

The clock is ticking on Cayman's Beneficial Ownership Regime. Are you compliant?

June 2018

If you are weary of all the changes currently happening with respect to regulatory obligations of Cayman Islands companies, we hear you.

As it stands, corporate services providers in the Caymans Islands (**CSPs**), such as Collas Crill Corporate Services Limited (**CCCS**), are already reporting beneficial ownership information for Cayman Islands companies to the Competent Authority but within a closed, secure and non-public system.

There has been some recent press about the UK taking steps to progress discussions about public beneficial ownership registers for its overseas territories.

Setting aside the politics of this, it's likely there will be more discussion and change on the topic of beneficial ownership to come.

Recap on the last few months...

In scope companies have been obliged to establish beneficial ownership registers and report information on their registrable persons and relevant legal entities since the beneficial ownership regime was introduced in July 2017.

Companies and LLCs which were previously out of scope of any reporting requirements (**Exempted Entities**), were required to report their exemptions to the competent authority. Read our January 2018 circular on this [here](#). At that, the form of required notification for Exempted Entities had yet to be announced.

Additional amendment legislation was published in March 2018 (**2018 Amendment**), quickly followed by a consolidated Companies Law (2018 Revision) (**Companies Law**) which helpfully includes all of the beneficial ownership provisions.

The 2018 Amendment set out the long awaited information as to how CSPs are to report information relating to Exempted Entities, as well as the additional supporting information required. It confirms that the information relating to Exempted Entities will be filed in the same manner as other companies (monthly by the CSP via the Competent Authority's secure portal).

The Competent Authority published a new reporting format and data entry guidelines to facilitate reporting of Exempted Entities in April 2018.

In light of all of the changes, all companies and LLCs should review the new exemptions provisions, and ensure they are reporting their information correctly.

Available Exemptions

The Regime applies to all companies (and LLCs) incorporated or registered by way of continuation in the Cayman Islands under the Companies Law, **except** a legal entity or a Subsidiary (more about subsidiaries to follow) of one or more legal entities, any of which is:

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1. Listed on the Cayman Islands Stock Exchange or an approved stock exchange;
2. Registered or holding a licence under a regulatory law (other than a company registered as an excluded person under section 5(4) of the Securities Investment Business Law);
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 the list published by the 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
(**AMLSG List**);
5. A general partner of a vehicle, fund or scheme referred to in paragraph 3) which vehicle, fund or scheme:
 - o is registered or holds a licence under a regulatory law; or
 - o is managed, arranged, administered, operated or promoted by an approved person;
6. 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 (2018 Revision), the Companies Management Law (2018 Revision), the Insurance Law, 2010, Part III of the Mutual Funds Law (2015 Revision) or the Securities and Investments Business Law (2015 Revision); or
7. Exempted by the Regulations.

For the purposes of the Regime, a company (**Company S**) is a **Subsidiary** of one or more legal entities described above if:

1. Such legal entities, separately or collectively, holds in excess of 75 % of the shares or voting rights in Company S;
2. Each such legal entity is a member of Company S and separately or collectively such legal entities have the right to appoint or remove a majority of its board of directors; or
3. It is a subsidiary of one of more legal entities each or which is itself a subsidiary of one or more legal entities described above.

The new reporting template requires Exempted Entities to state the specific section of the law of the applicable exemption, and has additional data fields which are required depending on the exemption. All relevant information as follows must be provided to the CSP:

1. Listed companies will need to confirm that the stock exchange appears on the list of approved stock exchanges, and report the name of the stock exchange.
2. Companies who are holding directly a licence under a regulatory law should supply a copy of this licence. No further information is required to be reported.
3. Companies wishing to rely on the approved person exemption should take note that they meet both criteria:
 - o that they are managed, arranged administered, operated or promoted by an approved person (as defined); and

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- o that entity or entities are being operated a special purpose vehicle, private equity fund, collective investment scheme or investment fund (including where the fund is a Cayman Islands Exempted Limited Partnership);

Note that where the Exempted Entity fits into the criteria of c) above, but is acting as general partner (GP) and it is the GP itself is listed or managed by an approved person then the GP should report as e(i) or e(ii), respectively (as set out below).

When relying on the 245 1 (c) exemption, the name of the approved person and the name of the applicable regulator of the approved person, as well as jurisdiction of regulation of the approved person of the approved person must be reported.

