

28 February 2018

CLIENT ADVISORY

IMPORTANT NOTICE TO THE COMPANY

New legislation ("**UBO Law**") was passed in the Cayman Islands in June 2017 and requires Cayman Islands companies (including LLCs) to maintain a beneficial ownership register (the "**UBO Register**"). All companies have until 30 June 2018 to complete and submit their UBO Registers.

The new regime arose out of a commitment agreed with the United Kingdom (UK) Government, by way of an Exchange of Notes in April 2016, by the Cayman Islands, together with other British Overseas Territories and British Crown Dependencies, (such as British Virgin Islands (BVI), Bermuda, Mauritius) to enhance existing arrangements on the exchange of Beneficial Ownership Information ("**BOI**") and is geared to assisting law enforcement agencies combat corruption, money laundering, tax evasion.

Key Points Summary of the UBO Law:-

- (a) Each Cayman Islands company, which does not meet certain criteria, must maintain a UBO Register at its registered office/corporate service provider ("**CSP**") in the Cayman Islands; Therefore each Cayman Islands company is expected to engage a CSP in the Cayman Islands to assist them to establish and maintain their UBO Register and to provide the required information to the Competent Authority by way of the Platform;
- (b) The Minister charged with responsibility for Financial Services, or a person designated by him (the "**Competent Authority**") has established a search platform enabling the information contained in the UBO Register to be searched (the "**Platform**");
- (c) The company's CSP will provide the information on the UBO Register to the Competent Authority in the Cayman Islands by way of the Platform;
- (d) The Platform will be accessible only by the Competent Authority;
- (e) Law enforcement authorities of countries that have entered into an agreement with the Cayman Islands may, through the Financial Crime Unit of the Royal Cayman Islands Police Service, request the Competent Authority to search the Platform on their behalf. Currently, only the UK has entered into such an agreement with the Cayman Islands. Also, certain Cayman Islands regulatory bodies such as the Cayman Islands Monetary Authority ("**CIMA**") may, if proper and lawful, request the Competent Authority to search the Platform on their behalf; and
- (f) Partnerships and foreign companies are not required to maintain such UBO Registers, nor are certain other companies, such as Cayman Islands companies listed on an approved stock exchange or those registered with the Cayman Islands Monetary Authority (CIMA).

How do Cayman Islands Companies (and LLCs) comply with UBO Law?

All Cayman Islands companies and LLCs must determine if they are In Scope Companies (as defined below) or whether they fall outside the scope ("**Out of Scope**" Companies) of the UBO Law. Exempt companies should take steps to document that they have exempt status under the UBO Law.

Foreign companies or foreign LLCs and partnership vehicles, whether or not registered in the Cayman Islands, are not required to report under the Regime.

Is your Cayman Company "In Scope" or "Out of Scope"?

The entities that must comply with the UBO Law are those incorporated or registered by continuation under the Companies Law (as amended) of the Cayman Islands (which includes exempted companies, limited liability companies, ordinary companies and special economic zone companies) excluding those that are Out of Scope (the "**In Scope Companies**").

A Cayman Company that meets the following criteria is exempt from having to create and maintain a UBO Register is an "Out-of-Scope" company:

- a) is regulated in a jurisdiction approved by the Cayman Islands Anti-Money Laundering Steering Group;
<http://www.cima.ky/list-of-equivalent-jurisdictions>
- b) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4 – pages 157 & 158 of the Companies Law (as revised);
<http://www.cima.ky/upimages/commonfiles/1499344548CompaniesLaw2016Revision.pdf>
- c) registered or holding a license under a "regulatory law" (other than a company registered as an excluded person under section 5(4) of the Securities Investment Business Law (2015 Revision);

- d) managed, arranged, administered, operated or promoted by an "approved person"¹ as a special purpose vehicle, private equity fund, collective investment scheme or investment fund, including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership;
- e) a general partner of any special purpose vehicle, private equity fund, collective investment scheme or investment fund that is registered or holds a licence under a Cayman Islands regulatory law or is managed, arranged, administered, operated or promoted by an "approved person"^[1];
- f) holds, directly, a legal or beneficial interest in the shares of a legal entity that is licensed in the Cayman Islands and is regulated by the Cayman Islands Monetary Authority where the conditions of such licence include full disclosure of the legal and beneficial owners of the licensee;
- g) a subsidiary^[2] of any of the above.

Out of Scope Companies

If the company falls within an exemption it must provide its CSP with written confirmation of the relevant exemption applicable, which must identify the grounds for the exemption and provide certain additional information regarding any regulated entity, regulated parent entity or approved person.

To date the competent authority has not yet issued specific guidelines on the required information. In the interim if the company is Out of Scope it should complete Form B - Out of Scope Declaration and return to Vistra. We may contact you once the guidelines are issued to obtain further information.

In-Scope Companies

In-Scope Entities are required to take **reasonable** steps to identify:

- (a) any individual who is a beneficial owner of the company; and
- (b) identify all relevant individuals and/or legal entities that exist in relation to the company.

Companies should commence taking the necessary steps to identify, obtain and hold information about their beneficial owners and relevant legal entities.

The company should contact any persons they know or have reasonable cause to believe are beneficial owners or relevant legal entities under the UBO Law requesting the required information. Such persons are required to respond to a request within one (1) month, and failure to do so may be a criminal offense.

Similarly, those individuals or legal entities which are aware that they are registrable persons in relation to a company but, have no reason to believe they have been entered in such company's UBO Register are under a pro-active obligation to disclose their details to the In-Scope Entity within one (1) month, and failure to do so may be a criminal offense.

