

## An overview of the Beneficial Registry changes in the Cayman Islands

The Cayman Islands officially approved, in April 2017, the implementation of a centralized platform that will provide specific authorities within the UK and the Cayman Islands with the ability to universally search and identify the beneficial owners of certain Cayman Islands entities. This change in the law came into force on the 1<sup>st</sup> July 2017 and works by imposing a duty on companies affected to ensure that a beneficial register is implemented and maintained. These individually maintained registers will allow the Financial Minister, and their appointed authority, to construct and preserve a central register for quick access and retrieval of information where necessary.

While this all seems very inconvenient, it should be noted that the information required to compile these registers, in truth, is not dissimilar to that which is currently required and maintained to satisfy longstanding jurisdictional requirements in respect of anti-money laundering and counter-terrorism financing requirements. This is not a public register; the public will have no access to the system or the records therein. A search of the system will only be carried out by the appointed authority once a designated UK or Cayman Islands law enforcement authority has received the necessary approval. Theoretically, the system is not supposed to allow any searches that would amount to nothing more than a fishing expedition or witch hunt.

### Relevant Companies

This legislative change will affect ordinary, exempted and special economic zone companies, as well as Cayman Limited Liability companies registered within the jurisdiction. Those positioned outside the scope of the legislation and not explicitly required to maintain registers are exempted limited partnerships, trusts, registered foreign companies, Non-Cayman companies and any entity that satisfies any criteria of section 245 of the amended law.

### Responsibilities

Companies affected by the change will be required to take reasonable steps to ascertain or confirm their beneficial owners or any relevant legal entity. While there is currently no clarification on what will be considered reasonable steps, it is likely safe to assume that any actions which a normal rational person would take given the circumstances would suffice to discharge this duty. The law specifically requires that affected companies send notices to their beneficial owners or relevant legal entities for them to

confirm their status and provide the due diligence on themselves. These notices can also be sent to those believed or suspected to be a beneficial owner or a relevant legal entity.

Once a notice is received recipients have 30 days within which to respond. At this point, a duty is placed on the recipient. If they neglect to respond or provide the information requested they can have the laws enforcement options, now provided under the amended law, levied against them. Recipients are also under a duty to notify the company of any beneficial owner or relevant legal entity known to them. However, if any information held is protected by legal professional privilege or is prohibited by law it is not disclosable by recipients.

The amended law allows a company to rely wholly on any response or information received from a recipient without the need for any verification. But only on the proviso that there was no reason to believe or suspect that the information provided was misleading or false. If there is any change regarding the information provided, there is a duty to notify the company of the change within a month and for the company to follow up on any suspected changes within a reasonable period.

#### Beneficial Owner & Relevant Legal Entities

According to the law, wherever a person or entity fits the description for a beneficial owner or relevant legal entity they must be added to the beneficial register as they are registrable.

The law identifies beneficial owners as those that, directly or indirectly, holds more than 25% of the shares or voting rights of a company or that have the right to remove or appoint the majority of the directors. However, where these criteria have not been met, then the law will consider any individual who directly or indirectly exercises significant unfettered influence or control over the company to be a beneficial owner. Once a criterion is satisfied. An individual will only not be considered a beneficial owner where their influence or control is derived from their capacity as a director, professional advisor or professional manager.

On the other hand, relevant legal entities are identified as any LLC's or companies incorporated or registered in the Cayman Islands, including those by way of continuation, which would be considered a beneficial owner if they were an actual, real, person.

#### Registers & Corporate Service Providers

Beneficial registers are to be kept at a company's registered office. Where the company in question is an exempted, ordinary non-resident or special economic zone company the law requires that a Corporate Service Provider ("CSP") is responsible for maintaining the registers and making the information available to the appointed authority. Resident companies, on the other hand, have the option of either engaging a CSP or the Registrar to establish and maintain their registers.

*So, to clarify, the CSP or Registrar will be responsible for maintaining the registers, but companies are responsible for gathering, supplying and confirming, where necessary, the information for the registers.*

#### Enforcement

Any recipient who has received a notice from a company for information and fails to confirm or provide the requested information can have a restrictions notice issued against them by the company. A restriction notice will limit a recipient's ability to deal with their interest and will prohibit the issuing of any sums due to the recipient in respect of said interest and will also invalidate any dealing of the interest by the recipient.

#### Required Information

The information that is to be provided by beneficial owners are as follows:

- full legal name
- residential address together with an alternative address for service of notices if necessary
- date of birth
- information identifying the individual from their passport, driver's licence or other government issued document which includes:
  - the identifying number,
  - country of issue; and
  - the date of issue and expiry; and
- the date on which the individual became or ceased to be a registrable person in relation to the company.

The information required in respect of relevant legal entity are as follows:

- corporate or firm name;
- registered or principal office;
- the legal form of the entity and the law by which it is governed;
- if applicable, the register of companies in which it is entered and its registration number in that register, and the date on which it became or ceased to be registrable.

For further clarification and help in determining whether you or your holding company is affected or for a detailed review of any other aspect of the law, please do give us a call at +1 (345) 949-7237 or send us an email at either [brando@broadhurstllc.com](mailto:brando@broadhurstllc.com) or [broadlaw@broadhurstllc.com](mailto:broadlaw@broadhurstllc.com).

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