



Legal Insights

Beneficial Ownership requirements in the British Virgin Islands: Registration and “legitimate interest” access

Introduction

The registration of beneficial ownership information in respect of British Virgin Islands (the “**BVI**”) companies and the potential for that information to be disclosed subsequently has long been the subject of speculation and understandable concern by owners of companies and other relevant entities in the BVI.

Political pressure from the Governments of several nations (including that of Great Britain, of which the BVI is an “overseas territory”) as well as the ever increasing efforts of organisations such as the Financial Action Task Force, contributed to a general sense that the ultimate end destination for BVI companies would be a fully transparent and publicly accessible beneficial ownership database, much like the one that is available via Companies House in respect of all companies incorporated in the United Kingdom.

However, judgments handed down by the European Court of Justice (the “**ECJ**”) in July 2022 in the cases of *La Quadrature du Net v. Conseil d'État*¹ and *La Quadrature du Net and Others v. Conseil d'État*² have proven to be instrumental in preventing, or in the very least postponing indefinitely, the march towards complete transparency of beneficial ownership in the BVI.

In these judgments, the ECJ held that unrestricted public access to beneficial ownership information is not permitted on the basis that it would breach rights to privacy and data protection and that instead a “legitimate interest” must first be demonstrated by those who are seeking access to beneficial ownership information. The ECJ considered that this approach would strike the right balance between preserving privacy and continuing the fight against money laundering, terrorist financing and proliferation financing.

Beneficial ownership filings in the BVI

Under the Beneficial Ownership Secure Search System Act, (Revised 2020) which was first enacted in June 2017 (the “**BOSS Act**”), the BVI adopted a conservative approach to the collection and monitoring of beneficial ownership information. All information uploaded to the platform was tightly controlled with access only being granted for official purposes to regulators, international tax authorities and other international governmental and quasi-governmental agencies and authorities.

Whilst reform seemed inevitable for the reasons given above, the rulings of the ECJ in the above-mentioned cases led to an announcement in December 2023 that the BVI would, broadly speaking, follow the approach approved by the ECJ whereby beneficial ownership information would only be disclosed to those with a ‘legitimate interest’ in receiving it. This approach has now been enacted in the BVI Business Companies and Limited Partnerships (Beneficial Ownership) Regulations 2024 (as revised) (the “**Regulations**”).

¹ (C-37/20)

² (C-601/20)

What information regarding beneficial ownership must be filed in the BVI?

Under the Regulations and subject to the exemptions described below, beneficial ownership details for all BVI Business Companies and BVI registered limited partnerships must be disclosed via upload to the 'VIRGGIN' database. This applies to beneficial owners who beneficially own 10% or more of the entity in question. The beneficial ownership information that must be disclosed is:

- the full legal name, nationality and date of birth of each beneficial owner per their official document (e.g. government issued photo identification);
- the current residential address of each beneficial owner;
- the nature of each beneficial owner's ownership or control (e.g. voting rights, direct / indirect ownership and/or the ability to appoint and remove directors); and
- the date on which they became a beneficial owner, within the meaning of the Regulations.

Notwithstanding the general requirement to disclose beneficial ownership, there are exemptions available which means beneficial ownership information need not be supplied. For example, the requirement to disclose beneficial ownership information under the Regulations does not apply to:

- entities whose shares are listed on a recognised stock exchange (a "**Listed Entity**");
- entities who are themselves a subsidiary of a Listed Entity;
- BVI entities who are regulated under alternative regimes and whose beneficial ownership information is separately monitored, such as investment funds (whether regulated in the BVI or elsewhere) or a subsidiary of such an investment fund; and
- an entity in which the Government of the BVI (or other recognised international government) owns a majority stake.

Disclosure of filed beneficial ownership information – 'legitimate interest'

Those who have a 'legitimate interest' may submit a request to access beneficial ownership information pursuant to the *Policy on Rights of Access to the Register of Beneficial Ownership for BVI Business Companies and Limited Partnerships* (the "**Policy**"). The applicable fee for single access to beneficial ownership information is US\$75 which will not be refunded even if the application is refused.

The Policy defines a 'legitimate interest' as a "*demonstrable and bona fide interest in accessing beneficial ownership information*" for one of the following purposes:

- in connection with the investigation, prevention or detection of suspected activity involving money laundering, terrorist financing and/or proliferation financing;
- conducting customer due diligence obligations in the context of certain types of entity; and
- where the legal entity concerned is connected with a person who has been convicted of, or is the subject of criminal proceedings for, an offence involving money laundering, terrorist financing or proliferation financing,

provided that access under this regime is limited to persons who (whether directly or indirectly), hold an interest of 25% or more in the relevant BVI entity (i.e. disclosure will not be made in respect of persons holding an interest of less than 25% in the relevant entity, regardless of any legitimate interest).

Upon receipt of a request for 'legitimate access', the Registrar will process the application within 12 business days of receipt. If the Registrar determines that the application for legitimate access meets the requirements of the Policy and the Regulations, the Registrar will notify the entity that is the subject of the request (the "**Subject Entity**"). This notification will include:

- where the person submitting the request is an individual, the purpose of the request only; and
- where the person submitting the request is not an individual, the name of the requesting person and the stated purpose of the request.

The Subject Entity will then have a period of five business days within which to object to the disclosure of its beneficial ownership information. To file such an objection, the Subject Entity must give reasons for the objection which may include:

- a *reasonable* belief that disclosure would expose a beneficial owner to disproportionate or other serious risks such as persecution, fraud, kidnapping, blackmail, extortion, harassment, violence or other intimidation;
- a statement confirming that the beneficial ownership information relates to a minor or other person lacking legal capacity;
- a statement confirming that disclosure of beneficial information will or is likely to raise issues of national security (whether in the BVI or elsewhere); and/or
- a statement that the request is of a nature that the Registrar should form the view that disclosure of the beneficial information is not in the public interest.

Supporting evidence should also be provided which justifies the objection that is raised. If the objection is upheld, the requester will be notified of the decision and of their right to appeal. If the objection is not considered to be justified, the Registrar will grant access to the information and the Subject Entity will be informed of its right to appeal. If such an appeal is lodged, beneficial information will not be disclosed pending the outcome of that appeal.

In circumstances where no objection is raised, the beneficial information will be disclosed to the requester.

The above stated grounds (risk of harm, beneficial ownership information relating to a minor or person lacking legal capacity, issues of national security and disclosure not being in the public interest) may also be used to make an application to the Registrar for exemption from disclosure of beneficial information.

Supporting evidence must be provided with this type of application also and the Registrar will generally make a decision within 12 business days of receipt of the application.

Conclusion

The Regulations and the Policy appear to be well structured and well considered. The Regulations (supported by the Policy) strive to strike the right balance between permitting disclosure where it is legitimate and proportionate in order to continue the fight against, money laundering, terrorist financing and proliferation financing whilst also protecting those who might be placed at risk if disclosure is permitted. The Regulations and the Policy do not adopt the UK model where all such information is publicly available, but instead follows the broad approach that has been approved by the ECJ and, by doing so, the BVI has aligned itself with international best practice on beneficial ownership transparency, providing competent authorities with access to necessary information while maintaining robust safeguards. This measured approach demonstrates a pragmatic balance between transparency, regulatory effectiveness, and the protection of legitimate privacy interests, positioning the BVI as a jurisdiction that is both compliant with global standards and sensitive to the operational realities of its businesses and residents.

This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on the matters covered in this Legal Insight, please contact your usual Loeb Smith attorney or any of the following:

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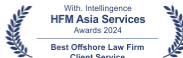


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