

The Beneficial Ownership Register in The Cayman Islands

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The Companies Law (2016 Revision) and the Limited Liability Companies Law 2016 have been amended and regulations enacted to provide for the establishment of beneficial ownership registers for companies (the aforementioned amendments and the attendant Regulations shall together be called the “Laws”). The Laws are not yet in force but are expected to be passed in or around June 2017.

The beneficial ownership register (“Register”) is different from the register of members required to be maintained for each company incorporated or registered under the Companies Law or the Limited Liability Companies Law. We will discuss some of the salient requirements of the Laws below.

Entities Affected

All companies incorporated or registered by way of continuation under the Companies Law or the Limited Liability Companies Law are required to maintain a Register. However, the following legal entities are excluded:

- i. entities listed on the Cayman Islands Stock Exchange or an approved stock exchange;
- ii. entities registered or licensed under a “regulatory law” in the Cayman Islands (being the Banks and Trust Companies Law, the Building Societies Law, the Companies Management Law, the Cooperative Societies Law, the Insurance Law, the Money Services Law, the Mutual Funds Law, and the Securities Investment Business Law);
- iii. entities managed, arranged, administered, operated or promoted by an approved person as special purpose vehicles, private equity funds, collective investment schemes or investment funds;
- iv. a general partner of any vehicle, fund or scheme referred to in paragraph (iii) above that is managed, arranged, administered, operated or promoted by an approved person;
- v. entities exempted by the Regulations.

Identifying The Beneficial Owner

Companies to which the Laws apply shall take reasonable steps to identify who is a beneficial owner of the company. An indi-

vidual is a beneficial owner of a company if the individual holds:

- i. directly or indirectly, more than 25% of the shares in the company;
- ii. directly or indirectly, more than 25% of the voting rights in the company; or
- iii. the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company.

If no individual meets the conditions in (i) to (iii) above, an individual is a beneficial owner of company if he has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the company through the ownership structure or interests described above, other than solely in the capacity of a director, professional advisor or professional manager.

If no individual meets any of the conditions above, but the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of the conditions above, an individual may be classified as a beneficial owner of the company if he has 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, professional advisor or professional manager.

Identifying A Relevant Legal Entity

A company must also identify who is a relevant legal entity in relation to the company. A relevant legal entity in relation to a company is a legal entity that:

- i. is incorporated, formed or registered (including by way of continuation or as a foreign company) in the Cayman Islands; and
- ii. would be a beneficial owner of the company if it were an individual.

A company must give notice in writing to beneficial owners and relevant legal entities (“registrable person”) and to any person that it knows or has reasonable cause to believe is a registrable person in relation to it.

The Register

The Register must be kept at the company's registered office. Exempted Companies, Ordinary Non-Resident Companies, Limited Liability Companies and Special Economic Zone Companies are required to engage a corporate service provider to assist them to establish and maintain a Register.

Ordinary Resident Companies to which the Laws apply must engage either a corporate service provider or the Registrar of Companies to assist them to establish and maintain a Register.

Content Of The Register

The information required to be contained in the Register is:

- i. for an individual, his full legal name, residential address (and address for service if different), date of birth, passport or driver's licence or other government ID (including the identifying number, country of issue, date of issue and expiry) and the date on which he became or ceased to be a registrable person in respect of the company;
- ii. for a relevant legal entity, its corporate or firm name, registered or principal office, the legal form of the entity and the law by which it is governed, the register of companies in which it is entered (if applicable), its registration number in that Register and the date on which it became or ceased to be a registrable person in relation to the company.

Access To Beneficial Ownership Information

The Minister charged with responsibility for Financial Services or a person designated by him (the "Competent Authority") shall establish an online platform by which the beneficial ownership registers may be accessed. The platform is secure and may only be accessed by the Competent Authority.

The Competent Authority will execute a search of a company's Register if formally requested to do so by:

- i. a senior official designated by name or position by the Minister, representing the financial intelligence unit, the Finan-

cial Reporting Authority, the Cayman Islands Monetary Authority, the Tax Information Authority or any other body which is assigned responsibility for monitoring compliance with the Money Laundering Regulations in the Cayman Islands;

- ii. the Financial Crime Unit of the Royal Cayman Islands Police Service if a senior official of the Unit certifies that the request for the search is in response to a request from a jurisdiction listed in the Laws that has entered into an agreement with the Cayman Islands Government with respect to the sharing of beneficial ownership information. The UK is the only country that has entered into such an agreement at this time.

The Competent Authority or any employee, servant or agent of the Competent Authority shall not disclose any information relating to a request for beneficial ownership information, including the fact that such a request was made or that a search was carried out, to any person other than the authorized personnel of the Competent Authority or the law enforcement agency that requested the search.

Enforcement

The company may send a restrictions notice to a person who has a relevant interest in the company in specified circumstances. The restrictions notice may among other things, affect the right of the person to transfer the shares or other rights exercisable in respect of the person's interest.

Next Steps

If H&J Corporate Services is your corporate service provider, it will be in contact with you in relation to establishing the register once the Laws have been passed and the IT infrastructure is in place for the platform.

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