



ARAB FORUM ON ASSET RECOVERY

AN INVESTIGATOR'S GUIDE TO COMPANY OWNERSHIP INFORMATION IN THE UNITED KINGDOM



The purpose of this country-specific guide is to provide assistance to investigators on the type of information that is available on the natural persons who control companies and trusts or otherwise play an important role in a legal person and arrangement in the **United Kingdom**, and the conditions that need to be met to be able to access such information. For ease of reference, the Contents of the guide are listed below.

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I. Definitions and Company Formation Process

1. How are legal entities (companies, partnerships, foundations, etc.) formed in the United Kingdom?

Companies and Limited Liability Partnerships (LLPs) are formed through registration with the registrar of companies (Companies House). The requirements are set out in the Companies Act 2006 (CA06) and the Limited Liability Partnerships Act 2000. Companies, for example, are formed through one or more persons subscribing their names to a memorandum of association and providing the relevant registration documents to the registrar.

2. How is basic information on legal entities obtained and recorded in the United Kingdom?

Certain information must be provided to the registrar of companies on incorporation (e.g. name, registered office details, proposed articles of association, proposed officers etc.). The company will not be registered without this information. The company must update the information held by the registrar in the annual return. This basic information is publicly available.

The UK has recently introduced legislation which could alter this process – The Small Business, Enterprise and Employment (SBEE) Bill - <http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>. If enacted, this process would be replaced by a new ‘check and confirm’ process which would require the company to update information at least once in every 12 month period.

3. What does “beneficial ownership” mean in the United Kingdom?

Beneficial ownership is currently defined in the Money Laundering Regulations 2007¹ as, broadly, an individual owning more than 25% of a company’s shares or voting rights or otherwise exercising control over the management of the company.

However, as mentioned above, the UK has recently introduced the SBEE Bill to Parliament. If enacted, this Bill would implement a publicly accessible central register of company beneficial ownership information. This includes a definition of a person with significant control over a company for the purpose of companies and others obtaining and holding this information. The definition focuses on ownership of shares, voting rights and other forms of significant control such as the right to appoint or remove a majority of the board of directors. Further information on the meaning of ‘significant influence or control’ will be set out in statutory guidance after the Bill has completed its Parliamentary passage.

4. How is beneficial ownership information on legal entities obtained and recorded in the United Kingdom?

Companies must also maintain information on their members and directors in a register, and keep this up to date. These registers are available for public inspection at the company’s registered office or at a single alternative address within the same jurisdiction. This location must be in the UK and notified to the registrar of companies. Information is updated at Companies House either in the context of the annual return (shareholders) or within 14 days of the change (directors).

If the SBEE Bill is enacted, private companies would have the option of maintaining their registers at Companies House. This means information would have to be updated at Companies House as it changes. The SBEE Bill would also require companies to obtain and hold information on people with significant control (beneficial owners). This information would be held, kept up to date and made publicly available in a register held by the company. It would also be provided to Companies House on incorporation and updated in the context of the new check and confirm process. Information at Companies House would be publicly available (with limited exceptions, e.g. for residential addresses).

¹ <http://www.legislation.gov.uk/uksi/2007/2157/regulation/6/made>

Relevant provisions would be applied to LLPs through secondary legislation.

5. How are legal arrangements (express trusts and trust-like agreements) formed in the United Kingdom?

Under the law of England and Wales an express trust is one intentionally declared by the creator of the trust (“the settlor”). It is created through the manifestation of the intention to create a trust; though there are certain formalities that have to be satisfied in relation to trusts of land and testamentary trusts.

In practice the trust is likely to be created by a written document (“the trust instrument”), which is usually a deed, setting out the terms of the trust. The trust instrument is often drawn up by a legal professional acting on behalf of the settlor.

6. How is information on legal arrangements obtained and recorded in the United Kingdom?

In the UK, trustees must have information on the intent of the trust, the assets that constitute the trust, and the beneficiaries. This requirement already meets the requirement in the proposed Fourth EU Anti-Money Laundering Directive (still under negotiation) which requires that “Member States shall ensure that trustees of any express trust governed under their law obtain and hold adequate, accurate and current information on beneficial ownership regarding the trust.” In addition, under this requirement, authorities will have the right to demand this information from the trustees.

Furthermore, under the UK’s Money Laundering regulations there is a legal obligation on financial institutions to check the source of funds whenever a client seeks to establish a business relationship with such an institution. These customer due diligence requirements would reveal when a client was acting as a trustee, and often require the financial institution to obtain and verify copies of trust deeds and deeds of appointment before a client can be taken on. Similarly, customer due diligence requirements apply to lawyers and trust/company service providers.

