
VIRGIN ISLANDS

**UNOFFICIAL CONSOLIDATED VERSION OF THE
BENEFICIAL OWNERSHIP SECURE SEARCH SYSTEM ACT, 2017**

Principal Act: No. 15 of 2017

Amended by the following:

No. 17 of 2017

No. 12 of 2018

No. 3 of 2019

No. 7 of 2019

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**UNOFFICIAL CONSOLIDATED VERSION OF THE
BENEFICIAL OWNERSHIP SECURE SEARCH SYSTEM ACT, 2017**

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VIRGIN ISLANDS

UNOFFICIAL CONSOLIDATED VERSION OF THE

BENEFICIAL OWNERSHIP SECURE SEARCH SYSTEM ACT, 2017

PRINCIPAL ACT NO. 15 of 2017

An Act to establish a secure search system to facilitate the effective and efficient storage and retrieval of beneficial owner information for all corporate and legal entities using the system and to provide for matters incidental thereto.

Short title

1. This Act may be cited as the Beneficial Ownership Secure Search System Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“AML/CFT legislation” means the Proceeds of Criminal Conduct Act, 1997, the Anti-money Laundering Regulations, 2008 and the Anti-money Laundering and Terrorist Financing Code of Practice, 2008;

“beneficial owner” has the meaning specified in section 6;

“beneficial ownership information”¹ means the information required by section 10(3)(a) to (d) other than that required by section 10(3)(a)(va) and (vi);

“Beneficial Ownership Secure Search system” means the Secure Search system, an electronic platform or system to be established and maintained by the competent authority under this Act to provide access to prescribed information contained in RA databases;

“competent authority” means the Financial Investigation Agency established under the Financial Investigation Agency Act, 2003²;

“competent authority” means the International Tax Authority established under the International Tax Authority Act, 2018³;

“core income-generating activity” has the meaning given to it for the purpose of the Economic Substance (Companies and Limited Partnerships) Act, 2018⁴;

“corporate and legal entity” means—

(a) a company as defined under section 3 of the BVI Business Companies Act, 2004;

(b) an existing limited partnership as defined under section 2 of the Limited Partnership Act, 2017;

(c) a limited partnership as defined under section 2 of the Limited Partnership Act, 2017;

(d) a foreign company as defined under section 3 of the BVI Business Companies Act, 2004;

(e) a foreign limited partnership as defined under section 2 of the Limited Partnerships Act, 2017⁵,

but shall not include a limited partnership, foreign limited partnership or existing limited partnership where the general partners have elected pursuant to either section 8(2)(b) or section 67(1)(c) of the Limited Partnership Act, 2017 that the limited partnership shall not have legal personality, or where the limited partnership, foreign limited partnership or existing limited partnership does not have legal personality for any other reason⁶;

“designated person” has the meaning assigned under section 13;

“economic substance information” means the information required by section 10(3) other than beneficial ownership information⁷;

“economic substance requirements” means the requirements for economic substance in the carrying out of relevant activities which are imposed by the Economic Substance (Companies and Limited Partnerships) Act, 2018⁸;

“exempt person” means a person specified in section 7;

“exchange of notes” means—

(a) the UK exchange of notes; and

(b) any similar agreement or arrangement made to which this Act applies by virtue of an Order made under section 4(3);

“financial period” has the meaning given to it for the purpose of the Economic Substance (Companies and Limited Partnerships) Act, 2018⁹;

“foreign regulated person” has the meaning assigned to it under section 2(1) of the Anti-Money Laundering Regulations, 2008;

“holding business” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018¹⁰;

“intellectual property business” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018¹¹;

“International Tax Authority” means the International Tax Authority established under section 3 of the International Tax Authority Act 2018¹²;

“licensee” has the meaning assigned to it under section 2 of the Financial Services (Regulatory Code), 2009;

“Minister” means the Minister responsible for Finance;

“non-resident company” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018¹³;

“non-resident limited partnership” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018¹⁴;

“overseas competent authority” means the competent tax authority for an overseas territory or country, as specified in regulations¹⁵;

“parent” has meaning given by section 7(3)¹⁶;

“prescribed information” means information prescribed under section 10;

“RA database” means an IT solution established and maintained by a registered agent, to hold the prescribed information for each relevant corporate and legal entity for which it acts as registered agent in accordance with this Act;

“recognised stock exchange” has the meaning assigned to it under section 2(1) of the Financial Services (Regulatory Code), 2009;

“registered agent” means a person who holds—

(a) a licence to conduct company management business under the Company Management Act, 1990; or

(b) a licence under the Banks and Trust Companies Act, 1990 authorising it to provide registered agent services;

“registrable legal entity” has the meaning specified in section 8;

“Registrar of Companies” has the meaning assigned to it under section 2 of the BVI Business Companies Act, 2004;

“relevant activity” has the meaning assigned to it under section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018¹⁷;

“requesting law enforcement authority” means a law enforcement authority specified in Schedule 2 which issues a request for a search to be conducted in the Beneficial Ownership Secure Search System under this Act; and

“UK exchange of notes” means the exchange of notes between the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Virgin Islands, for the exchange of beneficial ownership information as set out in Schedule 1.

(2) Where in this Act reference is made to Schedule 1, this shall be construed to include any Schedule set out in an Order made by the Minister pursuant to section 4.

Application

3. This Act applies to all corporate and legal entities.

Purpose of Act¹⁸

4. (1) This Act shall apply for the purposes of—

(a) giving effect to the exchange of notes;

(b) the provision of information to enable the competent authority to effect disclosure of information in accordance with Schedule 4;

(c) the provision of information to facilitate the monitoring and enforcement of the economic substance requirements.¹⁹

(2) Where an exchange of notes is amended by the parties thereto, the Minister may, by Order, amend Schedule 1 accordingly.

