

2020



Cayman Islands
General Registry

Competent Authority for Beneficial Ownership Enforcement Manual

COMPETENT AUTHORITY

Preface

Administrative Fines for non-compliance

Section 281A of the Companies Law (2020 Revision)¹ creates powers for the Registrar to impose administrative fines for breaches of certain provisions² of that Law which relate to Beneficial Ownership Registers. Similar powers are conferred on the Registrar in respect of limited liability companies by section 56A(1)³ of the Limited Liability Companies Law (2020 Revision). This Guidance is made under section 281F of the Companies Law and section 56F of the Limited Liability Companies Law (2020 Revision). 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 Law (2020 Revision), as amended. However, there are similar provisions in the Limited Liability Companies Law (2020 Revision).

The Guidance applies from October 2020 and we plan to conduct a review bi-annually.

¹ Inserted by section 14 of the Companies (Amendment) (No.2) Law, 2020

² These provisions are set out in Schedule 7.

³ Inserted by section 3 of the Limited Liability Companies (Amendment) (No. 2) Law, 2020

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Definitions

Administrative Fine - a fine levied for a breach listed in Schedule 7 of the Companies Law⁴.

Administrative Fine Notice - means an administrative fine notice issued by the Registrar under regulation 9B of the Beneficial Ownership (Companies) Regulations (2019 Revision).

Administrative Fines Review Committee - the committee appointed by the Competent Authority under regulation 9C(3) of the Beneficial Ownership (Companies) Regulations (2019 Revision) for the purposes of reviewing appeals against administrative fines.

Beneficial Owner - in relation to a company has the meaning assigned by sections 247(3), (4) and (5) of the Companies Law (2020 Revision).

Beneficial Ownership Register - means a register of adequate, accurate and current beneficial ownership information maintained by a company pursuant to section 252, containing the required particulars of a registrable person in relation to a company.

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

Corporate Service Provider (“CSP”) - means an individual or legal entity that provides corporate services under the Companies Management Law (2018 Revision), the Banks and Trust Companies Law (2020 Revision), the Insurance Law, 2010 or any other regulatory law pursuant to which the individual or legal entity is licensed or permitted to provide registered office services.

Exempt Company - means a legal entity which is listed in in section 245(1), or a subsidiary thereof.

Individual - means a natural person.

Registrable Person - means an individual or relevant legal entity that is a registrable person under section 251.

Regulatory Law - means a law defined as such in section 2 of the Monetary Authority Law (2020 Revision), other than the Directors Registration and Licensing Law, 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.

Restrictions Notice - means a notice issued under section 265 of the Companies Law.

⁴ Inserted by section 18 of the Companies (Amendment) (No.2) Law, 2020.

1. Introduction

1.1 The Cayman Islands, as a premier global financial hub, has always 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 Australia⁵. 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 laundering⁶.

1.2 On 1 July 2017, we enhanced our transparency by formalising a beneficial ownership regime in the Cayman Islands. Amendments to the Companies Law 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 financial crime and corruption.

1.3 Since the beneficial ownership legislation was introduced in the Cayman Islands, the EU's Fifth Money Laundering Directive⁷ 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 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 XVIIIA of the Companies Law and Part XII of the Limited Liability Companies Law (together "the Laws"), each an "applicable law".

Powers of the Registrar to Impose Administrative Fines

⁵ <https://cayman.finance/2019/10/cayman-finance-announces-support-for-cayman-islands-government-decision-to-introduce-a-public-register-of-beneficial-ownership/>

⁶ Results of the 2015 Cayman Islands Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing.

⁷ Directive (EU) 2018/843

1.7 Under section 281A of the Companies Law (2020 Revision) and section 56A of the Limited Liability Companies Law (2020 Revision), the Registrar may impose a fine on a person who breaches a provision of the Laws 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. Fines are capped at CI\$25,000.

1.9 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.

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

On whom may a penalty be imposed?

1.11 Fines may be imposed on CSPs, companies or beneficial owners.

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

- I. establish and maintain a company's beneficial ownership register when engaged for the provision of registered office services to that company (section 252(2)).
- II. file beneficial ownership information for these entities on the basis as prescribed in section 261(2).
- 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 issuing (section 256 (3)).
- IV. where applicable, give notice of its opinion if it is of the opinion that the company has failed to comply with sections 253 and 255 without reasonable excuse, or has made a false, deceptive or misleading statement in accordance with section 256(1).
- V. respond to a request from the Competent Authority for additional information under section 279A within the stipulated time frame.

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

- I. take reasonable steps to identify its beneficial owners (section 247(1)).
- II. take reasonable steps to identify relevant legal entities that exist in relation to the company (section 248(1)).
- III. give notice in writing to beneficial owners and relevant legal entities identified under section 249(1).
- 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)).

- 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)).
- VII. provide written confirmation of the exemption to the CSP or instructions to file written confirmation to the Competent Authority (section 253(1A)).
- 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)).
- 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)).
- X. provide the CSP or the Registrar with a response to a notice under section 256(2).
- XI. comply with the terms of a restriction notice under section 266(1)⁸.
- XII. Respond to a request for additional information under section 279A within the stipulated time.

1.14 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)).
- 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)). In this context, relevant changes relate to required particulars as outlined in section 254 of the Companies Law.

