



GUIDANCE

FILING OF BENEFICIAL OWNERSHIP INFORMATION UNDER THE BVI BUSINESS COMPANIES AND LIMITED PARTNERSHIPS (BENEFICIAL OWNERSHIP) REGULATIONS, 2024



Contents

Definitions	5
Introduction	6
Background	7
Understanding Beneficial Ownership	8
BVI Business Companies	8
<i>Determining the Beneficial Owner</i>	8
Legal Ownership vs Beneficial Ownership	8
Companies Limited by Shares or Authorised to Issue Shares	8
Segregated Portfolio Companies	9
Companies Limited by Guarantee – Not Authorised to Issue Shares	10
Companies Limited by Guarantee – Authorised to Issue Shares	10
<i>Who is Required to File BO Information</i>	10
Limited Partnerships	12
<i>Determining the Beneficial Owner</i>	12
<i>Who is Required to File BO Information</i>	13
Trusts and Other Legal Arrangements	14
<i>Determining the Beneficial Owner</i>	14
<i>Who is Required to File BO Information</i>	15
Ownership by Control	17
<i>Determining the Beneficial Owner</i>	17
<i>Who is Required to File BO Information</i>	17
Nominee Relationships	18
<i>Determining the Beneficial Owner</i>	18
<i>Who is Required to File BO Information</i>	18
Key Obligations Under the BO Regulations	19
Beneficial Owners	19
<i>Identifying as a BO</i>	19
<i>Notifying of Changes in Particulars of BO Information</i>	19

<i>Confirming Changes to Particulars of BO Information</i>	19
<i>Applying to Court for a Determination</i>	20
<i>Confirming Changes to Other Particulars of BO Information</i>	20
Legal Entities	20
<i>Obtaining Beneficial Ownership Information</i>	20
Adequacy.....	20
Accuracy.....	20
Up to Date.....	21
Notifying the Registrar.....	21
<i>When Beneficial Ownership Information Should be Filed</i>	22
<i>Identifying Beneficial Owners</i>	24
Issuing a Notice to Confirm Information Held on Record.....	24
Ongoing Review of Information Held on Record.....	24
Request for Confirmation of Information Held on Record.....	24
Identifying a BO Through a Third Party.....	25
<i>Maintaining Record of Actions Taken</i>	26
<i>Notification of Changes of Particulars of BO Information</i>	26
Notification to the Registrar.....	26
Notification to the Beneficial Owner	27
<i>Submission of Information Through a Registered Agent</i>	27
Registered Agents	28
Type of Beneficial Ownership Information That Should be Filed	29
___ Legal Entities.....	29
A. Individual BOs.....	29
B. Trustees Licensed Under the Banks and Trust Companies Act.....	30
C. Other Trustees not Licensed by the Commission	30
D. Other Legal Arrangements.....	30
E. Company Listed on a Recognised Exchange.....	30
F. Specified Fund	31

G. Foreign Fund	31
Filing Deadlines for BO Information	32
Companies.....	32
Limited Partnerships	32
Filing Deadlines for Changes in BO Information	32
Companies.....	32
Limited Partnerships	32
How to File BO Information	32
Duties and Powers of the Registrar	33
Maintenance of Electronic BO Register	33
Power to Grant Extension of Time.....	33
Inspection of BO Register	34
Removal of Entries from the BO Register	35
Keeping of Records	35
Inspection of the BO Register	36
Who Can Inspect the BO Register	36
<i>Competent Authorities</i>	36
<i>Law Enforcement Agencies</i>	37
Information Available Upon Inspection	38
Access to BO Information Under the Agreement	38
Exemptions From Filing Beneficial Ownership Information	40
Companies.....	40
Limited Partnerships	43
General Provisions	45
Giving or Serving Notice	45
Rectification of Register	47
Imposition of Penalties.....	47

Definitions

BCA	means the BVI Business Companies Act, Revised Edition 2020
BO	means beneficial owner
BO information	means the particulars of beneficial ownership information in relation to a beneficial owner specified in regulation 21 of the Regulations
BO Register	means the Register of Beneficial Ownership established under section 230(1)(d) of the BCA and kept and maintained in accordance with regulation 12
BO Regulations	means the BVI Business Companies and Limited Partnerships (Beneficial Ownership) Regulations, 2024
BTCA	means Banks and Trust Companies Act, Revised Edition 2020
Commission	means the British Virgin Islands Financial Services Commission established under section 3(1) of the Financial Services Commission Act, Revised Edition 2020
competent authority	means an authority designated or performing functions as a competent authority under an enactment, and includes the Attorney General, Governor, Financial Investigation Agency, Financial Services Commission, International Tax Authority and such other authority the Governor may, by an Order published in the <i>Gazette</i> designate
Court	means the High Court
FIA	Financial Investigation Agency
law enforcement agency	means an institution of government which has responsibility, whether under an enactment or otherwise, for the detection, prevention and investigation of crime
legal entity	means a body corporate that is incorporated or registered, a limited partnership that is formed or registered, or any other entity that is a legal person, under the laws of the Virgin Islands
LPA	means the Limited Partnership Act, Revised Edition 2020
recognised exchange	means an investment exchange that is prescribed as a recognised exchange in Schedule 2 of the BO Regulations
Registrar	means the Registrar of Corporate Affairs appointed under section 229(1)(a) of the BC Act
Registry	means the Registry of Corporate Affairs
SIBA	means the Securities and Investment Business Act, Revised Edition 2020
VIRRGIN	means the Virtual Integrated Registry and Regulatory General Information Network established by the Commission

Introduction

These Guidelines are issued by the Registrar of Corporate Affairs of the British Virgin Islands Financial Services Commission (the “Commission”) under Regulation 38 of the BVI Business Companies and Limited Partnerships (Beneficial Ownership) Regulations, 2024 (the “BO Regulations”).

The BO Regulations set out the framework for the collection and maintenance of Beneficial Ownership information for legal persons and legal arrangements in the Virgin Islands and is aligned with domestic AML legislation and international standards.

These Guidelines have been developed to assist persons in understanding the requirements of the BO Regulations, and how the Commission and the Registrar intend to apply them, including:

- obligations on legal entities to file beneficial ownership information;
- the nature of the information required to be filed;
- the process of filing;
- powers of the Registrar in relation to:
 - beneficial ownership registers, and
 - transactions;
- details on the inspection of the beneficial ownership registers;
- any exemptions available under the BO Regulations; and
- penalties for non-compliance.

These Guidelines should be read in conjunction with relevant legislation, such as the BO Regulations, the BVI Business Companies Act and the Limited Partnership Act.

These Guidelines are neither intended, nor should they be construed, to constitute legal advice.

Entities should not exclusively rely on these Guidelines to determine any obligations of a legal person in relation to the filing of beneficial ownership information.

Background

As an international financial centre, the Virgin Islands (VI) is keenly aware that money laundering (ML), terrorist financing (TF) and proliferation financing (PF) permeate national borders and is, therefore, committed to the prevention and detection of ML, TF, PF and other financial crimes by putting appropriate measures in place to combat these crimes and ensure global financial stability. The VI is also keenly aware of the potential for misuse and abuse of the products and services it offers in facilitating such activities. Knowing and understanding the ownership structures of the legal entities registered and incorporated in the VI is a key component of being able to prevent and detect such activities.

The requirement to collect and maintain adequate, accurate and up to date beneficial ownership information is set out in Recommendation 24 of the Financial Action Task Force's *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* and is an obligation that falls to all countries as part of international standards developed by the Financial Action Task Force (FATF) and promulgated globally. It is therefore critical to the VI playing its part in the global fight against ML, TF, PF, and other criminal activities.

To ensure ongoing compliance with these standards, the VI has enhanced its requirements for the collection and maintenance of beneficial ownership information by necessitating this information be now held by the Registrar. In so doing, new legal requirements have been introduced by way of amendments to the BVI Business Companies Act, Revised Edition 2020 and the Limited Partnership Act, Revised Edition 2020, along with the introduction of the BO Regulations to establish this framework.

Understanding Beneficial Ownership

1. In order to determine who is obligated to file BO information with the Registrar, the general concept of beneficial ownership must be understood. This section provides general guidance on how to determine beneficial ownership where the legal entity is a BVIBC or a limited partnership or whose ownership structure involves a trust.
2. For more detailed information on determining beneficial ownership, please refer to the Commission's ***Guidelines on Beneficial Ownership Obligations under the AML Regulations and AMLTF Code of Practice***.

BVI Business Companies

Determining the Beneficial Owner

3. To establish the BO of a BVIBC, understanding the ownership structure of that entity is important. This begins with identifying the difference between legal ownership and beneficial ownership.

