

2021



Cayman Islands
General Registry

Beneficial Ownership Enforcement Manual

REGISTRAR OF COMPANIES

Preface

Administrative Fines for non-compliance

Section 281A of the Companies Act (2021 Revision) creates powers for the Registrar to impose administrative fines for breaches of certain provisions of that Act which relate to Beneficial Ownership Registers. Similar powers are conferred on the Registrar in respect of limited liability companies by section 56A (1) of the Limited Liability Companies Act (2021 Revision) and in respect of limited liability partnerships by section 88 of the Limited Liability Partnership Act (2021 Revision).

This Guidance is made under section 281F of the Companies Act, section 56F of the Limited Liability Companies Act and section 93 of the Limited Liability Partnership Act. It sets out the powers of the Registrar to apply administrative fines, how those powers should be used and the role of corporate services providers and companies.

In this Guidance, you will find:

1. An explanation of the powers given to the Registrar;
2. A summary of our compliance and enforcement approach;
3. An overview of how we will assess whether to apply an administrative fine;
4. The factors that will be taken into consideration in deciding whether there is a continuance of a breach, and how the requisite administrative fine will be determined; and
5. The appeal process.

Where sections are referenced in this Guidance, they are sections within the Companies Act (2021 Revision), as amended. However, there are similar provisions in the Limited Liability Companies Act (2021 Revision) and the Limited Liability Partnership Act (2021 Revision).

The Guidance will be updated as and when needed, in addition to a review that we plan to conduct annually.

Last Updated: 26 November 2021

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Definitions

Administrative Fine - a fine levied for a breach listed in Schedule 7 of the Companies Act, the Schedule to the Limited Liability Companies Act or the Schedule to the Limited Liability Partnership Act, as the case may be.

Administrative Fine Notice - means a notice issued by the Registrar under regulation 9B of the Beneficial Ownership (Companies) Regulations (2019 Revision), regulation 9B of the Beneficial Ownership (Limited Liability Companies) Regulations (2019 Revision), or regulation 30 of the Beneficial Ownership (Limited Liability Partnership) Regulations, 2019.

Administrative Fines Review Committee – means the committee appointed by the Competent Authority for Appeals under regulation 9C(3) of the Beneficial Ownership (Companies) Regulations (2019 Revision), regulation 9C(3) of the Beneficial Ownership (Limited Liability Companies) Regulations (2019 Revision), or regulation 31(3) of the Beneficial Ownership (Limited Liability Partnership) Regulations, 2019 for the purposes of reviewing appeals against administrative fines levied by the Registrar of Companies.

Beneficial Owner - has the meaning assigned by section 247(3), (4) and (5) of the Companies Act, section 73(3), (4) and (5) of the Limited Liability Companies Act, or section 54(3), (4) and (5) of the Limited Liability Partnership Act.

Beneficial Ownership Register - means a register of adequate, accurate and current beneficial ownership information maintained pursuant to section 252 of the Companies Act, section 78 of the Limited Liability Companies Act or section 59 of the Limited Liability Partnership Act, as the case may be, containing the required particulars of a registrable person.

Competent Authority - means the Minister referred to in section 246(1) of the Companies Act and includes the person designated by the Minister under this section for the purposes of part XVIIA of the Act, being the Registrar of Companies.

Competent Authority for Appeals - means the Minister referred to in section 246(1) of the Companies Act and includes the person designated by the Minister under this section for the purpose of appeals against administrative fines levied by the Registrar, being the Chief Officer for the Ministry of Financial Services.

Corporate Service Provider (“CSP”) - means an individual or legal entity that provides corporate services under the Companies Management Act (2021 Revision), the Banks and Trust Companies Act (2021 Revision), the Insurance Act, 2010, or any other regulatory law pursuant to which the individual or legal entity is licensed or permitted to provide registered office services.

Individual - means a natural person.

Registrable Person - means an individual or relevant legal entity that is a registrable person under section 251 of the Companies Act, section 77 of the Limited Liability Companies Act, or section 58 of the Limited Liability Partnership Act.

Regulatory Law - means a law defined as such in section 2 of the Monetary Authority Act

(2020 Revision), other than the Directors Registration and Licensing Act, 2014.

