



## Updates to the Cayman Islands Beneficial Ownership Regime

19 August 2020

The Cayman Islands beneficial ownership regime (“Regime”), which came into force on 1 July 2017, has been revised by amendments to the laws which came into force on 29 June 2020, with amendments to the associated regulations on 31 July 2020 (together, the “Amendments”).

The Regime requires Cayman Islands companies and limited liability companies (together “Companies”) to establish and maintain beneficial ownership registers unless they are exempt. Please see our [previous advisory](#) for further details in relation to the Regime.

Key changes introduced by the amendments include a shift of responsibility for issuing restrictions notices, a more detailed administrative fines regime, and an evidential assumption of breach where a beneficial ownership register remains in ‘enquiries pending’ status for three or more calendar months.

### Responsibility for Issuing Restrictions Notices

Prior to the Amendments, it was the statutory duty of a Company, if required to maintain a beneficial ownership register, to issue a restrictions notice to its own shareholders or members as a means of compelling them to provide information to enable the Company to identify its beneficial owners and any relevant entities.

Pursuant to the Amendments, however, the duty to issue a restrictions notice has shifted from the Company to its corporate service provider (“CSP”). The other substantive provisions relating to restrictions notices remain unchanged.

As in practice those Companies which are required to maintain beneficial ownership registers are generally able to populate them without resorting to restrictions notices there will be little or no material impact. However, to the extent that a Company and / or its CSP is considering whether to issue a restrictions notice it is important to seek advice from Cayman counsel in relation to the relevant legal provisions and the potential consequences.



## Administrative Fines

Prior to the Amendments it was already the case that Companies and other persons, including directors and officers, were subject to robust penalties for offences committed in relation to the Regime, including significant fines and imprisonment.

Pursuant to the Amendments, however, the Registrar of Companies is now empowered to impose administrative fines in relation to breaches of specified provisions of the Regime. Administrative fines are CI\$5,000 (approximately US\$6,100) for each breach, with an additional fine of CI\$1,000 (approximately US\$1,220) imposed for every month that the breach continues, until the total amount due is CI\$25,000 (approximately US\$30,500). Where an administrative fine remains unpaid for ninety days, the Registrar of Companies may strike the Company off the register resulting in the Company being dissolved.

In many cases the breaches for which administrative fines may be imposed are also existing offences. The administrative fines regime does not limit the potential penalties relating to a person committing an offence under the existing law. The Amendments contain detailed provisions in relation to the fines and appeals processes.

Breaches for which fines may be imposed include failures by a Company, if required to maintain a beneficial ownership register, to take reasonable steps to identify any beneficial owners or relevant legal entities, or in certain circumstances to give written notice to beneficial owners and relevant legal entities, or to keep its beneficial ownership register at its registered office with the CSP, or to provide its CSP with the required particulars of any registrable beneficial owners and relevant legal entities, or to keep its CSP updated as to any changes to such registrable persons or to their required particulars. Administrative fines may be imposed on the beneficial owners and relevant legal entities of such a Company for failures to supply information or notify a Company of changes.

A Company which is exempt from having to maintain a beneficial ownership register may be subject to a fine for breaching its obligation to provide written confirmation of exemption to its CSP. An incorrect claim of exemption is also a breach attracting an administrative fine.

CSPs are also subject to the administrative fines regime and, as such, may not wish to provide registered office services to any client Company which does not cooperate adequately to enable the CSP to comply with its own obligations under the Regime.

## Evidential Assumption in Relation to “Enquiries Pending” Status

Prior to the Amendments it was already the case that those Companies required to maintain a beneficial ownership register could maintain a placeholder status of “enquiries pending” while undergoing the process of identifying any registrable beneficial owners and relevant legal entities.

Pursuant to the Amendments, if at any time the Company’s beneficial ownership register contains the note “enquiries pending” for an uninterrupted period of three or more calendar months, this shall be prima facie evidence that a breach by the Company has occurred.

## Conclusion and Next Steps

Companies will generally already be compliant with the Regime but to the extent any steps remain outstanding these should be taken without delay. This advisory provides a brief summary only and Walkers’ specialist Regulatory & Risk Advisory group has unparalleled understanding of the beneficial ownership legislation, including the recent Amendments, and is providing assistance to clients with all aspects. Where Walkers Professional Services is appointed as CSP, we can seamlessly handle all legislative and regulatory filings as a combined legal and professional services team.



## Contacts

Please do not hesitate to contact our Regulatory & Risk Advisory practice group, Walkers Professional Services, or your usual Walkers contact, should you have any questions.

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