

# CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with geometric patterns and some metal bollards.

## **Cayman Islands: Beneficial Ownership Register Requirements**

## Preface

This publication has been prepared for the assistance of those companies, limited liability companies and limited liability partnerships that are required to establish and maintain a beneficial ownership register in the Cayman Islands. It deals primarily with the requirements of Part XVIIIA of the Companies Act and Part 12 of The Limited Liability Companies Act. The substance of Part 8 of the Limited Liability Partnership Act is of broadly the same effect but there are specific differences in terminology and requirements. This publication is not intended to be exhaustive but rather to provide an overview which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in the Cayman Islands on their legal obligations in connection with the beneficial ownership regime.

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## 1. INTRODUCTION

Part XVIIA of the Companies Act, Part 12 of the Limited Liability Companies Act and Part 8 of the Limited Liability Partnership Act (the “**Beneficial Ownership Legislation**”), impose obligations on certain Cayman Islands entities to maintain beneficial ownership registers at their registered offices and for the information contained in such registers to be uploaded to the competent authority for beneficial ownership, the General Registry (the “**Competent Authority**”) via its Corporate Administration Platform (“**CAP**”) system. The information is encrypted upon submission and further encrypted upon receipt. The data is then deleted from CAP and goes to a non-internet facing, offline server only accessible by a Government authorised competent authority. The principal purpose of the Beneficial Ownership Legislation is to make beneficial ownership information normally held by corporate service providers (each a “**CSP**”) readily accessible in response to proper and lawful requests from specified law enforcement agencies<sup>1</sup> and not to materially expand existing requirements for such information<sup>2</sup>. The registers are not publicly accessible and may only be searched by or on behalf of the Competent Authority.

This publication deals primarily with the Beneficial Ownership Legislation as applicable to companies, as the terminology and specific requirements for limited liability partnerships differ.

## 2. WHO MUST COMPLY?

### 2.1. Current Beneficial Ownership Legislation

The Beneficial Ownership Legislation applies to every company, limited liability company and limited liability partnership incorporated, registered or registered by way of continuation in the Cayman Islands except a legal entity or subsidiary of one or more legal entities, any of which is<sup>3</sup>:

- (a) listed on the Cayman Islands Stock Exchange or another approved stock exchange<sup>4</sup>;
- (b) registered or licensed under a Cayman Islands regulatory act<sup>5</sup>;
- (c) managed, arranged, administered, operated or promoted by an approved person<sup>6</sup> as a special purpose vehicle, private equity fund, collective investment scheme or investment

<sup>1</sup> Presently limited to law enforcement agencies in the Cayman Islands and the United Kingdom.

<sup>2</sup> Under, for example, the Cayman Islands prevention and detection of money laundering, terrorism financing and proliferation financing regime.

<sup>3</sup> For the purposes of the Beneficial Ownership Legislation, a company (“company S”) is a subsidiary of one or more legal entities that are exempted from the Beneficial Ownership Legislation if (a) such legal entities, separately or collectively, hold seventy-five percent or more of the shares or voting rights in company S; (b) each such legal entity is a member of company S and, separately or collectively, such legal entities have the right to appoint or remove a majority of its board of directors; or (c) it is a subsidiary of one or more legal entities each of which is itself a subsidiary of one or more legal entities that are exempted from the Beneficial Ownership Legislation.

<sup>4</sup> As listed in Schedule 4 of the Companies Act (Revised).

<sup>5</sup> Currently comprising the Banks and Trust Companies Act (Revised), Buildings Societies Act (Revised), Companies Management Act (Revised), Cooperative Societies Act (Revised), Insurance Act (Revised), Money Services Act (Revised), Mutual Funds Act (Revised), Securities Investment Business Act (Revised), Development Bank Act (Revised), and Private Funds Act (Revised).

