

BENEFICIAL OWNERSHIP REGIME

Beneficial Ownership Requirements for Bermuda Companies,
Limited Liability Companies and Partnerships

Guidance Note

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FOREWORD

This document is intended to provide general guidance on what Bermuda legal entities (and service providers) must do to comply with the new beneficial ownership regime, pursuant to Bermuda law.

This document explains various aspects of the regime and is intended to help a legal entity comply with the BO requirements under this new regime. It is not a full statement of the law and should, therefore, not be relied upon as a source of law. It must be read in conjunction with Bermuda law generally and does not absolve persons from other obligations, including obligations under other statutory provisions relating to beneficial ownership.

Legal entities that fail to comply with their legal duties could be committing a criminal offence and could be fined. Legal entities and their officers, general partners or managers (and those designated members or partners) of such legal entities who are in default could be committing a criminal offence and could be fined and/or imprisoned.

This Guidance Note should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide general guidance. Should you have further questions regarding fact-specific situations, we recommend obtaining professional advice.

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ACRONYMS

AML/TF	Anti-money laundering/Anti-Terrorist financing
BO	Beneficial Owner or Beneficial Ownership
FATF	The Financial Action Task Force
LLC	Limited Liability Company
OECD	The Organisation for Economic Co-operation and Development
RLE	Relevant Legal Entity

DEFINITIONS

For the purposes of this Guidance Note the following definitions have been included below for ease of reference:

“the Acts” include the Companies Act 1981, Limited Liability Company Act 2016, Exempted Partnerships Act 1992, Limited Partnership Act 1883, Partnership Act 1902 (collectively, the “Acts”);

“Beneficial Owner” has the meaning given in the Acts;

“legal arrangement” includes a trust, partnership or other similar arrangement;

“legal entity” means a company, limited liability company or other body that is a legal person under the law by which it is governed;

“minimum required information” has the meaning given in the Acts;

“registrable person” means a beneficial owner or relevant legal entity;

“relevant legal entity” in relation to a company, partnership, or LLC means—

- (a) any legal entity that is incorporated or formed or registered (including by way of continuation) in Bermuda or elsewhere; and
- (b) any legal arrangement,

which would be a beneficial owner of the company, partnership, or LLC if it were an individual.

Part 1: The Beneficial Ownership Regime

1.1 International Commitment

FATF recommendations and OECD standards require jurisdictions to maintain beneficial ownership. Such information must also be accessible and made available upon request to a requesting jurisdiction, for the administration or enforcement of their domestic laws, be it for tax, anti-money laundering, regulatory, commercial or other reasons.

Bermuda has committed and continues to strive to meet such international standards.

1.2 The legislative framework

To comply with such international standards, the Government of Bermuda has adopted amendments to various provisions of the Acts by the following legislation:

- the Companies and Limited Liability Company Amendment Act 2016; and
- the Partnership, Exempted Partnerships and Limited Partnerships (Beneficial Ownership) Amendment Act 2018.

The legislative framework requires legal entities to keep a BO register of individuals and/or RLEs that own or have control over such entities. This obligation to keep a BO register is in addition to the obligation to keep other information, such as a register of members, register of limited partners and a register of directors or register of managers (as the case may be).

1.3 The requirements at a glance

Legal entities have a statutory and regulatory obligation with respect to beneficial ownership information. As a result, legal entities:

- have a duty to keep a BO register;
- must take reasonable steps to identify the individual BOs, if any, of a legal entity;
- should contact these persons whom it believes to be registrable persons, to confirm whether they meet the conditions and, if so, obtain the minimum required information in respect of such registrable persons;

- must enter the minimum required information on the legal entity’s BO register (see Part 3);
- must file the minimum required information with respect to BOs, as defined below in Part 2.1, with the BMA, which maintains the central register (see Parts 3 and 5); and
- must keep the minimum required information on such BOs up-to-date (see Part 4).

1.4 Applicability of the BO requirements

The requirement to maintain a BO register applies to **all registered legal entities**, except those that are specifically exempted as set forth in the Acts. **There is no affirmative duty to file a claim of exemption set forth in the Acts.**

Part 2: Who is a Beneficial Owner?

2.1 Who is a Beneficial Owner?

Beneficial owners are always natural persons who ultimately own or control a legal entity.¹

A “beneficial owner” is an individual or individuals (being a natural person or persons) who meet the following conditions²:

- (i) Any individual or individuals who own or control more than 25% of the shares, interests or voting rights in the company through direct or indirect ownership thereof (“condition (i)”);
- (ii) If no such individual or individuals exist or can be identified, any individual or individuals who control a company by other means (“condition (ii)”);
- (iii) If no such individual or individuals exist or can be identified who meet the criteria set out in condition (i) or (ii), the individual who holds the position of senior manager of the company (“condition (iii)”).

¹ This definition of beneficial ownership is also applicable to partnerships and LLCs, with the appropriate modifications.

² The definition in relation to a company is set out in section 98E of the CA 1981; in relation to an LLC in section 65C of the LLC Act; and for exempted partnerships and limited partnerships, in section 40 of the Partnership Act.

“control by other means” includes the right to appoint or remove a majority of the board of directors or general partners or managers (as the case may be) of a company and the exercise of control over a company by any means other than control by ownership of any interest;

“senior manager” means the chief executive, managing or executive director or president of a company or general partner (as the case may be) or other person holding such senior position in the company by whatever title known.

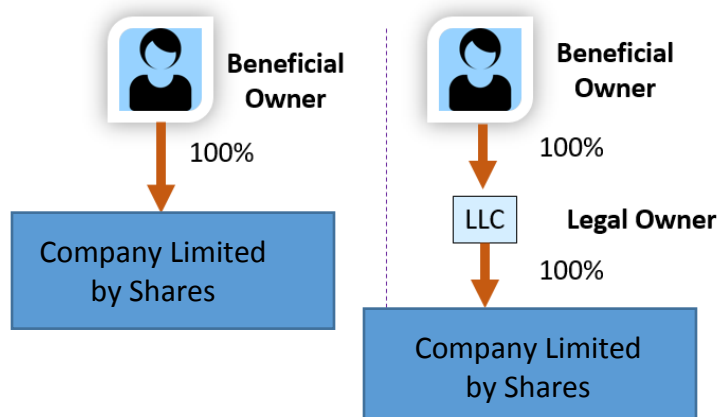
Identifying a beneficial owner involves a three step process. Condition (i) speaks for itself. If condition (i) is not satisfied, then you proceed to condition (ii) and finally if condition (ii) is not satisfied, you move to condition (iii).

2.2 How does a legal entity determine BO?

Given that beneficial ownership or control of shares, interest or rights can be exercised in many different ways, determining the BO of a legal entity can be a complex process that must be undertaken on a case-by-case basis. Note, also that determining the BO is independent of the BO’s nationality and place of residence.

