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**Public Consultation:  
Legislative Amendments to Enable the Creation  
of a Centralised Platform of Beneficial Ownership Information**

**Tuesday, 29<sup>th</sup> November 2016**

## CONSULTATION PROCESS

The Ministry of Financial Services, Commerce and Environment seeks feedback on the Companies (Amendment) Bill 2017. This legislation seeks to introduce a centralised platform for beneficial ownership of Cayman Islands companies.

Please note that you may submit comments electronically or by post. However, emailed submissions – in Word, PDF or RTF format – are preferred. Also, you should be aware that information contained in your submission may be made available to the public, either by disclosure as part of the Ministry’s public reporting on the consultation results, or if the Ministry receives a request to release information under the Freedom of Information Law.

If you would prefer your comments to remain private, you can request that all or part of your submission remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose.

For those comments that you wish to provide in confidence, please provide them in a separate submission, marked as confidential. Please note that an FOI request for information must be processed in accordance with that law.

Please note that this is a preliminary consultation, which is intended to identify any major areas of concern with the draft Bill. This preliminary consultation will run for two weeks.

Following this preliminary consultation, and once the bill has been published in the Gazette, the usual 21-day public consultation period will commence.

### **Closing date for submissions for this preliminary consultation: Friday, 9<sup>th</sup> December 2016**

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## BACKGROUND

1. In June 2013 the Cayman Islands and the other UK Crown Dependencies and Overseas Territories (CDOTs) agreed to assess if establishing central registers of natural persons who ultimately have beneficial ownership and control of companies would allow tax collectors and law enforcers to more easily access this information.
2. These agreements were made immediately following the G8 Summit, which the UK chaired. During the summit, the UK had advocated that the CDOTs consider whether establishing central registers of beneficial ownership information is the most appropriate and effective way to improve the CDOTs' domestic legal compliance, as well as the implementation of cross-border assistance, in accordance with internationally adopted and practiced standards.
3. Following our agreement, the Cayman Islands conducted a public consultation on beneficial ownership of registered companies in late 2013. Findings were published in December 2014. Regarding the introduction of a central, and/or a public, registry of beneficial ownership information, it was concluded that the strength of the Cayman Islands current regime, and its reliance on the use of licenced and regulated corporate service providers (CSPs), was an appropriate and preferred system that complies with international standards. The introduction of a public register raised significant human rights concerns. It was concluded that it was not the most optimal way to improve the existing channels that already facilitate coordination and information exchange with foreign tax authorities and law enforcement.
4. Discussions with the U.K. in 2015 on an approach to ensuring transparency of beneficial ownership information resulted in an agreement that there were "similarly effective systems" to that of a central register. This agreement recognises the validity of the Cayman Islands' approach to maintaining beneficial ownership information through CSPs and the development of a centralised platform. On the U.K.'s request, each CDOT entered into an Exchange of Notes in respect of the sharing of beneficial ownership information with the U.K., with the majority of CDOTs signing in April 2016.
5. A copy of the Exchange of Notes can be found [here](#).

## FRAMEWORK FOR THE CENTRALISED PLATFORM

6. As agreed in the Exchange of Notes with the U.K., Cayman will introduce a centralised platform of beneficial ownership information that will provide timely access to adequate, accurate, and current beneficial ownership information on corporate and legal entities in the Cayman Islands. This information will be available to designated U.K. law enforcement authorities. Legislative amendments and a technology solution will be necessary for the operation of this platform.
7. The centralised platform combines the key strengths to the two main approaches that jurisdictions use to maintain beneficial ownership information<sup>1</sup>. These strengths are the process of information verification through CSPs; and the central access to information without notifying CSPs or the legal entity that a request for information has been received.
8. Under the Proceeds of Crime Law and the Money Laundering Regulations, Cayman's CSPs are obligated to verify and maintain beneficial owner information with their clients. Cayman uses a minimum of 10% ownership to assess both the relevance of the ownership and control of the beneficial owner. This is a higher standard than the 25% that is required by the Exchange of Notes.
9. To enhance the platform's operation and to meet the requirements of the Technical Protocol that accompanies the Exchange of Notes, specified legal entities registered in Cayman will be obliged to maintain a beneficial ownership register. These registers will then allow access from a central point within Government. This is an alternative to a requirement that the data in each individual register is filed and held by the Government. The difference between central access and central filing is a key distinction in the proposed system.
10. Cayman's proposed framework for its centralised platform is shown in Appendix 1. This framework outlines the obligations for each node (each entity or agency) in the diagram. The obligations are summarised as follows:
  - a. The ultimate beneficial owners of a legal entity will be obliged to provide certain information to the legal entity.
  - b. Legal entities registered in Cayman will be required to know their ultimate beneficial owners and to record specified details on these owners in a beneficial ownership register. This register must be maintained with a corporate services provider or with the Registrar of Companies.

