

The background of the slide features a close-up, slightly blurred image of a document with the word "Disclosure" written in a large, elegant script. A portion of a ruler is visible at the top, showing markings for 5 and 0. The IBSA logo is positioned in the top left corner.

IBSA

International Business
Structuring Association

**LIVING IN AN INCREASINGLY
TRANSPARENT WORLD**



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With the option to host and speak at our numerous events and the networking drinks which follows, the IBSA offers social interaction with many professionals, providing the chance to promote your business and attract prospective clients.



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James Parker is a corporate lawyer based in Hong Kong. He has considerable experience in all aspects of corporate law practice, including public and private mergers and acquisitions, joint ventures, private equity and corporate advisory.

Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare







Living in an increasingly transparent world

IBSA – 3 December 2018

James Parker
Partner
Norton Rose Fulbright Hong Kong



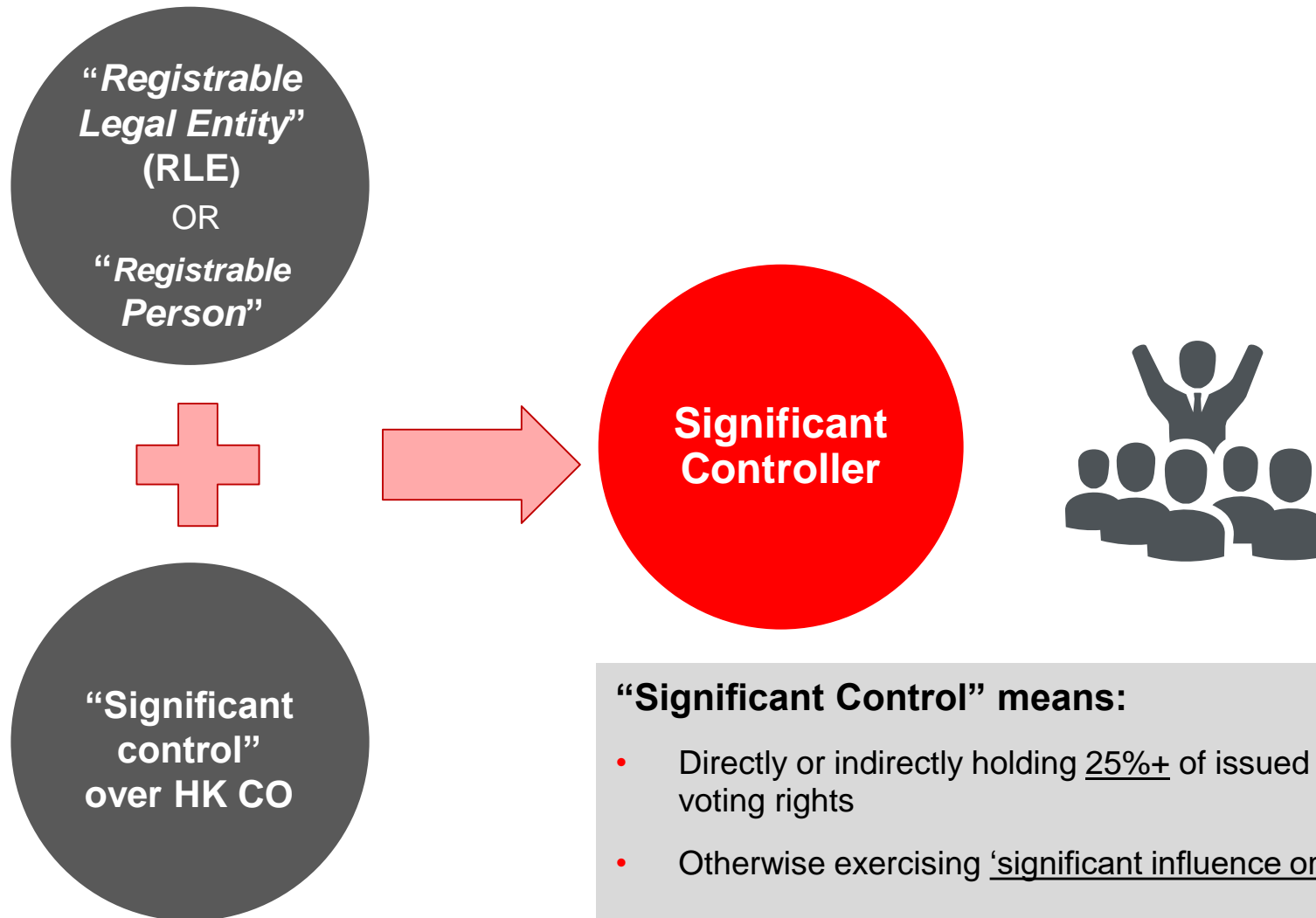
