

Scope and obligations - a new beneficial ownership regime begins

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The Cayman Islands beneficial ownership regime (**Regime**) came into force on 1 July 2017. It establishes a secure, non-public centralised platform on which beneficial ownership information of in-scope companies (**ISCs**) must be maintained. Although trusts are themselves out-of-scope, they may still be Registrable Persons with obligations under the Regime and material penalties apply for breach.

This Advisory focusses on the impact that the Regime will have on trusts and for a more detailed analysis of the Regime please refer to our [Client Advisory](#).

Practical steps

All Cayman legal entities should confirm their classification as "in-scope" or "out-of-scope" and document the results of such assessment. However, the analysis should extend also to all individuals and Cayman-legal entities which are connected, directly or indirectly, to a Cayman Islands company or LLC. For example, an individual does not need to be directly connected to the Cayman company but could be connected to another entity, including a trust, which itself is an owner of the company (see "Who is a Beneficial Owners?" for more details).

Classification - out-of-scope

The Regime applies only to Cayman Islands companies and LLCs (defined above as ISCs). In the first place, it should be identified whether or not the ISC falls within one of a number of exemptions, including:

- companies that are registered with CIMA under the Banks & Trust Companies Law (the **BTCL**);
- companies managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund (a **Managed Entity**); and

- companies that are subsidiaries of companies that fall within the above categories (a **Subsidiary**), i.e. companies whose out-of-scope parent(s) hold more than 75% of the shares or voting rights of the subsidiary, or the right to appoint and remove a majority of the board of the subsidiary; or companies that are themselves subsidiaries of such a subsidiary.

We expect considerable attention to be focused on the Managed Entity and Subsidiary exemptions. In relation to the Subsidiary exemption, it appears that a company that is wholly held on the terms of a trust will be treated for the purposes of the Regime as a subsidiary of the trustee. Where the trustee holds a trust licence under the BTCL, the company may be out-of-scope on the basis that it is a Subsidiary.

Classification - in-scope

Unless it falls within an exemption, therefore, all companies and LLCs incorporated in Cayman or registered by way of continuation in Cayman, including ordinary companies, exempted companies and exempted segregated portfolio companies are in-scope.

Who is a Registrable Person?

Registrable Persons in respect of a company are (i) beneficial owners (as described below), and (ii) relevant legal entities (that is, a Cayman entity that would be a Beneficial Owner if it were an individual).

Beneficial owners are individuals who, in respect of an ISC:

- hold, directly or indirectly, more than 25% of the company's shares;
- hold, directly or indirectly, more than 25% of the voting rights of the company;
- hold, directly or indirectly, the right to appoint or remove a majority of the company's board of directors;
- have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over the company; or
- have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control over a trust, partnership or other entity which owns the company.

Regulations provide details of what indirect ownership means.

Obligations under the Regime

ISCs have extensive obligations under the Regime, including an obligation to:

- engage a licensed Cayman corporate services provider (**CSP**) to maintain an adequate,

accurate and current beneficial ownership register;

- take reasonable steps to identify individual beneficial owners and relevant legal entities; and
- give notice to all beneficial owners and relevant legal entities requiring such persons to confirm their status.

Beneficial owners and relevant legal entities also have their own obligations, including an obligation to respond to any notice received from an ISC as well as having a proactive obligation to notify an ISC that they are Registrable Persons, even where they have not received a notice. Trustees and individuals connected with trusts that have a Cayman company within the structure should therefore carefully consider their role and whether or not they have obligations under the Regime.

Further information

For a more detailed analysis of the Regime, please see our [Client Advisory](#). For specific advice on a particular case, please do not hesitate to contact us.

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