

There aren't public beneficial ownership registers in respect of trusts - or are there?

25 September 2024

Currently, no, there are not public beneficial ownership registers in respect of trusts (at least in the British Virgin Islands ("BVI"), Cayman, Jersey, Guernsey or Bermuda), however, if enacted in the form gazetted, the BVI Trustee (Amendment) Bill (the "**Bill**") will in effect introduce beneficial ownership registers in respect of certain trusts – although, this will be a private 'register' it will not be a publicly accessible 'register'.

In response to the recommendations of the BVI Mutual Evaluation Report, the BVI is proposing to introduce an amendment to section 92 of the Trustee Act (As Revised) (the "**Act**").

The proposed amendment expands the current information retention obligation imposed on Relevant Trustees¹ by way of an amendment introduced to the Act by the Trustee (Amendment) Act, 2021 (the "**2021 Act**").

Under the provisions of the 2021 Act a new section (section 92A) was introduced to the Act. Under this amendment, a Relevant Trustee of an Applicable Trust² is required to maintain and retain records and underlying documentation of the Trust in such form as is appropriate to the Relevant Trust and trust property. A Relevant Trustee who fails to comply with these provisions is liable for a fine not exceeding \$10,000.

The provisions introduced by the 2021 Act (including, importantly the definitions of 'Relevant Trustee' and 'Applicable Trust') will be retained under the Bill once enacted, however, through introduction of a new section (92B) the information obtaining and retention obligations of Relevant Trustees have been extended.

Section 92B (once enacted) will require a Relevant Trustee to collect, keep and maintain adequate, accurate and up to date information on the beneficial owners of the relevant Applicable Trust (so on: (i) the trustee, (ii) the settlor or other person by whom the Applicable Trust is made, (iii) any protector, (iv) any beneficiaries with a vested interest in the Applicable Trust and (v) any other natural person exercising ultimate and effective control over the Applicable Trust (whether directly or through a chain of control or ownership)).

The beneficial ownership information that a Relevant Trustee of an Applicable Trust is obliged to obtain and retain are the particulars of beneficial ownership information as set out in the Regulations made under the BVI Business Companies Act (As Revised), so:

- i. in respect of registerable legal entities (which is likely to be the category in which corporate BVI trustees of BVI law governed trusts will fall into): (A) its name, (B) its incorporation number (or equivalent), (C) its date of incorporation, (D) its status, (E) its registered address, (F) the jurisdiction in which it is formed, (G) the basis upon which the entity is a registered legal entity, (H) where the registerable legal entity is a foreign regulated person, the jurisdiction in which it is so regulated and the name of the relevant foreign regulator or, where the registerable legal entity is a sovereign state or a wholly owned subsidiary of a sovereign state, the name of the sovereign state and (if applicable) the name of the subsidiary; and
- ii. in respect of each beneficial owner their: (A) name, (B) residential address, (C) date of birth and (D) nationality.

The maintenance obligation imposes not only an obligation requiring a Relevant Trustee to update the beneficial ownership information it is holding within 30 days of it becoming aware of a change to the same but also that it holds the relevant beneficial ownership information for at least 5 years from the date of the termination of the relevant Applicable Trust.

As well as maintaining information on the beneficial owners of the relevant Applicable Trust, a Relevant Trustee is under an obligation to cooperate with competent authorities³ and law enforcement agencies⁴ in the lawful discharge and performance of its relevant functions (such cooperation including disclosing information that is within the knowledge of or documents that are under the control of the Relevant Trustee) (provided always that the Relevant Trustee is not required to produce any documents to which legal professional privilege applies). Currently 'competent authorities' and 'law enforcement agencies' would extend to only BVI bodies.

The fine for breaching the obligations in section 92B is significantly higher – up to \$75,000 (compared to up to \$10,000 in respect of a breach of section 92A), however, the new provisions contain a welcome protection; in that the taking by a Relevant Trustee of 'reasonable steps' to comply with their obligations under new section 92B will result in them being treated as complying with such obligations.

In summary – the new provisions will have more teeth and will require greater time and effort on the part of trustees to comply with, but in practice are likely to apply only to BVI corporate trustees or individual trustees who are resident in the BVI. It is also worth remembering that the new provisions do not replace the information gathering obligations introduced under section 92A of the Act; rather they provide for the obtaining (and retaining) of an additional range of information on trusts caught by the new provisions.

1. For these purposes being: (i) a company incorporated in the BVI, (ii) a foreign company registered under Part XI of the BVI Business Companies Act (As Revised), (iii) an individual

resident in the BVI or (iv) any other person who is a trustee of a trust administered (in whole or in part) in, from or within the BVI).

2. For these purposes being any trust governed by any law, other than: (i) implied, constructive or bare trusts or (ii) duties incidental to the office of a personal representative).

3. For these purposes a 'competent authority' means an authority designated or performing functions such as under an enactment and expressly includes: (i) the Attorney General, (ii) the Governor, (iii) the Financial Investigation Agency, (iv) the Financial Services Commission, (v) the International Tax Authority and (vi) such other authorities as the Governor may by an Order published in the Gazette designate as a competent authority.

4. For these purposes a 'law enforcement agency' means an institution of the BVI government which has responsibility, whether under an enactment or otherwise, for the detection, prevention and investigation of crime.

Authors



Rajah Abusrewil

Partner, Walkers (CI) LP/Jersey

T/+44 (0) 1534 700 831

M/+44 (0) 7797 775 571

E/Email [Rajah Abusrewil](#)

[More articles from this author](#) [View profile](#)



David Cooney

Group Partner*/Guernsey

T/+44 (0) 1481 758 958

M/+44 (0) 7911 152 679

E/Email [David Cooney](#)

[More articles from this author](#) [View profile](#)



Rupert Morris

Partner/Guernsey

T/+44 (0) 1481 748 936

M/+44 (0) 7781 172 987

E/Email [Rupert Morris](#)

[More articles from this author](#) [View profile](#)