Introduction

	<ul style="list-style-type: none">• Global concern that companies are being used to obscure ultimate ownership so that criminals can distance themselves from their assets – FATF recommendations
	<ul style="list-style-type: none">• Considerable political and social pressure
	<ul style="list-style-type: none">• Tax driven initiatives:<ul style="list-style-type: none">– Base erosion and profit sharing (BEPS)– FATCA and Common Reporting Standards (CRS)
	<ul style="list-style-type: none">• Background information initiatives:<ul style="list-style-type: none">– Legal Entity Identifier (LEI)– ‘Significant Controllers’ regime




Application of Significant Controllers' regime

- Applies to all Hong Kong incorporated companies except listed companies
- Does not apply to non-Hong Kong incorporated companies registered in Hong Kong
- Required to take reasonable steps to ascertain and identify its significant controllers (if any)
- Required to keep a register of significant controllers at registered office
- Make register accessible to law enforcement officers on demand (NB. it is NOT public)

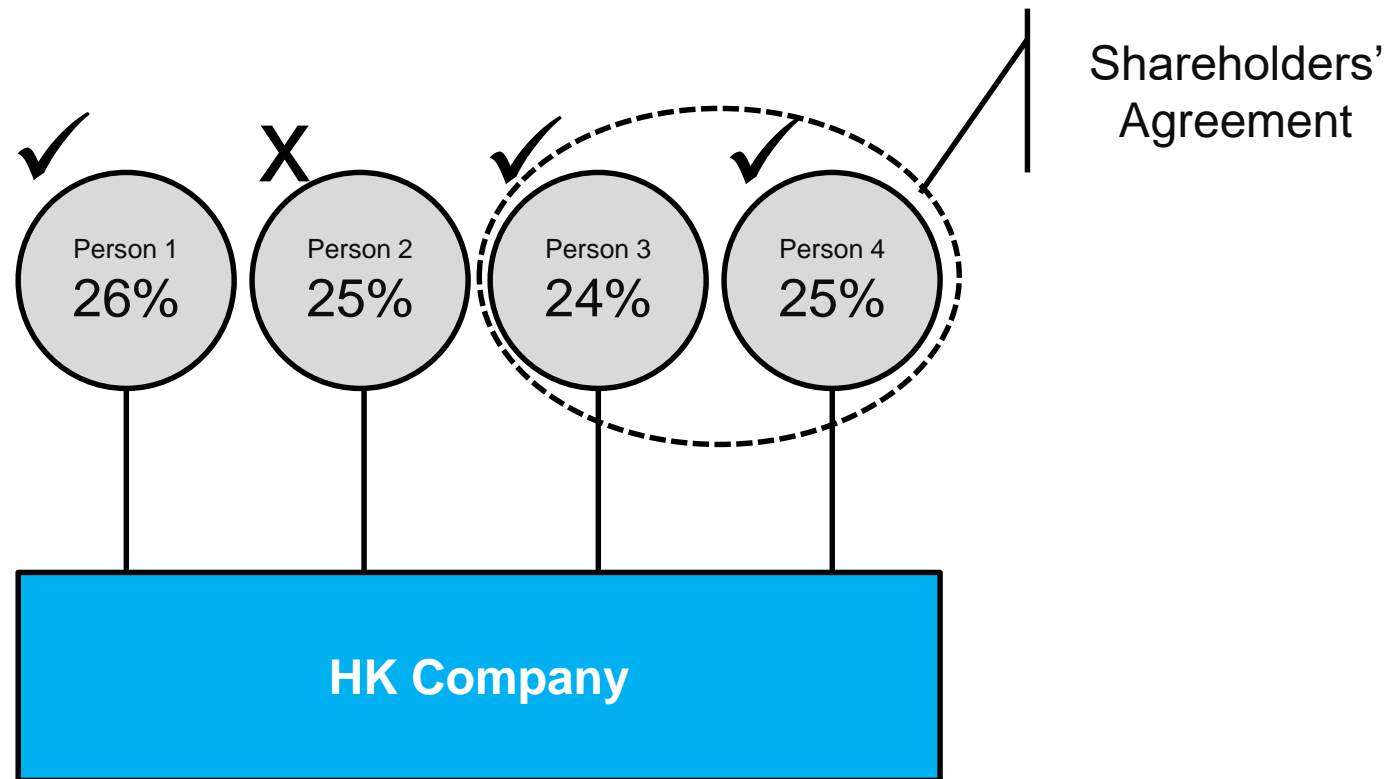
What makes someone a “Significant Controller”?



