

# Summary guide for Ordinary Resident Companies –Providing Beneficial Ownership Information to the Centralised Platform

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## About this guide

1. This guide provides a brief introduction for **ordinary resident companies** to the centralised platform for beneficial ownership information. It also sets out scenarios where the requirements apply to some simple company structures, for illustrative purposes only.

## The centralized platform

2. The Cayman Islands Government collects and maintains beneficial ownership information on legal persons in the jurisdiction in line with international standards and commitments to combat money laundering, tax evasion and terrorist financing. This information can be shared with international regulatory, enforcement and tax authorities in accordance with agreements, treaties, and memorandums of understanding agreed between the Cayman Islands and other jurisdictions.
3. Ordinary resident companies that do not engage a Corporate Service Provider (“**CSP**”) shall provide the company’s beneficial ownership information to the Registrar of Companies (i.e. General Registry) through the Cayman Business Portal (“**CBP**”). For those ordinary resident companies that employ a **CSP**, that CSP will collect and maintain the ordinary resident company’s beneficial ownership register.
4. There is an obligation to file the register of beneficial owners once a year or within thirty days of a change in beneficial owners.

## Request for Beneficial Ownership Information

5. Information contained in the beneficial ownership register is available to domestic competent authorities and foreign governments as provided in the Cayman Islands legislation.
6. In the Cayman Islands, Section 262 of The Companies Law provides that the Financial Reporting Authority, the Cayman Islands Monetary Authority, the Anti-Corruption Commission, the Tax Information Authority, the Department of Commerce and Investment, and any other body assigned responsibility for monitoring compliance with the Anti-Money Laundering Regulations can ask the Competent Authority, namely the Registrar of Companies, to execute a search of the Beneficial Ownership database.
7. The Companies Law also facilitates provisions found under the Exchange of Notes Agreement between the United Kingdom and the Cayman Islands. Under that agreement, the Financial Crime Unit of the Royal Cayman Islands Police Service can request the Competent Authority to execute a search of the registry in response to a request by a United Kingdom law enforcement or Competent Authority official.

8. Beneficial ownership information can also be sought via international requests for assistance for evidence to use in legal proceedings in other jurisdictions pursuant to the Criminal Justice (International Cooperation) Law (CJICL). These requests should be made to the Central Authority in the Cayman Islands. In the case of the Mutual Legal Assistance Treaty between the United States and the Cayman Islands, the Chief Justice is the Mutual Legal Assistance Authority.
9. The Office of the Director of Public Prosecutions may provide assistance to those countries that are party to the Vienna Convention as well as countries which are listed in the Schedule to the CJICL. The procedure is outlined on the ODPP's website: <http://www.gov.ky/portal/page/portal/dpphome/what-we-do/international-legal-assistance>
10. Requests from foreign law enforcement agencies in all other cases can be directed to the Detective Chief Inspector of the Bureau of Financial Investigations of the Royal Cayman Islands Police Service (<https://www.rcips.ky/financial-investigations>).

### Company requirements

11. In accordance with Section 252(3) of the Companies Law (2018 Revision), "ordinary resident companies to which this Part applies shall engage either a corporate services provider or the Registrar to assist them to establish and maintain their beneficial ownership registers." Furthermore the ordinary resident company is required to:
  - **Identify** the people who are registrable persons, in accordance with Part XVIIIA of the Companies (Amendment)(No. 2) Law, 2017 (the "**Law**") of the company and confirm their information (see paragraph 5);
  - **Record** the details of the registrable persons;
  - **Provide** this information in writing to the Registrar of Companies ("Registrar") or its CSP, as the case may be, to enter into the company's beneficial ownership register; and
  - **Update** the particulars of the company's registrable persons when changes have been confirmed, and send in writing the updated information to the Registrar or its CSP, as the case may be, to update the company's beneficial ownership register.

## Identifying registrable persons (i.e. beneficial owners):

12. A registrable person is an individual who meets one or more of the following conditions:

Condition:	What you need to consider:
(i) An individual who holds, <b>directly or indirectly</b> , 25% or more of the shares in the company.	Review your company's register of members and identify shareholdings of 25% and over.
(ii) An individual who holds, <b>directly or indirectly</b> , 25% or more of the voting rights in the company.	Review your company's register of members, articles of association, and identify people with voting rights (often attached to shares) 25% or more..
(iii) An individual who holds, <b>directly or indirectly</b> , the right to appoint or remove the majority of the board of directors of the company.	Look at your company's constitution, including articles of association, and identify whether anyone has this right. For example, if there is only one director and someone has the right to appoint them, then they would meet this condition.
(iv) An individual who has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the company through the ownership structure or interests outlined in (i) – (iii) above, other than solely in the capacity of a director, professional advisor or professional manager.	You would consider this where an individual <b>does not meet one of conditions (i) to (iii)</b> but does exercise 'significant influence or control' over the company. Look at your company's constitution, including articles of association, and identify whether anyone has this right. For example, do the directors act on the instructions of a particular individual acting other than solely in the capacity of a director, professional advisor or professional manager.

