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Cayman Islands Further Update to the Register of Beneficial Ownership Information

In July, 2017 the Cayman Islands introduced a series of laws and regulations¹ (the “**Laws**”) which require all Cayman Islands companies and limited liability companies (**LLCs**) to take reasonable steps to identify, record and maintain the details of all ‘*beneficial owners*’ defined as including any individuals who hold, directly or indirectly, more than 25% of the shares, capital, voting rights or the right to appoint or remove a majority of the directors or managers of the company or LLC. The Laws also treat as beneficial owners those persons who have the right to, or actually do, exercise significant influence or control over the company or LLC and also apply in relation to a trust where the trustees qualify as beneficial owners and to any persons who have the right to, or actually do, exercise significant influence or control over the trust.

Companies and LLCs have to identify, record and maintain the details of certain intermediate structures incorporated, formed or registered in the Cayman Islands and which would be a beneficial owner were it an individual, referred to as ‘*relevant legal entities*’.

Who is exempt from the requirements and what must they now do?

Previously there were a number of exemptions from the requirements of the Laws. They do not apply to partnerships including limited partnerships, nor do they apply directly to foreign

¹ Laws - The Companies (Amendment) Law, 2017; The Limited Liability Companies (Amendment) Law, 2017. Regulations - The Beneficial Ownership (Companies) Regulations, 2017; The Beneficial Ownership (Limited Liability Companies) Regulations, 2017.

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companies². They also do not apply to companies or LLCs which are, or are a subsidiary of, entities which are:

- a) listed on the Cayman Islands Stock Exchange or an ‘*approved stock exchange*’³;
- b) registered or holding a licence under a ‘*regulatory law*’⁴; (but now, not including excluded persons under the Securities Investment Business Law (2015))
- c) managed, arranged, administered, operated or promoted by *an approved person*⁵ as a special purpose vehicle, private equity fund, collective investment scheme or investment fund;
- d) general partners of a vehicle, fund or scheme referred to in paragraph (c) that are managed, arranged, administered, operated or promoted by an approved person; or
- e) exempted by the regulations.

On 13 December, 2017, the Companies (Amendment) (No. 2) Law, 2017 and the Limited Liability Company (Amendment) (No 3) Law, 2017 (the “**Amendment Laws**”) came into force further extending the category of entity that is exempt by including those entities (and subsidiaries of one or more of those entities);

- f) which are regulated in a jurisdiction included in a list published by the Anti-Money Laundering Steering Group of countries and territories whose Anti-Money Laundering legislation is deemed to be equivalent to the Anti-Money Laundering legislation of the Cayman Islands;
- g) that are general partners of a vehicle, fund or scheme referred to in (c) above which fund, vehicle or scheme is registered or holds a license under a regulatory law; and
- h) that hold directly a legal or beneficial interest in the shares of a legal entity which holds a license under one of the Banks and Trusts Companies Law 92013 Revision), the Companies Management Law (2003 Revision), the Insurance Law (2010 Revision), Part III of the Mutual Funds Law (2015 Revision) or the Securities Investment Business Law (2015 Revision).

Importantly, companies and LLCs registered as excluded persons under section 5(4) of the Securities Investment Business Law (2015 Revision) now fall within the scope of the beneficial ownership regime and although initially exempt from the requirements, they must now establish and maintain a beneficial ownership register.

Another significant update arising from the Amendment Laws is the fact that those companies and LLCs which fall within one of the exemptions must now provide written confirmation of the exemption to their corporate service provider, specifying which specific provision of the law they are

² Foreign companies registered under Part IX of the Companies Law (2016 Revision). Foreign companies are covered if they are a relevant legal entity.

³ see Schedule 4 of The Companies Law (2016 Revision).

⁴ see section 2 of the Monetary Authority Law (2016 Revision), currently includes (a) Banks and Trust Companies Law (2013 Revision); (b) Building Societies Law (2014 Revision); (c) Companies Management Law (2003 Revision); (d) Cooperative Societies Law (2001 Revision); (e) Insurance Law, 2010; (f) Money Services Law (2010 Revision); (g) Mutual Funds Law (2015 Revision); and (h) Securities Investment Business Law (2015 Revision), other than the Directors Registration and Licensing Law, 2014

⁵ regulated, registered or holding a licence in the Cayman Islands under a regulatory law (see footnote 4 above) except for ‘excluded persons’ registered under the Securities Investment Business Law (2015) or regulated in a jurisdiction deemed to have equivalent AML legislation or listed on the Cayman Islands Stock Exchange or an approved stock exchange (see footnote 3 above).

relying on including the prescribed information, and instructing them to file the written confirmation with the competent authority.

The final significant update in the Amendment Laws relates to how often corporate service providers file beneficial ownership information with the competent authority. The Amendment Laws state that this must be done 'regularly' and sets out the penalties which can be incurred for default. On 2 March, 2018 the Beneficial Ownership (Companies) (Amendment) Regulations, 2018 and the Beneficial Ownership (Limited Liability Companies) (Amendment) Regulations, 2018 (the "Amendment Regulations") came into force and have clarified that deposits of the beneficial ownership information must be made by corporate service providers not less than once per month. The Amendment Regulations specify the extent of the information which must be provided for out of scope entities and on 5 April, 2018, the Competent Authority published guidelines on the new filing format and data must be submitted in this format from now on.

The Amendment Regulations have specified that those companies in liquidation need only file the required information every 90 days and ordinary resident companies should make the filing annually.

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