The use of a legal entity or arrangement can obscure identity of a beneficial owner. Where an individual is the sole shareholder of a company and controls it directly, that individual is the BO of the company. However, there may be more layers involved in the ownership structure, perhaps a chain of entities between a legal entity and its BO. In Figure 1, the example on the right side shows an additional layer – the LLC – between the legal entity (the company) and its beneficial owner. The LLC, as the shareholder of the company, is its direct legal owner, while the beneficial owner indirectly controls the company through the LLC.

Figure 1. Difference between a BO and a Legal Owner



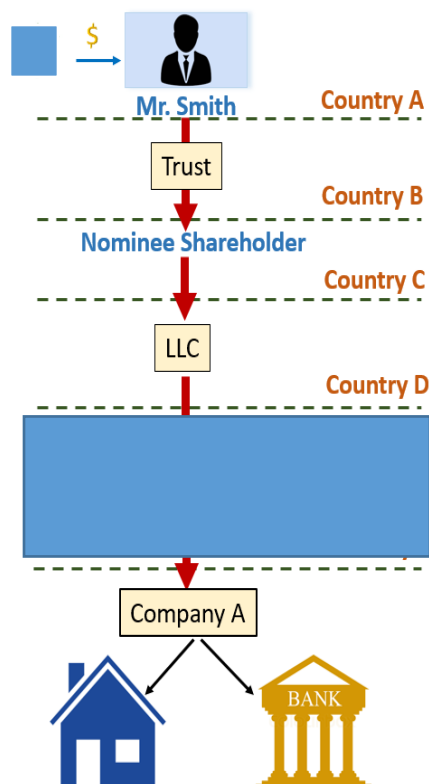
2.3 Why is it important to identify BOs?

Anonymity enables many illegal activities to take place hidden from law enforcement and regulatory authorities, such as tax evasion, corruption, money laundering, and terrorist financing. For example, money laundering involves complex operations and transactions to make money from illicit sources, in order to appear to have legal sources, while in reality the money is from illicit activities.

In a business setting, in particular, it is therefore important to know the BOs of legal entities and arrangements to prevent misuse of such structures.³ Whilst it is open to persons to create sophisticated corporate structures including corporate structures across jurisdictions, the concern is that certain persons could use such structures for illegal purposes such as to obscure their identity, income or property ownership.

Following is an example of how a person, Mr Smith, can easily create corporate structures across various jurisdictions to make it much more difficult to identify his ownership and control.

Figure 2. Economic Activity through a Complex System of Legal Entities



³ For this reason, FATF and OECD have included beneficial ownership requirements in their standards and conduct peer review assessments across jurisdictions, on availability of such beneficial ownership information.

The longer the chain of entities between a legal entity (in the above example, Company A and its BO, John Smith), the harder it can be to identify the BO, given the requirement for a legal entity to, in the process, determine who controls each of the layers.

In the example above, another factor that makes it difficult to identify a BO is **nominee** (also see paragraph 2.12). The use of nominees, whereby a person allows his or her name to appear as a shareholder or owner in the name of someone else is permitted in Bermuda.

2.4 Understanding Beneficial Ownership: Conditions (i) to (iii) in Part 2.1

Condition (i): Direct or indirect ownership or control of shares, voting rights or interests

Establishing beneficial ownership

A BO can only be a natural person. A legal entity cannot be a beneficial owner and must determine the identity of its BOs. Moreover, there may be more than one BO of a legal entity that owns or controls, through direct or indirect ownership, more than 25% of the shares in a company or interests in an LLC or partnership.

2.4.1 Companies limited by shares: calculating shareholdings

In the case of a company limited by shares, information in its register of members can assist a company (or service provider) in determining whether any individual or individuals directly own or control more than 25% of its shares.

All shares issued (whether voting or non-voting) by a company should be included when calculating shareholdings. However, shares which have never been issued or which have been bought back and cancelled by the company, should not be included in the calculation. If a company's shares or voting rights are held by legal arrangement, the company should take steps to identify the BOs of that legal arrangement – see also under paragraphs 2.10 and 2.12.4 below.

Beneficial ownership must be determined in relation to another person in certain situations including, but not limited to:

- shares or voting rights that are held jointly by two or more persons, each person must be treated as holding the entirety of the shares or rights;
- shares or voting rights that are not held jointly are subject to an arrangement between the people who hold them (whether or not the arrangement is in writing) that they will exercise their rights in the same way, each person who is party to the arrangement must be treated as holding the entirety of the shares or rights that are covered by the

arrangement; this applies to voting rights attached to shares or any other rights;

- a person controls a voting right held by another, the person with control must be treated as holding the right. This is also the case if the person who holds the right, latter also has control of such right. If, however, the person who holds the right has to act entirely as directed by another, only that person directing the actions should be treated as holding the right.

If an individual features within an ownership structure in more than one way, the value of each of that individual's holdings must be looked at in the aggregate in order to assess the overall holding, for the purpose of determining whether an individual is a beneficial owner.

If no individual's holding meets the threshold of more than 25% of shares or voting rights, that individual will still be a beneficial owner if he or she has the right to appoint or remove a majority of company directors or managers or meets one of the other conditions (ii) or (iii) of the beneficial owner definition.

2.4.2 Companies without share(s) (including charitable companies)

The BO legislation also applies to companies limited by guarantee and mutual companies. Such companies should interpret references to the term "shares" to mean interests, profit or capital as appropriate.

A company without share capital may have a member's agreement or other type of operating agreement, or association agreement (including bye-laws, operating agreement or articles of association, if applicable) (such documents being referred to as "governing documents" for the purpose of this Guidance Note). Such legal entity should look to the terms of its governing documents to determine who owns or controls the interests or voting rights in that entity.

The governing documents may contain provisions that prevent the distribution of profits and or capital to members of the company (such as in the case of companies with charitable purposes). If a legal entity cannot distribute profits or capital, it will have no individual or individuals who meet the criteria set out in condition (i) and should then consider if there is any individual or individuals who meet the criteria set out in condition (ii). A company without shares might well have a relevant legal entity (RLE) that meets the criteria as set out in condition (ii) and (iii).

Where the governing documents of a company without share capital do allow for the distribution of profits or capital, an individual will meet condition (i) in relation to such company if that person holds a right to share in more than 25% of a company's profits or capital by way of such distribution:

- (i) If this right is held jointly, or as nominee on behalf of another, or indirectly; or,
- (ii) If this right is held by an entity rather than an individual.

