

The Beneficial Ownership of Legal Persons (Nominee Relationships) (Alderney) Ordinance, 2017

THE STATES OF ALDERNEY, in pursuance of their Resolution of 6th December 2017, and in exercise of the powers conferred on it by sections 31, 32 of, and the Schedule to, the Beneficial Ownership of Legal Persons (Alderney) Law, 2017^a and all other powers enabling it in them behalf, hereby order:-

Duty of resident agent in respect of nominees on incorporation or registration.

1. (1) Subject to sections 2 and 3, before an application is made for the incorporation or registration of a relevant legal person, the proposed first resident agent must take reasonable steps to ascertain the identity of any nominees in relation to that relevant legal person, and when such an application is made the proposed first resident agent must –

(a) provide a statement to the Registrar confirming whether or not any nominees have been identified in respect of the relevant legal person, and if they have, provide a statement to the Registrar -

(i) in respect of any nominee who is the proposed first resident agent confirming that fact, and in respect of any other nominee setting out the nominee's –

^a Order in Council No. VI I of 2017; as amended by the Beneficial Ownership of Legal Persons (Alderney) (Amendment) Ordinance, 2017.

- (A) name,
 - (B) nationality (or jurisdiction of incorporation or registration in the case of a legal person),
 - (C) date of birth (or date of incorporation or registration, and registration number, in the case of a legal person), and
 - (D) principal residential address (or address of the registered office in the case of a legal person),
- (ii) identifying the nature of the nominee relationship and, in the case of any nominee relationship entered into after the coming into force of the Law, the date on which it was entered into,
- (iii) either confirming that the nominator is a beneficial owner and identifying that person, or, if that is not the case, setting out the nominator's-
- (A) name,
 - (B) nationality (or jurisdiction of incorporation or registration in the case of a legal person),

- (C) date of birth (or date of incorporation or registration, and registration number, in the case of a legal person), and
 - (D) principal residential address (or address of the registered office in the case of a legal person),
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the proposed first resident agent has taken reasonable steps to verify the information, and
- (c) serve copies of the statements on –
- (i) the relevant legal person,
 - (ii) upon request, the proposed first directors.

(2) For the avoidance of doubt, where two or more persons act as nominators jointly, the particulars listed at paragraph (1)(a)(iii) should be provided in respect of each of them.

Specified nominees.

2. (1) Where the proposed first resident agent of a relevant legal person ascertains that there is a nominee in respect of the relevant legal person, and that nominee is a post-trade services provider listed in Schedule 1 to this Ordinance (a "**specified nominee**"), section 1 applies save that in place of the particulars set out at section 1(1)(a), the particulars to be included in the statement provided to the Registrar under that section in respect of that nominee are –

- (a) the nominee's name, and
 - (b) confirmation of the nominee relationship and of the fact that the nominee is a specified nominee.
- (2) The Committee may amend Schedule 1 by regulations.

Licensed fiduciaries.

3. (1) Where the proposed first resident agent of a relevant legal person ascertains that there is a nominee in respect of the relevant legal person and either the nominee or nominator is a licensed fiduciary (a "**fiduciary**"), section 1 applies save that in place of the particulars set out at section 1(1)(a), the particulars to be included in the statement provided to the Registrar under that section in respect of that nominee are -

- (a) the fiduciary's name, and
- (b) confirmation of the nominee relationship and of the fact that the fiduciary is the nominee or the nominator (as the case may be).

(2) A fiduciary must make available to the proposed first resident agent (or any subsequent resident agent of the relevant legal person) upon request a record of the particulars, together with verifying information, set out in paragraph (3).

