

Deadline approaches for compliance with beneficial ownership regime

Service area / [Corporate](#)

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Bermuda companies have until 28 February 2019 to comply with requirements introduced in 2018 to maintain a register of their beneficial owners. If a company is non-compliant with these requirements after this date, both the company and, potentially, its directors and other officers may be subject to criminal sanctions.

Introduction and background

From 23 March 2018 a requirement has been imposed on Bermuda companies to maintain a register of beneficial owners, although affected companies were granted a transitional period of six months to provide the required information. The Bermuda government extended the deadline to December, before subsequently further extending it to February.

The aim of imposing these requirements is to allow Bermuda to meet transparency standards set by the Financial Action Task Force and the Organisation for Economic Co-Operation and Development.

Who is required to maintain a beneficial ownership register?

Any company incorporated, formed or registered in Bermuda must maintain a beneficial ownership register (a “**Register**”) unless the company falls into one or more of the exempt categories listed below. The requirement also applies to limited liability companies formed and registered under the

Limited Liability Company Act 2016 and partnerships registered under the Partnership Act 1902, the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883, and these entities must also be compliant by 28 February 2019. This briefing will focus, however, on companies.

Exempt categories of companies

Section 98D(2) of the Companies Act 1981 (the “**Companies Act**”) exempts the following companies, entities of vehicles, and any subsidiary thereof, from the obligation to maintain a beneficial ownership register:

- a. a company whose shares are listed on the Bermuda Stock Exchange or an appointed stock exchange designated by the Minister of Finance;
- 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 Bermuda Monetary Authority (the “**BMA**”);
- c. an overseas company (including where it has a permit to engage in or carry on any trade or business in Bermuda);
- d. a “financial institution” defined and listed in the Third Schedule to the Bermuda Monetary Authority Act 1969 (essentially, any company licensed and regulated by the BMA, including an insurance company); or
- e. any other type of company or entity that is exempted by the Minister of Finance under an order made by him.

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Beneficial owners

An individual is a “beneficial owner” if he owns or controls more than 25% of the shares, voting rights or interests in the company through direct or indirect ownership thereof. In the event of no such individual being identifiable, an individual who exercises control by other means (including the right to appoint or remove a majority of the board of directors), or, failing that, the senior manager of the company, may be identifiable as a beneficial owner.

Action to be taken

Companies who are not exempt under a category listed above must establish a beneficial ownership register and take reasonable steps to identify (a) any individual who is a beneficial owner and (b) all relevant legal entities in relation to the company. A “relevant legal entity” is any company, limited liability company or other body having separate legal personality, formed in Bermuda or elsewhere, and any legal arrangement, which in either case would be a beneficial owner of the company if it were an individual. Particular care needs to be taken in assessing the applicability of the requirements, and the beneficial owners and relevant legal entities to be identified, in circumstances where a trust is included in the corporate structure.

“Reasonable steps” for this purpose include issuing a notice in writing to beneficial owners and relevant legal entities identified by the company, and any person that the company knows or has reasonable cause to believe is a beneficial owner or relevant legal entity. Any person receiving such a notice is required, within 30 days of the date of receipt thereof, to state whether or not the person is a beneficial owner or a relevant legal entity in relation to the company, and if so, to confirm or correct any required information that is included in the notice and supply any required information that is missing. If a recipient fails to provide the required information after receiving such a notice, a company may, if its bye-laws permit, impose restrictions on the recipient’s shares preventing transfers of the shares, the exercise of voting rights, the issuance of further shares to the recipient or the payment of any sums on the shares. A company may also apply to the court for an order imposing these restrictions, including where its own bye-laws do not permit it to impose such restrictions itself.

A beneficial ownership register must be kept at the company’s registered office or, after giving written notice to the Registrar, at such other place in Bermuda convenient for inspection by the Registrar.

In addition to establishing a beneficial ownership register and verifying beneficial owners and relevant legal entities, affected companies are required to file certain minimum information with respect to its beneficial owners and any relevant legal entities with the BMA.

Unless a company is exempt, it must be able to demonstrate compliance with these and other requirements relating to its beneficial ownership register by 28 February 2019.

Offences

The Companies Act imposes significant sanctions on companies who fail to comply with their obligations under the Companies Act’s beneficial ownership provisions. A breach of any of these obligations can result in a fine of up to \$50,000, although it is a defence for a person to show that he took reasonable steps to identify beneficial owners.

If an offence committed by a company is proved to have been committed with the consent or connivance of an officer of the company, the officer is also guilty of the offence and is liable to a fine.

How we can help

Carey Olsen Bermuda can assist companies, directors, company secretaries and other officers to understand their obligations under the legislation, and with making the necessary enquiries of potential registrable persons. For further information, please contact the author or your usual [Carey Olsen Bermuda contact](#).

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