



Guernsey Association of Trustees

RESPONSE SUBMITTED ON 17th NOVEMBER 2022
ON BEHALF OF GAT MEMBERS

We refer to the Policy & Resources Committee’s Consultant Paper dated 25 October 2022 entitled “*Beneficial Ownership: Legal Persons – Increased Access by Supervised Businesses to Beneficial Ownership Information held by the Guernsey Registry*” and set out below our feedback.

1 General comments

- 1.1 In principle, we have no objections to the proposed changes to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (“the Beneficial Ownership Law”) and understand the rationale for such changes.
- 1.2 In particular, we have no concerns with the increased access for Bailiwick obliged entities to the accessible information outlined (save for our comments below with regards to the nature and extent of the beneficial interest held) for the limited purposes stated in the Consultation Paper. This is on the basis that such entities are subject to strict legal and regulatory obligations, including as to confidentiality and data protection.

2 Accessible Information

- 2.1 We do have some concerns that the wording “*the nature and extent of the beneficial interest held*” is ambiguous and open to interpretation.
- 2.2 Also, this wording does not align with the “required particulars” of an individual beneficial owner to be recorded in the record of beneficial owners under the Beneficial Ownership Law, which requires “*the grounds on which [the individual] is considered to be a beneficial owner*” to be recorded (section 10 of the Beneficial Ownership Law).
- 2.3 In practice, this could cause difficulties for the Registry in how it presents information on the nature and extent of the beneficial interest held, and also confusion in the expectations of Bailiwick obliged entities on the information that may be provided.
- 2.4 We would suggest that either (i) guidance is provided on the meaning of “*the nature and extent of the beneficial interest held*” (for the benefit of both Bailiwick obliged entities and the Registry to ensure a common interpretation of the scope of the accessible information) or (ii) within the new legislation the phrase “*the nature and extent of the beneficial interest held*” is defined by reference to the grounds on which the individual is considered to be a beneficial owner, as described in the record of beneficial owners.

3 Accessing Information

- 3.1 We do not have any comments on the proposed procedure for notifications by email, provided that information is by encrypted email as proposed and the Registry is able to confirm that the

highest standards of security measures will be established and that it can give assurances that beneficial ownership data will remain secure.

- 3.2 We consider that Bailiwick obliged entities should be able to appoint more than one designated person who can make notifications, to allow for staff absences due to holidays and sickness. We would suggest allowing up to three designated persons per Bailiwick obliged entity, to be notified to the Registry (and updated as necessary from time to time).
- 3.3 We do not think it would be appropriate to prescribe that such individuals should hold a particular position or role as the size and structure of Bailiwick obliged entities varies so greatly that this could provide difficulty. It should be left to the board of each Bailiwick obliged entity to determine internally who its designated persons should be and to give them the appropriate authority to make notifications on its behalf.
- 3.4 We agree that the terms “customer” and “potential customer” should be clearly defined in the legislation. We consider that, given that the only lawful reason for a notification is for due diligence purposes, the definitions should align with the definition of “customer” in the Proceeds of Crime Law and the eGambling Ordinance which govern Bailiwick obliged entities’ AML/CFT obligations regarding due diligence.