

The Cayman Islands, a British overseas territory, has long been recognized as one of the world’s leading providers of institutionally focused financial services and a preferred destination for the structuring and domiciling of sophisticated and specialized financial services products, particularly investment funds. However, for several reasons, the inherent risks to the Cayman Islands’ financial system of misuse by illicit actors such as money launderers and terrorist financiers are high.

Those reasons include the complexity of the products and services on offer, the high value of assets/funds under management, the high volume of cross border activities and transactions that are processed in or through the Cayman Islands, routinely for the benefit of non-resident customers, and customer bases normally comprising significant proportions of traditionally high-risk clientele such as politically exposed persons (PEPs), high and ultra-high net worth individuals (HNWIs) and corporates owned by foreign ultimate beneficial owners (UBOs).

Notwithstanding these inherent risks, the Cayman Islands was removed from the Financial Action Task Force (FATF)’s Grey List on October 27, 2023,¹ and then the EU’s High Risk Third Country list on February 7, 2024,² in both cases because of the steps the Cayman Islands has taken in recent times to strengthen the effectiveness of its anti-money laundering and combatting the financing of terrorism (AML/CFT) regime and to address certain strategic deficiencies. This is a significant victory for the Cayman Islands. Although a small collection of islands in the western Caribbean Sea spanning only 264 square kilometers (approximately 100 square miles) and comprising a population of less than 100,000 people, the economy depends upon a thriving financial services sector and the most immediate and notable impact of the FATF and EU delistings should be a reduction in due diligence requirements on Cayman-domiciled entities, easing the administrative burden when moving capital in and out of the jurisdiction.

In this Family Office Insight, which was originally published on our [Global Investigations & Compliance Review](#) blog, we focus on one of the key new pieces of domestic Cayman Islands legislation that was pivotal to the delisting effort: the Beneficial Ownership Transparency Act of 2023 (BOTA), which was passed by Parliament on December 15, 2023.³ BOTA will be brought into force in 2024 via a set of implementing regulations and will align the Cayman Islands’ beneficial ownership framework with the UK’s own regime.

BOTA’s Expansive Scope

Beneficial ownership refers to the natural person or persons who ultimately own(s) or control(s) a particular asset, which is normally a legal entity, such as a company or partnership or another legal arrangement, such as a trust or foundation.

Pursuant to §4 of BOTA, a beneficial owner is defined as an individual who: (a) ultimately owns or controls, whether directly or indirectly, 25% or more of the shares, voting rights or partnership interests in the legal person; (b) exercises ultimate effective control over the management of the legal person; or (c) exercises control of the legal person through other means, including as a senior managing official, where there is no individual who exerts control pursuant to paragraph (a) or (b).⁴

Importantly, §3 expands upon the prior regime by bringing into scope all forms of partnership – partnerships other than limited liability partnerships (LLPs) were previously exempted from complying with beneficial ownership requirements – and by removing exemptions for other types of vehicles such as investment funds.⁵

Increased Corporate Transparency and Implications

Under BOTA’s provisions, specified beneficial ownership information will be accessible to the public, subject to certain privacy safeguards. Specifically, §22(6) authorizes the Cayman Islands Cabinet to pass regulations empowering a competent authority to grant access to beneficial ownership information to members of the public, subject to obtaining affirmative resolutions in Parliament.⁶ Section 22(2) also provides that the competent authority may grant access to a number of other parties including the Royal Cayman Islands Police Service, the Cayman Islands Monetary Authority, the Financial Reporting Authority (which is the Cayman Islands’ Financial Intelligence Unit or “FIU”), the Tax Information Authority, the Anti-Corruption Commission and more.⁷ The positive outcomes of increased corporate transparency are clear. Primarily, it should help dramatically in the effort to identify and prevent fraud, money laundering, sanctions evasion and other illicit activities.

Allowing the public to scrutinize ownership structures should lead to more effective due diligence and potential red flags being recognized and investigated much earlier. This should have a knock-on effect in terms of fostering trust and confidence among the legitimate overseas investors who are crucial to the ongoing viability of the Cayman Islands as one of the world’s leading offshore financial centers. However, increased transparency may infringe upon individuals’ right to privacy and necessarily exposes beneficial owners to risks such as identity theft, cyber criminality or harassment. It may also discourage some investors whose businesses and sources of wealth or revenue generation are legitimate, but who seek anonymity for reasons that are not nefarious. Examples would be the desire to protect lawful assets from corrupt governments and illegal confiscations and seizures, or to reduce vulnerability to blackmail, extortion or kidnapping. As a result, BOTA might see some investors divert resources to offshore jurisdictions with more lenient disclosure requirements.