(3) Where the Government enters into an exchange of notes similar to the UK exchange of notes, the Minister may, with the approval of the Cabinet, by Order, provide that this Act shall apply to that exchange of notes with such necessary modifications as may be specified in the Order and the text of that exchange of notes shall be set out in a Schedule to the Order.

(4) For the avoidance of doubt and notwithstanding anything to the contrary contained in this Act or in any exchange of notes—

- (a) the Government shall exchange beneficial ownership information in accordance with the relevant exchange of notes;
- (b) the designated person shall exchange beneficial ownership information with an authority specified in section 13(6); and
- (c) anything required of the Government pursuant to a request made under or in accordance with the exchange of notes shall be dealt with in such manner as would be consistent with and satisfy the requirements of the exchange of notes, and the doing of such thing by the Government shall be treated as a power the Government has by virtue of this Act to exercise.

(5) The Minister may make regulations to enable the following²⁰—

- (a) access by the International Tax Authority to the economic substance information held on the Beneficial Owner Secure Search system for the purpose of enforcing and monitoring obligations placed on corporate and legal entities by the Economic Substance (Companies and Limited Partnerships) Act, 2018; and
- (b) disclosure in accordance with the obligations placed on the International Tax Authority under Schedule 4, of information held on RA databases to the persons, in the circumstances and on the terms set out in that Schedule.

Establishment of Beneficial Ownership Secure Search System

5. (1) The Government shall establish a Beneficial Ownership Secure Search System to enable—

- (a) each registered agent to establish an RA database; and
- (b) the designated person to access each RA database.

(2) The Beneficial Ownership Secure Search System shall—

- (a) be secure and accessible only by the designated person;
- (b) be accessible only from a designated secured location within the Virgin Islands;
- (c) be able to search simultaneously all RA databases connected to the Beneficial Ownership Secure Search System by either the name of an individual or the name of a corporate and legal entity; and

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- (d) prevent communication to any person of the fact that a search is being made or has taken place except where the designated competent authority expressly discloses such communication.

Beneficial owners

6. (1) A beneficial owner is the natural person who ultimately owns or controls a corporate or legal entity and includes, though not restricted to—

- (a) in the case of a legal person other than a corporate and legal entity whose securities are listed on a recognised stock exchange, a natural person who ultimately owns or controls, whether directly or indirectly, twenty-five or more per cent of the shares or voting rights in the legal person;
- (b) in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person;
- (c) in the case of a legal arrangement—
- (i) the partner or partners who control the partnership;
 - (ii) the trustee or other person who controls the legal arrangement; or
 - (iii) the settlor or other person by whom the legal arrangement is made;
- (d) in the case of a corporate and legal entity which is in insolvent liquidation, administration or administrative receivership under the Insolvency Act, 2003, the natural person who is appointed as a liquidator, administrator or administrative receiver of the corporate and legal entity; or
- (e) in the case of a receiver being appointed over twenty-five or more per cent of the shares or voting rights in a corporate and legal entity, the creditor who appoints the receiver; or
- (f) in the case of a shareholder in the corporate and legal entity who would otherwise be a beneficial owner under this subsection but is deceased, the natural person acting as an executor or a personal representative of the deceased's estate.

(2) Where there is a *bona fide* legal dispute as to the beneficial ownership of any interest in a corporate and legal entity which is in the process of being adjudicated by a court or tribunal, no change should be recorded with respect to the beneficial ownership of that interest in a RA database prior to the determination of that matter unless the court or tribunal so orders.

(3) A person shall not be treated as a beneficial owner only by reason of—

- (a) having the benefit of a security interest over shares or voting rights in a corporate and legal entity; or
- (b) having a commercial exposure to the financial performance of a corporate and legal entity pursuant to financial derivatives or similar contractual arrangements.

(4) Where two or more persons hold any qualifying interest jointly, whether as joint owners or tenants in common, then each joint owner shall be a beneficial owner.

(5) The Minister may issue Guidance Notes in relation to the determination of who is a beneficial owner of a corporate and legal entity.

Exempt person

7. (1) An exempt person shall be exempt from the provisions of section 10(3)(b) and the exempt person and the registered agent of the exempt person, shall be exempt from the duties imposed under section 9, insofar as they relate to the provision of information required by section 10(3)(b), unless the exempt person carries on a relevant activity²¹.

(2) For the purposes of subsection (1), an exempt person is a person who meets one or more of the following conditions—

- (a) a corporate and legal entity which is recognised, registered or otherwise approved as a mutual fund under the Securities and Investment Business Act, 2010 including an approved fund, an incubator fund, a public fund, a professional fund and a private fund;
- (b) a corporate and legal entity the securities of which are listed on a recognised stock exchange;
- (c) a licensee;
- (d) a corporate and legal entity which is a subsidiary of a corporate and legal entity that falls within paragraph (a) or (b); or
- (e) a corporate and legal entity exempted by regulations.

(3) A corporate and legal entity (the “subsidiary”) is a subsidiary of another corporate and legal entity (the “parent”) if the parent—

- (a) holds, directly or indirectly, a beneficial interest in 75% or more of the shares in the subsidiary; or
- (b) holds, directly or indirectly, more than 75% of the voting rights in the subsidiary.

