

CAYMAN ISLANDS BENEFICIAL OWNERSHIP TRANSPARENCY ACT MEMO

All references to Acts, Laws, Regulations, Guidance, Guidance Notes, Rules refer to Cayman Islands specific legislations.

Access the Beneficial Ownership Transparency Act (“BOT Act”) [here](#).

An announcement was made by the Ministry of Financial Services and Commerce of the Cayman Islands (the “Ministry”) confirming that the changes to the Beneficial Ownership Regime are in effect as of 31 July 2024. All Cayman entities should be aware of the new legislation as there is an extension of the regime to include new types of entities and there are also additional reporting obligations for Registrable Beneficial Owners (“RBO”).

Changes include the extension of the regime’s scope to cover limited partnerships and exempt limited partnerships. These along with Cayman Islands companies, limited liability companies, foundation companies and limited liability partnerships constitute Legal Persons (“LP”). Many entities previously not in scope, or utilizing exemptions, will need to review their records and identify Registrable Beneficial Owners (“RBOs”) for provision to their Corporate Service Provider (“CSP”) for reporting to the Registrar of Companies.

One notable change is that Legal Persons are now required to include the nature of ownership or control held and confirmation of the individual’s nationality on their Beneficial Ownership Register (“BOR”) where the RBO is an individual. The purpose of this Memo is to summarize the changes and the requirements of the BOT Act and to provide guidance on how in-scope Legal Persons may identify their Beneficial Owners.

ENTITIES IN SCOPE

Legal Person

A Legal Person for the purposes of the BOT Act means:

- a company that is incorporated, formed or registered (including by way of continuation) in the Cayman Islands under the laws of the Cayman Islands except a foreign company;
- a limited liability company registered under the Limited Liability Companies Act (2023 Revision) except a foreign entity;
- a limited liability partnership registered under the Limited Liability Partnership Act (2023 Revision) except a foreign limited liability partnership;
- a limited liability partnership registered under the Limited Liability Partnership Act (2023 Revision) except a foreign limited liability partnership;
- a company declared as a foundation company under section 5 of the Foundation Companies Act, 2017;
- an exempted limited partnership registered under section 9 of the Exempted Limited Partnership Act (2021 Revision); or
- any other Legal Person that may be prescribed in regulations.

Trusts and registered foreign company or other non-Cayman Islands entities continue to be out of scope of the BOT Act.

If there is uncertainty around your reporting obligations under the BOT Act it is strongly suggested that you contact your Legal Counsel for advice.

OBLIGATIONS OF A LEGAL PERSON

Each Entity is required to check if it falls in scope of a defined Legal Person for the purposes of the BOT Act and must categorize itself to ascertain whether it is required to maintain a BOR or if it can apply one of the Alternative Routes to Compliance (“**ARC**”). Furthermore, the BOT Act requires each Legal Person to provide its CSP with a written confirmation (the “**BOT Form**”) of its categorization along with the provision of the relevant required particulars stipulated under the BOT Act.

The required particulars differ if the Entity utilizes one of the ARCs or is considered an In-Scope Legal Person that is required to identify every individual that is a Beneficial Owner (“**BO**”), every reportable legal entity, and if there are no individual BOs - trustees of a trust. When there are no identifiable BOs then the Legal Person must provide the contact details of a Senior Managing Official to its CSP to be included in their BOR.

In the absence of a reasonable excuse, failure of the Legal Person to comply with these obligations is potentially a criminal offence and may also lead to the issuance by the competent authority of an administrative fine against the Legal Person. Moreover, if a RBO has not notified and/or provided its required particulars within one month of becoming a RBO, the Legal Person's CSP may issue Restrictions Notice regarding the RBO's relevant interest (ie. Shares, voting rights etc) in the Legal Person.