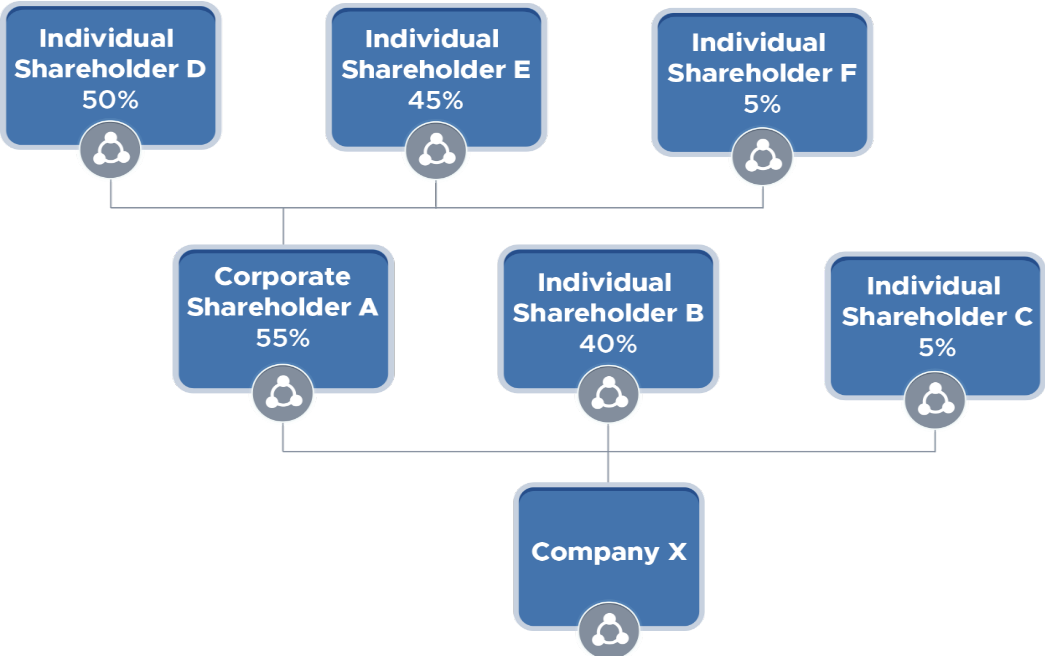
Legal Ownership vs Beneficial Ownership

Companies Limited by Shares or Authorised to Issue Shares

4. The following section applies to those BVIBCs whose constitutional documents limit them by shares or authorise them to issue shares.
5. A person is a legal owner of a company limited by shares or authorised to issue shares where the person is identified on the register of members as a shareholder. Where this is a natural person who holds shares for themselves, is not acting as a nominee on behalf of another person, and meets the threshold requirement of 10% or more, that person is also the BO.
6. Where the person listed in the register of members is a corporate entity (i.e. a legal person) that person is a legal owner but not a BO. In such instances, the ultimate natural person behind the corporate entity is the BO once they meet the threshold requirement of 10% or more. In ownership structures with multiple layers of ownership, this may require drilling down several layers to identify the natural person or persons.
7. Where the legal owner is a corporate entity acting in a nominee capacity (and meeting the threshold requirement of 10% or more), then the nominator on whose behalf the corporate

entity is acting, would be the BO. Where the nominator itself is a corporate entity, the ultimate natural person behind the nominator would be the BO.

8. BO Structure 1 below is provided as an illustrative example.



BO Structure 1 – Company Limited by Shares

9. In this example, shareholders A, B and C are legal owners of Company X. As a natural person, Shareholder B is also the BO of Company X. Shareholder C is not a BO of Company X as they do not meet the threshold requirement. As Shareholder A is a corporate shareholder, it is not a BO of Company X. Shareholders D and E, however, by virtue of their ownership in Shareholder A, are also BOs of Company X. Similarly to Shareholder C, Shareholder F is also not a BO of Company X as they do not meet the threshold requirement.

Segregated Portfolio Companies

10. A segregated portfolio company is a company limited by shares that may create segregated portfolios to separate its assets and liabilities. The beneficial owners of a legal entity structured as a segregated portfolio company would, therefore, be the individuals that own or control 10% or more of the shares or voting rights in the segregated portfolio company or 10% or more of the shares or voting rights in any segregated portfolio.

11. Any individual exercising control over the management of the segregated portfolio company or any segregated portfolio will also be a beneficial owner. Accordingly, the BO of a

segregated portfolio company should be established in the same manner as any other company limited by shares, as set out in paragraphs 3 to 7.

Companies Limited by Guarantee – Not Authorised to Issue Shares

12. Companies limited by guarantee that are not authorised to issue shares have guarantee members. Guarantee members can be either natural or legal persons who exercise control over the company by virtue of:

- their voting rights, where they have the power at general meetings to vote on all or substantially all matters to be voted on;
- their right to appoint or remove a majority of the board of directors (or equivalent management body); or
- ownership interest, if the company makes a distribution of its assets during the life of the company or at the time of winding up. (In the case of a guarantee member who is a legal person (i.e. BVIBC), the natural person ultimately benefiting from the distribution would be the BO.)

13. A BO of a company limited by guarantee – not authorised to issue shares – will, therefore, be the natural person or the individual within the legal person who is able to exercise such control.

Companies Limited by Guarantee – Authorised to Issue Shares

14. A company that is limited by guarantee and authorised to issue shares can have both shareholders and guarantee members. In such instances, the identification of the BO will follow the logic outlined in paragraphs 3 – 7 above in the case of a shareholder, and paragraphs 12 – 13 in the case of a guarantee member.

Who is Required to File BO Information

15. Once beneficial ownership is determined, the next step is determining whose BO information is required to be filed.

16. In accordance with the definition of BO in the BO Regulations,¹ BO information for the following persons is required to be filed with the Registrar:

¹ Regulation 2

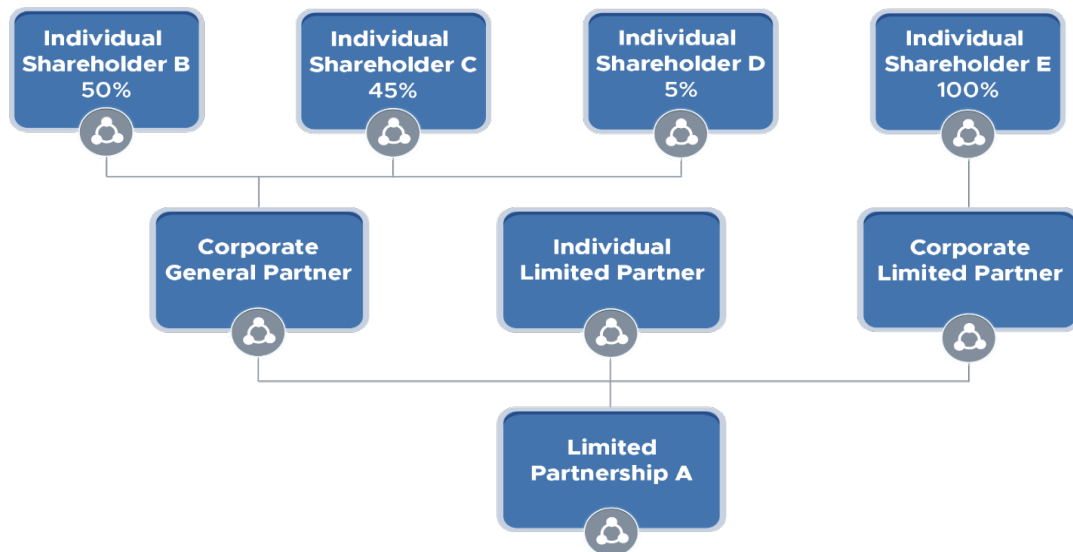
Type of Company	Qualifying BO	Considerations
Companies Limited by Shares or Authorised to Issue Shares	Any natural person owning 10% or more of the shares or voting rights, whether directly or indirectly, singularly or in aggregate	In the BO Structure 1 example above, shareholders B, D and E would be required to file their BO information with the Registrar
Companies Limited by Guarantee – Not Authorised to Issue Shares	Any natural person controlling 10% or more of the voting rights	
Companies Limited by Guarantee – Authorised to Issue Shares	Any natural person owning or controlling 10% or more of the shares or voting rights	

17. It should be noted that the requirements for individuals qualifying as beneficial owners by way of control are addressed in the ‘Ownership by Control’ section of the Guidelines.