Registrable legal entities

8. A registrable²² legal entity in relation to a corporate and legal entity is a legal entity which—

- (a) would be a beneficial owner of the corporate and legal entity if it were an individual; and
- (b) one or more of the following applies to it—
 - (i) it is a legal entity which is an exempt person;
 - (ii) it is a legal entity the securities of which are listed on a recognised stock exchange;
 - (iii) it is a licensee or a foreign regulated person; or

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- (iv) it is a sovereign state or a wholly owned subsidiary of a sovereign state.

Duties of registered agent and corporate and legal entities

9. (1) A registered agent shall take reasonable steps to—

- (a) identify the beneficial owners and registrable legal entities of each corporate and legal entity for which it acts as registered agent;
- (b) collect the prescribed information with respect to each corporate and legal entity for which it acts as registered agent,

in accordance with this Act.

(2) ²³A corporate and legal entity shall—

- (a) identify any person who is a parent, a beneficial owner or registrable legal entity of that corporate and legal entity, or, if it is registered on a recognised stock exchange, shall give details of its stock exchange registration;
- (b) identify whether it carries on one or more relevant activities, and if so which relevant activities; and
- (c) ascertain the information prescribed in sections 10(3)(e) and (f).

(3) A registered agent is not required to identify any beneficial owner of a corporate and legal entity under subsection (1) who holds its interest, directly or indirectly, in the corporate and legal entity through a registrable legal entity if the registered agent identifies that registrable legal entity for that purpose.

(4) For the purposes of this section, a registered agent who takes steps to identify and verify the identity of the beneficial owners of a corporate and legal entity in accordance with its obligations under the AML/CFT legislation shall have taken all reasonable steps in accordance with this section, and references to beneficial owners and registrable legal entities of a corporate and legal entity shall be interpreted accordingly.

(5) Nothing in this section limits or affects the separate obligation of each registered agent to obtain and verify beneficial ownership information under applicable AML/CFT legislation.

(6) Where a corporate or legal entity fails to comply with a requirement of this section without reasonable cause he or she commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding six months or both; or
- (b) on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years, or both.

(6A) A corporate and legal entity shall notify the registered agent of any information prescribed in section 10(3)(l)(va) and (vi) and 10(3)(e) to (j) within a period following the end of the financial period to be fixed by regulations and shall notify the registered agent of any matters prescribed in

section 10(3)(a) to (d), excluding section 10(3)(a), (va) and (vi), within 15 days of identifying those matters.²⁴

(7) Where a registered agent fails to comply with a requirement of this section without reasonable cause he or she commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding twenty thousand dollars; or
- (b) on conviction on indictment, to a fine not exceeding forty thousand dollars.

Duty to maintain RA database

10. (1) Each registered agent shall establish and maintain an RA database in accordance with this section.

(2) Each registered agent shall enter in the RA database particulars of the prescribed information obtained by it under this Act with respect to each corporate and legal entity for which it acts as registered agent.

(3) The prescribed information with respect to each corporate and legal entity is—

- (a) the particulars of each corporate and legal entity including—
 - (i) the name, including alternative names;
 - (ii) the incorporation number or its equivalent;
 - (iii) date of incorporation;
 - (iv) status;
 - (v) registered address;²⁵
 - (va) whether it carries on a relevant activity²⁶;
 - (vi) any relevant activities which it carries on; and²⁷
 - (vii) any other particulars as the Minister may by Order prescribe.²⁸
- (b) with respect to each beneficial owner of the corporate or legal entity—
 - (i) name;
 - (ii) residential address;
 - (iii) date of birth; and
 - (iv) nationality.
- (c) with respect to each registrable legal entity of the corporate and legal entity—
 - (i) details of the registrable legal entity as outlined in subsection (3)(a)(i) to (v)²⁹;
 - (ii) jurisdiction in which the registrable legal entity is formed;
 - (iii) the basis or bases upon which the legal entity is designated as a registrable legal entity;

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- (iv) where the registrable legal entity is a foreign regulated person, the name of the jurisdiction of regulation and the name of the foreign regulator; or
 - (v) where the registrable legal entity is a sovereign state or a wholly owned subsidiary of a sovereign state the name of that sovereign state and (if applicable) wholly owned subsidiary.
- (d) with respect to an exempt person—
- (i) the details of the exempt person as outlined in subsection (3)(a); and
 - (ii) the basis or bases upon which the exempt person is designated as an exempt person.
- (e) ³⁰with respect to the parent (if any) of any corporate and legal entity which carries on a relevant activity and which claims to be outside the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership—
- (i) details of the parent as outlined in subsection (3)(a)(i) and (ii);
 - (ii) jurisdiction in which the parent is formed;
- (f) with respect to any corporate and legal entity which is registered on a recognised stock exchange, details of the stock exchange listing;
- (g) with respect to any corporate and legal entity which carries on a relevant activity and claims to be outside the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership, the jurisdiction in which it is tax resident together with evidence to support the tax residence;
- (h) with respect to any corporate and legal entity which carries on a relevant activity, and which does not claim to be outside the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership, in relation to each such activity which it carries on during a financial period, and in respect of that period—
- (i) the total turnover generated by the relevant activity;
 - (ia) the total amount of expenditure incurred on the relevant activity;
 - (ii) the amount of expenditure incurred on the relevant activity within the Virgin Islands;
 - (iii) the total number of employees engaged in the relevant activity;
 - (iv) the number of employees engaged in the relevant activity within the Virgin Islands;

