

Guidance for administrators and administered entities regarding registration obligations under *The Data Protection (Bailiwick of Guernsey) Law, 2017* as amended ('the Law')

This document is for guidance only and does not constitute legal advice or legal analysis. It is intended as a starting point only, and organisations may need to seek independent legal advice.

1. Background and purpose

This guidance note is to assist administered entities (including special purpose vehicles (**SPVs**) and other entities) and the administrators of such entities to determine whether an administered entity is required to register with the Data Protection Authority ('the Authority') under the Law.

By SPV we mean any entity established for a limited purpose such as to hold a particular asset.

Where an administered entity is established (which has a broad meaning – see [4 and 5] below) in the Bailiwick of Guernsey (the Bailiwick), there are very few exceptions to the requirement for it to register.

Administrators include but are not limited to:

- a) fund administrators regulated under *The Protection of Investors (Bailiwick of Guernsey) Law, 2020*;
- b) fiduciary administrators regulated under *The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020*;
- c) insurance managers regulated under *The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002* (the administrators mentioned at a), b) and c) are **licensed service providers**); and
- d) in some cases, family offices.

Administered entities include but are not limited to:

- a) Bailiwick entities which are incorporated in the Bailiwick or otherwise governed according to the laws of the Bailiwick, such as companies (including cell companies and holding companies), limited partnerships with separate legal personality (**LP Incs**), limited liability partnerships (**LLPs**) and foundations, trusts, partnerships, limited partnerships without separate legal personality other SPVs and family offices.
- b) Non-Bailiwick entities which employ staff or coordinate activities within the Bailiwick; and
- c) Non-Bailiwick entities which are administered in Guernsey.

Administered entities which are both 1) processing/controlling personal data, whether by automated (electronic) means or as part of a manual or electronic filing system and 2) "established in the Bailiwick of Guernsey" are required to register under the Law. These criteria are considered in more detail below.

It is highly likely that the administered entities referred to above will be required to register, regardless of whether their administrator is also registered or if they are a subsidiary of an entity which is itself registered. Registration is therefore strongly recommended. If after

reading this guidance you are in any doubt as to whether registration is required, contact the ODPA (Office of the Data Protection Authority).

2. Determining whether personal data is processed as part of a manual or electronic filing system

Personal data is any information relating to an identified or identifiable living individual, and includes opinion and factual information about a person, however basic. The fact that information is available publicly and not considered to be confidential (e.g. the name of an employee is linked to its employer by a page on the employer's website) does not mean that it is not personal data.

The fact that an identifiable person is director or shareholder of a company, or represents a corporate director or is employed by a third party contractor or service provider is all personal data.

Any structured set of personal data which is accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis and whether kept in hard copy or electronic form will constitute a 'filing system'. This might include a register of members or a register of directors, a minute book or correspondence file or even documents which include contact details or the names of signatories (or in some cases the signatures themselves).

3. Determining whether an entity is a controller or a processor

Where any personal data is processed as part of a manual or electronic filing system, the 'controller' determines the purpose and means of processing of the personal data. The controller is responsible for decisions made about why and how personal data is used. Such personal data may relate to employees, customers, suppliers or any other people.

Whereas the 'processor' is given the task of processing personal data on the controller's behalf, which processing includes holding personal data. The processor does not determine the nature or the means of processing.

It is possible for an entity to be both a controller and a processor for different processing activities and it is also possible for there to be joint controllership, in cases where multiple controllers are responsible for determining the nature or the means of processing.

For a fuller explanation see [9] below or [listen to this short podcast](#) (14 mins).

4. Determining whether an entity is established in the Bailiwick

The Law sets out that an entity is established in the Bailiwick if it:

- (a) is a Guernsey person (including companies incorporated under *The Companies (Guernsey) Law, 2008*), Alderney person (including companies incorporated under *The Companies (Alderney) Law, 1994*) or Sark person, **or**

- (b) maintains in the Bailiwick:
 - (i) an office, branch or agency through which the person carries on an activity, **or**
 - (ii) a regular practice,
- (c) causes or permits any processing equipment in the Bailiwick to be used for processing personal data otherwise than for the purposes of transit through the Bailiwick, **or**
- (d) is engaging in effective and real processing activities through stable arrangements in the Bailiwick.