- (v) If no individual meets the conditions of (i) through (iv) above but trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of those conditions it is deemed that the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed) is the beneficial owner if they have the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a director, professional advisor or professional manager.
- Look at your company's constitution and structure, including articles of association, and identify whether there is a trust (or other entity that, under the law by which it is governed is not a legal person) in the ownership structure that may have influence or control over a company. For example if there is only one director and the trust has the right to appoint them, then the trustees of the trust would meet this condition.

### Identifying registrable relevant legal entities:

13. A registrable relevant legal entity is a legal entity that meets the following condition:

Condition:	What you need to consider:
(vi) A relevant legal entity ("RLE") is a legal entity that is incorporated, formed or registered in the Cayman Islands under the law of the Cayman Islands and would be a beneficial owner of the company if it were an individual.	The Cayman Islands legal entity will be a registrable RLE if it <b>directly</b> holds an interest in the company or meets one or more of (i) to (v) above conditions directly in respect of that company and would be a beneficial owner if it were an individual.

### Application:

14. Conditions (i) to (iii) set out in paragraph 5 might be met directly or indirectly. A condition is met indirectly where an individual holds their rights through, for example, another company.
15. These conditions may also be met under a number of less typical circumstances. For example, where there are agreements between individuals to vote or exercise rights jointly and the total combined value of the shares or rights are 25% or more.
16. If a company does not immediately know the identity of its beneficial owners, the Registrar (whose empowered by the engagement agreement with the ordinary companies) or the company (those who have engaged a CSP) must take reasonable steps to identify them for entry on the companies beneficial ownership register. Details of what this might involve are set out in the Beneficial

**Example 1:**

In figure 1, Company A is a Cayman company owned by a brother and sister. They both have equal ownership and voting rights in the company. This means they each meet:

- Condition (i) – They own 25% or more of the shares; and
- Condition (ii) – They hold 25% or more of the voting rights.

Both siblings are considered registrable persons and must be entered on the company's beneficial ownership register (see paragraphs 10 through 11 for information to be recorded on the register).

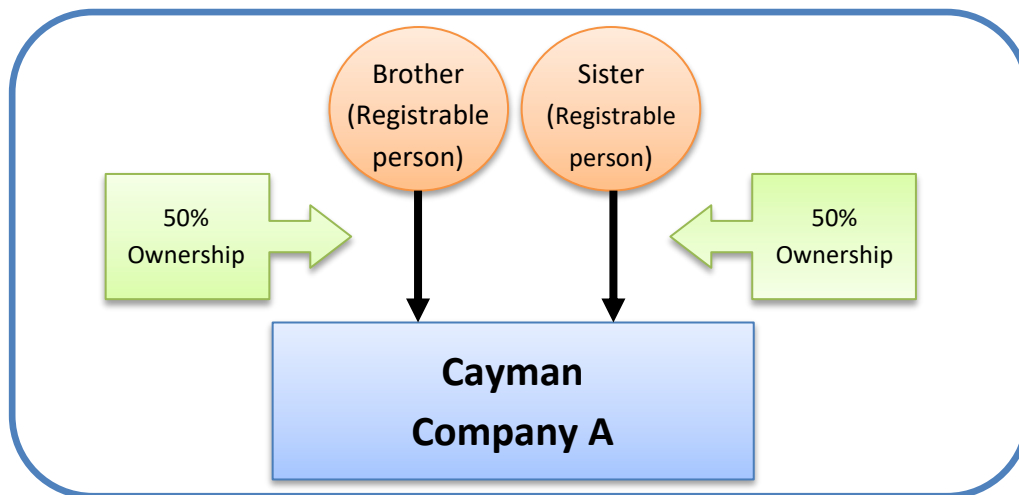


Figure 1

**Example 2:**

Figure 2 below helps explain what should appear on each of the respective company's beneficial ownership register in relation to the scenarios provided.