Further key principles

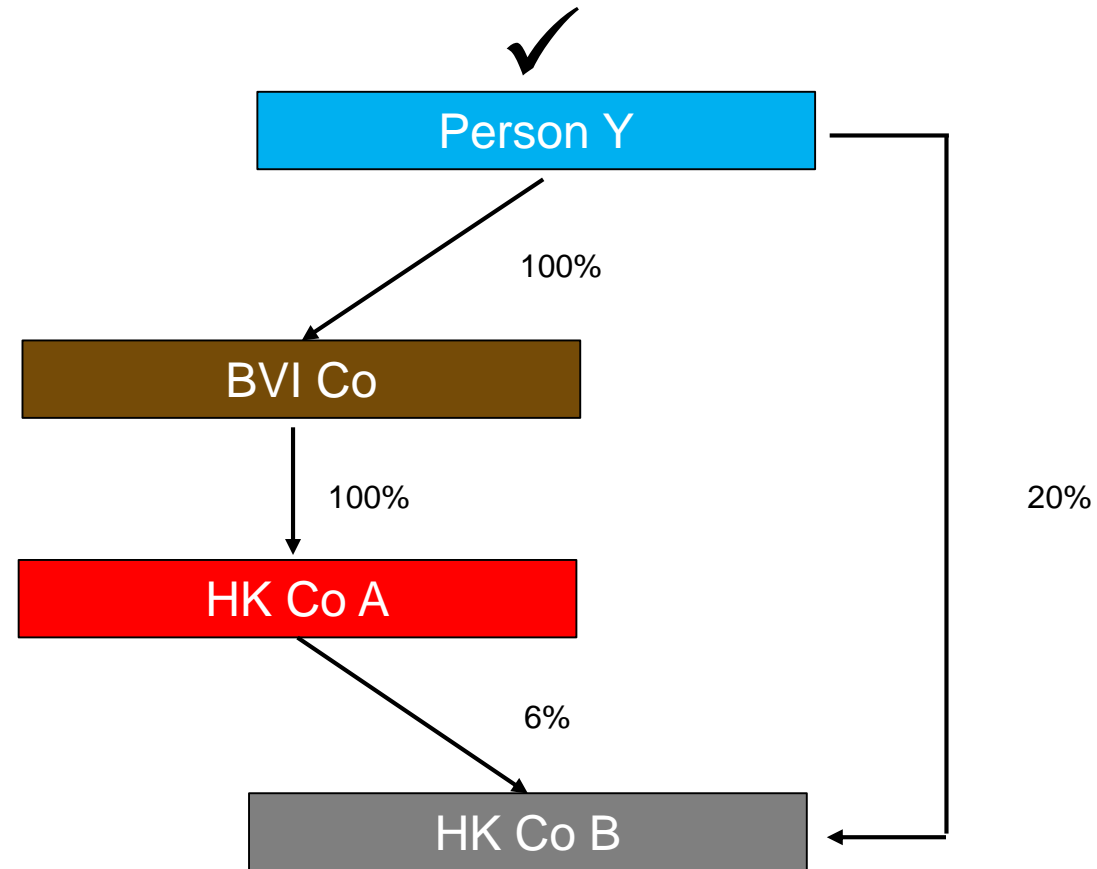
	<ul style="list-style-type: none">• Arrangements under shareholders agreements are relevant
	<ul style="list-style-type: none">• If 2 or more persons hold shares or rights jointly, each of them is regarded as holding the shares/rights
	<ul style="list-style-type: none">• Natural persons holding significant control through a listed company are not registrable persons
	<ul style="list-style-type: none">• A legal entity with significant control only needs to be registered if it is a <u>direct</u> shareholder
	<ul style="list-style-type: none">• A natural person holding through a chain of <u>majority-owned</u> companies qualifies
	<ul style="list-style-type: none">• Shares held by a nominee for another person are regarded as held by that other person

Examples



An arrangement “to exercise all, or substantially all, of the rights conferred by their respective shares jointly in a way pre-determined by the arrangement.”

