

Beneficial Ownership Requirements in the Cayman Islands

This briefing paper is intended for general guidance only and is not, nor should it be used for, a substitute for specific legal advice on any particular transaction or set of circumstances. This briefing paper has been prepared on the basis of the law and practice as at December 2022.

Introduction

This briefing paper 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.

The Cayman Islands Companies Act (as revised), the Limited Liability Companies Act (as revised) and the Limited Liability Partnership Act (as revised) (together the “**Beneficial Ownership Legislation**”) set out various 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 (on an encrypted basis) to the competent authority for beneficial ownership, the General Registry (the “**Competent Authority**”) via its Corporate Administration Platform system.

The main purpose of the Beneficial Ownership Legislation is to make beneficial ownership information accessible to specified law enforcement agencies (currently in the Cayman Islands and the United Kingdom) in response to proper and lawful requests. The registers are not publicly accessible and may only be searched by or on behalf of the Competent Authority.

Applicability of the 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:

- (a) listed on the Cayman Islands Stock Exchange or another approved stock exchange;
- (b) registered or licensed under a Cayman Islands regulatory act¹;

¹ Currently comprising the Banks and Trust Companies Act (as revised), Buildings Societies Act (as revised), Companies Management Act (as revised), Cooperative Societies Act (as revised), Insurance Act (as revised), Money Services Act (as revised),

- (c) managed, arranged, administered, operated or promoted by an approved person² 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 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 (as revised) (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; 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 Act (as revised), the Companies Management Act (as revised), the Insurance Act, 2010 (as revised), Part III of the Mutual Funds Act (as revised) or the Securities Investment Business Act (as revised).

An entity 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 corporate service provider (“**CSP**”) written confirmation of the exemption with prescribed information 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 entity must notify the CSP within one month of becoming aware of any changes to the written confirmation.

Beneficial Ownership Register

Unless an entity is able to avail itself of one of the above listed exemptions, each entity to which the Beneficial Ownership Legislation applies is required to establish and maintain a register of its beneficial owners (the “**Register**”) to be kept at its registered office and is required to take reasonable steps to identify any individual who is a beneficial owner of the entity and all “relevant legal entities”³ in relation to the entity.

For the purposes of identifying individuals who are beneficial owners or relevant legal entities, an entity 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 entity, unless the entity or CSP has reason to believe that the response is misleading or false.

Mutual Funds Act (as revised), Securities Investment Business Act (as revised), Development Bank Act (as revised), and Private Funds Act (as revised).

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

³ 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.

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 entity and to confirm or correct any particulars that are included in the notice.

Registrable Persons

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

Individual Beneficial Owner

An individual is a beneficial owner of an entity and a registrable person if he meets one of the following specified conditions:

- (a) he or she holds, directly or indirectly, twenty-five per cent or more of the shares/partnership interests in the entity;
- (b) he or she holds, directly or indirectly, twenty-five per cent or more of the voting rights in the entity;
- (c) has the right, directly or indirectly, to appoint or remove the majority of the board of directors/managing partners or those with a majority of voting rights at meetings of the partners of the entity; or
- (d) or if no individual satisfies the requirements of (a)–(c) above, an individual is a beneficial owner if he or she has the legal right to exercise, or actually exercises, significant direct or indirect influence or control over the entity through the ownership structure including any trust or partnership (other than solely in the capacity of a director, professional advisor or professional manager).

Relevant Legal Entity

A relevant legal entity in relation to the entity 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 entity if it were an individual.

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

Information to be entered on the Register

Individual Beneficial Owner

The required particulars of an individual beneficial owner 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 their 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.

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.

It is important to note that the Register should never be blank. Additional items are required to be noted in the Register where a 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.

Changes to Register

If the entity becomes aware of a relevant change with respect to a registrable person whose required particulars are entered in its Register, the entity 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 entity is required to record the details of the change and instruct the CSP to enter in the entity's Register in the prescribed form and manner:

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

Who may search the Register?

The Competent Authority shall execute a search of the entity'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;
- (d) the Anti-Corruption Commission;
- (e) the Cayman Islands Monetary Authority;
- (f) the Tax Information Authority; and
- (g) any Competent Authority as defined under section 2(1) of the PoCA.

The Competent Authority will also execute a search of an entity's Register for the purposes of verifying the accuracy of the information provided by the entity 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.

Restriction Notices

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. 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 the requirements set out in the applicable Beneficial Ownership Legislation.

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; except in the case of a liquidation, no payment may be made of sums due to the company in respect of the Interest; and
- (e) 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.

Contact

For further information on the matters referred to in this briefing paper, please contact your usual Campbells contact or visit our [website](#) for contact information.