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- (v) the address of any premises within the Virgin Islands which is used in connection with the relevant activity;
 - (vi) in the case of a corporate and legal entity which carries on an intellectual property business, the nature of any equipment located within the Virgin Islands which is used in connection with the relevant activity;
 - (vii) the names of the persons responsible for the direction and management of the relevant activity, together with their relationship to the company and whether they are resident in the Virgin Islands;
- (i) with respect to any corporate or legal entity which carries on an intellectual property business, and which does not claim to be outside the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership, in addition to the particulars supplied under section 10(3)(h), in relation to that activity—
- (i) whether or not the corporate or legal entity is a high risk IP legal entity within the meaning of section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;
 - (ii) whether the corporate or legal entity wishes to contest the rebuttable presumption introduced by section 9(2)(a) or, as the case may be by section 9(2)(b) of the Economic Substance (Companies and Limited Partnerships) Act, 2018;
 - (iii) if the corporate or legal entity wishes to contest such a rebuttable presumption the facts and matters relied upon for that purpose;
- (j) with respect to any corporate or legal entity which carries on a relevant activity and which does not claim to be outside the scope of the economic substance requirements by reason of being a non-resident company or a non-resident limited partnership, but for which core income-generating activity is carried out by another entity, the name of the entity which carries out that activity on its behalf, together with details of the resources deployed by that entity in carrying out the activity on its behalf.

(3A) Prescribed information required by subsection (3)(a)(va) and (vi) and subsection (3)(e) to (j) shall be entered by the registered agent on the RA database by reference to each financial period of the corporate and legal entity on a basis and within a time period to be prescribed by regulations except that, where the relevant activity is a holding business, the prescribed information required under paragraph (h) shall be limited to subparagraphs (iii),(iv) and (v)³¹.

(4) Where a registered agent fails to comply with a requirement of this section without reasonable cause he or she commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding twenty thousand dollars; or
- (b) on conviction on indictment, to a fine not exceeding forty thousand dollars.

10A. Repealed³².

Retention period

11. (1)³³ Information maintained by a registered agent on an RA database shall be maintained on the RA database for all corporate and legal entities—

- (a) for five years following the dissolution of the corporate and legal entity; or
- (b) for five years after the corporate and legal entity ceasing to be a corporate and legal entity.

(2)³⁴ Where, for purposes of this section, information to be maintained by a registered agent on an RA database relates to a corporate and legal entity that has ceased to be a corporate and legal entity, or has been struck off the Register of Companies before the 1st day of January, 2016, the registered agent shall not be required to maintain information in relation to that corporate and legal entity.

Duty to keep beneficial ownership information up to date

12. (1) A corporate and legal entity shall within 15 days of becoming aware of a change of any of the prescribed information relating to beneficial owners or registrable legal entities notify its registered agent of such changes and the date such changes took place.

(2) A registered agent shall within 15 days of being notified by a corporate and legal entity of a change or otherwise becoming aware of a change of any of the prescribed information relating to beneficial owners or registrable legal entities cause the updated information provided under subsection (1) to be included on the RA database.

(3) Nothing in subsection (2) shall affect the obligations of a registered agent under AML/CFT legislation to verify the beneficial owner or owners and the particulars relating to each with respect to a corporate and legal entity.

(4) Where a corporate and legal entity fails to comply with a requirement of this section without reasonable cause he or she commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding five thousand dollars; or
- (b) on conviction on indictment, to a fine not exceeding ten thousand dollars.

(5) Where a registered agent fails to comply with the requirements of this section without reasonable cause he or she commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding twenty thousand dollars; or
- (b) on conviction on indictment, to a fine not exceeding forty thousand dollars.

Designated person to use the Beneficial Ownership Secure Search System

13. (1) There shall be one or more designated persons who shall have access to the Beneficial Ownership Secure Search System from a physically secure premise and a secure IT system.

(2) A designated person shall have passed security vetting tests, be fit and proper and be so designated by the Minister by Order.

(3) A designated person shall, prior to being designated by the Minister, subscribe to the Oath of Confidentiality set out in Schedule 3.

(4) The Minister shall keep a record of all Oaths of Confidentiality taken pursuant to this section.

(5) A designated person shall provide the results of any search of the Beneficial Ownership Secure Search System requested under this Act within 15 days of the submission of a request for information unless it is notified that the request is urgent, in which case it will provide the information sought of it within one hour, or such other time period to be agreed between the requesting law enforcement authority or an authority named in subsection (6) and the designated person in accordance with the individual circumstances of the request.

(6) A designated person shall execute a search of the Beneficial Ownership Secure Search System if formally requested to do so by a senior officer of any of the following authorities—

- (a) the Financial Investigation Agency;
- (b) the Financial Services Commission;
- (c) the International Tax Authority;
- (d) the Attorney-General's Chambers.

(7) A search conducted under subsection (6) shall not be executed without certification that the request for the search—

- (a) is proper and lawful and in compliance with the legislation governing the affairs of the authority making the request and any international agreement administered by it; or
- (b) is in response to a request from a designated law enforcement authority listed in Schedule 2.

(8) A record shall be maintained of all searches conducted by a designated person under this Act.

(9) A designated person who fails to comply with a requirement of this section commits an offence and is liable to a fine not exceeding seventy five thousand dollars or to imprisonment for a term not exceeding two years or both.

(10) No person other than a designated person shall have access to the Beneficial Ownership Secure Search System to conduct a search of an RA database or access any data therein except the designated person or persons.

(11) *Repealed*⁵.

Confidentiality

14. (1) The particulars of and all matters relating to a request made under this Act shall be treated as confidential, and no designated person who is notified of a request, or is required to take any action, or supply any information in response to or in relation to any matters to which a request relates or in any way becomes aware of a request, shall disclose the fact of the receipt of such request or any of the particulars required or information supplied to any other person except in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or both; or
- (b) on conviction on indictment, to a fine not exceeding seventy thousand dollars or to imprisonment for a term not exceeding five years or both.

