

LEGAL UPDATE

REGISTER OF BENEFICIAL OWNERSHIP OF CAYMAN ISLANDS' COMPANIES AND LLCs

Introduction

In line with the transparency and compliance efforts that made the Cayman Islands one of the early adopters of the Common Reporting Standard (CRS) and FATCA, the Cayman Islands introduced, with effect from 1st July 2017, a beneficial ownership regime (the “**BO Regime**”) which requires each company and limited liability company (LLC) to maintain a register of beneficial owners holding more than 25% of the interests in the company or LLC. The rules are set out in Part XVIIIA (Beneficial Ownership Registers) of the Companies Law (2018 Revision) (the “**Companies Law**”). All companies and LLCs incorporated or registered by way of continuation in the Cayman Islands are collectively referred to herein as “**Companies**”.

In summary, a register is required to be created for Companies covered by the BO Regime, to be maintained at each company’s registered office in the Cayman Islands, in which beneficial ownership information is required to be kept current (the “**BO Register**”). Entries from the BO Register have to be periodically uploaded onto a centralized search platform (the “**Beneficial Ownership Platform**”) which is maintained by the Cayman Islands government authorities and accessible under certain conditions.

Determining which person(s) constitutes a “beneficial owner”

An individual is a “**beneficial owner**”^[i] of a company or LLC if he/she holds, directly or indirectly:

- (a) more than 25% of the shares in the company or interests in the LLC; or
- (b) more than 25% of the voting rights in the company or LLC; or
- (c) the right to appoint or remove a majority of the board of directors of the company or managers of the LLC.

If no person meets the conditions of (a), (b) or (c) above, then a person who has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the company or LLC (through the ownership structure or otherwise), other than solely in the capacity of a director, professional advisor or professional manager^[ii], will be deemed a beneficial owner.

Which Companies are impacted by the BO regime?

Companies required to maintain a BO Register are mainly those that are not already subject to some form of direct regulatory oversight (e.g. subject to regulatory oversight in the Cayman Islands, U.S.A., China, U.K., E.U.) or indirect regulatory oversight (e.g. subject to regulatory oversight by a competent authority in an equivalent jurisdiction). In any case, limited partnerships and foreign companies will not be subject to the BO Regime.

Investment Funds and Investment Fund Managers

Effectively Companies which are structured as Cayman Islands investment funds, whether hedge funds or private equity funds, and general partners of private equity funds, real estate funds, or other investment funds, will not have to maintain a BO Register provided they fall within one of several exemptions contained in the Companies Law (e.g. the investment fund (i) is listed on a recognized stock exchange or (ii) has appointed a fund administrator that is licensed and regulated either in the Cayman Islands or in an equivalent legislation jurisdiction, or (iii) appointed an investment manager that is licensed, registered and regulated either in the Cayman Islands or in an equivalent legislation jurisdiction, or (iv) appointed a sponsor that is licensed and regulated either in the Cayman Islands or in an equivalent legislation jurisdiction).

However Companies which are exempted are nonetheless required to file details outlining the basis for their exemption from the requirement to file details of beneficial owners.

Obligation on each Cayman company:

1. keep its beneficial ownership register at the company's registered office;
2. take reasonable steps to identify any individual who is a beneficial owner of the company;
3. take reasonable steps to identify all **relevant legal entities** that exist in relation to the company.

A “**relevant legal entity**” is a legal entity that (a) is incorporated, formed or registered (including by way of continuation or as a foreign company) in the Cayman Islands; and (b) would be a beneficial owner of the company if it were an individual^[iii].

Duty of beneficial owners and relevant legal entities to supply information

Where a “registrable person” (i.e. any beneficial owner and any relevant legal entity) knows that he or she is a beneficial owner of a Cayman company or a relevant legal entity and (i) has no reason to believe that the person's required particulars are stated in the company's beneficial ownership register, and (ii) the registrable person has not received a notice from the company in respect of its beneficial ownership obligations, the person shall:

- (i) notify the company of the person's status as a registrable person in relation to the company;
- (ii) state the date, to the best of the person's knowledge, on which the person acquired that status; and
- (iii) give the company the required particulars.