Examples



Obligations on applicable companies



- Take reasonable steps to ascertain and identify any significant controllers (including sending notices)
- Send a notice:
 - when know, or have reasonable cause to believe, there is a significant controller
 - to the significant controller / a person who knows or is believed to know the identity of such significant controller
- Recipient to confirm or provide certain particulars
- Particulars are then recorded in the register
- Register kept even if there is no significant controller
- Designate a representative to assist law enforcement officers
- Content of significant controllers' register

Consequences of non-compliance



- Failure to comply is a criminal offence for company and its responsible persons, as is failure to supply required confirmations etc within prescribed time
- If a person knowingly or recklessly makes a statement that is misleading, false or deceptive, liable to:
 - a fine of HK\$300,000; and
 - imprisonment for 2 years



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John has over 18 years of experience in KPMG's tax practices in Hong Kong and New Zealand. John's work involves providing the full range of tax assistance and advice to multinational companies across the Asia Pacific region and beyond. A number of John's clients use Hong Kong as the location for their ASPAC regional head office and John advises these organisations on managing their tax affairs regionally. This regularly entails the leadership of regional client teams for specific projects and the provision of tax advisory and compliance support.



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Ivor has over 15 years of experience in Big 4 tax practices in London and Hong Kong. Ivor's work includes providing domestic and cross border tax and consulting advice to MNCs, private equity and real estate funds.

He is a member of the regulatory committee for ANREV (the Asian association for investors in non-listed real estate vehicles) and of the British Chamber of Commerce real estate committee.



Tax Transpare ncy

Don't run into the same tax evasion trouble as Fan Bingbing when working in mainland China, Hong Kong actors warned

Film star's US\$129 million downfall could still have wide-ranging repercussions, including on how local talents sign up for work north of the border

Ireland collects more than €14bn in taxes and interest from Apple

The Telegraph

Hammond plotting new tax on Google and Facebook, but Amazon spared

Tax Transpare ncy

FINANCIAL TIMES

Starbucks' European unit paid 2.8% UK tax last year

THE BUSINESS TIMES

Paradise Papers increase pressure for tax transparency

FINANCIAL TIMES

LuxLeaks: Luxembourg's response to an international tax scandal

BBC

Google, Amazon, Starbucks: The rise of 'tax shaming'

Tax Transpare ncy

AEOI / CRS



BEPS

FATCA

Global trends – the move to tax transparency

International bodies



Tax evasion has taken a higher degree of prominence with G20, OECD and other international bodies

Domestic Regulation



Regulators increasing focus on AML and tax evasion, e.g., Hong Kong regulator's guidance

Media Scrutiny



Tax affairs are subject to media scrutiny – politicising efforts to stamp out tax avoidance and evasion

