agents, as, under the proposed law, they would be required to give the Registrar information which they are already obliged to keep, together with a few additional details. In addition, their information gathering powers would be enhanced and the Companies Law amended to provide that, instead of reporting concerns about the accuracy of beneficial ownership information to the company, as now, resident agents would report this to the Company Registrar, who would be given the power currently held by the company to suspend or cancel the relevant member's interest. In order to protect resident agents who are unable to obtain information from the company or the beneficial owner, resident agents would be given a statutory power to resign. Again in the interests of consistency, it is envisaged that these various new measures will mirror those currently being put in place for Guernsey legal persons and "beneficial owner" will be defined by reference to the Guernsey definition. This is currently being finalised but it will bring the position closer to that under the AML/CFT framework, including by making it clear that a beneficial owner can only be a natural person.

I would be grateful if you would place this matter before the next meeting of the States of Alderney with an appropriate proposition.

*James Dent
Chairman"*

The States of Alderney is asked to approve the "Beneficial Ownership of Legal Persons (Alderney) Law, 2017" and to request the President to seek the Sanction of Her Most Excellent Majesty in Council for it to have the force of Law in the Island of Alderney.

Item II The Al-Qaida (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2017

The following letter was received from Mr Dent, Chairman of the Policy and Finance Committee:-

"The EU has introduced Council Regulation (EU) 2016/1686 (the 2016 Regulation) to impose sanctions against legal or natural persons who are associated with ISIL (Da'esh) and Al-Qaeda or any related cell, affiliate, splinter group or derivative. These sanctions supplement existing EU restrictions under EU Regulation (EC) No. 881/2002 (the 2002 Regulation) that were introduced to give effect to United Nations measures aimed at members of the Al-Qaida network and splinter organisations. The 2002 Regulation is currently implemented domestically in Alderney by the Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013, which replaced previous legislation. The effect of the Ordinance is that any persons listed by the EU for the purposes of the asset freeze and other restrictions imposed by the 2002 Regulation are automatically subject to the same restrictions in Alderney.

The 2016 Regulation extends the scope of sanctions to a wider group of persons. These are persons who have an association with, but are not members of, ISIL (Da'esh), Al-Qaida and related organisations. Unlike the 2002 Regulation, the 2016 Regulation imposes autonomous EU sanctions, that is, sanctions which have not been introduced to give effect to UN measures but which have been introduced by the EU in its own right. The 2016 Regulation permits the listing of persons involved with a wide range of activities that goes beyond involvement in terrorist acts and includes the provision of financing, technology, arms or training, engaging in trade (in particular oil, oil products and cultural property), travelling or

seeking to travel into or outside the EU for the purposes of providing support, and recruiting or inciting the support of others.

It is important that Alderney continues to support international initiatives to counter terrorism by giving effect to the 2016 Regulation. The most effective way to do this is by amending the 2013 Ordinance rather than by introducing additional legislation, as having two separate sanctions regimes that both relate to ISIL (Da'esh) and Al-Qaeda may lead to confusion and duplication of work for industry. The amendment legislation has been drafted by Law Officers Chambers and is attached for consideration.

I would be grateful if you would place this matter before the next meeting of the States of Alderney with an appropriate proposition.

*James Dent
Chairman"*

The States of Alderney is asked to approve The Al-Qaida (Restrictive Measures) (Alderney) (Amendment) Ordinance, 2017

Item III **Questions and Reports**

The attached report 'Recent Representations of the States of Alderney on Brexit' was received from The President.

Issued: 7th April 2017