2.4.3 Shares, Interests or Rights held by an LLC or Partnership

Ordinarily, where shares, interests or rights in the legal entity are held as assets of a limited partnership without legal personality, the details should only be entered on the BO register if such entity is a general partner. A limited partner of a limited partnership without legal personality will not meet conditions (i) to (iii) by virtue of only being a limited partner. Similarly, the legal entity (or the legal entity, if it is a RLE) will not meet conditions (i) to (iii) solely by virtue of holding shares or rights (whether directly or indirectly) in a limited partner.

Where a BO or RLE has been identified with a right to share in or control more than 25% of a legal entity's profits or capital, a legal entity must enter the minimum required information in respect of such person or RLE on the BO register. The minimum required information as defined above, includes a statement of the nature and extent of an individual's shares, interest or rights under condition (i), using suggested wording as provided in **Annex 1** below, as guidance, relating to condition (1). For a legal entity without shares, the wording should refer to interests, profit or capital or control, as appropriate. If no individuals who meet the criteria set out in conditions (i), (ii) or (iii) are identified, please refer to paragraph 3.3, which covers what should be entered on an entity's BO register if no one who meets any of the conditions in paragraph 2.1

2.5 Calculating BO of voting rights

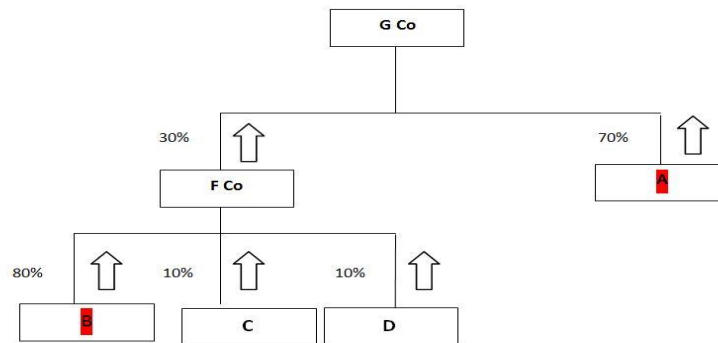
The voting rights attached to any shares, partnership or LLC interests are likely to be set out in the legal entity's governing documents. Voting rights can be exercisable in different ways, including at general meetings or through written resolutions. Often one vote is attached to one share or percentage of interest, but the entity may have different classes of shares or interests with different rights. Some shares or interests may have no voting rights, or the right to vote only in certain circumstances, or additional rights to more than one vote per share or percentage of interest.

Where shares or interests in a legal entity are directly owned and the voting rights attached to shares or LLC or partnership interests are set out in such governing documents, then the information contained in the register of members and the voting rights provisions of the governing documents, may enable such entity to work out if any individual or entity directly holds more than 25% of the voting rights. Voting rights attached to shares or interests that have been bought back and are held as treasury shares or interests should not be included.

In the case of LLC interests, all interests which are allocated to the members of the LLC should be used to calculate the percentage of LLC interests held by any member. This may correspond with the voting rights, or if the interest does not carry the right to vote, the rights of members to share in the profits of the LLC.

For more complicated arrangements such as indirect holdings, please see Paragraph 2.12 and Figures 3 (below) and 4 (after section 2.10.1, Nominees).

Figure 3



In Figure 3, G Co is a Bermuda company in which 30% of the shares are held by F Co (a foreign company) and A holds the remaining 70%. Therefore, A has a direct holding of more than 25% and is a beneficial owner of G Co. F Co is a RLE. B, C and D all hold indirect interests through F Co's shares. Thus, the holdings must be calculated based on F Co's shares. B holds 24% (80% of 30%) and C and D each hold 3% (10% of 30%). Therefore, neither B, C nor D is a beneficial owner of G Co.

2.6 Condition (ii): Control by other means

Any individual exercising control over an entity whether directly or indirectly, should be identified as a beneficial owner (subject to the 25% threshold, as discussed in Part 2.1).

It is not possible to give an exhaustive definition of "control" because it will depend on the particular circumstances of each specific legal entity. However, generally speaking an individual is likely to have control over a legal entity in situations which include, but are not limited to:

- (i) The individual holds, directly or indirectly, more than 25% of the shares, interests or voting rights in an entity, which may include having absolute decision or veto rights over the running of the business of the legal entity;
- (ii) The individual holds the right, directly or indirectly, to appoint or remove a majority of directors;
- (iii) The individual otherwise has the right to exercise, or actually exercise, significant influence over the legal entity;
- (iv) The individual has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or other arrangement

(which is not a legal person), where the trustees or participants in the arrangement would satisfy any of the conditions above.

Control will not ordinarily arise in the context of a standard professional or commercial relationship between the legal entity and an individual such as a legal adviser, an accountant, a client, a lender or a supplier. Nor will it ordinarily arise in the context of the exercise of a statutory function such as that of a regulator or a liquidator.

2.7 Relevant Legal Entities:

A company, partnership, or LLC may be owned or controlled by a legal entity, not an individual. A legal entity's details must be put on the BO register if it is a RLE in relation to a company or partnership. When a legal entity or legal arrangement is not a RLE, it is not a registrable person and its details are not required on the BO register.

A legal entity or legal arrangement is a RLE if it meets any of the criteria set out in conditions (i), (ii) or (iii) and would be a beneficial owner, as if it was an individual. Details of the legal entity or legal arrangement must be put on the BO register if it is an RLE in relation to such entity.

In the case of a legal arrangement, beneficial owners may include:

- Named beneficiaries with a fixed or determinable interest (i.e., not a discretionary beneficiary);
- All individuals who exercise control over the property of the trust must be identified, such as:
 - settlor
 - trustees
 - protector
 - named beneficiaries or classes of named beneficiaries
 - any other individual exercising control of the trust.
- In the case of an estate being administered, the term "beneficial owner" includes the executor or administrator of the estate.
- Except for cases in which the Official Receiver is the liquidator or receiver, in the case of a legal entity which is in liquidation or receivership, beneficial owner means the individual who is appointed as the liquidator or receiver of the legal entity.

2.8 Determining the BO when natural persons and legal arrangements are combined

A trust may be the owner or shareholder of a legal entity. A trustee or settlor of a trust may be a legal person, as is the case with a corporate trustee. Corporate trustees may be Bermuda-licensed trust

companies, private trust companies (PTCs) or a corporate trustee that may or may not be licensed by an overseas regulatory authority.

2.8.1 Legal Ownership by a Trust

Where the ownership structure of a legal entity includes an RLE that is a trust, the beneficial owners of the legal entity are the settlor, protector, trustee, named beneficiary(ies) and any individual that meets condition (ii). For clarity, in such case, the legal entity is not considered a subsidiary of the corporate trustee and the BOs of the trust must be included on the register. If the trustee is a Bermuda financial institution, section 98D(2)(d) of the Companies Act (with similar provisions in all of the Acts) will apply in relation to the BOs of the trustee. Other BOs as described in 2.7 above must also be included in the legal entity's BO register.

