

The Cayman Islands Beneficial Ownership Regime

July 2017

The Cayman Islands has introduced new legislation and regulations which require all Cayman companies (including Cayman limited liability companies) to establish and maintain a Beneficial Ownership Register ("BOR") at the Company's registered office in Cayman, unless the Company falls into one of the specific exempt categories. Note that similar laws are being passed in other jurisdictions.

This Memo requires the urgent attention of the Board of Directors, as the management of each Cayman company is required under the legislation to provide certain information to its Cayman Registered Office ("Cayman RO") as set out below.

Core Responsibilities and Decisions Required

Reporting of Beneficial Ownership under the new legislation became effective on 1st July 2017.

It is the responsibility of the Cayman RO of each Company to maintain the BOR, and to file BOR data monthly with the relevant Cayman Islands Government Authority ("the Authority").

However, under the law it is the Board of Directors of each Company that must determine whether the Company is an In-scope Company ("ISCs") or else a Company which meets an exemption test so is not reportable, and to inform the Cayman RO of the status of the Company. Details of exemptions are set out below.

If the Company is determined to be an ISC, then the Board of Directors has a further responsibility to determine if there are any persons who need to be reported on the Company's BOR as "Registrable Persons". In general terms, these are persons

controlling more than 25% of ownership rights but further details are set out below. The identity of any Registrable Person must be notified to the Cayman RO.

The Cayman RO is required to maintain certain specified data about every Registrable Person on the Company's BOR. Details of the specified data are set out below and is in line with normal due diligence requirements. If the Board does identify any Registrable Person, it would be desirable for the Company to provide the Cayman RO with fresh copies of documents (e.g. passports and utility bills) that cover all the specified data points for that Registrable Person.

All ISCs and all Registrable Persons of those ISCs must comply with the new legislation, or face financial penalties for non-compliance. The responsibility for such compliance lies with the Board of Directors of each ISC. However, no penalties will be charged within the first 12 months after July 1, 2017.

BOR Reporting to the Authority

The law establishes that the Authority must maintain a secure, non-public, centralized platform on which BOR information of all ISCs is stored. The reporting system is designed to safeguard the privacy of all legitimate business. There will be no on-line access to the data stored at the Authority, and the delivery of information by Cayman RO's will be done by the most secure available methods.

Each Cayman RO will on a monthly basis be required to supply the Authority with the current BOR information for every ISC for which it acts as RO.

The Cayman RO's will provide the Authority with encrypted data organized into specified formats that allow the Authority to conduct efficient searches across the data supplied from each Cayman RO.

BOR information will not be available to the public or to any persons in government outside the Authority. The Authority may only access BOR information relating to any ISC, if the Authority has first received and validated a formal lawful request from specific governmental authorities. These requests must stem from investigations into financial crime, money laundering, and regulatory or tax matters. At present the United Kingdom is the only country that has entered into a relevant agreement with the Cayman Islands which permits it to make formal lawful requests to the Authority.

The continued accuracy of the monthly BOR filings by the Cayman RO's with the Authority will of course be dependent upon the Cayman RO's receiving updated information from the management of the various ISC's. Therefore, if the Board of Directors of a Cayman company determines that the Company has changed category between ISC and Exempt, or that there are persons who have now become Registrable Persons, or that persons have recently ceased to meet the test for being Registrable Persons, the Board of Directors must notify its Cayman RO promptly of the changes that need to be made to the Company's BOR.

Steps to be taken to supply Trident as the current Cayman RO for this Company with the required information for the Beneficial Ownership Register.

Step 1: Board of Directors to Ascertain if the Company is Exempt or In-Scope Company

The legislation does provide exemptions from BOR reporting for several different types of legal entity. The Board of Directors for each Company needs to make its own decision as to whether the Company does fall within any of the Exemptions from BOR reporting. You will find the list of Exemptions on *Appendix A* below, and can refer to specific legislation on *Appendix C* below.

The Board of Directors must then inform Trident of the relevant exemption that applies to the Company, and should provide Trident with relevant

proofs that such exemption applies to the Company. In most cases such determinations should be straight-forward.