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<sup>1</sup> *van der Does de Willebois, Emile; Halter, Emily M.; Harrison, Robert A.; Park, Ji Won; Sharman, J. C.. 2011. The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It. World Bank. © World Bank. <https://openknowledge.worldbank.org/handle/10986/2363> License: CC BY 3.0 IGO.*

- c. Corporate services providers will be required to provide the technology that will maintain their beneficial ownership registers, in a format that allows access by the operator of Cayman’s central platform. Detailed specifications on the technology that must be used by CSPs to allow centralised access will be dealt with in regulations.
11. It is important to note that the basis upon which the Exchange of Notes with the U.K. was signed was that Cayman could operate a “similarly effective system” to the U.K.’s approach of a public register. As the definition of “similarly effective” hinges on speedy access to information, the centralised platform will enable responses to requests within 24 hours.
  12. Ongoing discussions on the design and implementation of the centralised platform are being held with the assistance of a small working group of Cayman Finance members and the wider public.
  13. The Cayman Islands Government has stated on numerous occasions that it will not consider the introduction of a public register of beneficial ownership until this becomes the accepted and implemented international standard.

## SUMMARY OF THE COMPANIES (AMENDMENT) BILL, 2017

14. The basis for Cayman's proposed legislative amendments is the U.K. legislation introduced by their Small Business, Enterprise and Employment Act 2015; the Register of People with Significant Control Regulations 2016; and the Exchange of Notes and Technical Protocol.
15. Cayman proposes to amend three laws:
  - a. Amendments to **The Companies Law** and **The Limited Liability Companies Law** would cover ordinary resident, non-resident companies, special economic zone companies, exempted companies, and limited liability companies.
  - b. An amendment to **The Companies Management Law** would expand the definition of "business of company management" to include the function of establishing and maintaining a beneficial ownership register on behalf of a company.
16. Although this consultation will focus on an amendment to The Companies Law, the agreed changes will be replicated under The Limited Liability Companies Law.
17. In the Companies (Amendment) Bill 2017, an individual ("X") is a beneficial owner of a company ("company Y") if the individual meets one or more of the following conditions in relation to the company.
  - X must hold, directly or indirectly, more than 25% of the shares in company Y.
  - X must hold, directly or indirectly, more than 25% of the voting rights in company Y.
  - X must hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of company Y;
  - X has the right to exercise, or actually exercises, significant influence or control over company Y;
  - The trustees of a trust or the members of a firm that, under the law by which it is governed is not a legal person, meet any of conditions (a) to (d) (in their capacity as such) in relation to company Y, or would do so if they were individuals, and (ii) X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm, other than in a professional advisory capacity.
18. Amendments contained in the Companies (Amendment) Bill 2017 are structured as a new part to be inserted into The Companies Law. This new part is organised as follows:
  - a. **Preliminary.** This includes definitions, the application of the section, and specification of the competent authority.

