

Cayman Islands private client structures and beneficial ownership – changes of note

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On 31 July 2024, the Cayman Islands Beneficial Ownership Transparency Act, 2023 (“**BO Act**”) and the accompanying Beneficial Ownership Transparency Regulations, 2024 (“**BO Regulations**”) were brought into force. At the same time, Guidance on Complying with Beneficial Ownership Obligations in the Cayman Islands (“**BO Guidance Notes**”) was published on the General Registry’s website.

The new requirements (referred to broadly below as the “**New BO Regime**”) introduced by the BO Act, BO Regulations and BO Guidance Notes were considered in detail in our recent [briefing note](#). This summary considers how private clients, and, in particular, those who have established structures involving trusts with underlying companies incorporated under the laws of the Cayman Islands, might be impacted by the New BO Regime in practice.

Relevant changes

As a consequence of the New BO Regime a wider class of Cayman Islands entities will fall within scope of the reporting obligations. This is because the New BO Regime removes certain exemptions applicable under the old rules and also includes additional types of Cayman Islands entities previously out of scope. As a result of these changes a number of vehicles commonly used for wealth structuring will now also fall within the scope of the New BO Regime, including foundation companies and private trust companies (“**PTCs**”).

While trusts remain out of scope of the New BO Regime (and there continues to be no requirement to register trusts themselves in the Cayman Islands), underlying trust companies and other entities falling within the definition of a Legal Person (discussed below) (which we will refer to as “**Trust Underlying Entities**”) are included. This means that persons deemed to be the Registrable Beneficial Owners of Trust Underlying Entities will be registrable under the New BO Regime.

Legal Person under the New BO Regime

The following Cayman Islands incorporated, formed or registered entities are within the scope of the New BO Regime:

- a company;
- a limited liability company;
- a limited liability partnership;
- a limited partnership;
- a foundation company;
- an exempted limited partnership; or
- any other legal person that may be prescribed in regulations (so far none has been), (each a “**Legal Person**”)

A person who is deemed to be a Registrable Beneficial Owner (discussed below) of a Legal Person under the New BO Regime will therefore need to be included on the beneficial ownership register (the “**Register**”) of that Legal Person.

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Who will be a “Registrable Beneficial Owner” of a Legal Person?

Under the BO Act the following natural or legal persons may be registrable in relation to a Legal Person (each a “Registrable Beneficial Owner”):

a) a natural person (subject to the exclusion of certain deeming provisions that are outside the scope of this note and irrelevant in the trusts context) (a “Beneficial Owner”) who:

- ultimately owns or controls, whether through direct or indirect ownership or control, 25% or more of the shares, voting rights or partnership interests in the Legal Person;
- otherwise exercises ultimate effective control over the management of that Legal Person; or
- is identified as exercising control of the Legal Person through other means; or

b) a Legal Person (a “Reportable Legal Entity”):

- that directly holds a “Relevant Interest” (being an interest in a Legal Person comprising a partnership interest, shares or voting rights or ultimate effective control over its management).
- that ultimately owns or controls, whether through direct or indirect ownership or control, 25% or more of the shares, voting rights or partnership interests in the Legal Person;
- that otherwise exercises ultimate effective control over the management of that Legal Person;
- that is identified as exercising control of the Legal Person through other means; or
- through which a Beneficial Owner or other Reportable Legal Entity indirectly holds a Relevant Interest.

If there are no Registrable Beneficial Owners that can be identified then a senior managing official (i.e. a director or CEO) of the Legal Person is required to be registered as a contact person.

Information to be provided

In addition to information that must be provided concerning the Legal Person itself, unless there is an “alternative route to compliance”, the relevant particulars of each Beneficial Owner of the Legal Person and any Reportable Legal Entity must also be provided. The alternative routes to compliance are unlikely to apply to private wealth holding vehicles (with the exception of licensed PTCs).

The relevant particulars to be provided in respect of each Beneficial Owner that is a natural person are:

- full name of each Beneficial Owner;
- residential address and address for service;
- nationality;
- date of birth;

- ID details;
- nature of control / ownership they have over the Legal Person; and
- date upon which they became or ceased to be a Registrable Beneficial Owner.

There is a requirement to update the Register on a monthly basis.

