

Beneficial Ownership Guide

A) Overview

The requirements around beneficial ownership are focused on private, unlisted entities. The approach to beneficial ownership is aligned with the provisions of Part 21A of the Companies Act 2006 and related provisions of the Companies Act 2006 inserted by the Small Business, Enterprise and Employment Act 2015.

Broadly speaking, private companies are asked to provide information on any individuals that exercise, or have the right to exercise, significant influence or control over the company either through a direct shareholding, one or more intermediary entities (e.g. companies partnerships, trusts) or by other means. Information will also be requested for such individuals with political influence.

The requirements for listed companies (and their subsidiaries) are extremely modest. Companies that are members of a group for which the parent is listed will only be asked to confirm that listed status, as listed companies are already required to publish information on beneficial ownership.

Data protection considerations may mean that in some cases the information requested may not be provided by beneficial owners, or may be provided without the consent necessary for its processing. See the additional guidance below relating to the Data Protection Act 1998.

B) Beneficial Ownership

Definition: A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity, with control defined consistently with the interpretative provisions applying to the public register of people with significant control of UK companies introduced in the Small Business, Enterprise and Employment Act 2015 (the “PSC Register”).

Meaning of person with significant control: A person with significant control over a company is defined as an individual that (either alone or as one of a number of joint holders of the share or right in question) meets one of the following conditions:

1. The individual holds, directly or indirectly, more than 25% of the shares in the company. The 25% threshold is calculated with reference to the nominal value of the shares in the case of a company with share capital. If the company does not have a share capital, the condition is met by an individual holding a right to share in more than 25% of the entity's capital or profits.
2. The individual holds, directly or indirectly, more than 25% of the voting rights in the company. Voting rights held by the company itself are disregarded for this purpose.
3. The individual holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company.
4. The individual has the right to exercise, or actually exercises, significant influence or control over the company. The Department for Business, Energy and Industrial Strategy has issued guidance on the meaning of ‘significant influence or control’ and regard must be had to that guidance in interpreting this condition.
5. The individual has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm, which in turn satisfies any of the first four conditions.

Publicly listed company requirements: Publicly listed entities on the UK's main FTSE 100 stock market, including wholly-owned subsidiaries of publicly listed entities, disclose information on their ownership and beneficial ownership differently. As a condition of their listing they are subject to the UK Financial Conduct Authority's Disclosure and Transparency rules requiring information on ownership and control to be disclosed to the market.

Reporting Requirement: Private companies that do not have reportable payments under UK EITI for the relevant period are not required to provide beneficial ownership information under EITI rules. But would continue to file information under the UK's general PSC disclosure requirements or under the public listing rules as appropriate. Private companies that do have payments to report for the period and that have beneficial owners (as defined above) will be asked to provide the following information regarding each of these persons:

1. Name of the beneficial owner.
2. Month and year of birth.
3. Nationality.
4. Country of residence.
5. Date when beneficial interest was acquired.
6. Service address.
7. Method of control.

Due Diligence: The reporting entity should take reasonable steps to ensure that the information provided on beneficial ownership is accurate and reliable.

Relevant date: The disclosures should be based on knowledge held when the report information is supplied to the independent administrator.

C) Politically Exposed Persons

Definition: UK EITI has adopted the EU's definition of politically exposed person as described in the new EU Fourth Money Laundering Directive. The term 'politically exposed person' means a natural person who is or who has been entrusted with prominent public functions and includes the following, and their family members and persons known to be their close associates:

- (a) heads of State, heads of government, ministers and deputy or assistant ministers;
- (b) members of parliament or of similar legislative bodies;
- (c) members of the governing bodies of political parties;
- (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances;
- (e) members of courts of auditors or of the boards of central banks;
- (f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- (g) members of the administrative, management or supervisory bodies of State-owned enterprises;
- (h) directors, deputy directors and members of the board or equivalent function of an international organisation.

No public function referred to in points (a) to (h) shall be understood as covering middle-ranking or more junior officials

The full definition can be found here: <http://data.consilium.europa.eu/doc/document/ST-5933-2015-REV-4/en/pdf>, on pages 44-46.

Ownership Threshold: Reporting entities should disclose information in relation to any politically exposed persons (PEP) owners, where the PEP owner(s) hold a share in the reporting entity of more than 5%.

Reporting Requirement: Reporting entities that have owners that meet both the definition of politically exposed person and satisfy the ownership threshold test, will be asked to provide the following information:

1. Name of the PEP.
2. Month and year of birth.
3. Nationality.
4. Country of residence.
5. Date when beneficial interest was acquired.
6. Service address.
7. Name of public office holder.
8. Public office position and role.
9. Date when office was assumed.
10. Date when office was left, if applicable.
11. If the PEP beneficial owner is not the public office holder, the PEP beneficial owner's connection with the public office holder.

Due Diligence: The disclosures in relation to politically exposed persons should reflect the actual knowledge of the reporting entity based on the information available to it in the ordinary course of business. There is no requirement for the entity to perform incremental due diligence.

Relevant date: The disclosures should be based on knowledge held when the report information is supplied to the independent administrator.

D) Data Protection

The requested information on beneficial ownership will be 'personal data' and therefore subject to the requirements of the Data Protection Act 2018 (DPA). Companies holding personal data will be data controllers and/or processors for the purposes of the DPA. Companies should therefore fully consider the requirements of the DPA when responding to the information requested in the beneficial ownership template, bearing in mind also that the UK EITI is a voluntary process such that Schedule 2 Condition 3 of the DPA (see extract below) appears to be inapplicable.

The following extract from the DPA sets out the conditions under which the processing of personal data is permissible.

SCHEDULE 1: THE PRINCIPLES

1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met; and

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
(Note: as the beneficial ownership and PEP information would not be classified as 'sensitive personal data' Schedule 3 of the DPA does not apply and has not been set out below.)*

- 2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.*
- 3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.*
- 4 Personal data shall be accurate and, where necessary, kept up to date.*
- 5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.*
- 6 Personal data shall be processed in accordance with the rights of data subjects under this Act.*
- 7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.*
- 8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.*

SCHEDULE 2: CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA

- 1 The data subject has given his consent to the processing.*
- 2 The processing is necessary—*
 - (a) for the performance of a contract to which the data subject is a party; or*
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.*
- 3 The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.*
- 4 The processing is necessary in order to protect the vital interests of the data subject.*
- 5 The processing is necessary—*
 - (a) for the administration of justice;*
 - (aa) for the exercise of any functions of either House of Parliament;*
 - (b) for the exercise of any functions conferred on any person by or under any enactment;*
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department;*
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.*

Companies should consider only including the requested information on the EITI template if informed written consent has been obtained from the individual to whom the data relates. In seeking consent from the relevant individual, the company should consider explaining the purpose of the request, how the information will be disclosed on the EITI template and how it will be subsequently published by BDO LLP in the UK EITI report.

The outcome of the company's consideration of the data protection issue will determine whether the company can provide a full or qualified attestation in relation to the information requested in the beneficial ownership template.