



REGISTERS OF BENEFICIAL OWNERS IN THE CAYMAN ISLANDS

Agreement between UK Government and the Cayman Islands

Following agreements reached between the UK Government and the Cayman Islands in 2016, and similar to measures being taken by many other jurisdictions, the Cayman Islands Government passed various legislative amendments during April 2017 introducing a requirement for Cayman Islands Companies ("Companies") to create and maintain beneficial ownership registers. The provisions of the various laws and regulations came into force on the 1st day of July, 2017.

Important Points to Note

- J Whilst the regime requiring beneficial ownership registers was mainly driven by the UK Government, the requirement came in response to FATF and OECD recommendations, which we understand will be implemented by all G20 countries by mid-2018, as well as a number of other jurisdictions. The UK's beneficial ownership register is a public register. In contrast, by being one of the first British Overseas Territories to introduce such legislation, the **Cayman Islands secured the benefit of the registers not being made available to the public.**
- J Searches of Cayman beneficial ownership registers may only be carried out by the competent Cayman Government Authority following strict requirements for bona fide requests from authorities in cooperating countries (currently only the UK). Fishing expeditions are not allowed.
- J The USA shows no indication of cooperating or entering into an agreement in this regard with the Cayman Government, meaning that information requests are unlikely to come from the USA.

Who can access the registers?

Registers will not be made public and the information will be accessible only by a competent Cayman Islands Government authority following a lawful request made by appropriate UK government agencies.

Which Companies must keep a Register of Beneficial Owners?

Subject to certain exceptions set out in laws and regulations (*see below*), beneficial ownership registers must now be kept by all companies incorporated or registered by way of continuation under the Cayman Islands Companies Law.

What are the Exemptions?

There are a number of exceptions where certain categories of Cayman Company will be exempted from the

requirement to maintain a beneficial ownership register, although exempt companies should record their exempted status by corporate action such as directors' resolutions and they must submit a declaration confirming which exemption they are relying on with their registered office and must instruct their registered office to file a copy with the Registrar of Companies.

A Company will be exempt from the requirement to maintain a beneficial ownership register where it is:

- (1) listed on the Cayman Islands Stock Exchange or another stock exchange approved by the Cayman Islands Government;
- (2) registered or holding a license under one of the Cayman Islands regulatory laws (e.g. a fund registered under the Mutual Funds Law (2015 Revision) - but note that following a further amendment to the Companies Law, a company registered as an excluded person under section 5(4) of the Securities Investment Business Law (2015 Revision) is not exempt and must keep a beneficial ownership register;
- (3) managed, arranged, administered, operated or promoted by an 'approved person' as a special purpose vehicle, private equity fund, collective investment scheme or investment fund, including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership;
- (4) regulated in a jurisdiction included in a list published by the Cayman Islands Anti-Money Laundering Steering Group of countries and territories whose Anti- Money Laundering legislation is deemed to be equivalent to the Anti-Money Laundering legislation of the Islands;
- (5) a general partner of a vehicle, fund or scheme referred to in paragraph (3) which vehicle, fund or scheme –
 - (i) is registered or holds a licence under a regulatory law; or
 - (ii) is managed, arranged, administered, operated or promoted by an approved person; or
- (5) holding directly a legal or beneficial interest in the shares of a legal entity which holds a licence under the Banks and Trust Companies Law (2013 Revision), the Companies Management Law (2003 Revision), the Insurance Law (2010 Revision), Part III of the Mutual Funds Law (2015 Revision) or the Securities Investment Business Law (2015 Revision); or
- (6) exempted by Regulations.

What is an approved person?

An "approved person" is a person (which includes companies) or a subsidiary of a person that is:

- (a) regulated, registered or holding a licence under a Cayman Islands regulatory law or regulated in a jurisdiction approved by the Cayman Islands Government (e.g. regulated by the SEC or the FCA), or
- (b) listed on the Cayman Islands Stock Exchange or stock exchange approved by the Cayman Islands Government.

What if there is no applicable exemption for a company?