<sup>6</sup> An approved person means a person or subsidiary of a person that is (a) regulated, registered or licensed under a Cayman Islands regulatory act; (b) regulated in an equivalent legislation jurisdiction that is designated as having measures for combating laundering and

- fund including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership;
- (d) regulated in a jurisdiction that is designated as having measures for combating money laundering and the financing of terrorism which are equivalent to that of the Islands in accordance with section 5(2) of the Proceeds of Crime Act (2020 Revision) (the “**PoCA**”);
  - (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 act; or (ii) is managed, arranged, administered, operated or promoted by an approved person;
  - (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 Act (2021 Revision), the Companies Management Act (2021 Revision), the Insurance Act, 2010 (as amended), Part III of the Mutual Funds Act (2021 Revision) (as amended) or the Securities Investment Business Act (2020 Revision); or
  - (g) exempted by the applicable regulations.

A company that is exempted from the requirement to keep a beneficial ownership register by virtue of falling into one or more of the categories above is required to provide to its CSP written confirmation of the exemption with prescribed information<sup>7</sup> together with instructions to file the written confirmation with the Competent Authority. The CSP is then required to provide the Competent Authority with all relevant information from the written confirmation. The company is required to notify the CSP within one month of becoming aware of any changes to the written confirmation.

## 2.2. Proposed Changes

The Beneficial Ownership Transparency Bill 2023 (**Bill**) was gazetted on 30 August 2023. It is expected that the Bill will be presented to Parliament by the end of 2023. The Bill consolidates existing beneficial ownership reporting requirements and brings limited partnerships and exempted limited partnerships into scope of those reporting requirements. The Bill, when adopted, will amend and expand current reporting requirements and will require beneficial owners to declare their nationality and the way in which their control is exercised, whether by voting rights, shareholding or ultimate effective control. Current available exemptions will be removed and instead certain “alternative routes to compliance” will be added.

Entities “licensed under a regulatory law” will be able to utilise an alternative route to compliance. However, entities that are part of a fund structure that is not registered with the Cayman Islands Monetary Authority (CIMA) and those that previously relied upon the managed, arranged, administered, operated or promoted by an ‘approved person’ exemption will not be able to rely on an alternative route to compliance. Corporate service providers will also need to comply with enhanced responsibilities in

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the financing of terrorism which are equivalent to that of the Islands in accordance with section 5(2) of the Proceeds of Crime Act (2020 Revision); or (c) listed on the Cayman Islands Stock Exchange or on another approved stock exchange.

<sup>7</sup> Part 2A of the Beneficial Ownership (Companies) Regulations, (2022 Revision). Please see Appendix A.

reviewing and identifying beneficial owners once the Bill is effective. Accompanying regulations and guidelines are expected to be issued in due course.

The remainder of this publication refers only to the requirements set out in the Beneficial Ownership Legislation rather than the proposed requirements contained in the Bill.

### 3. ESTABLISHING A BENEFICIAL OWNERSHIP REGISTER

Unless exempted for one of the reasons listed above, each company to which the Beneficial Ownership legislation applies has an obligation to establish and maintain a register of its beneficial owners (the “**Register**”) 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 entities<sup>8</sup> in relation to the company.

For the purposes of identifying individuals who are beneficial owners or relevant legal entities, a company or CSP is entitled to rely, without further enquiry, on the response of a person or relevant legal entity to a notice in writing sent in good faith by the company, unless the entity or CSP 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 that are included in the notice.

### 4. WHO IS A REGISTRABLE PERSON?

All registrable persons must be entered on the Register. Registrable persons fall into two categories, individual beneficial owners and relevant legal entities.

#### 4.1. Individual Beneficial Owner

An individual is a beneficial owner of a company and a registrable person if they meet one of the following specified conditions:

- (a) they hold, directly or indirectly, twenty-five per cent or more of the shares in the company;
- (b) they hold, directly or indirectly, twenty-five per cent or more of the voting rights in the company;
- (c) have the right, directly or indirectly, to appoint or remove the majority of the board of directors of the company; or
- (d) if no individual satisfies the conditions of (a)–(c) above, an individual is a beneficial owner if they have the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the company through the ownership structure or

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<sup>8</sup> 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 were an individual.

interests, including any trust or partnership (other than solely in the capacity of a director, professional advisor or professional manager)<sup>9</sup>.

#### **4.2. Relevant Legal Entity**

A relevant legal entity in relation to the company is a legal entity that is:

- (a) incorporated, formed or registered (including by way of continuation or as a foreign company) under the laws of the Cayman Islands; and
- (b) would be a beneficial owner of the company if it were an individual.

