

The Cayman Islands Beneficial Ownership Regime

Insights - 07/06/2023

The Cayman Islands beneficial ownership regime (**Regime**) came into force on 1 July 2017 and established a secure, centralised platform on which beneficial ownership information of in-scope entities (**ISEs**) must be maintained. The platform is not publicly available and can only be accessed by the competent authority or at the request of certain bodies, such as the Financial Reporting Authority, the Cayman Islands Monetary Authority (**CIMA**), the Anti-Corruption Commission, the Tax Information Authority or any other body assigned responsibility for monitoring compliance with money laundering regulations.

Both ISEs and "Registrable Persons" of ISEs must comply with the Regime.

Certain categories of Cayman legal entities currently fall outside the scope of the Regime. However, even legal entities that are out-of-scope may be Registrable Persons, with obligations under the Regime and material penalties for breach. Therefore, all Cayman legal entities and their direct and indirect owners and controllers should consider if they are affected by the Regime. The Regime also imposes obligations on corporate service providers (**CSPs**), such as registered offices for example.

This Advisory describes which vehicles are in-scope and which are out-of-scope; explains who will be beneficial owners and other Registrable Persons; summarises the duties both of ISEs and those who may hold interests in an ISE; and provides practical guidance as to how to ensure compliance.

Practical steps

The following steps should be taken:

- **For all Cayman legal entities, confirm classification** - all legal entities established in Cayman must formally assess whether they are in-scope and document the results of such

assessment.

- **For Out-of-Scope legal entities** - maintain record that classification analysis has been completed and basis upon which the entity is out-of-scope; provide the registered office with written confirmation of any relevant exemption; implement process to review classification on a regular basis; respond to requests for confirmation from the registered office provider; consider obligation as Registrable Person (see below)
- **For ISEs only** - instruct the registered office to establish a private beneficial ownership register (**Register**)
- **For ISEs only, identify the individuals or relevant legal entities who are Registrable Persons** - (and send notices to persons the ISE considers may be Registrable Persons if necessary) and provide the required particulars to the registered office (see "Obligations of ISEs" for more details)
- **For all individuals and Cayman legal entities, whether ISEs or out of scope, consider Registrable Person status** - irrespective of whether they are in-scope or not, individuals and legal entities incorporated, formed or registered (including as a foreign company) in Cayman should determine if they directly or indirectly own an interest in a Cayman company, LLC, or LLP. If so, they should try to determine if the company, LLC, or LLP is an ISE and if the size or nature of their interest may make them a Registrable Person. Cayman entities should document the results of such assessment (see "Obligations of Registrable Persons" for more details)
- **For all individuals and Cayman legal entities, whether ISEs or out of scope** - proactively contact any ISE in respect of which such person believes he, she or it may be a Registrable Person
- **For all individuals and Cayman legal entities, whether ISEs or out of scope** - respond within 30 days to any legitimate notices received from an ISE requesting particulars of Registrable Persons

Classification - out-of-scope

Certain categories of Cayman legal entities fall outside the scope of the Regime:

- Some types of partnerships (including exempted limited partnerships but not including limited liability partnerships)
- Trusts (including unit trusts)
- Bodies that are not legal persons
- Foreign entities that register as "foreign companies" in Cayman

The following are not ISEs:

- Entities listed on an approved stock exchange (including the Cayman Islands Stock Exchange)
- Companies and LLCs that are licensed or registered with CIMA under certain regulatory laws, including the Mutual Funds Act, the Private Funds Act, the Securities Investment Business Act and the Banks and Trust Companies Act
- Entities regulated in a jurisdiction designated as having equivalent measures for combating money laundering and the financing of terrorism to those of the Cayman Islands
- Entities 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 (a **Managed Entity**)
- Entities that are general partners of Managed Entities
- Entities that hold directly a legal or beneficial interest in the shares of a legal entity which holds a licence under certain regulatory laws, including the Banks and Trust Companies Act, the Companies Management Act, and the Securities Investment Business Act
- Entities that are subsidiaries of legal entities that fall within the above categories, e.g., companies whose out-of-scope parent(s) hold 75% or more of the shares or voting rights of the subsidiary, or the right to appoint and remove a majority of the board of the subsidiary; or companies that are themselves subsidiaries of such a subsidiary

For the Managed Entity exemption, an "approved person" is a person or a subsidiary of a person that is (i) regulated, registered or licensed under a Cayman regulatory law or regulated in a jurisdiction designated as having equivalent measures for combating money laundering and the financing of terrorism to that of the Cayman Islands, or (ii) listed on the Cayman Islands Stock Exchange or an approved stock exchange. Companies that have appointed directors registered under the Directors Registration and Licensing Act will not, for that reason alone, qualify for the Managed Entity exemption.

Classification - in-scope

All Cayman companies, LLCs, and LLPs (and those registered by way of continuation in Cayman), including ordinary companies, exempted companies and exempted segregated portfolio companies are in-scope, unless they fall within an out-of-scope category as described above.

