

BRIEFING MEMO

Beneficial Ownership Register Update

The Cayman Islands Beneficial Ownership Register Regime (the **BOR Regime**) came into effect July 2017 and amendments¹ were introduced in December 2017 that now modify the scope of the exemptions available under the BOR Regime.

The Original Exemptions

The BOR Regime provided the following exemptions for entities:

- a) listed on the Cayman Stock Exchange or one approved in Schedule 4 of the Companies Law;
- b) registered or holding a licence under a 'regulatory law' as defined under the Monetary Authority Law²;
- c) managed, arranged, administered, operated or promoted by an Approved Person³ as a special purpose vehicle, private equity fund, collective investment scheme or investment fund;
- d) that are a general partner of a vehicle, fund or scheme referred to in paragraph (c) that is managed, arranged, administered, operated or promoted by an approved person; or
- e) that are a "subsidiary" of a company or LLC where:
 - (i) more than 75% of the interests or voting rights are, collectively, held by one or more exempt entities;
 - (ii) exempt entities have the right to appoint or remove a majority of directors or managers; or
 - (iii) it is, itself, a subsidiary or another exempt subsidiary.

¹ The Companies(Amendment)(No.2) Law, 2017

² Section 2 of the Monetary Authority Law (2016 Revision)

³ An "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 SEC or the FCA would fall within this limb), or (ii) listed on the Cayman Islands Stock Exchange.

The New Exemptions

The amendments expand the scope of exempted entities to include the following:

- I. entities regulated in an Approved Jurisdiction, which the Anti-Money Laundering Steering Group deemed to have comparable AML/CFT framework in accordance with the Proceeds of Crime Law⁴;
- II. 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 such as the Mutual Funds Law or Securities Investment Business Law;
- III. entities that hold, directly, a legal or beneficial interest in the shares of a legal entity that is licensed in the Cayman Islands where the conditions of such licence include full disclosure of the legal and beneficial owners of the licensee; and
- IV. subsidiaries of the newly exempted entities, which include the Cayman Islands subsidiary of an entity regulated in an Approved Jurisdiction.

NEW APPROVED JURISDICTIONS LIST

The list of Equivalent Jurisdictions replaces the list of Schedule 3 jurisdictions originally set out in the old Money Laundering Regulations (2015 Revision) that have now been amended. The list can be found here: <http://www.cima.ky/list-of-equivalent-jurisdictions> and it may change from time to time. The new list no longer includes Mexico, Panama or Turkey. Review the new list before concluding whether you are eligible for the exemption.

⁴ Regulations 22(d)(ii); 22(d)(iii); and 23(1) of the Anti-Money Laundering Regulations, 2017 allow persons conducting relevant financial business from or within the Cayman Islands to place reliance on AML/CFT legislation of specified countries for simplified customer due diligence. Section 5(2)(a) of the Proceeds of Crime Law (2017 Revision) empowers the steering committee to produce the list of Equivalent Jurisdictions;

The New Limitations on the Exemptions

The amendments also made the following important changes and clarifications to the existing exemptions:

a) The Securities Investment Business Law(SIBL) Excluded Person

A company or LLC registered as an Excluded Person under SIBL (**SIBL Excluded Person**) ⁵ will no longer be exempt from the primary obligations of the BOR Regime unless other exemptions apply. Furthermore, SIBL Excluded Persons are no longer considered an approved person and consequently, any entities relying on this exemption will need to consider an alternative exemption, if any.

b) Regulated Persons Exemption

Prior to the amendments to the BOR Regime entities relying on exemption (c), were able to rely on directors licensed and regulated under The Directors Registration and Licensing Law, 2014(Directors Law) to qualify for the exemption. However, under the amendments the Directors Law will not be considered a regulatory law for the purposes of the BOR Regime.

c) Appointment of an Approved Person

A legal entity will not be considered to be managed, arranged, administered, operated or promoted (as the case may be) by an "approved person" solely as a consequence of that entity having appointed an individual who is an employee of a legal entity that holds a licence under a regulatory law as a director or manager. As such the classification of an entity as an Approved Person does not extend to its employees. In addition, they cannot rely on their appointment of an Approved Person to serve as its registered person.

NEW EXEMPTED COMPANY REQUIREMENT

The amendments introduce an obligation on any entities claiming an exemption from the BOR Regime to provide its CSP with a written confirmation that will be provided to the competent authority. The letter must identify the paragraph that provides for the exemption and shall include detailed information about the relevant entity that is seeking the exemption. Further information on the process of submission will be set out in upcoming regulations.

⁵ Section 5(4) of the Securities Investment Business Law (2015 Revision)

How JACOB LAW Can Help

We can advise any LLC or company affected by the BOR Regime and the related regulations and work with your nominated CSP or the Registrar to help you establish your company or LLC's BOR and advise on its maintenance thereafter. Our team would be happy to provide further assistance, please contact us on:

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