



Guernsey Financial
Services Commission

Beneficial Ownership of Guernsey and Alderney Legal Persons

Thematic Review – 2018 / 2019



Executive summary

During the second half of 2018, a Thematic Review was undertaken by the Commission to assess the actions taken by the fiduciary sector to implement the requirements of the Beneficial Ownership Legislation, which came into force on 15 August 2017. This legislation requires all resident agents of Guernsey and Alderney legal persons to maintain accurate and up to date beneficial ownership information and provide that information to the Registrar of Beneficial Ownership of Legal Persons. This law is an important part of the measures taken by the Bailiwick to identify and prevent financial crime, complementing longstanding beneficial ownership provisions in the AML/CFT Regulations. The Thematic Review covered all 190 Guernsey and Alderney Full Fiduciary and Personal Fiduciary Licensees and encompassed the sampling of beneficial ownership records of almost 400 legal persons with an estimated 3,000 pieces of information received and analysed as part of the review process.

The Commission's objectives in undertaking the Thematic Review were:

1. To assess how effective Guernsey and Alderney Licensees have been in understanding and identifying the beneficial owners of legal persons to whom they act as resident agent and for whom they must submit the correct information to the Guernsey and Alderney Registries;
2. To analyse the effectiveness of the systems and controls implemented by Licensees to meet their ongoing obligations under the Beneficial Ownership Legislation.

The findings from this in-depth review are positive. Licensees have identified and verified the beneficial owners of these legal persons in accordance with their obligations. They were resourceful in respect of the methods deployed for accurately identifying beneficial owners, and demonstrated a high degree of direct face to face contact with the beneficial owners of the legal persons. They had also taken a sensible, structured and pragmatic approach to the implementation of processes to ensure that correct information was submitted to the Register for existing legal persons under the transitional provision in the Beneficial Ownership Law. A significant factor contributing to the success in this respect can be attributed to the Bailiwick's long-standing AML/CFT Regulations, which requires all Licensees to accurately identify and verify their clients, including beneficial owners. Their efforts show, that the importance of ensuring that accurate and up to date beneficial ownership information is available within the Bailiwick, is taken seriously by the sector. Checks on the accuracy of beneficial ownership information continue to be a key element of the Commission's onsite supervision of firms subject to the Bailiwick's AML/CFT Regulations as well as fiduciaries who are subject to both that regime and the Beneficial Ownership Legislation. This supervision provides one of the mechanisms for effective verification of the accuracy of the information that the Registry holds in respect of beneficial ownership of Bailiwick legal persons for which Licensees act as resident agent.

We would like to thank Licensees for participating in the review, and in particular, those who met with staff from the Investment Fiduciary and Pension and the Financial Crime Divisions for the file reviews and discussed their processes and internal controls in relation to the new requirements in further detail.

We hope that this report will also be of interest to firms in the other sectors within the finance industry who are under identical obligations within the AML/CFT Regulations to identify and verify beneficial owners of their customers.

Gillian Browning
**Director of Investment Fiduciary
and Pension Division**

Fiona Crocker
Director of Financial Crime Division

8 May 2019

Contents

Executive summary.....	2
Scope.....	4
Approach.....	5
Analysis.....	6
1. Key Findings: Transparency of beneficial ownership	6
2. Key Findings: Identifying and verifying beneficial ownership	10
3. Key Findings: Systems and controls	16
4. Key Findings: Nominee shareholder services	20
Conclusion	21
Glossary of terms	22

Scope

The Thematic Review, conducted alongside the Commission's regular supervisory engagement within the fiduciary sector, consisted of two core elements:

1. A questionnaire sent to all 190 Guernsey and Alderney Full Fiduciary and Personal Fiduciary Licensees requesting information on the number of Guernsey and Alderney legal persons to whom they provide resident agent services, and the profile of their beneficial owner(s) representing 11,864 Guernsey and 169 Alderney legal persons, and;
2. Onsite visits to 20 Licensees responsible for acting as resident agent for more than a third of Guernsey and Alderney legal persons where a full or personal fiduciary licensee acts as resident agent. This element involved in-depth analysis of Licensees' approach to understanding the Beneficial Ownership Legislation and the policies, procedures and controls introduced by each Licensee to comply with it. The selection criteria included the quantity and the type of legal person the Licensee acted for, together with input from the Guernsey Registry and the Financial Intelligence Unit.

The onsite visits involved:

- Meetings with at least one Director, the Money Laundering Reporting Officer and staff responsible for the implementation of measures to comply with the Beneficial Ownership Legislation to discuss and assess the strategies adopted by the Licensee to ensure the accurate identification of beneficial owners and the submission of their details to the Register;
- Reviews of files of up to 20 legal persons per Licensee to assess the accuracy of beneficial ownership identification and information submitted to the Register; and
- Comparing the beneficial ownership information held by the Register against the information held in the sample of client files reviewed at Licensees' offices.

The results gathered from the questionnaires identified that 11 Full Fiduciary Licensees and 28 Personal Fiduciary Licensees fell outside of the scope of the Thematic Review as they did not provide resident agent services to any Guernsey and Alderney legal persons.

Approach

Thematic reviews are used by the Commission as a tool to gather information on industry trends or specific controls or measures to establish to what extent a particular subject area or issue is understood and managed. Thematic reviews also provide a means by which the Commission can share observations across the local financial sector on both good and poor practices and to engage with a wide selection of Licensees within a relatively short period of time.

The Beneficial Ownership Regulations define beneficial ownership for the purposes of registering accurate and up to date beneficial ownership information with the Registry, specifying three distinct tiers of ownership based upon requirements set by the Financial Action Task Force. The requirements are technical in nature and therefore to assist understanding, the three tiers of beneficial owner are set out in summary below:

- **Tier 1** - Identifying any natural person who controls the legal person through ownership; A natural person has control through ownership if he or she:
 - holds more than 25% of the shares or voting rights in a legal person;
 - holds the right to appoint or remove a majority of company directors or corresponding officials for other types of legal persons and, in the case of LLPs, limited partnerships with legal personality and foundations, having certain rights over the assets of the partnership or foundation as the case may be.
- **Tier 2** - Identifying any natural person who controls the legal person through other means; Once control through ownership has been considered as set out in tier 1, resident agents must consider tier 2. Tier 2 has two elements:
 1. Where no natural person has been identified to have control through ownership; and
 2. Where natural person(s) have been identified to have control through ownership at tier 1 but there is reason to believe that other natural person(s) exercise control through means other than ownership.