A relevant legal entity is registrable if it (i) holds an interest in the company or meets one or more of the specified conditions referred to above directly in respect of that company; and (ii) is an entity through which any beneficial owner or relevant legal entity indirectly owns an interest in the company.

### **5. NOTICE TO BE PROVIDED TO REGISTRABLE PERSONS**

Companies are required to give notice in writing to beneficial owners and relevant legal entities to request that the recipient of the notice state whether or not they are registrable persons and if they are, to confirm or correct any required particulars that are included in the notice and supply any required particulars that are missing from the notice within one month from the date of receipt of the notice.

### **6. INFORMATION TO BE ENTERED ON THE REGISTER**

#### **6.1. Information on Registrable Persons - Individual Beneficial Owner**

Once enquires are concluded, required particulars of an individual beneficial owner<sup>10</sup> are:

- (a) full legal name;
- (b) residential address and, if different, an address for service of notices under the legislation;
- (c) date of birth;
- (d) information identifying the individual from the individual's unexpired and valid passport, driver's licence or other government issued documentation including (i) identifying number; (ii) country of issue; and (iii) date of issue and of expiry; and
- (e) the date on which the individual became or ceased to be a registrable person in relation to the entity.

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<sup>9</sup> Equivalent provisions apply when determining beneficial owners of limited liability companies and limited liability partnerships.

<sup>10</sup> Certain governmental bodies, international organisations and local authorities are deemed to be individuals under the Beneficial Ownership Legislation details of which are out of the scope of this publication.



## 6.2. Information on Registrable Persons - Relevant Legal Entity

The required particulars of a relevant legal entity that is registrable are:

- (a) corporate or firm name;
- (b) registered or principal office;
- (c) the legal form of the entity and the law by which it is governed;
- (d) if applicable, the register in which it is entered and its registration number in that register; and
- (e) the date on which it became or ceased to be a registrable person in relation to the entity.

## 6.3. Register Must Always be Populated

The company's Register should never be blank. Additional specified matters are required to be noted in the Register where the company:

- (a) knows or has reasonable cause to believe that there is no registrable persons in relation to the entity;
- (b) has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person; and
- (c) has identified a registrable person in relation to it and all the required particulars of that person have not yet been confirmed.

## 6.4. Changes to the Information in the Register

If the company becomes aware of a relevant change with respect to a registrable person whose required particulars are entered in its Register, the company is required to give notice to the registrable person, as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred, requesting confirmation of the change. If the person to whom the notice is sent confirms the change, the company is required to record the details of the change and instruct the CSP to enter in the company's Register in the prescribed form and manner:

- (a) the details of the relevant change confirmed by the company;
- (b) the date on which the change was made; and
- (c) whether there are further alterations to be made.

## 7. WHO MAY SEARCH THE REGISTER?

The Competent Authority shall execute a search of the company's Register if formally requested to do so by a senior official designated by name or position by the Minister of Financial Services representing one of the following Cayman Islands bodies where such search is proper and lawfully made for any purpose under the legislation governing the affairs or responsibilities of the body:



- (a) the Financial Intelligence Unit;
- (b) the Financial Reporting Authority;
- (c) the Customs and Border Control Service;
- (ca) the Anti-Corruption Commission;
- (d) the Cayman Islands Monetary Authority;
- (e) the Tax Information Authority; and
- (f) any Competent Authority as defined under section 2(1) of the PoCA.

The Competent Authority will also execute a search of a company's Register for the purposes of verifying the accuracy of the information provided by the company or in response to a lawful request from a jurisdiction that has entered into an agreement with the Cayman Islands government in respect of the sharing of beneficial ownership information<sup>11</sup>.

## 8. OFFENCES

Significant penalties apply for non-compliance with the Beneficial Ownership Legislation. A company that knowingly and wilfully fails to establish or maintain a beneficial ownership register or fails to fulfil its duties in relation to identifying beneficial owners and relevant legal entities, notifying registrable persons, disclosing beneficial ownership and keeping the register up to date, shall be liable on summary conviction to a fine of CI\$25,000/US\$30,500 for each contravention. A fine of CI\$100,000/US\$122,000 applies to a second or subsequent offence. If a company commits a third offence, the Court may order that the company be struck off the register as if it is a company that the Registrar has reasonable cause to believe is not carrying on business or is not in operation.

