



CONSULTATION PAPER ON AMENDMENTS TO LEGISLATION ADMINISTERED BY THE ALDERNEY COMPANY REGISTRY

About this consultation

This consultation paper issued by the Alderney Company Registry (“Registry”) is seeking views from stakeholders on proposed changes to several pieces of legislation administered by the Registry.

A series of streamlining changes to legislation is proposed to introduce more clarity, simplicity and uniformity in the oversight of legal persons administered by the Registry. In practice, the changes are aimed at providing greater accuracy and consistency in the information available to the Registrar, creating operational efficiencies at the Registry and contributing to Alderney’s continued dedication as a jurisdiction committed to transparency and to meeting international standards. The proposals also seek to further enhance and harmonise the Registry’s enforcement measures, and more widely, seek to achieve greater consistency in the information gathering and sharing powers of the Bailiwick of Guernsey (“Bailiwick”) authorities.

This consultation paper seeks views on the proposed changes.

How to submit comments to the consultation

If you have any comments you wish to submit to this consultation, these can be made by emailing a response to court@alderney.gov.gg by the close of business on **Monday 6th February 2023**.

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Background

1. The records of all companies registered under the Companies (Alderney) Law, 1994 (“Alderney companies”) and external companies registered under the Companies (Alderney) Law (External Companies) Ordinance, 1998 (“external companies”) (together “companies”) are held at the Registry situated at the Court Office in Alderney. The Greffier acting in his capacity as the Registrar (“Registrar”) administers and maintains a suite of registers¹ (“registers”) in accordance with statutory responsibilities. The Registrar has a vital role in enabling, encouraging, and providing oversight of, compliance with local and international legal frameworks and standards.
2. The Guernsey Registry is currently carrying out a review of the legislation that the Guernsey Registrar administers with respect to legal persons. It is therefore appropriate, alongside this review, for Alderney to evaluate the legislation that the Registrar administers with respect to legal persons in Alderney namely, the Companies (Alderney) Law, 1994 (“Companies Law”) and the Companies (Alderney) Law (External Companies) Ordinance, 1998 (“External Companies Law”) (together “Alderney Companies Legislation”).
3. The aim of the review is to achieve consistency in both legislation and practice, address points that have come to the Registry’s attention and apply recognised good practice. A series of streamlining changes² to Alderney Companies Legislation are therefore proposed below to introduce more clarity, simplicity and uniformity in the oversight of companies administered by the Registry, further enhance and harmonise the application of the Registry’s enforcement measures and introduce greater operational efficiencies in practice. In addition, further harmonisation of information gathering and sharing powers across the Bailiwick’s authorities is recommended to ensure consistency in practice. In undertaking this review, standardisation and clarification of the enforcement measures and information and gathering powers across Alderney Companies Legislation, the Beneficial Ownership of Legal Persons (Alderney) Law, 2017 (“Beneficial Ownership Law”), the Charities etc. (Guernsey and Alderney) Ordinance, 2021 (“Charities Ordinance”) and the Companies (Guernsey) Law, 2008 (“Guernsey Companies Law”) has also been sought in the interests of consistency and effectiveness.
4. The proposals are categorised into the following three areas: (A) Record keeping; (B) Enforcement measures; and (C) Information gathering and sharing powers.

Proposals

A. Record keeping

5. The following set of streamlining changes are proposed to ensure consistency to the greatest extent possible in the record keeping provisions across the Alderney Companies Legislation and the Guernsey Companies Law. The proposals also seek to provide greater accuracy and

¹ The registers maintained by the Registrar which are the subject of this consultation paper are the Register of Companies, the Register of External Companies, and the Register of Beneficial Ownership of Legal Persons in Alderney.

² The revisions proposed in this consultation paper to legislation may also contain any consequential, incidental, supplementary, savings, transitional and other ancillary provisions that may appear to be necessary or expedient.

consistency in the information available to the Registrar, create operational efficiencies and reduce the administrative burden on the Registry.

Information recorded at the Registry

6. The following proposals aim to achieve greater consistency across the Alderney Companies Legislation in respect of the information recorded by the Registry.

Nature of business (Alderney companies)

7. With respect to Alderney companies, information with respect to the nature of the activities of the company is collected by the Registrar on an annual basis when Alderney companies submit their annual return³. For consistency across the Alderney Companies Legislation, it is proposed that information relating to the nature of the business of all companies is also collected at the application for registration stage⁴ and that this information is recorded by the Registry and made publicly available. This is already the case for external companies, where the nature of the business to be carried on at the external company's place of business in Alderney⁵ is filed with the Registrar and publicly available.