If the Board of Directors has reviewed the legislation and the exemptions and does not find any relevant exemption for the Company, then the Company must be treated as an ISC. In that case the Board of Directors must notify Trident that the Board believes that the Company is an ISC.

We request that the Board of Directors advise Trident as soon as possible, via email to BOReportingTCAY@tridenttrust.com or via your usual contact at Trident, whether the Board considers the Company to be an ISC, or to be Exempt from reporting under the legislation (with type of exemption).

If the Board of Directors is not immediately able to make a decision, it would be helpful if it could confirm to Trident via email to BOReportingTCAY@tridenttrust.com or via your usual contact at Trident, that it is in receipt of this email and to advise the likely timeframe for reporting its status as an ISC or as an Exempt entity.

Step 2: Board of Directors to Identify "Registrable Persons"

In all cases where the Board of Directors has concluded that the Company is an ISC, the Board will then need to identify whether there are any Registrable Persons under the Law. In general terms, a Registrable Person is an individual person who owns or controls, directly or indirectly, more than 25% of the shares or 25% of the voting rights in a Company. Such persons are considered to be Beneficial Owners for the purposes of the new Law.

The Board of Directors of an ISC must make all such enquiries as it sees fit to identify whether a person is a Registrable Person or is not a Registrable Person for the Company. In some cases the Board may conclude that there is no single individual who is a Registrable Person, however we expect that most ISCs will have one or more Registrable Persons.

We request that the Board of Directors of each ISC advise Trident as soon as possible via email to BOReportingTCAY@tridenttrust.com or via your usual contact at Trident,

- its preliminary findings as to whether the Company appears to have any individuals who are Registrable Persons
- the names of all Registrable Persons that have been identified
- if the Board of an ISC considers that there is no Registrable Person, an overview of how this decision was reached.

In most cases such determinations should be straight-forward. But if the Board of Directors is likely to have delays in making such determinations or needs to make further enquiries about certain persons, then it would be helpful if it could advise Trident of its progress via email to BOReportingTCAY@tridenttrust.com or via your usual contact at Trident.

Step 3: Information and Documentation Required on “Registrable Persons”

Specific information on each Registrable Person needs to be provided to Trident for entry on the Company’s BOR. The Board needs to arrange that Trident receives the complete prescribed details about any Registrable Persons for that ISC. This information on a Registrable Person may be supplied to Trident either directly by the Registrable Person or else via the usual intermediaries. It may be supplied as appropriate by courier, by mail or else by email to BOReportingTCAY@tridenttrust.com or via your usual contact at Trident.

You will find on *Appendix B* the prescribed list of details to be supplied to Trident for each Registrable Person. Note that the information required is in line with the normal due diligence requested by Cayman registered offices, but will bring such due diligence up-to-date and ensure that all required data points are refreshed for the purposes of the new Law.

Step 4: Ongoing Responsibilities of the Board of Directors

The Board of Directors of each Cayman Company has an ongoing duty under the law to notify Trident of the following events (with appropriate supporting documentation):

- If the Company was Exempt but is no longer Exempt, so is now an ISC

- If the Company was an ISC but has now met one of the Exemptions
- If any person needs to be added to the list of Registrable Persons for that ISC
- If any person may now be removed from the list of Registrable Persons for that ISC
- If there is a material change in the data with respect to any existing Registrable Person

Step 5: Failure of a Registrable Person to Provide BOR Data to Trident

If a Registrable Person is identified as such by the Board of Directors of an ISC, but fails in reasonable time to supply such information to the Board of Directors or to Trident as is required under the law, then the Board of Directors may have a duty under the law to issue a Restrictions Notice to such Registrable Person.

When a Restrictions Notice is issued in respect of any ownership interest on an ISC, it makes any transfer of (or agreement to transfer) such interest void and prohibits payment of sums due from the company in respect of such interest. A person to whom a Restriction Notice has been issued by the Board of Directors has certain rights as are set out in the Law.

