



## A closer look: Cayman Islands Beneficial Ownership registration regime

The new beneficial ownership registration regime has gone live in the Cayman Islands. Much of the focus to date has been on the mechanics of the new system: which companies are in scope, how to identify registrable persons, what information must be entered in the register and how that information is uploaded to the government's secure platform. With all the emphasis on the technicalities, little attention has been paid to some of the interesting legal issues that are thrown up by the new legislation. While an in-depth analysis is beyond the scope of this brief, a few items of particular interest are examined below.

### Interpretation Issues

While the bulk of the law is clear and unambiguous, some of the language seemingly betrays a desire for flexibility that may leave considerable room for interpretation. This is particularly evident in those provisions which set out a company's obligations to chase down the identities of registrable persons. What, for example, gives a company, "reasonable cause to believe" that a certain state of affairs exists, or that "reasonable steps" have been taken? Similarly, how should one assess "significant influence or control" when trying to identify a beneficial owner? The task of applying statutory language to a particular set of facts is not always straightforward. Where there is any doubt about whether the standards expressed in the legislation have been met, companies should seek specific legal advice.

### Access to Information

The secure beneficial ownership platform maintained by the Cayman Islands government will be accessible only through existing legal gateways by designated law enforcement agencies. It is not open to the public, and by virtue of its construction as an air-gapped, offline terminal, it is about as secure as any electronic system could possibly be. Furthermore, the Confidential Information Disclosure Law, 2016 and, when fully in force, the Data Protection Law 2017, provides protection against the disclosure of information on the register.

However, the information gathered for the beneficial ownership register contains more than just a list of those persons who are current beneficial owners of a company. It contains 'registrable persons', which includes Cayman entities through which beneficial owners hold their interests in a company. It also includes historical information on registrable persons going back five years. Litigants should take advice as to whether this may be a fruitful area of enquiry for a Norwich Pharmacal application.

### Non-Compliance

The legislation imposes significant financial penalties on a company that knowingly and wilfully contravenes its obligations to prepare and maintain the beneficial ownership register. Financial penalties extend outward to directors, officers and registrable persons who knowingly and wilfully participate in the non-compliance, or who knowingly or recklessly make a false statement in a material particular. Wrongdoers who find themselves within reach of the law may face serious jail time.

More interesting than the heavy artillery reserved for deliberate misconduct, however, is the remedy available in the case of simple non-compliance. If a company does not receive the information that it requires within one month of requesting it, the company may issue a "restrictions notice" in respect of the interest. Until that notice is withdrawn, any transfer or agreement to transfer the interest is void, no rights are exercisable in respect of the interest, no shares may be issued in respect of the interest or in pursuance

of an offer made to the interest holder, and except in a liquidation no payment may be made from the company in respect of the interest, whether in respect of capital or otherwise. Other than in a liquidation, an agreement to transfer a right to be issued any shares in respect of the relevant interest or a right to receive payment in respect of the interest is void. The shares are essentially stripped of their economic and other rights until the situation is rectified and the restrictions notice is either withdrawn by the company or ceased by the court.

The threat of a restrictions notice is likely to have a motivating effect on most beneficial owners. However, there may be cases where no answer - or no satisfactory answer - is received and the company will be left with little choice but to issue the notice. When it does, third parties may find themselves impacted.

The legislation has been carefully crafted to limit the adverse consequences of a restrictions notice on third parties, particularly arm's length security holders (affiliated security holders will want to take specific advice on their risks). In all cases, the company must have regard to the effect that the notice will have on the rights of other third parties, other shareholders and other beneficial owners, but the only practical remedy for an aggrieved third party is to seek the intervention of the court. While we would expect the Cayman Islands courts to take their usual sensible and commercial approach to such matters, it remains to be seen how the courts will approach applications of this nature - and how quickly.

### **Drafting Considerations**

Parties entering into a commercial transaction involving the shares of a company that is in scope of the new regime will want to take legal advice as to whether or not they are adequately protected in the event that the company, another shareholder or a registrable person fails to meet its obligations under the law. In many cases, contractual drafting techniques can reduce such risks. Share sale and purchase agreements, options, and other similar contracts should be carefully drafted in light of the new provisions.

### **Conclusion**

Appleby takes the view that the beneficial ownership registration regime is a balanced law that satisfies legitimate law enforcement needs (thereby assisting in the detection and prevention of money laundering and terrorist financing) while providing a flexible and commercially sensible compliance structure. In the vast majority of cases, the obligations imposed on a company, its shareholders, and registrable persons will be obvious and the path to compliance will be straightforward and clear. However, in more complex situations, the flexibility that is built into the legislation will require careful legal analysis and advice. In light of the serious consequences of non-compliance, companies, shareholders, and interested parties such as security holders should take bespoke legal advice. Appleby's beneficial ownership registration advisory team stands ready to help guide clients through these complex and important issues.

## Key Contacts



**Simon Raftopoulos**  
Partner  
Group Head, Private Equity  
Corporate  
Cayman Islands  
+1 345 814 2748  
[sraftopoulos@applebyglobal.com](mailto:sraftopoulos@applebyglobal.com)



**Samuel Banks**  
Counsel  
Corporate  
Cayman Islands  
+1 345 814 2720  
[sbanks@applebyglobal.com](mailto:sbanks@applebyglobal.com)



**Dylan Wiltermuth**  
Senior Associate  
Corporate  
Cayman Islands  
+1 345 814 2980  
[dwiltermuth@applebyglobal.com](mailto:dwiltermuth@applebyglobal.com)



**Peter Colegate**  
Senior Associate  
Corporate  
Cayman Islands  
+1 345 814 2745  
[pcolegate@applebyglobal.com](mailto:pcolegate@applebyglobal.com)

## Offshore Legal Services

[applebyglobal.com](http://applebyglobal.com)

© Appleby Global Group Services Limited 2017 • All Rights Reserved

This eAlert is published by APPLEBY and is not intended to be, nor should it be used as, a substitute for specific legal advice on any particular transaction or set of circumstances. It does not purport to be comprehensive or to render legal advice and is only intended to provide general information for the clients and professional contacts of Appleby as of the date hereof.

Appleby (Cayman) Ltd. (the Legal Practice) is a limited liability company incorporated in the Cayman Islands and approved and recognised under the Legal Practitioners (Incorporated Practice) Regulations 2006 (as amended). "Partner" is a title referring to a director, shareholder or an employee of the Legal Practice. A list of such persons can be obtained from your relationship partner.