4. If the company is regulated in a jurisdiction with deemed equivalent Anti-Money Laundering legislation and such jurisdiction appears on the AMLSG List, then the name of the relevant regulator and the relevant jurisdiction of the regulator must be reported.
5. If the company is a GP and is listed then it must report as e (i) and confirm the name of the Partnership as well as the name of the relevant stock exchange. If the company is a GP and managed by an approved person, then it must report as e (ii) and confirm the name of the approved person, name of applicable regulator of the approved person, and the jurisdiction of regulation of the approved person.
6. If the company is relying on the licence of a subsidiary company then the company must supply a copy of the licence of the subsidiary and evidence that it holds the shares of that company.
7. If a company has been granted a special exemption by the Cayman Islands Government, then evidence of this special exemption must be supplied, The company must supply evidence that it has been granted special exemption under the regulations, such as order of The Cabinet.

Subsidiaries

If a Subsidiary relies on an exemption on the basis that a parent entity meets one of the exemptions (directly, or indirectly) then the company must report: i) the exemption and name of the parent company; and ii) any additional information as may be required to confirm that the company meets the definition of Subsidiary.

Depending on whether a company is a direct or indirect Subsidiary, it may be necessary to provide a structure chart to the CSP which evidences percentage ownership interests, up to and including the exempted parent.

Ordinary Resident Companies

The Cayman Islands government has launched the Cayman Business Portal (**CBP Portal**) in respect of Ordinary Resident Companies, for use by individual company owners (who do not use a CSP) to register and submit their information directly to the Registrar of Companies, who will handle beneficial ownership reporting on their behalf. The Registrar has also confirmed extended opening hours (to 7:30pm) with staff on hand for business owners who may need assistance with the registration process.

Ordinary Resident Companies who have their registered office with a CSP will not need to use the CBP Portal as their CSP will already be reporting on their behalf. They should however ensure that they have provided the CSP with the information they will required to establish their registers and with up to date information relating to their registrable persons.

The frequency for reporting for Ordinary Resident Companies is annually.

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Ongoing maintenance of BORs

A Company's beneficial ownership register (**BOR**) must at all times state the required particulars of a registrable person or relevant legal entity. If the company becomes aware at any time of a change with respect to a registrable person whose required particulars are stated in the BOR, then the company shall give notice to the registrable person as soon as practicable, requesting confirmation of the change.

Once confirmation of the change is received by the company then the company must instruct the CSP to enter the relevant change in the company's BOR within 30 days.

The company is obliged to ensure that the information provided to the CSP is materially correct and not false, or misleading.

Where the company fails, due to the failure of the registrable person to comply with their obligations and to provide missing particulars for entry into the BOR, then the company must issue a Restrictions Notice to that registrable person, and ensure that a copy of the Restrictions Notice is provided to the competent authority and the CSP within two weeks of issuing it. Companies which believe they will be unable to confirm all relevant particulars of registrable persons prior to the Deadline, should lodge Restrictions Notices against non-responsive registrable persons with the competent authority prior to the Deadline, to avoid possible enforcement action.

Restrictions Notices, once issued, may only be set aside by the Grand Court, and while effective prevent any registrable person from exercising any of the rights with respect to their interests.

Registrable persons which cease to be registrable persons (for example shareholders who no longer meet the ownership threshold, or who cease to be shareholders) remain on the BOR for a period of 5 years following the date on which they ceased to be a registrable person.

If a Company enters a phase of winding up, liquidation or striking off, the BOR continues to be maintained but is only required to be reported every ninety days, until such time as the entity ceases to exist legally, at which time the BOR is no longer reported.

Any motion to wind up, liquidate or strike off a company made prior to the Deadline will not have the effect of avoiding the company's obligations to implement a BOR prior to the Deadline.

Important deadlines and penalties

The deadline for compliance with the Regime is 30 June 2018 (**Deadline**). There are some fairly hefty penalties for non-compliance.

Companies must have established their registers and be reporting in full all relevant particulars for registrable persons prior to the Deadline.

The Regime sets out offences for a company that knowingly and willfully fails to implement a BOR, or fails to supply required particulars for their BOR or for any registrable person to the CSP. Equally the company will commit an offence if it fails to issue and lodge Restrictions Notices with the Competent Authority. An offence if committed, will be liable on summary conviction for each such contravention:

- a) To a fine of twenty-five thousand dollars; and
- b) If the offence is a continuing one, to a fine of five hundred dollars for each day or part day during which the offence continues, up to a maximum of twenty-five thousand dollars.

Individuals will commit an offence if they have received notices to supply information, or a Restrictions Notice from the company, but have failed to supply the requested information, or supplied information which they know to be false, or have recklessly made statements that are false in a material particular.

Individuals may be liable on conviction on indictment to imprisonment for two years or a fine of ten thousand dollars, or both. On summary conviction to imprisonment for a term of twelve months or to a fine of five thousand dollars, or both.

Further Information

The above is an overview of the Regime. It is not intended to be legal advice.

Collas Crill is able to assist Companies and LLCs in determining if the Regime applies to them and the steps necessary to fulfil their obligations under the Regime.

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