Required Particulars - means the particulars of a registrable person which are required to be kept in a company's beneficial ownership register pursuant to sections 253 and 254 of the Companies Act, sections 79 and 80 of the Limited Liability Companies Act, and sections 60 and 61 of the Limited Liability Partnership Act.

Restrictions Notice - means a notice issued under section 265 of the Companies Act, section 91 of the Limited Liability Companies Act, or section 72 of the Limited Liability Partnership Act.

1. Introduction

1.1 The Cayman Islands, as a premier global financial hub is committed to the highest global standards for transparency and cross-border cooperation with tax and law enforcement authorities. For more than 15 years, we have had in place verification of ownership standards. Such commitment has contributed significantly to the Cayman Islands achieving the equivalent OECD rating for transparency as countries like the UK, US, Germany, Canada and Australia¹. In 2015 the Cayman Islands conducted a risk assessment and determined that, as an international financial centre, the main money laundering and terrorist financing threat in the Cayman Islands originates from criminal activities committed in foreign jurisdictions, which may involve the misuse of Cayman Islands financial instruments and institutions for the purpose of money laundering².

1.2 On 1 July 2017, we enhanced our transparency by formalising a beneficial ownership regime in the Cayman Islands. Amendments to the Companies Act facilitated the implementation of a new technology-based system by which beneficial ownership data was to be provided. A Competent Authority was also established to receive and manage this data, and supervise this framework. The Competent Authority conducts searches of the beneficial ownership registers at the request of national law enforcement agencies and certain other authorities competent in the field of fighting financial crime and corruption.

1.3 Since the beneficial ownership legislation was introduced in the Cayman Islands, the EU's Fifth Money Laundering Directive³ was published, which calls for increased transparency around beneficial ownership information.

1.4 The beneficial ownership framework, together with a robust, proportionate and dissuasive sanctions regime, has further enhanced the Cayman Islands' commitment to these best practices with regards to mitigating the risk of financial crime.

1.5 This Guidance should be read in conjunction with the applicable laws and regulations concerning the beneficial ownership regime in the Cayman Islands.

What are Administrative Fines?

1.6 An administrative fine is a civil penalty imposed by the Registrar for breaches of certain provisions of Part XVIIA of the Companies Act, Part 12 of the Limited Liability Companies Act and Part 8 of the Limited Liability Partnership Act (together "the Acts"), each an "applicable Act".

¹ <https://cayman.finance/2019/10/cayman-finance-announces-support-for-cayman-islands-government-decision-to-introduce-a-public-register-of-beneficial-ownership/>

² Results of the 2015 Cayman Islands Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing.

³ Directive (EU) 2018/843

Powers of the Registrar to Impose Administrative Fines

1.7 Under section 281A of the Companies Act, section 56A of the Limited Liability Companies Act and section 88 of the Limited Liability Partnership Act, the Registrar may impose a fine on a person who breaches a provision of the Acts that are specified in the relevant schedules.

1.8 The administrative fine shall be CI\$5,000 for a breach and the Registrar may, in addition to this initial fine, impose a further fine of CI\$1,000 per month for each month the breach continues. Total fines arising from a single breach are capped at CI\$25,000.

1.9 With regards to what constitutes a breach, an example of a single breach would be where the recipient of a request for additional information under section 279A of the Companies Act, fails to respond within the time specified. Multiple breaches may occur where, for example, a corporate services provider fails to file beneficial ownership information, in accordance with section 261(2) of the Companies Act, for more than one entity by which the CSP is engaged for the provision of registered office services.

1.10 A limitation period is applicable to the Registrar's ability to impose an administrative fine. Penalties will not be imposed where six months have expired after the date on which the Registrar became aware of the occurrence of the breach.

1.11 Section 281B of the Companies Act, section 56B of the Limited Liability Companies Act, and section 89 of the Limited Liability Partnership contemplate that an administrative fine may still be imposed where a breach has been remedied within the limitation period.

1.12 Where the breach is also a criminal offence, the Registrar may also impose a fine unless criminal proceedings are already in process or have been concluded.

On whom may a penalty be imposed?

1.13 Fines may be imposed on CSPs, companies, limited liability companies, limited liability partnerships or beneficial owners.