(3) All information maintained on each RA database is confidential, and shall not be accessible by any person except—

- (a) a designated person through the Beneficial Ownership Secure Search System; and
- (b) the registered agent to whom the RA database relates.

(4) Any person who accesses data on an RA database except as authorised by this Act commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or both; or
- (b) on conviction on indictment, to a fine not exceeding seventy thousand dollars or to imprisonment for a term not exceeding five years, or both.

(5) A person who discloses information or produces documents as required by this Act is not in breach of any enactment, rule of law, agreement or professional code of conduct to which that person is subject only by reason of complying with the requirements of this Act, and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

Protection for registered agents

15. Where a registered agent has collected the prescribed information in accordance with the laws of the Virgin Islands or includes information on the RA database not specified in this Act, the collection of and inclusion of such information by the registered agent shall be treated as done in accordance with this Act and the registered agent is not in breach of any agreement, professional code of conduct or rule of law to which they are subject.

Giving false or misleading information

16. (1) A registered agent who intentionally provides false information relating to a corporate and legal entity on its RA database commits an offence.

(2) A corporate and legal entity which intentionally provides false information under section 9(2) or 12(1) commits an offence.

(3) A person who commits an offence under this section is liable to—

(a) on summary conviction to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding two years or both; or

(b) on conviction on indictment, to a fine not exceeding seventy five thousand dollars or to imprisonment for a term not exceeding five years, or both.

Amendment of Schedules

16A.³⁶ (1) The Minister with the approval of the Cabinet, may from time to time, by Order published in the *Gazette*, amend the Schedules.

(2) Where an amendment is made to Schedule 4 of the principal Act, an order referred to under subsection (1) shall be subject to an affirmative resolution of the House of Assembly.

International Tax Authority to issues Rules

16B.³⁷ (1) The International Tax Authority may issue rules on how the duties imposed on legal and corporate entities and registered agents under this Act, or any regulations made under it, may be met, including, without prejudice to the generality of the foregoing, rules on the interpretation or meaning of any expression used in this Act or in such regulations.

(2) Regard shall be had to any rules under subsection (1) concerning the interpretation of any expression.

(3) The International Tax Authority may revise the rules issued under subsection (1) from time to time and a reference to published rules includes a reference to revised rules.

(4) The International Tax Authority shall publish the rules issued under subsection (1) in a manner which the International Tax Authority considers will bring the rules to the attention of those most likely to be affected by them.

Regulations

17.³⁸(1) The Minister, with the approval of the Cabinet, may make regulations with respect to anything required to be carried out in this Act or prescribing anything required to be prescribed under this Act, including—

(a) specifying the manner or form in which a registered agent must keep the RA database;

(b) prescribing fees in relation to the establishment and maintenance of the Beneficial Ownership Secure Search System;

(c) adding to, amending or removing any of the items of information prescribed under section 10(3);

(d) amending the scope of the duties imposed by sections 9 and 10(3A).

(2) Regulations shall only be made pursuant to subsection (1)(c) to (d), if and to the extent that the Minister is satisfied that the amendments are reasonably required to ensure that the Virgin Islands law is in accordance with any relevant international requirements relating to the need for legal and corporate entities carrying on relevant activities to have economic substance in the Virgin Islands.

(3) The power conferred by subsection (1) includes power to make such incidental, supplementary, consequential or transitional provision as appears to the Minister to be expedient for the purposes of the regulations or order.

(4) Regulations made under subsection (1) shall be subject to an affirmative resolution of the House of Assembly.

(Substituted by Act 8 of 2019)

SCHEDULE 1

(Sections 2, 2(2) and 4(2))

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF THE VIRGIN ISLANDS IN RESPECT OF THE SHARING OF BENEFICIAL OWNERSHIP INFORMATION

1. This commitment between the Government of the United Kingdom and the Government of the Virgin Islands (“the Participants”) is an important demonstration of our partnership to enhance the effectiveness of the long-standing law enforcement cooperation between the Participants in respect of the on-going sharing of beneficial ownership information.
2. The participants recognise the importance of the provision of beneficial ownership information for the prevention and detection of corruption, money laundering, terrorism financing, financing of the proliferation of weapons of mass destruction and other serious and organised crime. It also recognises the importance of facilitating timely and secure access for law enforcement agencies to such information whilst ensuring individuals concerned are not informed that a request has been made.
3. This commitment is made in the context of a number of international initiatives to improve access to beneficial ownership information, including the Fourth Money Laundering Directive of the European Union, Financial Action Task Force (FATF) Recommendations and Guidance on Transparency and Beneficial Ownership, the G20 High Level Principles on Beneficial Ownership Transparency and the UK Government’s decision to establish a public central register of beneficial ownership information.
4. It also recognises the Virgin Islands’ commitment on international cooperation matters, including the recent reforms to its legislative regime on beneficial ownership and its commitment to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the signing of 28 Tax Information Exchange Agreements and enactment of legislation to implement the US FATCA, UK FATCA and OECD Common Reporting Standards. The Participants further recognise that the Virgin Islands is in the process of having beneficial ownership information of corporate and legal entities updated to ensure their adequacy and the process is expected to be completed at the end of 2016.
5. Through this exchange of notes, each Participant commits to providing the law enforcement authorities of the other Participant with beneficial ownership information for corporate and legal entities incorporated in their respective jurisdiction and will implement this commitment as set out in the attached Technical Protocol, which is to be read as part of the commitment of both Participants.
6. The Participants will hold adequate, accurate and current beneficial ownership information for corporate and legal entities incorporated in their own

jurisdictions. This information will be held in a secure central electronic database or similarly effective arrangement.