Limited Partnerships

Determining the Beneficial Owner

18. Limited partnerships consist of one or more general partners and one or more limited partners. Limited partners will have ownership interest in the partnership but may not necessarily have control or voting rights, unless specified in the partnership agreement. General partners have controlling rights over the partnership.
19. General partners and limited partners can be natural or legal persons. Where these partners are natural persons, those persons are also BOs.
20. Where the general or limited partner listed in the register of general partners or limited partners is a corporate entity or partnership, the ultimate natural person behind the corporate entity or partnership is the BO.
21. BO Structure 2 below is provided as an illustrative example.



BO Structure 2 - Partnership

22. In this example, and in accordance with section 53 of the LPA, the corporate general partner would be listed in the register of general partners. (In a structure where a partnership serves as a general partner, the partnership would be listed in the register of general partners.)

23. The corporate entity and individual serving as limited partners in the above example would be listed in the register of limited partners in accordance with section 53 of the LPA. However, individual shareholders B and C of the corporate general partner and individual shareholder E of the corporate limited partner would be the BOs of Limited Partnership A as they meet the threshold requirement of 10% or more. Shareholder D, however, is not a BO as they do not meet the threshold requirement. The individual limited partner would also be a BO if he/she meets the ownership criteria set out in paragraph 24 below.

Who is Required to File BO Information

24. Once beneficial ownership is determined, the next step is determining whose BO information is required to be filed. BO information is required to be filed with the Registrar for any natural person who:

- is entitled to, directly or indirectly, 10% or more share in the capital or profits of the partnership;
- controls 10% or more of the voting rights in the partnership; or
- otherwise exercises control over the partnership.²

25. In the **BO Structure 2** example above, shareholders B, C and E would be required to file their BO information with the Registrar. The individual limited partner would also be required to file if he/she meets the beneficial ownership criteria set out in paragraph 24 above.

26. **See the ‘Ownership by Control’ section for further guidance on how to determine beneficial ownership by control.**

² See definition of Beneficial Owner under Regulation 2 of the BO Regulations

Trusts and Other Legal Arrangements³

Determining the Beneficial Owner

27. Where a trust or other legal arrangement is involved in the ownership structure of a legal entity, the BOs of that trust (save as excepted below) or legal arrangement must be identified when determining beneficial ownership of the legal entity.

Trusts

28. By virtue of the operation of law, a trustee is the legal owner of the trust and trust assets. A trustee may be a natural person or a corporate entity. Where the trustee involved in the ownership structure of a legal entity is a natural person, he/she is also a BO of the legal entity.

29. It is important to note that while the trustee is considered a BO of the legal entity, other parties involved in the trust for which the trustee acts, must also be considered when determining beneficial ownership.

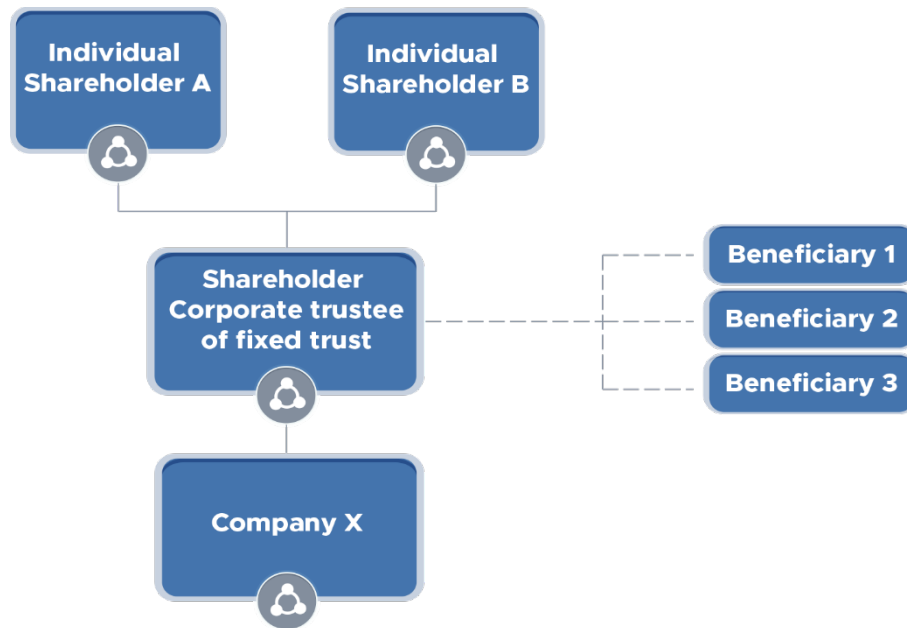
30. The following persons are considered to be BOs of the trust for which the trustee acts,⁴ and as such would be BOs, where relevant, of the legal entity where the trust is part of the legal entity's ownership structure:

- the settlor;
- the protector, if any;
- beneficiaries or class of beneficiaries with a vested interest before or at the time of distribution; and
- any other natural person exercising ultimate effective control over the trust.

31. In the case of a corporate trustee involved in the ownership structure of a legal entity, the BOs of the corporate trustee will be the BOs of the legal entity. In addition, a beneficiary of the trust administered by the corporate trustee will also be a BO of the legal entity, once vested, as illustrated in the **BO Structure 3** example below.

³ Other legal arrangements include arrangements with similar structures or functions to trusts such as fiducies (French arrangements), truehands (German arrangements), fideicomisos (civil law arrangements) and waqfs (arrangements under Islamic law)

⁴ See definition of Beneficial Owner in the case of a trust under Regulation 2 of the BO Regulations



BO Structure 3 - Trust

32. In the **BO Structure 3** example above, the corporate trustee is the legal owner of Company X. Through their ownership of the corporate trustee, shareholders A and B are BOs of Company X. In addition, the beneficiaries of the trust held by the corporate trustee, once vested, are also BOs of Company X.

Other Legal Arrangements

33. Where any other form of legal arrangement is involved in the ownership structure of a legal entity, the BOs should be identified in a similar manner as those identified in a trust.

Who is Required to File BO Information

34. Once beneficial ownership is determined, the next step is determining whose BO information is required to be filed.

Trusts

35. BO information for the following persons is required to be filed with the Registrar:

- the trustee;
- the settlor;
- the protector, if any;
- beneficiaries or class of beneficiaries with a vested interest before or at the time of distribution; and
- any other natural person exercising ultimate effective control over the trust.

36. Where a corporate trustee licensed under the BTCA holds shares in a company, and the company's BO information is held by the corporate trustee, only the name of the corporate trustee is required to be filed with the Registrar.

Other Legal Arrangements

37. BO information is required to be filed with the Registrar for any natural person holding equivalent positions to those listed in paragraph 35 or exercising ultimate effective control over the legal arrangement identified within the legal entity's ownership structure (including through a chain of control or ownership).

38. **See the 'Ownership by Control' section for further guidance on how to determine beneficial ownership by control.**

Ownership by Control

Determining the Beneficial Owner

39. Beneficial ownership through control over a legal entity can manifest itself in different ways.

A person controls a right where that right is exercisable:

- only by that person;
- in accordance with that person's directions or instructions; or
- with that person's consent or concurrence.⁵

40. Controlling rights can include:

- voting rights, where the person has the power to vote on all or substantially all matters to be voted on at general meetings;
- the ability to appoint or remove the board of directors (or equivalent management body); and
- the ability to influence decisions that affect the activities of the legal entity, including at a management level.

41. Control, however, does not extend to circumstances where there is a standard professional relationship between the legal entity and an individual in the normal course of business. Such relationships may include relationships with clients, lenders, suppliers, or where the individual provides advice or direction in a professional capacity (such as an accountant or legal adviser). Control will also not apply in the context of the exercise of any statutory function, such as that of a liquidator.⁶

Who is Required to File BO Information

42. When determining whether BO information must be filed with the Registrar, consideration must be given to the level of rights exercisable by the individual. Beneficial ownership by way of control should be filed where an individual, directly or indirectly:

- a) controls 10% or more of the voting, or equivalent, rights of a legal entity;⁷
- b) controls 10% or more share of the capital or profits of a partnership;
- c) has the right to appoint or remove a majority of the board of directors (or equivalent management body) holding a majority of voting rights on all or substantially all matters;⁸ or

⁵ Regulation 6(1)

⁶ Except in the case of information requested on a legal entity in insolvent liquidation through the Agreement (as defined in section 2 of the BO Regulations)

⁷ Regulation 7

⁸ Regulation 5

d) has the right to exercise significant influence over the activities of the legal entity.

Nominee Relationships

Determining the Beneficial Owner

43. Instances where shares in a legal entity are held by a legal or natural person on behalf of another person are known as nominee relationships. In such instances, the person serving as the nominee essentially holds the shares in the legal entity on behalf of the underlying natural person. The person holding the shares (i.e. the nominee) is the legal owner and the natural person for whom the shares are held (i.e. the nominator) is the BO.
44. Under such arrangements, multiple layers of nominees should not exist, as there should be a clear and direct line between the nominee and the nominator.

