

Proposed Amendments to the Cayman Islands Beneficial Ownership Regime

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Date / [October 2023](#)

Changes to the beneficial ownership regime, expected to come into force in 2024, will impact the compliance requirements applicable to most Cayman Islands entities.

On 30 August 2023, the Beneficial Ownership Transparency Bill, 2023 (the Bill) was published, proposing several important changes to the beneficial ownership regime in the Cayman Islands. The Bill is intended to enhance the jurisdiction's current beneficial ownership regime to ensure compliance with the recommendations of the Financial Action Task Force. The Bill demonstrates the Cayman Islands' continuous efforts in adopting the changing international standards for anti-money laundering and countering terrorist financing.

The Bill is expected to be considered by Parliament in the fourth quarter of 2023. If passed, it will impose a number of significant changes to the current regime, as outlined below. The existing legislation remains in place until the Bill is passed and its provisions come into force, which is likely to be in a phased approach in 2024.

Key changes to the regime

1. Expanded Scope to include Partnerships

The current beneficial ownership regime applies to Cayman Islands companies, including any type of ordinary company, exempted company or limited liability company, as well as

limited liability partnerships. The Bill will expand on this such that Cayman Islands exempted limited partnerships and limited partnerships will also be subject to the beneficial ownership regime and potentially required to maintain beneficial ownership registers.

2. Removal of Exemptions

When passed, the Bill will result in the removal of a number of exemptions available under the current regime, meaning several categories of currently exempt entities will be required to maintain a beneficial ownership register.

Under the Bill, the only in-scope entities that will not be required to maintain a beneficial ownership register are:

- a. entities, or subsidiaries of entities, listed on an approved stock exchange; and
- b. entities licensed under a Cayman Islands regulatory law.

A fund registered under the Private Funds Act or Mutual Funds Act will not be exempt under the Bill, however, an alternate route of compliance will be available. Instead of providing the details of its beneficial owners, a registered fund may provide contact details for a fund administrator licensed under the Mutual Funds Act or another contact person licensed or registered under a Cayman Islands regulatory law located in the Cayman Islands. Such contact person would be

responsible for providing details of the fund's beneficial owners if and when requested by the relevant authority.

All other exemptions under the current regime will be removed.

3. Access to Beneficial Ownership Details

Information submitted under the beneficial ownership regime is kept on a centralised electronic platform which is not publicly available but is accessible by the Cayman Islands Registrar of Companies on behalf of itself or certain regulatory bodies. Consistent with a commitment made by the Cayman Islands government in 2019 to have a public register of beneficial ownership by December 2023, the Bill includes a clause that would enable Cabinet to make regulations providing for public access. However, public access can only be implemented if and when further regulations are proposed by Cabinet and affirmed by a resolution of Parliament.

A European Court of Justice judgment in November 2022 ruled that unfettered public access to beneficial ownership registries in the EU was a disproportionate interference with privacy and data protection rights. Issues raised by this judgment are reflected in that the Bill does not allow for public access unless and until further regulations are proposed and affirmed, and no such regulations are anticipated until further analysis and consultation with the UK government is completed.

4. Details of beneficial owners

In addition to the information currently required to be provided with respect to each beneficial owner, the nationality of each individual beneficial owner and the nature of each beneficial owner's ownership or exercise of control will be required under the Bill.

Additionally, the definition of a 'beneficial owner' will be amended under the Bill in order to more closely align with that under Cayman Islands' Anti-Money Laundering Regulations (**AML Regulations**), which is intended to improve consistency across these regimes. However, the percentage of ownership or control applicable to be considered a beneficial owner will remain at 25% or more (whereas the threshold under the AML Regulations is 10% or more).

Further detail will follow after the Bill is considered by Parliament. Please feel free to reach out to your usual Carey Olsen contact or a member of our team listed on the following page to discuss further.

Continued



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