Only entities which are not established in the Bailiwick, or are not processing personal data as part of a manual or electronic filing system, are outside the scope of the Law. Where an entity is established in the Bailiwick, there are very few exceptions to the requirement for it to register.

There is no registration exemption under the Law for entities that are administered by a licensed service provider, even in circumstances where the entity which is the controller of personal data has engaged its licensed service provider to process the personal data. However, a licensed service provider may act as Levy Collection Agent for entities which it administers (see [7] below).

Where entities are registered to process personal data in jurisdictions other than the Bailiwick of Guernsey with a relevant supervisory authority in that jurisdiction, they are nevertheless obliged to register with the Authority if they satisfy the requirement for registration under the Law.

5. Examples of entities established in the Bailiwick and required to register

- **Bailiwick entities of any type with legal personality**

There is no restriction on the type of entity which may be required to register with the Authority, provided such entity has legal personality. An entity with legal personality has an existence separate and distinct from the persons (legal or natural) comprising it. Such entities may include, without limitation, companies (including cell companies and holding companies), LP Incs, LLPs and foundations and other incorporated SPVs or family offices.

- **Bailiwick entities which do not have legal personality**

Where an entity does not have separate legal personality (e.g. a trust, general partnership or limited partnership without separate legal personality), the registration obligations fall on the party with legal personality that is controlling or processing personal data on its behalf (e.g. the trustee, partners or general partner (**the controlling party**)). In that case the controlling party is required to register in its own name (and not in the name of the trust, partnership or limited partnership).

Examples of the application of this would include but not be limited to:

- in the case of a trust, every one of its trustees would be required to register
- in the case of a general partnership, every one of its partners is required to register
- in the case of a limited partnership without legal personality, the general partner would be required to register

Such registration requirements apply even where the controlling party is not itself a Bailiwick entity (for example an English or Scottish general partner of a Guernsey limited partnership without separate legal personality).

- **Established in the Bailiwick**

Companies 'established in the Bailiwick' for the purposes of the Law will include:

- companies of any type incorporated in Guernsey or in Alderney;
- companies of any type incorporated outside of the Bailiwick:
 - whose business or administration undertaken in the Bailiwick amounts to it having a branch in the Bailiwick;
 - which maintain a regular practice in the Bailiwick. For example, where the activities of the company are coordinated from Guernsey or it has employees present in Guernsey;
 - whose administration undertaken in the Bailiwick involves stable arrangements for data processing in Guernsey. For example, where administration of the company is undertaken by a Guernsey-based services provider which maintains, whether in physical or electronic form, the correspondence files, books and records of the company. This will be the case even where the company's statutory records are required to be kept elsewhere.
 - which use the services of a processor located within the Bailiwick, including but not limited to the outsourcing of payroll, HR, accountancy or IT functions.

The same analysis would apply to other entities which are not incorporated in, or governed according to the laws of, the Bailiwick, but may nevertheless meet the criteria to be established in the Bailiwick.

In respect of a branch in the Bailiwick, the registration fee to be paid will be determined by the total number of employees of the entity, not in the branch alone.

- **Non-Bailiwick entities which employ staff or coordinate activities within the Bailiwick**

A stable arrangement in the Bailiwick can exist if just a single employee or agent acts with a sufficient degree of stability from the Bailiwick and processing of personal data is undertaken in the context of the activities of that employee or agent.

- **Non-Bailiwick entities administered in Guernsey**

Entities which are incorporated in jurisdictions other than the Bailiwick, or governed according to a foreign law, and whose presence in the Bailiwick does not amount to having a branch in the Bailiwick, nonetheless will likely be engaging in data processing activities through stable arrangements in the Bailiwick if they are administered by a Bailiwick-based licensed services provider or if they use the services of a processor located within the Bailiwick. Accordingly, such entities are 'established in the Bailiwick' for the purposes of the Law.

6. Examples of entities falling outside the scope of the Law:

There are very few exceptions to the requirement to register.

- **Entities processing for domestic purposes**

Where the only processing carried out is for domestic purposes there may not be a requirement to register. The application of this exemption is narrow and limited to circumstances where the only processing of personal data is carried out for purposes connected to personal, family or household affairs. [This short guidance note](#) has been published with some criteria which may assist an entity in working out whether it is exempt from registration on this basis. If you are in any doubt as to whether registration is required, contact the ODPA.