7. Law enforcement authorities of the Participants will have the automatic right to the provision of unrestricted, timely (where urgently required, within one hour) beneficial ownership information held in the other jurisdiction for the law enforcement purposes set in Paragraph 2 above.

8. The Participant in whose jurisdiction the requested beneficial ownership information is held will be responsible for ensuring that searches are carried out securely, in particular ensuring that those interested in or otherwise connected to the corporate and legal entities concerned are not informed that a search is in progress or has been conducted and ensuring that the information that a search has been requested or conducted is not made known publicly, in accordance with the terms of the attached Technical Protocol.

8. Furthermore, the Participants will monitor the practical application of this commitment so that action can be taken to ensure it is implemented effectively and efficiently.

.....
Signed on behalf of the
Government of the UK

.....
Signed on behalf of the
Government of the
Virgin Islands

Date: 8th April, 2016

Technical Protocol

1. This Technical Protocol is appended to the Exchange of Notes dated 8 April 2016 between the Governments of the United Kingdom and the Virgin Islands in respect of the sharing of beneficial ownership information and is to be used in accordance with Paragraph 2 of the Exchange of Notes.

Beneficial Ownership Information in respect of Corporate and Legal Entities Incorporate in the UK

2. The Government of the United Kingdom has established a comprehensive central register of people with significant control (“PSC register”), to be held and maintained by Companies House. This will be a publicly accessible central register in respect of companies, limited liability partnerships (LLPs) and Societas Europaeae (SEs) incorporated in the United Kingdom. This will be online and searchable free of charge by both name of corporate entity and name of individual. Some PSC information is suppressed from the public central register under exceptional circumstances. All PSC information, including the information suppressed from the public central register, is available to the United Kingdom law enforcement authorities.

3. Acting only in furtherance of their functions, Virgin Islands law enforcement authorities will be able to request from the United Kingdom law enforcement authorities all of their non-public adequate, accurate and current beneficial ownership information from the PSC register.

Beneficial Ownership Information in respect of Corporate and Legal Entities Incorporated in the Virgin Islands

4. The Government of the Virgin Islands will establish and maintain an electronic platform (“the Virgin Islands Platform”) that will allow it to immediately access adequate, accurate and current beneficial ownership information on corporate and legal entities incorporate in the Virgin Islands.

5. The Virgin Islands Platform will be held electronically and will be searchable by both name of corporate and legal entity and name of individual.

6. Acting only in furtherance of their functions, United Kingdom law enforcement authorities will be able to request from the Virgin Islands law enforcement authorities all of their adequate, accurate and current beneficial ownership information contained on the Virgin Islands Platform on corporate and legal entities incorporated in the Virgin Islands.

Obligations of Participants

7. The Participants will establish designated points of contact, whose function will be to receive and respond to each other’s law enforcement authorities’ requests for beneficial ownership information.

i) Requests for information will be submitted to the designated point of contact on a form, the template for which is attached to this protocol.

ii) The designated point of contact will be permanently staffed by individuals who have passed security vetting tests to a standard agreed with the National Crime Agency.

iii) The designated point of contact will provide the information sought of it within twenty-four hours of the submission of a request for information unless it is notified that the request for information is urgent, in which case it will provide the information sought of it within one hour, or such time period as may be agreed between the requesting law enforcement authority and the designated point of contact in accordance with the individual circumstances of the request. In calculating these periods of time, no allowance will be made for office hours, weekends or public holidays.

iv) Members of the designated point of contact will provide beneficial ownership information that is both complete and helpful to the requesting law enforcement authorities. As such, the designated point of contact will accept and reply to requests for such information, which include requests for sequential searches to be carried out. Such requests may include a request to identify the beneficial owner of a named company incorporate in the Participant’s jurisdiction and then to identify all other corporate and legal entities incorporated in the Participant’s jurisdiction in which the beneficial owner has an interest as well as the names of other individuals with interests in those corporate and legal entities. Multiple or sequential search requests may be made at the same time, and will be conducted within the same twenty-four hour period (or one hour in urgent cases).

v) Members of the designated point of contact will have full authority to respond to requests for information made in accordance with this Protocol. It follows that no member of the point of contact will be required to seek any further authorisation or confirmation that they may respond to a request for information.

vi) The Participants will ensure the security of the request and any information provided by—

a. criminalising any disclosures of information relating to requests made in accordance with this Protocol, and reinforcing the severity of the offence with a suitably dissuasive penalty;

b. ensuring that each member of the designated point of contact has imposed as part of his or her terms and conditions of service an instruction not to disclose any information relating to requests made in accordance with this Protocol, and by bringing enforcement action in the case of any breach; and

c. providing the designated point of contact with physically secure premises and secure IT systems from which to operate.

vii) The criminal and administrative controls referred to in paragraphs vi) a. and b. above will not apply to any request for information or any supply of information to Participants' law enforcement authorities made in accordance with the terms of this Protocol.

viii) Arrangements for the supply of information by the designated point of contact in accordance with the terms of this Protocol are intended to mirror the ability of the Participants' law enforcement authorities to obtain beneficial ownership information held in each other's jurisdiction. It follows that information supplied through the designated point of contact to law enforcement authorities in accordance with the terms of this Protocol may be used by them free from any further procedural conditions. For the avoidance of doubt, the Participants accept that the information may be used in criminal and/or civil proceedings and may be disclosed by law enforcement authorities in accordance with applicable legal provisions, including data protection and freedom of information legislation.

ix) Any mutual legal assistance or other legal mechanism that either Participant may require in order to render information received in accordance with this Protocol admissible in criminal and/or civil proceedings will be sought and supplied in accordance with existing arrangements.

x) All requests for information will be subject to the Participants' duties and responsibilities under constitutional and international obligations, where applicable.

