

The new Cayman Islands Beneficial Ownership Register Regime: Q&A

May 2017

What has happened?

The Cayman Islands has now approved amendments to its corporate legislation (coming into force on 1 July 2017) to create a platform with centralised access to beneficial ownership information. This will require certain corporate entities to maintain a beneficial ownership register (a "**Register**").

At a glance:

- This is centralised "access" to beneficial ownership information, not a centrally "maintained" or "filed" register or a public register – the Cayman Islands government has stated that it will not consider the introduction of a public register of beneficial ownership until such time as that becomes the accepted and implemented international standard.
- The Register requirements are aimed at identifying and recording beneficial owners exercising effective control over the companies within scope, not at identifying all beneficial owners. Broadly, a more than 25% ownership interest or other effective control will be within scope.
- The legislation imposes obligations on companies/LLCs to maintain the Register and on beneficial owners to provide the prescribed information with a range of enforcement actions to address any failure to do so.
- Beneficial ownership information on a Register will only be capable of being directly accessed by a designated "**competent authority**", being the Cayman Minister of Financial Services or any person or body designated by the Minister of Financial Services as such, in response to requests from certain designated law enforcement and regulatory authorities in the Cayman Islands itself or who have entered into a separate agreement with the Cayman Islands (currently only the United Kingdom).
- A one year enforcement grace period will apply for within scope companies/LLCs from the implementation date of the legislation.

Why has the Cayman Islands done this?

The beneficial ownership legislation is specifically driven off an agreement (termed an 'Exchange of Notes') which the Cayman Islands, as an overseas territory of the United Kingdom, entered into in April 2016. The Exchange of Notes is itself part of a wider, global initiative relating to identifying beneficial ownership of companies, principally aimed at combatting money laundering, corruption, terrorist financing, financing for the proliferation of weapons of mass destruction and other serious organised crime.

The Cayman Islands legislation represents a proportionate response to implementation of measures to achieve these aims whilst preserving legitimate rights to confidentiality.

Which Cayman entities are required to maintain a beneficial ownership register?

A company incorporated or registered by way of continuation under The Companies Law and limited liability companies ("LLCs") established under The Limited Liability Companies Law, will (unless falling within one of the various exemptions discussed below) be required to establish and maintain a Register.

What exemptions are there to the requirements?

Non-Cayman companies and LLCs registered in Cayman, as well as Cayman exempted limited partnerships, are not directly caught by the legislation.

The beneficial ownership regime will also **not** apply to a company or LLC, or a subsidiary of one or more companies or LLCs, each of which is either:

1. Listed on the Cayman Islands Stock Exchange (or other '**approved stock exchange**' listed under Schedule 4 of the Companies Law);
2. Registered or licensed under a "**regulatory law**" as defined in the Monetary Authority Law (2016) (for example Cayman hedge funds registered under the Mutual Funds Law, managers registered or licensed under the Securities Investment Business Law, or Banks and Trust companies licensed or registered under the Banks and Trust Companies Law);
3. Managed, arranged, administered, operated or promoted by an 'approved person' (being a person, or a subsidiary of a person, regulated, registered or holding a licence in the Cayman Islands under a **regulatory law** (as above), or regulated in a jurisdiction listed in Schedule 3 of the Money Laundering Regulations (2015 Revision) (for example, the United States of America, Canada, the UK, The People's Republic of China, the United Arab Emirates); or listed on the Cayman Islands Stock Exchange or other **approved stock exchange**) as -
 - o A special purpose vehicle;
 - o A private equity fund;
 - o A collective investment scheme; or
 - o An investment fund;
4. A general partner of any of 3 a – d above that is managed, arranged, administered, operated or promoted by an **approved person**; or
5. Otherwise exempted by regulations made by the Cayman Islands government under the Companies Law or Limited Liability Companies Law (as applicable).

What does a company caught by the legislation have to do?

A company/LLC falling within the scope of the legislation has responsibility for maintaining the Register and must engage a licensed corporate services provider (such as Collas Crill Corporate Services Limited) to assist them to establish and maintain their Register which must be kept at the Cayman Islands registered office of the company/LLC.

A company/LLC has to take reasonable steps to identify beneficial owners within the scope of the legislation and to enter prescribed details of such beneficial owners on the Register. This will include sending notices to beneficial owners in a prescribed manner and, where relevant, notices to persons a company/LLC has reason to believe know the identify of its beneficial owners.