Local Revenue Authorities



Revenue authorities are increasingly active protecting their revenue base

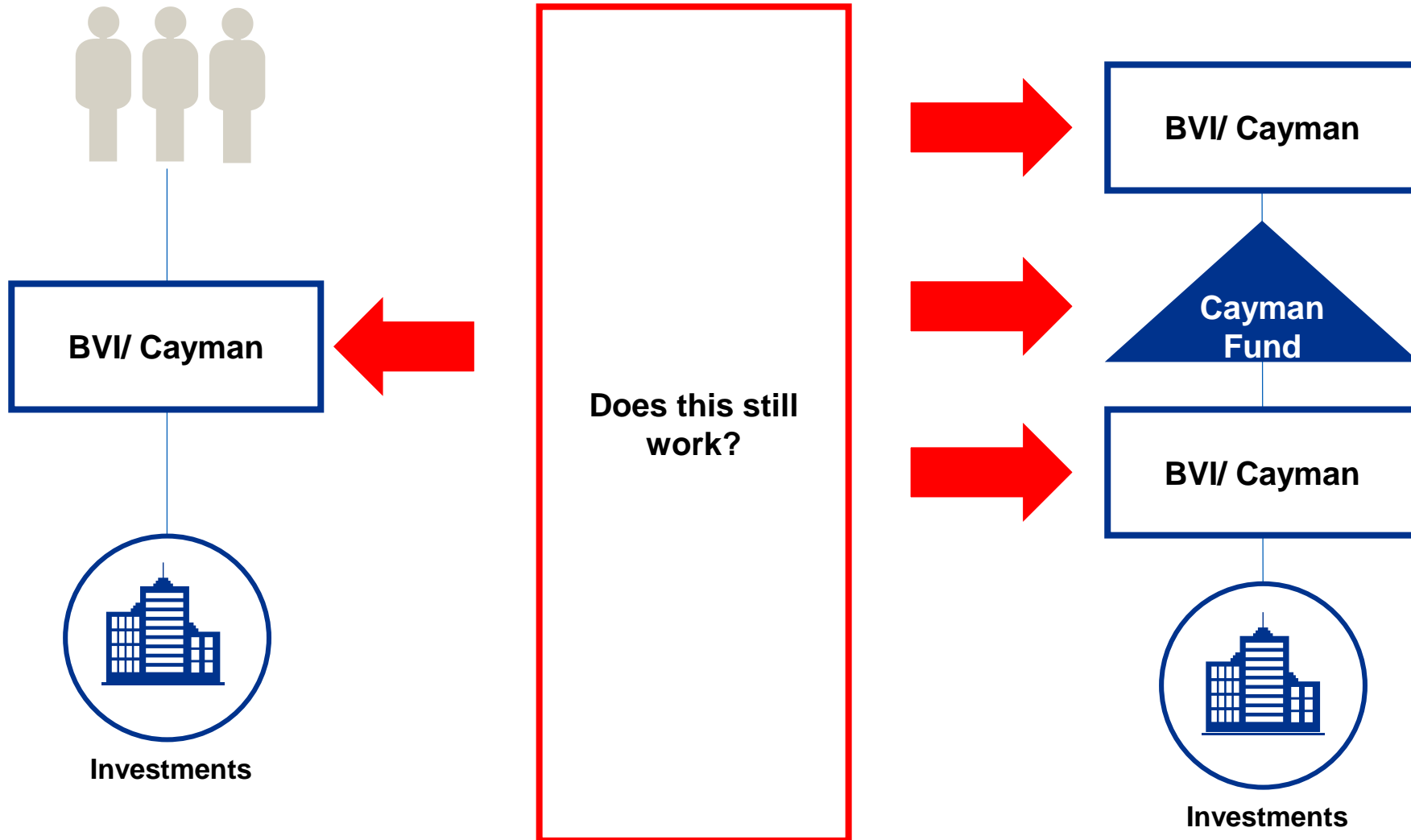
Information to be exchanged



Impact of Tax Transparency



Corporations



Individuals



Regulators and Institutions

PRC iIT Reform

Taxation of the Digital Economy

Tax audits

Transfer pricing (master file / local file)

Strengthening of CFC Regimes

Tax Evasion risk in the AML context

Disclosure of aggressive tax planning arrangements

Voluntary Disclosures

Regulators and



Inland Revenue Department
The Government of the Hong Kong Special Administrative Region

6. A full indexed set of documents for the transaction described in (5) above, including:
 - a) correspondence of negotiation with the customer;
 - b) a travel schedule of each of the responsible persons, showing (for each trip) the date of departure from Hong Kong, the place and purpose of each visit and the period of stay in that country;
 - c) the invoice/debit notes issued by your company to the customer in respect of the services rendered;
 - d) the basis of computation; and
 - e) the banking documents.
7. If your company has derived service income from related companies, provide the following additional information:
 - (a) the type of service being rendered;

8. The reasons that the service income so earned is not chargeable to Hong Kong Profits Tax.

8. The reasons that the service income so earned is not chargeable to Hong Kong Profits

(17) Whether income derived had been subject to tax of other territories. If so, provide all relevant copies of Income Tax returns, assessments and tax receipts in support.



kpmg.com/socialmedia

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Joe joined Vistra in May 2016 as Operations Director for Vistra Hong Kong. His mandate was to help with the integration of the Orangefield and Vistra corporate and private client services teams and the implementation of new business systems. He currently is the Managing Director of Corporate & Private Clients, having day to day responsibility of the corporate and private client services business lines in Hong Kong.