A Legal Person which fails to comply with its obligations to identify beneficial owners and relevant legal entities, to establish and maintain a beneficial ownership register at its Cayman Islands registered office (including the provision of required particulars of registrable persons and the requisite updates to such particulars) and/or to send required notices commits an offence, with the potential for a fine of up to CI\$100,000. A breach of any of the Legal Person's obligations under the Act may also result in a Restrictions Notice being served and/or in the imposition, by the competent authority, of administrative fines (starting at CI\$5,000 and rising by CI\$1,000 per month for a continuing breach, to a maximum of CI\$25,000 and with the potential for striking off where the fine goes unpaid for 90 days).

OBLIGATIONS OF THE CORPORATE SERVICE PROVIDER

The role of the CSP pursuant to the BOT Act is to receive, review and verify beneficial ownership information (verify if the required particulars and supporting documents are true and correct) from a Legal Person, and to establish and maintain a BOR to regularly deposit such beneficial ownership information with the competent authority every month.

If an individual or reportable legal entity ceased to be a registrable beneficial owner in relation to the Legal Person the CSP has to retain the records relating to that individual or reportable legal entity for five years from that date.

BENEFICIAL OWNERS

Individuals

The definition of a Beneficial Owner will align more closely with the definition used in the Cayman Islands Anti-Money Laundering regulations which refers to a natural person who meets any of the following specified conditions:

- who ultimately owns or controls (directly or indirectly) 25% or more of the shares, voting rights or partnership interests in the Legal Person;
- who otherwise exercises ultimate effective control over the management of the Legal Person; or
- who is identified as exercising control of the Legal Person through other means.

Deemed Beneficial Owners

Corporation soles, governments, government departments, international organizations whose members include two or more countries or governments and public authorities are all deemed to be individuals. In the BOT Act they are referred to as Deemed Beneficial Owners (“**DBO**”).

Trustees

Where, in relation to the Legal Person, no individual (or DBO) meets any of the specified conditions above, the trustees of a trust that meets one of the specified conditions in relation to the Legal Person and has ultimate effective control over the activities of the trust is deemed to be the RBO.

A corporate trustee that is incorporated, established or registered in the Cayman Islands is a RLE in accordance with the Act and should therefore also be included in the BOR. If the trustee is incorporated, established or registered outside of the Cayman Islands, the name of the foreign corporate trustee together with the name of a natural person within the foreign corporate trustee should be identified on the BOR.

Reportable Legal Entity

The definition of a Reportable Legal Entity (“RLE”), in relation to a Legal Person, means another Cayman Islands Legal Person, excluding a foreign company, foreign entity or a foreign limited partnership, that, if it were an individual, would be considered a beneficial owner of the Legal Person. The RLE is considered a RBO where:

- The RLE directly holds a relevant interest in the Legal Person or meets one or more specified conditions mentioned above; or
- Through which any BO or RLE indirectly holds a relevant interest in the Legal Person.

SENIOR MANAGING OFFICIAL

Where an individual does not meet the specified conditions above, there are no RLEs and there is no trustee with ultimate effective control, only then, a Senior Managing Official should be identified as a person with a control function. (This does not include professional advisors or professional managers). For the purposes of the Act, a senior managing official includes a director or chief executive officer of the Legal Person (or persons holding equivalent positions). It is important to note that this is not an exhaustive list. Where multiple directors individually exercise the same level of control and collectively, the directors control the Legal Person, at least one director or senior officer should be listed on the BOR.

SPECIFIED CONDITIONS DETAILS

When identifying the BOs, the percentage ownership (whether direct or indirect) may not be indicative of voting rights as controllers may not have a percentage control and may still have a complete veto over the affairs of a Legal Person. Each should be identified as a BO (i.e., the controllers and those with voting rights). There may be instances where an agreement is made to vote or exercise rights jointly with the total combined value of the shares or rights being 25% or more. In these cases, each should be identified as a BO.