2.8.2 Legal Ownership by a Trust with non-Bermuda Licensed Trustee

Where a corporate trustee is not a Bermuda-licensed trustee that is subject to regulation or supervision by a foreign competent authority, the senior manager (as defined in this guidance) must be recorded as the beneficial owner. Other BOs as described in 2.7 above must also be included in the legal entity's BO register.

2.8.3 Legal Ownership by a Private Trust Company (PTC)

Where a corporate trustee is not a Bermuda PTC that is exempted under the Trusts (Regulation of Trust Business) Exemption Order 2002, is treated the same as ownership by an RLE that is a legal person. That is, legal entity for which BO is being determined or recorded must look through the PTC to determine its BOs under Conditions (i), (ii) and (iii) described in this guidance and in the Act. Other BOs as described in 2.7 above must also be included in the legal entity's BO register.

2.9 Condition (iii) - Control by the senior manager

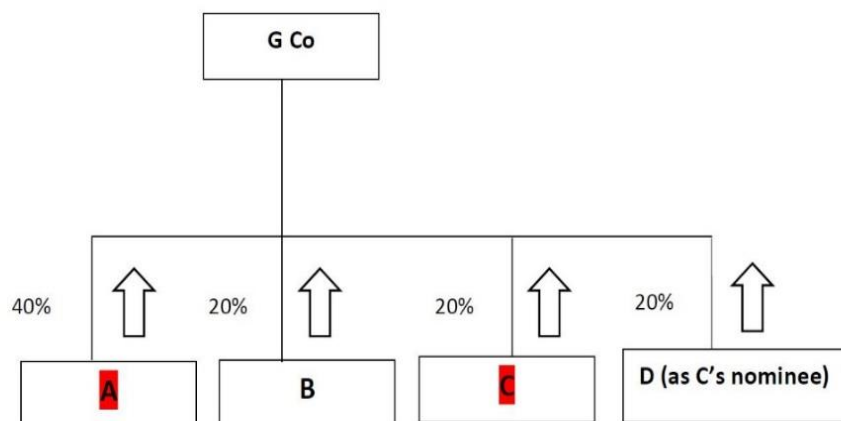
As a general rule control by the senior manager refers to individuals who exercise strategic decision-making powers in respect of the legal entity (for example, a Chief Executive Officer). This would not normally include an individual who does not have executive functions, such as a non-executive director.

2.10 Further guidance on other ownership arrangements

2.10.1 Nominees

If shares, voting rights or interests are held by a nominee, these should be treated as if they were held by the person for whom the nominee is acting. If this individual is a BO, you must enter the minimum required information in respect of that BO on the BO register. If the nominee is acting for a legal entity or legal arrangement, a legal entity must follow the steps in Part 2 as it would for any other legal entity or legal arrangement with an interest in such entity.

Figure 4



In Figure 3, G Co is a Bermuda company in which A holds 40% of the shares, B and C each hold 20% of the shares, and D holds 20% of the shares as nominee for C. As A holds more than 25% of the shares in G Co, A is a beneficial owner of G Co. B holds less than 25% of the shares in G Co, so B is not a beneficial owner of G Co. Although C only holds 20% of the shares in his own name, D holds a further 20% of the shares as C's nominee. Shares held by D must be treated for purposes of determining beneficial ownership as belonging C, not D. This means that C holds more than 25% of the shares in total, so C is a beneficial owner of G Co.

2.10.2 Jointly and severally held interests

If two or more people jointly and severally hold shares, voting rights or interests, each of them is treated as holding the total number of shares, interests or voting rights held by all of them. So if two or more people hold jointly and severally more than 25% of the shares, interests or voting rights, the minimum required information in respect of each of them must be separately be entered on the BO register.⁴

2.10.3 Joint arrangements

A joint arrangement includes proxy agreements, voting blocs, and any scheme, agreement or understanding, whether or not legally enforceable and any convention, custom or practice of any kind. It does not include one-off arrangements, partnerships or LLCs.

If two or more people have such an arrangement which relates to voting rights or interests in a legal entity, each of them is treated as holding the total number of shares or percentage of interests held by all of them. Where an arrangement covers more than 25% of the shares or interests, the minimum required information in respect of each party to the arrangement must separately be

⁴ Refer to the relevant sections in Part 2 where one of the joint owners is a legal entity.

entered on the BO register. If the arrangement covers appointment or removal of directors with a majority of board level voting rights, then the minimum required information in respect of each party to the arrangement must separately be entered on the BO register.

2.10.4 Interests held through a partnership

Where shares, voting rights or interests or in an entity are held as assets of a partnership, a legal entity should only enter the details of the general partner(s) on the BO register (if they are individuals or RLEs).

2.10.5 Rights attached to shares or interests held by way of security

Where a BO or RLE has used their or its shares or interests as security, e.g. for a loan from a bank, those shares or interests should be treated as being held by the BO or RLE if:

- The BO or RLE retains control;
- The BO or RLE retains control, except where the lender exercises rights relating to the shares or interests for the purpose of preserving or realizing the value of the security; or
- the lender controls the rights relating to the shares or interests but, other than the right to exercise them for the purpose of preserving or realizing the value of the security, must exercise them in the interests of the owner.

2.10.6 Rights exercisable only in certain circumstances

Voting rights and rights to appoint or remove company directors, LLC managers or general partners might only be exercisable in certain circumstances. If the circumstances under which the rights are exercisable are within the control of the individual who holds them, then they are relevant for identifying the BO of a legal entity. Otherwise, a legal entity should only consider these rights if those circumstances have arisen, and for as long as those circumstances continue.

2.11 Exemptions

2.11.1 Liquidation

While in the process of liquidation, liquidators and creditors may have certain rights, but these rights do not make them BOs. An entity should not put their details on a BO register.

2.11.2 Publicly traded companies

The requirements to obtain, maintain and file BO information do not apply to entities whose shares are listed on the Bermuda Stock Exchange or other appointed stock exchange. In addition, more than 75% owned subsidiaries of such entities are also exempted from these requirements. If an entity has determined that it meets the exemption requirements, then the BO legislative

amendments would not apply. **There is no affirmative duty to file a claim of exemption set forth in the Acts.**

2.11.3 Subsidiaries in general

The requirements to obtain, maintain and file BO information do not apply to more than 75% owned subsidiaries of entities that are exempted under section 98D(2) from the requirements to obtain, maintain and file BO information.

2.12 Taking reasonable steps to identify registrable persons (BOs or RLEs)

A legal entity must take reasonable steps to identify its registrable persons including, but not limited to, the issuance of a notice described in section 98G of the Companies Act. A legal entity must keep a record of all steps taken to identify such registrable persons.

