

# 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 (LPs). Many entities previously not in scope, or utilizing exemptions, will need to review their records and identify RBOs for provision to their Corporate Service Provider (CSP) for reporting to the Registrar of Companies.

One notable change is that LPs are now required to include the nature of ownership or control and confirm the individual’s nationality in 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 LPs may identify their Beneficial Owners (BOs).

## 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 prescribed by regulations.

Trusts, registered foreign companies 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 LP 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 LP to provide its CSP with a written confirmation (the “BOT Form”) of its categorization along with the provision of the relevant particulars stipulated under the BOT Act.

The required particulars differ if the entity utilizes one of the ARCs or is considered an in-scope LP that is required to identify every individual that is a BO, every reportable legal entity, and if there are no individual BOs – trustees of a trust. When there are no identifiable BOs then the LP 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 LP 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 LP. Moreover, if a RBO has not notified and/or provided its required particulars within one month of becoming a RBO, the LP's CSP may issue a Restrictions Notice regarding the RBO's relevant interest (i.e., shares, voting rights) in the LP.

A LP that fails to comply with its obligations to identify BOs and relevant legal entities, to establish and maintain a BOR 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 LP's obligations under the BOT 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 from a LP, and to maintain and submit the BOR monthly to the competent authority.

If an individual or reportable legal entity ceased to be a RBO in relation to the LP, 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 BO aligns 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 LP;
- > who otherwise exercises ultimate effective control over the management of the LP; or
- > who is identified as exercising control of the LP 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 (DBOs).

### Trustees

Where 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 LP 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 Reportable Legal Entity (RLE) in accordance with the BOT 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 RLE refers to a Cayman Islands LP that, if treated as an individual, would qualify as a BO of another LP. This excludes foreign companies, foreign entities, and foreign limited partnerships. A RLE is considered a RBO if:

- > the RLE directly holds a relevant interest in the LP or meets one or more specified conditions mentioned above; or
- > it serves as a conduit through which any BO or RLE indirectly holds a relevant interest in the LP.

#### 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, 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 BOT Act, a Senior Managing Official is a director or chief executive officer of the LP (or persons holding equivalent positions). Where multiple directors individually exercise the same level of control and collectively, 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 LP. 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 LP 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 LP and other LPs in the ownership group or chain; or
- > documents and records of a LP and other LP 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). Once influence or control has been exercised, it is presumed that it could be exercised again unless:

- > steps were subsequently taken to clarify ownership and control within the LP; or
- > it is evident that the influence or control was limited to specific circumstances that no longer apply.

It is acknowledged that control of a LP could be exercised through other means such as debt instruments or financing arrangements. For example, where a lender or creditor controls a LP 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.

When advice is provided solely in a professional capacity – such as by a lawyer, accountant, banker, or financial advisor – or when someone performs a statutory function, such as acting as a liquidator, this does not, in itself, constitute the exercise of influence or control.

#### REQUIRED PARTICULARS OF REGISTRABLE BENEFICIAL OWNERS

An in-scope LP is required to provide all of the required particulars for its RBOs. The required particulars differ depending on whether the RBO 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 valid ID including:
  - > identification number;
  - > country of issue; and
  - > date of issue and of expiry
- > Nature of ownership or control of the LP
- > Date the individual became or ceased to be a RBO for the LP

### Deemed Beneficial Owners

- > Name
- > Principal office address
- > Legal form
- > Nature of the DBO's ownership or its exercise of control of the LP
- > Date DBO became or ceased to be a RBO
- > 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 LP 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 the foreign corporate trustee became or ceased to be a RBO
- > Name, telephone number and email address of an individual contact person

### 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
- > Date 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 is responsible for collecting all supporting documents for the RBO's particulars. These documents must be certified and valid, and include:

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

### LIQUIDATION OF A LEGAL PERSON

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

### THE ALTERNATIVE ROUTES TO COMPLIANCE

Certain eligible LPs will be able to utilize the ARC described in Section 12 of the BOT Act.

Under the BOT Act Section 12(1), the ARC would be applicable to a LP 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"> <li>&gt; The list of approved stock exchanges in Schedule 4 of the Companies Act (2023 Revision) (and in Annex 1)</li> <li>&gt; The listed entity is exempt, together with its subsidiaries, from maintaining a BO register</li> <li>&gt; A LP is a subsidiary of a listed entity if the listed entity holds 75% or more of the shares or voting rights in the subsidiary LP, the listed entity exercised ultimate control over the subsidiary LP, or the listed entity controls the subsidiary LP by other means</li> </ul>
SECTION 12(1)(B)	Licensed under a regulatory law	<ul style="list-style-type: none"> <li>&gt; Registered entities under the SIBA/VASP Act are not exempt</li> <li>&gt; Subsidiaries are not exempt</li> <li>&gt; 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)</li> </ul>

ARC SECTION	ROUTE NAME	GUIDANCE
SECTION 12(1)(C)	Fund registered under the Private Funds Act (As Amended) or the Mutual Funds Act (As Amended)	<ul style="list-style-type: none"> <li>&gt; If a LP is a regulated fund vehicle under the Private Funds Act or the Mutual Funds Act, it is exempt from BO reporting</li> <li>&gt; General Partners, single investor funds and subsidiaries of the fund are not exempt and will need to establish a BOR</li> <li>&gt; Must appoint a contact person</li> </ul>
SECTION 12(1)(D)	Exempted by the Cabinet by virtue of this Act	N/A

### CONTACT PERSON

LPs that are registered under the Mutual Funds Act or Private Funds Act can opt to appoint a contact person (CP) to act as a liaison between the LP and the Competent Authority. This is a requirement of the ARC under Section 12(1)(C) of the BOT ACT where the LP 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 BOs.

The responsibilities of the CP are to ensure communication is facilitated between the LP 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 LP and CP 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 BORs are not accessible to the public. However, the BOT Act provides that certain Cayman Islands regulatory authorities and others may be provided access to information on all BORs maintained on behalf of LPs subject to the BOT Act. The list of authorities is provided under Annex 3.

## ANNEX 1 APPROVED STOCK EXCHANGES

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

- > Royal Cayman Islands Police Service
- > Financial Reporting Authority, established under section 3 of the Proceeds of Crime Act (As Revised)
- > Cayman Islands Monetary Authority established under section 5 of the Monetary Authority Act (As Revised)
- > Anti-Corruption Commission established under section 3 of the Anti-Corruption Act (As Revised)
- > Tax Information Authority, designated under section 4 of the Tax Information Authority Act (As Revised)
- > Maritime Authority of the Cayman Islands established under section 3 of the Maritime Authority Act (As Revised)
- > Civil Aviation Authority of the Cayman Islands established under section 3 of the Civil Aviation Authority Act (As Revised)
- > Competent authority of Lands appointed under section 5 of the Registered Lands Act (As Revised)
- > Entity undertaking procurement in accordance with the Procurement Act (As Revised)
- > Any other body that 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).

- ▶ PEOPLE LED
- ▶ TECH ENABLED
- ▶ GLOBAL COVERAGE
- ▶ TAILORED SERVICE

- ▶ 1,100 STAFF
- ▶ 25 JURISDICTIONS
- ▶ 47,000 ENTITIES
- ▶ \$177BN AUA

- ▶ FUNDS
- ▶ PRIVATE CLIENTS
- ▶ CORPORATE CLIENTS
- ▶ MARITIME

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