Who is Required to File BO Information

45. BO information should be filed for the natural person for whom the shares are held (i.e. the nominator), where the value of the shares constitutes 10% or more of the shares in a company, whether singularly or in aggregate.

Key Obligations Under the BO Regulations

46. The BO Regulations place certain obligations on BOs, legal entities and RAs as it relates to the filing and maintenance of BO information. This section identifies the obligations placed on each of these parties, which must be adhered to in order to ensure compliance with the filing and reporting requirements outlined in the BO Regulations.

Beneficial Owners

Identifying as a BO⁹

47. Every person who qualifies as a BO of a legal entity for the purposes of the BO Regulations is obligated to identify himself/herself as such to the legal entity, unless the legal entity has already confirmed the BO's identity.

48. Each BO must provide the legal entity with the particulars outlined in 'Individual BOs' section of paragraph 104 and ensure that the information provided is adequate, accurate and up to date.

Notifying of Changes in Particulars of BO Information¹⁰

49. BOs are also obligated to notify the legal entity of any change in their BO information and provide the legal entity with the details of the change, including when the change occurred. This information must be provided to the legal entity within fourteen (14) days of the occurrence of the change. A change would include, for example, where the individual ceases to be a BO or has reason to believe that he/she is no longer a BO of the legal entity.

50. In some instances, a legal entity, upon review of the BO information maintained, may conclude that any particulars of information held in relation to a BO have changed. Where the legal entity has not received notification of such change from the BO, it is required to notify the BO of the identified change and request that the BO confirm or refute the change within twenty-one (21) days of being notified.

Confirming Changes to Particulars of BO Information¹¹

51. Where a change has occurred, the BO is required to confirm that the change occurred in the identified particular and provide the legal entity with the date on which it occurred. If,

⁹ Regulation 20

¹⁰ Regulation 23

¹¹ Regulation 24

however, the BO refutes that the change occurred, the BO must inform the legal entity that he/she is not in agreement with the information provided and give reason for the disagreement.

Applying to Court for a Determination¹²

52. Where the BO refutes the information provided by the legal entity, but the legal entity is of the opinion that the information has changed and proceeds to notify the Registrar and file the change of the information with the Registrar, the BO may apply to the Court for a determination on the matter.

Confirming Changes to Other Particulars of BO Information¹³

53. Additionally, where the BO receives notification from the legal entity querying a change in a specific particular, but the change has actually occurred in a different particular, the BO must inform the legal entity of the correct change and provide the legal entity with the date on which the change occurred.

Legal Entities

Obtaining Beneficial Ownership Information

54. A legal entity has an obligation to obtain BO information on each person identified as a BO of the legal entity.¹⁴ The extent of this information is outlined in paragraphs 102 – 107. Legal entities must ensure that this information is adequate, accurate and up to date at all times.

Adequacy

55. In determining adequacy, a legal entity must consider whether the information obtained for each BO includes all the particulars required under the BO Regulations as outlined in paragraphs 102 – 107. BO information would not be considered adequate if, for example, in respect to place of birth, only a BO's city of birth was recorded and not the country of birth, or if any of the required particulars was omitted from the BO's record.

Accuracy

56. It is important to ensure that any information collected on a BO correctly reflects the particulars of that BO. Ensuring accuracy involves making sure that information held, such as dates of birth and spelling of names, is error-free. For example, where the BO's legal name appears on his/her identification document as *John Alexander Doe*, the BO information

¹² Regulation 24(4)

¹³ Regulation 24(2)(b)

¹⁴ Regulation 16

recorded should also reflect *John Alexander Doe*. Permutations such as *J.A. Doe* or *John A. Doe* would not be considered accurate.

Up to Date

57. Information held must be up to date at all times. In order to meet this requirement, a legal entity must ensure that information such as the BO's address, occupation, country of residence, nature of interest or control, and even their name and nationality is updated if any of this information changes after it has been filed with the Registrar. For example, if a BO's name or occupation changes, that information should be updated within thirty (30) days of the legal entity becoming aware of the change.¹⁵

Notifying the Registrar

58. A legal entity also has an obligation to notify the Registrar if it determines that the information it has filed in relation to any of its BOs is not adequate or accurate or up to date.¹⁶ This notification must include details of the steps the legal entity is taking to obtain adequate, accurate or up to date information and how long it is anticipated it will take the legal entity to provide this information to the Registrar. Legal entities should note that the time indicated for providing this information to the Registrar cannot exceed thirty (30) days unless an extension is granted by the Registrar.¹⁷

59. In deciding whether to grant an extension, the Registrar will consider whether the circumstances put forward by the legal entity as to why it is unable to provide the information within the thirty-day timeframe are sufficiently exceptional to warrant granting an extension. Consideration may also be given to the risk level of the legal entity and the need, therefore, for urgent compliance or otherwise. The ultimate aim is that any extension of time has to be founded on solid and justifiable reasons as determined by the Registrar. It is important, in this regard, that an application for extension of time should be filed prior to the due date for filing the information. It is expected that a request for extension will be made in sufficient time to allow the Registrar to evaluate the application and provide a response before the due date.

60. In making such a decision the Registrar will consider, amongst other things, whether:

- a) the information in question is material to being able to properly identify the BO;

¹⁵ Regulation 22

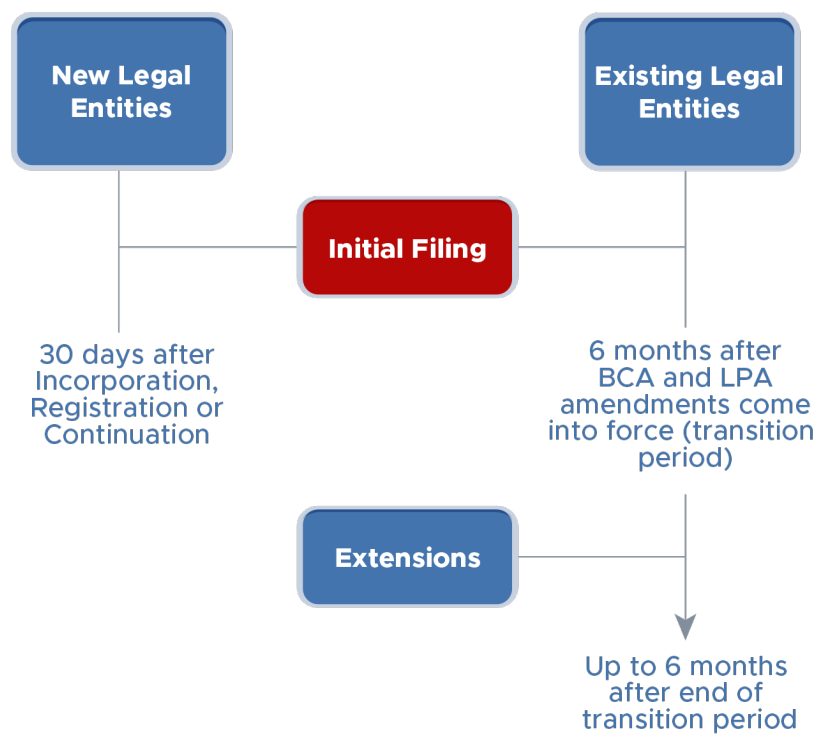
¹⁶ Regulation 16(3)

¹⁷ Regulation 16(4)

- b) the steps being taken by the legal entity to obtain the correct information are sufficient;
- c) the inaccurate information has any impact on the risk rating assigned to the legal entity and, if so, whether the rating should be adjusted to reflect such impact; and
- d) the inaccurate information has any impact on the status of the legal entity on the Register of Companies or Register of Limited Partnerships.

61. Any extension granted by the Registrar will not exceed twenty-one (21) days.

When Beneficial Ownership Information Should be Filed¹⁸



62. BO information collected by a legal entity must be filed with the Registrar.

63. In the case of a company or partnership that is incorporated, registered or continued into the VI on or after the date the BO Regulations came into force, the timeframe for filing beneficial ownership information is thirty (30) days after the date of incorporation, registration or continuation.