1.14 A CSP may be subject to fines where it fails to:

- I. establish and maintain each company's beneficial ownership register when engaged for the provision of registered office services by that company (section 252(2) of the Companies Act);
- II. file beneficial ownership information for each entity in accordance with section 261(2) of the Companies Act;
- III. where applicable, issue a Restrictions Notice to a Registrable Person and provide a copy of that notice to the Competent Authority within two weeks of its issuance (section 256 (3) of the Companies Act);
- IV. where applicable, give notice of its opinion if it is of the opinion that a company has failed to comply with sections 253 and 255 of the Companies Act without reasonable excuse, or has made a false, deceptive or misleading statement in accordance with section 256(1) of the Companies Act;

- V. respond to a request from the Competent Authority for additional information under section 279A of the Companies Act, within the stipulated time frame.

1.15 A company may be subjected to fines where it fails to:

- I. take reasonable steps to identify its beneficial owners (section 247(1) of the Companies Act);
- II. take reasonable steps to identify relevant legal entities that exist in relation to the company (section 248(1) of the Companies Act);
- III. give notice in writing to beneficial owners and relevant legal entities identified under section 249(1) of the Companies Act;
- IV. keep its beneficial ownership register at its registered office;
- V. in the case of an ordinary resident company, to either engage a corporate service provider or the Registrar to assist the ordinary resident company to establish and maintain the beneficial ownership register (sections 252(3) and (3A) of the Companies Act);
- VI. provide in writing to the CSP or the Registrar of Companies, the required particulars of registrable persons in respect of the company once those particulars have been confirmed (section 253(1) of the Companies Act);
- VII. provide written confirmation of the exemption to the CSP or instructions to file written confirmation to the Competent Authority (section 253(1A) of the Companies Act);
- VIII. give notice requesting confirmation of a change to a registrable person as soon as reasonably practicable after the company becomes aware of the relevant change with respect to the registrable person (section 255(1) of the Companies Act);
- IX. instruct the CSP or the Registrar to enter the updated information in the company's beneficial ownership register after receiving confirmation of a change (section 255(2) of the Companies Act);
- X. provide the CSP or the Registrar with a response to a notice under section 256(2) of the Companies Act;
- XI. comply with the terms of a restriction notice under section 266(1) of the Companies Act;
- XII. respond to a request for additional information under section 279A of the Companies Act within the stipulated time.

1.16 A beneficial owner may be subjected to administrative fines where they fail, within the stipulated time periods, to:

- I. notify the company that they are a registrable person in circumstances where they know that to be the case and have no reason to believe that their particulars are already included in the beneficial ownership register (section 250(2) of the Companies Act);
- II. notify the company of any relevant changes to information in respect of them that is/should be included within the beneficial ownership register (see section 257(2) of the Companies Act). In this context, relevant changes relate to required particulars as outlined in section 254 of the Companies Act.

1.17 Any person who incorrectly reports that the person is a legal entity or a subsidiary to whom Part XVIIA of the Companies Act does not apply by virtue of section 245(1) of the Companies Act may be subject to an administrative fine (section 253(1A)(a)(i) of the Companies Act).

2. Our Enforcement Approach

2.1 The Beneficial Ownership regime is an important component of the overall AML/CFT regime of the Cayman Islands. The Registrar views enforcement as playing a critical role in complementing existing compliance standards in the jurisdiction. We intend, where necessary, to share information relating to our enforcement procedures with law enforcement agencies and other authorities in the jurisdiction.

2.2 The guiding principles to the approach to enforcement comprise of the following:

Promote

- We will promote compliance by providing industry with strategic feedback and guidance which can assist with fortifying compliance frameworks

Enable

- We will enable compliance by providing access to the relevant IT systems, and where there are recurring breaches of a similar nature, the Competent Authority will engage with the private sector through training and sensitisation sessions.

Respond

- We will respond to non-compliance in an appropriate, proportionate, transparent and effective manner. We will exercise our enforcement powers in a manner that is procedurally fair. We will take into consideration the facts of each case and learn from each experience.

Change

- Where necessary, we will assist in changing the behaviour of non-compliant entities, through proportionate and dissuasive enforcement methods.

