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Given the increasing global drive towards transparency and the cross-border sharing of information, trustees and corporate service providers are now more regularly the recipients of requests, demands, and orders compelling the production of information held on their books. In addition to the traditional approach of obtaining disclosure orders from a local court, claimants (including governmental bodies) are relying on new tools such as Unexplained Wealth Orders and enforcing new reporting obligations in legislative initiatives such as the Common Reporting Standard and beneficial ownership registers. Navigating these requests can be a minefield for the recipient, and the steps to be taken can differ depending on whether the recipient is located onshore (for example, in the United Kingdom) or offshore (such as in the Cayman Islands). Below, we compare the key foundations of different categories of disclosure requests, and considerations for recipients, across these two jurisdictions.

England and Wales

1. Types of information requested

- Beneficial ownership information (PSC register, Registration of Overseas Entities Bill, TRS)
- Registered office records (registers of shareholders, officers, PSCs)
- Trust information (including name of trust, settlor, beneficiaries including potential beneficiaries even where not named in the trust instrument, protectors, details of the trust's assets including values, information on residence of the trust, information on legal, financial and tax advisers) (TRS)
- Land ownership, UBO/PSCs, price paid information
- Corporate documents (constitutional documents, resolutions, accounts)
- Financial information and related documents, under informal or formal requests, including to third parties (HMRC under its information powers)

2. Forms of information requests

- Legal obligation on applicable trustees, entities and individuals to register and keep updated information as required by the legislation
- Requests made by Relevant Persons (financial institutions, lawyers, accountants) in relation to registered trusts before entering into a business relationship
- Requests made by corporate entities to PSCs to provide personal information for disclosure in corporate records and at Companies House
- Requests by 'interested' third parties for information held on the PSC register, TRS information to be made accessible to 'legitimate interest' third parties
- Notices issued to HMRC pursuant to applicable Tax Information Exchange Agreements with other jurisdictions and by UK law enforcement authorities
- English civil procedure does not provide a mechanism for pre-trial oral discovery, and civil procedure only requires disclosure of "relevant" documents, being only documents which support or detract from a pleaded fact
- Until 31 December 2020, the English courts will enforce orders for disclosure from the courts of EU and EEA jurisdictions but not those of any other jurisdiction (with the exception of Mexico and Singapore in certain very limited circumstances). Post-Brexit the English courts will not enforce foreign disclosure orders except in the same highly unusual circumstances as those currently applicable to Mexico and Singapore
- Unexplained Wealth Orders (UWOs) directed to UK persons or entities
- Informal requests by beneficiaries of trusts or shareholders of companies
- Requests for information flowing from marital disputes, whether locally or internationally though again after Brexit, English courts will not enforce orders for information in connection with such disputes from any foreign court

3. Compliance with requests for information

Compliance may be appropriate if:	Non-compliance may be appropriate if:
The request is based on a formal demand from a governmental or law enforcement body or an order from a court with jurisdiction over the recipient, and is clearly binding on the recipient, or is an informal request under HMRC's information powers with which it is in the interests of the recipient to engage, usually in order to avoid a less flexible formal request being issued	The request is for information to which the requesting body is not entitled under the applicable powers and guidance
The request has been properly and appropriately directed to the recipient by the relevant entity subject to an obligation to register information; this may require investigation by the recipient and legal advice	The recipient disputes the basis on which the information is requested (eg. disagrees that they are a PSC on a proper analysis). In this case further steps must be taken to resolve the situation in order to avoid sanctions being imposed (eg. restrictions on dealing with shares)
There is a risk of a financial penalty and/or criminal prosecution for failure to comply	The information requested is not in the possession or under the control of the recipient
There is a risk of sanctions or other restrictions being imposed on the person's ability to deal with shares (PSC) or UK land (Overseas Entities Bill), or the risk of confiscation of property (UWOs)	The information is subject to legal privilege and the owner of the information does not wish to waive privilege

4. Form of disclosure

- Disclose relevant information and consider whether it is appropriate to redact any third party or irrelevant subsidiary material contained in the documents
- Where information is sent electronically, consider appropriate levels of security (including encryption) and safe custody of files, if sending information in hard copy consider secure physical delivery and storage methods
- Consider whether the process of determining the request give rise to any obligations to report under applicable anti-money laundering or anti-bribery regulations
- Consider whether information disclosed in the UK might give rise to exposure in any other jurisdiction such that a disclosure is considered in that other jurisdiction

