

## Cayman Islands Beneficial Ownership Regime Update 开曼群岛实益拥有权制度新要求

Since our [Cayman Islands Beneficial Ownership Regime Alert in May 2017](#), the Cayman Islands Government has amended the beneficial ownership regime under the *Companies (Amendment) (No. 2) Law, 2017* and the *Limited Liability Companies (Amendment) (No.3) Law, 2017*<sup>1</sup> and has issued further regulations under *The Beneficial Ownership (Companies) (Amendment) Regulations, 2018*<sup>2</sup> and *The Beneficial Ownership (Limited Liability Companies) (Amendment) Regulations, 2018* (together the “Amending Laws”). The Amending Laws modify who must comply with the beneficial ownership regime and impose new filing obligations on out of scope companies. Consequently, all companies and limited liability companies (“companies”) registered in the Cayman Islands should review their obligations under the beneficial ownership regime and ensure that they are in compliance by the deadline of 30 June 2018.

### What companies are out of scope and thus excluded from the requirement to keep a Beneficial Ownership Register?

Companies falling out of the scope of the beneficial ownership regime are not required to prepare and maintain a beneficial ownership register, but they are required to file prescribed details of the exemption applicable to them with the competent authority of the Cayman Islands.

继我们于2017年5月刊发开曼群岛实益拥有权制度的提示简报后，开曼群岛政府对《2017年公司（修订）法》（第2号）和《2017年有限责任公司（修订）法》（第3号）<sup>1</sup>中的实益拥有权制度进行了修订，并进一步颁布了《2018年实益拥有权（公司）（修订）法规》和《2018年实益拥有权（有限责任公司）（修订）法规》<sup>2</sup>（统称“修订法规”）。修订法规对必须遵守实益拥有权制度的实体范围作了修订，并对豁免实体规定了新的备案义务。因此，在开曼群岛登记的所有公司和有限责任公司（下称“公司”）均应重新审视自己于实益拥有权制度下的义务，确保于2018年6月30日（截止日期）前遵守新规定。

### 获修订法规豁免而无需保存实益所有权登记册的公司有哪些？

在实益拥有权制度下获豁免公司无需编制和保存实益所有权登记册，但必须向开曼群岛主管当局提交其所适用之豁免的具体说明。

<sup>1</sup> In force date 13 December 2017

于2017年12月13日生效

<sup>2</sup> In force date 2 March 2018

于2018年3月2日生效

The categories of entities falling out of scope of the beneficial ownership regime have been amended. The list now includes a legal entity or subsidiary of one or more legal entities, any of which is:

- (a) listed on the Cayman Islands Stock Exchange or an approved stock exchange;
- (b) registered or holding a licence under a regulatory law<sup>3</sup> (other than a company registered as an excluded person under Section 5(4) of the *Securities Investment Business Law (2015 Revision)*);
- (c) 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;
- (d) regulated in a jurisdiction deemed to have an equivalent Anti-Money Laundering framework to the Cayman Islands by the Anti-Money Laundering Steering Group<sup>4</sup>;
- (e) a general partner of a vehicle, fund or scheme referred to in paragraph (c) which vehicle, fund or scheme: (i) is registered or holds a licence under a regulatory law; or (ii) is managed, arranged, administered, operated or promoted by an approved person; or
- (f) holding directly a legal or beneficial interest in the shares of a legal entity which holds a licence under the *Banks and Trust Companies Law (2018 Revision)*, the *Companies Management Law (2018 Revision)*, the *Insurance Law (2010 Revision)*, Part III of the *Mutual Funds Law (2015 Revision)* or the *Securities Investment Business Law (2015 Revision)* ("SIBL").

## Out of scope exemptions clarified

Please note that:

- (a) paragraphs d, e(i), and f above are new exemptions for the purposes of the beneficial ownership regime; and
- (b) entities registered as an excluded person under Section 5(4) of SIBL no longer: (i) receive the benefit of the out of scope company exemption; or (ii) fall within the definition of an approved person.

经修订的实益拥有权制度规定的豁免公司类别包括符合以下条件的法律实体或者一个或多个法律实体的附属公司：

- (a) 在开曼群岛证券交易所或其他获认可的证券交易所上市；
- (b) 根据一项监管法规<sup>3</sup>注册或持有牌照（不包括根据《证券投资商业法》（2015年修订本）第5(4)条登记为除外人士的实体）；
- (c) 是由获核准人士管理、安排、提供行政管理、营运或发起的特殊目的实体、私募股权基金、集体投资计划或投资基金（该等实体、基金或计划亦可为开曼群岛豁免有限合伙）；
- (d) 受反洗钱指导小组视为拥有与开曼群岛同等反洗钱(AML)法律架构的司法管辖区<sup>4</sup>所规管；
- (e) (c)段中提及的实体、基金或计划的普通合伙人，而该实体、基金或计划：(i) 根据一项监管法规注册或持有牌照；或 (ii) 由获核准人士管理、安排、提供行政管理、营运或发起；或
- (f) 在根据《银行与信托公司法》（2018年修订）、《公司法》（2018年修订）、《保险法》（2010年修订）、《互惠基金法》（2015年修订）第三部或《证券投资业务法》（2015年修订）（下称“SIBL”）持有牌照之法律实体的股份中直接持有法定或实益权益。

