

# Cayman Islands Introduces Fines Under Beneficial Ownership Regime

The Cayman Islands beneficial ownership regime (the "BO Regime") will be reinforced by the introduction of an administrative fines regime (the "Fines Regime") with effect from 29 June 2020. While breaches of obligations arising under the BO Regime have constituted an offence since the introduction of the BO Regime in July 2017, the Fines Regime will grant the Cayman Islands Registrar of Companies ("ROC") the power to impose fines for a number of breaches unilaterally and without court proceedings. Non-payment of administrative fines could lead to strike-off or dissolution by the ROC.

As is discussed in further detail below, Cayman Islands companies ("companies") and Cayman Islands limited liability companies ("LLCs") whose beneficial ownership register indicates the status of "Enquiries Pending" for three uninterrupted months will be presumed to be in breach of the BO Regime and so liable to fines.

## Background

The BO Regime, which governs the collection, maintenance and sharing (within strict limitations) of information regarding the ultimate beneficial ownership or control of companies and LLCs came into force in the Cayman Islands on 1 July 2017.

Certain companies and LLCs are exempted from complying with the primary obligations of the BO Regime to establish and maintain a register of beneficial owners, but these exempted entities ("Exempted Entities") still have certain limited

filing obligations and are also impacted by the introduction of the administrative fines regime.

## The Administrative Fines Regime

Amendments to the BO Regime will come into force on 29 June 2020, introducing the Fines Regime. Related draft regulations were issued for consultation on 10 June 2020 and give an initial indication as to the proposed operation of the Fines Regime. While some minor amendments to the draft regulations may be made following the consultation process, the fundamental nature of the Fines Regime is contained in the primary legislation and so will not change significantly.

Under the Fines Regime, the ROC will be granted the power to impose fines on persons in breach of their obligations under the BO Regime, including companies and LLCs who are subject to the primary obligations of the BO Regime ("In-Scope Entities") who fail to take reasonable steps to identify beneficial owners and relevant legal entities (both as defined under the BO Regime) and / or fail to provide required particulars of registrable persons (also as defined under the BO Regime) to the corporate services providers in the Cayman Islands (their "CSP").

Fines may also be imposed where In-Scope Entities fail to issue certain notices to their registrable persons (though it should be noted that there are a number of carve-outs from the obligations to provide such notices), and upon In-Scope Entities who fail to take the steps set out in the BO Regime to ensure that their beneficial

ownership register remains up to date. This latter obligation extends to the requirement to ensure that any required particulars of any registrable person (such as their address and passport number) are also kept current and accurate.

Exempted Entities who fail to provide written confirmation of their exemption from the BO Regime to their CSP, along with instructions to file that written confirmation, will also be liable to an administrative fine, as will any person who incorrectly reports to their CSP that they are an Exempted Entity where this is not the case.

The above list of breaches of the BO Regime which may give rise to an administrative fine is not exhaustive and there are a number of other technical breaches which may give rise to fines for companies, LLCs and / or their CSPs.

In all instances, initial fines will be approximately US\$6,100 for an initial breach, with continuing breaches attracting further monthly fines of approximately US\$1,220 up to a maximum of US\$30,500 for a single breach. Where a fine remains unpaid by a company for ninety days, the ROC may strike off such company from the register, which will result in automatic dissolution.

### **In-Scope Entities Designated 'Enquiries Pending'**

The BO Regime contains a requirement for each In-Scope Entity to maintain a 'status' on its beneficial ownership register which indicates its progress in complying with its beneficial ownership obligations. Among the available options is a status of 'Enquiries Pending', which is required to be entered on a beneficial ownership register where a company or LLC has determined that it is an In-Scope Entity but is yet to complete the process of identifying its registrable persons. The 'Enquiries Pending' status is not applicable where an In-Scope Entity has listed all of its registrable persons on its beneficial ownership register, but some of the required particulars regarding those registrable

persons (such as address or passport number) remain outstanding.

The draft regulations contemplate that if, at any time between the date it was incorporated, formed or registered in the Cayman Islands and the date of its ultimate dissolution, an In-Scope Entity has a status of 'Enquiries Pending' for an uninterrupted period of not less than three months, that fact will be prima facie evidence of a breach of its obligations under the BO Regime and therefore render it liable to an administrative fine without the need for any additional consideration by the ROC.

All In-Scope Entities which have had an 'Enquiries Pending' status from on or before 29 March may therefore potentially be liable to an administrative fine.

### **Other Changes to the BO Regime**

The amendments to the BO Regime have also altered the process regarding the use of restrictions notices. Restrictions notices are one of the tools by which In-Scope Entities could compel their shareholders or members (as applicable) to comply with their own obligations under the BO Regime to respond to enquiries and provide information to assist the In-Scope Entity in identifying its registrable persons.

The ability to issue a restrictions notice has now been removed from In-Scope Entities and, instead, granted to their CSPs. The effect of restrictions notices remain unchanged (essentially a freeze on the relevant shares or interest, prohibiting distributions, dividends and / or transfer) as do the circumstances in which they may be issued. The criteria for the issuance of a restrictions notice are detailed and any In-Scope Entity contemplating their use (via their CSP) should seek detailed and fact-specific advice.

## Next Steps

It is now important for all companies and LLCs, whether they are In-Scope Entities or Exempted Entities, to review their compliance with the BO Regime, including the accuracy of any beneficial ownership register or written confirmation of exemption maintained with their CSP in the Cayman Islands. Those In-Scope Entities with a status of 'Enquiries Pending' should take immediate and well-documented steps to identify their registrable persons with a view to ensuring that such status does not endure any longer than absolutely necessary.

## Further Assistance

If you would like further information on the amendments to the BO Regime or assistance in complying with relevant obligations, please contact your usual Maples Group contact or any of the contacts listed below.

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