- (3) The particulars referred to in paragraph (2) are –
- (a) information demonstrating whether the fiduciary is the nominee or the nominator,

- (b) where the nominee is a specified nominee, that fact and the name of the specified nominee,
- (c) in respect of any party to the nominee relationship other than the fiduciary (or the specified nominee if applicable), that person's –
 - (i) name,
 - (ii) nationality (or jurisdiction of incorporation or registration in the case of a legal person),
 - (iii) date of birth (or date of incorporation or registration, and registration number, in the case of a legal person), and
 - (iv) principal residential address (or address of the registered office in the case of a legal person), and
- (d) the nature of the nominee relationship and, in the case of any nominee relationship entered into after the coming into force of the Law, the date on which it was entered into.

(4) The particulars set out in subsection (3), together with verifying information, must be maintained by the fiduciary for the duration of the nominee relationship, and for a period of at least five years starting from the date on which that relationship ceased, and while they are so maintained the fiduciary must take reasonable steps to ensure that they remain accurate and up to date.

Existing relevant legal persons.

4. (1) On or before 31st January 2018 the resident agent of a relevant legal person that was incorporated or registered (as the case may be) before the coming into force of this Ordinance must take reasonable steps to ascertain whether there are any nominees in respect of that relevant legal person, and take the steps set out in regulations 1 to 3 as those regulations apply in relation to that relevant legal person.

(2) On or before 31st January 2018 any fiduciary who is a nominee or nominator in respect of a relevant legal person that was incorporated or registered (as the case may be) before the coming into force of this Ordinance must establish and thereafter maintain a record of the particulars set out at section 3(3), and must make that record available to the resident agent of the relevant legal person upon request.

Ongoing powers and duties of resident agent in respect of nominees and nominators.

5. (1) Sections 6 to 10 and 12 to 13 of the Law shall apply in respect of nominees and nominators, as set out in Schedule 2 to this Ordinance.

(2) The resident agent of a relevant legal person must keep the required particulars of nominees in a separate part of the record of beneficial owners in respect of that relevant legal person; and references to a relevant legal person's record of beneficial owners shall, as sections 6 to 10 and 12 to 13 apply by virtue of this Ordinance, be construed accordingly.

Failure to comply with information duties.

6. (1) A proposed first resident agent who fails to comply with section 1, 2 or 3, and a resident agent who fails to comply with section 4(1) or 5(2), or with a duty under sections 6 to 10 of the Law as those provisions apply to the resident agent by virtue of section 5, is guilty of an offence.

(2) A person who fails to comply with a notice served under section 6 or 8 of the Law, or with a duty under section 12 or 13 of the Law, as those provisions apply to the person by virtue of section 5, is guilty of an offence.

(3) A fiduciary who fails to comply with section 3(2) or (4), or section 4(2), is guilty of an offence.

(4) It is a defence for a proposed first resident agent charged with an offence under paragraph (1) of failing to comply with section 1, 2 or 3, and for a resident agent charged with an offence under that paragraph of failing to comply with section 4(1) or 5(2), or with a duty under sections 6 to 10 of the Law as those provisions apply to the resident agent by virtue of section 5, to prove that he or she took all reasonable steps to attempt to comply with the section or duty.

(5) It is a defence for a person charged with an offence under paragraph (2) of failing to comply with a notice served under section 6 or 8 of the Law, or with a duty under section 12 or 13 of the Law as those provisions apply to the person by virtue of section 5, to prove that the person took all reasonable steps to attempt to comply with the notice or duty (as the case may be).

(6) It is a defence for a fiduciary charged with an offence under paragraph (3) of failing to comply with section 3(2) or (4), or section 4(2), to prove that he or she took all reasonable steps to attempt to comply with the section.

False or misleading information.

7. (1) A person to whom paragraph (2) applies who –

(a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) This paragraph applies to a person on whom a notice is served under section 9 or 11 of the Law, who is subject to a duty under section 15 or 16 of the Law as those provisions apply to the person by virtue of section 5, or who is a fiduciary to whom a request is made under section 3(2), and who makes any statement or provides any information or document in response to that notice or request, or in the purported discharge of that duty (as the case may be).

Penalties.