5. Top tips

- Take legal advice on the applicable disclosure framework and in relation to the validity of the information request and related compliance obligations, be willing to work with entities or persons that are subject to registration and/or information requirements to arrive at an agreed position (eg. agree who is a PSC, who is a beneficiary)
- Pay close attention to deadlines for disclosure and understand the risks and/or sanctions related to non-compliance, and for failure to notify any changes to the information disclosed
- Be on the front foot: understand your obligations, understand your exposure
- Assuming you reside in the UK, do NOT consent to participate in foreign depositions. Agree to comply with any order for a deposition made by the UK courts
- Post Brexit, English courts will not enforce any (with some small number of very limited exceptions) foreign judgments for non-money relief. If you live in the UK, insist that you will only comply with an order of the English courts

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Cayman Islands

Cayman Islands

1. Types of information requested

- Registered office records
- Trust records, including the trust deed and other instruments, details of settlor, trust assets, beneficiaries, and protectors
- Beneficial ownership information
- Land ownership and transfer records
- Corporate documentation such as constitutional documents, registers or shareholders and directors, and resolutions
- Confidential information concerning the personal affairs of the settlor and beneficiaries of a trust, and underlying structures

2. Forms of information requests

- Orders for production of documents from local regulatory authorities, such as the Cayman Islands Monetary Authority
- Third party disclosure orders made by the Grand Court of the Cayman Islands, including under the *Norwich Pharmacal* jurisdiction
- Notices issued by the Cayman Tax Information Authority pursuant to the Tax Information Agreement Law, or Tax Information Sharing Agreements
- Orders of foreign courts, which have been resealed by the Grand Court
- Unexplained Wealth Orders (UWOs), directed to Cayman companies or trustees
- Informal requests by beneficiaries of trusts or shareholders of companies owned by the trusts
- Requests for information flowing from marital or family disputes, either locally or internationally
- In extremely rare cases, pre-trial cross-examination of individuals who have responded to interrogatories under the Grand Court Rules

3. Compliance with requests for information

Compliance may be appropriate if:	Non-compliance may be appropriate if:
The request is based on a formal demand from a duly empowered local authority or an order from a court with jurisdiction over the recipient, and is clearly binding on recipient	The request has not been issued by a Cayman regulator, by a Cayman court, or if the request is plainly for information to which the entity making the request is not entitled to with reference to the relevant trust documents or company constitutional documents, or because it is subject to legal professional privilege
There are no issues with the form or substance of the request, and it has been properly and appropriately directed to the recipient; this may require investigation by the recipient and legal advice	There are any issues with the specific terms of the request or the categories of the information sought such that it is impractical or impossible to comply, including if there are gagging orders in place otherwise preventing notification of the disclosure to affected parties
Disclosure pursuant to the request will not trigger a breach of any duty of confidence prescribed in any governing engagement letters or other agreements – if so, an application for directions under the Confidential Disclosure Law (as revised) may be necessary prior to compliance	The information requested is not under the control of the recipient; if it is held outside of the Cayman Islands or controlled by an entirely different entity, then compliance will likely be impossible
The requesting entity has confirmed that it will meet the costs of compliance, and penal provisions will otherwise be triggered by non-compliance	Penal provisions are not triggered by non-compliance, and it is inappropriate to make a formal challenge or objection to compliance with reference to specific timeframes or periods of objection

4. Form of disclosure

- If disclosure is to be made, consider closely whether it is necessary and appropriate to redact any sensitive or irrelevant material
- If disclosure is to be made electronically, consider security and encryption to ensure safe custody of documents – if disclosure is in hard copy, consider safe and secure physical delivery methods
- Ensure clarity as to the purposes for which the information being disclosed will be used, and reiterate any restrictions or conditions on which the disclosure is being made; this is particularly relevant in the trusts context
- Consider whether the process of receiving, questioning and complying with any or all aspects of the request may give rise to any legal obligations and potential risks as and when they arise

5. Top tips

- Proceed cautiously at all times, and do not be afraid to ask further questions or for clarification of the legal basis on which the request is made and the categories of information sought
- Pay close attention to deadlines – timeframes for challenging a request are generally extremely short, and it may be necessary to seek an extension to any deadlines by consent in order to undertake sufficient investigations
- Get legal advice in early course as to the validity of the request and compliance obligations, and be as informed as possible in respect of your obligations and risks
- Establish a robust and efficient system for the storage and security of information of the types listed above so that, when requests for access arrive, collating and reviewing the documentation is an easy task
- Monitor developments, both locally and internationally. Change in this area can be fast-paced, and it is important to be up to date with your legal obligations and potential risks as and when they arise