

Cayman Islands enacts legislation on beneficial ownership information

Publication - 10/04/2017

The Cayman Islands has enacted legislation that requires certain Cayman vehicles to maintain in Cayman a non-public register of beneficial ownership interests. Some common vehicles are excluded, such as most types of investment funds. The legislation is not yet in force.

The legislation follows through on commitments made to the United Kingdom and is consistent with Cayman's strategy of meeting or exceeding global standards on transparency and international co-operation, while safeguarding the privacy of legitimate transactions.

Who is affected?

The legislation affects companies incorporated in Cayman under the Companies Law or the Limited Liability Companies Law, except:

- i. companies listed on an approved stock exchange;
- ii. funds registered with CIMA under the Mutual Funds Law;
- iii. companies registered with CIMA as excluded persons under the Securities Investment Business Law such as many Cayman-incorporated investment managers;
- iv. other licensed companies in Cayman such as banks, trust companies and insurance managers;
- v. companies managed, arranged, administered or promoted by an entity regulated or listed in Cayman or an approved jurisdiction, where the company is a special purpose company, a private equity or collective investment scheme, an investment fund, or the general partner of a Cayman exempted limited partnership; and
- vi. subsidiaries of companies that fall within the above categories.

Exempted limited partnerships and registered foreign companies are not affected.

What is the effect of the legislation?

Companies that do not fall within an exemption must engage a licensed Cayman corporate services provider to maintain a non-public beneficial ownership register at the company's registered office in Cayman. This register will be accessible only by a designated Cayman governmental authority through a secure search platform.

The register must contain current information on the company's beneficial owners or "relevant legal entities" in an ownership chain. To achieve this:

1. The company must identify:
 - i. individuals who directly or indirectly hold 25% or more of the company's shares;
 - ii. individuals who directly or indirectly hold 25% or more of the voting rights of the company;
 - iii. individuals who directly or indirectly have the right to appoint or remove a majority of the company's board of directors;
 - iv. individuals who have the absolute and unconditional right to exercise, or actually exercise, significant influence or control over the company; and

v. each "relevant legal entity", being a legal entity in an ownership chain that meets any of the above ownership and control criteria in relation to the company.

Certain trust arrangements are also covered.

2. The company must identify any beneficial owner or relevant legal entity in an ownership chain that (a) meets any of the above ownership and control criteria in respect of the company and (b) only holds an interest in the company through relevant legal entities.

All other beneficial owners and relevant legal entities (ie. other than those falling under 2(a) and (b) above) are "registrable persons". Registrable persons therefore include:

- i. all individual beneficial owners who do not hold a beneficial interest in the company through a relevant legal entity;
 - ii. any relevant legal entities that directly hold shares in the company; and
 - iii. the highest relevant legal entity in an ownership chain.
3. Unless it already has this information, the company must give notice to all registrable persons requiring such persons to confirm their status as registrable persons and their registration details within one month of the notice. A separate provision requires a person who knows it is a registrable person proactively to notify the company of its status, even where it has not received a notice from the company.

The details required are substantially the same as are required for individuals and companies under Cayman's existing anti-money laundering regime, so should be familiar.

4. The register must be updated with this information (or a nil return, if a company has no beneficial owners or relevant legal entities).

Companies and their directors who knowingly and wilfully breach the legislation may incur significant fines.

Similarly, registrable persons who do not provide timely and complete information commit an offence and may be fined. A company is also 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.

Who may access the beneficial ownership register?

The beneficial ownership information on the register will be maintained at the registered office in Cayman but will also be held securely on a search platform provided by, and accessible only to, the competent authority in Cayman. The platform will not be publicly accessible. Access will only be available to the competent authority upon formal request from a specified list of governmental authorities in the context of financial crime, money laundering, and regulatory or tax matters, including in response to a legitimate request from a jurisdiction which has entered into an agreement with the Cayman Islands government in respect of the sharing of beneficial ownership information. Currently this is limited to the United Kingdom.

Does anything need to be done now?

No action is required at this time.

The Cayman Islands and UK governments have previously agreed an implementation date of 30 June 2017. However, the IT infrastructure required to comply with the secure access

provisions under the legislation may delay full implementation. We expect the legislation may be brought into effect on a phased basis. The legislation also anticipates additional regulations and guidance around some of the key concepts to ensure it is workable and achieves its objectives.

We would be happy to discuss the implications of this new legislation for your business. Please contact your usual Ogier attorney or any of the partners listed on the right.

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Meet the Authors



Nick Rogers
Partner
Cayman Islands
nick.rogers@ogier.com
T+1 345 815 1844
M+1 345 525 5159



Giorgio Subiotto
Partner
Cayman Islands
giorgio.subiotto@ogier.com
T+1 345 815 1872
M+1 345 516 9071

Key Contacts



James Bergstrom
Partner
Cayman Islands
james.bergstrom@ogier.com
T+1 345 815 1855
M+1 345 516 9077



Angus Davison
Partner
Cayman Islands
angus.davison@ogier.com
T+1 345 815 1788
M+1 345 516 2008



Kate Hodson 凯特·赫臣
Partner 合伙人
Hong Kong, British Virgin Islands
kate.hodson@ogier.com
T+852 3656 6049
M+852 9199 5699



Bradley Kruger
Partner
Cayman Islands
bradley.kruger@ogier.com
T+1 345 815 1877
M+1 345 516 2198



Nicholas Plowman 包乐文
Partner 合伙人
Hong Kong, British Virgin Islands
nicholas.plowman@ogier.com
T+852 3656 6014
M+852 6390 5664

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