

## Isle of Man Public Beneficial Ownership

### A joint statement from the Isle of Man, Guernsey and Jersey Governments was issued on the creation of a public beneficial ownership register.

Details are yet to be worked out, but the Governments of the Isle of Man, Guernsey and Jersey have today (19 June 2019)<sup>1</sup> announced that they intend to comply with the provisions of the European Union's Fifth Money Laundering Directive by permitting public access to details of the beneficial owners of companies. No reference has been made to trusts or foundations, which are also covered by the EU Directive.

Contemporary literature and investigative journalism are showing that the scale of the problem of tax evasion, money laundering, organised crime, terrorism, bribery, corruption and gross human rights abuses is vast.

Ownership – specifically, the quest to identify beneficial owners – has been chosen by national and international regulators as the touchstone, the litmus test in the fight back. An owner by definition must possess something for which they are financially accountable. But what is meant by 'ownership'?

The Heads of Government of the Crown Dependencies state:

The commitment announced today will increase further transparency and accessibility whilst maintaining high standards of accurate, up-to-date, verified information. It sets out three clear stages which are consistent with the EU's approach to transparency of beneficial ownership data of companies under the EU's Fifth Money Laundering Directive ('the EU Directive') within a deliverable timeframe.

1 [www.gov.im/news/2019/jun/19/joint-statement-by-governments-of-guernsey-jersey-and-isle-of-man-on-beneficial-ownership-registers/](http://www.gov.im/news/2019/jun/19/joint-statement-by-governments-of-guernsey-jersey-and-isle-of-man-on-beneficial-ownership-registers/)

2 [www.routledge.com/Ownership-Financial-Accountability-and-the-Law-Transparency-Strategies/Beckett/p/book/9781138359888](http://www.routledge.com/Ownership-Financial-Accountability-and-the-Law-Transparency-Strategies/Beckett/p/book/9781138359888)

The stages are:

- The interconnection of the islands' registers of beneficial ownership of companies with those within the EU for access by law enforcement authorities and Financial Intelligence Units; then
- Access for financial service businesses and certain other prescribed businesses for corporate due diligence purposes; then
- Public access aligned to approach taken in the EU Directive.

However, this will neither be as straightforward nor as comprehensive as may appear at first sight.

Firstly, according to the Financial Action Task Force, a registrable beneficial owner is someone who owns or controls 25% or more of a company. This threshold has been adopted Europe-wide, including the Crown Dependencies, and is found in the Beneficial Ownership Act 2017 of the Isle of Man. Anyone owning 24.99% or less will not be required to register. Any company with five owners (if each holds under 25%) will be entirely off the radar.

Secondly, the idea of 'ownership' is being manipulated. What if there is in fact no owner, and so no-one to be registered in the first place? Various offshore jurisdictions have introduced laws which in effect allow a company to be owned by no-one at all – counter-intuitive though that seems. This is the global industry in "beneficial ownership avoidance" through the use of so-called "orphan structures" which Paul Beckett, Senior Counsel to MannBenham, describes in his newly published book 'Ownership, Financial Accountability and the Law: Transparency Strategies and Counter-Initiatives' (Routledge, May 2019)<sup>2</sup>. Where there is no ownership, there is no accountability.

MannBenham's team of Business Lawyers can guide you through the complexities of this new open access commercial world. We explain the distinction between privacy and legitimate confidentiality on the one hand, and concealment on the other, with reference to commercial and trade law and practice, principles of corporate governance and applicable business human rights.

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