



# Show us who's BOSS

**WILL BURNELL** INTRODUCES THE BVI'S NEW BENEFICIAL OWNERSHIP REGIME, INCLUDING THE BOSS SYSTEM

**THE BRITISH VIRGIN** Islands' (BVI's) *Beneficial Ownership Secure Search System Act, 2017* (the Act) came into force on 30 June 2017.

The Act requires each BVI registered agent (RA) to establish and maintain a database (an RA database) that records information about the ultimate beneficial owners (UBOs) of the BVI companies it administers.

It also introduces the Beneficial Ownership Secure Search (BOSS) system. BOSS is an electronic search platform that enables persons who have been designated by the BVI Finance Minister (designated persons) to access information on the RA databases following a request from the Financial Intelligence Unit of the UK National Crime Agency. Requests must come via a senior officer of the BVI's Financial Investigation Agency, Financial Services Commission (FSC), International Tax Authority, or Attorney General's Chambers.

## SCOPE OF THE ACT

The main provisions of the Act apply in respect of every company incorporated or existing under BVI law (a company), except the following:

1. companies regulated by the FSC;
2. companies recognised, registered or otherwise approved as BVI funds;
3. companies whose shares are listed on a recognised stock exchange; and
4. subsidiaries of the companies at points two and three above (where the company directly or indirectly holds 75 per cent or more of the shares or voting rights in the subsidiary).

The Act also provides that details of UBOs who hold their interests directly or indirectly through any of the above types of company, a foreign regulated person, a sovereign state, or a wholly owned subsidiary of a sovereign state, need not be added to the RA database.

## UBOs

Under the Act, a UBO is a natural person who ultimately owns or controls a company, including (but not limited to):

- Where the UBO is a legal person (other than a company listed on a recognised stock exchange), a natural person who ultimately owns or controls (directly or indirectly) 25 per cent or more of the shares or voting rights in the legal person.
- Where the UBO is a legal person, a natural person who otherwise exercises control over the management of the legal person.
- In the case of a legal arrangement (such as a trust):
  - the trustee or other person controlling the legal arrangement (this is unlikely to include the beneficiaries); or
  - the settlor or other person who created the legal arrangement.
- In the case of a company in insolvent liquidation, administration or administrative receivership, the natural person who is appointed as the company's liquidator, administrator or administrative receiver.
- In the case of a receiver being appointed over 25 per cent or more of the shares or voting rights in a company, the creditor who appoints the receiver.

A person will not be a UBO purely because they hold the benefit of a security interest over shares or voting rights in a company, or because they have a commercial exposure to the financial performance of a company pursuant to financial derivatives or similar contractual arrangements.

## RELEVANT INFORMATION

Companies must identify their UBOs and pass details to their RAs within 15 days of receipt. Where a UBO is a natural person, their name, address,

date of birth and nationality must be provided to the RA. Where the UBO is a corporate or legal entity, the company must confirm the entity's name, incorporation number and date, status, and registered address.

Similarly, a company must notify its RA of changes to its UBO information (and the effective date(s) of those changes) within 15 days of becoming aware of the same. The RA has a further 15 days to update its RA database.

## DATABASE ACCESS

The RA databases are not available for public inspection, and each RA can access only its own RA database. Likewise, BOSS is only accessible by designated persons from a physically secure location in the BVI and via a secure IT system. Designated persons must pass security vetting tests and take an oath of confidentiality, and may be subject to heavy fines and/or a prison sentence for breaches of their duties.

To avoid any risk of 'tipping off' a UBO who is involved in criminal activity, UBOs will not be notified when a BOSS search is made.

Beneficial ownership information relating to companies active on 30 June 2017 and struck off since 1 January 2016 should have been passed to RAs in time for them to populate the RA databases before 30 June 2017. RA databases must now be kept up to date, particularly given the potential financial and, for companies, penal consequences for non-compliance with the Act. RAs should already be receiving more than the required level of information as part of due-diligence procedures.



**WILL BURNELL** IS A SENIOR ASSOCIATE IN CAREY OLSEN'S TRUST AND PRIVATE WEALTH TEAM