

Progress Made: Changes to the Cayman Islands Beneficial Ownership Regime Now in Force

Introduction

The Cayman Islands' new beneficial ownership regime was brought into force on 31 July 2024, however, the Ministry of Financial Services and Commerce (the "Ministry") has confirmed there will be no enforcement of the new requirements until 1 January 2025. Thousands of entities will now fall into the scope of the beneficial ownership regime for the first time and those already filing beneficial ownership details will need to review their reporting requirements under the new rules. Those who fall foul of the new regime could face significant penalties.

Background

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").

Further to the Beneficial Ownership Transparency Act, 2023 (Commencement) Order, 2024, the Act was brought into force on 31 July 2024, however, the Ministry has confirmed that there will be no enforcement of the Act until 1 January 2025, from which date all in-scope legal persons are expected to be compliant. The previous Cayman Islands

beneficial ownership regime (the "previous BOR") has effectively ended and the Ministry has suspended the requirement to file beneficial ownership information until further notification, allowing time for all in-scope legal persons to prepare for the new regime.

The Act makes several changes to the previous BOR and offers certain alternative routes for compliance, including for regulated investment funds, which are summarised in our previous legal update¹.

On 31 July 2024, the Cayman Islands Government passed the Beneficial Ownership Transparency Regulations (2024) (the "Regulations") and it is expected the Ministry will release a final version of the Beneficial Ownership Transparency Guidance Notes (the "Guidance Notes") shortly. The Regulations and Guidance Notes both accompany the Act and provide important detail and guidance on the practical application of the new regime for industry and clients.

Those of our clients which are in-scope of the Act will receive further communications from us shortly to assist them in understanding and assessing how the new regime will impact them (and any legal persons for which they are responsible) and the

¹<https://maples.com/en/knowledge-centre/2024/03/cayman-islands-update-upcoming-fundamental-changes-to-beneficial-ownership-regime>

actions that will need to be taken by 1 January 2025 to remain compliant.

Summary of Key Aspects of the Regulations

The Regulations clarify and provide further detail on key aspects of the proposed changes brought about by the Act, such as:

Single Pending Status

Under the previous BOR, it was possible for corporate service providers to indicate on an entity's beneficial ownership register the status of 'enquiries pending' or 'confirmations pending'. The former being used where the status of an entity (as either in-scope or exempt) or the identity of any beneficial owners was being determined, and the latter being used in respect of certain required particulars of identified beneficial owners who were in the process of being confirmed.

The two statuses have now been merged into a single 'pending' status which the Regulations provide is to be used to show that either:

- (a) the legal person is in the process of determining whether there are any registrable beneficial owners; or
- (b) the legal person has identified registrable beneficial owners, but all required particulars of that beneficial owner have not yet been confirmed or verified.

Multiple Nationalities

As noted in our previous legal update, the required particulars to be reported on a legal person's beneficial ownership register (assuming that legal person is unable to apply an 'alternative route to compliance') are largely unchanged from those required under the previous 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.

As it relates to nationality of the beneficial owner, there was uncertainty as to what was expected to be reported in instances where a beneficial owner had more than one nationality. The Regulations clarify that only one nationality needs to be reported on the legal person's beneficial ownership register, but individuals are required to indicate whether they hold additional nationalities (but are not required to disclose those additional nationalities).

The nationality reported should match the one used during the verification process by the legal person's Cayman Islands corporate services provider.

Administrative Fines

The Regulations provide detail regarding the administrative fines that may be imposed for a breach of any of the provisions of the Act or Regulations. The Regulations also provide detail regarding the procedural steps for the issuance and appeal of an administrative fine.

Direct and Indirect Holdings

The Regulations provide much needed clarity on the rules for determining whether a person meets the definition of a beneficial owner under the Act by holding an interest directly or indirectly through another legal person.

The 'majority stake' analysis is critical in determining which indirect owners will be registrable beneficial owners (with the effect that persons holding minority stakes in intermediate holding vehicles will generally not be registrable). This concept remains largely unchanged from the previous BOR but will continue to require careful analysis in any specific factual situation, particularly those involving complex multi-tier ownership structures.

Next Steps

Legal persons who were in-scope of the previous BOR will continue to have beneficial ownership reporting requirements now that the Act has come into force. Such legal persons should therefore now review and confirm their beneficial ownership analysis under the new regime and provide the additional required particulars that must be recorded. Such legal persons should take steps now to ensure that, once the Act is being enforced, they are able to comply.

Legal persons that were not in-scope of the previous BOR (e.g. exempted limited partnerships, limited partnerships and foundation companies) and those legal persons which previously benefitted from an exemption, should now seek to determine their compliance requirements under the Act.

All in-scope legal persons will need to ensure they are in compliance by 1 January 2025.

Registered Investment Funds – Optional Alternative Route to Compliance

Cayman Islands investment funds registered under the Private Funds Act or Mutual Funds Act should take steps now to determine whether they will:

- (a) elect to apply the alternative route to compliance; or
- (b) elect to establish and maintain a beneficial ownership register under the Act.

By way of reminder, regulated Cayman Islands investment funds wishing to apply the alternative route to compliance 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, such as an entity's registered office services provider (a "Contact Person") who will provide beneficial ownership information to the

Registrar on request within 24 hours (or such longer period as may be included in the request).

The Maples Group is able to act as Contact Person for investment funds for which it provides registered office services and it has established protocols in place to assist those funds in responding to requests for beneficial ownership information from the Registrar in accordance with the regime's requirements.

As noted above, we will be reaching out to clients shortly with further details on what is needed to ensure in-scope legal persons meet their compliance requirements under the Act.

Further Assistance

Please contact your usual attorney at the Maples Group with any questions or for further advice on the above.

Cayman Islands

Christopher Capewell

+1 345 814 5666

chris.capewell@maples.com

Julian Ashworth

+1 345 814 5413

julian.ashworth@maples.com

Patrick Head

+1 345 814 5377

patrick.head@maples.com

Philip Dickinson

+1 345 814 5410

philip.dickinson@maples.com

Tim Dawson

+1 345 814 5525

tim.dawson@maples.com

Anthony Mourginos

+1 345 814 5155

anthony.mourginos@maples.com

Dubai

Manuela Belmontes

+971 4 360 4074

manuela.belmontes@maples.com

Hong Kong

Derrick Kan

+852 9384 9006

derrick.kan@maples.com

London

Heidi de Vries

+44 20 7466 1651

heidi.devries@maples.com

Singapore

Michael Gagie

+65 9723 9872

michael.gagie@maples.com

August 2024

© MAPLES GROUP

This update is intended to provide only general information for clients and professional contacts of Maples Group. It does not purport to be comprehensive or to render legal advice.