COLLAS CRILL

Updates to the Cayman Islands beneficial ownership regime

OCTOBER 2024

The Beneficial Ownership Transparency Act, 2023 (the **Act**) and the Beneficial Ownership Transparency Regulations, 2024 (the **Regulation**) (together, the **Regime**) came into effect in the Cayman Islands on 31 July 2024.

The Regime replaces the previous beneficial ownership regime which was spread across multiple pieces of legislation, which now consolidates the beneficial ownership requirements into a single statute.

The Regime also introduces new measures.

As entities must comply with the Regime by 1 January 2025, Cayman Islands entities falling within scope of the Regime now need to consider and determine whether they meet the new Regime requirements, and if not, what further steps they must take in order to comply, before enforcement of the Regime occurs at the beginning of 2025.

Scope and changes to the beneficial ownership regime

The Act introduces the concept of a "legal person" which brings into scope entities who were previously exempt. The previous beneficial ownership regime only caught companies, limited liability companies, and limited liability partnerships (limited partnerships and exempted limited partnerships were excluded and foundation companies were not expressly included). The new definition of a "legal person" brings into scope these previously excluded or not expressly included entities. The Act does however exclude foreign companies registered in the Cayman Islands under the Companies Act (as revised).

In addition, exemptions under the previous beneficial ownership regime that may have applied to certain entities are no longer available, and all in scope legal persons will need to classify themselves under the Act. The Act does however, provide for an alternative route for compliance, which replaces previous exemptions that were available.

In addition, a legal person will need to also identify and provide certain additional "required particulars" (i.e. required information) with regards to its beneficial owners unless an alternative route to compliance is available.

Removal of exemptions and alternative route to compliance

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Under the alternative routes to compliance in the Act, these are the defined legal persons able to take advantage of this alternative route to compliance in order to meet the requirements to report on any required particulars:

1. a registered fund, under either the Private Funds Act (as revised) or the Mutual Funds Act (as revised); or
2. licensed under a regulatory law;
3. listed, or is a subsidiary of a listed entity, on the Cayman Islands Stock Exchange or on an approved stock exchange;
4. otherwise exempted by Cabinet.

With regards to legal persons classified as investment funds registered as either mutual or private funds, these funds will be allowed to submit the contact details of a licensed fund administrator or another contact person licensed or registered within the Cayman Islands, which in many cases will most likely be the funds corporate service provider (CSP). This is especially true of funds that do not have a licensed fund administrator in which case it may make the most sense for its corporate service provider to fulfil this role.

Regardless of which licensed entity is fulfilling the role of a contact person, the licensed entity will be required to provide beneficial ownership information to the Caymans Islands Registrar within 24 hours of any request.

Alternatively, if funds do not wish to identify a contact person via this alternative route to compliance, they may provide the full details of their beneficial owners.

Reporting obligations

A legal person without an alternative route to compliance will be required to provide their required particulars for their beneficial owners to the CSP maintaining the entity's beneficial ownership register in the Cayman Islands.

The CSP is required to review those required particulars and verify, within reason, the identity of the registrable persons.

The CSP will then be charged with entering the information into the relevant beneficial ownership register and reporting these details to the Cayman Islands Registrar.

Beneficial owner

The definition of beneficial owner in relation to a legal person has now been expanded to bring it more in line with the Cayman Islands Anti-Money Laundering Regulations (as revised).

The definition of a beneficial owner refers to an individual:

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

1. 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;
2. who otherwise exercises ultimate effective control over the management of the legal person; or
3. who is identified as exercising control of the legal person through other means.

The Act also outlines when no individual can be identified under the definition of beneficial owner, and in those circumstances a 'senior managing official' must be identified and reported.

Public registers and access to beneficial ownership information

The Act itself does not provide for public access, however, it does provide for the possibility of public access to certain required particulars at a later date. This is mainly true for those members of the public who meet a "legitimate interest test", which the Cayman Islands government has indicated would be those persons legitimately seeking information to prevent or combat money laundering and terrorist financing. Therefore, the competent authority can only, in very limited circumstances, provide any beneficial ownership information if it is a matter of such import which involves money laundering/terrorist financing and financial crime.

The Cayman Islands Government has indicated it will continue to monitor other jurisdictions as it determines the best path forward before any implementation of any public register in the Cayman Islands.

Failure to comply

It is ultimately the responsibility of the legal person to identity all beneficial owners, both individuals and reportable legal entities in writing to their CSP and notify them of any changes as soon as reasonably practicable, and no later than 30 days after becoming aware of the change.

If the CSP determines that the legal person has not supplied the necessary information on the beneficial owners, the CSP will issue a notice to the legal person. If information is still not provided with 30 days of the legal person receiving the notice, the CSP may issue a restriction notice and will also deliver a copy to the competent authority.

In addition, the Regime sets out significant administrative fines and penalties for failure to comply with the beneficial ownership requirements.

Next steps and further assistance

The Cayman Islands Ministry for Financial Services and Commerce has released technical guidance notes and sample files throughout the first half of 2024, so that CSPs and administrators can properly prepare and update their relevant systems in order to receive and record the relevant data.

Collas Crill can assist in determining if and how these amendments apply and the next steps necessary to fulfil the required obligations under the Regime.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

Collas Crill Corporate Services Limited is a licensed CSP and can assist entities in complying with the reporting requirements of the beneficial ownership Regime where it provides registered office services to that entity.

For assistance with any of the above matters please liaise with your usual contact at Collas Crill Corporate Services Limited or any of the Attorneys at Collas Crill.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Gina Berry

Cayman Managing Partner | Cayman

t: +1 345 914 9654 | **e:** gina.berry@collascrill.com



Patrice Boothe

Director, Head of Corporate Services | Cayman

t: +1 345 938 7560 | **e:** Patrice.Boothe@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.