Basic governing powers (external companies)

8. For consistency across the Alderney Companies Legislation, it is proposed that the basic governing powers for all companies should be recorded by the Registry and made publicly available. This is already the case for Alderney companies, where a company's memorandum and articles of association, which provide details of the governance of the company, are filed with the Registry and publicly available. For external companies, a certified copy of the memorandum and articles of association or other equivalent constitutive documents are filed with the Registry however are not stated in the Register. It is proposed that a requirement is introduced so that such information is publicly available and the legislation is amended accordingly.
9. It is also proposed that, like Alderney companies, external companies would have a similar duty to notify the Registrar of any changes to their constitutive documents filed at the Registry.

Shareholder and beneficial ownership information (external companies)

10. To achieve greater consistency across the Alderney Companies Legislation, to ensure proper oversight of external companies and to keep pace with developing international standards, it is proposed that shareholder and beneficial ownership information is provided with respect to external companies upon their application for registration.
11. It is envisaged for external companies that the requested shareholder information would encompass the names and addresses of all shareholders, the number of shares held by each shareholder, the distinguishing numbers of such shares, the category of share held by each shareholder and the nature of the voting rights associated with such shares, the amount paid up on the shares and date of each payment, the date on which the shareholder was registered and the date, where relevant, in which a person ceases to be a shareholder. For the beneficial ownership information, it is envisaged that this would encompass beneficial ownership information as defined under the Beneficial Ownership Law, namely information about the natural person who ultimately controls the external company through ownership or through other

³ See section 37(2)(ab) of the Alderney Companies Law.

⁴ It is envisaged that this information would be collected in such form and manner as the Registrar may specify, whether by reference to a system of classifying purposes or otherwise.

⁵ See section 3(1)(e) of the External Companies Ordinance.

means⁶. It is proposed that the shareholder and beneficial ownership information would be filed at the Registry so that it would be available for competent authorities for the purpose of carrying out their functions, however, it is not proposed that this information would be available more widely.

12. It is currently not proposed that external companies would be required to appoint a resident agent in Alderney as this is not viewed as proportionate given the cost implications involved in such an appointment. However, it is proposed that external companies would have a duty to notify the Registrar of any changes to shareholder and beneficial ownership information filed at the Registry.

Records maintained by entities

13. In practice, entities keep and maintain their registration and ownership records at their registered office. This includes information filed with the Registrar. The following proposals aim to achieve consistency in respect of the records maintained by companies –

Location of company records (Alderney companies)

14. With respect to Alderney companies, it is proposed that it is clarified that, in addition to the registers of directors and shareholders, it will be a requirement for other basic company information to be kept and maintained at the company's registered office, namely information legally required to be filed with, or issued by, the Registrar⁷ together with evidence of the company's legal form and status⁸.

Content of records (Alderney companies)

15. Proof of incorporation and legal form and status: In practice, Alderney company records tend to include their proof of incorporation or registration, and their legal form and status⁹. From an external perspective, it would provide greater clarity if a requirement to keep such proof at the registered office was expressly stated in the Companies Law and it is therefore proposed that the legislation is amended accordingly.
16. Register of members: Alderney companies are required to keep a register of members at their registered office which contains the names and addresses of all shareholders, the number of shares held by each shareholder and the distinguishing numbers of such shares, the amount paid up on the shares and date of each payment, the date on which the shareholder was registered and the date, where relevant, in which a person ceases to be a shareholder. To ensure proper oversight of Alderney companies and to keep pace with developing international standards, it is proposed that Alderney companies must also record in their register of members the category of share held by each shareholder and the nature of the voting rights associated with such shares.

Mandatory Audit for large Alderney companies

17. Any Alderney company that is a private company may exempt itself from the requirement to have its financial accounts audited¹⁰. In contrast to Guernsey¹¹, there are no exceptions to this principle,

⁶ For the meaning of "beneficial owner", see the Beneficial Ownership (Alderney) (Definition) Regulations, 2017, the Beneficial Ownership (Alderney) (Definition) (Amendment) Regulations, 2017 and the Beneficial Ownership (Definition) (Amendment) (No.2) Regulations, 2017.