- A legal entity should firstly consider all of the documents and information already available to identify a possible registrable person and the full extent of their holdings. A legal entity should also consider whether there is evidence of any joint arrangements or evidence of rights held through a variety of means that might be controlled by the same person.
- Once a legal entity has identified a registrable person, it must make sure it has the relevant minimum required information about that individual or RLE to enter on the BO register. Information about such registrable persons must be complete and confirmed before recording the same in the legal entity's BO register. A legal entity must give notice in writing to the registrable person to provide information that it needs. A legal entity must also keep a record of all relevant communications. Example notices are available in **Annex 2**.
- When a legal entity writes to its shareholders or members, it should enquire whether they hold the shares, voting rights or interests on their own behalf or on behalf of someone else. If the latter is the case, then it should also ask to be provided with the contact details of any such other individual or legal entity, on whose behalf they may be acting. A legal entity must give notice in writing on those individuals or legal entities.
- If the interest is held by a trust or legal arrangement, then the legal entity must also make sure it has the minimum required information to enter on the BO register. Legal entities must give notice in writing to the trustees to provide their own details and details of any individuals or RLE with **control** over the activities of the trust or legal arrangement.

Part 3: Minimum Required Information to be entered on the BO Register

3.1 Entering minimum required information on the BO register

A legal entity must enter the minimum required information on its BO register. When a company is incorporated, or LLC or partnership formed, the BO information will be entered on the central register held by the BMA at the time of application for consent. Thereafter, in the event there is any change to the BO register in relation to any BO or RLE, such entity will need to file updated information with the BMA, where it will be entered on the central register.

The legal entity must also enter any restrictions that may be imposed on its BO register (see Part 6).

3.2 Confirming minimum required information BOs and RLEs

The minimum required information about a BO or RLE must be confirmed before it is entered on the BO register. Such information can be treated as confirmed if:

- the BO or RLE supplied a legal entity with the minimum required information;
- the information was provided to the legal entity by someone with knowledge of the BO or RLE;
- the legal entity asked the BO or RLE to confirm that the information was correct, and they confirmed its accuracy; or
- the legal entity holds previously confirmed information on the BO or RLE and has no reason to believe it has changed.

If a legal entity has identified a registrable person but cannot confirm information about that person, see Part 6.9.

3.3 Legal entities without BOs

A legal entity's BO register must never be empty. If a legal entity has taken all reasonable steps and is confident that there are no individuals or RLEs which meet any of the conditions in 2.1 in relation to the entity, it must enter that fact on the BO register. The BO register should indicate that, for example:

“The company knows or has reasonable cause to believe that there is no registrable person in relation to the company.”

Part 4: Duty to Keep and Update BO Register

4.1 Keeping the minimum required information on the BO register up-to-date

A legal entity has a duty to establish and maintain a BO register and to keep the BO minimum required information on its BO register up-to-date and current⁵.

4.2 Updating the legal entity's BO register

If circumstances change and any information entered on the legal entity's BO register is no longer correct, then it must be updated. If a legal entity cannot immediately enter new information, its BO register should be updated showing the date from which the old information was no longer correct and a statement on the status of any new investigations should be placed on the BO register (see Part 6).

A legal entity must enter updated information on its BO register once it has:

- been informed of the change; and
- confirmed all of the updated information to be entered on the BO register.

If a legal entity knows or has reason to believe a change has occurred, but needs more information, then it must serve notice to obtain the information which is required for entry on the BO register, as soon as practicable. See Annex 2.

This notice should ask the individual or legal entity to:

- confirm that the change has occurred;
- give the date that the change occurred; and
- give the correct and up-to-date information.

The BO or RLE must respond to a legal entity's notice within 30 days. If they do not respond or provide incomplete or incorrect information a record of these circumstances must be recorded on the BO register.

4.3 Updating the central register

The minimum required BO information in respect of every registrable person must be entered on the company's BO register. **The minimum required information with respect to a company, partnership or LLC's individual BOs must be filed with the BMA no later than 28 February**

⁵ See section 98H of the CA 1981; section 65F of the LLC Act; and section of the 4R of the Partnership Act 1902.

2019, for entry onto the central register held at the BMA. The BMA will provide additional information regarding how BO information must be filed. The BMA has issued separate guidance to assist persons with making filings to the central registry.

No matter when it was incorporated or formed, the company must ensure that the information filed with the BMA is up to date. Where there are changes to the minimum required information concerning individual BOs or where an individual BO has changed throughout the year, the minimum required information relating the company's individual BOs should be updated and filed with the BMA as soon as practicable, but not later than 14 days, after the minimum required information has been confirmed by the company in respect of the change.

4.4 Removing information from the register

4.4.1 When someone ceases to be a BO

When a legal entity becomes aware that someone is no longer a BO or RLE, it must record the date of cessation in the BO register as soon as reasonably practicable, and must also update the central register at the BMA.

4.4.2 When there is an error

When the legal entity has received correct information but entered it incorrectly, it should make the necessary changes to the BO register immediately. It should also update the information on the central register at the BMA.

4.4.3 When someone disputes information on the register

If a BO or RLE wishes to dispute the information entered on the company's BO register, they will need to make an application to court to rectify the BO register or to take such other action as may be appropriate in relation to any rights, ownership or other interest.⁶

Where there is any dispute before the court as to any rights, ownership or other interest in the company⁷, a legal entity must not make any changes to the BO register or information filed with the BMA until determined or otherwise ordered by the court.

⁶ See 98J of the CA, 1981

⁷ See section 98K of the CA, 1981

Part 5: Protected information

5.1 Legal entity's BO register

A legal entity must keep its own BO register at its registered office, or at another location in Bermuda provided it has notified the Registrar of Companies.

A company is not required to make its BO register available to inspection by the public. However, a company is required to make the BO register available for inspection by the Registrar of Companies to ensure it complies with the law.

5.2 BO Information to be filed with the BMA

All information held by the BMA will be available to law enforcement agencies and competent authorities, as may be determined, following a valid request for such information in accordance with Bermuda law or an applicable competent authority production order.⁸

The information held on the central register is not subject to public inspection and will not be shared with any member of the general public.

Part 6: When a legal entity is unable to obtain information for the BO Register

6.1 When a legal entity cannot obtain information on its BOs

The BO legislation sets out processes to situations wherein the information needed to comply with the BO regime is not forthcoming, is incomplete or is disputed.

The BO legislation also sets out the requirements of the BO regime and the criminal offences which apply if they are not met. If the company, partnership, or LLC fails to comply with the requirements of the BO regime, the company and its officers, designated members or partners (as applicable) could face a fine or imprisonment or both, under the Registrar of Companies (Compliance Measures) Act 2017.