3. Case Assessment

3.1 In determining whether to impose an administrative fine, the Registrar will take into consideration the following:

- Whether a breach has occurred and the nature of the breach;
- The explanation provided in response to any notice issued by the Registrar; and
- Any other factor relevant to the case.

3.2 The Registrar will consider, on a balance of probabilities, whether a breach has occurred. Balance of probabilities is the civil standard of proof.

3.3 We will consult with relevant law enforcement and prosecuting authorities where there is suspicion that the breach is of a criminal nature. In line with the Acts, issuance of an administrative fine does not preclude prosecution for the same where the breach is also an offence, but if criminal proceedings have already commenced or concluded, the Registrar will not issue a fine in respect of the same breach.

Voluntary disclosure

3.4 If a company, an individual, or CSP identifies a breach prior to being approached by the Registrar, voluntary disclosure to the Registrar is valued. Co-operation is a sign of good faith and makes enforcing more efficient and effective. The impacts of the voluntary disclosure on any enforcement action will be considered by the Registrar on a case by case basis.

3.5 We expect that breaches should be disclosed in a timely fashion, as soon as reasonably practicable, after discovery of the breach. What this means will differ in each case. There is no conflict between timeliness and material completeness. Although it is reasonable for you to take some time to assess the nature and extent of the breach, or seek legal advice, this should not delay timely and appropriate remediation of the breach.

3.6 When a voluntary disclosure is made, consideration should be given to ensuring that the disclosure is materially complete on all relevant factors that evidence the facts of the breach. We expect facts to be truthfully stated in good faith.

Revisions to case-assessment process

3.7 The Registrar recognises that as we progress with this enforcement regime, there will be a need to review and amend our processes. From time to time, we will review our case assessment and enforcement processes, and make changes where necessary. We will publish changes to our processes before implementing them, in the same detail as in this Guidance.

4. The Procedure for Imposing a Fine

4.1 Prior to the imposition of an administrative fine, the Registrar will conduct an investigation into the suspected breach(es). The list of breaches is outlined in Schedule 7 of the Companies Act (2021 Revision). During the investigation, the Registrar will formally notify the entity and or CSP in writing that an official investigation is underway. The entity and / or CSP will be informed as to the basis of the investigation, what entities (where

applicable) are subject of the investigation, and they will be requested to provide a response to the Registrar, together with any evidence on which they seek to rely to deny or mitigate any breach of the Acts.

4.2 The entity or CSP will have fourteen (14) working days to provide this written response and any evidence on which they seek to rely. Where an extension is required, an application can be sent to the Registrar for consideration, within the 14 day timeframe.

4.3 For clarity, relevant evidence includes, but is not limited to, copies of emails, on-boarding documents, restriction notices or any other document. An unsupported assertion by a CSP or an entity of a purported fact is unlikely to meet the required evidential threshold.

4.4 Where an entity or CSP fails to respond within the stipulated timeframe or any other subsequent period extended by the Registrar, or fails within the stipulated timeframe to satisfy the Registrar, on the strength of the evidence, that no breach has occurred; the Registrar will exercise the discretion to levy an administrative fine for the breach.

4.5 The administrative fine notice will state:

- the date on which the notice was issued;
- the breach for which the fine is imposed and the relevant provisions of the Acts;
- details of the breach;
- the amount of the fine;
- the reference number of the fine;
- how payment should be made;
- the date by which the administrative fine should be paid;
- the effects of non-payment; and
- the process for appealing to the Competent Authority for Appeals in respect of the administrative fine (see the template notice at **appendix 1**).

4.6 Schedule 7 of the Companies Act, and the Schedules to both the Limited Liability Companies Act and the Limited Liability Partnership Act, outline the breaches which can be committed by an entity or CSP. These offences are singular in nature and as such can occur multiple times within one case. An example would be a breach of section 261(2) of the Companies Act, where a CSP fails to file beneficial ownership information for each entity by which it is engaged.

4.7 Where an administrative fine is imposed upon a CSP, the Cayman Islands Monetary Authority will be notified of the imposition of such fine upon the CSP, as its licensee.