Control through means other than ownership cannot fall within a single definition as this will depend on the particular circumstances of each legal person. It may arise where, because of contractual, employment, familial or historical ties there is a natural person with an absolute decision or right of veto of the activities of the legal person or who can influence decisions taken by the legal person.

- **Tier 3** - Where no such natural persons can be identified in either of tiers 1 and 2, the natural person(s) who is/are the senior managing official(s) of the legal person must be identified as the beneficial owner(s).

The introduction of the Beneficial Ownership Legislation in August 2017 augmented existing requirements in Guernsey Company Law for resident agents of Bailiwick legal persons to hold beneficial ownership information. The transitional provisions of the Beneficial Ownership Legislation required Licensees to provide accurate and current beneficial ownership information on existing Guernsey and Alderney legal persons to the Register by 28 February 2018.

Analysis

1. Key Findings: Transparency of beneficial ownership

Licensees had correctly identified and held the appropriate records verifying the beneficial owners of all 381 files assessed by the Commission.

Licensees had correctly identified the beneficial owners and submitted this information to the Register on 363 files, representing 95% of the client files sampled. On just 18 files, representing 5% of the sample, Licensees had identified and verified the beneficial ownership correctly, however they had submitted incorrect or incomplete information on beneficial ownership to the Registry. These instances are categorised as follows (note, any reference to sections within points 1 to 5 below are to the Beneficial Ownership Regulations):

1. Eight files related to Licensees correctly recording the power-holders to trusts in their systems, and submitting tier 1 beneficial ownership information to the Registry, but the submissions were not complete because information was not submitted to the Registry on the identity of the power-holders pursuant to section 2(1)(e);
2. Four files related to Licensees' internal records correctly identifying the beneficial owners, but the Licensees submitted details of intermediate UK holding companies as the beneficial owners to the Register, misinterpreting the requirement of section 1(3);
3. Three files where the companies were held in trust and the beneficial owners had been identified in the Licensees' own records, but had not disclosed the ownership information of the trustee to the Register as required by section 2(1)(d);
4. Two files where no natural persons owned more than 25% in a legal person and therefore a senior management official, such as an executive company Director, should have been entered on the Register pursuant to section 1(1)(c) (tier 3), although the identity of the senior managing officials would have been disclosed on the Register as directors of the legal persons; and
5. One file where information on the life tenant of a fixed trust was not submitted pursuant to section 2(1)(a).

The Commission raised each aforementioned instance with the relevant Licensees who undertook to review and resubmit the correct information to the Register. The Commission conducted a sample follow-up review of beneficial ownership information at the Registry, which confirmed that these entries had been corrected.

The Beneficial Ownership Legislation contained a transition period for the provision of beneficial ownership information to the Registry by 28 February 2018. Licensees have completed the most significant task under this legislation of providing the required information to the Registrar for all their existing legal persons for whom they act as resident agent. It is inevitable that a small number of issues of technical compliance were encountered within the sector for a project where beneficial ownership information had to be uploaded to the Register for just over 12,000 legal persons.

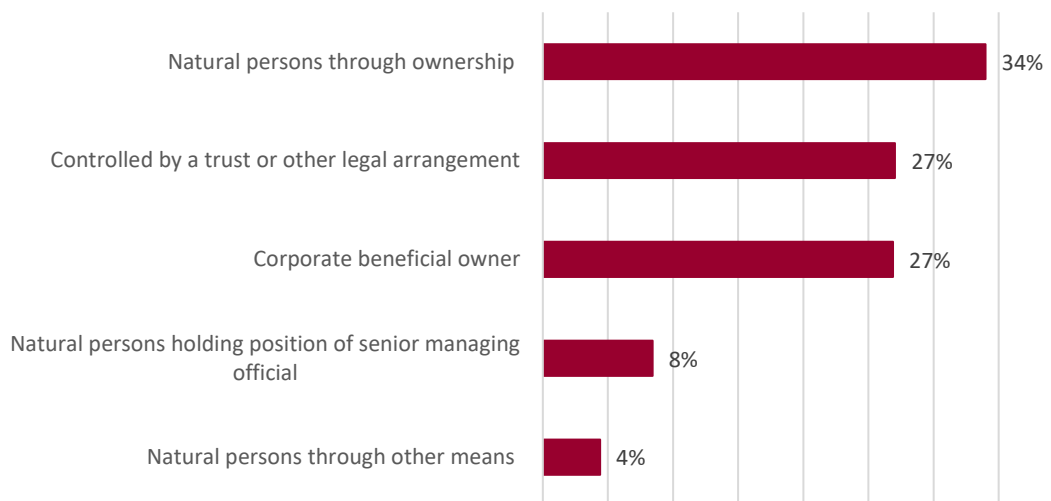
1.1. Nature of beneficial ownership of Guernsey and Alderney legal persons

Where Licensees provide resident agent services to Guernsey and Alderney legal persons, they must determine which category of beneficial owner, as defined in the Beneficial Ownership Regulations, is relevant to each legal person and submit this information to the Register.

The results obtained from the questionnaires demonstrate that of the total of 12,033 Guernsey and Alderney legal persons with a Licensee as its resident agent, 96% are owned by just one type of beneficial owner. The graph below provides a breakdown of the legal persons that are owned by one category of beneficial ownership as prescribed by the Beneficial Ownership Regulations. The remaining 4% of legal persons were reported to have more than one category of beneficial owner.

