

# GUIDANCE ON NOMINEES

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## Part 1: Introduction

This guidance relates to the provisions about information on nominees under the Beneficial Ownership (Nominee Relationships) Regulations, 2017 (the Nominee Regulations). It is issued by the Registrar of Beneficial Ownership of Legal Persons in the exercise of his powers under section 35 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the Law).

The purpose of this guidance is to clarify the obligations under the Nominee Regulations. It takes the form of FAQs. However, the guidance is not intended to replace the Nominee Regulations and it is important that both are read together, in order to have a proper understanding of the obligations applicable to resident agents in respect of nominee relationships.

The beneficial ownership regime makes reference to nominees in the context of shareholdings, but it does so by, in effect, looking through a nominee relationship as it requires the shares to be treated as held by the nominator. This ensures that individuals cannot hide their beneficial ownership of legal persons by using nominee shareholders.

The Nominee Regulations on the other hand contain obligations specifically intended to identify and obtain information about the nominee relationship itself. The Nominee Regulations therefore apply to all shares or rights in a legal person that are within the scope of the Beneficial Ownership (Definition) Regulations, 2017 (the Beneficial Ownership Regulations). In other words, the Nominee Regulations apply whenever there are shares or rights in a Guernsey legal person held on behalf of someone who meets the test for being beneficial owner. This means they will apply to all holdings of shares or rights of more than 25%, and may apply to holdings of shares or rights below that threshold if the person for whom they are held meets the test for beneficial ownership for any other reason (e.g. by virtue of an arrangement that voting rights will always be exercised in the same way as another shareholder, or by exercising control over the legal person other than through ownership).

The purpose of this is to meet a requirement under the FATF standards for specific mechanisms to ensure that nominee relationships in respect of legal persons are not misused. This is additional to the FATF requirements about information on beneficial ownership.

As a result, there is a key difference between the two regimes, namely that the beneficial ownership regime requires natural persons to be identified (save for some limited exceptions), whereas nominees may be legal persons.

Nevertheless it is recognised that there is likely to be a degree of overlap between the two regimes in practice. The beneficial owner will also be the nominator in any case where he or she appoints a nominee directly (i.e. not through any intervening person or entity). Similarly, there may be cases where the same person fulfils the function of resident agent and nominee. Therefore the Nominee Regulations contain provisions to avoid duplication in this situation. They also contain some specific exemptions in respect of nominee relationships involving

Guernsey licensed fiduciaries and post-trade service providers. These exemptions are included on the basis of risk.

## Part 2: FAQs

### FAQ 1: What is a nominee relationship?

This is defined in the Law as a relationship where an interest in a legal person, or a power exercisable in relation to a Guernsey legal person, is held or is exercisable by one person on behalf of another. The Nominee Regulations build on this by defining a nominee as a legal or natural person in a nominee relationship in which that person is registered as the legal owner of a share or right in a Guernsey company (or of an equivalent interest in a Guernsey foundation or LLP) which is held or is exercisable by that person on behalf of a beneficial owner of that company, foundation or LLP. This applies whether the share or right is held directly from the beneficial owner or indirectly (e.g. through a chain of ownership).

The measures to avoid abuse of nominee relationships are not aimed at the situation where a trustee holds shares or exercises rights on behalf of the beneficiaries. Specific provision for that situation is made in the Beneficial Ownership Regulations, which require the trustee to be identified as the beneficial owner of any legal person in which the trust holds shares or rights that meet the ownership threshold. Therefore, the definition of nominee makes it clear that this does not apply to shares or rights held as a trustee.

### FAQ 2: What is the overall scope and effect of the Nominee Regulations?

In broad terms, the obligations in respect of nominees under the Nominee Regulations mirror those in relation to beneficial owners under the Law, save that, as indicated in the introduction, nominees may include legal persons.

The Nominee Regulations provide that, before the incorporation or registration of a Guernsey company, foundation or limited liability partnership (LLP), the first proposed resident agent must:

- identify any person who is a nominee, that is, holds shares or rights in the company (or equivalent interest in the case of a foundation or LLP) on behalf of a beneficial owner
- obtain and verify details about the nominee and the nominator ( these details broadly mirror those required for beneficial owners under the Law, modified as necessary to include legal persons)
- enter the details of the nominee and nominator in the record of beneficial ownership
- give the Registrar of Beneficial Ownership

- a. a statement containing the details of the nominee and nominator, identifying the nature of the nominee relationship (and giving the date on which it began if that was after the Law came into force)
  - b. a verification statement.
- serve copies of the statements on the relevant company, foundation or LLP and, on request, upon its first proposed directors, members or officials as the case may be.

