

Cayman Islands Update: Upcoming Fundamental Changes to Beneficial Ownership Regime

On 24 November 2023, the Parliament of the Cayman Islands passed the Beneficial Ownership Transparency Act, 2023 which was later gazetted on 15 December 2023 (the "Act").

Although, the Act is not yet in force, the new provisions are expected to be introduced very shortly in a phased approach throughout the course of 2024. Once in force, the Act will bring fundamental changes to the existing Cayman Islands beneficial ownership regime (the "BOR").

The Ministry of Financial Services and Commerce (the "Ministry") in the Cayman Islands is developing a revised consultation draft of the Beneficial Ownership Transparency Regulations (the "Regulations") and accompanying Guidance Notes (the "Guidance Notes"), which are expected to be released in the first quarter of 2024. The current BOR will remain in effect until the Act comes into force.

The key changes which the Act makes to the current BOR and some practical next steps, in particular for vehicles in an investment fund structure, are summarised in this update.

Summary of Key Changes

Single Act

The BOR is currently enacted across a number of different pieces of legislation according to the

various in-scope entity type. The Act consolidates these separate pieces of legislation into a single Act (along with its accompanying Regulations and Guidance Notes), making it easier for users of the framework to identify and understand their obligations.

New In-Scope Entities

The current BOR applies only to companies, limited liability companies ("LLCs") and limited liability partnerships ("LLPs"). The Act brings new entities into scope and applies to all 'legal persons', which includes companies, LLCs, LLPs, limited partnerships; exempted limited partnerships ("ELPs") and foundation companies; and any other legal person that may be prescribed in regulations. Foreign registered entities and certain other categories of legal person are expected to be carved out of the new BOR (e.g. certain charities and not-for-profits).

It is anticipated that only legal persons in scope of the current BOR will be subject to the new regime initially, with the other new entity types being brought into scope at a future date sometime in 2024.

Definition of Beneficial Owner

Under the Act, the definition of 'beneficial owner' in relation to a legal person is amended to be more aligned with that under the Cayman Islands Anti-

Money Laundering Regulations (As Revised). The definition refers to an individual (i) who ultimately owns or controls (directly or indirectly) 25% per cent or more of the shares, voting rights or partnership interests in the legal person; (ii) who otherwise exercises ultimate effective control over the management of the legal person; or (iii) who is identified as exercising control of the legal person through other means. A person operating solely in the capacity of a 'professional advisor' or 'professional manager' (both terms defined in the Act) will not be considered a beneficial owner.

The Act also specifically provides for circumstances in which no individual can be identified under the definition of beneficial owner. In those circumstances, the Act provides that a 'senior managing official' should be identified as a contact person.

Removal of Exemptions and New Required Particulars

As part of the anticipated phased implementation of the Act, the majority of the exemptions which apply under the current BOR will be removed or significantly restricted in favour of certain 'alternative routes to compliance', meaning the legal person would not be required to report its beneficial owners, nor establish a beneficial ownership register, but rather report limited 'required particulars'.

Under the Act, legal persons able to apply an alternate route to compliance include a legal person that is:

- (a) listed, or is a subsidiary of a listed entity, on the Cayman Islands Stock Exchange (CSX) or an approved stock exchange;
- (b) licensed under a regulatory law (note this is limited to certain Cayman Islands regulatory laws);
- (c) a fund registered under the Private Funds Act (As Revised) or the Mutual Funds Act (As Revised); or

- (d) otherwise exempted by Cabinet (none currently).

Relevant to the investment fund industry, legal persons under category (c), being registered Cayman Islands mutual or private funds will be required to supply the contact details of a licensed fund administrator or another contact person licensed or registered under a regulatory law and located within the Cayman Islands that will provide beneficial ownership information to the Registrar on request within 24 hours.

Note that, unlike under the current BOR, only subsidiaries of listed entities are recognised as being able to take advantage of any alternative route to compliance (indeed, the application of this exemption will need to be further considered in the context of the Regulations and Guidance). For example, in an investment fund structure, trading subsidiaries or blocker entities would be in-scope and would need to maintain beneficial ownership registers and identify any beneficial owners or (where relevant) a senior managing official on the basis discussed above.

Entities falling outside categories (a) – (d) above (or otherwise opting not to apply an alternative route to compliance) are considered 'in-scope' of the requirement to establish and maintain a beneficial ownership register.

The required particulars to be reported on the legal person's beneficial ownership register are largely unchanged from the current list under the BOR with two notable exceptions, those being that the legal person must also report (1) the nationality of all beneficial owners; and (2) details of the nature in which the individual or 'reportable legal entity' owns or exercises control of the legal person.

Public Registers

The Act provides that the Cabinet may, subject to resolution in Parliament, make further regulations empowering the Registrar to provide public access

to certain required particulars of registrable persons.

The Cayman Islands Government has indicated that it is currently progressing to provide access to the beneficial ownership register for those members of the public who meet a 'legitimate interest test'. We understand this may include access to parties who are genuinely seeking information to prevent or combat money laundering and terrorist financing (for instance, media and civil society organisations under specific circumstances). We understand the Cayman Islands Government will continue to monitor the progression of similar legislation and approaches in other jurisdictions as it determines when and how to implement a public register in the Cayman Islands in line with evolving global standards, best practices and in a proportionate manner.

Next Steps

Legal persons that are currently in scope of the current BOR will likely continue to have beneficial ownership reporting requirements once the Act comes into force, although their beneficial ownership analysis may need to be reviewed given the new definition of beneficial owner and the additional required particulars needing to be reported. Such entities may wish to take steps now to ensure that, once the Act comes into force, they are able to comply with the Act.

Entities that are currently not in scope of the BOR (e.g. ELPs, limited partnerships and foundation companies) and those entities which currently benefit from an exemption, should ascertain whether they will be required to establish and maintain a beneficial ownership register once the Act comes into force. If so, such entities may wish to take time to understand the obligations that will apply to them under the Act.

Further Assistance

Please reach out to your usual Maples Group contact for assistance in understanding and

assessing how the Act may impact your business and what actions you should take now to prepare.

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