



**ADVISORY**  
Industry Information

# Cayman Islands Introduction of Beneficial Ownership Registers

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Following public consultation during 2016 and early 2017, legislation has been passed which will require Cayman Islands companies (but not partnerships) to maintain registers of beneficial ownership at their registered offices. The Cayman Islands Ministry for Financial Services (or its designate), as the Cayman Islands competent authority (the "Competent Authority"), will establish a non-public platform which will allow it to search information on a company's beneficial ownership provided by the company's corporate services provider upon the request of specified Cayman Islands or UK law enforcement authorities.

## What do companies need to do?

Unless falling within one of the exemptions discussed below, a company must take "reasonable steps" to identify individual "beneficial owners" or "relevant legal entities". For these purposes, a company must give notice to anyone it knows or has reasonable cause to believe is a "beneficial owner" or "relevant legal entity" in relation to it and may also give notice to a person it believes knows the identity of such a person. The notice shall require the persons to whom it is addressed to confirm within one month whether or not they are registrable persons. For the purposes of identifying "beneficial owners" and "relevant legal entities", a company is entitled to rely on the response of a person to such a notice, unless the company has reason to believe that the response is misleading or false. There is no requirement to disclose information protected by legal professional privilege or where disclosure is prohibited by law.

An individual is a beneficial owner of a company if the individual holds, directly or indirectly, more than 25% of the shares or 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 meets these conditions then the law looks to persons who directly or indirectly exercise significant influence or control over the company through direct or indirect ownership or interests, unless such control is solely in the capacity of a director, professional advisor or professional manager.

The company must provide the required particulars of beneficial owners and certain relevant legal entities in respect of a company to its corporate services provider with instructions to enter the required particulars in the company's beneficial ownership register (or, if none are identified, enter a nil return). In line with practice, this information is most likely already held by corporate services providers in the Cayman Islands pursuant to anti-money laundering laws.

## Who can access the information?

The company's corporate service provider will provide the information on the company's register of beneficial owners to the Competent Authority. The Competent Authority is required to establish a non-public platform which will allow it to search this information, which, it can only search upon a lawful request by specified Cayman Islands or UK law enforcement authorities. The information will not be open to public inspection. The Cayman Islands Government has been clear that it will not consider the introduction of a public register of beneficial ownership unless and until that becomes an accepted and implemented international standard.



## Which companies are in scope?

All Cayman Islands companies incorporated or registered by way of continuation under the Companies Law and LLC Law will have to maintain a beneficial ownership register unless they are, or are a subsidiary of one or more legal entities each of which is:

- (a) listed on the Cayman Islands Stock Exchange or other approved stock exchange;
- (b) registered or holding a licence under a "regulatory law" which includes, among others, regulated funds under the Mutual Funds Law and excluded persons under the Securities Investment Business Law;
- (c) managed, arranged, administered, operated or promoted by an "approved person" as a special purpose vehicle, private equity fund, collective investment scheme or investment fund; or
- (d) a general partner of a vehicle, fund or scheme referred to in paragraph (c) that is managed, arranged, administered, operated or promoted by an "approved person".

An "approved person" is a person or a subsidiary of a person that is regulated, registered or holding a licence in the Cayman Islands under a "regulatory law" or regulated in a jurisdiction listed in Schedule 3 of the Money Laundering Regulations (which includes the US and other key investment sector jurisdictions) or listed on the Cayman Islands Stock Exchange or other approved stock exchange. So, for example, a Cayman Islands fund which is not itself registered or holding a licence under a "regulatory law" will nevertheless be exempt if its manager is regulated in, say, the US (or if its manager is the subsidiary of an entity regulated in the US).

## How are the requirements enforced?

If a company is unable to keep its beneficial ownership register up to date due to the failure of a registrable person to provide particulars, the company shall issue a restrictions notice to that person. The effect of a restrictions notice with respect to a relevant interest includes, but is not limited to, making any transfer (or agreement to transfer) void and payment of sums due from the company in respect of the interest being prohibited. A person to whom a restrictions notice is issued may apply to the Grand Court to set aside any restriction imposed by the notice. Companies and other persons, including directors and officers, may be subject to robust penalties for breaches of the new requirements.

## What form does the legislation take?

The legislation is in the form of amendments to the Companies Law and the Limited Liability Companies Law. In addition, amendments to the Companies Management Law expand the definition of "business of company management" to include the function of establishing and maintaining a beneficial ownership register on behalf of a company. Regulations relating to certain aspects of the primary legislation have been proposed and are expected to come into force immediately after the primary legislation. These set out additional matters to be noted in a company's beneficial ownership register (for example, where there is no registrable person, where an identified registrable person's particulars are not confirmed, where a company's investigations are ongoing or where a company has issued a restrictions notice). The Regulations also expand on when a person will be considered to hold an interest in a company directly or indirectly and other matters of interpretation.

## Next steps

The Government intends to introduce the registers and platform by 30 June 2017, in accordance with the Cayman Islands' agreement with the UK, but it is expected that corporate services providers will not be required to provide the information on companies' beneficial ownership registers to the Competent Authority until some months later.

Walkers has a detailed understanding of the legislation having been involved in the consultation process and can assist with all aspects of the new legislation.



## Contacts

For further information please contact:



**Lucy Frew**  
Partner - Cayman Islands  
T: +1 345 814 4676  
E: [lucy.frew@walkersglobal.com](mailto:lucy.frew@walkersglobal.com)



**Andrew Howarth**  
Associate - Cayman Islands  
T: +1 345 814 4561  
E: [andrew.howarth@walkersglobal.com](mailto:andrew.howarth@walkersglobal.com)



**Anne Dolan**  
Director, Corporate Services - Cayman Islands  
T: +1 345 814 7620  
E: [anne.dolan@walkersglobal.com](mailto:anne.dolan@walkersglobal.com)

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