⁸ See section 98L of the CA, 1981

6.2 Restricting a relevant interest in the company, partnership, or LLC

If a registrable person does not respond to requests from the company, partnership, or LLC for information, the company, partnership, or LLC may, if authorized by its governing documents, decide that it is appropriate to apply restrictions to shares, voting rights or interests in the legal entity held by the person who is not responding⁹. If not authorized by its governing documents, a company, partnership, or LLC may apply to Court for an order placing a restriction on the relevant shares, voting rights or interests.

If restrictions are imposed, the person who is not responding should derive no benefit from the shares or interests or rights they have in the company, partnership, or LLC until the restrictions have been lifted.

6.3 When restrictions can be imposed

Part 2 sets out the reasonable steps a typical company would take to identify its BOs or RLEs. As explained in Part 4 a company must give written notice¹⁰ on anyone it believes has information that will help identify BOs or RLEs. Notices require the addressee to respond within 30 days. If a registrable person fails to respond to an additional warning notice within 30 days of that warning notice, then a company may take steps to impose restrictions on any shares, interests or rights they hold in the company, having served a decision notice on the registrable person of its intention of impose such restriction. The process for imposing restrictions is set out in Part 6.4 below.

A company is not required by law to impose restrictions in these circumstances, but a company should consider this option as part of meeting its legal requirements to take reasonable steps. If a company chooses not to impose restrictions, it should be able to justify its decision and should document the reasons for its decision.

6.4 The process for imposing restrictions

If a legal entity is authorized by its governing documents to do so, there are three steps in the statutory process for imposing restrictions. Each step must be completed before moving to the next.

6.4.1 Step 1: Notice requesting information

A legal entity must have given written notice requesting information from an individual it believes is a registrable person. If the addressee fails to reply or give a valid reason for not replying within 30 days of the date of such notice, an entity can move to step two. It should also note on its BO register that a notice was issued, but there was no reply.

⁹ See section 98M of the CA 1981

¹⁰ See sections 98G and 98I, CA 1981

6.4.2 Step 2: Warning notice

If the individual that is believed to be a registrable person has failed to reply to a written notice requesting information and has a relevant interest in the legal entity, it can issue a warning notice¹¹. This notice must advise of the intention to impose restriction if there is no reply to the initial notice requesting information. The addressee then has a further 30 days to reply.

A legal entity should consider carefully what the relevant interest is and whether it can be restricted. For instance, an entity must consider if the restriction would have an unfair effect on third parties, if so then such restriction should not be imposed. An entity must consider joint interests and joint arrangements in the same way as described in Part 2.6, where all parties involved are considered to hold the interest.

If the addressee fails to reply or give a valid reason for not replying to the initial notice and the warning notice within 30 days, move to step three.

6.4.3 Step 3: Imposing restrictions

If the individual fails to reply to the warning notice then a company can issue a decision notice¹² impose a restriction. A company must first send a notice of its decision to the registrable person informing such person that a restriction will be imposed 30 days from the date of receipt (as determined in accordance with the law). An entity must also note on its BO register that a restriction has been imposed.

A legal entity should consider carefully whether there was a reasonable excuse for the lack of response before it issues the decision notice. A legal entity should particularly consider whether the individual was capable of responding, and should ask to be provided with any evidence to support any reasons given.

6.5 When restrictions are in place

Restrictions can apply to any share, right or interest held directly or indirectly in the company, with the effect that, for example:

- The interest cannot be sold or transferred and any agreement to sell or transfer the interest is void¹³;
- No rights associated with the interest¹⁴ can be sold or transferred and any agreement to sell any such rights is void;

¹¹ See Annex 2 for a sample warning notice containing the required information.

¹² See 98M(2)(b) of the CA 1981

¹³ The company, partnership, or LLC may apply to the court for an order that the relevant interest subject to restrictions be sold or transferred. If the court grants a sale order, the court may make further orders relating to the sale or transfer as it sees fit – or on application from the company, interest holder or a person appointed by the court to effectuate the sale.

- No voting rights may be exercised in respect of the interest;
- No shares or interests may be issued in right of the interest or in pursuance of an offer made to the interest-holder; and
- No payment may be made by the company in respect of the interest, whether in respect of capital or otherwise unless the company is in liquidation.

The company’s BO register should indicate the type of restriction imposed, for example:

“The company has issued a notice [under sections [] and [] of the CA 1981 or [] and [] of the LLC Act]”

6.6 Lifting restrictions

A company, partnership, or LLC must lift restrictions if:

- the individual provides the BO information requested;
- the individual provides a valid reason for not complying and you are satisfied with it;
- it discover that the restriction is unfairly affecting the rights of a third party; or
- it is ordered by the court to do so.

A company, partnership, or LLC may lift any restrictions in accordance with its bye-laws, LLC or partnership agreement and note on the register that such restrictions have been lifted (see Annex 2).

6.7 After restrictions are lifted

Once restrictions are lifted the shares, interests or rights may be voted, exercised, sold or transferred. New agreements to sell or transfer shares, interests or rights can be made. A company, partnership, or LLC can issue shares or interests or pay any dividends or other sums due from the date the restrictions are lifted.

6.8 Selling a restricted interest

A company, partnership, or LLC may wish to apply to court to sell a restricted interest as an equitable remedy. This might be helpful if the restrictions do not seem to be encouraging the provision of BO information and the restrictions are affecting the operation of the company, partnership, or LLC.

¹⁴ An associated right might be the right to be issued with any shares, or receive payment of sums due from the company in respect of the relevant interest.

6.9 What to insert on BO register when the relevant information is missing

A legal entity's BO register must always have information about the entity's BOs or RLEs, or an update on the status of its investigations. It should never be empty. When an entity cannot obtain information about its registrable persons, the BO register must contain information to enable the position with respect to the steps being taken by the entity to be clearly understood. When a statement ceases to be true, the company, partnership, or LLC must note this along with the date on which it ceased to be true and insert new information as appropriate.

6.10 When a registrable person cannot be identified

6.10.1 Where a legal entity is unable to immediately identify its BOs

During the process of taking reasonable steps to ascertain the missing minimum required information, this fact should be entered on the legal entity's BO register. The register may say, for example:

"The company/partnership/LLC has not yet completed the process of taking reasonable steps to identify anyone who is a registrable person in relation to the company/partnership/LLC."

If a legal entity has reason to believe that it has a BO or RLE that it was unable to identify, it should send notices¹⁵ requesting information to anyone that it knows or has reasonable cause to believe knows the identity of the BO or RLE. This could include intermediaries or advisers known to act for them, such as lawyers, accountants, banks, trust and company service providers or any other contacts such as family members, business partners or known associates.

The notices must require a response within 30 days. If any recipient fails to respond to an additional warning notice and the addressee has a relevant interest in a legal entity, that entity must consider whether it is appropriate to impose restrictions on any shares, interests or rights they hold in a legal entity.