Additionally, under new international anti-money laundering standards, trustees are required to disclose their status as a trustee when seeking financial services. The proposed Fourth EU Money Laundering Directive (still under negotiation) will require that countries ensure that trustees disclose their status to financial and non-financial institutions regulated by anti-money laundering laws when doing business.

The UK tax authority, HM Revenue & Customs (HMRC), also collects information on trust settlors, trustees and beneficiaries, where the trust has a UK tax liability. Where there is UK-taxable income or gain on a trust, the trustee is required to notify HMRC and submit regular returns under self-assessment. The trustees and/or settlor are also required to report liability to inheritance tax on trust assets. Additionally, UK domiciled settlors and UK resident beneficiaries of non-resident trusts have to disclose information to HMRC. Finally, professionals assisting UK domiciled individuals to settle assets into a non-resident trust are also required to report the existence of the settlement to HMRC. In 2010-11, HMRC received 164,000 trust returns where there was a UK tax liability.

II. Types of Legal Entities

There are many types of legal entities able to be formed in the **United Kingdom**. This Guide will provide information on two commonly used entities: **1) Companies limited by shares and Companies limited by guarantee, and 2) Limited Liability Partnerships (LLPs)**.

An LLP is an alternative corporate business vehicle that gives the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a traditional partnership. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the members will be limited. You can find further information about the difference between legal structures in the UK here: <https://www.gov.uk/business-legal-structures/limited-partnership-and-limited-liability-partnership>.

Companies Limited by Shares/Companies Limited by Guarantee

Type of Legal Entity	Company	
	Yes	No
What is the minimum number of natural persons required for formation?	1 ¹	
Is there a requirement to register with the company registry?	X	
Is there a residency requirement for directors?		X
Are bearer shares/share warrants permitted?	X ²	
Is a Trust and Company Service Provider required to form?		X
Is a registered agent in the jurisdiction of formation required?		X
Is the entity required to hold financial account(s) in jurisdiction of formation?		X
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?	X	
Does the jurisdiction allow for nominee directors?	X ³	
If so, are they required to disclose their status as nominee directors?		X ⁴
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		X ⁴
Does the jurisdiction allow for nominee shareholders?	X ⁵	
If so, are they required to disclose their status as nominee shareholders?		X ⁵
Are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		X ⁵

1 – Currently companies must have at least one natural person director. This requirement applies from incorporation. If the SBEE Bill is enacted, companies would only be able to have natural person directors (with limited exceptions). The persons forming the company may be legal persons.

2 – If the SBEE Bill is enacted, the UK will abolish bearer shares – prohibiting future issue and instituting a robust process for rapid conversion (or cancellation) of existing bearer shares.

3 – Under UK law, all directors are equal and have equal duties and liabilities. Therefore a nominee director can potentially be liable for wrongdoing whether acting on instructions or not. If the SBEE is enacted, the UK would have an updated regime which would deter opaque arrangements and wrongdoing involving directors:

- All directors would be notified of their duties on appointment (to highlight the personal liability of acting on someone else's behalf).
- The UK would update the way that directors' duties apply to those who control a company's directors (shadow directors), so that the expectation is that all directors' duties apply to them, unless they are not capable of applying.
- The regime for disqualifying unfit directors would be tightened in a number of ways (e.g. we will update the factors which determine a finding of unfitness, and improve information sharing between agencies).
- It would be possible to disqualify and remove from involvement in a company an individual who controls an unfit company director.

4 – If the SBEE Bill is enacted, it would require disclosure of any person with significant control over the company, which would include disclosure of the person 'behind' the nominee director in specified circumstances. Furthermore, regulated bodies are

required to conduct customer due diligence (CDD) on such companies in accordance with the Money Laundering Regulations 2007, which may include identification of the person(s) on whose behalf the nominee director acts.

5 – If the SBEE Bill is enacted, it would require disclosure of any person with significant control over the company, which would include disclosure of the person ‘behind’ the nominee director in specified circumstances. Furthermore, regulated bodies are required to conduct customer due diligence (CDD) on such companies in accordance with the Money Laundering Regulations 2007, which may include identification of the person(s) on whose behalf the nominee shareholder acts.