8. (1) A person guilty of an offence under this Ordinance is liable on conviction on indictment to a fine, imprisonment for a term not exceeding 6 months, or both, and on summary conviction to a fine not exceeding level 5 on the Alderney uniform scale, imprisonment for a term not exceeding 3 months, or both.

(2) Section 18 (Criminal liability of officers, etc.) of the Law

applies in respect of offences under this Ordinance as if they were offences under the Law.

General provisions as to regulations.

9. (1) Regulations under this Ordinance -

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Committee to be necessary or expedient, and
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred by this Ordinance to make regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

Interpretation.

10. (1) In this Ordinance words and expressions have the same meaning as in the Law, and –

"**licensed fiduciary**" means a person who is licensed under the Section of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^b,

"**the Law**" means the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,

a "**nominator**" means a legal or natural person who has appointed, requested or instructed a nominee to act as a nominee on

^b Order in Council No. I of 2001 amended by No. XIV of 2003; No. XVI of 2007; oNo. VIII of 2008; No. XXV of 2008; Ordinance No. XXXIII of 2003 (the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003) and Guernsey Statutory Instrument No. 3 of 2008 (the Section of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008).

his behalf or on behalf of another person, and

a "**nominee**" means a legal or natural person in a nominee relationship in which that person is registered as the legal owner of a share or right in a company which is held or is exercisable by that person on behalf of a beneficial owner of that company, whether directly or indirectly (other than as the trustee of a trust).

(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Ordinance.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

11. This Ordinance may be cited as the Beneficial Ownership of Legal Persons (Nominee Relationships) (Alderney) Ordinance, 2017, and shall come into force on 6th December, 2017.

^c Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE 1

Section 2.

Specified Nominees

1. Euroclear UK & Ireland Limited.
2. Clearstream.

SCHEDULE 2

Section 5.

Application of sections 6 to 10 and 12 to 13 of the Law in respect of nominees and
nominators

1. (1) Subject to subparagraph 2, and except as regards the phrase "record of beneficial owners", wherever they appear in sections 6 to 10 and 12 to 13 of the Law for "beneficial owner" and "beneficial owners" substitute "nominee" and "nominees" respectively.

(2) In section 6(1) of the Law, for "ascertain the identity of the beneficial owners", substitute "ascertain the identity of any nominees and their nominators,".

2. For section 7(3) of the Law, substitute –

"(3) Subject to subsections (3A) to (3C), **"required particulars"** means –

(a) in respect of any nominee who is the resident agent, a statement confirming that fact, and in respect of any other nominee, the nominee's –

(i) name,

(ii) nationality (or jurisdiction of incorporation in the case of a legal person),

(iii) date of birth (or date of incorporation and registration number in the case of a legal person), and

- (iv) principal residential address (or address of the registered office in the case of a legal person),
- (b) the nature of the nominee relationship and, in the case of any nominee relationship entered into after the coming into force of this Law, the date on which it was entered into, and
- (c) where the nominator is a beneficial owner, that fact and the name of the beneficial owner in question, or, if that is not the case, the nominator's –
 - (i) name,
 - (ii) nationality (or jurisdiction of incorporation or registration in the case of a legal person),
 - (iii) date of birth (or date of incorporation or registration, and registration number, in the case of a legal person), and
 - (iv) principal residential address (or address of the registered office in the case of a legal person).

(3A) For the avoidance of doubt, where two or more persons act as nominators jointly, the particulars listed at subsection (3)(c) should be provided in respect of each of them.

(3B) Subject to subsection (3C), where the nominee is a specified nominee, "**required particulars**" in respect of that nominee means -

- (a) the nominee's name, and
- (b) confirmation of the nominee relationship, and of the fact that the nominee is a specified nominee.

(3C) Where either the nominee or nominator is a licensed fiduciary, "**required particulars**" in respect of that nominee means -

- (a) the fiduciary's name, and
- (b) confirmation of the nominee relationship, and of the fact that the fiduciary is the nominee or the nominator (as the case may be),

and in this subsection, a "**licensed fiduciary**" means a person who is licensed under the Section of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000."