

# The Cayman Islands beneficial ownership regime

Under Cayman Islands company beneficial ownership legislation<sup>i</sup> (the **Legislation**), certain Cayman Islands companies are required to establish and maintain details of their beneficial owners and relevant legal entities on a beneficial ownership register (a **Register**). Registers are not publicly available, although they can be searched in limited circumstances by the competent authority in the Cayman Islands. This guide explains which companies are in scope of the Legislation and which are exempt, who is classed as a beneficial owner and a relevant legal entity, and the obligations for in scope companies and those who hold interests in them.

## Which companies are in scope and so have to maintain a Register?

Under the Legislation, the following companies are in scope and so must establish and maintain a Register at its registered office, unless an exemption applies:

- Companies incorporated or registered by way of continuation in the Cayman Islands under the Companies Act, including ordinary companies, exempted companies, exempted segregated portfolio companies, and special economic zone companies
- Limited liability companies formed under the Limited Liability Companies Act

Together referred to as **companies** and **In Scope companies** in this guide.

Limited Liability Partnerships formed under the Limited Liability Partnership Act are also subject to beneficial ownership requirements, however this guide only covers companies.

## Which companies are exempt?

Not all companies are In Scope and exemptions apply to any company (or subsidiary of one or more legal entities) that is:

- Listed on the Cayman Islands Stock Exchange or an approved stock exchange (eg New York Stock Exchange, NASDAQ, Hong Kong Stock Exchange, London Stock Exchange)
- Registered or licensed under regulatory legislation<sup>ii</sup> in the Cayman Islands. This includes a company which is registered as a Registered Person under the Securities Investment Business Act (**SIB Act**), funds registered with CIMA under the Mutual Funds Act and the Private Funds Act
- 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

An “approved person” is a person (or its subsidiary) that is (a) regulated, registered or licensed under a Cayman Islands regulatory law, or (b) regulated in an equivalent jurisdiction<sup>iii</sup> (eg investment advisors or managers regulated by the SEC or the FCA or fund administrators based in the Cayman Islands), or (c) listed on the Cayman Islands Stock Exchange or another approved stock exchange.

This exemption is not available to a company solely because it has appointed as a director an individual who is an employee of a legal entity that is licensed under Cayman Islands regulatory laws or solely because it has appointed an approved person to provide the company’s registered office in the Cayman Islands.

- Regulated in an equivalent jurisdiction
- A general partner of a special purpose vehicle, private equity fund, collective investment scheme or investment fund which is (a) registered or holds a licence under a Cayman Islands regulatory law (eg a general partner of a partnership that is registered as a mutual fund under the Mutual Funds Act or private fund under the Private Funds Act), or (b) managed, arranged, administered, operated or promoted by an approved person
- Holding directly a legal or beneficial interest in shares of a legal entity which holds a licence under certain regulatory laws<sup>iv</sup>, or
- Otherwise exempted by the regulations issued under the Legislation.

These exemptions have been included in the Legislation to recognise the fact that companies which are regulated, or which are related to regulated entities, will already be subject to regulatory requirements to obtain information on their beneficial owners. Given the nature of the majority of companies registered in the Cayman Islands, it is likely that many companies will be able to determine that they are exempt. Please connect with your usual Harneys contact for detailed advice as to whether or not your company is In Scope or exempt.

Certain Cayman Islands companies which are exempt may however be classed as relevant legal entities in relation to an In Scope company and so may have obligations to notify their interests, as detailed below. Exempt companies should therefore review if they fall within the definition of a relevant legal entity.

Partnerships established in the Cayman Islands, including exempted limited partnerships, as well as foreign companies registered as such under the Companies Act and Cayman Islands trusts and bodies which are not legal persons, are not In Scope of the Legislation and so are not required to maintain a Register.

## Filing requirement for companies which are exempt

Companies which are exempt from maintaining a Register by virtue of falling into one or more of the categories listed above must file written confirmation of the exemption that they are relying on with their Cayman Islands corporate services provider, together with instructions to file the written confirmation with the competent authority in the Cayman Islands. This will give the competent authority an overview of all companies, whether they are required to maintain a Register or are exempt. Exempt companies are also required to notify their Cayman Islands corporate services provider within one month of becoming aware of any changes to the written confirmation of exemption.

## Who is a “beneficial owner”?

An individual (natural person) is a beneficial owner of an In Scope company if they **directly or indirectly** meet one or more of the following conditions:

- Hold 25 per cent or more of the shares or membership interests (for LLCs) in the company
- Hold 25 per cent or more of the voting rights in the company, or
- Hold the right to appoint or remove a majority of the board of directors/managers (for LLCs) of the company.