- **Scenario 1** - Company A is a Cayman company wholly owned by Company B, a Cayman company. Company B is wholly owned by a Cayman company, Company C. Company C is subsequently owned 100% by a natural person. As the first registrable RLE in Company A's ownership chain, Company B should be placed on the beneficial ownership register of Company A. As the ultimate beneficial owner of Company A, natural Person 1 should also be placed on the beneficial ownership register of Company A.
- **Scenario 2** – Cayman Company B is wholly owned by foreign Company C. As the first registrable RLE in Company B's ownership chain, foreign Company C should be placed on the beneficial ownership register of Company B. As the ultimate beneficial owner of foreign Company C, natural Person 1 should be placed on the beneficial ownership register of Company B.
- **Scenario 3** – Company A is a Cayman company wholly owned by Company B, a foreign company. Company B is wholly owned by a foreign company, Company C. Company C is subsequently owned 100% by a natural person. As the first registrable RLE in Company A's ownership chain, Company B should be placed on the beneficial ownership register of

*Company A. As the ultimate beneficial owner of Company A, natural Person 1 should also be placed on the beneficial ownership register of Company A.*

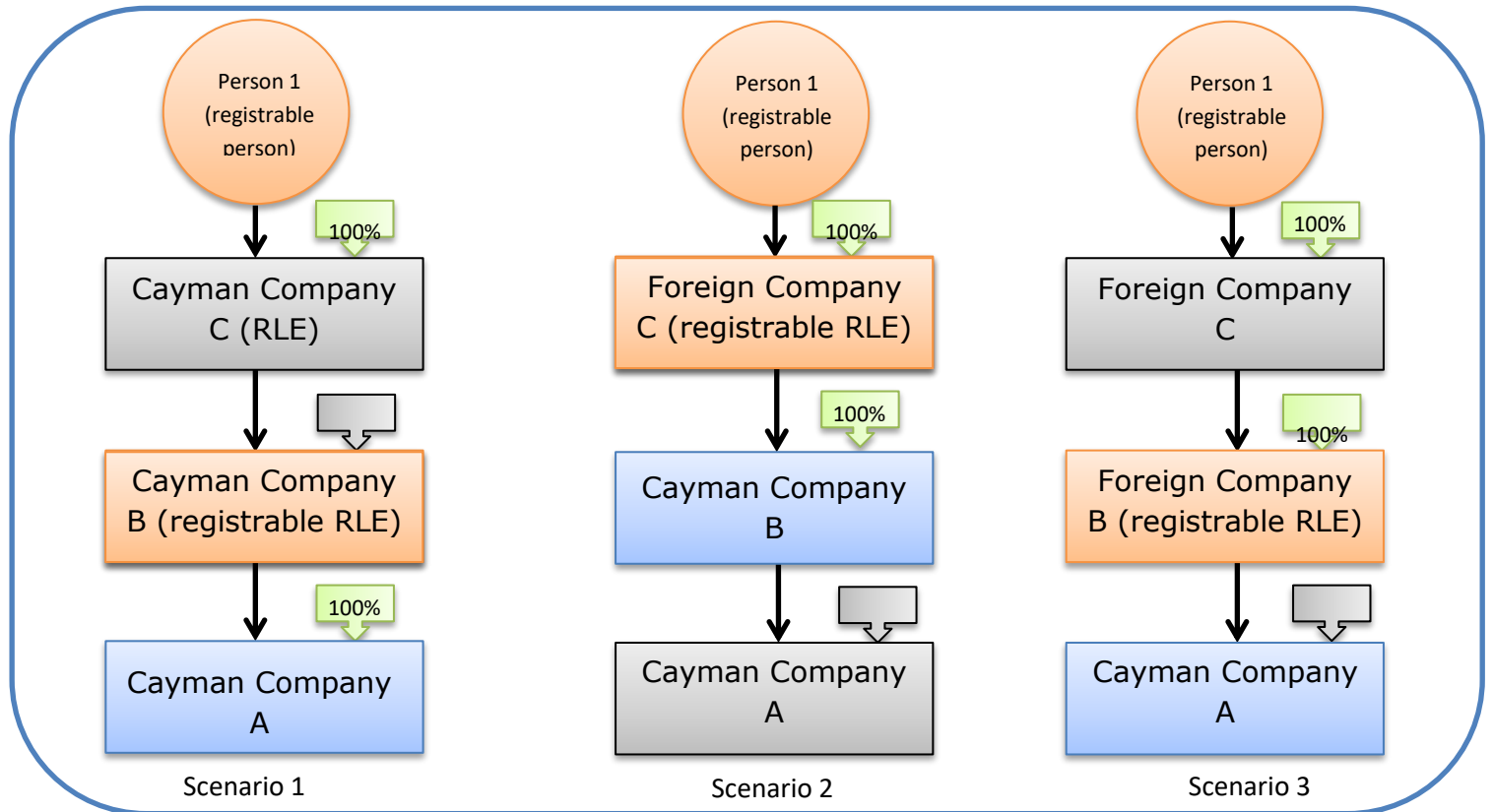
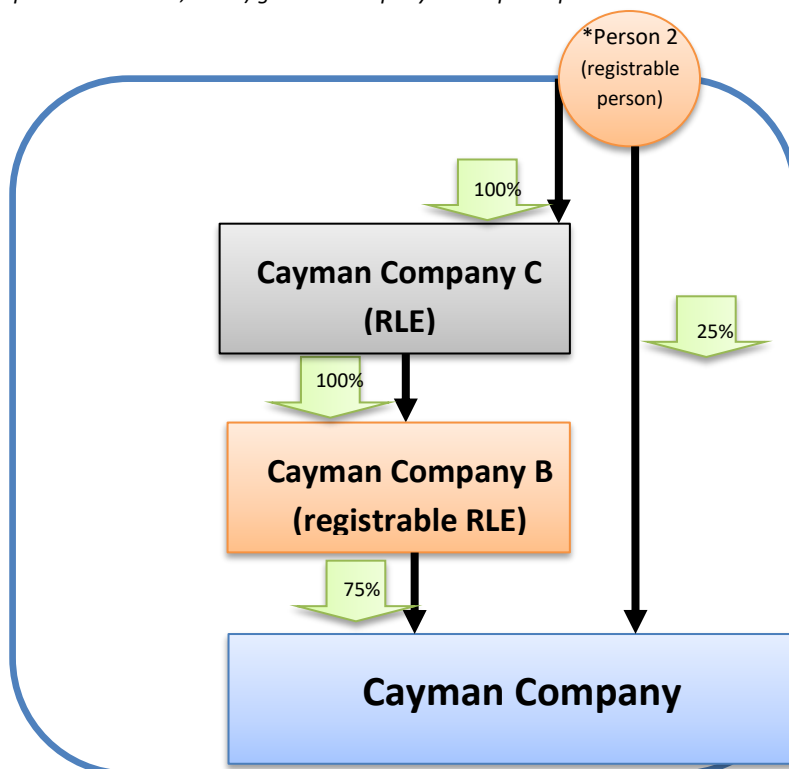