“ Please specify the number of Guernsey and Alderney legal persons to whom the licensee acts as resident agent and whose beneficial owners fit into just one of the following categories: ”

Legal Persons with one category of beneficial owner as defined by the Beneficial Ownership Regulations

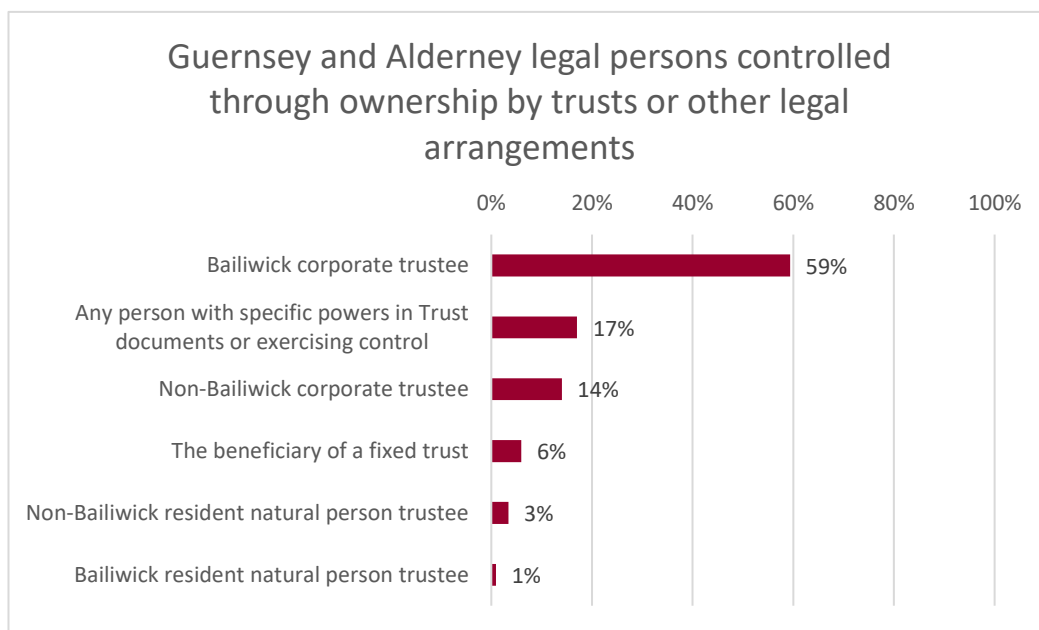


The profile of beneficial owners of Guernsey and Alderney legal persons where a full fiduciary or a personal fiduciary Licensee acts as resident agent is broken down as follows:

- One third of legal persons (34%) have beneficial owners who are natural persons through ownership (tier 1);
- Over one quarter (27%) comprises of legal persons controlled by trusts;
- Over one quarter (27%) of legal persons are beneficially owned by a corporate beneficial owner, which is a company that is either listed on a recognised stock exchange; a trading company owned by the States of Guernsey or Alderney; and/or legal persons whose beneficial ownership details are available on the Register. Owing to the transparency of these corporate beneficial owners, this category is treated as equivalent to a natural person through ownership (tier 1);
- 8% of legal persons have a senior managing official(s) recorded as the beneficial owner (tier 3), and
- 4% of legal persons are beneficially owned by natural persons through control by other means (tier 2).

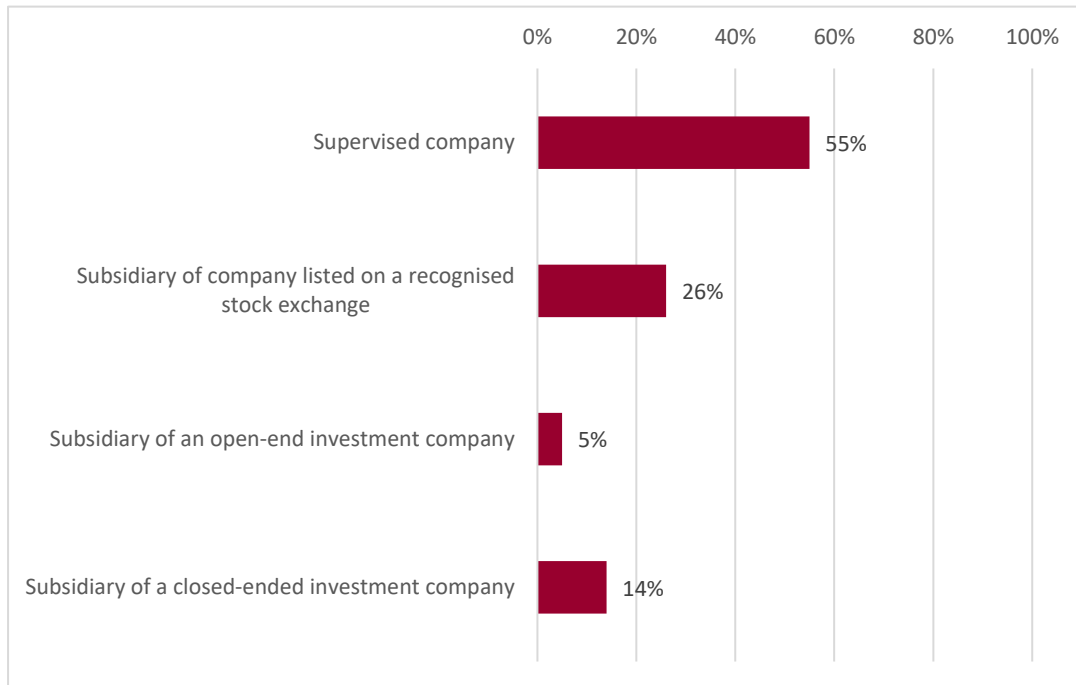
The next graph shows that Guernsey and Alderney corporate trustees control the majority of Bailiwick legal persons controlled by a trust. The beneficial ownership information for licensed Guernsey and Alderney corporate trustees is held by the Commission as part of its licensing and supervisory functions. Where a resident agent of the legal person is a Licensee, it must hold accurate and up to date information on the identity of the settlor, trustee, beneficiaries and any protector (and where all these are legal entities their beneficial ownership) in accordance with the Bailiwick’s AML/CFT Regulations and will be available to the Competent Authorities where required.

“ Please specify the number of Guernsey and Alderney legal persons to which the Licensee acts as resident agent that are controlled through ownership by trusts or other legal arrangements and have the following categories of beneficial owners recorded on the Register: ”



Robust mechanisms already exist in the Bailiwick to allow Competent Authorities to access accurate beneficial ownership information for listed companies or companies supervised by the Commission. 13% of Guernsey and Alderney legal persons fell within this category, the graph below represents a breakdown of this figure. The highest number of such instances were where Licensees provided resident agents for companies supervised by the Commission, followed by subsidiaries of companies that are listed on recognised markets such as those detailed in the EU Directive in Financial Instruments, the Alternative Investment Market, or the International Stock Exchange (previously the Channel Islands Stock Exchange).