¹⁸ Regulation 17

64. For existing companies and limited partnerships,¹⁹ the transitional timeframe for filing BO information is six (6) months after the date the Act or the Limited Partnership Act (as the case may be) came into force.
65. Where an existing company or existing limited partnership is unable to file its BO information within the six (6) month transition period, it may apply to the Registrar in writing for an extension. An application for extension must clearly outline the circumstances that are preventing the legal entity from meeting the filing deadline and the steps that are being taken in trying to comply.
66. In considering whether to grant the application for extension, the Registrar will take into consideration whether:
- a) exceptional circumstances exist by virtue of the provisions of the Financial Services Commission Act and/or the Financial Services (Exceptional Circumstances) Act;
 - b) given the circumstances provided, the steps taken are deemed sufficient to demonstrate a genuine attempt to meet the filing deadline within the transition during the transition period; or
 - c) some other relevant reason acceptable to the Registrar is provided.
67. The Registrar may also issue a general extension to the transitional period for existing companies and existing limited partnerships to file BO information if he/she considers it necessary to do so.
68. Any individual or general extension granted by the Registrar cannot extend for more than an additional six (6) months.
69. The end of the transitional period does not absolve a legal entity from filing its beneficial ownership information if this was not done during the transitional period. This is notwithstanding that the failure to file within the transitional period will attract liability for the legal entity.

¹⁹ Existing companies and existing limited partnerships are entities that were incorporated, registered or continued into the VI before the date the BO Regulations came into force and had not been struck off and dissolved/de-registered

Identifying Beneficial Owners²⁰

Issuing a Notice to Confirm Information Held on Record

70. A legal entity is required to identify each of its BOs. To fulfil this obligation, a legal entity is required to issue a notice to each BO requesting confirmation of the information the legal entity has on record for the BO and request that the BO update or correct any inaccuracies in the information held by the legal entity. To facilitate this, the legal entity should provide the BO with the information held on record when issuing the notice.

Ongoing Review of Information Held on Record

71. To ensure that the BO information collected is kept up to date, a legal entity should be proactive in determining whether the information it holds and has filed with the Registrar is current and accurate.

72. One way to do so is to review BO information on an ongoing basis and periodically request that the BO confirm the accuracy of the information held. This may include reviewing information each time a legal entity's ownership structure, or the particulars of any BO's information, changes and sending notices to the relevant BOs for confirmation of the accuracy of the information held. It may also include carrying out, at a minimum, an annual review of all BO information that a legal entity has on its records.

73. Legal entities, and RAs acting on behalf of legal entities, may wish to consider implementing a periodic (for example, an annual) BO declaration form to ensure the information held remains adequate and accurate and is kept up to date as a measure to demonstrate it takes steps to monitor BO information.

Request for Confirmation of Information Held on Record

74. In a case where there is uncertainty as to whether the individual is a BO, the legal entity should request the individual to confirm whether he/she is in fact a BO of the legal entity and provide the necessary information to maintain a record of that ownership information.

75. If there is any other information the legal entity feels may be necessary to complete the record of beneficial ownership for an individual, then the legal entity should also request that such information be provided. Examples of other information that may be helpful could include details of ownership interest such as:

²⁰ Regulation 18

- the percentage of shares held;
- whether shares are held jointly;
- if shares are held jointly, whether they are held as joint owners or tenants in common; and
- in relation to control, how such control is exercised.

76. To ensure compliance with its filing requirements, the legal entity should ensure this information is received and filed with the Registrar within the timelines outlined in paragraph 63 or 64 above as relevant, based on whether the legal entity was incorporated, registered or continued into the VI before or after the date the BO Regulations came into force.

Identifying a BO Through a Third Party

77. Where the legal entity is unable to identify a BO, but knows a person, or has reasonable cause to believe that another person knows the identity of a BO, the legal entity must also issue a notice to that other person, enquiring as to whether he/she does in fact know the identity of the BO.

78. That other person may be a known close associate of the person suspected to be a BO or another person who may be in a contractual relationship with the BO.

79. Enquiries must also be made in instances where a legal entity knows or has reasonable cause to believe that the person:

- a) knows the identity of another person who may know the identity of a BO of the legal entity; or
- b) knows of any other person who may be a BO of the legal entity.

80. Where a person receives a notice and confirms that he/she knows:

- a) the identity of the BO in question,
- b) another person who may know the identity of a BO, or
- c) or is aware of the identity of another BO,

that person must provide the legal entity with the required BO information.²¹ He/she should also confirm whether the BO is aware that the information is being provided.

81. Where a person receives a notice to provide information and fails to do so, the legal entity should inform the Registrar and provide the Registrar with details of the steps taken to try to acquire the information.

²¹ Regulation 18(5)

82. The Registrar will then determine whether the person should be subject to a penalty as outlined in Schedule 3 of the BO Regulations for failing to provide particulars of BO information specified in a notice.

83. However, if such information is subject to legal professional privilege, the person is under no obligation to provide the information and should inform the legal entity of that fact.

Maintaining Record of Actions Taken²²

84. Where a legal entity seeks to identify a BO, whether through direct contact with the BO or through contact with a person described in paragraph 77 or 79 above, it must ensure that a record of all the steps taken to identify and obtain information of the BOs of the legal entity is maintained. The legal entity should maintain the record of actions taken in respect of each BO for at least 5 years after its relationship with the BO has ended.

85. The information maintained by a legal entity may be requested by the Registrar, or any competent authority or law enforcement agency in the VI. As such, legal entities should ensure this information is properly maintained and can be made available immediately upon receiving such a request.

Notification of Changes of Particulars of BO Information

Notification to the Registrar

86. In instances where the particulars of a BO that have been entered in the Register change, a legal entity is required to notify the Registrar of the relevant change(s) and file the information relating to the identified change. This must be done within thirty (30) days of the legal entity becoming aware of the change.²³

87. A legal entity should not rely solely on the BO to notify it of any changes to his/her particulars that have been filed on the Register but should ensure it has systems in place to ensure it is notified by the BO in a timely manner of any changes to the BO's particulars. This may be done through the implementation of periodic (for example, annual) declaration forms as noted in paragraph 73 above.

Where a Person Has Ceased to be a BO

88. Where an individual notifies a legal entity that he/she has ceased to be a BO or has reason to believe that he/she is no longer a BO of a legal entity, the legal entity must seek to confirm

²² Regulation 19

²³ Regulation 22

this information.²⁴ This may be done by requesting evidence that points to the individual no longer qualifying as a BO, such as proof of a change in shareholding or documentation that the individual is no longer in a position of control.

89. Where the legal entity confirms the information provided by the individual, it must file the change of information with the Registrar. Where it is unable to confirm the information provided, no change should be filed. However, the legal entity should notify the Registrar that information has been provided to it in relation to an individual who has determined that he/she is no longer a BO of the legal entity, but it has not been able to confirm the information.
90. In instances where the legal entity does not file the change of information with the Registrar, the individual who notifies the legal entity of the change may apply to the Court for the record to be rectified.²⁵

Notification to the Beneficial Owner

91. Where a legal entity, upon review of the BO information maintained, concludes that any particulars of information held in relation to a BO have changed, but has not received notification from the BO of the change, it must take the necessary steps to confirm whether the information has in fact changed.²⁶
92. The legal entity must notify the BO of the identified change and request that the BO confirm or refute the change within twenty-one (21) days of being notified. Once the information is confirmed by the BO, the legal entity must ensure that the Registrar is notified, and that the information is filed with the Registrar.
93. Where the individual refutes the information provided by the legal entity, but the legal entity is of the opinion that the information has indeed changed, it must still ensure that the Registrar is notified, and that the information is filed with the Registrar. The legal entity must also inform the BO that the change in information has been filed with the Registrar.²⁷

Submission of Information Through a Registered Agent

94. While the obligations placed on legal entities require them to submit relevant filings and notifications to the Registrar, these actions are to be executed through the legal entity's

²⁴ Regulation 23(3)

²⁵ Regulation 33

²⁶ Regulation 24

²⁷ Regulation 24(3)(b)(ii)

Registered Agent (RA).²⁸ Submission of any information by the RA does not absolve the legal entity from its obligations under the BO Regulations. The legal entity should, therefore, ensure that all information provided to its RA is adequate, accurate, up to date and in full compliance with the requirements set out in the BO Regulations.

Registered Agents

95. RAs acting on behalf of a legal entity have an obligation to ensure that any information received from the legal entity that is required to be filed with, or provided to, the Registrar is submitted to the Registrar in accordance with the timeframes set out in the BO Regulations for submission of the particular information.
96. Before filing BO information with the Registrar, RAs are required, under s.96A of the Act, to take steps they consider necessary to verify that the information received is adequate, accurate and up to date. At the time of filing BO information, RAs will be required to declare that the verification has been completed.
97. The BO information that should be filed with the Registrar encompasses the information detailed in paragraphs 102 – 107 above.
98. RAs also have an obligation to notify the Registrar if they become aware that the legal entity for which they act has contravened any of the provisions within the BO Regulations that apply to it.²⁹
99. This obligation to notify the Registrar also applies in cases where the RA has reasonable grounds to suspect that the legal entity for which it acts has contravened any of the provisions within the BO Regulations that apply to it.
100. It is important, therefore, that RAs familiarise themselves with the provisions set out in the BO Regulations to ensure that they are able to adequately adhere to all of their filing and reporting obligations.

