

Cayman Islands quarterly update

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Beneficial ownership registers

In April 2017, the Cayman Islands Government met its commitment to the UK Government made a year earlier by enacting a regime requiring Cayman Islands companies to maintain registers of their beneficial owners. The regime has not yet come into force, but is expected to do so by the end of June 2017. The regime has certain regulated and listed company exemptions and generally only applies to ultimate beneficial owners holding more than a 25% interest, together with certain entities through which their interest is held. Companies for which our service company, CO Services Cayman Limited, provides the registered office can expect to receive a guide to complying with the new regime shortly.

Regulatory update

Administrative fines

In December 2016, additional statutory powers were approved for the Cayman Islands Monetary Authority (**CIMA**) to impose administrative fines on persons subject to the Cayman Islands regulatory and/or anti-money laundering regime. The additional powers are expected to come into force during 2017 and will put CIMA's enforcement powers on an equal footing with most onshore regulators.

Fund annual returns

In January 2017, an amendment to the reporting regulations that apply to hedge funds registered with the Cayman Islands Monetary Authority have clarified that funds with multiple

sub-funds must submit a separate Fund Annual Return for each sub-fund.

Tax transparency reporting update

CRS regulations

In December 2016, the Cayman Islands regulations applicable to registration and reporting under the Common Reporting Standard (**CRS**) were amended. The amendments were primarily to incorporate details of the enforcement regime, with the introduction of specific offences for non-compliance with the CRS regime that can result in fines or penalties of up to US\$61,000 with additional daily penalties for ongoing non-compliance. However, the amendment also introduced a significant change to the registration and reporting requirements for nil reporting entities. Nil reports under CRS (for reporting entities with no reportable accounts) are now mandatory (under FATCA they are still optional) and Cayman Islands investment managers and fund general partners are now required to register and report under CRS, even if, as is likely, they have no reportable accounts and will be submitting a nil report.

Updated CRS guidance notes

In April 2017, the Cayman Islands Tax Information Authority (**TIA**) issued updated CRS Guidance Notes, which now contain up to date lists of Participating Jurisdictions and Reportable Jurisdictions for CRS reporting purposes. The CRS Guidance Notes and copies of the related regulations can be viewed on TIA's website [here](#).

OFFSHORE LAW SPECIALISTS

Updated AEOI Portal user guide

The TIA has issued an updated AEOI Portal user guide v.3.1 on 17 May 2017. This can be accessed online [here](#).

Extension to 2017 deadlines

As 2017 is the first CRS reporting year, the registration and reporting deadlines for 2017 have been extended as follows:

- TIA's AEOI Portal is now open for CRS registration and for FATCA registration and reporting. It is expected to open for CRS reporting the week of 12 June 2017
- CRS and FATCA registration deadline is 30 June 2017
- CRS and FATCA reporting deadline is 31 July 2017
- Any UK CDOT reporting should be included in the CRS report for the UK

Foundation companies

The Foundation Companies Law, 2017 was enacted in April 2017 and should come into force shortly. This law introduces the Cayman Islands foundation company as an alternative to trust structures, which are unfamiliar to clients in civil law jurisdictions. The foundation company also has the benefit of separate legal personality and perpetual succession, while being more flexible than a traditional company with regard to its ownership and control structures.

Cayman Enterprise City aviation park

In April 2017, Cayman Enterprise City, a special economic zone in the Cayman Islands, added an Aviation Park designed to attract aviation services businesses. The new park supplements its existing offering of an Internet Park, Science and Technology Park, Media Park, Commodities and Derivatives Park and Maritime Services Park.

Litigation updates

Section 238 mergers - recent developments

Three recent unreported judgments considered the process under section 238 of the Companies Law for valuing the shares of a shareholder of a Cayman company who dissents to the terms of a merger or consolidation.

Shanda Games Limited

In what was the first judgment in the Cayman Islands to consider the meaning of "fair value" in the context of section 238 of the Companies Law since the *Integra Group* decision in 2015, the Court confirmed that: (i) fair value is to be established by the Court undertaking a fresh assessment of all relevant factors, in consideration of the parties' expert evidence and where necessary determining which expert's evidence is to be preferred; (ii) while they are not binding on the Cayman Courts, it was appropriate to consider the Delaware and Canadian authorities decided on similar legislation in those jurisdictions; and (iii) the shares of the minority shareholder(s)

should be valued as a proportion of the value of the company, without the application of a "minority discount" to reflect the fact that the shares represent a minority holding. In a decision that is likely to be relevant to future section 238 applications, the Court also accepted that there is sufficient evidence of the "China effect", which is the theory that for a period from around November 2010, US investors tended to undervalue Chinese companies.

Qihoo Technology Co Ltd

The company had offered the dissenting shareholders US\$17 million for their shares and commenced proceedings under section 238 proceedings when this offer was not accepted. As security for the payment of the fair value of the shares, the company agreed to pay US\$92 million into Court.

The dissenting shareholders then made an application under GCR O.29 for an Order that the company make an interim payment to them. The Court accepted that at trial the dissenting shareholders would receive at least US\$17 million, and so ordered the company to make an interim payment in this amount, rejecting the company's argument that section 238 is a self-contained statutory code which does not permit any discretionary overlap with the interim payment regime in GCR O.29.

Homeinns Hotel Group v Masco Capital Investments Limited et Ors, 7 February 2017 - discovery issues

The Court was asked to determine the types of documents the parties to a section 238 petition should be required to disclose. The Court rejected the company's argument that discovery should take place in the usual way, i.e. by the exchange of lists of relevant documents in each party's possession, noting that in a section 238 application it is the company that will hold the relevant documents. Instead, the Court directed the company to provide certain classes of documents identified by the dissenting shareholders as relevant to the valuation and in the possession of the company.

In Re CHC Group Ltd - directors' rights to appoint provisional liquidators

In *China Shanshui Group Limited*, it was held that directors needed express authorisation in the company's articles in order to present both a winding-up petition and an application to appoint provisional liquidators. In *CHC Group Ltd*, the Court held that directors were permitted to apply for the appointment of provisional liquidators without such authorisation where the application followed the presentation of a petition by one of the company's creditors. In distinguishing *China Shanshui*, McMillan J noted that it was clear that the judgment in that case was only concerned with applications by directors to appoint provisional liquidators which followed a petition presented by the company's directors, and not by a creditor.

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CO Services Cayman Limited is regulated by the Cayman Islands Monetary Authority as the holder of a corporate services licence (No. 624643) under the Companies Management Law (as revised).

Please note that this briefing is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2018