
PRACTICE NOTE

PN 29/2024

Date: 20 February 2024

BENEFICIAL OWNERSHIP ACT 2017
GUIDANCE FOR LIQUIDATORS

This Practice Note, prepared in association with the Financial Services Authority (FSA), has been issued to provide clarification in regards to Beneficial Ownership obligations for legal entities that are in liquidation.

This practice note is intended as a general guide only and must be read in conjunction with the relevant legislation (Note 1). It should not be relied upon as a substitute for legal advice.

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1. Responsibilities of the liquidator

- 1.1 The “mind and management” of the company vests in the liquidator from the moment of his/her appointment. This includes the statutory filings applicable once the company is in liquidation and ensuring the orderly winding up of the company.
- 1.2 There are no exemptions from the obligations under the Beneficial Ownership Act 2017 (the Act) for liquidators.
- 1.3 In some cases the liquidator may meet the control parameters for a beneficial owner under section 4 of the Act. The liquidator would need to consider their position in relation to the Act in each case, for example in relation to the control of the entity in section 4(1) where aspects such as exercising control of the business and its assets may be material in considering if the liquidator is a beneficial owner of the entity for the purposes of the Act.
- 1.4 The Act (including Schedule 1) also provides for requirements of and offences by persons who are not necessarily relevant persons. More widely, other offences included in the Act such as tipping off offences and offences set out in Schedule 1 paragraph 7 can apply to any person no matter their position.
- 1.5 A new nature of interest ‘Control as Liquidator’ has been added to the submission form through online services. Liquidators should select this option when they are appointed as a beneficial owner of a company. Any current appointments should also be altered so that this nature of interest is used instead of ‘control’ or ‘control as corporate trustee’ which are the other options in relation to control rather than ownership.

2. Requirement to have a nominated officer.

- 2.1 The Act requires every legal entity (to which it applies) to appoint a 'nominated officer', unless the legal entity is in receipt of corporate services comprising Class 4 regulated activity provided by a CSP, who may undertake the role or responsibility for which a nominated officer is responsible (further information can be found in the Beneficial Ownership (Nominated Officer Exemption)(Class 4 Regulated Activity) Order 2017. Failure to appoint a Nominated Officer is an offence under the Act.
- 2.2 The nominated officer must be a natural person who is resident on the Isle of Man or the holder of a license issued under section 7 of the Financial Services Act 2008 which permits the holder to carry on the regulated activity (within the meaning of section 3(1) of that Act) of providing corporate services.
- 2.3 There is a statutory obligation on the legal owners to provide the nominated officer with details of the beneficial owner of the shares if it is not them. There is also a duty on the beneficial owners and intermediate owners to assist the legal owner to ascertain the beneficial owner. Failure to meet these obligations is an offence under the Act.
- 2.4 The nominated officer needs to be told the name, usual residential address, a service address where it differs from the residential address, nationality, date of birth, date on which the interest in the legal entity was acquired and the nature and extent (expressed as a percentage) of the interest in the legal entity. The nominated officer must be notified of any changes to these details as soon as reasonably practicable but in any event within 21 days of the date of the occurrence of the change.
- 2.5 Any changes to the Nominated Officer/CSP must be notified to Companies Registry as soon as reasonably practicable but in any event within 21 days of the occurrence of the change using the ‘Form NO/CSP’.

3. Duty of the nominated officer.

- 3.1 The nominated officer/CSP must hold the “required details” for every beneficial owner of a legal entity to which the Act applies.

The required details are;

- Name;
- Usual residential address;

- A service address where it differs from the residential address;
 - Nationality;
 - Date of birth;
 - Date on which the interest in the legal entity was acquired;
 - The nature and extent (expressed as a percentage) of the interest in the legal entity;
- 3.2 Where any beneficial owner holds more than 25% of the beneficial ownership of a legal entity to which this Act applies, that person is a registrable beneficial owner and the nominated officer must submit the required details of each registrable beneficial owner to the Department to be held in the Isle of Man Database of Beneficial Ownership.
 - 3.3 The Act states that the registrable beneficial ownership information must be submitted online, directly to the Isle of Man Database of Beneficial Ownership, by the nominated officer.
 - 3.4 The Database will be accessed through Online Services on www.gov.im. Companies Registry will issue an enrolment code by post to the nominated officer for each company for which they are appointed, this will enable the nominated officer to link the company to their Online Services account. CSP's will be issued with a single activation code.
 - 3.5 Any changes to the information must then be submitted to the database as soon as reasonably practicable but in any event within 21 days of the nominated officer being made aware of the said changes. For legal entities already in existence the information must be submitted to the database as soon as reasonably practicable but in any event within 21 days of the nominated officer being made aware of the said changes. Each time the nominated officer updates the information in the database they will be required to confirm that the information submitted is a true record of the required details of registrable beneficial ownership that has been provided to them as nominated officer. If no changes occur during a year the nominated officer is still required to visit the Database at least once a year to confirm that the information held is both current and correct.
 - 3.6 If the legal entity does not have any registrable beneficial owners, the nominated officer is still required to visit the Database at least once a year (by the date by which the legal entity is due to submit its annual return) and confirm that there are no registrable beneficial owners for the legal entity and that the information held is both current and correct.
 - 3.7 The nominated officer must ensure that the required details (covered in 3.1) and the information which verifies those details, which were provided to the nominated officer in relation to that entity, are maintained and preserved in accordance with section 13 of the Act.

4. Submission of Information to the Isle of Man Beneficial Ownership Database

- 4.1 Where the nominated officer is satisfied that the liquidator, acting in their professional capacity is controlling more than 25% of the legal entity, the required details of the liquidator must be submitted to the Database, and the newly introduced "Control as Liquidator" nature of interest category is to be selected. This will allow for a clear distinction in the Database of the capacity in which the Liquidator is acting.

5. Oversight

- 5.1 The Isle of Man Financial Services Authority has oversight responsibilities to ensure the Act is complied with and the nominated officer or CSP comply with their obligations under the Act. Is it a criminal offence not to comply with the Act.
- 5.2 Guidance issued by the Isle of Man Financial Services Authority can be found here; <https://www.gov.im/media/1357278/beneficial-ownership-act-2017-guidance-june-2017-gc-no-2017-0003.pdf>

6. Further information

Should you require any further information then please email your enquiry to BOAEnquiries.DFE@gov.im. Our team will respond by e-mail as soon as possible but cannot give legal advice. If you require such advice you should consult an Advocate.

The e-mail address is: BOAEnquiries.DFE@gov.im

Statutory forms and practice notes are available free of charge from the website: www.companiesregistry.gov.im

A list of licensed TCSP providers is available on the Isle of Man Financial Supervision Authority website at <https://www.iomfsa.im/register-search/>.

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

Tel: +44 (0)1624 662910

E-mail: enquiries@iomlawsociety.co.im

Website: www.iomlawsociety.co.im

Copies of Acts of Tynwald dealt with by the Companies Registry can be found on the following website administered by H.M. Attorney General:

<http://www.legislation.gov.im/cms/index.php>

Central Registry

Registries Building
Deemsters Walk, Bucks
Road Douglas, Isle of Man
IM1 3AR

Enquiries Email: BOAEnquiries.DFE@gov.im

Website: <https://www.gov.im/categories/business-and-industries/companies-registry/>