Amendments

8. Amendments to the commitment set out in the Exchange of Notes may be agreed in writing by both Participants.

Review

9. In recognition of our joint commitment to fighting serious and organised crime, the Premier of the Virgin Islands and the Secretary of State will review

together the operation of these arrangements in consultation with law enforcement agencies six months after the coming into force of these arrangements, and thereafter annually. This will be in addition to ongoing monitoring of the practical application of the commitment by both Participants.

Transition

10. These arrangements will come into effect no later than 30 June 2017. Each Participant will ensure that any necessary legislative regulatory or technical changes are made to allow implementation by this date.

Date for coming into effect

11. The commitment set out in the Exchange of Notes will be effective upon signature by the Participants.

Definitions of the Terms used in the Exchange of Letters and Technical Protocol

12. For the purposes of the commitment set out in the Exchange of Notes and Technical Protocol, the following definitions will apply—

“automatic” has the meaning set out in paragraph 7(v) of this Protocol,

“beneficial owner” means any natural person(s) who ultimately owns or controls a corporate or legal entity through direct or indirect ownership of more than 25% of the shares or voting rights or ownership interest in that entity, or through control via other means. This is abbreviated from Article 3(6) of the Fourth Money Laundering Directive’s definition of a beneficial owner.

“the Virgin Islands Platform” means such an electronic platform as the Virgin Islands develops to access and provide beneficial ownership information.

“corporate and legal entities” has an ordinary meaning. Participants should ensure that the widest possible range of corporate and legal entities incorporated in their jurisdiction is covered.

“designated point of contact” means in the case of the—

Virgin Islands, the Financial Investigation Agency; and

UK, the UKFIU, being the United Kingdom’s Financial Intelligence Unit.

“law enforcement authorities” means law enforcement and tax authorities.

“secure” has the meaning set out at paragraph 7(ii) and vi) of this Protocol, and means the fact that a search has been requested or conducted will not be made public or communicated to any person whatsoever apart from those suitably security cleared individuals who have responsibility for processing a request, including the officials conducting the search.

“similarly effective arrangement to a secure central electronic database” is defined as one which meets the following criteria—

- a) law enforcement agencies and tax authorities can obtain corporate and legal entities beneficial ownership information which restriction, and this information is to be available in accordance

with Paragraph 2 of the Exchange of Notes for use in both civil and criminal proceedings;

- b) law enforcement authorities of the Participants are to be able to identify quickly all corporate and legal entities connected to a beneficial owner without needing to submit multiple and repeated requests; and
- c) corporate and legal entities or those to whom the beneficial ownership information relates are not to be alerted to the fact that a request has been made or an investigation is underway.

“suitably security cleared individuals” has the meaning set out in paragraph 7ii) of this Protocol.

“timely” has the meaning set out in paragraph 7iii) of this Protocol.

INTERNATIONAL REQUEST FOR BENEFICIAL OWNERSHIP INFORMATION

Any unauthorised disclosure of information relating to this request may constitute a criminal offence.

Request or details:

Name:		Competent Authority*:	
Telephone:		Email:	

***Competent Authority refers to any UK or Virgin Islands Law Enforcement or Tax Authority**

URN	
Operation / Case Ref:	
Jurisdiction for Request:	
Date and Time of Submission:	
Authorising Officer Grade/Rank:	
Urgent I Return Appropriate rationale must be given as to reason for urgency e.g. threat to life, immediate risk of asset flight, time critical Court applications	Rationale:

REQUEST RELATES TO SERIOUS & ORGANISED CRIME

Information Requested:

- | |
|---|
| <ol style="list-style-type: none">1. Accurate and current beneficial ownership information on all legal person named in this request;2. Identification of the beneficial owner of any named company;3. Identification of all other legal persons in which the beneficial owner has an interest as well as the names of other individuals with interest in those legal person. |
|---|

Subject details:

(If you are enquiring about more than one subject, copy and paste this section as required. The boxes will expand automatically)

Surname:		Forename:	
DOB:		Where born:	
Nationality:		Occupation:	
Alias:		Gender:	
Address(es):			

Subject link to the overseas jurisdiction:	
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Company details:

(If you are enquiring about more than one company, copy and paste this section as required)

Company name:			
Registration number:		Country of Registration:	
Company address(es):			

Subject link to the overseas jurisdiction:	
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IT SHOULD BE NOTED THAT ANY INFORMATION OBTAINED AS A RESULT OF THIS REQUEST MAY BE USED BY RELEVANT UK COMPETENT AUTHORITIES IN ANY CRIMINAL OR CIVIL PROCEEDINGS WITHOUT PRIOR RECOURSE.

SCHEDULE 2

(Sections 2, and 13(7)(b))

Part I - Designated countries	Part II – Designated law enforcement authorities	Part III – Relevant agreement
United Kingdom	National Crime Agency - Financial Intelligence Unit	Exchange of Notes between the Government of the United Kingdom and the Government of the Virgin Islands dated 8th April, 2016

SCHEDULE 3

(Section 13(3))

OATH OF CONFIDENTIALITY

I, , being a (insert post of the employee) of (insert name of agency) solemnly swear / affirm* that I shall keep confidential all information which comes to my knowledge in my capacity as a designated person and I shall not divulge such information except as authorised by and in accordance with law.

