



## Legal Updates

# Cayman Islands - New Beneficial Ownership Requirements

September 2022

### Introduction

The Cayman Islands Companies Act (the “Act”) requires each Cayman company to provide its corporate services provider (such as its Cayman registered agent) and the Registrar of Companies with the ‘*required particulars*’ of ‘registrable persons’. By the Companies (Amendment of Section 254) Regulations, 2022 (the “Regulations”), which came into force on 10 June 2022, an amendment has been made to the definition of ‘*required particulars*’ in the Act which has serious implications for each Cayman company (including LLCs).

### Background

Part XVIIIA of the Act (“Beneficial Ownership Regime”) deals with Beneficial Ownership compliance and applies to all companies which are incorporated or registered under the Act (or under the Limited Liability Companies Act which has corresponding provisions). Exceptions to the Beneficial Ownership Regime include (but is not limited to) companies listed on Approved Stock Exchanges, and those which are registered or licensed under a regulatory law (e.g. Investment Funds and Investment Managers and Investment Advisors registered with the Cayman Islands Monetary Authority (“CIMA”).

A beneficial owner under the Beneficial Ownership Regime in respect of a Cayman company will be any of the following:

- i. An individual that holds, directly or indirectly, 25% or more of the shares;
- ii. An individual that holds, directly or indirectly, 25% or more of the voting rights; and
- iii. An individual that has the right, directly or indirectly, to appoint or remove a majority of the board of directors.

Each beneficial owner under the Beneficial Ownership Regime is required to file “required particulars” in Cayman and such “required particulars” include information such as the individual’s full legal name, residential address, date of birth and information identifying the individual from a government issued identification document (e.g. passport or drivers’ license).

### What have the Regulations changed?

The change made to the Act by the Regulations is significant and relates to s.254(d) of the Act. The table below shows the wording prior to 10 June 2022 and as it is now in force:

Previous wording	Wording now in force
<p>“254(1) The required particulars of an individual are</p> <p>...</p> <p>(d) information identifying the individual from their passport, drivers’ licence or other governing-issued document...”</p>	<p>“254(1) The required particulars of an individual are</p> <p>...</p> <p>(d) information identifying the individual from the individual’s unexpired and valid passport, drivers’ licence or other governing-issued document...” (emphasis added)</p>

### What are the implications of the change?

As will be apparent from the Table above, it is now incumbent on the Cayman company (note, not the corporate services provider) in question to ensure that the ID document held by its Cayman registered agent for each individual beneficial owner that is registrable person is in date and is valid.

Therefore, companies which are subject to the Beneficial Ownership Regime should ensure that they have in place appropriate procedures to ensure that updated ID documents are provided to the Cayman registered agent prior to the expiry of the previous document.

### What are the penalties for non-compliance?

The key enforcement authority in the Cayman Islands is the Registrar of Companies and it is responsible for actively checking and monitoring whether or not the required particulars filed with the Registrar of Companies complies with the Act.

If the Registrar of Companies identifies non-compliance with the Beneficial Ownership Regime under the Act it can impose an administrative fine of up to CI\$5,000 (approximately US\$6,100) for each breach. We are aware that the Registrar of Companies has already demonstrated a clear intent to impose administrative fines since the Regulations came into force.

It is important to note that such administrative fine is *per breach*, not per company. So for example, if a company has two ‘registrable persons’ and fails to provide copies of updated ID documents to the Cayman registered agent for both such persons, the company could be fined up to CI\$10,000 (approximately US\$12,200).

Further fines may be imposed if oversights are not remedied in a timely fashion.

### Does the Registrar of Companies actually police compliance with this requirement?

Yes, it does. Even though this change to the Act has only been in force since 10 June 2022, we are aware of compliance checks actively being undertaken by the Registrar of Companies and it is showing a willingness to impose fines in cases of non-compliance.

*This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on compliance with the Beneficial Ownership Regime, please contact your usual Loeb Smith attorney or :*

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