For the purpose of identifying individuals who are beneficial owners and relevant legal entities, a company is entitled to rely, without further enquiry, on the response of a person (or legal entity, in

the case of relevant legal entities) to a notice in writing sent in good faith by the company, unless the company has reason to believe that the response is misleading or false.

The Company must provide their CSP with required particulars on beneficial owners from which the UBO Register is compiled.

How to identify beneficial owners

"Beneficial" ownership is determined differently to the standard Cayman Islands Anti-Money Laundering Regulations.

In the UBO Laws, a beneficial owner:

- (a) is any **individual** who:
 - (i) directly or indirectly holds *more than 25%* of the *shares* in a company;
 - (ii) directly or indirectly holds *more than 25%* of the *voting rights* in a company;
 - (iii) the *right, directly or indirectly*, to appoint or remove a majority of the board of directors of the company; or
- (b) if no individual meets the criteria in (a), is the *individual* (if any) who has the absolute and unconditional right to exercise, or actually exercises, *significant influence or control* over the In-Scope Company, other than solely in the capacity of a director (or manager if an LLC), professional advisor or professional manager; or
- (c) if no individual meets the criteria in (a) or (b) above, is the *individual* (if any) who has the absolute and unconditional right to exercise or actually exercises significant influence or control over the trustees of a trust or members of another legal vehicle that is not a legal person (such as general partnership) that, in their capacity as such, meet one of the criteria in (a) or (b) above in relation to an In-Scope Company, other than solely in the capacity of a director (or manager in the case of an LLC), professional advisor or professional manager.

Each "relevant legal entity" also has to be identified. A "relevant legal entity", in relation to a company, is a legal entity that is incorporated, formed or registered (including by way of continuation or as a foreign company) in the Cayman Islands and would be a beneficial owner of the company if it were an individual.

What details are contained in the UBO Register?

Each In-Scope Company has to ensure that details of any beneficial owner(s) and any registrable relevant legal entity(s) (together "registerable persons") are entered in the company's UBO Register. If a company does not have any registerable persons, then a nil return will be entered in the company's UBO Register.

The information required to be contained in the UBO Register is:

- (a) For a registerable individual - Full legal name, residential address (and address for service if different), birth date, passport or driver's licence or other government ID identifying number, country of issue, date of issue and expiry of the document and the date on which he or she became a registerable person in respect of the In Scope Company or ceased to be a registerable legal entity to the company in question.
- (b) For a registerable relevant legal entity - Corporate or firm name, registered or principal office, the legal form of the entity and the law by which it is governed, if applicable, the register of companies in which it is entered and its registration number in that register; and the date on which it became or ceased to be a registerable person in relation to the company in question.

The company is also required to inform their CSP of any changes once they are aware of a change with respect to registerable persons.

What happens if you don't comply?

If the In-Scope Company is unable to maintain and keep its UBO Register up to date due to the failure of registerable persons to provide required information, the In-Scope Company must issue a restrictions notice to that person. The effect of the restrictions notice in respect of any interest includes, but is not limited to, making any transfer (or agreement to transfer) void and no payment being made of any sums due from the company in respect of the interest. A person to whom a notice has been issued may apply to the Court for any restriction imposed to be set aside. Companies and other persons including directors and officers will each be liable to substantial penalties including fines up to USD61,000 and imprisonment for a term of up to two years for breaches of the new requirements.

What do you need to do now?

All Companies:

Complete [**Form A**](#) – Appointment of Corporate Service Provider and return to Vistra.

Out of Scope Companies: (**please see Important Note**)

Complete **Form B*** - Declaration of Exemption - Company Out of Scope and return to Vistra.

In-Scope Companies: (**please see Important Note**)

- (a) if you are able to identify the beneficial owners complete a **Form C(1)*** - Declaration of Registrable Individual for each beneficial owner and return to Vistra;
- (b) if you identify that the company has "Relevant Legal Entities" complete a **Form C(2)*** - Declaration of Registrable Entity for each such entity and return to Vistra; or
- (c) if the company has no registerable persons complete **Form D*** - Declaration of No Registrable Person and return to Vistra.

Please return the following documents **before 8 June 2018**, in order for us to facilitate the conversion of UBO data into the prescribed format, as required by the Cayman Islands Competent Authority by email at caymanubo@vistra.com:-

1. Completed and **SIGNED** form; **and**
2. Completed fillable PDF form.

Please also note that an additional handling fee of USD200 will be charged if handwritten forms are submitted.

***Important Note**

The new file format, for Form B, Form C(1), Form C(2), Form D is currently under review by the Cayman Islands Ministry of Financial Service and is expected to be approved and gazette in the first week of March. We will provide the corresponding forms thereafter.

If you have any questions or need assistance on classification of UBOs for your Cayman Company, please contact your usual Vistra contact or email your enquiries to caymanubo@vistra.com.

For contacts of our Vistra offices, please visit our website at:- <https://www.vistra.com/contact>

[1] approved person is a person or a subsidiary of a person that is (i) regulated, registered or licensed under a Cayman Islands regulatory law or regulated in an approved jurisdiction (e.g. investment advisors or managers regulated by the Securities Exchange Commission (SEC) or the Financial Conduct Authority (FCA) would fall within this limb), or (ii) listed on the Cayman Islands Stock Exchange or another approved stock exchange.

Approved person DOES NOT include:

- An individual who is an employee of a legal entity that holds a licence under a regulatory law as a director or manager; or
- An approved person who provides registered office only services in Cayman Islands; or
- An individual who is a SIBL Excluded Person.

[2] subsidiary being a company or LLC where, (i) more than 75% of the interests or voting rights are, collectively, held by one or more exempt entities or other legal entities; (ii) exempt entities or other legal entities having the right to appoint or remove a majority of directors or managers; or (ii) it is itself a subsidiary of another exempt subsidiary).

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