Who is a beneficial owner under the legislation?

The legislation requires companies/LLCs to take reasonable steps to identify beneficial owners who are termed '**registrable persons**'. These will be individuals (including certain 'deemed individuals') and '**relevant legal entities**'.

Individuals

The Register will record details of beneficial owners being, broadly, individuals holding:

1. (directly or indirectly) more than 25% of the shares or interests of the company or LLC;
2. (directly or indirectly) more than 25% of voting rights of the company or LLC;
3. The right (directly or indirectly) to appoint or remove a majority of the board of directors or LLC managers.

If none of the conditions above are satisfied, an individual will still be a beneficial owner if he has the absolute and unconditional right to exercise or actually exercises, significant influence or control over the relevant company or LLC (other than solely in the capacity of director or manager, professional advisor or professional manager).

If no individual meets the conditions above but the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of those conditions in relation to the company or LLC in their capacity as such, such individual will be a beneficial owner if it has the absolute and unconditional right to exercise or actually exercises significant influence or control over the activities of a trust (or partnership or other entity without separate legal personality) other than solely in the capacity of a director, manager, professional advisor or professional manager.

Deemed Individuals

In addition to actual 'individuals', the legislation also deems the following to be 'individuals' for the purposes of the legislation:

- A corporation sole;
- A government or government department of a country or territory or part of a country or territory;
- An international organisation whose members include two or more countries or territories (of their governments);
- A local authority or local government body.

Relevant Legal Entities

Where a company or LLC is incorporated, formed or registered (including by way of continuation or as a foreign company) in the Cayman Islands and would be considered a beneficial owner of the company if it were an individual, it is a "**relevant legal entity**" and its relevant details must be recorded on the Register.

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What is included on the Register?

Registrable particulars will include, for individuals: full legal name, residential address (and if different an address for service of notices), date of birth, identification document details (passport, drivers licence or other government issued identification) and the date on which the individual became/ceased to become a registrable person in relation to the company. For a company/LLC that is a **relevant legal entity** the information will also include corporate identification information such as registered office, type of entity and governing law.

Companies/LLCs also have to ensure the Register includes certain prescribed notations including where **registrable persons** have not been identified, where confirmation or enquiries relating to prescribed particulars are pending and where **restrictions notices** have been issued/withdrawn or where court orders relating to interests in connection with the legislation have been made.

Who is able to search the Register?

Only the **competent authority** is able to search the Register.

Certain Cayman law enforcement and regulatory authorities can, through a senior official who certifies that the request is properly and lawfully made, request that the **competent authority** conduct a search of a Register. A senior official from the Cayman Financial Crime Unit can also request a search in response to a request from a jurisdiction with which Cayman has entered into an agreement respecting the sharing of beneficial ownership information – currently only the UK.

Enforcement

The legislation is not without teeth – companies/LLCs failing to comply with their obligations to maintain the Register can, following an initial 'grace period' of one year from the date the legislation comes into force, face financial penalties.

Registrable persons who are beneficial owners failing to comply with their obligations to provide particulars or providing materially false information (knowingly or recklessly) can, in addition to receiving **restrictions notices** from the company/LLC in question (which may amongst other things restrict their ability to vote/deal with/transfer their shares/interests) potentially face fines and/or custodial sentences of up to two years (no grace period applicable).

In certain circumstances where a director, manager of an LLC or other officer conducting the management of a company/LLC or other legal entity is found to have consented to an offence or is guilty of wilful default in connection with the offence, such director/manager/officer(s) may be treated as being guilty of the same offence and liable to the same penalty as the company/LLC or legal entity who committed the offence.

Further information and contacts

The above is an overview of the beneficial ownership register regime and does not constitute legal advice.

For further information on requirements regarding companies subject to the regime, see our briefing on [Establishing and Maintaining a Beneficial Ownership Register](#).

Collas Crill is able to assist entities in determining if the beneficial ownership regime applies to them and the steps necessary to fulfil their obligations under Cayman Islands law.

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Collas Crill Corporate Services Limited, as a licensed corporate services provider (including the provision of registered office services), is also able to assist with the establishment and maintenance of the Register where it provides registered office services to a company or LLC.