

Companies which are subject to some form of direct or indirect regulatory oversight are likely to be exempt from the requirements to maintain a beneficial ownership register.

Cayman's new beneficial ownership regime to take effect on 1 July 2017

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Following lengthy discussions with the UK authorities, the Cayman Islands Government has now approved new legislation to introduce beneficial ownership registers for certain Cayman Islands companies or limited liability companies (each a **Company** and together **Companies**), as we detailed in our [client update](#) in January. The new legislation¹ was published on 7 April 2017 and will come into force on 1 July 2017.

What does this mean for the investment funds industry?

Essentially, Companies which are subject to some form of direct or indirect regulatory oversight are likely to be exempt from the requirements to maintain a beneficial ownership register.

For the investment funds industry, this means that Companies which are structured as Cayman Islands investment funds, whether hedge funds or private equity funds, Cayman Islands investment managers, which are registered as "Excluded Persons" under the Securities and Investment Business Law (**SIB Law**), and general partners of private equity funds or other investment funds, will not have to maintain beneficial ownership registers provided they fall within one of several exemptions contained in the Legislation.

These exemptions, which apply to all Companies, apply to Companies which are:

- listed on the Cayman Islands Stock Exchange or an approved stock exchange
- registered or licensed under a regulatory law in the Cayman Islands, which includes regulated funds under the Mutual Funds Law and Excluded Persons under the SIB Law
- managed, arranged, administered, operated or promoted by an "**approved person**" as a special purpose vehicle, private equity fund, collective investment scheme or investment fund. An "approved person" is a person (or a subsidiary of a person) that is regulated, registered or licensed under a Cayman Islands regulatory law or regulated in an approved

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Schedule 3 jurisdiction² (eg investment advisors or managers regulated by the SEC or the FCA or Cayman Islands-based fund administrators), or listed on the Cayman Islands Stock Exchange or another approved stock exchange

- general partners of special purpose vehicles, private equity funds, collective investment schemes or investment funds each of which must be managed, arranged, administered, operated or promoted by an approved person
- subsidiaries (as defined in the Legislation) of a Company that is exempted under one of the conditions above

For example, a Cayman Islands CIMA registered mutual fund will not have to maintain a beneficial ownership register regardless of the location or regulation of its administrator or investment manager. If this applies to you or your fund, you need read no further.

Contrast this to the position of a Cayman Islands private equity fund structured as a Company or the general partner of a limited partnership private equity fund, whose US based investment manager is not regulated by the SEC and that has appointed an administrator which is located, but not regulated, in the US. Neither of those Companies will be able to take advantage of an exemption and both would have to maintain a register. For funds or general partners that find themselves in this position, it may be possible for the fund to engage a different office of the administrator as their administrator of record (for example, if the administrator has a Cayman Islands office which is regulated, that entity could be the administrator of record) to ensure that it can benefit from the exemption and therefore not have to maintain a beneficial ownership register.

There are currently no proposals to extend the registers to cover beneficial ownership of limited partners of Cayman Islands exempted limited partnerships or foreign companies and foreign limited liability companies registered in the Cayman Islands.

When a register is required, who are beneficial owners and what information must the register contain?

Companies who are not able to take advantage of the exemptions listed must establish and maintain a beneficial ownership register. The register must be maintained at the Company's registered office in the Cayman Islands, and must contain details of each individual who is the ultimate beneficial owner of the Company because he or she:

- holds, (in)directly, more than 25 per cent of the shares, or limited liability company (LLC) interests with a right to share in more than 25 per cent of the capital or profits in the Company
- holds, (in)directly, more than 25 per cent of the voting rights of the Company
- holds the right, (in)directly, to appoint or remove a majority of the board of directors or managers (for an LLC)

If no individual meets the three tests above, the relevant beneficial owner is the person who has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the Company through the ownership structure, other than solely in its capacity as director, manager or professional advisor.

If no individual then meets the four tests above, but the trustees of a trust (or members of a partnership or other entity that is not a separate legal person) satisfies one of the tests, they are the beneficial owner if they have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a director, manager or professional advisor.

Details of the name, residential address and (if different) address for service of notices, date of birth, identification information from the individual's passport/driving licence/other government ID, and date on which they became a registrable person are to be included on the register. The register must be updated within one month of any changes.

In addition to this, a Company must take reasonable steps to identify all relevant legal entities that exist in relation to it. A “**relevant legal entity**” in relation to a Company is a legal entity that:

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

Specified details of certain prescribed relevant legal entities that qualify as registrable persons will also need to be included in the beneficial ownership register.

Who will have access to beneficial ownership register information?

The Legislation requires the information in the registers to be accessible by a specified Cayman Islands competent authority (the **Competent Authority**) through a centralised search platform.