²⁸ Regulations 14(2)

²⁹ Regulation 15(2)

Type of Beneficial Ownership Information That Should be Filed

101. As outlined in the BO Regulations³⁰, the following information is required to be filed with the Registrar:

Legal Entities

102. The legal entity itself is required to file the following information:

- Name, including any alternative names;
- Incorporation number or its equivalent;
- Date of incorporation;
- Address of principal office or registered office;
- Country of incorporation or registration;
- Legal form of legal entity and the law by which the legal entity is governed;
- The type of register the legal entity is registered under; and
- Nature of interest in, or control over, legal entity for which it is considered a BO

103. These requirements do not apply to a foreign legal entity incorporated in a jurisdiction in which it is required to provide BO information equivalent to the information listed above, or whose information is available on a publicly accessible register.

104. Where the following persons form part of the ownership structure of a legal entity, the information listed should be filed with the Registrar:

A. Individual BOs

- Full legal name as it appears in a passport or other government-issued identity document;
- Former name, other current name, or aliases used;
- Month and year of birth;
- Date and place of birth;
- Gender;
- Occupation;
- Nationality;

³⁰ Regulation 21

- Principal residential address;
- Country in which the individual is usually resident; and
- Nature of his or her interest in, or control over, the legal entity.

B. Trustees Licensed Under the Banks and Trust Companies Act

- Name of Trustee; and
- Nature of interest in, or control over, the legal entity.

105. 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 customer due diligence measures set out in the AMLTFCOP and section 92B of the Trustee Act, Revised Edition 2020.

C. Other Trustees not Licensed by the Commission³¹

- Name of Trustee;
- Settlor or other person by whom the trust is made;
- Protector, if any;
- 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;
- Any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership); and
- Nature of interest in, or control over, the legal entity.

D. Other Legal Arrangements

- Information listed under the '*Individual BO*' section above should be provided for any underlying natural person having a BO interest in a legal arrangement that holds a 10% or more ownership interest in the legal entity, by way of shares, voting rights or control; and
- Information on persons who hold similar positions to those listed under the '*Other Trustees not Licensed by the Commission*' section above, should be provided where relevant.

E. Company Listed on a Recognised Exchange

- Recognised Exchange Name;
- Ticker Symbol;
- Jurisdiction of Recognised Exchange;

³¹ This includes Private Trust Companies exempted under the Financial Services (Exemptions) Regulations, Revised Edition 2020

- Name of Recognised Exchanged Regulator;
- Date of Listing; and
- Nature of interest in, or control over, the legal entity.

F. Specified Fund

106. A private fund, professional fund, public fund, private investment fund, incubator fund, or approved fund that is recognised or registered under SIBA or the Securities and Investment Business (Incubator and Approved Funds) Regulations, Revised Edition 2020, that owns shares or has control in an entity:

- Fund Name; and
- Nature of interest in, or control over, the legal entity.

G. Foreign Fund

107. A foreign fund that owns shares or has control in a legal entity:

- Fund Name;
- Incorporation number or its equivalent;
- Date of incorporation or registration;
- Country of incorporation or registration;
- Principal or registered office address;
- Exemption criteria equivalent to those referred to in Regulation 11(1)(c)(i) that are applicable;
- Specific rules applicable and the international standards under which those rules are provided; and
- Nature of interest in, or control over, the legal entity.

Filing Deadlines for BO Information

Companies

108. As outlined in Section 96A(2) of the BCA, a company must file its beneficial ownership information within thirty (30) days after its incorporation or continuation.

Limited Partnerships

109. As outlined in Section 53B(2) of the LPA, a company must file its beneficial ownership information within thirty (30) days after its registration or continuation.

Filing Deadlines for Changes in BO Information

Companies

110. As outlined in Section 96A(8) of the BCA, a company must file changes in its beneficial ownership information within thirty (30) days of becoming aware of the change. Changes filed outside of that timeframe will attract a penalty.

Limited Partnerships

111. As outlined in Section 53B(8) of the LPA, a limited partnership must file changes in its beneficial ownership information within thirty (30) days of becoming aware of the change. Changes filed outside of that timeframe will attract a penalty.

How to File BO Information

112. As noted in paragraph 94 above, the obligations placed on a legal entity to submit relevant filings and notifications to the Registrar may be fulfilled through the legal entity's RA making such submissions.
113. To facilitate timely filing and reduce errors in the information filed, the Commission has developed the VIRRGIN online system for the collection and maintenance of BO information. RAs are required to file all BO information, including any changes or updates to such information through this system.

Duties and Powers of the Registrar

114. The BO Regulations place certain obligations on the Registrar and empower the Registrar to effectively manage the registration of BO information.

Maintenance of Electronic BO Register

115. The Registrar will maintain the BO Register in an electronic format and in such a way that makes the information held easily accessible and retrievable.³² Information that is maintained in the BO Register should include the information described under Regulation 21 of the BO Regulations and paragraph 104 of these Guidelines.

116. To confirm any particulars of BO information or ensure the information being maintained in the BO Register is adequate, accurate and up to date, the Registrar may request additional information from the legal entity.

117. Any request for additional information made by the Registrar must be communicated to the legal entity or the BO by way of a notice.³³ Any such notice should include an explanation as to why the information is considered necessary for proper maintenance of the BO information.

Power to Grant Extension of Time

118. Where it becomes necessary for a legal entity to request an extension of time in order to fulfil its obligations under the BO Regulations the Registrar may grant such an extension if he/she is satisfied that the request for the extension is warranted.

119. In deciding whether to grant an extension, the Registrar will consider whether the circumstances put forward by the legal entity warrant granting an extension. In making such a decision the Registrar will consider a number of factors, including:

- (a) whether exceptional circumstances exist by virtue of the provisions of the Financial Services Commission Act and/or the Financial Services (Exceptional Circumstances) Act;
- b) the circumstances that prevented the legal entity from being able to fulfil its obligations within the prescribed time;

³² Regulation 12

³³ Regulation 16(1)

- c) whether a delay in fulfilling its obligations will have any impact on the legal entity's status on the Register of Companies or Register of Limited Partnerships;
- d) whether the steps taken by the legal entity are deemed sufficient to demonstrate a genuine attempt to try to fulfil its obligations; and
- e) whether the information needed is material to the legal entity being able to fulfil its obligations.

120. To assist the Registrar in making a determination, a legal entity should submit its request for extension via the VIRRGIN system, ensuring that all the required information is provided.

121. In granting an extension, the Registrar must take into consideration whether an explicit period has been specified in the BO Regulations by which the action in question must be completed. In a case where a period has been specified, the Registrar may grant an extension of up to twenty-one (21) days.³⁴ However, this extension may only be considered if the Registrar receives a written request for an extension from the legal entity no less than three (3) days before the end of the period in question.

122. In a case where an action is required to be taken but no period has been specified for when it should be done, that the action should be taken within twenty-one (21) days from when the requirement arose.³⁵ In such a case, any extension granted by the Registrar will be based on that timeline and receipt of a written request from the legal entity for extension no less than three (3) days before the end of that twenty-one (21) day period. The Registrar may then grant an extension of up to twenty-one (21) days.

123. The Registrar's power to grant extensions does not extend to court related deadlines, requirements or matters, which must follow the rules of Court.

Inspection of BO Register

124. The BO Register may be inspected by a competent authority or a law enforcement agency in the exercise of their regulatory or investigative powers. It is up to the Registrar to determine the form, manner and sequence in which the Register may be inspected.³⁶

³⁴ Such extensions do not apply to extensions granted under Regulation 17

³⁵ Regulation 34

³⁶ Regulation 30

125. To simplify this process, VIRRGIN has been designed to allow for the electronic inspection of the Register and the form, manner and sequence of inspection has been provided for in the design of this system.

Removal of Entries from the BO Register

126. Where an individual ceases to be a BO of a legal entity, whether by the legal entity being dissolved or the individual no longer qualifying as a BO, the Registrar still has an obligation to maintain the information held in the Register for a period of five (5) years from the date the individual ceases to be a BO.

Keeping of Records

127. In addition to maintaining the BO Register, the Registrar is required to keep a record of the following:

- i. number of requests for BO information;
- ii. number of requests received for copies of entries in the Register;
- iii. details of persons who inspected the register under Regulation 25(3);
- iv. details of legal entities whose particulars of BO information may have been inspected; and
- v. details of legal entities whose particulars of BO information may have been provided in copy.