Figure 2

**Example 3:**

*In figure 3, Person 2, a natural person, holds 25% of the shares in Company A, directly, and indirectly holds the remaining 75% of the shares via Companies B and C. In this instance both the natural person and Company B should be recorded on the beneficial ownership register of Company A.*

*\*Note: In this scenario Person 2 is required, within 30 days of knowing they are a registrable person, to: a) notify the company of the person's status as a registrable person in relation to the company; b) state the date, to the best of the person's knowledge, on which the person acquired that status; and c) give the company the required particulars.*



### Information you need to record on the beneficial ownership register:

17. The particulars of an individual that is a registrable person to be entered into the beneficial ownership register of a respective company are:
- full legal name;
  - residential address and, if different, an address for service of notices under this Law;
  - date of birth;
  - information identifying the individual from their passport, driver's licence or other government-issued *photo* document, including –
    - i. identifying number;
    - ii. country of issue; and
    - iii. date of issue and expiry.
  - the date on which the individual became or ceased to be a registrable person in relation to the company in question.
18. The particulars of a relevant legal entity that is a registrable person are to be entered into the beneficial ownership register of a respective company are:
- 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 the registration number in that register; and
  - the date on which it became or ceased to be a registrable person in relation to the company in question.

### Obtaining the information

19. A company is required to take reasonable steps to contact its beneficial owners, confirm the information for the register, and provide in writing to the Registrar or its CSP the required particulars outlined in paragraphs 9 through 10 of this guide.
20. A company shall give notice to a registrable person as soon as reasonably practicable after the company learns of a change or has reasonable cause to believe a change has occurred as it relates to the registrable person's particulars in the company's beneficial ownership register.

### Recording the information:

21. A company's beneficial ownership register should contain the information listed in paragraph 10 through 11 of this guide for each beneficial owner of the company. The **beneficial ownership register** of a company can never be blank and must be recorded at the Registrar or its CSP or, as the case may be.