If a company, partnership, or LLC has one or more BOs, but is unable to verify the information relating to such person(s), when it has taken reasonable steps to do so, it must note this fact on the BO register for each unidentified BO. The BO register should indicate that, for example:

"The company/partnership/LLC knows or has reasonable cause to believe that there is a registrable person in relation to the company but it has not been able to verify such registrable person."

¹⁵ See section 98G of the CA 1981 for example.

6.10.2 When a company, partnership or LLC issues notices but does not receive any replies

Where a company, partnership, or LLC issues notices but do not receive a response to the same, these facts must be noted on the register. The register should indicate, for example:

- when seeking new BO information:

“The company/partnership/LLC has given a notice under sections [] or [] which has not been complied with.”

- when seeking an update to previous BO or RLE information, a company must note against the particulars of the BO or RLE in question that, for example:

“The addressee has failed to comply with a notice given by the company under section [] of the Act.”; or

“The notice has been complied with after the time specified in the notice.”

6.10.3 When a company, partnership or LLC has identified a BO but can't confirm BO or RLE details

A company, partnership, or LLC may find that it has identified the BO or RLE but they will not confirm one or more pieces of the minimum required information, note this fact on the BO register for each registrable person lacking confirmed such minimum required information. The BO register should indicate that:

“The company/partnership/LLC has identified a registrable person in relation to the company/partnership/LLC, but the minimum required information in respect of that person has not been confirmed.”

In this scenario, taking reasonable steps may include serving notice on those who could identify the registrable person or, where authorized, following the process for imposing restrictions.

Annex 1: Suggested wording for entering information on the BO register

When a legal entity is in the process of any necessary steps to determine registrable persons at any given point, it should include a statement of the position on its BO register. The suggested wording below should be used along with any other relevant information an entity may wish to enter on the BO register. All entries on the BO register should be dated.

This is a reference guide to suggested wording for entry on the BO register (using a company as an example):

The company, partnership or LLC has no BOs or RLEs

- a) The company/partnership/LLC knows or has reasonable cause to believe that there is no registrable person in relation to the company.**

Unidentified BO

- b) The company/partnership/LLC knows or has reasonable cause to believe that there is a registrable person in relation to the company/partnership/LLC, but it has not identified the registrable person.**

Unconfirmed particulars

- c) The company/partnership/LLC has identified a registrable person in relation to the company but the minimum required information in respect of that person has not been confirmed.**

Taking reasonable steps

- d) The company/partnership/LLC has not yet completed the process of taking reasonable steps to identify anyone who is a registrable person in relation to the company/partnership/LLC.**

Where any of the above statements are no longer applicable, a legal entity must enter that on the company, partnership or LLC's BO register along with the date on which the statement ceased to be true.

Notices

- e) The company/partnership/LLC has given a notice under section [] of the Act which has not been complied with.**
- f) The addressee has failed to comply with a notice given by the company/partnership/LLC under section [] of the Act.**

Where a notice given is complied with after the time specified in the notice, the company, partnership, or LLC should enter on its BO register, along with the date on which the notice was complied with, that:

- g) The notice has been complied with after the time specified in the notice.**

When a company, partnership, or LLC withdraws a restriction, it should enter on its BO register, along with the date specified in the withdrawal notice as the date on which the withdrawal notice was given, that:

- h) The company, partnership or LLC has withdrawn the restriction by giving a withdrawal notice.**

Where a court makes an order directing that a relevant interest in the legal entity must cease to be subject to restrictions then enter this information on the BO register, along with the date on which the order takes effect, that, for example:

i) The court has made an order under section [] of the Act directing that a relevant interest in the company, partnership or LLC cease to be subject to restrictions.

A legal entity must enter on its BO register which condition or conditions a registrable person meets, with a statement of the nature and extent of their share, interest or right, where relevant. A company, partnership or LLC should enter all of the following statements which are applicable:

Condition (i)

1. The following statements are also for use by companies without share capital, see Paragraph 2.6:

j) The person has direct or indirect ownership or control of more than [25 %] of the interest in the company/partnership/LLC.

k) The person has direct or indirect ownership or control of more than [25 %] of the voting rights in the company/partnership/LLC.

Conditions (ii) and (iii)

l) The person has the right to appoint or remove a majority of the board of directors.

m) The person exercised, control over the company by means other than control by ownership of any interest or right.

n) The person holds the position of senior manager of the company/partnership/LLC.

Annex 2: Example Notices

The following pages contain examples of each of the notices a legal entity may be required to give in respect of the BO register, as set out below.

Each of these notices should be dated and be signed in accordance to the legal entity's constitution or governing documents. A record should be kept of what has been sent to the Registrar. Notices

can be sent electronically. If notices are sent by post, an entity may wish to consider using recorded delivery so that it has a record of the steps it has taken:

Example 1

Notice: For an individual

[DATE]

Dear [ADDRESSEE],

**Beneficial Ownership Register – Notice to an individual under section [] of (the Act)
Interests in [COMPANY] [type]**

We know or have reasonable cause to believe that you may be a registrable person, as defined in section [] of the Act in respect of [COMPANY].

We therefore require you, pursuant to section [] of the Act, to provide us, in writing [including by email to the address shown above], within 30 days of the date of this notice, with the following minimum required information concerning your shareholding or interest (within the meaning of Part/section [] of the Act), if any, in [COMPANY]:

(For example: see section 98H of the CA 1981 for example of minimum required information which should be requested)

[Note: if responding on behalf of another individual, provide any of the above minimum required information that is within your knowledge, stating whether or not the information is being supplied with the knowledge of each of the persons or legal entities concerned.]

Please be aware that failure to provide the information required by this notice, may result in action being taken to restrict your voting rights until such time as you have complied with this notice or provided a reasonable excuse sufficient to justify your failure to do so.

Full details of your obligations under this Part of the Act can be found on the Bermudalawsonline.com website.

Yours [sincerely / faithfully],

[NAME]

[Director/Company Secretary]

Example 2

Notice: For a legal entity

[DATE]

Dear [ADDRESSEE],

**Beneficial Ownership Register – Notice to a legal entity under section [] of (the Act)
Interests in [COMPANY] [type]**

We know or have reasonable cause to believe that [the company] may be a registrable legal entity, as defined in section [] of the Act in respect of [COMPANY].

We therefore require you, pursuant to section [] of the Act, to provide us, in writing [including by email to the address shown above], within 30 days of the date of this notice, with the following minimum required information concerning any shareholding or interest (within the meaning of Part [] of the Act), if any, in [COMPANY]:

(For example: see section 98H of the CA 1981 for example of minimum required information which should be requested)

If the company is no longer a registrable legal entity, kindly provide details of when it ceased to hold shares or interest in such company.