The types of companies that are in-scope include:

- personal holding companies
- private trading companies
- joint venture companies
- holding companies and subsidiaries in private corporate groups
- small unregulated funds that are self-administered or managed by a non-regulated manager
- some carry vehicles
- private unlicensed businesses trading in Cayman

Who is a Beneficial Owner?

Beneficial owners are individuals who, in respect of an ISE:

- hold, directly or indirectly, 25% or more of the ISE's shares/equity interests/partnership interests
- hold, directly or indirectly, 25% or more of the voting rights of the ISE
- hold, directly or indirectly, the right to appoint or remove a majority of the ISE's board of directors (or equivalent office-holders for an LLC or LLP, such as its managers for example)
- have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over the ISE
- have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over a trust, partnership or other entity which owns the ISE

Regulations provide details of what indirect ownership means.

What is a Relevant Legal Entity?

Relevant legal entities are legal entities incorporated, formed or registered (including by way of continuation or as a foreign company) in Cayman that would be Beneficial Owners if they were individuals. Partnerships, trusts and other bodies that are not legal persons are not relevant legal entities.

Who is a Registrable Person?

Registrable Persons in respect of an ISE are (i) beneficial owners, and (ii) relevant legal entities that hold an interest in the ISE or meet one of the above ownership and control conditions

directly in respect of the ISE and through which any beneficial owner or relevant legal entity indirectly owns an interest in the ISE.

The result is that, in practice, while there may be multiple relevant legal entities in respect of an ISE, only the relevant legal entities at the level immediately above the ISE will be Registrable Persons. Individuals, on the other hand, will be Registrable Persons (as beneficial owners) even where their interest in the underlying ISE is held indirectly through a majority interest in multiple entities.

Obligations of ISEs

ISEs have the most extensive obligations. Each ISE must:

- engage a licensed Cayman CSP to maintain an adequate, accurate and current beneficial ownership register for the ISE at the ISE's registered office in Cayman
- take reasonable steps to identify individual beneficial owners and relevant legal entities
- give notice to all beneficial owners and relevant legal entities requiring such persons to confirm their status as Registrable Persons and their registration details within one month of the notice
- provide to its CSP the required particulars of such Registrable Persons once those particulars have been confirmed
- instruct the CSP to enter the required details of Registrable Persons into the register, or a nil return
- upon becoming aware of any relevant change to the particulars of a Registrable Person stated in its register, give notice to the Registrable Person as soon as reasonably practicable requesting confirmation of the change. For this purpose a relevant change will occur if the Registrable Person ceases to be a Registrable Person or there is a change in their particulars

Obligations of Registrable Persons

Beneficial owners and relevant legal entities also have their own obligations. They must respond to any notice received from an ISE; if they are Registrable Persons, they must confirm or correct their details; and they must state whether or not they know the identity of a Registrable Person or any person likely to have that knowledge.

Registrable Persons have a proactive obligation to notify an ISE that they are Registrable Persons, even where they have not received a notice from the ISE. Similarly, Registrable Persons must proactively notify an ISE if they know of any change in their status or particulars. Registrable Persons must ensure the beneficial ownership register of an ISE contains details of

an unexpired valid passport, driver's license or other government issued document (and provide details of any replacements to the CSP once available).

Obligations of CSPs

An ISE may engage its CSP in order to comply with the Regime. Where a CSP is engaged for this purpose, direct obligations are imposed on the CSP to:

- establish and maintain private beneficial ownership registers on behalf of ISEs
- give notice to an ISE if it has failed to comply with certain obligations, including keeping its register up to date or if statements have been made that are false, misleading or deceptive
- issue restriction notices to shareholders/members in order to compel them to provide information to enable an ISE to identify its beneficial owners and send a copy to the Registrar within two weeks of issuing such notices
- regularly provide beneficial ownership information to the Registrar
- respond to additional information requests from the Registrar

Offences and fines

ISEs and their directors/managers who knowingly and wilfully breach the Regime commit criminal offences and may incur significant fines of up to CI\$100,000. Similarly, persons who are Registrable Persons in relation to an ISE under the Regime and do not provide timely and complete information or knowingly make false statements also commit an offence and may be liable to fines of up to CI\$50,000 as well as imprisonment.

In addition to these penalties, a CSP is required to serve a defaulting Registrable Person with a restrictions notice (copied to the Cayman authorities), the effect of which is to freeze dealings in the relevant interests. The Registrar is also empowered to impose additional administrative fines for non-compliance with the regime of up to CI\$25,000 per breach. The Beneficial Ownership Enforcement Manual published by the Cayman Islands General Registry contains further information about the administrative fines regime.

Developments

There are continuing consultations on extending the scope of the Regime to include exempted limited partnerships and limited liability partnerships, as well as the creation of a single Act to consolidate the Regime, along with an ongoing review with respect to information rights and the possibility of a public register of beneficial ownership. In this regard, the Court of Justice of the European Union recently ruled that the legal provision whereby information on the

beneficial ownership of certain entities is accessible to any member of the general public is invalid. It remains to be seen what impact (if any) this ruling will have on the proposal to introduce public beneficial ownership registers in the Cayman Islands.

Should you have any questions, please reach out to your usual Ogier contact or any member of our team included here.

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