Increased Transparency

Joe Cheung
Managing Director
Vistra Hong Kong

03 December 2018

Agenda

1. BVI
2. Cayman Islands
3. Comparisons with Hong Kong & UK
4. Public Registers of Beneficial Ownership

Increased Transparency

British Virgin Islands

BVI - Transparency

Compulsory Filing of Registers of Directors

- For companies registered on or after 1 April 2016, the particulars of the first directors must be filed at the Registry within 21 days of their appointment by the first registered agent.
- When the Director particulars change, a subsequent filing must be made within 30 days of the occurrence of the change.
- The filed particulars are not available to the public unless the Company elects otherwise. The Act requires that the Registrar shall not make the Director particulars available to any person save in limited circumstances.

BVI - Transparency

Compulsory Filing of Registers of Directors

Where a company has not elected for their filings to be public the Registrar will only share company information:

1. With the company itself, its registered agent and any person authorised in writing by the company; and
2. Pursuant to a Court Order or a request by BVI law enforcement and tax authorities. Typically, such information is requested in order to prevent and detect money laundering, terrorism financing, financing of the proliferation of weapons of mass destruction and other serious and organised crime.

The Director particulars are not available to third parties who do not have a legitimate interest.

BVI – Transparency

Compulsory Filing of Registers of Directors

In the case of an individual director:

1. full name;
2. former name, if any;
3. address for service of documents;
4. usual residential address, unless that address is the same as the address for service of documents;
5. date and country of birth; and
6. nationality.

In the case of a corporate director:

1. full corporate name;
2. registration number;
3. address of registered or principal office;
4. date and place of incorporation or registration.

BVI - Transparency

Failure to File Register of Directors

Company Type	Offence	Penalty (USD)
New Company	Failure to file within 21 days of the appointment of first directors	100
Existing Company	Failure to make Initial Filing on or before 31 March 2017 or the date of any extension granted:	
	(a) For the first month or part thereof;	300
	(b) For the next 3 months or part thereof after (a);	500
	(c) For the next 3 months or part thereof after (b);	750
	(d) After the end of the period specified in (c), for each month or part month thereafter (maximum USD5,000)	1,000
All	Failure to file changes in particulars within 30 days	100

BVI - Transparency

Failure to File Register of Directors

- Existing companies will be struck from the Register of Companies if they fail to file Register of Directors before 31 December 2018.
- Effective 01 October 2018, certificates of good standing will not be issued for companies that have not filed their Registers of Directors.

BVI - Transparency

Beneficial Ownership Registration Regime

- On 30 June 2017 the BVI Government enacted the Beneficial Ownership Secure Search System Act, 2017 (the "BOSS Act").
- The BOSS Act requires licensed Registered Agents to take reasonable steps to collect and report to the government certain information on the corporation's "ultimate beneficial owners" (UBOs).
- An entity shall identify any person who is a beneficial owner or registrable legal entity and notify the registered agent of that information within 15 days of identifying such person or entity.
- The BOSS Act effectively implemented the sharing of beneficial ownership information agreed between the UK Government and the BVI Government on 8 April 2016 (the "Exchange of Notes").

BVI - Transparency

Beneficial Ownership Registration Regime

- All information appearing on the platform is confidential and **will not be publicly available**. It is only accessible through the BOSS, which enables a search to be conducted across the network of separate registered agents' databases.
- Searches on the BOSS will only be conducted following receipt of a formal request from a senior officer of any of the Financial Investigation Agency, the BVI Financial Services Commission, the BVI International Tax Authority and the BVI Attorney General Chambers (together, the "BVI Authorities").

BVI - Transparency

Beneficial Ownership Registration Regime

What entity types does this legislation apply to?

- BVI Business Companies incorporated under the BVI Business Companies Act (the “BC Act”); companies registered by way of continuation in the BVI under the BC Act; and company re-registered as a BVI business company under the BC Act

What entity types does this legislation not apply to?

- Limited Partnerships formed in the BVI and BVI domiciled trusts.

BVI - Transparency

Beneficial Ownership Registration Regime

Who is a “beneficial owner”?

A ‘beneficial owner’ is defined as a **natural person** who ultimately owns or controls a legal entity and **includes, though is not restricted to:**

- a) a natural person who ultimately owns or controls, whether directly or indirectly, **25% or more** of the shares or voting rights in the legal person;
- b) in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person;
- c) in the case of a legal arrangement:
 - i. the partner or partners who control the legal partnership;
 - ii. the trustee or other person who controls the legal arrangement; or
 - iii. the settlor or other person by whom the legal arrangement is made.

BVI - Transparency

Beneficial Ownership Registration Regime

What is a “registrable legal entity”?