- b. **Identifying Beneficial Owners Relevant Legal Entities and Registrable Persons.** This includes provisions that specify the duty of a company to identify beneficial owners having significant control over them, represented by holding directly or indirectly more than 25% of shares, voting rights or control in that company; and any intermediate legal entity through which such beneficial owner holds his/her interest in that company; the duty of the company to give notice to such persons; the duty of beneficial owners and relevant legal entities to supply information; and the duty of the company to identify and register registrable beneficial owners on the beneficial ownership register.
- i. Provisions 247 to 253 in this section are meant to replicate the tests that exist in the U.K. legislation with regards to their register. Chapter 2 of the U.K.'s explanatory note<sup>2</sup>, which deals with identifying people with significant control, is therefore a useful tool to understanding these provisions.
  - ii. In summary, the objective is to identify the ultimate beneficial owners of a Cayman company. However, a company is not required to enter intermediate entities in its ownership chain on its register, and this chain may stop where the next registrable company in the chain is itself a company for which a beneficial ownership registry is held (see 251 and 253).
- c. **Establishing Beneficial Ownership Registers.** This includes provisions that specify the duty of a company to establish and maintain a beneficial ownership register; the duties of corporate services providers and the Registrar; the required particulars to be held in a register; and the consequences of failure to disclose beneficial ownership.
- d. **Access to Beneficial Ownership Information.** These provisions specify the duty of the competent authority to establish a search platform and to execute a search for beneficial ownership information through the platform.
- e. **Enforcement.** The provisions specify offences and corresponding penalties.
- f. **Supplementary Provisions.** These provisions specify the exemption powers of the competent authority and the regulation-making powers conferred on the Cabinet.

*Impact on Local Business conducted using an Ordinary Resident Company*

19. Under the proposed bill, use of an ordinary resident company to conduct local business would be affected in the following ways.
- a. While other types of companies will be required to maintain their beneficial ownership registers with a CSP, local businesses would be permitted to continue

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<sup>2</sup> U.K. Department for Business Innovation & Skills, Register of People with Significant Control: Guidance for Companies, Societates Europaeae and Limited Liability Partnerships.

to file directly with the Registrar. They therefore would not need to retain the services of a CSP.

- b. Local businesses would be required to identify their beneficial owners and submit this information to the Registrar. In the vast majority of cases, this information is likely to be no different from what is currently filed with the Registrar. This is due to the fact that for most local businesses the beneficial owners are likely to be the shareholders and directors of the business.
  - c. If the beneficial owners differ from the shareholders, additional information would need to be submitted to the Registrar. For example, for an ordinary resident company conducting local business, which is owned (in whole or in part) by another company, it would be necessary to identify the individual(s) who ultimately owns or controls the company identified as the shareholder.
  - d. One of the main changes introduced by the Bill would be the requirement to notify the Registrar of a change in the beneficial owners within a month of a change. Currently, the Registrar would be notified of such a change as part of the annual return.
20. The public is invited to review the proposed legislative amendments to the Companies Law, and to submit any queries or concerns as part of this consultation.



## CONSULTATION QUESTIONS

21. Currently, Cayman requires that CSPs verify information at a level of 10%. Under the Exchange of Notes with the U.K., Cayman is required to exchange beneficial ownership information only on persons with a level of ownership or control that is greater than 25%.

*Q1: Would the difference in the reporting threshold (10% vs. 25%) be of consequence to the responsibilities of a CSP and in what way?*

*Q2: Should the proposed legislative amendments for beneficial ownership information require a reporting threshold of 10% rather than 25%?*

22. Current record-keeping requirements are for a period of 5 years<sup>3</sup>, and Cayman's proposed Companies Law amendment accordingly reflect that a person may be removed from a beneficial ownership register on the expiration of 5 years from the date on which they ceased to be registerable. There is a suggestion from the U.K. that this period be increased to 20 years.

*Q3: What are the implications for a change in the length of time for maintaining beneficial ownership information for persons that are no longer registerable from 5 to 20 years?*