A Legal Person may need to review its records to ascertain evidence of nature of control. Such records may include, but are not limited to:

- the corporate registers of a Legal Person and other Legal Persons in the ownership group or chain; or
- documents and records of a Legal Person and other Legal Persons in the ownership group or chain (evidencing voting rights, power to remove directors and managers or holder of majority voting power of the board/partnership governing body).

In some instances, there may be legal instruments used that result in the exercise of control (e.g., nominee appointments and Powers of Attorney). The exercise of influence or control once, is sufficient to indicate that it could be exercised again unless:

- steps were subsequently taken to clarify ownership and control within the Legal Person; or
- it is evident that the influence or control was only exercisable in certain circumstances which no longer exist.

It is acknowledged that control of a Legal Person could be exercised through other means such as **debt** instruments or financing arrangements. For example, where a lender or creditor could control a Legal Person via the provisions of a lending agreement (such as a convertible debt instrument that is convertible into voting equity), or by a third party who can otherwise influence a shareholder by financial or relational means.

Please note that where advice is provided purely in a **professional** capacity in a role such as a lawyer, accountant, banker or financial advisor; or exercises a statutory function in the role of a liquidator or other, this alone would not be considered the exercise of influence or control.

REQUIRED PARTICULARS OF REGISTRABLE BENEFICIAL OWNERS

As noted above, an In-Scope Legal Person is required to include all of the required particulars for its RBOs. The required particulars differ depending on whether the registrable beneficial owner is an individual, a DBO, an RLE or a trustee incorporated, established or registered outside of the Cayman Islands

Individuals

- Full legal name;
- Residential address;
- Address for service of notices under the BOT Act (if different from residential address)
- Date of birth;
- All nationalities
- Information from the individual's unexpired and valid ID that identifies the individual including:
 - identification number;
 - country of issue; and
 - date of issue and of expiry;
- Nature in which the individual owns or exercises control of the Legal Person; and
- The date on which the individual became or ceased to be a RBO in relation to the Legal Person in question.

Deemed Beneficial Owners

- Name;
- Principal office address;
- Legal form;
- Nature of the DBO's ownership or its exercise of control of the Legal Person;
- Date on which the Deemed Beneficial Owner became or ceased to be a RBO; and
- Name, telephone number and email address of an individual contact person within such DBO

Trustees

If the Trustee is an individual then the required particulars are the same as for the Individual RBO. If the Trustee is a Caymanian Trustee then the required particulars are the same as for the RLE. However if the Trustee is a Foreign Corporate Trustee then the In-Scope Legal Person needs to provide the following required particulars:

- Name;
- Registered office address;
- Legal form;
- Nature of the Foreign Corporate Trustee's ownership or its exercise of control;
- Date on which the Foreign Corporate Trustee became or ceased to be a RBO; and
- Name, telephone number and email address of an individual contact person within such

Reportable Legal Entity

- Name;
- Registration number;
- Registered office address;
- Legal form of the entity;
- Nature of the RLE's ownership or its exercise of control; and
- Date on which the RLE became or ceased to be a RBO

Senior Managing Official

The required particulars are the same as those required for an individual BO.

SUPPORT FOR REQUIRED PARTICULARS

The CSP must collect all documents to support the RBOs required particulars. These documents must be certified and valid.

- Certified valid true copy of an **ID** identifying the RBO's main nationality.
- Certified true copy of a **utility bill** issued in the last 3 months.
- Supporting documentation showing the **BO nature of ownership** (voting rights or share rights or managerial status etc).
- Certificate of Incorporation for a RLE.

LIQUIDATION OF A LEGAL PERSON

Where a Legal Person is being wound up, the CSP is required provide the competent authority with the name and contact details of the provisional liquidator, liquidator or joint liquidator which has been appointed to the Legal Person along with the required particulars for its RBOs or Senior Managing Official.

