

Cayman Islands Beneficial Ownership Transparency Act: Implications for US CLOs

Further to our prior update¹, the new Cayman Islands Beneficial Ownership Transparency Act Regime (the "BOTA Regime") is now in force, with a 31 July 2024 commencement date; however, the Cayman Islands government has notified that there will be no enforcement of new obligations under the BOTA Regime until 1 January 2025.

While most CLO issuers were previously exempt from the requirement to maintain a beneficial ownership register, this is no longer the case under the new amended BOTA Regime. As set out in prior updates², for most CLO issuers the Maples Group will be able to analyse and provide a full in-house solution to meet the new requirements, without requiring any input from the collateral manager or trustee. In most cases, the only entry on the CLO issuer's beneficial ownership register will be in respect of MaplesFS Limited, as the sole holder of the issued ordinary shares, which it holds on trust for charitable purposes.

Where a CLO transaction includes the issuance of preference shares, whether at the warehouse stage or as part of the CLO transaction, it will be necessary to analyse the positions of the preference shareholders to determine whether they fall in scope for further analysis. Currently, information is obtained in respect of preference shareholders for purposes of the Cayman Islands

AML regime (the "AML Regime") While there are differences between the regimes, the underlying analysis to be undertaken for the BOTA Regime will be similar to, and overlap with, that already undertaken for the AML Regime.

What is required with respect to preference shareholders will vary from investor to investor, as the BOTA analysis will turn on the details of the ownership structures in place above the particular investor being examined.

Where an investor holds 25% or more of the issued preference shares in a CLO issuer, it is necessary to look at that investor's ownership structure. Setting aside the nuances around various forms of entities (companies, corporations, LLCs, partnerships, trusts, etc.), the analysis moves up the ownership chain wherever someone holds a majority stake, typically being 50% or more of the voting rights or exercising ultimate effective control over the management of the investor entity (the "majority stake test"). As a general rule of thumb, this continues up each such ownership chain until (i) there is no one who meets the majority stake test, (ii) there is an individual person that meets the test, or (iii) there is a Cayman Islands entity that meets the test.

¹ <https://maples.com/knowledge/progress-made-changes-to-the-cayman-islands-beneficial-ownership-regime-now-in-force>

²https://issuu.com/maplesgroup/docs/the_closer_june2024

Where the analysis reaches a Cayman Islands entity, the analysis of that particular ownership chain ends and the following details of the Cayman Islands entity are required to be entered on the CLO issuer's beneficial ownership register:

- (a) Name of reportable legal entity;
- (b) Registration number of reportable legal entity;
- (c) Legal form of the reportable entity;
- (d) Cayman Islands registered office of reportable legal entity;
- (e) Nature of ownership or exercise of control of the CLO issuer; and
- (f) Date became a registrable person

Where the analysis reaches an individual person, the analysis of that particular ownership chain ends and the following details of the individual person are required to be entered on the beneficial ownership register:

- (a) Full name;
- (b) Date of birth;
- (c) Nationality;
- (d) ID type;
- (e) ID number;
- (f) ID country;
- (g) Additional nationalities (if applicable);
- (h) ID issue date;
- (i) ID expiry date (if applicable);
- (j) Residential address, including postcode or ZIP code;
- (k) Service address, including postcode or ZIP code (which can be identical to the residential address);
- (l) Nature of ownership or exercise of control of the CLO issuer; and
- (m) Date became a registrable person

In each case, the Cayman Islands entity and/or the individual person will be deemed to be a 'registrable person', and the details of any such registrable person are required to be entered on a CLO issuer's beneficial ownership register. The Maples Group will reach out to investors or other transaction parties to collect the information required in respect of preference shareholders as

part of the integrated support that we offer to CLO structures. It is important that the analysis be completed in a timely manner as the information is to be completed within 30 days of an investor taking ownership of its preference shares or any other change which affects the CLO issuer's beneficial ownership analysis. The timeline is therefore short, but the information can continue to be obtained in parallel with the preference shares being issued.

There are various administrative fines and other sanctions that may be applied to a CLO issuer if it fails to comply with its obligations under the BOTA Regime. However, it is important to reiterate that a CLO issuer has until 1 January 2025 to ensure that it is compliant with the new requirements, as enforcement of the BOTA Regime does not commence until that time.

Further Assistance

If you should have any questions, please reach out to your usual Maples Group contacts or any of the contributors below.

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