



Registration of Beneficial Ownership Law for Bahamian Companies

NEW LEGISLATION (“**registration of beneficial ownership law**”) is now in force in The Bahamas to create a secure and searchable database of beneficial ownership details of all Bahamian companies. The beneficial ownership law aims to align The Bahamas with evolving international standards amongst financial centers.

The registration of beneficial ownership law was enacted by the *Register of Beneficial Ownership Act, 2018*. It is effective as of 2019 and applies to all companies (each termed a “**legal entity**”) existing in The Bahamas under the *Companies Act* or the *International Business Companies Act*.

Who has access?

The database is not a public register. As such, it is not accessible by the public at large.

The secure and searchable database is required to be maintained by a legal entity’s registered agent. In the case of legal entities for which Delaney Corp. (Bahamas) Ltd. (“**Delaney Corp**”) is the registered office, Delaney Corp as registered agent will maintain and have access to the database.

Additionally, the registration of beneficial ownership law requires that designated persons within the office of the Attorney General of The Bahamas are permitted to access the database.

Only authorised persons may lawfully access the database. Any access by an unauthorized person is an offence. Further, every authorised person accessing the database owes a statutory duty of confidentiality in relation to all information maintained in the database. Any access by an unauthorised person, or any breach by an authorised person of the duty of confidentiality is punishable by fine and/or imprisonment.

Who is a beneficial owner?

A beneficial owner is a natural person who ultimately owns or controls a legal entity.

Under the registration of beneficial ownership law *beneficial owners* include the following:

- a) In the case of a legal person (other than a legal entity whose securities are listed on a securities exchange, being The Bahamas International Securities Exchange or any other



regulated securities exchange recognised pursuant to the *Securities Industry Act*), a natural person who ultimately owns or controls, whether directly or indirectly, 10% or more of the shares or voting rights of the legal entity;

- b) A natural person who otherwise exercises control over the management of the legal entity other than solely in the capacity of a director, advisor or professional manager;
- c) In the case of a legal entity which is in insolvent liquidation, administration or receivership proceedings in accordance with any law providing for the same, the natural person or entity who is appointed liquidator, administrator or receiver of the legal entity;
- d) In the case of a receiver being appointed over 25% or more of the shares or voting rights in a legal entity, the creditor who appoints the receiver; or
- e) In the case of a shareholder in the legal entity who would otherwise be a beneficial owner but is deceased, the natural person(s) who serve(s) as personal representative(s) for the deceased.

Having a security interest over shares in a legal entity or other contractual arrangements tied to its financial performance may not necessarily be sufficient to constitute such a person as being a beneficial owner.

In certain instances, a legal entity may have a beneficial owner which is itself another legal entity that is considered to be “**registrable legal entity**”, the effect of which is that (insofar as that registrable legal entity being a beneficial owner is concerned) it would not be necessary to get to the point of a natural person which is ultimate owner. A *registrable legal entity* is a non-natural legal person which (by itself, affiliates or wholly owned subsidiaries) would be a beneficial owner of the legal entity in question if it were a natural person, and which is also one of the following:

- a legal entity which is an *exempt person* (see as defined below);
- a legal entity the securities of which are listed on a regulated securities exchange;
- a licensee or a foreign regulated person; or
- a foreign state or a wholly owned subsidiary of a foreign state.

The registered agent must verify the identity of beneficial owners and of registrable legal entities, and collect and maintain the information which is required by the registration of beneficial ownership law.



What information is required to be collected and maintained on the secure database?