5. Appeals Process

5.1 Upon receipt of an administrative fine notice for breach of the beneficial ownership provisions, as outlined within the BO Regulations⁴, the recipient of the notice may appeal against the decision of the Registrar within 30 calendar days of receipt of the notice using the form found at the Schedule to those sets of Regulations. This form can also be found at **appendix 2**.

5.2 The appeal is to be sent by email to BOAppeals@gov.ky. The Competent Authority for Appeals is the Chief Officer for the Ministry of Financial Services, who is designated for these purposes by the Minister for Financial Services.

5.3 The below process sets out what should happen from the receipt of an appeal to the Competent Authority:

- I. Following receipt of an appeal to the Competent Authority for Appeals, the Chief Officer for the Ministry of Financial Services (as designated by the Minister for Financial Services) shall establish a review committee comprising of three persons who are officers of the Ministry. Two persons in the review committee shall have knowledge and experience in accounting, financial services, banking or compliance, and the third person shall be an attorney-at-law. No persons who were involved in the decision making process for the administrative fine shall be appointed to the review committee.
- II. Once the review committee is formed, the review committee shall inform the Registrar that an appeal to the Competent Authority for Appeals has been received, including the grounds on which the applicant relies and provide the Registrar the opportunity to make representations to the review committee concerning the appeal. The Registrar shall not otherwise participate in any discussion, decision, debate or vote of the review committee concerning the appeal.
- III. The review committee shall consider the information provided by the appellant, as well as the representations made by the Registrar and the relevant legislative provisions. Should the review committee require additional information, the Competent Authority for Appeals may by notice in writing (with a clearly stated deadline) require the appellant to provide such documents, statements or any other information as it may reasonably require in the exercise of its functions, and the appellant must comply with any such request. Any failure to respond to a request within the time specified will lead to the review committee continuing with their function to the extent they are able without the requested information.
- IV. The review committee shall consider whether there is sufficient evidence of a breach and whether a fine is appropriate. Once the review committee has completed the inquiry, it shall report its findings and recommendations, including

⁴ Beneficial Ownership (Companies) Regulations (2019 Revision), the Beneficial Ownership (Limited Liability Companies) Regulations (2019 Revision) and the Beneficial Ownership (Limited Liability Partnership) Regulations, 2019.

its rationale, to the Competent Authority for Appeals i.e. the Chief Officer as designated by the Minister. This should be in the form of a report similar to the one found at **appendix 3**.

- V. Once the Competent Authority for Appeals receives the review committee's recommendation, he shall consider and determine the appeal and may affirm or set aside the original decision made by the Registrar to issue the administrative fines notice at issue. In making his decision, the Competent Authority for Appeals shall have regard to, but is not bound by, the findings and recommendations of the review committee.
- VI. Within 15 working days from the receipt of an appeal, the Competent Authority for Appeals shall give the appellant notice of the decision using a form similar to that found at **appendix 4**. Where the original administrative fine decision is affirmed, the notice of the decision shall also state the reasons for the decision and that the appellant may apply to the Grand Court for judicial review of the decision. Where the Competent Authority for Appeals sets aside the original decision, the original decision is deemed never to have been made.

6. Payment of Fines

6.1 For Corporate Services Providers, beneficial ownership fine payments may be submitted by email to ciregistry@gov.ky with the subject line "BO FINES: ROC#, Entity name" and should include a cover letter acknowledging the fines and granting authorisation to debit the online CORIS account. All documents attached should be in PDF format.

6.2 For other entities, beneficial ownership administrative fine payments may be submitted by email to ciregistry@gov.ky with the subject line "BO FINES: ROC#, Entity name" and should include a cover letter acknowledging the fines and the executed direct deposit confirmation (downloaded from the bank site). All documents attached should be in PDF format.

6.3 For local electronic fund transfers, please ensure that the payment is remitted to the correct Government Department (General Registry) and please ensure the following reference format is included when making your transfers:

REG/ROC#/Name of Company (e.g. REG/12345/My Company Ltd.)

7. Consequences of Failure to Pay

7.1 Where a CSP, company or individual fails to pay an administrative fine issued by the Registrar, or where that administrative fine has been appealed, reviewed and confirmed by the Competent Authority for Appeals and there is no application made to apply for judicial review and the natural person, CSP or company fails to pay the administrative fine levied, the Registrar of Companies may:

- Refuse the issuance of a certificate of good standing; and/or
- direct that the entity is struck from the Register of Companies.