Licenses were asked to provide the number of Guernsey and Alderney legal persons to whom the Licensee provides corporate services that are exempt from having a resident agent because alternative robust mechanisms exist to ensure accurate and up to date beneficial ownership information is available to Competent Authorities.¹



1.2. Level of direct contact with beneficial owners of Guernsey and Alderney legal persons

The questionnaire asked to what extent Licensees had met with the beneficial owners of legal persons for whom they act as resident agent. The response showed that Licensees have directly met with two thirds of their beneficial owners in the last three years, a positive figure which was further supported by information and documentation seen by the Commission in the file reviews.

The introduction of the Beneficial Ownership Legislation with the requirement to register beneficial ownership information with a central authority has not had a material impact upon the size of the sector. The questionnaire revealed that Licensees received minimal requests reflecting less than 0.25% of legal persons for who they act, to change the structure or ownership of legal persons following the introduction of the Beneficial Owner Legislation.

This extremely small number of requests to restructure is a positive indication that beneficial owners of Guernsey and Alderney legal persons either accept or acquiesce to the disclosure of their identity on a confidential official Register with access available to Competent Authorities.

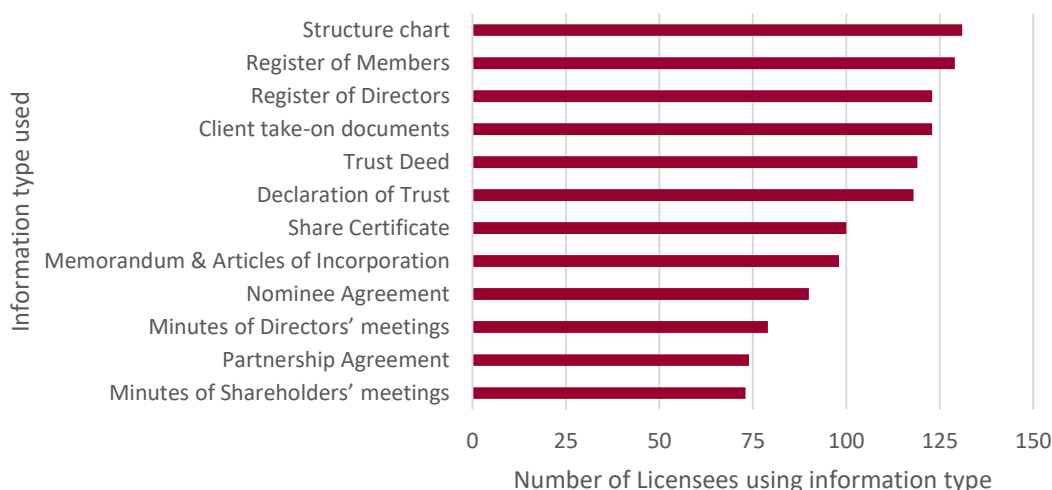
¹ Open-ended and closed-ended investment companies are collective investment schemes regulated by the Commission.

2. Key Findings: Identifying and verifying beneficial ownership

Licensees were resourceful in respect of the various methods used for accurately identifying the beneficial owners of legal persons to whom they act as resident agent, a finding which was confirmed from both the questionnaire and the onsite visits. On average, Licensees used a combination of 12 separate documents to assist them to identify the beneficial owner which are listed within the table below. This list is not exhaustive, as Licensees used a large variety of different information sources to assist them in identifying or verifying the relevant information such as: client take-on documentation, face to face meetings with clients and representatives, and information collated as part of client due diligence to understand and assess the ownership and control of the legal persons and information on the purpose and rationale for the relationship.

“ “ What information does the Licensee utilise to establish the beneficial ownership of a legal person to which resident agent services are provided? ” ”

Most common information used for identifying Beneficial Ownership



The Beneficial Ownership Legislation and AML/CFT Regulations specify legal and regulatory obligations upon Licensees to hold accurate and current beneficial ownership information and to ensure the Registry is notified of changes to beneficial ownership. A failure to comply in this respect can carry criminal and civil sanctions. It is therefore important for Licensees to ensure that they have mechanisms for the timely identification of changes in beneficial ownership so that the records they hold, and those of the Registry, are accurate and up to date.

The questionnaire sought information on how Licensees monitored for changes in the beneficial ownership information of legal persons for whom they act as resident agent. Measures included, but were not limited to: seeking assurance that beneficial ownership had not changed during regular client contact, considering whether beneficial ownership has changed in the periodic risk reviews of the legal person, and using trigger events such as a notice of changes to registers of directors or shareholders, changes of risk ratings, transaction monitoring, or the addition/removal of beneficiaries where the legal persons were owned by a trust to check that beneficial ownership has not changed.



GOOD PRACTICE:

A visited Licensee had made alterations to its client software platform to assist with keeping up to date with any changes in beneficial ownership information. Where there was a change to the information relating to a legal person to whom the Licensee acts as resident agent, an alert would be automatically generated and flagged directly to the corporate secretary. Internal policy required the corporate secretary to review the updated information and where appropriate they would liaise with the relevant administrator within the firm in order to update the internal systems and assess whether the update required notification to the Registry in compliance with the Beneficial Ownership Legislation.

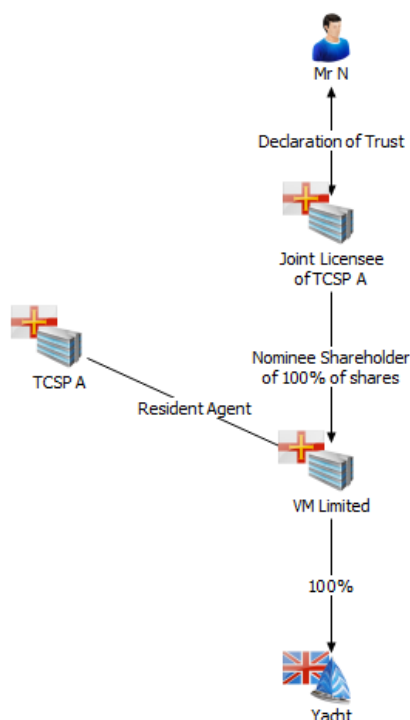
2.1 Case studies on beneficial owners

The following anonymised case studies are drawn from the client files reviewed by the Commission during the onsite visits. They serve to illustrate real life examples of the different categories of beneficial owners as defined by the Beneficial Ownership Regulations that Licensees may expect to see when applying the three tier test to the legal persons to whom they provide resident agent services.