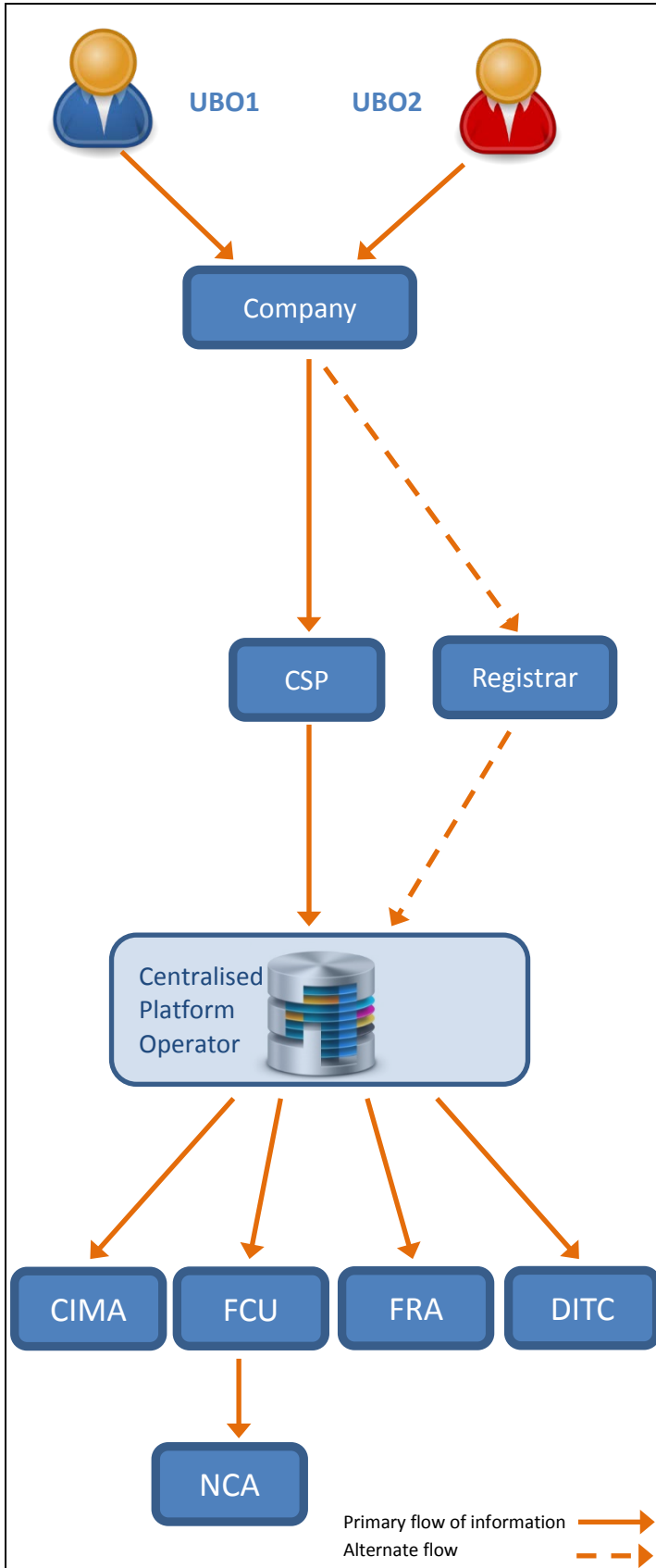
23. The Cayman Islands Government is extremely aware of the risk of cyberattacks and the potential for illegal disclosure of confidential information. The design and technical specifications of the centralised platform and the beneficial ownership registers will be designed to mitigate against these risks. Again a special working group, which will include industry IT professionals, will be involved in this process.

*Q4: Are there any specific technology concerns that should be a part of the considerations for the design of the centralised platform?*

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<sup>3</sup> This is the current international standard, as developed by the Financial Action Task Force.

## Appendix 1: Framework for Centralised Platform



- An ultimate beneficial owner (UBO) with greater than 25% ownership or control will be obliged to submit specified particulars for a company's beneficial ownership register.
- The company will be obliged to keep and maintain a register of its UBOs.
  - Exempted Companies and Limited Liability Companies shall use a licenced corporate service provider (CSP) for the BO register.
  - Ordinary Resident Companies may file their BO information directly with the Registrar or with a CSP.
  - Appropriate exemptions will be specified in regulations.
- CSPs will be obliged to maintain BO registers to specifications dictated by the Centralised Platform Operator.
  - CSPs have an obligation to report suspicious activity under Money Laundering Regulations.
  - Mechanism for imposing restrictions on share rights where there are breaches.
- Centralised Platform Operator to operate the technology platform that will search the individual registers maintained by the CSPs and the Registry.
- Local competent authorities (e.g. CIMA, the Department of International Tax Cooperation, the Financial Reporting Authority, the Financial Crimes Unit) will be permitted to request information from the platform, in compliance with their existing legal gateways.
  - Requests either arise from a local investigation or according to an agreed mechanism with a foreign authority counterpart (*Note: Initial exchanges will be limited to the U.K. under the Exchange of Notes*).
- UK law enforcement (e.g. National Crime Agency) to make requests through a local designated point of contact.