Compliance

The Legal Person itself will be responsible for establishing and maintaining the Register for the Legal Person with its corporate services provider (“CSP”) in compliance with the New BO Regime. The CSP will be responsible for filing the Register with the Cayman Islands responsible authority each month. Failure to comply carries civil and, in certain cases, criminal penalties.

Timing

Enforcement of the New BO Regime will not commence until January 2025, allowing a grace period to ensure compliance.

How will this affect trusts?

Trustees of trusts with a Trust Underlying Entity that is a Legal Person may be registrable if there is no other Beneficial Owner that can be identified. This is subject to the trustees satisfying the test for a Beneficial Owner outlined above, provided that they have ultimate effective control over the activities of the trust and that this is not solely in the capacity of professional advisor or professional manager. The position is straightforward for individual trustees, and Cayman Islands corporate trustees. Where the trustee is a foreign corporate trustee the name of the trustee and an individual within the foreign corporate trustee will need to be identified in the Register.

If there is any Registrable Beneficial Owner in relation to the Trust Underlying Entity, then their relevant particulars must be provided.

The BO Regulations provide that in relation to a Legal Person:

“a person controls a right, if by virtue of any arrangement between that person and others, the right is exercisable only:

- *by that person;*
- *in accordance with that person’s directions or instructions; or*
- *with that person’s consent or concurrence.”*

In this context, a person is deemed to have control of the Legal Person and as such will be a Registrable Beneficial Owner whether they have positive powers of direction, or veto powers over the Legal Person. This means that the following individuals or entities may be classified as Registrable Beneficial Owners of a Trust Underlying Entity dependent on the scope of their powers:

1. protectors;
2. settlors and other power holders of reserved powers trusts; and
3. enforcers of STAR trusts.

To determine if there are any Registrable Beneficial Owners controlling the Trust Underlying Entity it will be necessary to carefully consider the trust deed and any supplemental documents, along with any other arrangements in place such as powers of attorney and nominee agreements.

There is a trap for the unwary here. The legislation looks to the control actually exercised by individuals in practice, rather than based on the legal documentation in place. Therefore, in situations where the control arrangements in place in relation to trust assets have not been properly papered then, aside from the trust law issues this poses for the trustee, it could also result in inaccuracies in the Register.

Foundation companies

Foundation companies, regularly used in private wealth structures, should also be subject to review in order to ensure compliance. It will be necessary to carefully look over the provisions of the memorandum and articles of association along with any by-laws to determine whether the foundation company has any Registrable Beneficial Owners. In some basic foundation companies, the Registrable Beneficial Owner could simply be the Supervisor. However, due to the flexibility of foundation companies and the ability to include bespoke provisions to suit a wide range of different scenarios the Registrable Beneficial Owner of a foundation company with more complex constitutional documents could be any of the supervisor, the founder, the directors or others. Where there is no Registrable Beneficial Owner a senior managing official should be identified.

Foundation companies are also commonly used in the digital assets space and can form part of what are considered to be “ownerless” structures. The considerations for identifying the person or people considered to be Registrable Beneficial Owners set out above will also apply in respect of such foundation companies.

Private trust companies

Under the former regime, entities that were either licensed or registered under a regulatory act including the Banks and Trust Companies Act (Revised) were exempt. As a result, unlicensed PTCs were formerly exempt. This exemption no longer applies under the New BO Regime, and it will now be necessary to identify the Registrable Beneficial Owners of unlicensed PTCs. Where, as is typically the case, the PTCs' shares are held by a STAR trust, the analysis in relation to trusts outlined above will apply.

Privacy considerations

For the time being, access to beneficial ownership information will not be granted to the general public. As was the case before the New BO Regime came into force, disclosure of this information will be confined to various public bodies and authorities, now specified in the BO Act.

However, it is important to note that the BO Act provides a framework for further regulations in relation to public access to be introduced in the future, and draft regulations are currently under industry consultation. In their present form, the draft regulations provide that anyone seeking public access will first be required to satisfy a “legitimate interest” test. A consultation process is also currently underway in relation to how public access should be restricted (in the event that public access is ultimately introduced at some point in the future). It is proposed that access would be restricted where affected individuals can demonstrate that the disclosure of their information could place them at serious risk of kidnapping, extortion, violence, intimidation, or other similar danger or serious harm. We are monitoring these potential developments and will provide a further update in due course.

As this is an evolving area, with a significant regulatory burden, private clients and trustees alike should take care to review their current structuring arrangements and prepare for the January 2025 deadline.



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