⁷ This will include the company name, registered office address, memorandum of incorporation and articles of incorporation.

⁸ Legal form and status includes (i) the legal entity type (i.e. the type of company) (ii) the date of registration (iii) registration number and (iv) where applicable, the date of removal from the register.

⁹ Ibid 8.

¹⁰ See Schedule 3 to the Companies Law.

¹¹ See the Companies (Audit Exemption) Regulations, 2008, as amended.

and it follows that large companies are not prevented from using the exemption. To achieve greater consistency with the Guernsey Companies Law and to ensure proper oversight of Alderney companies, it is proposed that large companies would no longer be able to rely on the audit exemption and would be required to appoint auditors to prepare an auditors' report in accordance with the requirements under Part XII of the Companies Law.

18. It is envisaged that the definition of a large company would be equivalent (to the extent possible) to the definition under the Guernsey Companies Law. It follows that it is proposed that an Alderney company would be a large company if it satisfied two of the following conditions: (a) it has an annual net turnover of £10.52 million or greater, (b) it has a net balance sheet of £5.1 million or greater, or (c) it has an average number of employees of 50 or more. However, Alderney companies with 10 or fewer members or which are licensed insurers within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 and have received notice by the Guernsey Financial Services Commission ("Commission") under section 35(6) of that Law will not be regarded as a large company, and will therefore still be able to rely on the audit exemption.

Annual return for external companies

19. It is proposed that external companies will be under a statutory duty, like Alderney companies, to submit an annual return to the Registrar. It is envisaged that the annual return will require external companies to validate information that they are required to provide upon their application to be registered in the Register of External Companies (including, director, shareholder and beneficial ownership information) and that this information is submitted in a form directed by the Registrar.

Access to information upon an Alderney company's liquidation

20. When an Alderney company enters into liquidation, a director's powers generally cease. In such cases, it is sometimes the case that directors resign and no directors are left in office, or the current directors are no longer willing to act as a resident agent. This can result in there being no resident agent in place, which means there is no longer a person appointed on behalf of the Alderney company to maintain and file the requisite company information or deal with information requests from the Registry. In such cases, the Registrar tends to list the Alderney company for strike off but defers the actual strike off for a reasonable time so the liquidation may be completed. However, during that time, there may be inadequacies of information on the Register of Companies. Liquidators are not generally eligible to be a resident agent as they must be either a director of the Alderney company being liquidated or a corporate service provider. To address this issue, it is proposed that the Companies Law is amended so that, in future (in respect of liquidations that commence after the date of the amendment) if in such circumstances there is no resident agent, the liquidator appointed by the Alderney company automatically becomes the resident agent.

B. Enforcement measures

21. It is proposed that the enforcement provisions are further harmonised across the Beneficial Ownership Law, the Charities Ordinance and the Alderney Companies Legislation.

Consistency in sanctions

22. Greater harmonisation will provide more consistency in the Registrar's oversight processes and enforcement measures, and a wider set of powers at the Registrar's disposal so that the most appropriate and proportionate sanction can be applied to the individual circumstances in the event

of non-compliance with obligations under the Alderney Companies Legislation. It is hoped that this will in turn further increase the dissuasive impact of the sanctions regime and help ensure that entities and related persons meet their obligations.

23. To achieve greater consistency in the sanctions measures available to the Registrar, it is proposed that equivalent provisions to the following enforcement powers found in the Beneficial Ownership Law and/or Charities Ordinance and/or Guernsey Companies Law are incorporated into the Registrar's current suite of statutory powers in the Alderney Companies Legislation:
- a. *Private reprimands*¹² – Private reprimands would be formal warnings which could be issued by the Registrar to any registered company, or their officers, in respect of non-compliance with obligations under the Alderney Companies Legislation;
 - b. *Public statements*¹³ – Public statement powers would allow the Registrar to make open public statements about misconduct, in respect of non-compliance with their obligations under the Alderney Companies Legislation, as a form of enforcement action against registered companies or their officers.
 - c. *Financial penalties of up to £20,000*¹⁴ – Financial penalties could be issued by the Registrar to any registered company, or their officers, in respect of non-compliance with obligations under the Alderney Companies Legislation; and
 - d. *Civil penalties*¹⁵ – Civil penalties may be issued by the Registrar in respect of non-compliance with obligations under the Alderney Companies Legislation.