Inspection of the BO Register

Who Can Inspect the BO Register

128. Competent authorities and law enforcement agencies may inspect the BO Register maintained by the Registrar.³⁷

Competent Authorities

129. To inspect the BO Register as a competent authority, the following criteria must be met:³⁸

Criteria 1: Fall under the definition of competent authority

130. The person must be an officer of one of the following agencies and be approved by the head of that agency to make such an enquiry:

1. Attorney General;
2. Financial Investigation Agency;
3. Governor's Office;
4. International Tax Authority; or
5. Any other authority the Governor may, by an Order published in the *Gazette*, designate as a competent authority.

Criteria 2: Inspecting the BO Register for a lawful purpose

131. A person who satisfies criteria 1 above must not inspect the Register unless doing so is for the purpose of dealing with a matter for which the agency has authority under an enactment. This includes:

1. acting pursuant to its obligations to a mutual legal assistance request received or made or to be made by it; or
2. acting in the lawful exercise of its powers as a regulator of financial services business.

132. The persons listed in 1. to 4. of paragraph 130 above may apply to the Registrar to create an account on VIRRGIN for the purposes of inspecting the BO Register. Prior to each inspection of the BO Register using a VIRRGIN account, a competent authority must make a declaration that it is inspecting the BO Register or accessing the information contained in the BO Register for one or more of the lawful purposes specified above.

³⁷ Regulation 25(3)

³⁸ Regulation 25(3)(a)

133. Any eligible competent authority that wishes to inspect or access information contained in the BO Register, other than through a VIRRGIN account, must submit a request to the Registrar. This request should include:
1. the name of the authority;
 2. a declaration that the institution is acting for a lawful purpose; and
 3. the signature of a senior official of the authority.
134. Where an authority is not the Attorney General, Financial Investigation Agency, Governor's Office or International Tax Authority, the Registrar may request further information (including the designation instrument) to determine whether the authority is a competent authority designated by the Governor.

Law Enforcement Agencies

135. To inspect the BO Register as a law enforcement agency, the following criteria must be met:³⁹

Criteria 1: Fall under the definition of law enforcement agency

136. The person must be an officer of an institution of the Government of the VI, that has responsibility, whether under an enactment or otherwise, for the detection, prevention and investigation of crime and be approved by the head of that agency to make such an enquiry.

Criteria 2: Inspecting the BO Register for a lawful purpose

137. A person who satisfies criteria 1 above must not inspect the Register unless he/she is acting in the lawful performance of his/her agency's investigative functions or in relation to the performance of those investigative functions.
138. A law enforcement agency must submit the following information to the Registrar in order to gain initial access to the BO Register:
1. the name of the agency;
 2. the agency's responsibility/ies relating to the detection, prevention and investigation of crime; and
 3. the enactment or otherwise that designates the responsibilities listed in 2. above to the agency;
139. In addition, each time a request is made to access the Register, the request must be signed by a senior official of the law enforcement agency, and a declaration made that the agency is acting for a lawful purpose.

³⁹ Regulation 25(3)(b)

Information Available Upon Inspection

140. Eligible competent authorities and law enforcement agencies that inspect the BO Register⁴⁰ can access information relating to a natural person who:
1. owns or controls 25% or more of the shares, capital, profits or voting rights in a legal entity;
 2. holds the right to appoint or remove a majority of the directors of the board;
 3. otherwise exercises control over the management of a legal entity; and
- in the case of a limited partnership, the general partner or limited partner who controls the partnership.⁴¹
141. All particulars of BO information maintained in the BO Register as identified under the ‘*Type of Beneficial Ownership Information That Should be Filed*’ section above, are available to Competent Authorities and law enforcement agencies who meet the criteria outlined above.
142. Any inspection of or access to information contained in the BO Register must comply with the Data Protection Act, 2021.⁴²

Access to BO Information Under the Agreement⁴³

143. UK law enforcement authorities can access information included in the BO Register on persons owning or controlling 25% or more of the shares or voting rights in a legal entity. A relevant UK law enforcement authority must submit a request to the FIA for BO information in respect of a beneficial owner or legal entity,⁴⁴ pursuant to the terms of the Agreement included in Schedule 1 of the BO Regulations.
144. Where a request is made to the FIA pursuant to the Agreement, the FIA must be satisfied that the request is:
1. proper and lawful and in compliance with the terms of the Agreement; and
 2. in response to a request from a foreign party⁴⁵ to the Agreement or an authority designated by the foreign party.⁴⁶

⁴⁰ Domestic competent authorities and law enforcement agencies will have access to all BO information submitted

⁴¹ Regulation 26

⁴² Regulation 31

⁴³ The Agreement refers to the Exchange of Notes referenced in Schedule 1 of the BO Regulations

⁴⁴ Regulation 29(1)

⁴⁵ This is currently limited to the UK

⁴⁶ Regulation 29(4)

145. Thereafter, the FIA will access the BO Register and exchange the following information with the requesting party:

1. in the case of an individual:

- a) full legal name as it appears in a passport or other government-issued identification document
- b) former name, other current name, or aliases used
- c) date and place of birth
- d) gender
- e) occupation
- f) nationality
- g) principal residential address

2. with respect to a legal entity connected to the beneficial owner:

- a) name, including alternative names
- b) incorporation number or its equivalent
- c) address of principal office or registered office
- d) country of incorporation or registration

Exemptions From Filing Beneficial Ownership Information

146. In certain circumstances, a legal entity may be exempted from the requirement to file BO information with the Registrar. However, an exemption from filing BO information with the Registrar does not absolve the legal entity from the requirement to collect, keep and maintain adequate, accurate and up to date information on its beneficial owners.
147. The following legal entities may be exempt from the requirement to file BO information with the Registrar:

Companies

*Recognised exchange*⁴⁷

148. A company that is listed on a recognised exchange included in Schedule 2 of the BO Regulations is exempt from filing BO information with the Registrar. However, that company must notify the Registrar of the exemption and provide the Registrar with the information specified below:

- Name of Recognised Exchange;
- Ticker Symbol;
- Jurisdiction of Recognised Exchange;
- Name of Recognised Exchange Regulator; and
- Date of Listing.

*Specified fund*⁴⁸

149. A company may be exempted from filing BO information with the Registrar if:
- a) the company is a:
 - i. private fund recognised under SIBA;
 - ii. professional fund recognised under SIBA;
 - iii. public fund registered under SIBA;
 - iv. private investment fund recognised under SIBA;
 - v. fund deemed to be an incubator fund under the Securities and Investment Business (Incubator and Approved Funds) Regulations; or

⁴⁷ Section 96A(3)(a) of the BCA

⁴⁸ Section 96A(3)(b) of the BCA

- vi. fund deemed to be an approved fund under the Securities and Investment Business (Incubator and Approved Funds) Regulations; and
- b) the company's BO information is held:
 - i. by a person who holds a Category 6 investment business licence under SIBA;
 - ii. by its authorised representative; or
 - iii. by another person licensed by the Commission that has a physical presence in the Virgin Islands; and

the company's BO information can be provided to the Registrar, by the person listed in i. ii. or iii. above, within 24 hours of a request.⁴⁹

150. Pursuant to section 96A(5) of the BCA, a company that meets the above eligibility criteria must notify the Registrar of the exemption and provide the Registrar with the name and address (including email address) of the person specified in paragraph 149 b) above within 30 days after the date of incorporation or continuation of the company or the coming into force of these Regulations for existing companies.

Subsidiary⁵⁰

151. Where 75% or more of a company's shares or voting rights are held by another legal entity (a parent entity) that is subject to the requirements under the BO Regulations, the company is exempted from filing BO information (by virtue of it being a subsidiary of the parent entity).

152. To qualify, the parent entity must meet at least one of the following criteria:

- Company filed beneficial ownership information pursuant to Section 96A(2) of the BCA;
- Company is exempted under section 96A(3)(a) of the BCA;
- Company is exempted under section 96A(3)(b) of the BCA, and filed the relevant information with the Registrar in accordance with Section 96A(5);
- Limited partnership filed beneficial ownership information pursuant to Section 53B(2) of the LPA;
- Limited partnership is exempted under section 53B(3) of the LPA and filed the relevant information with the registrar in accordance with Section 53B(5); or
- Entity is exempted under Regulation 11(3)(a)(iii).

⁴⁹ Section 96A(4) of the BC Act

⁵⁰ Regulation 11(1)(c)(ii)

153. However, the exempt company must notify the Registrar of the exemption and provide the Registrar with the name of the parent entity.

Company subject to specified disclosure and transparency rules⁵¹

154. A company may claim this exemption where it is:

- a) subject to disclosure and transparency rules that are contained in international standards; and
- b) subject to disclosure and transparency rules that are equivalent to those applicable to listed companies or specified funds referred to section 96A(3) of the BCA.