A ‘registrable legal entity’ in relation to a company is a legal entity which:

- a) would be a beneficial owner of a company if it were an individual; and
- b) one or more of the following applies to it:
 - i. it is a mutual fund under the Securities and Investment Business Act, 2010 or its subsidiary;
 - ii. it is an entity whose shares or securities are listed on a recognised stock exchange or a subsidiary of such an entity;
 - iii. it is a licensee or foreign regulated person; or
 - iv. it is a sovereign state or a wholly owned subsidiary of a sovereign state.

BVI - Transparency

Beneficial Ownership Registration Regime

What is an exempt person?

- a) a corporate and legal entity which is recognised, registered or otherwise approved as a mutual fund under the securities and Investment Business Act, 2010;
- b) including an approved fund, an incubator fund, a public fund, a professional fund and a private fund;
- c) a corporate and legal entity the securities of which are listed on a recognised stock exchange;
- d) a licensee;
- e) a corporate and legal entity which is a subsidiary of a corporate and legal entity that falls within (a) or (b);
or
- f) a corporate and legal entity exempted by regulations.

BVI - Transparency

Beneficial Ownership Registration Regime

For each company, the information to be included in the BOSS register is as follows:

- a) **the particulars of each company including:** the name (including alternative names); incorporation number (or equivalent); date of incorporation; status; registered address; and registered address;
- b) **with respect to each beneficial owner:** name; residential address; date of birth; and nationality; and
- c) **with respect to each company:** the details of the entity as outlined in (a); jurisdiction of incorporation; the basis on which the entity is a registrable legal entity; the name of the regulator (if any); and the name of the sovereign state (where the registrable legal entity is a sovereign state or a subsidiary of a sovereign state).

Increased Transparency

Cayman Islands

Cayman Islands - Transparency

Beneficial Ownership Register

- The Cayman Islands have recently made several amendments to the Companies Law and the Limited Liability Companies Law (collectively, the “Laws”). The Laws came into effect 30 June 2017.
- Under the new Laws, certain Cayman Companies and Cayman Limited Liability Companies are required to create and maintain a Register of Beneficial Ownership (“RBO”).
- The new regime comes as a result of an agreed commitment with the UK Government, by way of an Exchange of Notes in April 2016, by the Cayman Islands, together with other British Overseas Territories and British Crown Dependencies, (*such as the BVI, Bermuda, Anguilla, Jersey, Guernsey and the Isle of Man*) to enhance existing arrangements on the exchange of Beneficial Ownership Information (“BOI”) geared to assist law enforcement agencies combating corruption, money laundering, and tax evasion.

Cayman Islands - Transparency

Beneficial Ownership Register

Confidentiality and Access to Information

Information regarding beneficial owners is protected under the Confidential Information Disclosure Law, 2016. The **Beneficial Ownership Platform** will be accessible, however, by the Cayman Islands Government Minister with responsibility for Financial Services upon formal request by the Financial Intelligence Unit, the Financial Reporting Authority, the Cayman Islands Monetary Authority, the Tax Information Authority, or another body monitoring compliance with money laundering regulations, or by the Financial Crime Unit of the Royal Cayman Islands Police Service in response to a request from a jurisdiction that has entered into an agreement with the Cayman Islands respecting the sharing of beneficial ownership information. Currently, only the UK is deemed to be such a jurisdiction.

Cayman Islands - Transparency

Beneficial Ownership Register

In-Scope Companies

The entities that must comply with the RBO Law are those incorporated or registered by continuation under the Companies Law of the Cayman Islands (which includes exempted companies, limited liability companies, ordinary companies and special economic zone companies) excluding those that are "Out-of-Scope".

Cayman Islands - Transparency

Beneficial Ownership Register

Out-of-Scope Companies

A Cayman Company that meets the following criteria is exempt from having to create and maintain a RBO is an “Out-of-Scope” company:

- a) Listed on the Cayman Islands Stock Exchange or an approved stock exchange;
- b) Registered or holding a license under a “regulatory law”;
- c) Managed, arranged, administered, operated or promoted by an "approved person" as a special purpose vehicle, private equity fund, collective investment scheme or investment fund;
- d) Is regulated in a jurisdiction approved by the Cayman Islands Anti-Money Laundering Steering Group;
- e) A general partner of any special purpose vehicle, private equity fund, collective investment scheme or investment fund that is registered or holds a licence under a Cayman Islands regulatory law or is managed, arranged, administered, operated or promoted by an "approved person¹";
- f) Holds, directly, a legal or beneficial interest in the shares of a legal entity that is licensed in the Cayman Islands where the conditions of such licence include full disclosure of the legal and beneficial owners of the licensee;
- g) A subsidiary of any of the above.