Delaney Corp must maintain the following information:

- a) For each legal entity for which it provides registered office and serves as registered agent:
 - (i) Full name of the legal entity, including any alternative names
 - (ii) The incorporation number;
 - (iii) Date of incorporation;
 - (iv) Status (whether in good standing);
 - (v) The registered address;
 - (vi) Any other particulars as the Attorney General may by Order specify [\[1\]](#).
- b) For each beneficial owner of the legal entity –
 - (i) Full legal name;
 - (ii) Residential address and if different, an address for service of notices under the registration of beneficial ownership law;
 - (iii) The country of ordinary residence or domicile;
 - (iv) The date of birth;
 - (v) Nationality, supported by a passport, driver's licence or other government-issued document containing the identifying number, the country of issue and date of issue and expiry.
- c) For each registrable legal entity of the legal entity –
 - (i) The information as stated in A. above for a legal entity;
 - (ii) The jurisdiction in which the registrable legal entity is formed;
 - (iii) The basis upon which the legal entity is designated as a registrable legal entity;
 - (iv) Where the registrable legal entity is a foreign regulated person, the name of the jurisdiction



of regulation and the name of the foreign regulator;

- (v) Where the registrable legal entity is a foreign state or a wholly owned subsidiary of a foreign state, the name of that foreign state and, if applicable, wholly owned subsidiary.

Who is exempt under the registration of beneficial ownership law?

An *exempt person* is a person who meets one or more of the following conditions:

- (a) A legal entity the securities of which are listed on The Bahamas International Securities Exchange or any other regulated securities exchange recognised pursuant to the *Securities Industry Act*;
- (b) A licensee or registrant under the *Banks and Trust Companies Regulation Act* (i.e. a bank or trust company licensed by the Central Bank of The Bahamas), the *Investment Funds Act* (i.e. investment funds regulated by the Securities Commission of The Bahamas), the *Securities Industry Act* (i.e. registered firms regulated by the Securities Commission of The Bahamas), the *Insurance Act* (i.e. insurance companies regulated by the Insurance Commission of The Bahamas), the *External Insurance Act* (i.e. external insurers regulated by the Insurance Commission of The Bahamas) and the *Financial and Corporate Service Providers Act* (i.e. financial and corporate service providers regulated by the Inspector of Financial and Corporate Service Providers), and includes its affiliates and wholly owned subsidiaries;
- (c) Any other legal entity that the Minister (the Attorney General) may exempt by regulations [\[2\]](#).

Beneficial ownership information is not required in the case of *exempt persons*. However, Delaney Corp, as registered agent, must maintain for any *exempt person* for which it provides registered office - (i) the details required in A. above for a legal entity, and (ii) the basis upon which the *exempt person* is designated as an *exempt person*.

What does this mean for you?

Clients of Delaney Corp are required to do the following:

1. Know who is deemed a *beneficial owner* and/or a *registrable legal entity* regarding your company for purposes of the registration of beneficial ownership law (see as explained above). We are available to assist you with any questions you may have;
2. Notify Delaney Corp within 15 days of identifying any person as a (i) beneficial owner or (ii) registrable legal entity of the legal entity for which Delaney Corp is registered agent;



3. Provide Delaney Corp with all information required to be maintained on the beneficial owner or registrable legal entity; and
4. Notify Delaney Corp within 15 days of becoming aware of any changes in the information required to be kept by Delaney Corp on the beneficial owner or registrable legal entity and must also provide the date such changes took place.

Legal entities existing before 2019 (transitional requirements)

A legal entity in existence before 31 December 2018 must meet the requirements of the registration of beneficial ownership law before the end of 2019.

What if you do nothing?

There are statutory penalties for non-compliance. Failure to give the registered agent the beneficial ownership information required is a statutory offence for which, on conviction, the offender is subject to a fine or imprisonment. Fines range between \$5,000 - \$40,000 on summary conviction (Magistrate's Court) and \$10,000 - \$250,000 on conviction on indictment (Supreme Court).

Next Steps

In coming weeks, all clients for which Delaney Corp provides registered office and registered agent services to legal entities will receive a *Client Update* form for completion and prompt return to Delaney Corp. Kindly complete that *Client Update* form and return it to us on or before 31 July 2019.

How to get further help?

For further information, please contact Delaney Corp at DelaneyCorp@delaneypartners.com or the commercial lawyers of Delaney Partners at info@delaneypartners.com.

^[1] We are currently not aware of any such particulars.



[2] We are not aware of any to date

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