2.1.1 Section 1(1)(a) (tier 1) - natural person(s) who ultimately controls the relevant legal person through ownership



CASE STUDY: section 1(1)(a)



VM Limited is 100% owned by Mr N and shares in the company were held by the joint licensee of the resident agent as nominee shareholder on behalf of Mr N via a declaration of trust. The company owns a boat as its sole asset. Mr N was correctly recorded as the beneficial owner in the licensee's files and at the Registry. Furthermore, the nominee and nominator were identified to the Register.

In addition to identifying if control rests through direct or indirect ownership of more than 25% of the shares of a legal person, there are further considerations set out in sections 3(a)(ii) and 3(a)(iii) of the Beneficial Ownership Regulations such as whether control rests through direct or indirect holdings of more than 25% of voting rights or through holding direct or indirect rights to appoint or remove a majority of the directors. The Beneficial Ownership Regulations also interpret how to treat joint interests where two or more persons hold a share or right jointly and where there are joint arrangements

between persons who each hold shares in the legal persons who will exercise their rights in a predetermined way. There was limited evidence from the client files reviewed that Licensees were applying sufficient attention to these additional considerations.



AREA FOR IMPROVEMENT:

In addition to the consideration of the three tier beneficial ownership test, it is recommended that Licensees take care to ensure that their internal policies and procedures cover identifying beneficial owners who qualify i) by holding directly or indirectly more than 25% of the voting rights, ii) by holding a joint interest in more than 25% of the shares or rights, or iii) who have the ability to remove and appoint directors at client take on and on on-going basis. They should also ensure that policies and procedures include identifying where joint arrangements exist between individuals. Additionally Licensees should ensure that training covers these areas.

Three quarters of the Licensees visited have implemented internal policies that require the identification of individuals who hold lower percentages than the >25% ownership threshold required by section 3 of the Beneficial Ownership Regulations. This is a positive reflection of Licensees going beyond the legal requirements to ensure that there are appropriate and effective controls to manage and mitigate relationships where the risk of parties seeking to conceal their identities could be higher, for example where structures are complex.



POINT OF NOTE:

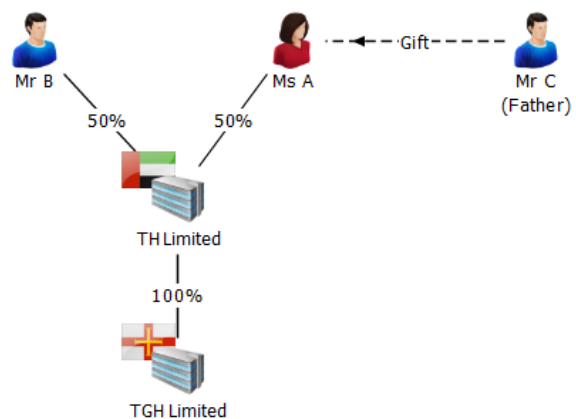
A visited Licensee applied a risk-based approach where beneficial owners of standard (or medium) risk rated relationships were identified to the >25% ownership threshold set in the legislation but applied a lower threshold of >10+% ownership for high risk relationships. Three-quarters of Licensees visited by the Commission applied a lower threshold of between 1 and 25%. This is an example of good practice to manage risk.

2.1.2 Section 1(1)(b) (tier 2) - natural person(s) who ultimately controls the relevant legal person through other means



CASE STUDY: Section 1(1)(b)

Ms A and Mr B had been identified as the beneficial owners by the Licensee acting as resident agent of a legal person as they both held a 50% share of a Guernsey company. Ms A had received the source of funds to purchase the shareholding in the company from her father as a gift. The father was not recorded as a beneficial owner and no rationale was located on the file to demonstrate consideration of whether he exercised any control over the company as a result of his parental relationship with the 50% shareholder or as a result of the gift of funds to buy the shareholding. The Licensee was asked whether there was any element of control over the company by the father. It



was confirmed that the Licensee did not consider there to be any such controlling interest, explaining that it had taken into account factors such as the relatively low value of the gift in relation to the father's total wealth and the considerable experience that Ms A already had in the sector within which the company operated. The Licensee did not record this assessment, which would have assisted in ensuring that the Licensee could clearly show that it understood the beneficial ownership of this relationship on an ongoing basis and that that information was readily available to its staff with responsibility for administering or reviewing the files.

Once a resident agent has considered tier 1 of the three tier process, section 1(1)(b) of the Beneficial Ownership Regulations requires that it must take the additional step, referred to as tier 2, of considering whether any individual or entity exercises control over the legal person through means other than ownership. This step must be taken where no natural person has been identified under tier 1, or, where a natural person(s) has/have been identified under tier 1, however, the resident agent is aware of additional natural person(s) who exercise control over the actions of the legal person through means other than ownership.

Hypothetical examples of control through means other than ownership would be an individual who exercises influence over a legal person through either a close relationship such as a husband, wife or parent or through contract of employment, or coercion of some form i.e. debt or other financial influence.

It was clear from the questionnaire and the files reviewed by the Commission that beneficial ownership mainly rested at tier 1, i.e. through direct or indirect ownership by a natural person or corporate beneficial owner. A very small proportion of legal persons, approximately 4%, were beneficially owned through tier 2. It was not evident from the file reviews and/or discussion with some Licensees that consideration was given as to whether there were individuals who should be categorised as beneficial owners through control at tier 2, in addition to ownership at tier 1.



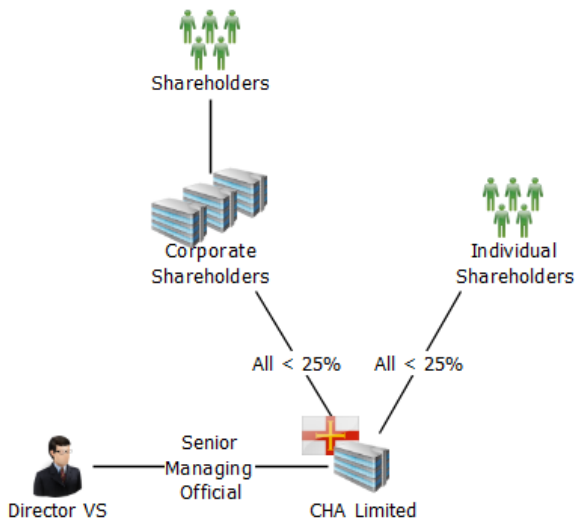
AREA FOR IMPROVEMENT:

Licensees are reminded of the requirement as set out under section 1(1)(b) of the Beneficial Ownership Regulations (tier 2) to consider control through means other than ownership in addition to and following their consideration of control through ownership pursuant to section 1(1)(a) (tier 1). Situations where this may be relevant could arise where a person holds influence over the individual identified as the beneficial owner through ownership by an informal agreement i.e. the individual identified as the owner acts as a 'straw-man' or proxy on behalf of the other individual who has no apparent formal connections to the company. This may not be easy to identify but Licensees should be alert to the possibility that a person could be falsely presented as the beneficial owner. Potential indicators could include: no clear rationale for establishing the legal person for the individual identified as the beneficial owner; a lack of relevant experience in the activities of the company; discrepancies between the value of the company's assets with that of its identified beneficial owner; or receipt of instructions or receipt or payment away of funds from parties with no discernible connection with the legal person.

