

Proposed enhancements to Cayman's beneficial ownership regime

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Following consultation with a wide cross section of the financial services industry, the Cayman Islands legislature published the Beneficial Ownership Transparency Bill, 2023 (**BOR Bill**) at the end of August 2023.

The BOR Bill consolidates the various existing beneficial ownership legislation (see our advisory on the [current beneficial ownership regime](#) applicable in the Cayman Islands). In addition, the published BOR Bill seeks to enhance the transparency framework for legal persons and has been drafted to comply with Recommendation 24 of the Financial Action Task Force Recommendations, which relates to the provision of access to adequate, accurate and current beneficial ownership information.

The BOR Bill is expected to be presented to the Cayman Parliament during the fourth quarter of this year. Associated regulations and guidance are expected to be published. The Cayman Ministry of Financial Services and Commerce (**MoFS**) has stated that the obligations under the existing legislation will remain in force until commencement of the BOR Bill, which has been drafted to permit a phased introduction, the timetable for which is yet to be confirmed.

Key points for investment funds

The key points of change which should be of note to Cayman Islands investment fund vehicles and Cayman Islands fund managers and advisors are as follows:

- (a) all partnerships (including exempted limited partnerships typically used in investment fund structures) will be brought into scope of the beneficial ownership regime
- (b) the current exemptions under the existing beneficial ownership regime will be removed, including the exemption for funds registered under the Mutual Funds Act (Revised) or the Private Funds Act (Revised). Instead, funds registered under such Acts will be able to utilise an "alternative route to compliance", which will require them to provide their corporate services

provider with the contact details of a licensed fund administrator or another contact person licensed or registered under a regulatory law for providing beneficial ownership information located within the Cayman Islands. The contact person must provide the competent authority with requested beneficial ownership information within 24 hours (or such other time required by the competent authority) of a request being made. This alternative route to compliance will not be available to unregistered funds or other unregistered vehicles within a registered fund's structure and these vehicles will likely be in scope and required to provide their corporate services provider with the required particulars

(c) the definition of "beneficial owner" will be amended to more closely align with the definition used in Cayman's Anti-Money Laundering Regulations (noting that the relevant ownership and control percentage thresholds will remain at 25%)

(d) entities which are registered with the Cayman Islands Monetary Authority under the Securities Investment Business Act or the Virtual Asset (Service Providers) Act will no longer be exempt and will be required to establish and maintain a beneficial ownership register

Although there is no immediate action required until the BOR Bill is passed and comes into force which, as stated above, is expected to be on a phased basis, investment funds clients are advised to prepare themselves to be compliant on a timely basis once it does come into force. To the extent the BOR Bill is approved, any Cayman Islands vehicles that are out of scope of the current BOR legislation should be reclassified to assess whether they will fall within scope of the new legislation. Currently in scope entities should assess whether their existing registers require any amendments in light of the revised definition of "beneficial owner". All in-scope entities should also familiarise themselves with the enhanced obligations under the BOR Bill.

Public register

In line with the commitment made by the Cayman Islands Government (CIG) in 2019 to the UK government in response to the UK government's request to all of its Overseas Territories to introduce public beneficial ownership registers, the BOR Bill does contain a provision relating to public access to beneficial ownership information. However, the BOR Bill does not itself enact any provisions for public access, but rather it provides the framework to enable CIG to make regulations to provide public access to specified beneficial ownership information at a later date. This means the introduction of public registers cannot be implemented unless and until affirmed by a future resolution of the Cayman Parliament. The MoFS has confirmed that further legal analysis and consultation between the CIG (and other Overseas Territories and Crown Dependencies) and the UK government regarding the effect of the ruling handed down by the Court of Justice of the European Union (ECJ) will take place before any public access to Cayman's beneficial ownership register can be granted. In this judgment, the ECJ ruled that unfettered public access to beneficial ownership registries in the European Union interfered with privacy and data protection rights of Articles 7 and 8 of the EU's Charter of Fundamental Rights.

Read the [statement on this from the Cayman Islands MoFS](#).

How can Ogier help?

Ogier is available to assist with all aspects of compliance with the enhanced beneficial ownership regime including classification of vehicles as in or out of scope of the regime, identification of registrable beneficial owners and advice on the enhanced obligations applicable to in scope vehicles.

Should you have any questions or wish to receive further information concerning the above matters, please contact your usual Ogier attorney or any of the contacts listed in this briefing.

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