## 豁免遵守修订法规的说明

敬请留意：

- (a) 上述d、e(i)和f段为实益拥有权制度新增的豁免；及
- (b) 根据SIBL第5(4)条登记为除外人士的实体不再：(i) 获得规定范围外实体可享有的获豁免；或 (ii) 属于修订法规定义的获核准人士。

<sup>3</sup> Excludes for this purpose the *Directors Registration and Licensing Law, 2014* 就此而言，不包括《2014年董事注册和发牌法》

<sup>4</sup> It should be noted that Mexico, Panama, and Turkey have been removed from the list of approved jurisdictions since the publication of our May 2017 alert.

请留意，在我们于2017年5月刊发提示简报后，墨西哥、巴拿马和土耳其已自获批准司法管辖区的名单中移除。

Furthermore, a legal entity will not be considered:

- (i) to be operated or managed by an approved person solely as a consequence of the entity having appointed an individual who is an employee of a legal entity which holds a licence under a regulatory law as a director; or
- (ii) to be managed, arranged, administered, operated or promoted by an approved person solely as a consequence of that entity having appointed an approved person to provide its registered office in the Cayman Islands.

## New Filing Requirements for out of scope companies

The Amending Laws require companies that are out of scope of the beneficial ownership regime to provide their registered office provider with a written confirmation of the nature of the exemption applicable to them including certain prescribed information. <sup>5</sup>Registered office providers are under an obligation to provide all relevant information from the written confirmation to the competent authority of the Cayman Islands. Any change to the written confirmation must be notified to the company's registered office provider within one month of the company becoming aware of such changes together with instructions for the registered office provider to file the relevant update with the competent authority of the Cayman Islands.

All companies that had previously made a determination that they were out of scope will need to re-examine that determination in light of the changes described above to confirm that they remain out of scope or are now in scope.

## Next Steps

The beneficial ownership regime requires action from **all** companies registered in the Cayman Islands. Analysis should be undertaken by each company to determine whether it is in scope or out of scope of the beneficial ownership regime.

Where in scope, the company should prepare a beneficial ownership register, file the same with its registered office provider and instruct its registered office provider to up-load such register to the search platform maintained by the competent authority of the Cayman Islands. On an ongoing basis, the in-scope company must notify its registered office provider if there are any changes to its beneficial ownership register.

此外，法律实体将不再：

- (i) 仅因其指定根据一项监管法规而持有牌照的法律实体的雇员担任其董事而被视为由获核准人士营运或管理；或
- (ii) 仅因其指定一名获核准人士向其提供开曼群岛注册办事处而被视为由获核准人士管理、安排、提供行政管理、营运或发起。

## 对豁免公司的新备案要求

修订法规要求实益拥有权制度的豁免公司向其注册办事处供应商提供一份书面确认，说明其所适用的豁免性质（包括若干规定的信息<sup>5</sup>）。注册办事处供应商须将书面确认中的所有相关信息呈交予开曼群岛主管当局。对书面确认的任何变更必须在公司知悉有关变更后的一个月內通知公司注册办事处供应商，并同时指示注册办事处供应商向开曼群岛主管当局就相关变更进行备案。

所有先前已确定属于规定范围外的公司须根据上述变更重新进行检查，以确认是否仍属规定范围外的公司。

## 后续步骤

实益拥有权制度要求在开曼群岛注册的所有公司均采取行动。各公司应进行分析，以确定是否在实益拥有权制度的涵盖范围内。

倘属规定范围内，公司须编制实益拥有权登记册，并交予其注册办事处供应商，并指示其将登记册上传至开曼群岛主管当局维持的搜索平台。其后，规定范围内的公司必须持续向其注册办事处供应商通知有关实益拥有权登记册的任何变更。

<sup>5</sup> The prescribed information is detailed in the Regulations in force from 2 March 2018. 规定信息的具体内容载于2018年3月2日起生效的法规。

Where out of scope, the company should confirm the nature of its exemption to its registered office provider and instruct its registered office provider to up-load an out of scope confirmation to the search platform maintained by the competent authority of the Cayman Islands. Any changes thereafter are required to be notified to the competent authority within one month.

All companies are reminded that the search platform containing the beneficial ownership registers and filing confirmations of out of scope status are not publicly accessible.

All companies must be in compliance with the beneficial ownership regime by **30 June 2018**, after which time significant penalties will be imposed.

For additional information, please contact your usual Conyers Dill & Pearman representative.

倘属规定范围外，公司须向其注册办事处供应商确认其豁免的性质，并指示注册办事处供应商将其豁免确认书上传至开曼群岛主管当局维持的搜索平台。其后的任何变更须在变更后一个月内通知主管当局。

所有公司均请留意，登载实益拥有权登记册的搜索平台和豁免确认书的备案不供公众查阅。

所有公司必须在**2018年6月30日**之前确保遵守实益拥有权制度，逾期将面临严重处罚。

有关其他资料，请联络阁下于康德明律师事务所的日常联络人。

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.

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!

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