Cayman Islands - Transparency

Beneficial Ownership Register

A beneficial owner:

- a) is any individual who holds:
 - i. directly or indirectly more than 25% of the shares in a company;
 - ii. directly or indirectly more than 25% of the voting rights in a company; or
 - iii. the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company; or
- b) if no individual meets the criteria in (a), *is the individual* (if any) who has the right to exercise, or actually exercises, significant influence or control over the Entity; or
- c) if no individual meets the criteria in (a) or (b) above, *is the individual* (if any) who has the right to exercise or actually exercises significant influence or control over the trustees of a trust or members of another legal vehicle that is not a legal person (such as a general partnership) that, in their capacity as such, meet one of the criteria in (a) or (b) above in relation to an Entity.

Cayman Islands - Transparency

Beneficial Ownership Register

- Each “relevant legal entity” also has to be identified. A “relevant legal entity” is any Cayman Islands company or foreign company incorporated, formed or registered in the Cayman Islands that would meet the “specified conditions” set out at (a) – (c) above if it were an individual.
- However, a “relevant legal entity” is only registrable if (i) it *directly* holds an interest in an In-Scope Entity or meets one or more of the specified conditions directly in respect of that In-Scope Entity, and (ii) through it, any beneficial owner or relevant legal entity indirectly owns an interest in that In-Scope Entity.

Cayman Islands - Transparency

Beneficial Ownership Register

The information required to be contained in the UBO Register is:

- **For an individual beneficial owner:** full name, residential address, birth date, passport or driver's licence or other government ID identifying number, country of issue, date of issue and expiry of the document and the date on which he or she became a registrable person (and for former beneficial owners) the date he or she ceased to be so. Governmental or statutory bodies and international organisations, are treated as if they were individuals.
- **For a registrable relevant legal entity:** its corporate or firm name, registered or principal office, the legal form of the entity, its registration number; and the date on which it became or (for former relevant legal entities) ceased to be a registrable person in relation to the company in question.

Cayman Islands - Transparency

Beneficial Ownership Register

Consequences of non-compliance

- If an In-Scope Entity is unable to maintain and keep its UBO Register up to date due to the failure of registrable person(s) to provide required information, the In-Scope Entity must issue a restrictions notice to such person(s).
- A restrictions notice in respect of any interest, among other things, makes any transfer of (or agreement to transfer) such interest void and prohibits payment of sums due from the company in respect of such interest.
- A person to whom a restrictions notice has been issued may apply to the Court for the restriction imposed to be set aside. Companies and other persons including directors and officers may be subject to robust penalties including fines and imprisonment for breach of the Regime.

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Comparisons with Hong Kong and UK

Comparisons

Hong Kong

- Significant Controllers Registers are not kept centrally like in BVI or Cayman;

UK

- Public Registers but no verification; data quality is bad;

BVI & Cayman

- Control of quality data because only licensed agents can incorporate companies and will collect UBO information before incorporation.

Increased Transparency

Public Registers of Beneficial Ownership

Public Registers of Ultimate Beneficial Owners – UK Overseas Territories

Amendment to the Sanctions and Anti-Money Laundering Bill

The amendment requires each territory to establish "a publicly accessible register of the beneficial ownership of companies registered in [its] jurisdiction", with "all reasonable assistance" from the UK Government. Any territory that fails to establish a register by 31 December 2020 will have one imposed by the UK Government.

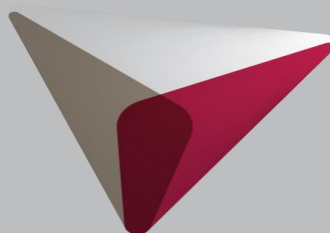
Public Registers of Ultimate Beneficial Owners – UK Overseas Territories

Applicable to UK Overseas Territories (14)

- Anguilla
- Bermuda
- British Virgin Islands
- Cayman Islands
- Gibraltar
- Turks & Caicos Islands

NOT applicable to Crown Dependencies

- Guernsey
- Isle of Man
- Jersey



Thanks for attending



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