Penalties and fines for failing to Comply

A company or LLC that knowingly and wilfully contravenes its obligations with respect to the BO Register will be liable:

- (i) in the case of a first offence, to a fine of CI \$25,000 (circa US \$30,500); or
- (ii) in the case of a second or subsequent offence, to a fine of CI \$100,000 (circa US \$122,000); and
- (iii) Where a company is convicted of a third offence, the Cayman court may order that the company be struck off the register by the Registrar of Companies.

Directors and officers may be guilty of the same offence and liable to the same penalty if non-compliance happens with their consent or connivance, or is attributable to their wilful default.

Sanctions also apply to “registrable persons” that knowingly and wilfully fail to comply with the notice received from the company or LLC, or that knowingly and wilfully make a statement that they know to be false in a material particular, or recklessly make a statement that is false in a material particular. In this case, the sanctions are:

- (i) on conviction on indictment:
 - (a) in the case of a first offence, to a fine of CI \$25,000 (circa US \$30,500); or
 - (b) in the case of a second or subsequent offence, to a fine of CI \$50,000 (circa US \$74,500) or to imprisonment for a term of two years, or to both;
- (ii) on summary conviction, imprisonment for twelve months or a fine of CI\$5,000 (circa US \$6,100), or both.

Dealing with Non-Cooperative Shareholders

If the company or LLC does not receive the information from the registrable persons within a month of requesting them, a **restrictions notice**¹ may be issued to the registrable persons whose particulars are missing, with a copy to the competent authority². If the company or LLC has sent a restrictions notice³, then until it is withdrawn:

- (i) any transfer or agreement to transfer the interest held by the person having received the restrictions notice, or to transfer a right to be issued with any shares, or a right to receive payment of any sums due from the company, is void (other than in a liquidation);
- (ii) no rights are exercisable in respect of the interest (including the right to vote or appoint a proxy), no shares may be issued and, except in a liquidation, no payments may be made of sums due from the company, whether in respect of capital or otherwise; and
- (iii) the BO Register will state ““*restrictions notice issued*” and the date of issue of the notice⁴.

Restrictions may be withdrawn by the company or LLC, if the company or LLC is satisfied with information and/or explanations received, or if the rights of a third party are being unfairly affected by the restrictions notice⁵. The restrictions may also be removed by the Court upon application by an interested party. Finally, a company or LLC may apply to the Court that interests subject to restrictions be sold, with the proceeds to be paid into the Court for the benefit of the beneficial owners⁶.

Confidentiality and Access to Information

Information regarding beneficial owners is protected under the Confidential Information Disclosure Law, 2016⁷. The **Beneficial Ownership Platform** is accessible, however, by the Cayman Islands Government Minister with responsibility for Financial Services⁸ upon formal request by the Financial Intelligence Unit, the Financial Reporting Authority, the Cayman Islands Monetary

Authority, the Tax Information Authority, or another body monitoring compliance with money laundering regulations⁹, or by the Financial Crime Unit of the Royal Cayman Islands Police Service in response to a request from a jurisdiction that has entered into an agreement with the Cayman Islands respecting the sharing of beneficial ownership information.

If you would like to discuss the application of the Beneficial Ownership regime to your particular Cayman Islands entity, please contact your usual Loeb Smith attorney or any of:

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^[i] Section 247 of the Companies Law

^[ii] Section 247(4) of the Companies Law

^[iii] Section 248 of the Companies Law

¹ Section 256(3) of the Companies Law

² According to Section 246(1) of the Companies law, the competent authority is the Minister charged with responsibility for Financial Services.

³ Section 266(1) of the Companies Law

⁴ Section 7(2) of the Beneficial Ownership (Companies) Regulations, 2017

⁵ Section 273 of the Companies Law; in this case, the BO Register will state “restrictions notice withdrawn”.

⁶ Sections 271(1) and 272(1) of the Companies Law

⁷ Section 264 of the Companies Law

⁸ Section 260(1) of the Companies Law

⁹ Section 262(1) of the Companies Law