If no exemption applies, the Company must take reasonable steps to identify -

- (i) any individual who is a 'reportable person' / qualifying 'beneficial owner' of that Company; and
- (ii) all relevant legal entities registered in the Cayman Islands (including as a "foreign company") that would

meet the definition of a beneficial owner in relation to that Company if they were an individual rather than a legal entity (a "relevant legal entity").

What are reasonable steps?

The 'reasonable steps' may require companies to enter into written correspondence with, and give formal notices to individuals and entities it knows or has reasonable cause to believe are beneficial owners or relevant legal entities. Such notices must be responded to within one month of receipt. Failure to do so is a criminal offence and could result in restrictions being placed on the transfer of shares in the company. However, where the information is already known by the Company, such formal notices may not be required.

Whose names will be entered in the register?

All individuals who are reportable person / qualifying beneficial owners and some 'relevant' legal entities will have their details entered in the beneficial ownership register (see below for more information).

It is a criminal offence for a Company that is required to keep and maintain a register, a registrable person or a relevant legal entity to fail to comply with obligations under the beneficial ownership register regime.

Changes to the Register

IMPORTANT POINT TO NOTE: If a person knows that they are a registrable person and knows that their details are not otherwise entered in the Company's beneficial ownership register or where their registered details subsequently change, such persons are obligated to inform the company within one month.

Who is a qualifying 'beneficial owner' (reportable person)?

A qualifying beneficial owner of a company will be an individual who meets one or more of the following conditions with respect to a company that is required to keep and maintain a register:

- (i) holds, directly or indirectly, in aggregate, more than 25% of the shares or membership interests;
- (ii) holds, directly or indirectly, in aggregate, more than 25% of the voting rights;
- (iii) holds, directly or indirectly, in aggregate, the right to appoint or remove the majority of directors or managers;
- (iv) if no individual meets any of the conditions in (i) to (iii) above, a person is a beneficial owner if they have the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the company, other than solely in the capacity of a director (or manager of in the case of an LLC), professional advisor or professional manager;
- (v) otherwise, if no individual satisfies any of the conditions in (i) to (iv) above, but the trustees of a trust (or the members of a partnership or other entity that is not a legal person) meet one of the conditions set out in (i) to (iv) above in their capacity as such, then such persons will be considered to be 'beneficial owners' (i.e. the trustees or partners as appropriate) if they have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a director, professional advisor or professional manager.

What Information goes in the Register?

For an individual, information required includes details such as name, residential address, and date of birth

details from a government issued identification. For a legal entity, certain prescribed relevant identifying information is required. If information has not yet been obtained, the register must include a note of the status of enquiries. The register must also contain details of the date on which such individual became a registrable person or ceased to be so.

Registers must also include certain details in relation to any 'relevant legal entity' that

- (i) directly holds an interest in the in-scope company or meets one or more of the specified conditions directly in respect of that company; and
- (ii) through which any beneficial owner or relevant legal entity indirectly owns an interest in entity.

What now?

All Cayman Islands registered companies who have not yet done so, must now determine whether they are exempt from the requirement to maintain a beneficial ownership register.

We recommend that exempt companies document their status as exempt by internal memorandum/declaration or resolution of the directors and notify the registered office.

Following a recent amendment to the Companies Law, companies that are exempt must submit a declaration to their registered office service provider confirming certain prescribed information. ***Please contact your usual contact in this regard.***

If there is no available exemption, companies are now required to create and maintain a register of beneficial owners and they should ***contact us as a matter of urgency*** in order to ensure the above steps are taken to avoid criminal sanctions as restrictions being placed on shares in the company.

IT IS IMPORTANT TO NOTE THAT BENEFICIAL OWNERSHIP REGISTERS MUST BE CREATED AND HELD BY THE LICENCED CORPORATE SERVICE PROVIDER THAT PROVIDES THE COMPANY'S REGISTERED OFFICE IN THE CAYMAN ISLANDS.

We have contacted you previously in this regard, attaching certain documentation to be completed with a view to creating a beneficial ownership register or for you to confirm to us if you are relying on an exemption from the requirement. Please note that if such registers are not in place by 1 July 2018, criminal sanctions including fines will be applicable and could be levied against the company and relevant beneficial owners and restrictions placed upon the shares in the company. Please therefore contact us as a matter of urgency to assist with the process.

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