Powers and Enforcement

Sections 24–27 address the powers of the competent authority and the Registrar of Companies (Registrar),⁸ as well as enforcement. Section 24 allows the competent authority or the Registrar to request information from legal persons or corporate services providers for various purposes, including carrying out their duties, verifying accuracy of beneficial ownership information, assisting in the prevention and detection of a crime or furthering the interest of national security. Legal persons and corporate services providers must comply with these requests within a time frame specified in the information request.⁹ Section 26 establishes an administrative penalty system, enabling the Registrar to impose fines of US\$5,000 for violations. The Registrar can impose additional fines of US\$1,000 per month for ongoing violations.¹⁰ Section 27 establishes criminal penalties for legal persons who violate specific provisions of the legislation. A summary conviction for contraventions of §§6, 8, 11, 13 or 14 involves penalties ranging from US\$25,000 for a first offense to US\$100,000 for subsequent offenses.¹¹ If a legal person (excluding limited partnerships) is convicted of a third offense, the court may order that legal person to be struck off the register.¹²

Welcome Public Consultation

The Cayman Islands Ministry of Financial Services (Ministry) has consulted with industry stakeholders, members of the public, government partners and international entities for two years to create and shape BOTAs, which “garnered positive comments from Stakeholders.”¹³ The Ministry is now working on developing accompanying regulations and guidance, which we expect will also undergo industry consultation. This means BOTAs probably will not come into effect for several months.

Additional Considerations

The Cayman Islands is not the only British overseas territory to introduce beneficial ownership registry requirements. Rather, both Anguilla¹⁴ and the British Virgin Islands¹⁵ have passed the primary legislation necessary for the implementation of UBO registers, while Montserrat¹⁶ has completed the consultation process on a draft bill. Indeed, we are witnessing a general global shift towards transparency and accountability in corporate ownership and control that should deter and prevent the misuse of corporate vehicles, such as companies, trusts and other types of legal persons and arrangements, for money laundering, terrorist financing and other illicit purposes.

However, we are far from arriving at a truly harmonized global approach. For example, while the EU was a pioneer of beneficial ownership transparency,¹⁷ the Court of Justice of the European Union (CJEU), following a referral from the Luxembourg District Court, recently invalidated a provision of the 5th EU Anti-Money Laundering Directive (Directive) that purported to guarantee public access to information on beneficial owners.¹⁸ The CJEU held that Article 30 ¶5(c) of the Directive, regarding making personal data available to the general public unnecessarily and disproportionately interferes with the fundamental right to privacy enshrined in Articles 7 and 8 of the EU Charter. Transparency International reported that, immediately after the CJEU ruling, “eight countries suspended public access to their registers, including access by journalists and civil society,”¹⁹ which the organization believes will significantly frustrate the ability of public watchdogs to bring illicit activity to light and promote financial integrity.

It remains to be seen how the EU Member States will interpret the ruling and whether any will construe it so conservatively that independent actors like investigative media and civil society organizations will effectively be barred from accessing corporate ownership information. We will continue to monitor this space.

¹ FATF, [Jurisdictions under Increased Monitoring](#), (October 27, 2023).

² [Commission Delegated Regulation \(EU\) 2024/163 Amending Delegated Regulation \(EU\) 2016/1675](#), 2024 O.J. (L 34) 9.

³ Cayman Islands, [Beneficial Ownership Transparency Act No. 13 of 2023](#).

⁴ Cayman Islands, [Beneficial Ownership Transparency Act No. 13 of 2023](#), § 4.

⁵ *Id.*, § 3.

⁶ *Id.*, § 22 (6).

⁷ *Id.*, § 22 (2).

⁸ The Registrar of Companies is the administrative body empowered by the Cayman Islands General Registry to exert authority over companies governed by the Cayman Islands Companies Act, the Cayman Limited Liability Companies Act and the Foundation Companies Act. Under BOTAs, the Registrar is the authority that has the power to impose financial penalties.

⁹ *Id.*, § 24.

¹⁰ *Id.*, § 26.

¹¹ *Id.*, § 27.

¹² *Id.*, § 27 (2).

¹³ Ministry of Financial Services, [Cayman Islands Government, Beneficial Ownership Transparency Bill to Advance Cayman’s AML/CFT Regime](#), (August 31, 2023).

¹⁴ Anguilla, [Commercial Registry and Beneficial Ownership Registration System Act No. 3 of 2022](#).

¹⁵ British Virgin Islands, [Beneficial Ownership Secure Search System Act No. 17 of 2017](#).

¹⁶ UK Parliament Written Questions, Answers and Statements, [Update on the Implementation of Publicly Accessible Registers of Beneficial Ownership in the Overseas Territories](#), (December 19, 2023).

¹⁷ The 4th EU Anti-Money Laundering Directive (“4AMLD”) required all member states to establish central beneficial ownership registers with accurate, adequate and up-to-date information on the real owners of companies, and had an implementation date of June 26, 2017.

¹⁸ *WM and Sovim SA v Luxembourg Business Registers*, Joined Cases C-37/20 and C-601/20, [ECLI:EU:C:2022:912](#) (CJEU 2022).

¹⁹ Transparency International, [EU Court Ruling on Beneficial Ownership Registers](#), (November 22, 2023).

Contacts



Richard J. Gibbon

Partner, Dubai and Abu Dhabi
T +971 4 447 8715
E richard.gibbon@squirepb.com



Collis Abrahams

Associate, Dubai and Abu Dhabi
T +971 4 447 8724
E collis.abrahams@squirepb.com