

Cayman Islands Beneficial Ownership Regime 开曼群岛实益拥有权制度

The Cayman Islands has recently passed legislation requiring certain Cayman Islands corporate entities to maintain beneficial ownership registers at their registered offices and for the information contained in such registers to be stored in encrypted form on a secure standalone search platform (the “Search Platform”) being established by the Minister of Financial Services as the competent authority (the “Competent Authority”). The principal purpose of the legislation is to make beneficial ownership information normally held by corporate service providers readily accessible in response to proper and lawful requests from specified law enforcement agencies¹ and not to materially expand existing requirements for such information². The Search Platform will not be publicly accessible and may only be searched by the Competent Authority.

The beneficial ownership legislation will come into force on 1 July 2017 and the purpose of this Alert is to provide advance notice to clients and others who may be affected.

开曼群岛近期通过法例，规定某些开曼群岛企业实体必须在其注册办事处存置实益拥有权登记册，而该等登记册所载的资料必须以加密形式储存于由金融服务部长作为主管部门（下称“主管部门”）设立的安全且独立的搜索平台（下称“搜索平台”）。该法例的主要目的，是要令指定执法机构¹在提出适当且合法的要求后，可随时获取通常由企业服务提供者持有的实益所有权资料，而非大幅扩展有关该等资料的现行规定²。搜索平台不予公众使用，仅供主管部门搜索。

实益拥有权法例将于2017年7月1日生效，本提醒通告旨在向或受影响的客户及其他人士作出预先通知。

¹ Presently limited to law enforcement agencies in the Cayman Islands and the UK.
目前仅限于开曼群岛及英国的执法机构。

² Under, for example, the Cayman Islands money laundering and terrorism financing regime.
在（例如）开曼群岛反洗钱及恐怖主义融资制度下。

Who must comply and what exemptions are available?

The legislation applies to every company (including LLCs) incorporated or registered by way of continuation in the Cayman Islands **unless** it is (or is a subsidiary of one or more legal entities each of which is):

- Listed on the Cayman Islands Stock Exchange or another approved stock exchange;
- Registered or licensed under a Cayman Islands regulatory law³; or
- Managed, arranged, administered, operated or promoted by an approved person⁴ as a special purpose vehicle, private equity fund, collective investment scheme or investment fund or a general partner of such a vehicle, fund or scheme.

What action is to be taken?

Unless exempted for one of the reasons listed above, each company to which the legislation applies has an obligation to create and maintain a register of its beneficial owners to be kept at its registered office and, in particular, is required to take reasonable steps to identify any individual who is a beneficial owner of the company and all relevant legal entities⁵ in relation to the company.

For the purposes of identifying individuals who are beneficial owners or relevant legal entities, a company is entitled to rely, without further enquiry, on the response of a person or relevant legal entity to a notice sent in good faith by the company, unless the company has reason to believe that the response is misleading or false. The notice shall require the recipient to state, within one month of receipt, whether or not they should be included in the beneficial ownership register of the company and to confirm or correct any particulars included in the notice.

谁必须遵守和有哪些豁免情况？

该法例适用于所有在开曼群岛注册成立或以存续方式登记的公司（包括有限责任公司），除非其本身（或其是一间或多间法人实体的附属公司，而该等法人实体均属以下情况）：

- 于开曼群岛证券交易所或其他经核准证券交易所上市；
- 在开曼群岛监管法规下登记或持牌³；或
- 由获批准人士⁴管理、安排、管治、经营或推动作为特殊目的公司、私募基金、集体投资计划或投资基金或上述公司、基金或计划的普通合伙人。

将采取什么行动？

除非因上述任何原因获得豁免，否则该法例适用的所有公司均有责任设立并在其注册办事处存置其实益拥有人的登记册，及（尤其是）必须采取合理步骤识别任何个人为公司之实益拥有人以及涉及公司的所有相关法人实体⁵。

为了识别属实益拥有人的个人或相关法人实体，公司有权倚赖（没进一步查询）该人士或相关法人实体就该公司真诚发出之通告所作出的回应，除非公司有理由相信其回应含有误导或虚假成分。相关通告应要求收件人在收到通告后的一个月内说明其是否应被列入公司之实益拥有权登记册中，并确认或更正通告所载的任何详细资料。

³ Including investment funds registered under the Mutual Funds Law (2015 Revision) and excluded persons registered under the Securities Investment Business Law (2015 Revision).

包括根据《互惠基金法（2015年修订本）》登记的投资基金和根据《证券投资商业法（2015年修订本）》登记的豁免人士。

⁴ An approved person means a person or subsidiary of a person that is (a) regulated, registered or licensed under a Cayman Islands regulatory law or regulated in an approved jurisdiction, or (b) listed on the Cayman Islands Stock Exchange or on another approved stock exchange.

获批准人士指该人士或其附属公司(a)受开曼群岛监管法规规管或根据开曼群岛监管法规登记或持牌，或在经核准司法管辖区受规管，或(b)于开曼群岛证券交易所或其他经核准证券交易所上市。

⁵ A "relevant legal entity" in relation to a company is one that is incorporated or registered in the Cayman Islands (including by way of continuation or as a foreign company) and would be a beneficial owner of the company if it was an individual.

涉及一间公司的“相关法人实体”指在开曼群岛（包括以存续方式或作为外国公司）注册成立或登记的公司，若其为个人，则将会是该公司的实益拥有人。

Who is a beneficial owner?

An individual is a beneficial owner of a company if he holds, directly or indirectly, more than 25 per cent of the shares or the 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 satisfies those requirements, an individual is a beneficial owner if he has the legal right to exercise, or actually exercises, significant direct or indirect influence or control over the company through the ownership structure including any trust or partnership (other than solely in the capacity of a director or manager, professional advisor or professional manager).

Next steps

All Cayman Islands companies should now take steps to determine their status under the legislation and, unless exempted, should proactively identify and provide notices to beneficial owners.

Conyers Dill & Pearman offers a full range of services to assist clients with their obligations under the legislation. For further information please contact your usual Conyers Dill & Pearman contact.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

谁是实益拥有人？

若某人士直接或间接持有一间公司超过25%的股份或投票权或有权委任或罢免该公司董事会大部分董事，则其为该公司的实益拥有人。如无一人满足该等条件，某人士是该公司的实益拥有人若其透过拥有权结构（包括任何信托或合伙，而非仅以董事或经理、专业顾问或专业经理的身份），具有法律权利对公司行使或实际行使重大（直接或间接）的影响力或控制权。

下一步措施

所有开曼群岛公司现应采取行动确定其在该法例下的状况，除非获得豁免，否则应主动识别实益拥有人并向其发出通告。

康德明律师事务所可提供全方位服务，协助客户履行其在该法例下的责任。如需更多资料，请联系阁下于康德明律师事务所的日常联络人。

本文并非法律意见，其内容亦非详尽无遗，只可作为概览及一般参考资料。感谢您的垂阅！

FOR FURTHER INFORMATION, PLEASE CONTACT:

Conyers Dill & Pearman
29th Floor
One Exchange Square
8 Connaught Place
Central
Hong Kong
Tel: +852 2524 7106
Fax: +852 28459268
Email: hongkong@conyersdill.com
Web: www.conyersdill.com

欲了解更多资讯，请联络：

康德明律师事务所
香港中环康乐广场8号
交易广场1期29楼
电话: +852 2524 7106
传真: +852 2845 9268
电邮: hongkong@conyersdill.com
网址: www.conyersdill.com

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