

The new beneficial ownership regime of the Cayman Islands

The Cayman Islands' new beneficial ownership regime (the "**New BO Regime**"), designed to enhance transparency with accurate and up-to-date ownership information, took effect on July 31, 2024. The Beneficial Ownership Transparency Act, 2023 (the "**Act**"), will be enforced starting January 1, 2025. This framework is further supported by the Beneficial Ownership Transparency Regulations, 2024, and guidance from the Ministry of Financial Services & Commerce.

What are the changes?

- **Expansion of scope**

The new regime applies to all legal entities in the Cayman Islands, including companies, limited liability companies (LLCs), limited liability partnerships (LLPs), foundation companies, and, for the first time, exempted limited partnerships (ELPs) and limited partnerships (LPs) (collectively referred to as "Legal Persons" and individually as a "Legal Person"). However, certain foreign entities, such as trusts and registered foreign companies (e.g., US general partners of Cayman Islands partnerships), are excluded from the requirements of the New BO Regime.

- **Removal of exemption**

Several exemptions from the previous beneficial ownership framework have been eliminated. These include exemptions for entities registered under regulatory laws such as the Mutual Funds Act (As Revised), Private Funds Act (As Revised), Securities Investment Business Act (As Revised), and Virtual Asset (Service Providers) Act (As Revised). While many prior exemptions have been removed, the regime introduces new exemptions for certain entities. As a result, a larger number of entities are now required to maintain beneficial ownership registers.

- **Revised beneficial owner definition**

An individual who directly or indirectly owns or controls 25% or more of shares, voting rights, or partnership interests, or who exercises ultimate effective control (through a chain of ownership or other means) over an entity, or has control over its management, qualifies as a Registrable Beneficial Owner.

If no individual meets these criteria, a senior managing official (e.g., a director or CEO) must be identified. Notably, a senior managing official can also be a Professional Advisor or Professional Manager (as defined). A Beneficial Owner may also be a legal entity. In such cases, if a Reportable Legal Entity holds a 25% or greater interest in a Legal Person, it must be reported to the Corporate Service Provider (CSP) to ensure transparency across the ownership structure.

In cases involving a trust, if no individuals meet the threshold to qualify as Beneficial Owners, but the trustees of the trust meet the criteria and have ultimate effective control, the trustees will be deemed the Beneficial Owners.

Additional beneficial ownership information required

The New BO Regime broadens the required details for beneficial owners by including nationality and the nature of ownership or control exercised by the beneficial owner. These types of information were not mandated under the previous beneficial ownership framework.

What are the alternative compliance routes under the New BO Regime?

Entities classified as legal persons under the Act must maintain a Beneficial Ownership Register (BOR) with adequate, accurate, and up-to-date information on their registrable beneficial owners. However, certain categories of legal persons may follow alternative compliance routes. These alternatives, which replace the previous exemptions to maintaining a BOR, involve providing reduced information as outlined below.

Category of legal person	Required particulars
An investment fund registered under the Mutual Funds Act (as amended) (the Mutual Funds Act) or the Private Funds Act (as amended) (the Private Funds Act)	The contact details of a person (the Contact Person) who is either a licensed fund administrator or other person licensed or registered with the Cayman Islands Monetary Authority (CIMA)
CIMA Legal Person	Identification of the regulatory law under which the legal person is licensed
A legal person listed on the Cayman Islands Stock Exchange or an approved stock exchange, or a subsidiary of such a listed entity	Name and jurisdiction of stock exchange and, where applicable, details of relationship to the listed entity

These alternative routes to compliance have replaced the previous 'exemptions' to maintaining a beneficial ownership register.

It should be noted that subsidiaries of licensed entities and regulated investment funds are not eligible to use alternative routes to compliance by virtue of their parent's status. However, a subsidiary of a listed entity may be able to use the alternative route to compliance for listed entities if it falls with the applicable definition of a 'subsidiary' of a listed entity in the Act or is itself listed.

Regulated investment funds can designate a licensed fund administrator or another individual located in the Cayman Islands, licensed or registered with CIMA, to serve as the Contact Person for beneficial ownership matters. Hermes Corporate Services Ltd is able to act as Contact Person. Please get in touch with us on the contact details below if you wish to discuss.

The Contact Person must provide the requested beneficial ownership information within 24 hours of receiving a request or within any other timeframe specified in the request.

According to the Guidance, the Competent Authority may request beneficial ownership information equivalent to what would be recorded in a Beneficial Ownership Register (BOR) if the investment fund were not eligible for an alternative compliance route. While the Contact Person is not required to maintain the BOR or beneficial ownership details themselves, they must have access to this information to fulfill their role and provide it to the Competent Authority within the stipulated timeframe.

What are the Administrative fines?

The Registrar is empowered to impose administrative fines for breaches of the beneficial ownership provisions under the BOR legislation, even if the breach does not constitute an offence under the law.

Fine Structure:

- The initial fine is US\$6,098, with an additional US\$1,220 per month for ongoing breaches, capped at US\$30,488. If a fine remains unpaid for 90 days, the Registrar may strike the entity off the Register.

Breaches Subject to Fines:

- Failure of a legal person to identify and notify registrable beneficial owners.
- Registrable beneficial owners not providing required information within 30 days of becoming aware of the obligation.
- Failure of a legal person to supply its CSP with accurate and current beneficial ownership information.
- CSP failing to confirm the category of legal person.
- Notifying changes in beneficial ownership or depositing updated beneficial ownership information with the Registrar.

Fines can be appealed to the Competent Authority within 30 days of receipt.

If a registrable beneficial owner's particulars are marked as "pending" for more than three months due to lack of confirmation, identification, or verification by the CSP, the legal person will be presumed to be in breach of the Act, and administrative fines may be imposed.

For specific advice on the New BO Regime, please contact please contact us at enquiries@hcs offshore.com.