THE ALTERNATIVE ROUTES TO COMPLIANCE

Certain eligible Legal Persons will be able to utilize the Alternative Route to Compliance described in Section 12 of the BOT Act

Under the BOT Act Section 12(1), the ARC would be applicable to a Legal Person where:

- (a) it is listed, or is a subsidiary of a listed entity, on the Cayman Islands Stock Exchange or an approved stock exchange;
- (b) it is licensed under a regulatory law, (List in Appendix B);
- (c) it is a fund registered under the Mutual Funds Act (As Amended) or the Private Funds Act (As Amended);
- (d) it is exempted by Cabinet.

ARC Section	Route Name	Guidance
section 12(1)(a)	listed, or is a subsidiary of a listed entity, on the Cayman Islands Stock Exchange or an approved stock exchange;	<ul style="list-style-type: none"> • The list of approved stock exchanges in Schedule 4 of the Companies Act (2023 Revision) (and in Annex 1) • The listed entity is exempt, together with its subsidiaries, from maintaining a BO register; • A Legal Person is a subsidiary of a listed entity if the listed entity holds 75% or more of the shares or voting rights in the subsidiary Legal Person, the listed entity exercised ultimate control over the subsidiary Legal Person or the listed entity controls the subsidiary Legal Person by other means.
section 12(1)(b)	licenced under a regulatory law;	<ul style="list-style-type: none"> • Registered entities under the SIBA/VASP Act are not exempt. • Subsidiaries are not exempt. • Regulatory law means a law defined as such in section 2 of the Monetary Authority Act (2020 Revision), other than the Directors Registration and Licensing Act, 2014 (Annex 2);
Section 12(1)(c)	a fund registered under the Private Funds Act (As Amended) or the Mutual Funds Act (As Amended);	<ul style="list-style-type: none"> • If a Legal Person is a regulated fund vehicle under the Private Funds Act or the Mutual Funds Act it is exempt from BO reporting. • General Partners, single investor funds and subsidiaries of the fund are not exempt and will need to establish a BOR. • Have to appoint a Contact Person (“CP”)
Section 12(1)(d)	exempted by the Cabinet by virtue of this Act; or	N/A

CONTACT PERSON

Legal Persons that are registered under the Mutual Funds Act or Private Funds Act can opt to appoint a Contact Person to act as a liaison between the Legal Person and the Competent Authority. This is a requirement of the ARC under Section 12(1)(C) of the BOT ACT where the Legal Person can provide a Registered Office services provider, a licensed Fund Administrator or another appropriately licensed Cayman Islands service provider’s details to the Competent Authority in lieu of its Beneficial Owners. The responsibilities of the Contact Person are to ensure communication is facilitated between the Legal Person and the Competent Authority, engage with the Competent Authority and Registrar as required and provide BO information within the specific timeframe set, which can be within 24 hours. Due to the swift turnaround times, a Legal Person and Contact Person should ensure there is an effective mechanism in place to support the effective execution of any such request received. Trident Trust as a licensed Fund Administrator, is eligible to act as the CP for Registered Funds where it is providing Fund Administrator services to the Legal Entity.

WHO HAS ACCESS TO THE BENEFICIAL OWNERSHIP REGISTERS?

The Beneficial ownership registers are not accessible to the public. However, the Act provides that certain Cayman Islands regulatory authorities and others may be provided access to information on all beneficial ownership registers maintained on behalf of Legal Persons subject to the BOT Act. The list of authorities is provided under Annex 3.