The Cayman Islands Government has not yet named the designated officials who will have access to search beneficial ownership registers via the platform, however, in its announcement of the new laws it stated that “the central platform will allow designated Cayman Islands officials to directly obtain and provide details of beneficial ownership of companies incorporated in the Cayman Islands to the UK”.

The UK authorities will be able to request that a search be done by the Competent Authority and, in the future, other jurisdictions entering into similar agreements with the Cayman Islands may also be able to request a search. It is important to note that there will be no automatic exchange of information. The register will otherwise be private and confidential and not open to public inspection. The Cayman Islands Government has confirmed that it will not consider the introduction of a public register of beneficial ownership unless and until that becomes an accepted and implemented international standard.

What happens if the register is not maintained?

If a Company fails to maintain a beneficial ownership register or keep it up to date due to the failure of a registrable person to provide particulars, the Company must issue a restrictions notice to that person. A restrictions notice will make any transfer or agreement to transfer the relevant shares void, no rights will be exercisable in respect of the shares (eg voting), the owner will not be able to take up any further shares issued in respect of the restricted shares or similar rights on the shares and except in a liquidation, no payment may be made in respect of the shares, eg of dividends or other distributions. Equivalent provisions apply for

restriction notices over LLC interests. The Legislation also includes a right to apply to the Grand Court of the Cayman Islands to remove or relax any restrictions notice imposed.

Penalties on conviction include fines of up to, approximately, US\$30,500 for a Company that knowingly and wilfully breaches the relevant sections. This includes any director or manager (for an LLC) or other officer where it is proved that the offence was committed with the consent or due to the wilful default of a director, manager (for an LLC) or other officer of the Company. Penalties of imprisonment for two years and/or a fine of approximately US\$12,200 will apply on conviction of an individual. The Legislation includes a one year transitional period from the date the law enters into force, after which prosecutions may be brought.

Why have beneficial ownership registers and a centralised search platform been introduced?

The implementation of the new Legislation should allow the Cayman Islands to reach closure with the UK on the beneficial ownership issue and it also reflects similar international initiatives, including the Fourth Anti-Money Laundering Directive in the EU (**MLD4**), which is to be implemented by EU member states by June 2017. Ireland introduced legislation for a central register of beneficial ownership in 2016 and, despite Brexit, the UK is expected to expand its “persons with significant control” (**PSC**) regime to allow compliance with MLD4, which mandates disclosure regimes for the beneficial owners of corporate entities across the EU by June 2017.

The centralised search platform of beneficial ownership information will effectively improve transparency in support of internationally adopted and practised standards. The UK considers this as similar in effect to having a central government register of that information. The Cayman Islands’ beneficial ownership register regime borrows a number of concepts from the UK’s PSC regime but it is important to note that the Cayman Islands will, unlike the UK, continue to rely on regulated corporate service providers to verify the information.

The Cayman Islands has maintained its position as a leading offshore jurisdiction and international finance centre by consistently implementing, maintaining and remaining at the forefront of international regulatory and compliance measures such as multi and bi-lateral tax information exchange arrangements and anti-money laundering legislation. The introduction of the Legislation demonstrates the Cayman Islands’ continued commitment to meeting the high standards of due diligence and transparency imposed by the international financial services industry.

In our view, the Legislation strikes a sensible balance by enabling law enforcement authorities to have access to the information they need in cases where people abuse the corporate veil, while continuing to protect the privacy of legitimate commercial interests and individuals, particularly in the regulated global financial services industry.

What action is required today?

The Legislation comes into force on 1 July 2017 and all Cayman Islands Companies should now review whether or not they will be required to maintain a beneficial ownership register or if they fall within one of the exemptions in the Legislation. Where a Harneys affiliate provides the registered office for a Cayman Islands Company, we will be contacting clients to assist them with compliance with the Legislation, when applicable.

If you are the director or manager of an investment fund or general partner that is structured as a Company and does not fall within an exemption, we recommend that you review your governance structure as soon as possible and consider restructuring it to bring the relevant Company within an exemption from the

requirement to maintain a beneficial ownership register. Your usual Harneys contact will be available to discuss all options and can help with any changes you want to make to your governance structure.

To ensure that the Legislation achieves its objective, further guidance and regulations are expected to be issued in the coming months and we will issue further updates on those requirements in due course. For more information and advice on the implications of the Legislation on your business, please speak to your usual Harneys contact or visit www.harneys.com/Cayman.

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¹ Companies (Amendment) Law, 2017, the Limited Liability Companies (Amendment) Law, 2017, the Companies Management (Amendment) Law, 2017, the Beneficial Ownership (Companies) Regulations, 2017 and the Beneficial Ownership (Limited Liability Companies) Regulations, 2017 (together the **Legislation**)

² Current Schedule 3 jurisdictions are Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Cyprus, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, People's Republic of China, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Arab Emirates, United Kingdom and United States of America.