If there is no individual who meets any of these conditions, the beneficial owner of the company is the individual 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 the capacity of a director (or manager for an LLC), professional manager or professional advisor).

If no individual satisfies any of the conditions above, but the trustees of a trust (or the members of a partnership or other entity that is not a legal person) meet one of those conditions, then those persons will be beneficial owners for the purposes of the Legislation if they have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over the activities of the trust (or partnership or other entity), other than solely in the capacity of a director (or manager for an LLC), professional advisor or professional manager.

## What is a “relevant legal entity”?

A relevant legal entity 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; **and**
- Would be a beneficial owner (as set out above) of the company **if it were an individual**.

This means that the Register must include details of certain intermediate holding companies through which individual beneficial owners hold interests in the In Scope company. A legal entity must have a registration connection with the Cayman Islands however to be classed as a relevant legal entity.

## Who is a “registrable person”?

Any beneficial owner (including any deemed beneficial owner<sup>v</sup>) and any relevant legal entity are registrable persons, whose details will need to be included in the Register.

## What are the legal obligations for an In Scope company?

All In Scope companies must establish and maintain a Register with details of their registrable persons.

In order to do this, In Scope companies:

- Need to instruct their registered office service provider in writing to establish and maintain their Register
- Must take reasonable steps to identify their beneficial owners (including any deemed beneficial owner) and relevant legal entities
- Must serve notice in writing on beneficial owners and relevant legal entities that the company has identified and to any person that it knows or has reasonable cause to believe is a registrable person. The notice will require the person, within one month of receiving it, to confirm whether or not they are a registrable person and, if they are, to confirm or correct the information in the notice that the In Scope company has about them. The In Scope company must serve these notices even if it believes that it has this information already, but does not have to give notice if the company knows that the individual or entity is not a registrable person or the company has already received all the required particulars on that person
- May also give notice in writing to a registered shareholder or legal entity that the company knows or has reasonable cause to believe is a relevant legal entity, if the company knows or has reasonable cause to believe that they know the identity of a registrable person
- May rely, when identifying relevant legal entities, on the response of a legal entity to a written notice sent in good faith by the company, unless the company has reason to believe that the response is misleading or false

An In Scope company's Register must never be empty. The required particulars for each registrable person are entered in the Register once confirmed, including their full name, residential address and identification document details.

The Register should state “Confirmations Pending” when a company has identified a registrable person but all the required particulars of that person have not yet been confirmed.

The Register can also state “No registrable person identified’ when the company knows or has reasonable cause to believe that it has no registrable beneficial owner or relevant legal entity or the company has taken reasonable steps to identify all beneficial owners and relevant legal entities and has not been able to identify any.

If the company becomes aware of a relevant change for a registrable person, it must serve notice on the relevant registrable person/s as soon as practicable, asking for confirmation of the change. A relevant change happens if the registrable person ceases to be one in relation to the company or any other change occurs as a result of which the required particulars for the registrable person in the company's Register are materially incorrect or incomplete. If the change is confirmed, the company will then instruct its registered office provider to update the Register as necessary.

## What should you do if you receive a notice from an In Scope company or if you are a registrable person?

Individuals or legal entities who receive a notice from an In Scope company must provide or confirm the prescribed information to the company within one month of the date of receipt of the notice.

If a person knows they are a registrable person in relation to an In Scope company, but they have no reason to believe that their details are included in the company's Register and they have not received a notice from the company asking for those details, for a period of at least one month, then that person must notify the company that they are a registrable person and give the company their required details including the date they became a registrable person.

Registrable persons must also notify the company within one month of any relevant change that they know of if they have no knowledge that the Register has been amended to reflect the change and they have not received a notice from the company within one month of the change. The registrable person must notify the company of the change, state the date it occurred and include any information needed to update the Register. A relevant change includes the expiry of a registrable person's government issued document.

It is important to comply with these notice requirements as failure to provide information may be a criminal offence and/or lead to a restrictions notice being served on them, as detailed below.

## Offences and fines for breach and restrictions notices

It is an offence for an In Scope company to knowingly and wilfully breach various provisions of the Legislation or to provide materially false information. Registrable persons who knowingly and wilfully fail to comply with a notice they have received, or who make false statements in their reply, also commit an offence. On conviction, substantial fines and/or imprisonment for two years may be imposed, including on any director, manager or other officer of an In Scope company where it is proved that the offence was committed with their consent or wilful default. For repeated offences the court may ultimately strike the In Scope company from the register of companies.