The Nominee Regulations also contain ongoing obligations on resident agents to keep the information on nominees and nominators up to date, as well as obligations on nominees to supply information about the nominee relationship to resident agents and to inform resident agents about any changes to the information. These obligations are directly based on corresponding obligations in relation to beneficial ownership under the Law.

### **FAQ 3: What is meant by identifying the nature of the nominee relationship?**

This means identifying which categories the parties to the nominee relationship fit into. For example, the parties may be a licensed corporate services provider (from Guernsey or another jurisdiction) and its client or members of the same family. In order to make it easy to provide this information, the online process for providing details to the Registrar of Beneficial Ownership includes a menu of options from which a selection must be made (including “other” if none of the identified options applies).

### **FAQ 4: What happens if the nominee is also the resident agent?**

Because there will be cases in which a nominee is also the resident agent of the legal person in question, there are measures in place to avoid duplication of information. The Nominee Regulations provide that in that situation, the only information that has to be provided in respect of the resident agent is confirmation of the fact that he or she is acting as a nominee, details about the nominator (subject to FAQ 5) and the nature of the nominee relationship.

### **FAQ 5: What happens if the beneficial owner is also the nominator?**

In some cases, a nominee may be appointed by a legal or natural person who is acting on behalf of the beneficial owner. That person will therefore be the nominator for the purposes of the Nominee Regulations. However, there will be some cases in which the beneficial owner appoints the nominee directly so he or she will be the nominator. The Nominee Regulations provide that in that situation, the only information that has to be provided in respect of the beneficial owner is confirmation of the fact that he or she is acting as a nominator, details about the nominee (subject to FAQ 4) and the nature of the nominee relationship.

#### **FAQ 6: What happens when a nominee relationship involves a Guernsey licensed fiduciary?**

Where either party to a nominee relationship is a legal or natural person licensed under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, the obligations on resident agents under the Nominee Regulations are to notify the Registrar of Beneficial Ownership of the fact of the nominee relationship, to give the name of the relevant fiduciary and to specify whether the fiduciary is a nominee or a nominator. In that situation, the Nominee Regulations also require the fiduciary in question to maintain an up to date record of the required particulars of the nominee relationship for the duration of that relationship and for at least 5 years thereafter, and to make that record available to the resident agent upon request. As a licensee of the Guernsey Financial Services Commission (GFSC), the fiduciary will also be obliged to make that information available to the GFSC upon request under the GFSC's existing information gathering powers (as well as to the law enforcement agencies under their existing investigatory powers).

#### **FAQ 7: What happens when a nominee is a post-trade services provider?**

Where a nominee is a specified nominee, that is, a post-trade services provider specified in Schedule 1 to the Nominee Regulations, the obligations on resident agents under the Nominee Regulations are to notify the Registrar of Beneficial Ownership of the fact of the nominee relationship, to give the name of the nominee and to confirm that the nominee is a specified nominee. This is in recognition of the fact that, in essence, specified nominees, perform a clearing function on behalf of multiple parties and, therefore, this form of nominee relationship cannot be abused by any given individual.

#### **FAQ 8: What ongoing steps have to be taken in relation to nominees and nominators?**

The Nominee Regulations provide that the ongoing information powers and duties at sections 9 to 13 and 15 to 16 of the Law apply in respect of a nominee or nominator in the same way as they do to beneficial owners. In order to give effect to this, some modifications to the language in those sections have to be made and these modifications are set out in a schedule to the Nominee Regulations. In summary, the position is as follows:

- Resident agents have an ongoing duty to identify any nominees or nominators. They also have duties and powers in respect of the service of information notices on persons believed to be nominees or nominators, or on third parties that may hold relevant information
- Resident agents must keep an up to date record of the required particulars of a nominee or nominator in a separate part of the record of beneficial owners and must notify the Registrar of Beneficial Ownership of any relevant changes

- Nominees have a positive duty to notify resident agents about their status and about any subsequent changes, where that information is not already known to the resident agent and they have not been served with an information gathering notice.