### Providing the information to Corporate Service Providers and/or General Registry:

22. Companies shall provide the information in writing on the particulars of respective registrable persons to the Registrar or its respective CSP, as the case may be. Ordinary Resident Companies are the **only** companies permitted to engage the Registrar to assist them to establish and maintain

their beneficial ownership registers. Ordinary resident companies may engage a CSP to provide this service.

23. All other types of companies (i.e. exempted companies, ordinary non-resident companies, limited liability companies, and companies registered as special economic zone companies under the Special Economic Zones Law (2017 Revision)) are required to engage a CSP to assist them to establish and maintain their beneficial ownership registers.

#### **What happens if the information requirements are not met?**

24. If a company fails to comply, the Registrar or its CSP, as the case may be, shall give notice of the Registrar's or its CSP's opinion to the company and the company shall within one month of receipt of the notice reply with the missing particulars or a justification or correction with respect to information in the notice.

25. If the company does not comply with paragraph 20 above, the company shall:

- issue a restrictions notice to the registrable persons whose particulars are missing with regard to the shares or other relevant interest of such registrable persons in the company; and
- Send a copy of the notice to the Registrar within two weeks of issuing the restriction notice.

26. The contents of a restriction notice shall be as follows:

- specify the date on which it is issued;
- identify the addressee's relevant interest in the company by reference to shares or right in question;
- explain the effect of the notice;
- state that, by virtue of the notice, certain acts or failures to act may constitute an offence; and
- State that an aggrieved person may apply to the court for an order directing that the relevant interest cease to be subject to restrictions.

27. The effect of a restrictions notice with respect to a relevant interest is as follows -

- (a) any transfer or agreement to transfer the interest is void;
- (b) no rights are exercisable in respect of the interest;
- no shares may be issued in respect of the interest or in pursuance of an offer made to the interest-holder;
- (d) except in a liquidation, no payment may be made of sums due from the company in respect of the interest, whether in respect of capital or otherwise; and
- (e) other than in a liquidation, an agreement to transfer any of the following associated rights in relation to the relevant interest is void -
  - (i) a right to be issued with any shares issued in respect of the relevant interest; or
  - (ii) a right to receive payment of any sums due from the company in respect of the relevant interest



## Sanctions

28. A person commits an offence who, knowing that a relevant interest is subject to restrictions -
- (a) Exercises or purports to exercise any right to dispose of the relevant interest;
  - (b) Exercises or purports to exercise any right to dispose of any right to be issued with the relevant interest; or
  - (c) Votes in respect of the relevant interest (whether as holder of the interest or as proxy) or appoints a proxy to vote in respect of the relevant interest.
- (d) **A person who commits an offence under this section is liable on summary conviction to a fine of five thousand dollars.**

## Offences

29. A company that knowingly and willfully contravenes section 247(1), 248(1), 252, 253(1) or (1A) or 255(2) or knowingly and willfully fails to issue a notice as required by section 249, 255 or 256(3) commits an offence and is liable on summary conviction for each such contravention -
- (a) to a fine of twenty-five thousand dollars (\$25,000.00); and
  - (b) if the offence is a continuing one, to a fine of five hundred dollars for each day or part of a day during which the offence continues, up to a maximum of twenty-five thousand dollars.
275. (1) A person to whom a notice under section 249 or 255 is addressed commits an offence if the person -
- (a) knowingly and willfully fails to comply with the notice; or
  - (b) in purported compliance with the notice -
    - (i) makes a statement that the person knows to be false in a material particular; or
    - (ii) recklessly makes a statement that is false in a material particular.
- (2) A person does not commit an offence under subsection (1)(a) if the person proves that the requirement to give information was frivolous or vexatious.
- (3) A person guilty of an offence under this section is liable -
- (a) on conviction on indictment, to imprisonment for a term of two years or a fine of ten thousand dollars, or to both;
  - (b) on summary conviction to imprisonment for a term of twelve months or a fine of five thousand dollars, or to both.
276. (1) A person commits an offence if the person -
- (a) knowingly and willfully fails to comply with a duty under section 250 or 257 within the time required by that section; or
  - (b) in purported compliance with such a duty -
    - (i) makes a statement that the person knows to be false in a material particular; or
    - (ii) recklessly makes a statement that is false in a material particular.
- (2) A person guilty of an offence under this section is liable -
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine of ten thousand dollars, or to both;
  - (b) on summary conviction to imprisonment for a term of twelve months or to a fine of five thousand dollars, or to both.