The company's obligations under this Part of the Act can be found on the Bermudalawsonline.com website.

Yours [sincerely / faithfully],

[NAME]

[Director / Company Secretary]

Example 3

Notice: For an individual

[DATE]

Dear [ADDRESSEE],

**Beneficial Ownership Register – Notice to an individual under section [] of the Act)
Interests in [COMPANY] [type]**

We have reasonable cause to believe that a relevant change has occurred to the following particulars stated in respect of you on the Beneficial Ownership register of [COMPANY].

We therefore require you, pursuant to section [] of the Act, to provide us, in writing [including by email to the address shown above], within 30 days of the date of this notice, with the following information concerning your shares or interest (within the meaning of Part [] of the Act), if any, in [COMPANY]:

- (i) Whether or not any such relevant change, as defined under section [] or [] of the Act has occurred;
- (ii) If so, the date of that change; and
- (iii) To confirm or correct the following particulars and supply any that are missing from this notice: (for example)

(See Example 1 Notice - for minimum required information criteria to be requested, if necessary).

You should be aware that failure to provide the information required by this notice, may result in action taken to restrict your control rights until such time as you have complied with this notice or provided a valid reason sufficient to justify your failure to do so.

Full details of your obligations under this Part of the Act can be found on the Bermudalawsonline.com website.

Yours [sincerely / faithfully],

[NAME]

[Director / Company Secretary]

Example 4

Warning notice

This must be accompanied by a copy of the [] or [] notice to which it relates

[DATE]

Dear [ADDRESSEE],

Beneficial Ownership Register – Warning Notice

Interests in [COMPANY] [shares or LLC interests/rights]

On [DATE] we sent you a notice under section [] or [] of the [] Act (the Act) requiring that you provide us, in writing [including by email to the address shown above], within one calendar month, specified information concerning your interest (within the meaning of Part [] of the Act), if any, in the [shares or LLC interests/ rights] of [COMPANY] or your knowledge of any person or legal entity that might have such an interest. A copy of the section [] notice we sent you is included with this notice.

You have failed to respond to this notice.

We are therefore writing to you pursuant to [] of the Act to give you notice that, in consequence of your having failed to comply with the notice issued to you on [DATE], [COMPANY] will issue you with a formal notice on or after [DATE] unless you respond within 30 days of the date of receipt of this warning notice. We will consider any reasons you provide as to why you have failed to comply.

The effect of a restrictions in respect of your share or interest in [COMPANY] [shares or LLC interests/rights] would be that: [for example]

- Any transfer of your relevant interest is void, as is any agreement to transfer your interest or any associated right;
- No voting rights are exercisable in respect of your interest;
- No shares or LLC interests may be issued in right of your interest or in pursuance of an offer made to the interest holder; and
- Except in a liquidation, no payment may be made of sums due from the company in respect of your interest, whether in respect of capital or otherwise.

When a notice has been issued the following acts, or failures to act, may constitute an offence:

- Exercising or purporting to exercise any right to dispose of your interest;
- Exercising or purporting to exercise any right to dispose of any right to be issued with your interest;
- Voting in respect of your interest (whether as holder of the interest or as proxy) or appointing a proxy to vote in respect of your interest;
- Failing to notify a person entitled (apart from the restrictions) to vote in respect of your interest, whether as holder or proxy, who you do not know to be aware that your interest is subject to restrictions; and
- Entering into an agreement to transfer your interest or any associated right (except in a liquidation).

Full details of your obligations under this Part of the Act and the penalties for failure to comply with them can be found on the Bermudalawsonline.com website.

We look forward to hearing from you by [DATE] to avoid the need for this further action.

Yours [sincerely / faithfully],

[NAME]

[Director / Company Secretary]

Example 5

Restriction on Shares/Interests/Rights

This must be accompanied by a copy of the preceding warning notice that was sent and a copy of the original [] OR [] /S[] notice

[DATE]

Dear [ADDRESSEE],

Beneficial Ownership Register – Notice of Restriction

Interests in [COMPANY] [type] [shares or LLC interests / rights]

On [DATE] we sent you a notice under section [] or [] of the [] Act (the Act) requiring that you provide us, in writing [including by email to the address shown above], within 30 days of the date of this notice, specified information concerning your interest (within the meaning of Part [] of the Act), if any, in the [shares or LLC interests/ rights] of [COMPANY] or your knowledge of any person or legal entity that might have such an interest.

On [DATE] we sent you a warning notice pursuant to [] the Act. Copies of both notices we have sent you are included with this notice. You have persisted in your failure to comply with these notices or provide a valid reason for not doing so.

We are therefore writing to you pursuant [] of the Act to give you notice that, in consequence of these repeated failures, [COMPANY] hereby issues you with a notice of decision to impose restrictions.

In accordance with [] of the Act, the effect of this notice in respect of your interest in [COMPANY] is that, from the date of this notice:

- Any transfer of your interest is void, as is any agreement to transfer your interest or (other than in a liquidation) any associated right;
- No rights are exercisable in respect of your interest;
- No shares may be issued in right of your interest or in pursuance of an offer made to the interest holder; and
- Except in a liquidation, no payment may be made of sums due from the company in respect of your interest, whether in respect of capital or otherwise.

While this restrictions is in place the following acts, or failures to act, may constitute an offence:

- Exercising or purporting to exercise any right to dispose of your interest;
- Exercising or purporting to exercise any right to dispose of any right to be issued with your interest;
- Voting in respect of your interest (whether as holder of the interest or as proxy) or appointing a proxy to vote in respect of your interest;

- Failing to notify a person entitled (apart from the restrictions) to vote in respect of your interest, whether as holder or proxy, who you do not know to be aware that your interest is subject to restrictions; and
- Entering into an agreement to transfer your interest or any associated right (except in a liquidation).

Full details of your obligations under this Part of the Act and the penalties for failure to comply with them can be found on the www.bermudalawsonline.bm website.

Yours [sincerely / faithfully],
[NAME]
[Director / Company Secretary]

Example 6

Withdrawal of restriction

This should be given within 14 days of the day on which the company withdrew the restrictions

[DATE]

Dear [ADDRESSEE],

Beneficial Ownership Register – Notice

Interests in [COMPANY] [shares or LLC interests/rights]

We are writing to you to give you notice that the notice issued on [DATE], pursuant to [] of the Act in respect of your relevant interest in the [shares, interests or rights] of [COMPANY], is withdrawn with effect from the date of this notice.

[The reason restriction(s) has been withdrawn].

Full details of your obligations under this Part of the Act and the penalties for failure to comply with them can be found on the Bermudalawsonline.com website.

Yours [sincerely / faithfully],

[NAME]
[Director / Company Secretary]