- **Entities that do not control/process any personal data**

It is possible, although likely to be exceptional, that a Bailiwick established entity falls outside of the scope of the Law on the basis that it does not process/control any personal data. Entities deciding not to register on this basis need to be ready to demonstrate that they do not process/control any personal data.

The maintenance of statutory registers (e.g. shareholder and director/officer registers) of an entity (even where such maintenance is carried out by an administrator rather than the entity itself), where such registers contain personal data and the purposes of the processing go beyond solely domestic use, would likely necessitate registration of the entity with the Authority.

- **Entities whose only processing of personal data in the Bailiwick is 'occasional'**

A controller or processor is unlikely to have a regular practice or stable arrangements for processing personal data in the Bailiwick where any processing of personal data by (or on behalf of) it in the Bailiwick is occasional, does not include any large-scale or systematic processing and is not high-risk processing. If that is the case it will not be required to register with the Authority.

This could, for example, include a UK-based financial services provider which makes occasional visits to Bailiwick clients but otherwise has no personnel or agents operating in the Bailiwick and no base in the Islands.

7. Registration requirements and levy regime under the Law

Any controller or processor of personal data to whom the Law applies is required to register with the Authority unless exempt.

In particular, they are required to:

- 1) register with the Authority through one of the following routes:

- Route 1: Register directly with the Authority (available to everyone)
- Route 2: Register with an Authority Levy Collection Agent (only available to certain controllers or processors)

- 2) submit to the Authority an annual return during January-February of each year (as opposed to at any point during the year); and
- 3) pay an annual levy.

Registration is confidential - the register maintained by the Authority is not public-facing and all registration data will only be processed by the Authority for administrative and regulatory purposes.

For a detailed overview in relation to the Authority registration and levy regime, with all the key questions answered, see [this detailed guidance](#).

8. Levy Collection Agent regime

A person required to register, for example an SPV, can authorise a licensed service provider to act as its 'Levy Collection Agent' (**LCA**) who will then be responsible for paying the annual levy for each entity for whom it has been authorised to act in that capacity (in this case the Authority will not collect details of the entity itself but the LCA must maintain certain records of the entity and make them available to the Authority upon request).

If a number of Bailiwick-based licensed service providers provide administration services to an entity, the entity should register itself or choose one only of its licensed service providers as its LCA to avoid duplication.

The LCA must give a certificate of exemption to each entity for whom it has paid the annual levy within one month of paying its annual levy. This certificate means that the entity in respect of which the certificate is issued has completed all the statutory returns and payments required to the Authority for that calendar year. The certificate will remain valid even if an entity changes its administrator part way through the calendar year.

LCAs must maintain up to date and accurate records relating to the controllers and/or processors they are paying the levy for, which must be retained for 6 years from the return date. These must include:

- Name of each controller or processor;
- A copy of the Certificate of Exemption the LCA has issued to them; and
- The date the LCA provided the controllers or processors with a copy of the Certificate of Exemption.

Not every entity can authorise an LCA to pay the levy on their behalf. The following must register directly with the Authority:

- All controllers or processors that employ 50 or more full time equivalent (FTE) employees
- All controllers or processors the Law requires to appoint a Data Protection Officer
- All organisations who are acting as an LCA
- All charities, not-for-profit organisations, and Bailiwick elected officials (all of whom pay no levy)

9. Responsibilities for compliance and accountability

Each controller or processor as applicable is accountable for determining the application of the Law to them, and to ensure registration requirements are complied with save where an exemption applies.

Where an entity appoints an LCA, all the legal responsibility as well as liability for data protection compliance still rests with the appointing entity.

An entity must be clear whether it has appointed an LCA or whether it is registering in its own right. Historically, some entities have mistakenly registered by both routes. There is no requirement under the Law for the Authority to provide refunds. As of January 2023, no such refunds will be provided.

Failure to register when required to do so is a criminal offence under the Law and is potentially punishable by a fine or imprisonment. The Authority may also recover any levy due and payable by any person to the Authority as a civil debt owed by the person to the Authority.

Where an individual or organisation knowingly and wilfully fails to comply with any element of the Law, including registration and levy duties, this may be considered an offence and the Authority has the power to take action and recover unpaid levies.

To read more about this approach see [this detailed guidance](#).