

Legal Briefings

Cayman Islands: Proposed Legislation to expand Cayman Islands' beneficial ownership framework

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The Beneficial Ownership Transparency Bill, 2023 (the “**Bill**”), which aims to streamline the Cayman Islands' beneficial ownership framework and to enhance transparency and access to adequate, accurate and current beneficial ownership particulars is part of the Cayman Islands' continuing efforts to advance the FATF's enhanced Recommendation 24 global standards on beneficial ownership of legal persons. The aim is for the Cayman Islands to enhance its legal framework to combat money laundering and terrorist financing, and to maintain its compliance with the international standards. The Bill is expected to be presented to the Parliament of the Cayman Islands in this fourth quarter of 2023, and if passed, it will have considerable implications on the compliance obligations of most Cayman entities and their beneficial owners.

In this Briefing Note, we provide a brief overview of the principal proposed changes or additions to be introduced by the Bill.

Consolidation of existing rules

- The Bill in effect consolidates the existing rules of the beneficial ownership framework which lie across the Companies Act, the Limited Liability Partnership Act and the Limited Liability Companies Act into one single Act.
- Such consolidation streamlines the beneficial ownership framework and allows for easier reference by concerned parties to the beneficial ownership framework.

Expansion of scope of entities covered by Beneficial Ownership framework

- The scope of entities covered by the beneficial ownership framework has been significantly expanded by:
 - (a) including limited partnerships and exempted limited partnerships into the definition of “legal person”, hence bringing these partnerships into the scope of the beneficial ownership framework; and
 - (b) removing certain exemptions under the current beneficial ownership framework, including removal of the exemption for any legal entity registered under a regulatory law such as the Mutual Funds Act (As Revised), the Private Funds Act (As Revised), the Securities Investment Business Act (As Revised) and the Virtual Asset (Service Providers) Act (As Revised).
- For an investment fund registered under the Mutual Funds Act (As Revised) or registered under the Private Funds Act (As Revised), however, the Bill provides that such fund does not have to supply the

full required particulars of beneficial owners as mandated in other cases, and instead such fund will only need to provide its corporate services provider with the contact details of a licensed fund administrator or another contact person licensed or registered under a Cayman Islands regulatory law for providing beneficial ownership information located within the Cayman Islands. Within 24 hours of a request being made by the Minister responsible for financial services (the “**Minister**”) (or at any other time as the Minister may reasonably stipulate), such licensed fund administrator or contact person of the fund will be required to provide the Minister with the requested beneficial ownership information.

- In light of the above, prior to the formal enactment of the Bill, Cayman entities are suggested to review whether they fall within the expanded scope of the beneficial ownership framework and whether the exemptions which they previously relied upon may no longer be applicable.

Revision of “beneficial owner” definition

- The definition of “beneficial owner” under the beneficial ownership framework will be revised in order to align with the concepts and wordings used in that of the Cayman Islands Anti-Money Laundering Regulations (As Revised) (the “**AML Regs**”), such revisions include but are not limited to:
 - (a) replacing “hold” with “ultimately owns or controls” when describing the 25% threshold in shares, voting rights or partnership interests; and
 - (b) categorising an individual who “otherwise exercises ultimate effective control over the management” of a legal person as its beneficial owner.
- By making the definitions of “beneficial owner” in the beneficial ownership framework and the AML Regs more consistent with each other to certain extent, it will make it easier for relevant stakeholders to interpret and apply these laws and regulations.

Additional beneficial ownership information required

- The Bill expands the scope of required particulars of the relevant beneficial owner by requesting for the nationality and/or the nature of ownership or exercise of control of the relevant beneficial owner. These are not required to be provided in the existing beneficial ownership framework.
- Through expanding the scope of required particulars, the Bill allows for the Minister to access more transparent beneficial ownership information, which may facilitate its identification of money laundering and/or terrorist financing risks.

Provision of leeway to create a public beneficial ownership register

- Currently, the beneficial ownership information provided to the Minister is not available to the public.
- Noting that the Cayman Islands Government made a commitment to the UK Government in 2019 to introduce a public register of beneficial ownership, the Bill grants the Cayman Islands Cabinet the power to, subject to the affirmative resolution by the Cayman Islands Parliament, make regulations empowering the Minister to provide access of certain beneficial ownership information to the public.
- However, in light of the November 2022 judgment made by the European Court of Justice which held that indiscriminate public access to information on beneficial ownership of legal persons was a disproportionate and serious interference with the fundamental rights to respect for private life and to the protection of personal data, the Ministry of Financial Services of the Cayman Islands Government emphasised that the Cayman Islands Parliament would only approve any such regulations to be made by the Cayman Islands Cabinet after discussions with the UK and its other overseas territories, as well as Crown Dependencies, relating to “the necessary privacy safeguards” have been concluded.

- As such, there will not be a public register of beneficial ownership even after the Bill is formally passed and enacted, so long as the relevant regulations have not been approved by the Cayman Islands Parliament.

Conclusion

The Bill is a keen effort by the Cayman Islands to solidify its status as a leading globally-recognised offshore financial centre which is compliant with global standards set by the FATF for combating money laundering and terrorist financing. The Bill is yet to be approved by the Cayman Islands' Parliament, and as such the relevant obligations imposed by the Bill have not taken effect. The current beneficial ownership framework will remain in place for now. Nonetheless, Cayman entities which are in-scope are encouraged to be prepared and actively review the Bill's application on them well ahead of the Bill's formal enactment, which will then be effected in a phased approach.

Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the matters discussed in this Briefing, please contact us. We would be delighted to assist.

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