Publication of sanctions

24. It is also recommended that, in the Alderney Companies Legislation and Beneficial Ownership Law, the Registrar should have an equivalent power to that under the Charities Ordinance¹⁶ to publish details of sanctions imposed by the Registrar (including, the name of the company or person sanctioned, the nature of the applicable sanction etc...)¹⁷.

Strike off powers for Alderney companies

25. To achieve greater consistency with the Guernsey Companies Law, it is proposed that the Registrar's strike off powers are extended to include circumstances where an Alderney company carries out a persistent or gross contravention of the Companies Law or has less than the minimum number of directors required.

Consistency in enforcement process

26. To achieve greater consistency and simplicity in the enforcement process, it is recommended that the decision making procedure for enforcement decisions in the Beneficial Ownership Law is aligned with the process under Part V of the Charities Ordinance. Currently, the Beneficial Ownership Law has a complex enforcement process which is administratively burdensome and inconsistent with the Registrar's other enforcement processes. In practice, alignment with the enforcement process under the Charities Ordinance would provide the beneficial ownership regime with a more timely and streamlined decision making procedure whereby –

¹² See section 32 of the Charities Ordinance and section 21 of the Beneficial Ownership Law.

¹³ See section 33 of the Charities Ordinance and section 22 of the Beneficial Ownership Law.

¹⁴ See section 19 of the Beneficial Ownership Law.

¹⁵ See section 516 of the Companies Law where a civil penalties regime is in place, and in practice implemented where documents or information are not filed with the Registrar.

¹⁶ See section 38 of the Charities Ordinance.

¹⁷ Please note that private reprimands would not be published without the consent of the relevant company or person.

- a. Sanctions will generally take effect 4 weeks (rather than 6 weeks) following the date of the sanctions notice (during which time the relevant entity or person may apply to the court to have the decision set aside);
 - b. The Registrar can make an application for a court order directing that the sanctions decision has immediate effect where it is in the public interest or in the interests of the reputation of the Bailiwick as a financial centre; and
 - c. There will no longer be a requirement for the Registrar to issue a “sanctions proposal notice” (which provides a 28 day period for the entity or person to make representations) before the Registrar makes an enforcement decision. It is important to note that as a matter of general practice and to ensure fair process, before making an enforcement decision, the Registrar requests input from the entity or person primarily impacted (for example, by asking for an explanation as to why a requirement has not been met).
27. It is also proposed that the decision making procedure for enforcement decisions under the Alderney Companies Legislation, particularly in respect of any new sanctions introduced under paragraph 23 above, are also aligned with Part V of the Charities Ordinance to the extent practicably possible. It is envisaged that this would provide more clarity and consistency to the enforcement process across the Alderney Companies Legislation (including with respect to the considerations that need to be taken into account by the Registrar before making a decision, the notification provisions and the point at which a sanction takes effect).

Consistency in due process

28. All of the above enforcement proposals will be implemented in a manner that ensures due process and fairness and which is as consistent as possible across the various pieces of legislation.

C. Information gathering and sharing powers

29. It is vital that the necessary legal gateways are in place so that the Bailiwick’s authorities have the necessary information gathering and sharing powers to carry out their functions.

Harmonisation in information gathering and sharing powers

30. Currently, the Registrar has a suite of existing information gathering and sharing powers under the Alderney Companies Legislation. The extent of these powers vary and the Registry would therefore like to standardise and clarify these powers as much as possible across the Alderney Companies Legislation, the Charities Ordinance and the Beneficial Ownership Law. In the interests of consistency, it is proposed that the following streamlining changes are put in place.

Information gathering

31. *Registrar’s power to request/obtain information/visit premises:* It is proposed that the Registrar, across the Alderney Companies Legislation and the Beneficial Ownership Law should have the equivalent powers to those under Schedule 3 to the Charities Ordinance to request and obtain information and enter into premises for the purposes of or in connection with the exercise of the Registrar’s functions (including those functions with respect to Alderney companies and external companies). This includes the power to visit the premises of companies and require information and documents to be provided to the Registrar¹⁸. It is envisaged that the language would be made consistent with the language used in the Charities Ordinance.

Information sharing

¹⁸ See paragraphs 2 to 6 of Schedule 3 to the Charities Ordinance.