Appendix 1 – Administrative Fine Breach Notice

To: [Individual, Company, CSP]

At: _____

(The physical address of the entity)

OR

Email address on record for the entity:

(The most recent email address on record)

Date of notice:

TAKE NOTICE that, in accordance with section **[281A of the Companies Act (2021 Revision)] [56A of the Limited Liability Companies Act (2021 Revision)] [88 of the Limited Liability Partnership Act (2021 Revision)]**, the Registrar has imposed a fine of five thousand dollars on you.

The particulars are as follows:

- Reference Number:
- The relevant prescribed provision is:
(Outline section and content of the provision)
- The facts and circumstances the Registrar believes constituted the breach are:
- The amount of the fine is five thousand dollars in line with section 281B of the Companies Act.
- Payment can be made in person at the Government Administration Building or online via the following link:

TAKE NOTICE that payment is required to be made prior to [insert date].

Failure to pay the fine prior to the abovementioned date may result in further penalties in line with section 281B of the Companies Act.

Should you wish to appeal against the decision of the administrative fine, please apply to the Competent Authority using the form in the Schedule of the Beneficial Ownership (Companies) Regulations, 2019, within 30 days of the date you receive this notice.

Appendix 2 - Application for an Appeal to the Competent Authority for Appeals

To: The competent authority for appeals by email to BOAppeals@gov.ky

At: _____

(The physical address of the competent authority for appeals)

OR

If the competent authority accepts the sending of an application under regulation 9C at a particular email address:

(The email address of the competent authority for appeals)

TAKE NOTICE that, under regulation 9C, the following person applies to the competent authority to appeal against the decision of the Registrar to impose the administrative fine by administrative fine notice received by the person on:

(Here insert date the notice was received and, if two or more administrative fine notices were given on that day. Identify the fine(s) in the administrative fine notice(s) which are the subject of the appeal.)

Reference number: _____

Applicant's full name: _____

The applicant's physical address is: _____

The applicant's email address for notices from the competent authority to the person is:

Particulars about the application are as follows:

The relevant prescribed provision set out in the administrative fine notice is:

The grounds of appeal on which the person relies are:

The facts and circumstances that the person relies on for the grounds are:

(Here insert the facts and circumstances relied on, including those contended to be different from those set out in the relevant administrative fine notice and any relevant surrounding circumstances.)

Dated _____, 20 ____.

Signed on behalf of the applicant

Position with the applicant (If the applicant is not an individual).

Appendix 3 – Report from the Review Committee to the Chief Officer as competent authority for appeals

Application received on: _____

Applicant's full name: _____

The facts and circumstances considered by the review committee are:

(Here insert the details of what information was obtained and considered as part of the investigation. Append documents considered to the Report, including Fine Notice, appeal form and Registrar's submissions)

The findings of the review committee are:

(Here make specific reference to the points raised by the applicant in their appeal request and outline the findings of the investigation, outlining if and why the review committee agrees with the applicant.)

The recommendation and rationale of the review committee is as follows:

(Here state the recommendation of the review committee and how the recommendation is reasonable, fair and proportionate.)

Dated _____, 20 ____.

Appendix 4 – Chief Officer’s Decision to the Applicant

Application received on: _____

Applicant’s full name: _____

Thank you for your application for an appeal to the competent authority for appeals of the administrative fine notice you received on:

Following careful consideration of your application and of the findings of the investigation undertaken by a review committee, I would like to inform you that the original decision by the Registrar to issue you with an administrative fine has been **[affirmed] [set aside]**.

The reasoning and rationale for the above decision are as follows:

(Here outline the reasoning for the decision.)

[Where the original decision to issue an administrative fine is affirmed] Should you wish to seek judicial review of this decision, you may do so by applying to the Grand Court for judicial review. An application for judicial review should be made promptly, and in any event within 3 months of the date of this notice.

[Where the original decision to issue an administrative fine is set aside] The original decision by the Registrar to issue an administrative fine is deemed to never have been made and records will be updated accordingly.