Note that In-Scope Companies and other persons, including the Directors and officers of that ISC, may be subject in due course to penalties for breaches of the Beneficial Ownership Law.

Queries and Assistance

This notification is only intended to provide general information for the Board of Directors. It is not intended to be, nor should it be used as, a substitute for specific legal advice. The Board may contact Trident via email to BOReportingTCAY@tridenttrust.com or your usual contact at Trident for general assistance on BOR reporting requirements. Should the situation require legal advice, Trident will be happy to put you in touch with local attorneys with expertise in this field.

Yours sincerely
Trident Trust Company (Cayman) Limited

Appendix A – Categories of Exempt Entity

All Cayman Islands companies incorporated, or registered by way of continuation, under the Companies Law and the LLC Law will have to maintain a Beneficial Ownership Register (BOR) unless (a) the Company fits one of the Exempt categories, or (b) the Company is a subsidiary of one or more legal entities, each of which fits one of the Exempt categories.

Exempt categories are:

- listed on the Cayman Islands Stock Exchange
- listed on other approved stock exchange
- registered or holding a licence under a “regulatory law” in the Cayman Islands as defined in the legislation, including inter alia the Mutual Funds Law, the Securities Investment Business Law, the Insurance Law
- registered as an Excluded Person under the Securities Investment Business Law
- special purpose vehicles, private equity funds, collective investment schemes and investment funds, IF they are managed, arranged, administered, operated or promoted by an “approved person” as defined in the legislation*
- a General Partner of any special purpose vehicle, private equity fund, collective investment scheme or investment fund, that is managed, arranged, administered, operated or promoted by an “approved person” as defined in the legislation
- Partnerships and foreign companies are not affected by this legislation, whether or not they are registered in the Cayman Islands

Appendix B – List of Prescribed Items for Each “Registrable Person”

The following prescribed items will be required by the Cayman RO under the Law for each Registrable Person related to any ISC. The prescribed items will be entered into the BOR by the Cayman RO, and will be filed with the Authority on a monthly basis in the prescribed format:

For an Individual:

- full legal name
- residential address and, if different, an address for service of notices under this Law
- date of birth
- an approved document which contains information identifying the individual (passport, driver’s licence or other government-issued document), on which the following are reported:
 - identifying number
 - country of issue
 - date of issue
 - date of expiry of issue
- the date on which the individual became a registrable person in relation to the ISC
- the date on which the individual ceased to be a registrable person in relation to the ISC
- share percentage
- nature of control

For a Corporation Sole:

- name
- principal office
- the legal form of the corporation sole
- the law by which the corporation sole is governed
- the date on which the corporation sole became a registrable person in relation to the ISC
- the date on which the individual ceased to be a registrable person in relation to the ISC

For a Relevant Legal Entity:

- 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

*An “approved person” is a person or a subsidiary of a person that is (i) regulated, registered or licensed under a Cayman Islands regulatory law or regulated in an approved jurisdiction or (ii) listed on the Cayman Islands Stock Exchange or another approved stock exchange.

- if applicable, its registration number in that register
- the date on which the legal entity became a registrable person in relation to the ISC
- the date on which the legal entity ceased to be a registrable person in relation to the ISC

Appendix C - Legislation and Summary

- The Companies Management (Amendment) Law, 2017, <http://www.gov.ky/portal/pls/portal/docs/1/12400775.PDF>
- The Limited Liability Companies (Amendment) Law, 2017, <http://www.gov.ky/portal/pls/portal/docs/1/12400774.PDF>
- The Companies (Amendment) Law, 2017, <http://www.gov.ky/portal/pls/portal/docs/1/12400773.PDF>
- The Beneficial Ownership (Limited Liability Companies) Regulations, 2017; and <http://www.gov.ky/portal/pls/portal/docs/1/12400777.PDF>
- The Beneficial Ownership (Companies) Regulations, 2017, <http://www.gov.ky/portal/pls/portal/docs/1/12400776.PDF>
- Summary Guidance for Companies and Limited Liability Companies - 17 May 2017 provided by the Ministry for Financial Services, Commerce and Environment

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