So help me God! (omit if affirming)

Sworn / Affirmed before me, a Magistrate / Additional Magistrate / Registrar of the High Court / Justice of the Peace* this day of,

(Name of person swearing / affirming)

(Magistrate / Additional Magistrate/
Registrar of the High Court/
Justice of the Peace)*

* Delete as appropriate

SCHEDULE 4³⁹

ECONOMIC SUBSTANCE REQUIREMENTS

1. In this Schedule unless the context otherwise requires—

“economic substance requirements” has the meaning given by 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;

“relevant overseas competent authority” means, in relation to any corporate or legal entity, the overseas competent authority for each state in which—

- (a) a beneficial owner resides; or
- (b) within which a registrable legal entity is registered; or
- (c) within which the corporate or legal entity is registered; or
- (d) within which a parent of the corporate or legal entity is registered; or
- (e) within which the corporate or legal entity claims to be tax resident;

“required information” means all the information stored in the RA database for the corporate or legal entity in question.

2. The International Tax Authority shall disclose or procure the disclosure of the required information to each relevant overseas competent authority in respect of any corporate and legal entity which satisfies one or more of the following conditions—

- (a) it has been determined to be in breach of the economic substance requirements in accordance with section 10 of the Economic Substance (Companies and Limited Partnerships) Act, 2018;
- (b) it carries on an IP relevant activity and has either—
 - (i) stated pursuant to section 10(3)(i)(ii) that it does not wish to contest the rebuttable presumption introduced by section 9(2)(a) of the Economic Substance (Companies and Limited Partnerships) Act, 2018 to the effect that it does not carry on the relevant IP activity in the Virgin Islands; or
 - (ii) has stated pursuant to section 10(3)(i)(ii) that it does wish to contest the rebuttable presumption introduced by section 9(2)(a) of the Economic Substance (Companies and Limited Partnerships) Act, 2018 to the effect that it does not carry on the relevant IP activity in the Virgin Islands; or
 - (iii) it is a high risk IP legal entity within the meaning of section 2 of the Economic Substance (Companies and Limited Partnerships) Act, 2018.
- (c) it claims to be resident for tax purposes in a jurisdiction outside the Virgin Islands, in which case disclosure shall be made only to—

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- (i) the relevant overseas competent authority of that jurisdiction;
and
 - (ii) in the case of a corporate and legal entity one or more of whose beneficial owners, or whose legal owner, are or is resident in a member state of the European Union, to the relevant overseas competent authority of each member state in which a beneficial owner or the legal owner reside.
- (d) for the purpose of subparagraph (c), the legal owner of a corporate and legal entity is the person who is the direct parent of the corporate and legal entity.⁴⁰
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AMENDMENTS

- ¹ Inserted by No. 8/2019.
- ² Inserted again by No. 8/2019.
- ³ Inserted by 12/2018.
- ⁴ Inserted by No. 12/2018.
- ⁵ Amended by No. 17/2017 & No. 12/2018.
- ⁶ Inserted by No. 3/2019.
- ⁷ Inserted by No. 8/2019.
- ⁸ Inserted by No. 12/2018.
- ⁹ Inserted by No. 12/2018.
- ¹⁰ Inserted by No. 7/2019.
- ¹¹ Inserted by No. 12/2018.
- ¹² Inserted by No. 8/2019.
- ¹³ Inserted by No. 12/2018.
- ¹⁴ Inserted by No. 12/2018.
- ¹⁵ Inserted by No. 12/2018.
- ¹⁶ Inserted by No. 12/2018.
- ¹⁷ Inserted by No. 12/2018.
- ¹⁸ Amended by No. 8/2019.
- ¹⁹ Substituted by No. 12/2018, section 4(1)(b) replaced by No. 3/2019.
- ²⁰ Inserted by No. 12/2018 & replaced by No. 8/2019.
- ²¹ Amended by No. 17/2017, 12/2018 & replaced by No. 8/2019.
- ²² Amended by No. 17/2017
- ²³ Replaced by No. 12/2018
- ²⁴ Inserted by No. 2/2018, Amended by No. 3/2019, No. 7/2019 & No. 8/2019.
- ²⁵ Amended by 7/2019.
- ²⁶ Inserted by 7/2019.
- ²⁷ Amended by 12/2018.
- ²⁸ Amended by 7/2019.
- ²⁹ replaced by No. 8/2019.
- ³⁰ (e) to (j) inserted by No. 12/2018, 3(e), 3(h) amended by No. 3/2019, 3(g), 3(h), 3(i) amended by No. 7/2019 & 3(e), 3(g), 3(h), 3(i) & 3(j) replaced by No. 8/2019.
- ³¹ Inserted by No. 3/2019, amended by No. 7/2019 & replaced by No. 8/2019.
- ³² Inserted by No. 12/2018 & repealed by No. 3/2019.
- ³³ Amended by No. 17/2017.
- ³⁴ Inserted by No. 17/2017.
- ³⁵ Repealed by No. 8/2019.
- ³⁶ Inserted by No. 8/2019.
- ³⁷ Inserted by No. 8/2019.
- ³⁸ Amended by No. 12/2018, No. 7/2019 and replaced by No. 8/2019.
- ³⁹ Inserted by No. 12/2018.
- ⁴⁰ Inserted by No. 12/2018 and amended by No. 3/2019, No. 7/2019 and No. 8/2019.