2.1.3 Section 1(1)(c) (tier 3) - natural person(s) who hold(s) the position of a senior managing official of the relevant legal person



CASE STUDY: section 1(1)(c)



The ownership of CHA Ltd was such that the tier 1 and tier 2 beneficial ownership tests under section 1(1)(a) and (b) resulted in no beneficial owners being identified. The Licensee confirmed that all shareholders owned less than the 25% threshold and there was no individual identifiable at tier 2. The Licensee identified and submitted to the Registry details of Mr VS as the beneficial owner through the tier 3 test under section 1(1)(c) as a director of CHA Ltd and therefore the senior managing official.

Where no beneficial owners exist under tiers 1 and/or 2 as described above, the resident agent must identify a senior managing official of the legal person as the beneficial owner and submit this information to the Registry. This can be the case where there are a number of

shareholders with percentage holdings of 25% or less and strategic decision making powers are held by a member of the legal person’s Board.

2.1.4 Section 1(3) - corporate beneficial owners



CASE STUDY: section 1(3)

PO Limited is a Guernsey company owned by a Guernsey limited partnership. The Guernsey limited partnership had elected under section 9A of The Limited Partnerships (Guernsey) Law, 1995 not to have legal personality and therefore can only operate through its General Partner, which in this case is a Guernsey company GP Limited. Consequently PO Limited’s resident agent determined that the company’s corporate beneficial owner is the limited partnership’s General Partner, GP Limited pursuant to section 1(3) of the Beneficial Ownership Regulations and the definition of ‘relevant legal person’ as prescribed by section 41(1) of the Beneficial Ownership Law. As a corporate beneficial owner the identity of the beneficial owners of GP Limited had been disclosed to the Register in its own submission.



This section is relevant where a corporate beneficial owner i.e. a listed company, States of Guernsey or States of Alderney trading company or another relevant legal person whose beneficial ownership information has already been disclosed to the Registry, has been identified as the beneficial owner.

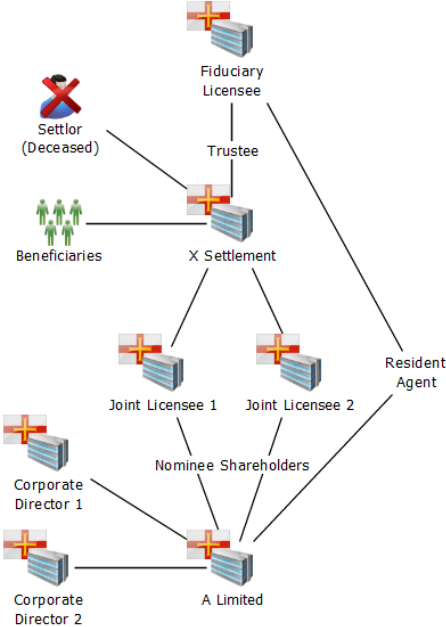
2.1.5 Section 2 - trusts and other legal arrangements



CASE STUDY: section 2

A Limited, a Guernsey company, was directly owned by X Settlement, the Guernsey corporate trustee of which had been correctly entered on the Register as the beneficial owner of the company under section 2. Identification information on the settlor and beneficiaries of the trust was held by the resident agent who also provided the trustee of the X settlement.

A number of Licensees visited by the Commission as part of the Thematic Review administered structures where a trust owned a legal person. The onsite teams assessed from client files they tested that all Licensees had correctly identified and verified the individuals or entities behind the trust structures including the trustee (where different from the resident agent), settlor and beneficiaries and kept a record of these individuals at their premises.



Where a trust controls a legal person, the identity of any person who holds a range of powers to influence the administration of the trust must be disclosed to the Register as a beneficial owner as required by section 2(1)(e) of the Beneficial Ownership Regulations. Such a person would include the trustee but might also include a protector if the protector has the power to appoint new or remove existing trustees. In the majority of reviewed client files Licensees had correctly identified and submitted information on the persons that held such powers to the Register, although there were eight examples where Licensees had correctly identified power-holders in accordance with the AML/CFT Regulations but had not submitted this information to the Register. These instances were flagged with the Licensees who have since corrected the information on the Register by making new submissions.

A further consideration for Licensees acting as resident agent to a legal person where a trust is involved is whether any individual exercises control over the trust pursuant to section 2(1)(f). This is a similar consideration to the scenario explained in more detail under the Case Study for section 1(1)(b) or tier 2 as described above.

! AREA FOR IMPROVEMENT:

Whilst the identification and submission of information to the Register of persons that hold powers under trusts and other legal arrangements was not a systemic issue across the Licensees visited, it is recommended that Licensees check whether a person such as a protector has been appointed and holds powers which qualifies the individual as a beneficial owner of the relevant underlying legal person in accordance with section 2(1)(e) Beneficial Ownership Regulations. This could form part of the controls that Licensees are recommended to introduce as described in more detail in the Systems and Controls section below.

In addition, Licensees should consider whether there is any person exercising control over the trust pursuant to section 2(1)(f) Beneficial Ownership Regulations, and where applicable submit this information to the Register.

3. Key Findings: Systems and controls

The onsite visits provided an opportunity to gain further insight into how Licensees:

- adapted their internal control systems and client procedures to incorporate the requirements of the Beneficial Ownership Legislation;
- comply with paragraph 5(3) of Schedule 1 of the Fiduciaries Law (having regard to the adequacy of the applicant's records and systems in deciding whether a person is conducting their business in a prudent manner);
- comply with paragraph 6 of the CSP Code (requiring Licensees to have effective management and systems in place); and
- comply with the AML/CFT Regulations.