155. A company wishing to claim this exemption must file an application with the Registrar and provide the following information as part of the application:

- a) the specific disclosure and transparency rules available to it;
- b) the international standards under which the rules included in a. above are provided; and
- c) the exemption criterion equivalent to those concerning listed companies or specified funds under section 96A(3).

156. The Registrar may request further information from a company to determine whether the company does indeed qualify for exemption from filing BO information.

Company whose shares are held by a trust licensed under the BTCA⁵²

157. Where the shares of a company are held by a trustee licensed under the BTCA, the company is required to provide the Registrar with the name of the trustee as the BO information for the company. Where shares are not held by a trustee licensed under the BTCA, the company must file BO information on all the beneficial owners of the company.

⁵¹ Regulation 11(1)(c)(iii) of the BO Regulations

⁵² Regulation 11(3) of the BO Regulations

Limited Partnerships

Specified fund⁵³

158. A limited partnership may be exempted from filing beneficial ownership information with the Registrar if:

- a) the limited partnership is a
 - i. private fund recognised under SIBA;
 - ii. professional fund recognised under SIBA;
 - iii. public fund registered under SIBA;
 - iv. private investment fund recognised under SIBA;
 - v. fund deemed to be an incubator fund under the Securities and Investment Business (Incubator and Approved Funds) Regulations; or
 - vi. fund deemed to be an approved fund under Securities and Investment Business (Incubator and Approved Funds) Regulations; and

- b) the limited partnership's beneficial ownership information is held
 - i. by a person who holds a Category 6 investment business licence under SIBA;
 - ii. by its authorised representative; or
 - iii. by another person licensed by the Commission that has a physical presence in the Virgin Islands; and

the limited partnership's beneficial ownership information can be provided to the Registrar, by the person listed in i., ii. or iii. above, within 24 hours of the request.⁵⁴

159. Pursuant to section 53B(5) of the LPA, a limited partnership that meets the above eligibility criteria must notify the Registrar of the exemption and provide the Registrar with the name and address (including email address) of the person specified in paragraph 158 b) above within 30 days after the date of registration or continuation of the limited partnership or the coming into force of these Regulations for existing limited partnerships.

⁵³ Section 53B(3) of the LP Act

⁵⁴ Section 53B(4) of the LP Act

Subsidiary⁵⁵

160. Where 75% or more of the right to share in the capital or profits of the limited partnership, or the voting rights in the limited partnership, are held by another legal entity (a parent entity) that is subject to the requirements under the BO Regulations, the limited partnership is exempted from filing BO information (by virtue of it being a subsidiary of the parent entity).
161. However, the exempt limited partnership must notify the Registrar of the exemption and provide the Registrar with the name of the parent entity.

Limited partnership subject to specified disclosure and transparency rules⁵⁶

162. A limited partnership may claim this exemption where it is:
- a) subject to disclosure and transparency rules that are contained in international standards; and
 - b) subject to disclosure and transparency rules that are equivalent to those applicable to listed companies or specified funds referred to section 96A(3) of the BC Act.
163. A limited partnership wishing to be exempted from filing BO information under this exemption must file an application with the Registrar and provide the following information as part of the application:
- a) the specific disclosure and transparency rules available to it;
 - b) the international standards under which the rules included in a. above are provided; and
 - c) the exemption criterion equivalent to those concerning specified funds under section 53B(3).
164. The Registrar may request further information from a limited partnership to determine whether the limited partnership does indeed qualify for exemption from filing BO information.

⁵⁵ Regulation 11(1)(c)(ii)

⁵⁶ Regulation 11(1)(c)(iii)

General Provisions

Giving or Serving Notice

165. In instances where the BO Regulations require a legal entity or the Registrar to give notice, this notice must be given by way of the following⁵⁷:

- a) Electronically via email - if the email address is known or, in the case of the Registrar, through the VIRRGIN system. Notices sent via email or through the VIRRGIN system will be considered received once the email has been sent or the action has been completed in the VIRRGIN system; and
- b) In person - where the person to whom the notice applies is a natural person, by leaving the notice at the person's usual or last known place of abode or business. Such notice must be left with an adult person.

Where the person to whom the notice applies is a legal entity, notice may be given by delivering the notice to a secretary or clerk at the registered office or principal office of the legal entity.

166. Notices given in person will be considered received on the day the notice is delivered. To establish that a notice has been received, any notice given in person should be supported by proof of delivery. This may be done by requesting the person who receives the notice to sign for the delivery.

167. Where a legal entity is unable to obtain an address for the delivery of a notice, a request may be made to the Government's Cabinet Office to have the notice published in the *Official Gazette*. Notices may be submitted by writing to:

the Virgin Islands Official Gazette
c/o Cabinet Office
Sebastian's Building
Government of the Virgin Islands
Road Town, Tortola VG1110, Virgin Islands

⁵⁷ Regulation 9

168. The notice may also be published on the Commission’s website. To facilitate the publication of the notice, an email should be sent to the External Relations Unit (ERU) requesting that the notice be published on the Commission’s website. The contact information for the ERU is externalrelations@bvifsc.vg. Notices submitted to the Commission for publication should be formatted in the same way as those sent to the *Official Gazette*. The Commission does not accept responsibility for the accuracy of any notice submitted for publication; it merely facilitates publication.
169. Where the Registrar is required to give notice or inform a BO or legal entity of any matter, this may be done through contact with the BO or legal entity’s RA. In the event there is no RA associated with the BO or legal entity, the Registrar may arrange for the notice to be published in the *Official Gazette* and on the Commission’s website.

Authentication and Attestation of Documents and Information

170. A person is required to authenticate and attest documents and information sent or provided if such authentication and attestation is needed to comply with the requirements of the BO Regulations.⁵⁸
171. The circumstances in which a person is required to authenticate and attest documents and information include where:
1. a legal entity is required to send a notice to a beneficial owner of the legal entity (in accordance with Regulation 18(1));
 2. a legal entity is required to send a notice to a person, other than a beneficial owner of a legal entity (in accordance with Regulation 18(3)); or
 3. a person is required to provide a document or information in response to a notice received in accordance with 1 and 2 above.
172. To sufficiently authenticate and attest a document or information, the sender must:
1. inscribe their name, address and contact details (either on the document or information being provided or on a cover letter or memorandum that is attached to the document or information being sent); and
 2. in the case of an individual, include their signature on the document; or
 3. in the case of a legal entity,
 - a) include on the document, the signature of the
 - i. director (or other equivalent position holder);
 - ii. secretary;

⁵⁸ Regulation 10(1)

- iii. authorised agent; or
- iv. other senior officer (not included above); or
- b) include on the document, the seal of the legal entity; or
- c) sign the document or information in accordance with requirements under the Electronic Transactions Act, 2021.

Rectification of Register

173. Where an individual whose BO information has been placed on the Register is of the opinion that:
- a) particular details have been omitted or have been included unnecessarily, or
 - b) there has been an unnecessary delay in notifying the Registrar that the individual is no longer a BO of the legal entity,

the individual may apply to the Court for the record to be rectified.⁵⁹ To assist the Court in considering such a claim, the individual should make every effort to provide the Court with the information that is the subject of the claim.

Imposition of Penalties

174. BOs, legal entities and RAs have various obligations under the BO Regulations. In instances where persons are found to be in contravention of these obligations, they may become liable to the imposition of a penalty. A four-tiered system of penalties for identified contraventions is outlined in **Schedule 3** of the BO Regulations. These penalties carry a maximum of \$10,000, \$25,000, \$50,000 or \$75,000, depending on the tier of the contravention.
175. The amount of penalty imposed for a contravention of the BO Regulations could range from the minimum dollar amount up to the maximum dollar amount specified for the relevant tier and will be considered on a case-by-case basis. The actual amount imposed will depend on a number of factors. These may include:
- the nature of the contravention;
 - the duration of the contravention;
 - whether it is a first-time or a repeated contravention;
 - the impact of the contravention on the Registrar being able to maintain adequate, accurate and up to date BO information; and
 - whether the legal entity provided any evidence to demonstrate that an effort was made to avoid or rectify the contravention.

⁵⁹ Regulation 33

176. Consideration of these factors aims to help ensure decisions taken by the Registrar are fair, objective and rational.
177. Where a legal entity is found to be in contravention of a provision of the BO Regulations, liability will extend to every senior officer within the legal entity who authorised, permitted or agreed to the contravention. In such instances, in addition to the liability of the legal entity, the senior officer(s) will be liable to the penalty specified in the BO Regulations for the identified contravention.
178. BOs, legal entities and RAs are advised to familiarise themselves thoroughly with their obligations under the BO Regulations to ensure they are able to comply with the various requirements and are not found to be in contravention of any of their obligations.