Where a restrictions notice is issued, certain acts or failure to act as a result may constitute an offence under the Companies Act (see below).

Where an entity is guilty of an offence, and it is proved that the offence was committed with the consent or connivance of, or was attributable to wilful default on the part of a director or other officer concerned in the management of the company or legal entity, the director or other officer is guilty of the same offence and liable to the same penalty as the entity.

## 9. RESTRICTIONS NOTICES

It should be noted that if a CSP is of the opinion that a company has failed to provide it with the required details of its registrable persons or changes in respect of the same, or has otherwise, without reasonable excuse, made a false, deceptive or misleading statement concerning a material particular, the CSP is required to issue a notice of its opinion. The company then has one month to respond.

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<sup>11</sup> Only the United Kingdom Government has currently entered into such an agreement.

If the company fails to provide the outstanding information or provide a justification or correction of a statement identified in the notice, the CSP is empowered to issue a restrictions notice, subject to certain considerations set out in the relevant acts.

A restrictions notice, once issued, has the following consequences:

- (a) any transfer or agreement to transfer an interest in the company that is relevant to the restrictions notice by reference to the shares or right in question (the “**Interest**”) is void;
- (b) no rights are exercisable in respect of the Interest;
- (c) no shares may be issued in respect of the Interest;
- (d) no shares may be issued in pursuance of an offer made to the Interest holder;
- (e) except in the case of a liquidation, no payment may be made of sums due to the company in respect of the Interest; and
- (f) other than in a liquidation, any agreement to transfer a right to be issued shares in respect of the Interest, or a right to receive payment of any sums due from the company in respect of the Interest will be void.

## APPENDIX A - The Beneficial Ownership (Companies) Regulations, (2022 Revision)

### PART 2A – Duties of Corporate Services Providers and the Registrar – Confirmation of Exemption

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(3) The written confirmation of the exemption required to be provided by a company by section 253(1A) of the Act shall include the following information for the purposes of paragraph (a)(ii) of that section –

- (a) for an exemption under section 245(1)(a) of the Act, the name of the stock exchange;
- (b) for an exemption under section 245(1)(c), the names of the approved person, the regulator or the stock exchange that is relevant to the approved person and the jurisdiction in which that regulator or stock exchange is established;
- (c) for an exemption under section 245(1)(d), the names of the relevant regulator and the jurisdiction in which that regulator is established;
- (d) for an exemption under section 245(1)(e) –
  - (i) where the vehicle, fund or scheme is registered or holds a licence under a regulatory act, the name of the partnership; or
  - (ii) where the vehicle, fund or scheme is managed, arranged, administered or operated by an approved person, the names of the partnership, the approved person and the regulator or stock exchange that is relevant to the approved person and the jurisdiction in which that regulator or stock exchange is established;
- (e) for an exemption under section 245(1)(f), the name of the relevant legal entity holding a licence under the relevant Act referred to in that section;
- (f) for an exemption under section 245(1)(g), such information as may be specified in the Regulations.

(4) Where a company is exempted on the basis that it is a subsidiary of one or more legal entities described in section 245(1), the written confirmation shall include –

- (a) the names of –
  - (i) every legal entity described in that section of which the company is a subsidiary for the reasons set out in section 245(3)(a) or (b); or
  - (ii) the ultimate parent or parents in each chain of exempted legal entities, where the company is a subsidiary by reason only of section 245(3)(c); and
- (b) in respect of each legal entity named pursuant to paragraph (a), the paragraph of section 245(1) that provides for the exemption and such additional information as is relevant to that paragraph.

(5) Where, in the case of an exemption under section 245(1)(e) of the Act, the general partner is a general partner of more than one partnership which qualifies for the exemption, the written confirmation of the exemption need only name one such partnership.

(6) Where a company is exempt from the application of Part XVIIA of the Act under more than one paragraph of section 245(1), the written confirmation of the exemption need only include the information required by one subparagraph of paragraph (3) of this regulation that applies to the company.

(7) The written confirmation referred to in paragraph (4) need only include the names of legal entities or parent entities required under one of the subparagraphs of paragraph (4)(a) that applies to the company.

*This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

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