In support of the results gathered from the questionnaire, the discussions and review of information during the onsite visits demonstrated that Licensees have adopted a sensible, structured and pragmatic approach to informing themselves of the new Beneficial Ownership Legislation and the requirements to report the correct information to the Register for existing legal persons within the transitional timeframes. The majority of Licensees produced a plan and appointed either one individual or a group of individuals to form a project team to oversee the introduction of internal policies to implement the requirements of the Beneficial Ownership Legislation.

Where individuals had been assigned with the oversight and running of the project, whilst this provided in-depth knowledge and a consistent approach to the identification and submission of beneficial ownership information of the legal persons, it presented a potential issue whereby Licensees could be exposed to the risk of dependency on a single individual with in-depth knowledge of the subject area. Licensees should be wary when developing systems and controls to meet new legislation, to avoid relying solely on one key individual. Sharing the responsibility across two or more members of staff can assist with guarding against key person dependency.

There was a good level of engagement in the projects across Licensees involving directors, senior management and client facing staff including compliance teams and corporate secretaries. In addition, external parties such as law firms, compliance consultants and the Registry, including use of the Guidance materials, were used to aid Licensees' in their understanding of the Beneficial Ownership Legislation. A common approach taken by 60% of Licensees was to prepare checklists and flow charts to assist staff in the identification and documentation of beneficial owners.

These factors had the effect that Licensees applied a consistent approach to ensuring the accurate identification of the beneficial owner, which is supported by the success rate of the reviewed client files as detailed in the Transparency of beneficial ownership information section.

The visits identified a correlation between the accuracy of data submitted and the robustness of control checks. The likelihood of incorrect submissions to the Register were higher where Licensees had not carried out checks or updated internal controls.

All Licensees who were visited took measures to identify and verify beneficial owners and considered the profile of the beneficial owner/s as part of their initial client risk assessment and client on-boarding procedures in accordance with the AML/CFT Regulations. Clear evidence of this was noted by the Commission on all files reviewed.



GOOD PRACTICE:

A visited Licensee had incorporated the changes required as a result of the introduction of the Beneficial Ownership Legislation into their internal policies and procedures, this included the requirement to record the rationale for identifying beneficial owners of legal persons to whom they provided resident agent services. The rationales were stored on its internal system together with a central register of beneficial ownership for all its business relationships. This represents good practice as the need to document the grounds for the identification of a beneficial owner is a requirement under the Beneficial Ownership Law as well as providing practical assistance to the Licensee when conducting periodic and trigger event reviews of these relationships.

It is a requirement that Licensees record the rationale of their decisions to identify an individual as a beneficial owner, pursuant to section 10(3)(f) of the Beneficial Ownership Law.



POINT OF NOTE:

Licensees are reminded of the requirement to record the grounds on which an individual(s) is considered a beneficial owner in accordance with Part 1 of the Beneficial Ownership Regulations. In certain circumstances, Licensees should also record why an individual connected to the legal person is not considered to be the beneficial owner where such a question could reasonably be raised because that individual occupies a position and/or could influence the legal person or the individual(s) identified as the beneficial owner.

Examples of an individual in a position and/or exercising influence over the legal person or beneficial owner could include the following:

1. An individual could be a protector to a trust which owns the Bailiwick legal person but who does not hold the powers specified in 2(1)(e) of the Beneficial Ownership Regulations to be classified as a beneficial owner. A Licensee would need to consider and record what powers that individual held as the protector in order to reach a decision that the individual was not a beneficial owner, or
2. On a non-exhaustive basis an individual that i) is the source of funding for the legal person or its acquisition by the individual considered to be its beneficial owner, ii) holds the expertise about the type of activity being undertaken by the legal person which the identified beneficial owner lacks and to whom the beneficial owner is or is likely to defer to, and/or iii) the directors of the legal person engage or will engage with about the legal person's activities. A Licensee would need to consider such factors, singly and cumulatively as part of determining who is the beneficial owner(s) of the legal person and where it determines that such an individual is not the beneficial owner it would be wise to record the reason(s) for its decision.

This record will assist a Licensee in demonstrating that it understands the ownership of the legal person and in monitoring for any changes in beneficial ownership when conducting periodic or trigger event driven reviews and its CMP tests.

At the time of the thematic 80% of visited Licensees had implemented, or were in the process of introducing updated policies and procedures to incorporate the requirements established in the Beneficial Ownership Legislation. The remaining 20% considered that their existing policies and procedures were appropriate for the purpose of complying with the Beneficial Ownership Legislation.



POINT OF NOTE:

With the coming into force of Schedule 3 to The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and rules and guidance in the Handbook on Countering Financial Crime and Terrorist Financing on 31 March 2019, Licensees are required to revise their policies, procedures and controls to ensure they remain appropriate and effective in light of the legislative and regulatory revisions that have been made by the end of January 2020. Where Licensees have not already introduced the requirements of the Beneficial Ownership Legislation into their policies and procedures, they are encouraged to do so at the same time they are reviewing and updating their AML/CFT policies, procedures and controls in line with the new legislation and revised Handbook.

The Commission identified a range of controls at the Licensees it visited to ensure that beneficial ownership information remained up to date. These included regular reviews of the beneficial ownership information recorded on their client files against the information submitted to the Register, periodic risk reviews and tests incorporated into CMP. There was also evidence of Licensees having implemented reviews of beneficial ownership upon trigger events and the introduction of workflows in electronic systems to record changes. Client facing teams also played an important role in ensuring that changes to beneficial owners were updated in systems and brought to the attention of supporting teams.



GOOD PRACTICE:

One personal fiduciary Licensee who the Commission visited had revised his procedures to include in the beneficial ownership section details of the trigger events which would require an update to the Register which included any change to a protector or guardian. The Licensee also incorporated within his procedures the guidance issued by the Registry to help resident agents identify beneficial owners.



AREA FOR IMPROVEMENT:

Where Licensees have not already done so Licensees are recommended to review their policies, procedures and controls and consider introducing sample testing of beneficial ownership information as part of their periodic review process and CMP to ensure that their policies and procedures for implementing the various requirements specified within the Beneficial Ownership Legislation and Regulations are effective and appropriate.