ANNEX 1 APPROVED STOCK EXCHANGES

Amman Stock Exchange	Indonesia Stock Exchange
Athens Stock Exchange	Intercontinental Exchange
Australian Securities Exchange	International Securities Exchange
B3 S.A.	Johannesburg Stock Exchange
BATS Global Markets	Korea Exchange
Bermuda Stock Exchange	London Stock Exchange (including AIM)
BOAG Borsen AG	Luxembourg Stock Exchange
Bolsa de Barcelona	Malta Stock Exchange
Bolsa de Bilbao	Montreal Exchange
Bolsa de Madrid	Nagoya Stock Exchange
Bolsa de Valencia	Nasdaq
Bolsa de Comercio de Buenos Aires	Nasdaq Copenhagen
Bolsa de Comercio de Santiago	Nasdaq Dubai,
Bolsa de Valores de Caracas	Nasdaq Helsinki
Bolsa de Valores de Lima	Nasdaq Iceland
Bolsa de Valores de Colombia	Nasdaq OMX Nordic
Bolsa Mexicana de Valores (Mexican Stock Exchange)	Nasdaq PHLX
Bolsas y Mercados Espanoles	Nasdaq Riga
Borsa Istanbul	Nasdaq Stockholm
Borsa Italiana	Nasdaq Tallinn
Borse Berlin	Nasdaq Vilnius
Borse Frankfurt	National Stock Exchange of Australia
Borse Munchen	National Stock Exchange of India
Borse Stuttgart	New York Stock Exchange (NYSE)
BSE Limited	New Zealand Stock Exchange
Bucharest Stock Exchange	NYSE American
Budapest Stock Exchange	NYSE Arca
Bursa Malaysia (including the Main Market and the ACE Market)	NYSE Chicago
Chicago Board Options Exchange	NYSE Euronext,
CME Group	Osaka Exchange
Colombo Stock Exchange	Philippine Stock Exchange
Cyprus Stock Exchange	Prague Stock Exchange
Deutsche Borse	Saudi Exchange (Tadawul)
Dusseldorf Stock Exchange	Shanghai Stock Exchange
Eurex	Shenzhen Stock Exchange
Euronext Brussels	Singapore Exchange (including Catalist)
Euronext Dublin	SIX Swiss Exchange
Euronext Lisbon	Stock Exchange of Mauritius
Euronext NV	Taipei Exchange
Euronext Oslo Bor	Taiwan Stock Exchange
Euronext Paris	The Egyptian Exchange
Fukuoka Stock Exchange	The Stock Exchange of Thailand
Hong Kong Exchange and Clearing (HKEX) (including Growth Enterprise Market (GEM))	Tokyo Stock Exchange
	Toronto Stock Exchange (including TSX Venture Exchange)
	Warsaw Stock Exchange
	Wiener Borse AG (Vienna Stock Exchange)

ANNEX 2

For the Purpose of the BOT Act, Regulatory Law means:

- the Banks and Trust Companies Act (As Revised);
- the Building Societies Act (As Revised);
- the Companies Management Act (As Revised);
- the Cooperative Societies Act (As Revised);
- the Development Bank Act (As Revised);
- the Insurance Act (As Revised);
- the Money Services Act (As Revised);
- the Mutual Funds Act (As Revised).

ANNEX 3

Authorities that may be provided with BOR access:

- the Royal Cayman Islands Police Service;
- the Financial Reporting Authority, established under section 3 of the Proceeds of Crime Act (As Revised);
- the Cayman Islands Monetary Authority established under section 5 of the Monetary Authority Act (As Revised);
- the Anti-Corruption Commission established under section 3 of the Anti-Corruption Act (As Revised);
- the Tax Information Authority, designated under section 4 of the Tax Information Authority Act (As Revised);
- the Maritime Authority of the Cayman Islands established under section 3 of the Maritime Authority Act (As Revised);
- the Civil Aviation Authority of the Cayman Islands established under section 3 of the Civil Aviation Authority Act (As Revised);
- the competent authority of Lands appointed under section 5 of the Registered Lands Act (As Revised);
- an entity undertaking procurement in accordance with the Procurement Act (As Revised);
- any other body which is:
 - assigned responsibility under section 4 of the Proceeds of Crime Act for monitoring compliance with money laundering regulations made under the Proceeds of Crime Act (As Revised);
 - a licensed financial institution; or
 - a designated non-financial business and profession under regulation 55A of the Anti-Money Laundering Regulations (As Revised).