Limited Liability Partnership (LLP)

Type of Legal Entity	LLP	
	0 ¹	
What is the minimum number of natural persons required for formation?	Yes	No
Is there a requirement to register with the company registry?	X	
Is there a residency requirement for directors?		X
Are bearer shares/share warrants permitted?		X
Is a Trust and Company Service Provider required to form?		X
Is a registered agent in the jurisdiction of formation required?		X
Is the entity required to hold financial account(s) in jurisdiction of formation?		X
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?		X ²
Does the jurisdiction allow for nominee directors?	X ³	
If so, are they required to disclose their status as nominee directors?		X ⁴
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		X ⁴
Does the jurisdiction allow for nominee shareholders?	X ⁵	
If so, are they required to disclose their status as nominee shareholders?		X ⁵
Are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		X ⁵

1 – Two or more natural or legal persons may form an LLP. An LLP must have at least two “designated” members.

2 – LLPs are tax transparent; therefore the individual partners have a requirement to file in respect of their share of the partnership income. A non-resident partner would only need to file a UK return in respect of the UK element of their share of the partnership income.

3 – LLPs do not have directors but members. These are different from directors, and in fact have some properties of shareholders - they will have an economic stake in the LLP, alongside a role in management. All members of an LLP will be registered at Companies House, with certain details available on the public record.

4 – If the SBEE Bill is enacted, regulations made following Royal Assent would require disclosure of any person with significant control over an LLP, which would include disclosure of the person ‘behind’ the nominee member in specified circumstances. Furthermore, regulated bodies are required to conduct CDD on LLPs in accordance with the Money Laundering Regulations 2007, which may include identification of the person(s) on whose behalf the nominee member acts.

5 – LLPs have members, not shareholders. These questions should be read on that basis. If the SBEE is enacted, it would require disclosure of any person with significant control over the company, which would include disclosure of the person ‘behind’ the nominee member in specified circumstances. These provisions would be applied also to LLPs. Furthermore, regulated bodies are required to conduct CDD on LLPs in accordance with the Money Laundering Regulations 2007, which may include identification of the person(s) on whose behalf the nominee member acts.

III. How to Access Information

This guide will address the ability to access information on entities formed in the **United Kingdom** available in **1) registries** and **2) other channels**.

Registries

The registry in the **United Kingdom** is called the Companies House, available online at www.companieshouse.gov.uk. A point of contact for the Companies House is provided here:

Name: Rachael Watts

Agency: Companies House

Address: Crown Way, Cardiff, CF14 3UZ

Phone: 02920 380 063

Email: rwatts@companieshouse.gov.uk

In general, the following information is publicly available online (free or for a nominal fee, with no log-in requirements):

1. Name of Legal Entity
2. Entity Number (if any)
3. Type of Legal Entity
4. Date of Incorporation
5. Current Status (active, etc.)
6. Principal Address of Business
7. Principal Purpose of Business
8. Officer/Director Information
9. Shareholder/Member Information
10. Memorandum
11. Articles of Incorporation
12. Application/Certification of Formation
13. Annual/Biennial Reports
14. Historical Document (example: past annual filings)

In general, the following information is not available online, but may be available through another form of public access (i.e. in person only or via a pre-registration requirement) or to law enforcement, through specific procedures listed here:

1. Officer/Director Information: A director's usual residential (i.e. home) address is not made publicly available. It can be accessed by credit reference agencies and specified public authorities (including law enforcement and tax authorities and some overseas authorities) if they apply to the Registrar for access and comply with the necessary requirements, as set out in the relevant regulations.
2. Shareholder Register: This must be kept available for inspection subject to a request for access. A company is required to comply or apply to the court.
3. Register of Charges: This must be kept available for inspection subject to a request for access. A company is required to comply or apply to the court.
4. Bank Account Information: Access to the more detailed financial information is by request by law enforcement through a notice/production order either on the company or on the relevant bank.
5. Payment Records: Access to the more detailed financial information is by request by law enforcement through a notice/production order either on the company or on the relevant bank.

