

BERMUDA EXTENDS ITS BENEFICIAL OWNERSHIP REGIME

Bermuda continues to demonstrate its commitment to adopt and implement the international transparency standards promulgated by the Financial Action Task Force and the Organisation for Economic Co-operation and Development to combat money laundering, terrorist financing and the misuse of corporate vehicles.

Legislation amending and enhancing the beneficial ownership regime for Bermuda companies and limited liability companies (“LLCs”) became operational on 23 March 2018. New disclosure and record keeping obligations have been introduced with the principal intent of ensuring that the Bermuda Monetary Authority (the “Regulator”) and law enforcement agencies have access to up to date information on beneficial ownership of Bermuda companies and LLCs. The beneficial ownership register is not available for public inspection and may only be accessed by or on behalf of the Registrar of Companies (the “Registrar”).

Who is exempt and who must comply?

Unless an exemption is available, all Bermuda companies and LLCs are required to obtain information regarding their beneficial owners and to establish and maintain a beneficial ownership register. This register is to be kept at the registered office, or with due notification, at such other place in Bermuda convenient for inspection by the Registrar.

Exemptions from the application of the legislation are available. The following companies, LLCs, entities or vehicles and any subsidiary (as such term is specifically defined in the legislation):

- a) a company whose shares are listed on the Bermuda Stock Exchange or an appointed stock exchange;
- b) a closed-ended investment vehicle managed or administered by a person licensed under the Investment Business Act 2003 or the Investment Funds Act 2006 or registered, authorised or licensed by a foreign regulator recognised by the Regulator;
- c) a permit company;
- d) a financial institution as defined in the Third Schedule to the Bermuda Monetary Authority Act 1969;
- e) any other type of company or entity that is exempted by order of the Minister.

Required actions

Companies and LLCs without an exemption have an obligation to take reasonable steps to identify individual beneficial owners and relevant legal entities (“RLEs”). Reasonable steps include the issue of written notices to any person that is known, or there is reasonable cause to believe, is a registrable person. Within 30 days of receipt of the notice, the addressee must confirm whether or not they are a registrable person in relation to the company or LLC. If they are, they must confirm, correct or supply any information included in the notice and supply any missing information.

A company or LLC is entitled to rely on the response of a person to whom a written notice has been sent in good faith and without further enquiry, unless it has reasonable cause to believe that a response is misleading or false. If no beneficial owners are identified or confirmed, the company or LLC must keep a record of the actions taken to identify the beneficial owners.

Who is a registrable person?

A beneficial owner or a RLE is a “registrable person” to be listed on the beneficial ownership register. A beneficial owner is defined as (i) any individual or individuals who own or control more than 25% of the shares, voting rights or interests in the company or LLC whether through direct or indirect ownership; or (ii) if no such individual exists or can be identified, then any individual is a beneficial owner if that person controls the company or LLC by other means; or (iii) if no such individual exists or can be identified, who meets either of the above criteria, then an individual is a beneficial owner if he holds the position of senior manager of the company or LLC. The term “senior manager” means chief executive, managing or executive director, president or any other person holding such senior position in the company or LLC by whatever title known.

A RLE in relation to a company or LLC means any legal entity incorporated, formed or registered (including by way of continuation) in any jurisdiction and any legal arrangement (including a trust, partnership or other similar arrangement), which would be a beneficial owner of the company or LLC if it were an individual.

Filing with the Regulator and maintaining the Beneficial Ownership Register

New companies and LLCs will each be required at the time of registration, continuation or conversion in Bermuda, to file a beneficial ownership register with the Regulator.

Once established, the beneficial ownership register must be updated with respect to any change of beneficial ownership. This must be done as soon as practicable after the company or LLC is notified of such change and in any event not later than 14 days after such notification.

If a company or LLC (a) becomes aware that a beneficial owner or a RLE has ceased to be a registrable person or a change occurs which renders the accuracy of the information contained on the existing beneficial ownership to be incorrect or incomplete (each a “Relevant Change”); or (b) has reason to believe that such a Relevant Change has occurred, such company or LLC is required to give written notice to that person as soon as practicable requesting confirmation of such relevant change within 30 days.

Offences

Non-compliance with the new beneficial ownership provisions applicable to companies and LLCs will incur significant penalties, including a fine of up to \$5,000 for failure to comply with any of the required provisions and up to \$50,000 for knowingly providing false information to the Regulator. A person may have a defence where it can be shown that reasonable steps were taken to identify beneficial owners.

If a company or LLC is guilty of an offence and it is proved to have been committed with the consent or connivance of an officer of the company or LLC, both the officer and the company or LLC are deemed to have committed the offence and are liable to be penalised.

Transitional period

Bermuda companies and LLCs that are subject to the requirement to maintain a beneficial ownership register are afforded a 6-month transitional period in which to comply. The Regulator has also indicated that specific guidance notes will be forthcoming shortly. In light of the potential administrative burden imposed by the new obligations, Bermuda companies and LLCs are advised to initiate the required steps to identify registrable persons in advance of the 23 September 2018 deadline.

Similar legislation amending the beneficial ownership regimes applicable to exempted general and limited partnerships is also now operative. CHW will provide further guidance on the filing requirements as and when these become available.

September 2018

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