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

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 applicable and necessary, to engage national law enforcement agencies and certain other authorities in the jurisdiction with regards to sharing information relating to our enforcement

⁸ This provision applies to all legal entities, not just companies.

procedures, as well as exploring alternative measures that may assist in mitigating potential overarching deficiencies where there is evidence of such.

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 by the natural person, CSP or Company as a result of a warning 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 and means it is more likely than not that something happened.

3.3 We will consult with relevant law enforcement and prosecuting authority where there is suspicion that the breach is of a criminal nature. Issuance of an administrative fine does not

preclude prosecution for the same where the breach is also an offence⁹, but if criminal proceedings have already commenced or concluded, the Registrar will not issue a fine in respect of the same breach¹⁰.

Voluntary disclosure

3.4 The Registrar values voluntary disclosure. Co-operation is a sign of good faith and makes enforcing simpler, easier, quicker and more effective. Voluntary disclosures of a breach by a company, relevant person or CSP will be considered when we assess the case.

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 an effective response to the breach.

3.6 When a disclosure is made, consideration should be given to ensure 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, a warning notice may be issued by the Registrar, as shown at **appendix 1**, to allow the CSP, individual or Company an opportunity to remedy the breach identified within a specified timeframe. This time frame is discretionary and can range from two weeks to a month.

4.2 Upon the expiry of the specified timeframe referenced in 5.1 and where the breach has not been remedied, the Competent Authority may issue an official notification, in line with appendix 2, informing the entity, individual or CSP of the breach and accompanying fine. The administrative fine notice will also state:

- the date on which the notice was issued;

⁹ See sections 274-278 & 281E of the Companies Law

¹⁰ *Ibid.* section 281C(3)

- the breach for which the fine is imposed and the provision under the Law;
- details of the breach;
- the amount 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 against the decision of the Registrar to impose the administrative fine.

5. Appeals Process

5.1 Upon receipt of an administrative fine notice for a breach of the beneficial ownership provisions, as outlined within the Beneficial Ownership (Companies) Regulations (2019 Revision) and the Beneficial Ownership (Limited Liability Companies) Regulations (2019 Revision), the recipient of the notice may appeal against the decision of the Registrar within 30 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 3**.

5.2 The appeal is to be sent to the Competent Authority, which for the appeals process 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 the application for an appeal to the competent authority:

- I. Following receipt of an application for an appeal to the Competent Authority, 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 application for an appeal to the competent authority 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 application. The Registrar shall not otherwise participate in any discussion, decision, debate or vote of the review committee concerning the application.

- III. The review committee shall consider the information provided by the applicant in the application for an appeal to the competent authority, as well as the representations made by the Registrar and the relevant legislative provisions. Should the review committee require additional information, the Competent Authority may by notice in writing (with a clearly stated deadline) require the applicant to provide such documents, statements or any other information as it may reasonably require in the exercise of its functions, and the applicant must comply with any such request.
- 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 their rationale, to the Competent Authority 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 4.
- V. Once the Chief Officer receives the review committee's recommendation, he shall consider and determine the application and may affirm or set aside the original decision made by the Registrar to issue the administrative fines notice at issue. In his decision, the Chief Officer 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 application for an appeal to the competent authority, the Chief Officer shall give the applicant notice of the decision using a form similar to that found at appendix 5. Where the original decision is affirmed, the notice of the decision on the application shall also state the reasons for the decision and that the applicant may apply to the Grand Court for judicial review of the decision. Where the Chief Officer 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 account. **All documents attached should be in PDF format.**

6.2 For other entities, 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 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. Failure to Pay

Consequences of the failure to pay administrative fines

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 review committee and the natural person, CSP or Company fails to pay that fine, the Registrar of Companies may:

- Refuse the issuance of a certificate of good standing¹¹; and/or
- direct that the entity is struck from the Register of Companies¹².

¹¹ *Ibid.* section 200A

¹² *Ibid.* section 156A

Appendix 1 – Warning 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:

As you will be aware, in accordance with section 281A of the Companies Law (2020 Revision), the Registrar may impose a fine of five thousand dollars for breaches of the Law as specified in Schedule 7.

It has been brought to the Registrar's attention that you are currently in breach of the following provision:

(Outline section and content of the provision)

The facts and circumstances the Registrar believes constituted the breach are:

TAKE NOTICE that the Registrar is providing you with the opportunity to rectify or make representations with regards to the abovementioned breach before [insert date].

AND TAKE FURTHER NOTICE that should the breach not be rectified nor representations made before the specified date, the Registrar intends to use power under section 281A of the Companies Law (2020 Revision).

Should you wish to make representations, please do so to the following address:

Appendix 2 – 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 Law (2020 Revision), the Registrar has imposed a fine of five thousand dollars on you.

The particulars are as follows:

- 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 Law.
- 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 Law.

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 3 - Application for an Appeal to the Competent Authority

To: The competent authority

At: _____

(The physical address of the competent authority)

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)

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.)

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 4 – Report from the Review Committee to the Chief Officer

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 5 – 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 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 Report from the Review Committee has been appended to this document for your records. **[I agree with their recommendation]** **[I disagree with their recommendation for the following reasons:**

(Here outline where there is disagreement and why.)

[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 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.