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BVI's new beneficial ownership regime to take effect on 1 July 2017

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The BVI has enacted legislation to implement a networked database of beneficial ownership interests in companies incorporated or domiciled in the jurisdiction. The database, known domestically as the Beneficial Ownership Secure Search (**BOSS**) System, is being rolled out so that the BVI can comply with its obligations under the Exchange of Notes agreement entered into with the UK in April 2016 (**UK Exchange of Notes**). The UK Exchange of Notes modernises the way in which the BVI competent authorities may gain access to beneficial ownership information of BVI companies.

Beneficial ownership information and the BVI

BVI Registered agents have, for many years, been subject to extensive obligations under anti-money laundering legislation to obtain and keep up to date information about the ultimate beneficial owners (**UBOs**) of companies that they provide services to. As of the end of 2016, those requirements were further strengthened by requiring registered agents to obtain UBO information on business introduced to them by professional and regulated intermediaries based outside of the BVI.

Under the regime prior to BOSS's implementation, the BVI Government would extend cooperation with competent authorities based overseas, including in the UK, following the receipt of a legitimate and valid request for information. Typically, this would be a request for UBO or other similar KYC information relating to an ongoing foreign investigation. To comply with the request, the BVI Government would issue a notice to a person in the BVI assumed to be in possession of the underlying information, typically a registered agent. The recipient would then have a short window of time in which to comply with the notice, typically between 24 to 48 hours.

How will BOSS work?

Under the BOSS system, registered agents, though not other BVI institutions, must record basic information about certain UBOs of the BVI companies they administer in the BOSS database. In turn, law enforcement officials in the BVI, in accordance with the UK Exchange of Notes and applicable legislative safeguards, may search that system for the UBO information in order to exchange it with the UK. Each registered agent in the BVI will have and maintain its own database.

Information maintained on each database will be confidential to the registered agent and will be accessible externally only by specially designated BVI law enforcement officials.

Access to BOSS is permissible only from a physical location in the BVI and only following a formal request from the BVI competent authorities: the BVI Financial Investigation Agency, the BVI Financial Services Commission, the BVI International Tax Authority and the BVI's Attorney General's Chambers. The identity of each designated person competent to search the BOSS database will be publicly gazetted in secondary legislation in due course. The BVI competent authorities may request the designated person to search BOSS solely in order to assist the BVI in complying with its obligations under the UK Exchange of Notes. This would mean that a request would need to originate from the UK authorities before a search of BOSS can take place in the BVI.

What UBO information will be stored on BOSS?

Each registered agent must enter the following basic information for every UBO that is a natural person and meets the following threshold requirements: name; residential address; date of birth and nationality.

The threshold requirement for UBO interests disclosable under BOSS is 25 per cent of the ownership interests (shares or voting rights) in a company. This is in line with the Financial Action Task Force (**FATF**) benchmark recommendations and the UK's own public UBO register¹ but represents a relaxation from the equivalent threshold of 10 per cent under the BVI's anti-money laundering regime (the Anti-money Laundering Regulations 2008 and the Anti-money Laundering and Terrorist Financing Code of Practice 2008 (**BVI AML legislation**)).

In practice, the necessary UBO information will already be in the possession of the BVI registered agent, so it is unlikely that registered agents will need to materially vary current KYC collection procedures with clients or intermediaries.

Exemptions from disclosure

Any company which is regulated by the BVI Financial Services Commission and any company whose shares are listed on a recognised stock exchange is out of scope. Subsidiaries of BVI regulated funds and listed companies are also exempt.

For the investment funds industry, this means that all BVI regulated funds and BVI investment managers will fall outside of scope for providing UBO information through BOSS. Some private equity funds structured as companies may fall within the requirements, although the 25 per cent threshold for UBOs will mean that any requirement to provide information in relation to investors will be limited.

Additionally, the definition of beneficial owner is limited to persons with a sufficiently 'fixed' ownership interest in the company. In this way beneficiaries of a discretionary trust which owns a BVI company may not be considered UBOs where their interest has not been sufficiently vested by the trustee. As too would be the case for third parties with merely a contractual as opposed to a proprietary exposure to the assets or performance of the company.

Security Measures

The BVI Government has employed top-tier cyber security measures in the deployment of the BOSS System in order to develop a rich, yet secure search portal. The standardised data base has been developed with the corresponding objective to protect data sovereignty and the security principles of all industry stakeholders. To

this end, leading technological methods have been and will be utilised to ensure continued safety, protection and security of information stored on the BOSS System.

Deadlines

The requirement to exchange information under the UK Exchange of Notes must be complied with on or prior to 30 June 2017. As such, UBO information of all active companies on 30 June 2017 as well as companies struck off the register since 1 January 2016 must be uploaded on to the BOSS system by each registered agent in the BVI on or before 30 June 2017. Thereafter, UBO information must be uploaded on an ongoing basis.

Please contact Colin Riegels, Aki Corsoni-Husain, Ayana Hull, Mirza Manraj or your normal Harneys contact or visit www.harneys.com/bvi if you have any questions.

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¹ People with Significant Control register, maintained at UK Companies House.