The majority of Licensees had provided training to staff on the introduction of the Beneficial Ownership Legislation and the policies and procedures implemented to comply with the new requirements. This was provided either in-house or with the assistance of external expert parties including the Registry. TCSPs are required, as per paragraph 6 of the CSP Code, to formulate and keep up to date plans for staff training and development. Due to the recent introduction of the Beneficial Ownership Legislation, in general Licensees had not yet considered the provision of ongoing training for new and existing staff regarding the Beneficial Ownership Legislation and their internal policies and procedures on this topic.



POINT OF NOTE:

The Commission recommends that Licensees ensure that their training policy and procedures for both new and existing staff members include the identification and ongoing maintenance of Beneficial Ownership information, through both the annual validations process of Bailiwick legal persons and through the incorporation of new Bailiwick legal persons. This would ensure that training on the new legislation and the requirements for the Register are included as a matter of course for new and existing staff.

4. Key Findings: Nominee shareholder services

The Nominee Regulations came into force in December 2017. Where a legal person uses the services of a nominee shareholder, the Nominee Regulations requires that nominator and nominee information must be disclosed to the Register within the submission of beneficial ownership information.

The client files reviewed confirmed that in all relevant cases, Licensees had ‘looked through’ the nominees in compliance with the Beneficial Ownership Regulations and had identified and submitted information on the correct beneficial owner to the Register.



POINT OF NOTE:

Licensees are reminded that the Nominee Regulations requires nominee information to also be submitted to the Register and that Licensees should consider including a review of this requirement as a test within their periodic review and/or CMP tests to ensure that they are complying with the Nominee Regulations.

Conclusion

The evidence gathered in response to the Thematic Review demonstrates effective controls to ensure that accurate and up to date beneficial ownership information is available and accessible to the Competent Authorities. Visited Licensees have taken a sensible, structured and pragmatic approach to ensuring they understand and identify the true beneficial owners of legal persons for which they are the resident agent and submitted the correct information to the Register. In all the files reviewed by the Commission, Licensees had accurately identified and verified the beneficial owner of the legal person in compliance with their responsibilities under the AML/CFT Regulations.

The Thematic Review has provided an insight into the success of the fiduciary sector in implementing the introduction of the Beneficial Ownership Legislation. The information gathered from the questionnaire covering 12,033 legal persons (at the time of the survey) to whom the sector provides resident agent services provides an overview of the beneficial ownership of the different types of legal persons across Guernsey and Alderney, whilst the information gathered during the onsite visit phase covering almost 400 legal persons has helped gain a greater understanding of areas of good practice, as well as areas where there is room for improvement in the understanding and implementation of the new Beneficial Ownership Legislation.

From the evidence gathered and analysed consisting of approximately 3,000 different pieces of information, the Commission is in a unique position to provide focussed observations and recommendations aimed at assisting both the implementation and the ongoing maintenance of Licensees' compliance with the Bailiwick's Beneficial Ownership Legislation.

Checks on the beneficial ownership information held by all firms across the sectors continue to remain a key element of the Commission's onsite supervision to all firms subject to the AML/CFT Regulations. Going forward Licensees subject to both that regime and the Beneficial Ownership Legislation can expect the Commission to also sample the accuracy of the beneficial ownership information they provide to the Registry.

Glossary of terms

AML/CFT	Anti-Money Laundering/Countering Financing of Terrorism
AML/CFT Regulations	The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018
beneficial owner	As defined within Part 1 Beneficial Ownership Regulations, 2017, section 1, 2 and 3; and equivalent sections in the Beneficial Ownership (Alderney) (Definition) Regulations, 2017
Beneficial Ownership Law*	Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 Beneficial Ownership of Legal Persons (Alderney) Law, 2017 Beneficial Ownership of Legal Persons (Alderney) (Amendment) Ordinance, 2017
Beneficial Ownership Legislation	Collective term used for all the various parts of Beneficial Ownership Legislation implemented and denoted with an ‘*’ within this glossary.
Beneficial Ownership Regulations*	Beneficial Ownership (Definition) Regulations, 2017 Beneficial Ownership (Alderney) (Definition) Regulations, 2017 Beneficial Ownership (Definition)(Amendment) (No. 2) Regulations, 2017 Beneficial Ownership (Definition)(Amendment) (No. 3) Regulations, 2017 Beneficial Ownership of Legal Persons (Guernsey) (Amendment) Ordinance, 2017 Beneficial Ownership of Legal Persons (Guernsey) (Amendment) (No. 2) Ordinance, 2017
CMP	Compliance Monitoring Programme
Commission	Guernsey Financial Services Commission
Competent Authorities	The Economic Crime Division of Bailiwick Law Enforcement; The Guernsey Financial Services Commission (nominated individuals); Guernsey and Alderney Registry (nominated individuals).
CSP Code	Code of Practice – Corporate Service Providers
Fiduciaries Law	Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000

GP	General Partner
Guidance	Guidance issued by the Guernsey and Alderney Registries including <i>Guidance on the meaning of Beneficial Owner</i> and <i>Guidance on Nominees</i>
Handbook	Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing and Handbook on Countering Financial Crime and Terrorist Financing (issued 1 March 2019)
legal person	Includes:- <ul style="list-style-type: none"> • -a company incorporated under the Companies (Guernsey) Law 2008, and Companies (Alderney) Law, 1994; • -an Limited Liability Partnership incorporated under the Limited Liability Partnership (Guernsey) Law, 2013; • -a foundation established under the Foundations (Guernsey) Law, 2012.
Licensee(s)	Full Fiduciary and Personal Fiduciary Licensees including Full Fiduciary licensees who also hold a Protection of Investors Licence
LLP	Limited Liability Partnership
LP	Limited Partnership
Nominee Legislation*	Beneficial Ownership of Legal Persons (Nominee Relationship) Regulations, 2017 Beneficial Ownership of Legal Persons (Nominee Relationships) (Alderney) Ordinance, 2017
Register	Registers of Beneficial Owners of Legal Persons, for Guernsey and Alderney
Registry	Guernsey and Alderney Registries
resident agent	As per sections 484 to 490 inclusive of the Companies (Guernsey) Law, 2008, as amended.
TCSP	Trust and Corporate Service Provider
Thematic Review	The Beneficial Ownership of Guernsey and Alderney Legal Persons Thematic review 2018