32. *Registrar's disclosure of information powers:* It is proposed that the Registrar, across the Alderney Companies Legislation and the Beneficial Ownership Law, would have the equivalent powers to those under paragraph 2 of Schedule 2 to the Charities Ordinance to disclose information. The disclosure powers would therefore include disclosing public information, non-personally identifiable summary information, information to enable the discharge of the Registrar's functions (including those functions with respect to Alderney companies and external companies), together with information in connection with proceedings, a court order or for other specified purposes. The specified purposes would mirror those already in place in the Charities Ordinance and would include the power to share information with other Bailiwick competent authorities (including with other offices of the Registrar and the Economic and Financial Crime Bureau) as well as with foreign authorities with equivalent functions¹⁹.
33. *Cooperation with foreign authorities:* It is proposed that the Registrar, across the Alderney Companies Legislation, the Beneficial Ownership Law and the Charities Ordinance should have equivalent power to the Commission²⁰ to cooperate with foreign competent authorities, which may take the form of information sharing.

Tipping Off

34. It is recommended that equivalent tipping off provisions to those set out under the Beneficial Ownership Law²¹ are included in the Alderney Companies Legislation so that where the Registrar engages their information gathering powers with a third party, it is an offence for that person to disclose information which may prejudice any criminal or regulatory investigations or proceedings.

Cooperation with Bailiwick authorities by resident agents

35. Resident agents of Alderney companies are currently required, on the receipt of a certificate, to provide beneficial ownership information to Her Majesty's Procureur, the Commission, the police, customs or such other person prescribed by the States of Alderney Policy and Finance Committee when such information is required for the purposes of criminal or regulatory investigations and proceedings²². This certification process dates back to times when the beneficial ownership regime was still in its infancy and the legal gateways available for competent authorities to access information were not as open as they are now. To further enhance and simplify the information gathering powers available to Bailiwick competent authorities, it is proposed that such powers should be available to all Bailiwick AML/CFT and sanctions authorities (including, without limitation, the Revenue Service and the Economic and Financial Crime Bureau) in order to enable them to directly obtain any information or documents and request any assistance necessary to discharge their functions²³. Although legal gateways are in place which allow Bailiwick competent authorities to obtain information via the Registrar²⁴, a simplified and more streamlined process is desirable. It is therefore envisaged that a simple notification process will replace the current certification procedures.
36. Overall, it is proposed that resident agents will be required to provide information and assistance (including attending at specified premises and answering questions) to a greater number of

¹⁹ It is envisaged that there will also be a power to amend the list of purposes by regulations to permit the inclusion of any other functions that may necessary in future to keep pace with developing international standards.

²⁰ See section 21A of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.

²¹ See paragraph 6 of the Schedule to the Beneficial Ownership Law.

²² See section 152H of the Companies Law.

²³ It is likely that the powers would be framed in a similar manner to the disclosure provisions under paragraph 2 of Schedule 2 to the Charities Ordinance.

²⁴ See paragraph 2 of the Schedule to the Beneficial Ownership Law.

Bailiwick agencies and in a wider set of circumstances. In addition, the information would no longer be limited to beneficial ownership information but to any information that could be of assistance to Bailiwick authorities in the exercise of their functions. In order for the proposals to work in practice, resident agents would need to be given the necessary statutory powers to obtain such information from the Alderney company.

37. It is envisaged that the legislation will expressly state that resident agents are authorised by the Alderney company to provide any information or further assistance required by competent authorities for the purpose of carrying out their functions. In conjunction with these proposals, with respect to those Alderney companies that are exempt from the resident agent framework, the Registry would be interested to understand what stakeholders consider the best approach would be to ensure that information and assistance can be provided to Bailiwick competent authorities on behalf of such Alderney companies.

Concluding Remarks

Transitional Provisions

38. It is recognised that some of the proposed changes are likely to have an impact on existing registered companies and will require some time to implement in practice. The Registry would be interested to hear views from stakeholders on which proposals would most require transitional provisions and the reasons why.

Invitation for comments

39. The Registry is of the view that the proposed changes provide a real opportunity to provide further consistency in legislation and practice across the Alderney Companies Legislation and introduce more clarity and simplicity in the oversight of the companies administered by the Registrar. In practice, this will provide greater accuracy and consistency in the information available to the Registrar, and create operational efficiencies at the Registry. The changes are also important in order to further enhance and harmonise the Registry's enforcement measures, and more widely, achieve greater consistency in the information gathering and sharing powers of the Bailiwick's authorities.
40. The Registry looks forward to receiving comments from stakeholders on the proposed changes set out in this consultation paper.