

The Cayman Islands Beneficial Ownership Regime

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The Cayman Islands beneficial ownership regime (**Regime**) comes into force on 1 July 2017. It establishes a secure, non-public centralised platform on which beneficial ownership information of in-scope companies (**ISCs**) must be maintained. From 1 July 2017, both ISCs and "Registrable Persons" of ISCs must comply with the Regime.

Many categories of Cayman legal entities 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 shareholders should consider if they are affected by the Regime.**

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

Practical steps

The following steps should be taken now:

- **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; 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 ISCs only, instruct the registered office to establish a beneficial ownership register.**
- **For ISCs only, identify the individuals or relevant legal entities who are Registrable Persons** (and send notices to persons the ISC considers may be Registrable Persons if necessary) and provide the required particulars to the registered office (see "Obligations of ISCs" for more details).
- **For all individuals and Cayman legal entities, whether ISCs 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 or LLC. If so, they should try to determine if the company or LLC is an ISC and if the size of their interest may make them a Registrable Person. Cayman

companies should document the results of such assessment (see "Obligations of Registrable Persons" for more details).

- For all individuals and Cayman legal entities, whether ISCs or out of scope, proactively contact any ISC in respect of which such person believes he, she or it may be a Registrable Person.
- For all individuals and Cayman legal entities, whether ISCs or out of scope, respond within 30 days to any legitimate notices received from an ISC requesting particulars of Registrable Persons.

Classification - out-of-scope

Many categories of Cayman legal entities fall outside the scope of the Regime.

- Partnerships (including exempted limited partnerships) are not covered by the Regime.
- Trusts (including unit trusts) are not covered by the Regime.
- Bodies that are not legal persons are not covered by the Regime.
- Foreign entities that register as "foreign companies" in Cayman are not ISCs.

The following Cayman companies (including LLCs) are not ISCs:

- companies listed on an approved stock exchange;
- companies that are registered with CIMA under the Mutual Funds Law;
- other licensed companies in Cayman such as banks, trust companies and insurance managers;
- companies managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund (a **Managed Entity**);
- companies that are general partners of Managed Entities; and
- companies that are subsidiaries of companies that fall within the above categories, i.e. companies whose out-of-scope parent(s) hold more than 75% 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 an approved jurisdiction, or (ii) listed on an approved stock exchange.

We expect considerable attention to be focused on the Managed Entity exemption, as terms such as "managed", "administered", "special purpose vehicle" are construed. For example Cayman investment funds that have delegated discretionary management to SEC registered investment advisers in the US or FCA regulated managers in the UK will be exempt as Managed Entities. Other scenarios may not be so clear-cut. Companies that have appointed directors registered under the Directors Registration and Licensing Law will not, for that reason alone, qualify for the Managed Entity exemption.

Classification – in-scope

All Cayman companies and LLCs incorporated in Cayman or 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 expected to be 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; and
- private unlicensed businesses trading in Cayman.

Who is a Beneficial Owner?

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

- hold, directly or indirectly, more than 25% of the company's shares;
- hold, directly or indirectly, more than 25% of the voting rights of the company;
- hold, directly or indirectly, the right to appoint or remove a majority of the company's board of directors; or
- have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over the company.
- 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 company.

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 a company are (i) beneficial owners, and (ii) relevant legal entities that hold an interest in the company or meet one of the above ownership and control conditions directly in respect of the company and through which any beneficial owner or relevant legal entity indirectly owns an interest in the company.

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

through a majority interest in multiple entities.

Obligations of ISCs

ISCs have the most extensive obligations. Each ISC must:

- engage a licensed Cayman corporate services provider (CSP) to maintain an adequate, accurate and current beneficial ownership register for the ISC at the ISC'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; and
- upon becoming aware of any 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.

Obligations of Registrable Persons

Beneficial owners and relevant legal entities also have their own obligations. They must respond to any notice received from an ISC; 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 ISC that they are Registrable Persons, even where they have not received a notice from the company. Similarly, Registrable Persons must proactively notify an ISC if they know of any change in their status or particulars.

Thus it is not the case that the board of directors of a Cayman company can determine that they are out of scope and automatically proceed as if the Regime does not apply to them.

Default

ISCs and their directors who knowingly and wilfully breach the Regime commit criminal offences and may incur significant fines. Similarly, persons who are Registrable Persons in relation to an ISC under the Regime and do not provide timely and complete information or knowingly make false statements also commit an offence.

In addition to these penalties, an ISC 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.

Security of Information

Information held on the centralised platform is (i) not available to the public, (ii) air-gapped

with no external connectivity to enhance security and (iii) accessible only by the Ministry of Financial Services upon formal lawful request from specific governmental authorities (currently only Cayman and the UK) in relation to financial crime, money laundering and regulatory or tax matters.

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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