An In Scope company, beneficial owner or corporate services provider may be fined by the Registrar of Companies for breaches of prescribed provisions of the Legislation. The Registrar published a Beneficial Ownership Enforcement Manual which sets out how they will approach enforcement, assess cases and impose fines. Please see our [client alert](#) for further information.

The corporate services provider must serve a restrictions notice on a person who has a relevant interest in the company if that person does not comply with the company's request for information within one month of receipt of the notice or provide a valid reason to justify their failure to comply.

The effect of a restrictions notice on the relevant interest in the company is:

- Any transfer or agreement to transfer the interest is void
- No rights are exercisable in respect of the interest
- No shares or additional rights (for LLCs) may be issued or granted in respect of the interest or in pursuance of an offer made to the interest-holder
- Except in a liquidation, no payment may be made of sums due from the company in respect of the interest, whether for capital or otherwise
- Other than in a liquidation, an agreement to transfer (a) a right to be issued with any shares issued or to be granted additional rights (for LLCs) in respect of the relevant interest or (b) a right to receive payment of any sums due from the company in respect of the relevant interest, is void.

## Where is the Register kept?

The regulated corporate services provider engaged by the company to provide registered office services must keep the Register. Ordinary resident companies may also establish their beneficial ownership register directly with the Registrar of Companies in Cayman. Harneys Fiduciary will provide this service to In Scope companies for which it provides a registered office.

The relevant corporate services provider is under no obligation to establish or maintain a Register on behalf of an In Scope company or provide any information to the competent authority, unless instructed by the company. Once engaged by the company, the corporate services provider must provide the information in the Register to the competent authority on a regular basis.

## Who can access information on a Register?

The competent authority has established a secure and confidential platform through which access may be provided to information on all Registers maintained on behalf of In Scope companies.

This platform is not open to the public and is only accessible by the competent authority to verify the accuracy of information provided by a company or if a proper and lawful request is made by the Financial Reporting Authority, the Cayman Islands Monetary Authority, the Anti-Corruption Commission, the Tax Information Authority or the Financial Crime Unit. A request can only be made from a jurisdiction that has entered into an agreement with the Cayman Islands Government for the sharing of beneficial ownership information. The UK is currently the only country that has entered into such an agreement.

## Steps to ensure compliance

All Cayman Islands companies must determine if they are In Scope or exempt from the beneficial ownership regime. If the company is In Scope (ie no exemptions apply) the company must obtain information on its beneficial owners and determine which are registrable persons under the Legislation. We can provide clients with appropriate beneficial ownership questionnaires to help with this process. Once the company has this information, the company must provide those details to its registered office provider to enter on its Register.

If an exemption applies and a company is not therefore In Scope, the company must send written confirmation of the relevant exemption to its registered office provider in the Cayman Islands.

Please contact your usual Harneys representative for further advice on whether a company is In Scope or may benefit from an exemption, or for assistance with any aspect of compliance with the Cayman Islands beneficial ownership regime.



For more information and key contacts  
please visit [harneys.com](https://www.harneys.com)

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- i The Companies Act (Revised), The Limited Liability Companies Act (Revised), The Beneficial Ownership (Companies) Regulations (Revised), The Beneficial Ownership (Companies) (Amendment) Regulations (Revised), The Beneficial Ownership (Limited Liability Companies) Regulations (Revised) and The Beneficial Ownership (Limited Liability Companies) (Amendment) Regulations (Revised), together the **Legislation**.
  - ii As defined in the Monetary Authority Act (other than the Directors Registration and Licensing Act (Revised)), ie the Banks and Trust Companies Act (Revised), Building Societies Act (Revised), Companies Management Act (Revised), Co-operative Societies Act (Revised), Insurance Act (Revised), Money Services Act (Revised), Mutual Funds Act (Revised), Development Bank Act (Revised), Securities Investment Business Act (Revised) and the Private Funds Act (Revised).
  - iii Current equivalent jurisdictions are Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Curacao, Cyprus, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, People's Republic of China, Portugal, Singapore, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom and United States of America.
  - iv Banks and Trust Companies Act (Revised), Companies Management Act (Revised), Insurance Act (Revised), fund administration license under the Mutual Funds Act (Revised) or the SIB Act (Revised).
  - v The Legislation anticipates that there may be further circumstances when the beneficial owner of an In Scope company is not an individual but will be deemed to be a beneficial owner (a **deemed beneficial owner**) where interests (direct or indirect) in an In Scope company are held by: (i) a corporation sole; (ii) a government or government department of a country or territory or a part of a country or territory; (iii) an international organisation whose members include two or more countries or territories (or their governments); or (iv) a local authority or local government body.

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