

Cayman Islands Beneficial Ownership Regime

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The Cayman Islands has recently passed legislation requiring certain Cayman Islands corporate entities to maintain beneficial ownership registers at their registered offices and for the information contained in such registers to be stored in encrypted form on a secure standalone search platform (the “Search Platform”) being established by the Minister of Financial Services as the competent authority (the “Competent Authority”). The principal purpose of the legislation is to make beneficial ownership information normally held by corporate service providers readily accessible in response to proper and lawful requests from specified law enforcement agencies¹ and not to materially expand existing requirements for such information². The Search Platform will not be publicly accessible and may only be searched by the Competent Authority.

The beneficial ownership legislation will come into force on 1 July 2017 and the purpose of this Alert is to provide advance notice to clients and others who may be affected.

Who must comply and what exemptions are available?

The legislation applies to every company (including LLCs) incorporated or registered by way of continuation in the Cayman Islands unless it is (or is a subsidiary of one or more legal entities each of which is):

- Listed on the Cayman Islands Stock Exchange or another approved stock exchange;
- Registered or licensed under a Cayman Islands regulatory law³; or
- Managed, arranged, administered, operated or promoted by an approved person⁴ as a special purpose vehicle, private equity fund, collective investment scheme or investment fund or a general partner of such a vehicle, fund or scheme.

¹ Presently limited to law enforcement agencies in the Cayman Islands and the UK.

² Under, for example, the Cayman Islands money laundering and terrorism financing regime.

³ Including investment funds registered under the Mutual Funds Law (2015 Revision) and excluded persons registered under the Securities Investment Business Law (2015 Revision).

⁴ An approved person means a person or subsidiary of a person that is (a) regulated, registered or licensed under a Cayman Islands regulatory law or regulated in an approved jurisdiction, or (b) listed on the Cayman Islands Stock Exchange or on another approved stock exchange.

What action is to be taken?

Unless exempted for one of the reasons listed above, each company to which the legislation applies has an obligation to create and maintain a register of its beneficial owners to be kept at its registered office and, in particular, is required to take reasonable steps to identify any individual who is a beneficial owner of the company and all relevant legal entities⁵ in relation to the company.

For the purposes of identifying individuals who are beneficial owners or relevant legal entities, a company is entitled to rely, without further enquiry, on the response of a person or relevant legal entity to a notice sent in good faith by the company, unless the company has reason to believe that the response is misleading or false. The notice shall require the recipient to state, within one month of receipt, whether or not they should be included in the beneficial ownership register of the company and to confirm or correct any particulars included in the notice.

Who is a beneficial owner?

An individual is a beneficial owner of a company if he holds, directly or indirectly, more than 25 per cent of the shares or the voting rights in the company or the right to appoint or remove a majority of the board of directors of the company. If no individual satisfies those requirements, an individual is a beneficial owner if he has the legal right to exercise, or actually exercises, significant direct or indirect influence or control over the company through the ownership structure including any trust or partnership (other than solely in the capacity of a director or manager, professional advisor or professional manager).

Next steps

All Cayman Islands companies should now take steps to determine their status under the legislation and, unless exempted, should proactively identify and provide notices to beneficial owners.

Conyers Dill & Pearman offers a full range of services to assist clients with their obligations under the legislation. For further information please contact the author of this Alert or your usual Conyers Dill & Pearman contact.

⁵ A "relevant legal entity" in relation to a company is one that is incorporated or registered in the Cayman Islands (including by way of continuation or as a foreign company) and would be a beneficial owner of the company if it was an individual.

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