	Online Access (free or for nominal fee, no log-in requirements)	Other Public Access (available in person only or via pre-registration requirement)	Law Enforcement Access only	For Information/ documents accessible only by Law Enforcement, please describe how an investigator may access information
Name of Legal Entity	Yes			
Entity Number (if any)	Yes			
Type of Legal Entity	Yes			
Date of Incorporation	Yes			
Current Status (active, etc)	Yes			
Principal Address of Business	Yes			
Principal Purpose of Business	Yes			
Registered Agent Information				There is no requirement for a registered agent in the UK. It is likely that a lawyer/accountant or other Trust or Company Service Provider will be registered to act on behalf of the company and it is up to them to provide this information.
Officer/ Director Information	Yes		Yes	A director's usual residential (i.e. home) address is not made publically available. It can be accessed by credit reference agencies and specified public authorities (including law enforcement and tax authorities and some overseas authorities) if they apply to the Registrar for access and comply with the necessary requirements, as set out in the relevant regulations.
Shareholder/ Member Information	Yes			
Memorandum	Yes			
Articles of Incorporation	Yes			
Application/ Certificate of Formation	Yes			
Annual/ Biennial Reports	Yes			
Shareholder Register			Yes	This must be kept available for inspection subject to a request for access. A company is required to comply or apply to the court.
Register of Charges			Yes	This must be kept available for inspection subject to a request for access. A company is required to comply or apply to the court.
Bank Account Information		Yes	Yes	A company will put out their annual accounts if required but access to the more detailed financial information is by request by law enforcement through a notice/production order either on the company or on the relevant bank.
Payment Records		Yes	Yes	A company will put out their annual accounts if required but access to the more detailed financial information is by request by law enforcement through a notice/production order either on the company or on the relevant bank.
Historical Documents (example: past annual filings)	Yes			

Other Channels

The explanation below outlines the channels by which foreign authorities may obtain information on legal entities, legal arrangements, or relevant persons from different sources in the **United Kingdom**.

Channels through which foreign authorities may obtain information

Legal entities/ Relevant Individuals (directors, shareholders, managers, associates, family members, etc.)

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals	()	(x)		(x)	()	Further information can be found in page 14 of the MLA Guidelines .
Records/ documents	(x)	()	UK is able to share material if it is submitted to the National Crime Agency (NCA) and assessed for onward dissemination based on the intelligence handling processes and legal framework under the Crime and Courts Act 2013.	(x)	()	Further information can be found in the MLA Guidelines .

Legal arrangements/ relevant individuals (trustees [nonprofessional], settlers, beneficiaries, protectors, etc.)

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals	()	(x)		(x)	()	Further information can be found in page 14 of the MLA Guidelines .
Records/documents	(x)	()	UK is able to share material if it is submitted to the NCA and assessed for onward dissemination based on the intelligence handling processes and legal framework under the Crime and Courts Act 2013.	(x)	()	Further information can be found in pages 21, 35 and 38 of the MLA Guidelines .

Financial Institutions

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel	()	(x)	UK is able to share material if it is submitted to the NCA and assessed for onward dissemination based on the intelligence handling processes and legal framework under the Crime and Courts Act 2013.	(x)	()	Further information can be found in page 14 the MLA Guidelines .
Accounts records/ documents	(x)	()		(x)	()	Further information can be found in page 21 of the MLA Guidelines .

Trust and Company Service Providers

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel	()	(x)	UK is able to share material if it is submitted to the NCA and assessed for onward dissemination based on the intelligence handling processes and legal framework under the Crime and Courts Act 2013.	(x)	()	Further information can be found in page 14 of the MLA Guidelines .
Accounts records/ documents	(x)	()		(x)	()	Further information can be found in page 21 of the MLA Guidelines .

Other Designated Non-Financial Businesses and Professions

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with	()	(X)		(X)	()	Further information can be

personnel						found in page 14 the MLA Guidelines .
Accounts records/ documents	(X)	()	UK is able to share material if it is submitted to the NCA and assessed for onward dissemination based on the intelligence handling processes and legal framework under the Crime and Courts Act 2013.	(X)	()	Further information can be found in page 21 of the MLA Guidelines .

IV. Other Useful Sources of Information

Resource Name	Web Link
Company ownership: transparency and trust discussion paper and Government response	https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper
This discussion paper outlines the UK's plans to enhance corporate transparency and increase trust in UK business, which are being taken forward through the Small Business, Enterprise and Employment Bill.	
The Small Business, Enterprise and Employment Bill (text of the Bill)	http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html
Part 7 of the Bill contains proposals to enhance UK corporate transparency.	
The Small Business, Enterprise and Employment Bill (related documents)	https://www.gov.uk/government/collections/small-business-enterprise-and-employment-bill
These documents will assist the reader to understand UK proposals to enhance corporate transparency as set out in Part 7 of the SBEE Bill.	
UK Asset Recovery Guide	http://star.worldbank.org/star/sites/star/files/UK-Guide-to-Asset-Recovery.pdf
This guide explains how foreign jurisdictions can obtain assistance from to UK to recover assets that are the proceeds of crime.	